INTRODUCTION – ETHICS AND GOVERNANCE

Introduction

The new and emerging concepts in management like

1) Corporate Governance
2) Business Ethics
3) Corporate Sustainability

   Are some of the expressions through which this emerging ethical instinct in the corporate world is trying to express and embody itself in the corporate life.

Meaning of Governance

It means establishment of policies and continuous monitoring of their proper implementations by the member of organization.

Governance Through Inner Consciousness

According to Sri Aurobindo

To be able to do the right thing in the right way, in each case and at every moment, one must be in the right consciousness.

Inner consciousness

- Inner consciousness is the awareness, the capacity to listen to the inner voice that tells us that there is someone who is looking up at us and also warns that there is someone who is watching us.
- The soul and core of Corporate Governance is not the conduct or behavior that we see outwardly. It is internalized values that an organization and its top management follow.
- The quality our consciousness depends on which part of the consciousness we live. There are two parts in our consciousness.
- First is the lower physical-vital being driven predominantly by self-interest, material needs and sensuous desires, quite often degenerating into greed.
- The second is the higher mental, moral and spiritual being seeking for truth, beauty, goodness, harmony and unity.
- The corporate governance, to be truly effective and enduring, has to be based on this higher part of our human nature or consciousness.

Corporate Sustainability

Sustainability is based on simple principle. Everything that we need for our survival and well being depends, either directly or indirectly on our natural environment. Sustainability creates and maintains the conditions under which humans and nature can exist in productive harmony, that permit fulfilling the social, economic and other requirements of present and future generations.

ETHICS

- The term "ethics" is derived from the Greek word "ethos"

- which refers to
  - ✓ character or
  - ✓ customs or
  - ✓ accepted behaviours.
- The Oxford Dictionary states ethics as
  - ✓ the moral principle that governs a person's behavior or
  - ✓ how an activity is conducted.
- In other words, it is the branch of knowledge concerned with moral principles.

Meaning

- Ethics means the rules or principles that define right or wrong conduct.
- Ethics refers to a code of conduct that guides an individual while dealing with others.
- It is a branch of study dealing with what is the proper course of action for man.
- Ethics is a set of principles or standards of human conduct that govern the behavior of individuals or organizations.
- Using these ethical standards, a person or a group of persons or an organization regulate their behavior to distinguish between what is right and what is wrong as perceived by others.
- It is not a natural science but a creation of the human mind.
- It is not absolute and is open to the influence of time, place and situation.

Conclusion

- Ethics can be defined as the discipline dealing with moral duties and obligation, and explaining what is good or not good for others and for us.
- Ethics is the study of moral decisions that are made by us in the course of performance of our duties.
- Ethics is the study of characteristics of morals and it also deals with the moral choices that are made in relationship with others.
- Ethics is concerned with truth and justice, concerning a variety of aspects like the expectations of society, fair competition, public relations, social responsibilities and corporate behavior.

BUSINESS ETHICS AND CORPORATE GOVERNANCE ETHICS

BUSINESS ETHICS

- Business ethics is a form of applied ethics.
- In broad sense ethics in business is simply the application moral or ethical norms to business.
- Business ethics refers to a 'code of conduct' which businessmen are expected to follow while dealing with others.
- Business ethics comprises the principles and standards that guide behavior in the conduct of business.
- Business ethics stands for the saneness or purity of purpose that is upheld through carefully designed actual practices of a business enterprise.

Code of conduct

- It is a set of principles and expectations that are considered binding on any person who is member of a particular group.
- The alternative names for code of conduct are 'code of ethics' or 'code of practice'.

Coverage of business ethics

- The coverage of business ethics is very wide as it deals with norms relating to
  - ✓ a company and
  - ✓ its employees,
  - ✓ suppliers,
  - ✓ customers and
  - ✓ neighbors,
- Its fiduciary responsibility to its shareholders.

CORPORATE GOVERNANCE ETHICS

- Corporate governance is meant to run companies ethically in a manner such that all stakeholders-
  - ✓ creditors,
  - ✓ distributors,
  - ✓ customers,
  - ✓ employees and
  - ✓ even competitors,
  - ✓ the society at large and governments – are dealt with in a fair manner.
- Good corporate governance should look at all stakeholders and not just shareholders alone.

Corporate governance ethics

- Business ethics and corporate governance of an organization go hand in hand.
- An organization that follows ethical practices in all its activities will, in all probability, follow best corporate governance practices as well.

ETHICS PHILOSOPHIES/ Ethical Theories

Deontological ethics (Kantian Ethics)

- Deontology word derived from Greek word "deon" meaning "duty" or "obligatory" and "logos" meaning "science" is therefore science of duty.
- Deontological ethics focus on the relationship between duty and the morality of human actions.
- It follows the concept that moral duty is to do good actions and not bad ones.
- This ethical model simply suggests adherence to independent moral rules or duties regardless of the consequences of such actions.

- When we follow our duty, we are behaving morally and when we fail to follow our duty, we are behaving immorally.
- Example: If a manager decides that it is his duty to always be on time to meetings is running late for reasons not in his control, how is he supposed to drive to reach the meeting on time? Is he supposed to speed, breaking his duty to uphold the law or is he supposed to arrive at his meeting late, breaking his duty to be on time.
- Bhagavad Gita teaches the following: - "That, without being attached to the fruits of activities, one should acts as a matter of duty, for by working without attachment one attains the Supreme (Verse 19, Chapter 3).

Teleological Ethics [Dec, 2009]

- Teleological word derived from the Greek word 'telos' meaning end, purpose and 'logos' meaning logic or reason
- It is also known as consequential ethics. These theories that hold the ends or consequences of an act determine whether an act is good or evil.
- Rightness of actions is determined solely by the good consequences.
- Teleological analysis of business ethics leads to consideration of the full range of stakeholders in any business decision, including
  - ✓ the management,
  - ✓ the staff,
  - ✓ the customers,
  - ✓ the shareholders,
  - ✓ the country,
  - ✓ humanity and
  - ✓ the environment.

Egoism

- The word Egoism derived from Latin word ego, in philosophy, an ethical theory holding that the good is based on the pursuit of self-interest.
- This model takes into accoxnt harms, benefits and rights for a person's own welfare.
- In this model an action is morally correct if it increases benefits for the individual in a way that does not intentionally hurt others, and if these benefits are believed to counterbalance any unintentional harms that ensue.

Utilitarianism

- Utilitarianism is an ethic of welfare.
- It is the idea that the moral worth of an action is solely determined by its contribution to overall utility, that is, its contribution to happiness or pleasure as summed among all persons.
- It can be described by the phrase "the greatest good for the greatest number". For example, one may be tempted to steal from a rich wastrel to give to a starving family.
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Relativism

- Relativism is the idea that some elements or aspects of experience or culture are relative to, i.e., dependent on, other elements or aspects.
- It holds that there are no absolute truths in ethics and that what is morally right or wrong varies from person to person or from society to society.
- The term often refers to truth relativism, which is the doctrine that there are no absolute truths, i.e., that truth is always relative to some particular frame of reference, such as a language or a culture.

Virtue Ethics theory

- Virtue Ethics theory is a branch of moral philosophy that
- emphasizes character,
- rather than rules or
- consequences,
- as the key element of ethical thinking.
- Example – when a person of good standing is found possessing a valuable article belonging to someone else it will be presumed that the article was loaned to him or kept with him for safe-keeping, whereas if it were in the possession of a person of doubtful or dubious character it would be presumed that he has stolen article.

Justice Theory

- Justice approach is also known as fairness approach.
- It is a principle of Equality
- Greek philosophers have contributed to the idea that all equals should be treated equally.
- Justice does not depend on consequences; it depends on the principle of equality.

SCOPE OF BUSINESS ETHICS

Ethics in Compliance

- Compliance is about obeying and adhering to rules and authority.
- The motivation for being compliant could be to do the right thing out of the fear of being caught rather than a desire to be abiding by the law.
- An ethical climate in an organization ensures that compliance with law is fueled by a desire to abide by the laws.
- Organization that value high ethics comply with the laws not only in letter but go beyond what is stipulated or expected of them

Ethics in Finance

The ethical issues in finance that companies and employees are confronted with include:

- In accounting –
  - ✓ Window dressing,
  - ✓ Misleading financial analysis.
- Related party transactions not at arm's length
- Insider trading, securities fraud leading to manipulation of the financial markets.
- Executive compensation.
- Bribery, kickbacks, over billing of expense, facilitation payments.
- Fake reimbursements

ETHICS IN HUMAN RESOURCES (HRM)

Role of ethics in HRM

- Human resource management (HRM) plays a decisive role in introducing and implementing ethics.
- Ethics should be a pivotal issue for HR specialists.
- The ethics of human resource management (HRM) covers those ethical issues arising around the employer-employee relationship, such as the rights and duties owed between employer and employee.

The issues of ethics faced by HRM include

- Discrimination issues i.e. discrimination on the bases of age, gender, race, religion, disabilities, weight etc.
- Sexual harassment
- Affirmative Action
- Issues surrounding the representation of employees and the democratization of the workplace, trade unionization.
- Issues affecting the privacy of the employee: workplace surveillance, drug testing.
- Issues affecting the privacy of the employer: whistleblowing
- Issues relating to the fairness of the employment contract and the balance of power between employer and employee.
- Occupational safety and health.

ETHICS IN MARKETING

Role of ethics in marketing

Marketing ethics is the area of applied ethics which deals with

- the moral principles behind the operation and
- regulation of marketing

The ethical issues confronted in this area include

- Pricing: price fixing, price discrimination, price skimming.

- Anti-competitive practices like manipulation of supply, exclusive dealing arrangements, tying arrangements etc.
- Misleading advertisements
- Content of advertisements
- Children and marketing
- Black markets, grey markets.

Role of ethics in production

- This area of business ethics deals with the duties of a company to ensure that products and production processes do not cause harm.
- Some of the more acute dilemmas in this area arise out of the fact that
  - ✓ there is usually a degree of danger in any product or production process and
  - ✓ it is difficult to define a degree of permissibility, or
  - ✓ degree of permissibility may depend on the changing state of preventative technologies or
  - ✓ changing social perceptions of acceptable risk.

The ethical issues confronted in this area include

- Defective, addictive and inherently dangerous products and
- Ethical relations between the company and the environment include pollution, environmental ethics, Carbon emissions trading
- Ethical problems arising out of new technologies for eg. Genetically modified food
- Product testing ethics

ADVANTAGES OF ETHICS

Ethics helps to promote a strong public image

- An organization that pays attention to its ethics can portray a strong and positive image to the public.
- People see such organizations as valuing people more than profit and striving to operate with the integrity and honor.
- Managing ethical values in businesses besides optimizing profit generation in the long term, legitimizes managerial actions, strengthens the coherence and balance of the organization's culture, improves trust in relationships between individuals and groups, supports greater consistency in standards and qualities of products, and cultivates greater sensitivity to the impact of the enterprise's values and messages.

Ethics programs helps to avoid criminal acts

- Ethics programs help to detect ethical issues and violations early,
- so that they can be reported or addressed.

Enhanced employee growth

- Attention to ethics in the workplace helps employees face the reality, both good and bad in the organization and
- gain the confidence of dealing with complex work situations.

Strong teamwork and greater productivity

- Ongoing attention and dialogue regarding values in the workplace
  - ✓ builds openness,
  - ✓ integrity and
  - ✓ community,
  - ✓ all critical ingredients of strong terms in the workplace.
- Employees feel a strong alignment between their values and those of the organization resulting in strong motivation and better performance.

Improved society

- Trusts controlled some markets to the extent that prices were fixed and small businesses stifled.
- Influence was applied through intimidation and harassment.
- The society reacted and demanded that
  - ✓ businesses place high value on ethics, fairness and
  - ✓ equal rights resulting in framing of antitrust laws,
  - ✓ establishment of Government agencies and recognition of labour unions

Attracting and retaining talent

- People aspire to join organizations that have high ethical values.
- Companies are able to attract the best talent and an ethical company that is dedicated to taking care of its employees will be rewarded with employees being equally dedicated in taking care of the organization.
- Retaining talented people is as big a challenge as getting them in the first place.
- Work is a means to an end for them, not an end in itself.
- The relationship they have with their employer must be a mutual, win-win one, in which their loyalty should not be taken for granted.
- Talented people will invest their energy and talent only in organizations with values and beliefs that match their own

Investor Loyalty

- Investors are concerned about ethics, social responsibility and reputation of the company in which they invest.
- Investors are becoming more and more aware that an ethical climate provides a foundation for efficiency, productivity and profits.

- Relationship with any stakeholder, including investors, based on dependability, trust and commitment results in sustained loyalty

Customer satisfaction

- Customer satisfaction is a vital factor in successful business strategy.
- Repeat purchases/ orders and enduring relationships of mutual respect is essential for the success of the company.
- This is achieved by a company that adopts ethical practices.
- Ethical conduct towards customers builds a strong competitive position. It promotes a strong public image.

Ethical Principle in Business

Introduction

Organization value, influences individual's decisions.
Here ethical issues depends on

- Organization culture
- Employees & colleges

Corporate organization culture comprises of: -

- Value
- Attitude
- Experience
- beliefs

Collection of values & norms shared by employee or group of organization & controls the way of interaction between them & outsiders.

Important element organization culture→ Ethical Climate:- Shared set of understanding about what is correct behavior & how ethical issues will be handled.

<u>Ethical climate</u> is set @ T<u>op level</u>

- ✓ Sets the character for decision making at all level
- ✓ Reflect whether firm has an ethical conscience
- ✓ Function of many factors
- ✓ Their behavior or action will set the way Lower –level employee will act & way of organization's act as a whole during ethical dilemma.

Note: → When Ethical Climate is not clear → Ethical dilemma will often result in unethical behavior.

Structure of organization & ethics (D09)

★ Centralized organization

- Decision making authority delegated to top-level management only.
- Very little authority is delegated to lower level.
- Internal & external responsibility is always with top-level management.

- **Suitable for those organizations**
  - ✓ Which makes high risk decisions &
  - ✓ Whose lower level might not be highly skilled in decision-making.
  - ✓ Where production processes are routine & efficiency is of primary importance.

Disadvantage: -

* It may lead to unethical act because of top to down approach & because of distance in between.
* If it is much bureaucratic, employee may behave according to letter of law rather than sprit of law.

Decentralized: -

* Authority is delegated at several levels.
* They have few formal rules & procedures
* Focuses on increasing flow of information
* Provides greater flexibility
* **Main strength→** Adaptability & early recognition of external change so that manager can react quickly to the change.
* **Weakness →** Difficulty in responding quickly to change in policy & procedures made by top-level management.
* Independent profit centers may divert from organizational objective.

Ethics Programme (J11)

- Company should have good ethical program.
- So that employees can understand company's values & he will comply with policy, procedure & rules, code of conduct
- Following 2 types of Ethics program can be created and both can be adopted simultaneously.

1) Compliance orientation programme

* Creates order by requiring that employees comply with and commit to the required conduct.
* It uses Legal terms, statutes, rules & penalties for non compliance.

2) Value orientation programme

* Objective is to **develop shared value**
* Focus is basically on an abstract core of ideals (e.g. respect & responsibility)
* instead of relying on coercion, the company's values are seen as something to which people willingly aspire.

Most companies start from code of conduct

- Codes of Conduct are Formal statement which describes what the organization expects from its employees.

Features of Good Business Ethics Programme

Leadership means that executives and supervisors care about ethics and values as much as they do about the bottom line.

Consistency between words and actions refers that top management "Practices what it preaches". This is more important than formal mechanisms, such as hotlines for people to report wrong doing.

Fairness means that the organization operates fairly. To most employees, the most important ethical issue is how the organization treats them and their co workers.

Just rewards say that ethical behaviour is fairly rewarded. This has greater influence on the effectiveness of an ethics programme than the perception that unethical behaviour is punished.

Openness means that people can talk openly about ethics and values, and that ethics and values are integrated into business decision making.

Code of ethics in a company

* Shall be Comprehensive
* Consist of general statement
* Serves as principles & basis for rule of conduct
* Desire of management to comply with values, Rules & policy

Shall be developed by president/BOD/CEO with assistance of Legal Staff

* Outlines set of fundamental principles
* Can be used
  1) Basis of operational requirements (things to do)
  2) Basis of operational prohibitions (things not to do)

A code of ethics is based on a set of core principles or values and is not designed for convenience.

* Reflects upper management's desire- for compliance with rules norms & policies
* **Contains 6 core values→**
  1) Trust worthiness
  2) Respect
  3) Responsibility
  4) Fairness
  5) Caring
  6) Citizen

& other descriptions & examples of appropriate conduct

In US → Sec 406 of Sarbanes Oxlay Act, 2002 says

* **Public Company shall disclose**

- Whether they have code of ethics
- Any waiver of code for certain members
- Any change of code of ethics.

If they don't have → explain why?

* **A company may either**

- File with annual report

- Post on website
- Provide a copy on request without change.

Code of conduct

COC may be defined as a document containing the core values and moral principles which all those working in the company are expected to follow in the course of their duties as well as in their daily activities.

It reflects commitment of the company to ensure ethical behaviour on part of its members. It also indicates how an employee should act in general or in specific situation. A code of conduct lay down do's and don'ts. It describes socially acceptable and responsible behaviour.

The development of Corporate Code Contains standards of business conduct

Guides actions of board & senior management.

Elements of COC (J09)

1) Company's value
2) Avoidance of conflict of interest
3) Accurate & timely disclosure in reports & documents.
4) Compliance of laws, rules & regulations.
5) Maintaining confidentiality & fair dealings
6) Prohibition of corporate opportunities.

Most of companies have following principles in their Code of Ethics (COE)

➔ Use of company's assets
➔ Avoidance
- Actions of conflict of interest
- Unlawful agreements
- Compromising on commercial relationships
- Offering or receiving monetary & other inducements

➔ Confidentiality
➔ Safety
➔ Records
➔ Free & fair competition
➔ Disciplinary actions

Ethics Training & Communication: (J10/D11/D10)

A major step in developing an effective ethics program would be to implement a training program and communication systems to train, educate & communicate employees about the firm's ethical standards.

Training program

- ❖ Can educate firm's policy & expectations as well as relevant laws & regulations & general social standards
- ❖ Can make employees aware about available resources, support system, designated personnel who can assist them with ethical and legal advice.
- ❖ They empower employees to ask tough questions and make ethical decisions.

Note: Many companies are now incorporating ethics training into their employee and management development training efforts.

CREDO: - (D12/J13)

- ➢ It is a Latin word.
- ➢ **Meaning →** Set of fundamental belief or a guiding principles,
- ➢ Statement of common values which allow employees to understand the importance of stakeholders & services provided.
- ➢ A good credo gives the company a reason to exist.
- ➢ It develops the spirit of employees, motivating them at all times.
- ➢ It is force which make them work together to achieve a consistent high standard.

Sam Walton, founder of Walmart, established 3 basic beliefs as his company's credo

- ✶ Respect for the individual
- ✶ Service to overall customers
- ✶ Strive for excellence

SAIL Credo: -

- ➢ Credo of sail talks about **respect of stakeholders & ethical practice**
- ➢ We build lasting relationships with customers, we create a culture, which support flexibility, learning & its proactive to change.
- ➢ We value the opportunity & responsibility

Integrity Pact (J13)

- ➔ Developed by TI (Transparency International)
- ➔ Tool for preventing corruption in public contracting
- ➔ Also introduce a monitoring system which will provide independent oversight & accountability.
- ➔ Consist of process which includes an agreement between government departments & bidders.
- • **Contains rights & obligations,** that they will not pay, demand, offer or accept bribes or collude with competitors to obtain the contract.

First → "Agreement between government & bidders to protect from bribery & collusion".

- ➔ Bidder are required to disclose any thing paid by then to anyone for contract- **if violated, they may: -**

- Loose or denial of contract.
- Forfeiture of bid.
- exclusion from bidding on future contract.
- Criminal action against them.

Second→ Monitoring System, that provides for independent oversight & increased government accountability of the public contracting parties process.

Monitors performance functions such as

- Overseeing corruption risk
- Offering guidance on preventive measures
- Informing public about contracting process, transparency and integrity

Social and ethical accounting

Normally links a company's values with development of policies & performance targets & to the assessment & communication of performance

It is a process that helps a company to address: -

- ✓ Issues of accountability to stake holders,
- ✓ To improve performance of all aspects i.e. social, environmental and economics.

Social and ethical accounting has: -

- ✓ No standardized model
- ✓ No standardized balance sheet or unit of currency
- ✓ Issues are defined by the company values and aims by the interest and expectations of its stake holders and by social norms regulations.

Principles of Social and ethical accounting: - (D10)

The dominant principle of social and ethical accounting is inclusivity. This principle requires that the aspirations and needs of all stakeholder groups are taken into account at all stages of the social and ethical accounting process.

- **Planning:** The Company commits to the process of social and ethical accounting, auditing and reporting, and defines and reviews its values and social & ethical objectives or targets.
- **Accounting:** The scope of the process is defined, information is collated and analyzed, and performance targets and improvement plans are developed.
- **Reporting:** A report on the company's systems and performance is prepared.
- **Auditing:** The process of preparing the report, with the report itself, is externally audited and the report is made accessible to stakeholders in order to obtain feedback from them.
- **Embedding:** To support each of the stages, structures and systems are developed to strengthen the process and to integrate them into the company's activities.
- **Stakeholder Engagement:** The concerns of stakeholders are addressed at each stage of the process through regular involvement.

The nature of social and ethical reporting is related to the size and nature of the organization. Even a comprehensive and clear report needs to be trusted to be valuable.

ETHICS AUDIT

They include external societal pressures, risk management, Stakeholder obligations and identifying a baseline to measure future improvements. In some cases, companies are driven to it by a gross failure in ethics, which may have resulted in costly legal action or stricter government regulation. An ethical profile brings together all the factors which affect a company's reputation, by examining the way in which it does business.

The following are the some of the suggested steps in ethics audit:

1. The **1st step** → Securing the commitment of the firm's top management.
2. The **2nd step** → Establishing a committee or team to oversee the audit process.
3. The **3rd step** → Establishing the scope of the audit.
4. The **4th step** → A review of the firm's mission values, goals, and policies.
5. The **5th step** →Identifying the tools or methods that can be employed to measure the firm's progress and then collecting and analyzing the relevant information.
6. The **6th step** → Having the results of the data analysis verified by an independent party.
7. The **final step** → Reporting the audit findings to the BOD and top executives and, if approved, to external stakeholders.

ETHICS COMMITTEE (D10)

Codes of conduct are an outgrowth of company missions, visions, strategies and values. Thoughtful and effective corporate codes provide guidance for making ethical business decisions that balance conflicting interests.

Senior management needs to hold it self to the highest standards of conduct before it can demand similar integrity from those at lower levels. Writing a code of conduct, supporting it at top level and communicating it to the employees are just a beginning. Companies should have a committee of independent non executive directors who are responsible for ensuring that systems are in place in the company to assure employees compliance with the code of ethics.

<u>Functions of Ethics Committee:</u>

- **Review of the definitions of standards and procedures**
  The Committee should review the organization's areas of operation, the activities that require a formal set of ethical standards and procedures. The ethics committee can suggest behaviors to upper management that reinforce the organization's guidelines.

- **Facilitate Compliance**
  The ethics Committee has the responsibility for overall compliance. It is the responsible authority for ethics compliance within its area of jurisdiction. It should serve as the court of last resort concerning interpretations of the organization's standards and procedures.

- **Due diligence of prospective employees**
  The ethics committee should define how the organization will balance the rights of individual applicants and employees against the organization's need to avoid risks that come from placing known violators in positions of discretionary responsibility.

- **Oversight of communication and training of ethics programme**
  The ethics committee should define methods and mechanisms for communicating ethical standards and procedures. This includes the distribution of documents to ensure that every employee understands and accepts the organization's ethical guidelines.

- **Monitor and audit compliance**
  Compliance is an ongoing necessity and the ethics committee should design controls which monitor, audit and demonstrate employees' adherence to published standards and procedures.

- **Enforcement of disciplinary mechanism**
  Disciplinary provisions should be in place to ensure consistent responses to similar violations of standards and procedures

- **Analysis and follow-up**
  When violations occur, the ethics committee should have ways to identify why they occurred. It is also important that lessons learned from prior violations are systematically applied to reduce the chances of similar violations taking place in future.

Concept of Whistleblower (vigil mechanism)

A whistleblower is a person who publicly complains concealed misconduct on the part of an organization or a body of persons, usually from within that same organization. This misconduct may be classified in many ways.
For example: a violation of a law, rule, regulation and a direct threat to the public interest, such as fraud, health/ safety violations and corruption.

LODR 2015 provides provisions for vigil mechanism as follows:
The company shall establish a vigil mechanism for directors and employees to report concerns about unethical behaviour, actual or suspected fraud or violation of the company's code of conduct or ethics policy.

- This mechanism should also provide for adequate safeguards against victimization of directors/employees who avail the mechanism and also provide for direct access to the chairman of the audit committee in exceptional cases.
- The details of establishment of such mechanism shall be disclosed by the company on its website and in the Board's Report.

Types of Whistleblowers

1. **Internal:** When the whistleblower reports the wrong doings **to the officials at higher position** in the organization. The usual subjects of internal whistle

blowing are disloyalty, improper conduct, indiscipline, insubordination, disobedience etc.

2. **External:** Where the wrong doings are reported **to the people outside** the organization like media, public interest groups or enforcement agencies it is called external whistle blowing
3. **Alumini:** When the whistle blowing is **done by the former employee** of the organization it is called alumini whistle blowing
4. **Open:** When identity of the whistleblower **is revealed,** it is called open whistle blowing.
5. **Personal:** Where the organizational wrongdoing is **to harm one person** only, disclosing such wrong doings it is called personal whistle blowing.
6. **Impersonal:** when the wrong doing **is to harm others**, it is called as impersonal whistle blowing.
7. **Corporate:** When a disclosure is made about the wrong doing in a business corporation, it is called corporate whistle blowing.

Whistleblowing under Sarbanes – Oxley Act, 2002 (SOX) (sec 302)

An act enacted by US congress to protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws and for other purposes contains following provisions for whistleblowers:

a) Makes it illegal to "discharge, demote, suspend, threaten, harass or in any manner discriminate against" whistleblowers.
b) Establish criminal penalties of up to 10 years for executives who retaliate against whistleblowers.
c) Require board or audit committees to establish procedures for hearing whistleblower complaints.
d) Allow the secretary of labour to order a company to rehire a terminated employee with no court hearing.
e) Give a whistleblower the right to a jury trial, by passing months or year of administrative hearings.

Vigil Mechanism under Co. Act 2013

Every listed company and the following companies shall establish a vigil mechanism for their directors and employees to report their genuine concerns or grievances –

1. The companies which accept deposits from the public
2. The companies which have borrowed money from banks and public financial institutions in excess of Rs. 50 Cr.

Sec 177(9) read with Rule 7(1) of companies (meeting of board and its power) Rules 2014

The vigil mechanism shall provide for adequate safeguards against victimization of persons who use such mechanism and make provision for direct access to the chairperson of the audit committee in appropriate or exceptional cases.

The details of establishment of such mechanism shall be disclosed by the company on its website, if any, and in the board's report.

Ethical Dilemma (J10/J09/J11/J13)

Dilemma is a situation that requires a choice between options that are or seem equally unfavorable or mutually exclusive. By definition, an ethical dilemma involves the need to choose from among 2 or more morally acceptable courses of action, when one choice prevents selecting the other or the need to choose between equally unacceptable alternatives.
A dilemma **could be right vs. wrong** situation in which the right would be more difficult to pursue and wrong would be more convenient. A right vs. wrong dilemma is not so easy to resolve. It often involves an apparent conflict between moral imperatives, in which to obey one would result in transgressing the other. This is also called an ethical paradox.

An ethical dilemma involves a situation that makes a person question what is right or wrong thing to do. They make individuals think about their obligations, duties or responsibilities. These dilemmas can be highly complex and difficult to resolve. Easier dilemmas involve a right vs. wrong answer, whereas, complex ethical dilemma involve a decision between right and another right choice. However, any dilemma needs to be resolved.

Steps to resolving an Ethical Dilemma: - (J10/J11)

(i) What are the options?
List the **alternative courses of action** available.

(ii) Consider the consequences
Think carefully about the range of positive and negative consequences associated with each of the different paths of action available.

- ✓ Who/what will be helped by what is done?
- ✓ Who/What will be hurt?
- ✓ What kinds of benefits and harms are involved and what are their relative values?
- ✓ What are the short-term and long term implications?

(iii) Analysis the actions
Actions should be analyzed in a different perspective, i.e. viewing the action perse disregard the consequences concentrating instead on the actions and looking for that option which seem problematic. How do the options measure up against moral principles like honesty, fairness, equality and recognition of social and environmental vulnerability?

In the case you are considering, is there a way to seem one principle as more important than the others?

(iv) Make decision and act with commitment

Now, both parts of analysis should be brought together and a conscious and informed decision should be made once the decision is made, act on the decision assuming responsibility for it.

(v) Evaluate the system.

Think about the circumstances which led to the dilemma with intention of identifying and removing the conditions that allowed it to arise.

Conceptual Framework of Corporate Governance

CORPORATE

Corporate or a Corporation is derived from Latin term "corpus" which means a "body".

GOVERNANCE

The root of the **word governance** is from **'gubernate'**, which **means to steer**
When combined Corporate Governance means a set of systems procedures, policies, practices, standards put in place by a corporate to ensure that relationship with various stakeholders is maintained in transparent and honest manner

VARIOUS DEFINITIONS OF CORPORATE GOVERNANCE

Corporate Governance is the application of best management practices, compliance of law in true letter and spirit and adherence to ethical standards for effective management and distribution of wealth and discharge of social responsibility for sustainable development of all stakeholders."**(ICSI)**

Corporate Governance is concerned with the way corporate entities are governed, as distinct from the way business within those companies is managed. Corporate governance addresses the issues facing Board of Directors, such as the interaction with top management and relationships with the owners and others interested in the affairs of the company" **Robert Ian (Bob) Tricker** (who introduced the words corporate governance for the first time in his book in 1984)**(James D. Wolfensohn (9th President World Bank)**

Corporate governance deals with laws, procedures, practices and implicit rules that determine a company's ability to take informed managerial decisions **vis-a-vis** its claimants - in particular, its shareholders, creditors, customers, the State and employees. **(Confederation of Indian Industry (CII)**

ICSI PRINCIPLE FOR GOVERNANCE

1) **Sustainable development of all stakeholders**
2) **Effective management and distribution of wealth**
3) **Discharge of social responsibility**
4) **Application of best management practices**

NEED FOR CORPORATE GOVERNANCE

Corporate Governance is needed to create a corporate culture of Transparency, accountability and disclosure. It refers to compliance with all the moral & ethical values, legal framework and voluntarily adopted practices.

BENEFITS OF CORPORATE GOVERNANCE

1. Reduced Risk of Corporate Crisis and Scandals
2. Corporate Performance
3. Better Access to Global Market
4. Enhanced Investor Trust:

5. Combating Corruption
6. Easy Finance From Institutions

CORPORATE GOVERNANCE AND COMPANIES ACT, 2013

Some of the Provisions of Companies Act, 2013 related to Corporate Governance are:

1. Mandatory provisions related to independent directors, woman director, Key Managerial Personnel
2. Enhanced disclosures and assertions in Board Report, Annual Return and Directors' Report with regard to Managerial Remuneration, risk management, internal control for financial reporting, legal compliance, Related Party Transactions, Corporate Social Responsibility, shareholding pattern, public money etc.
3. Stricter yet forward-looking procedural requirements for Secretarial compliances and ICSI Secretarial Standards made mandatory.
4. Enhanced scope of Related Party Transactions and introduction of concept of arm's length pricing.
5. Introduction of mandatory provisions regarding Whistle Blower Policy, Audit Committee, Nomination and Remuneration Committee, Stakeholders Relationship Committee, and Corporate Social Responsibility Committee.

ELEMENTS OF GOOD CORPORATE GOVERNANCE

ROLE AND POWERS OF BOARD

Good governance is decisively the manifestation of personal beliefs and values which configure the organizational values, beliefs and actions of its Board. The Board as a main functionary is primary responsible to ensure value creation for its stakeholders.

LEGISLATION

Clear and unambiguous legislation and regulations are fundamental to effective corporate governance. Legislation that requires continuing legal interpretation or is difficult to interpret on a day-to- day basis can be subject to deliberate manipulation or inadvertent misinterpretation.

MANAGEMENT ENVIRONMENT

Management environment includes setting-up of clear objectives and appropriate ethical framework, establishing due processes, providing for transparency and clear enunciation of responsibility and accountability, implementing sound business planning, encouraging business risk assessment, having right people and right skill for the jobs, establishing clear boundaries for acceptable behaviour, establishing performance evaluation measures and evaluating performance and sufficiently recognizing individual and group contribution.

BOARD SKILLS

To be able to undertake its functions efficiently and effectively, the Board must possess the necessary blend of qualities, skills, knowledge and experience. Each of the directors should make quality contribution. A Board should have a mix of the following skills, knowledge and experience:

BOARD INDUCTION AND TRAINING

Directors must have a broad understanding of the area of operation of the company's business, corporate strategy and challenges being faced by the Board.

CODE OF CONDUCT

It is essential that the organization's explicitly prescribed norms of ethical practices and code of conduct are communicated to all stakeholders and are clearly understood and followed by each member of the organization.

BOARD MEETINGS

Directors must devote sufficient time and give due attention to meet their obligations. Attending Board meetings regularly and preparing thoroughly before entering the Boardroom increases the quality of interaction at Board meetings.

EVIDENCE OF CORPORATE GOVERNANCE FROM THE ARTHASHASTRA

Kautilya's Arthashastra maintains that for good governance, all administrators, including the king were considered servants of the people. Good governance and stability were completely linked. There is stability if leaders are responsive, accountable and removable.

KAUTILYA'S FOURFOLD DUTY OF A KING			
RAKSHA	**VRIDDHI**	**PALANA**	**YOGAKSHEMA**
literally **means** protection, in the corporate scenario it can be equated with the risk management aspect.	literally means growth, in the present day context can be equated to stakeholder value enhancement	literally means maintenance/compliance, in the present day context it can be equated to compliance to the law in letter and spirit.	literally means well being and in Kautilya's Arthashastra it is used in context of a social security system. In the present day context it can be equated to corporate social responsibility.

CORPORATE GOVERNANCE THEORIES

(a) Agency Theory

According to this theory, managers act as 'Agents' of the corporation. The owners set the central objectives of the corporation. Managers are responsible for carrying out these objectives in day-to- day work of the company.

Corporate Governance is control of management through designing the structures and processes.

In agency theory, the owners are the principals. But principals may not have knowledge or skill for getting the objectives executed. Thus, principal authorises the mangers to act as 'Agents' and a contract between principal and agent is made. Under the contract of agency, the agent should act in good faith. He should protect the interest of the principal and should remain faithful to the goals.

(b) Shareholder Theory

According to this theory, it is the corporation which is considered as the property of shareholders/ stockholders.

They can dispose off this property, as they like. They want to get maximum return from this property.

The owners seek a return on their investment and that is why they invest in a corporation. But this narrow role has been expanded into overseeing the operations of the corporations and its mangers to ensure that the corporation is in compliance with ethical and legal standards set by the government.

(c) Stake Holder Theory

According to this theory, the company is seen as an input-output model and all the interest groups which include creditors, employees, customers, suppliers, local-community and the government are to be considered.

From their point of view, a corporation exists for them and not the shareholders alone.

(d) Stewardship Theory

The word 'steward' means a person who manages another's property or estate. Here, the word is used in the sense of guardian in relation to a corporation, this theory is value based. The managers and employees are to safeguard the resources of corporation and its property and interest when the owner is absent. They are like a caretaker. They have to take utmost care of the corporation. They should not use the property for their selfish ends. This theory thus makes use of the social approach to human nature.

CORPORATE GOVERNANCE DEVELOPMENTS IN USA

YEAR	PROVISIONS	DEVELOPMETS
1977	**The Foreign Corrupt Practices Act**	Provides for specific provisions regarding establishment, maintenance and review of systems of internal control.
1979	**US Securities Exchange Commission**	Prescribed mandatory reporting on internal financial controls
1985	**Tread way commission**	Emphasized the need of putting in place a proper control environment, desirability of constituting independent boards and its committees and objective internal audit function.

1992	**(COSO) issued Internal Control - Integrated Framework**	It is a framework to help businesses and other entities assess and enhance their internal control systems".
2002	**Sarbanes - Oxley Act**	The Act made fundamental changes in virtually every aspect of corporate governance in general and auditor independence, conflict of interests, corporate responsibility, enhanced financial disclosures and severe penalties for wilful default by managers and auditors, in particular.
2010	**The Dodd-Frank Wall Street Reform and Consumer Protection Act, 2010**	This gives shareholders a powerful opportunity to hold accountable executives of the companies they own, and a chance to disapprove where they see the kind of misguided incentive schemes that threatened individual companies and in turn the broader economy.

CORPORATE GOVERNANCE DEVELOPMENTS IN UK

Historical developments in the UK for the improvement in corporate governance since the setting of Cadbury Committee are as under:

THE CADBURY REPORT 1992

Due to several scandals and financial collapses in the UK in the late 1980s and early 1990s, London Stock Exchange setup the Cadbury Committee in May 1991 to raise the standard of corporate governance. **This committee in its report known as Cadbury Report, recommended mainly**:

- ✓ Separating the role of CEO and Chairman of the Board
- ✓ Balanced composition of Board of Directors with executive and non executive directors
- ✓ Selection process for non executive directors.

THE GREENBURY REPORT. 1995

The Confederation of British Industry set up a group under the Chairmanship of Sir Richard Greenbury to examine the remuneration of the directors. It recommended the formation of Remuneration committee composed of non executive directors. Its recommendations were incorporated in the Listing Rules of The London Stock Exchange.

THE HAMPEL REPORT. 1998

The Hampel Committee was set up to review the implementation of Cadbury and Greenbury Reports and to see that their purposes were being achieved. The Recommendations of the committee coupled with further consultations by the London Stock Exchange resulted in a combined code on Corporate Governance, the original combined code 1998.

THE TURNBULL REPORT

A working group under the Chairmanship of Niger Turnbull recommended the internal Control Guidance for Directors which were included in the combined code.

HIGGS REPORT

The combined code was reviewed in July 2007 by Derek Higgs about the role and effectiveness of non-executive directors.

SMITH REPORT

A group under The Chairmanship of Sir Robert Smith was set up to develop guidance for Audit Committee in the combined code.

THE TYSON REPORT

The Tyson Report was recommended on the recruitment and development of non-executive directors.

THE UK STEWARDSHIP CODE (REVISED), 2012

The Stewardship Code aims to enhance the quality of engagement between institutional investors and companies to help improve long-term returns to shareholders and the efficient exercise of governance responsibilities. Engagement includes pursuing purposeful dialogue on strategy, performance and the management of risk, as well as on issues that are the immediate subject of votes at general meetings. The Code is addressed in the first instance to firms who manage assets on behalf of institutional shareholders such as pension funds, insurance companies, investment trusts and other collective investment vehicles.

2014 The UK Corporate Governance Code

The changes to the Code are designed to strengthen the focus of companies and investors on the longer term and the sustainability of value creation. In this update of the Code, the Financial Reporting Council (FRC) has focussed on the provision by companies of information about the risks which affect longer term viability. In doing so the information needs of investors has been balanced against setting appropriate reporting requirements. Companies will now need to present information to give a clearer and broader view of solvency, liquidity, risk management and viability. For their part, investors will need to assess these statements thoroughly and engage accordingly. In addition, boards of listed companies will need to ensure that executive remuneration is aligned to the long-term success of the company and demonstrate this more clearly to shareholders

CORPORATE GOVERNANCE DEVELOPMENTS IN SOUTH AFRICA

In 1992, former South African Supreme Court judge, Mervyn king was asked to chair a private - sector body to draft corporate governance guidelines. The body became known as the king committee, and its first report, issued in 1994, was regarded by many as ahead of its time in adopting an integrated and inclusive approach to the business life of companies, embracing stakeholders other than shareholders. Three reports were issued in 1994 (king I), 2002 (king II), and 2009 (king III). King principles of corporate governance is based on apply or explain.

KING I REPORT ON CORPORATE GOVERNANCE (1994)

In 1992, the king committee on corporate governance was formed in south Africa, and, in line with international thinking, considered corporate governance from a south African Perspective. The result was the king report 1994, which marked the institutionalization of corporate Governance in South Africa. It aimed to promote Corporate governance in south Africa and Established recommended standards of conduct for Boards and directors of listed companies, banks, And certain state-owned enterprises, with an Emphasis on the need for companies to become a Responsible part of the societies in which they Operate.

KING II REPORT ON CORPORATE GOVERNANCE (2002)

In 2002, the second king report on corporate governance was published. It contains a code of corporate practices and conduct. It refers to seven characteristic for good corporate governance

1. **Discipline** - A commitment to behaviour that is universally recognised and accepted as correct and proper.
2. **Transparency** - The ease with which an outsider is able to analyse a company's actions.
3. **Independence** - The mechanisms to avoid or manage conflict.
4. **Accountability** - The existence of mechanisms to ensure accountability.
5. **Responsibility** - Processes that allow for corrective action and acting responsibly towards all stakeholders.
6. **Fairness** - Balancing competing interests.
7. **Social Responsibility** - Being aware of and responding to social issues.

KING III REPORT ON CORPORATE GOVERNANCE (2009)

King III became necessary because of the anticipated new Companies Act, 2008 and changing trends in international governance. As with King I and King II, the King Committee endeavoured to be at the forefront of governance internationally and focused on the importance of reporting annually on how a company has both positively and negatively affected the economic life of the community in which it operated during the year under review. In addition, emphasis has been placed on the requirement to report on how the company intends to enhance those positive aspects and eradicate or ameliorate any possible negative impacts on the economic life of the community in which it will operate in the year ahead.

CORPORATE GOVERNANCE DEVELOPMENTS IN INDIA

The initiatives taken by Government in 1991, aimed at economic liberalization and globalisation of the domestic economy, led India to initiate reform process in order to suitably respond to the developments taking place world over. On account of the interest generated by Cadbury Committee Report, the Confederation of Indian Industry (CII), the Associated Chambers of Commerce and Industry (ASSOCHAM) and, the Securities and Exchange Board of India (SEBI) constituted Committees to recommend initiatives in Corporate Governance.

Confederation of Indian Industry (CII) - Desirable Corporate Governance

CII took a special initiative on Corporate Governance, the first institution initiative in Indian Industry. The objective was to develop and promote a code for Corporate Governance to be adopted and followed by Indian companies, whether in the Private Sector, the Public Sector, Banks or Financial Institutions, all of which are corporate entities. The final draft of the said Code was widely circulated in 1997. In April 1998, the Code was released. It was called Desirable Corporate Governance.

Recommendation I
The full board should meet a minimum of 6 times a year, preferably at an interval of 2 months, and each meeting should have agenda items that require at least half a day's discussion.

Recommendation II
Any listed company with a turnover ≥ Rs.100 Cr. should have professionally competent, independent, nonexecutive directors, who should constitute:
- ✓ At least 30 % of the board if the Chairman of the company is a non-executive director, or
- ✓ At least 50 % of the board if the Chairman and MD is the same person.

Recommendation III
No single person should hold directorships in more than 10 listed companies. This ceiling excludes directorships in subsidiaries (where the group has over 50% equity stake) or associate companies (where the group has over 25 % but no more than 50 % equity stake).

Recommendation IV
For non-executive directors to play a material role in corporate decision making and maximising long term shareholder value, they need to:
- ✓ become active participants in boards, not passive advisors;
- ✓ have clearly defined responsibilities within the board such as the Audit Committee; and
- ✓ know how to read a balance sheet, profit and loss account, cash flow statements and financial ratios and have some knowledge of various company laws. This, of course, excludes those who are invited to join boards as experts in other fields such as science and technology.

Recommendation V
To secure better effort from non-executive directors companies should Pay a commission over and above the sitting fees for the use of the professional inputs. The present commission of 1% of net profits (if the company has a MD), or 3% (if there is no MD) is sufficient.

Recommendation VI
While re-appointing members of the board, companies should give the attendance record of the concerned directors. If a director has not been present (absent with or without leave) for 50 % or more meetings, then this should be explicitly stated in the resolution that is put to vote.

Recommendation VII

Kev information that must be reported to, and placed before, the board must contain:

1. Annual operating plans and budgets, together with up-dated long term plans.
2. Capital budgets, manpower and overhead budgets.
3. Quarterly results for the company as a whole and its operating divisions or business segments.
4. Internal audit reports, including cases of theft and dishonesty of a material nature.
5. Show cause, demand and prosecution notices received from revenue authorities which are considered to be materially important (Material nature if any exposure that exceeds 1 % of the company's net worth).
6. Default in payment of interest or non-payment of the principal on any public deposit and/or to any secured creditor or financial institution.
7. Fatal or serious accidents, dangerous occurrences, and any effluent or pollution problems.
8. Defaults such as non-payment of inter-corporate deposits by or to the company, or materially substantial non-payment for goods sold by the company.
9. Any issue which involves possible public or product liability claims of a substantial nature, including any judgment or order which may have either passed strictures on the conduct of the company, or taken an adverse view regarding another enterprise that can have negative implications for the company.
10. Details of any joint venture or collaboration agreement.
11. Transactions that involve substantial payment towards goodwill, brand equity, or intellectual property.
12. Recruitment and remuneration of senior officers just below the board level, including appointment or removal of the Chief Financial Officer and the Company Secretary.
13. Labour problems and their proposed solutions.
14. Quarterly details of foreign exchange exposure and the steps taken by management to limit the risks of adverse exchange rate movement, if material.

Recommendation VIII

Listed companies with either a turnover of over Rs.100 Cr OR a paid-up capital of Rs.20 Cr should set up Audit Committees within 2 years.

Composition: at least 3 members, all drawn from a company's non-executive directors, who should have adequate knowledge of finance, accounts and basic elements of company law.

Audit Committees should periodically interact with the statutory auditors and the internal auditors to ascertain the quality and veracity of the company's accounts as well as the capability of the auditors themselves.

Recommendation IX

Under "Additional Shareholder's Information", listed companies should give data on: High and low monthly averages of share prices in a major Stock Exchange where the company is listed for the reporting year.

Statement on value added, which is total income minus the cost of all inputs and administrative expenses.

SEBI had set up a Committee under the Chairmanship of KUMAR MANGALAM BIRLA to promote and raise standards of corporate governance.

The Report of the committee was the 1st formal and comprehensive attempt to evolve a Code of Corporate Governance, in the context of prevailing conditions of governance in Indian companies, as well as the state of capital markets at that time.

The recommendations of the Report, led to inclusion of Clause 49 in the Listing Agreement in the year 2000. These recommendations, aimed at improving the standards of Corporate Governance, are divided into mandatory and non-mandatory recommendations. The said recommendations have been made applicable to all listed companies with the paid-up capital ≥ 3 Cr. **OR** net worth ≥ Rs. 25 Cr. at any time in the history of the company.

A summary of the Report is reproduced hereunder:

1) The Board should have an optimum combination of Executive and Non- Executive Directors with not less than 50 % of the Board consisting of non-executive directors. In the case of Non-executive Chairman, at least 1/3rd of the Board should consist of independent directors and in the case of an executive Chairman, at least half of the Board should consist of independent directors.
2) Board meetings should be held at least 4 times in a year, with a maximum time gap of 4 months between any 2 meetings. A director should not be a member in more than 10 committees or act as Chairman of more than 5 committees across all companies in which he is a director.
3) Financial Institutions should appoint nominee directors on a selective basis and nominee director should have the same responsibility, be subject to the same discipline and be accountable to the shareholders in the same manner as any other director of the company
4) Non-executive Chairman should be entitled to maintain Chairman's office at the expense of the company and also allowed reimbursement of expenses incurred in performance of his duties.
5) Audit Committee - a qualified and independent audit committee should be set up by the board of a company.

Composition

1) The audit committee should have minimum 3 members, all being non-executive directors, with the majority being independent, and with at least 1 director having financial and accounting knowledge;
2) The chairman of the committee should be an independent director;
3) The chairman should be present at AGM to answer shareholder queries;
4) The audit committee should invite such of the executives, as it considers appropriate (and particularly the head of the finance function) to be present at the meetings of the committee but on occasions it may also meet without the presence of any executives of the company. Finance director and head of internal audit and when required, a representative of the external auditor should be present as invitees for the meetings of the audit committee;
5) The Company Secretary should act as the secretary to the committee.

Frequency of Meeting

The audit committee should meet at least thrice a year. One meeting must be held before finalisation of annual accounts and one necessarily every 6 months.

Quorum

The quorum should be either 2 members or 1/3rd of the members of the audit committee, whichever is higher and there should be a minimum of 2 independent directors.

Powers of Audit Committee

- ✓ To investigate any activity within its terms of reference.
- ✓ To seek information from any employee.
- ✓ To obtain outside legal or other professional advice.
- ✓ To secure attendance of outsiders with relevant expertise, if it considers necessary.

Remuneration Committee

Remuneration Committee should comprise of at least 3 directors, all of whom should be non-executive directors, the chairman of committee being an independent director. All the members of the remuneration committee should be present at the meeting. These recommendations are non- mandatory.

Shareholders/Investors' Grievance Committee of Directors

The Board should set up a Committee to specifically look into share holder issues including share transfers and redressal of shareholders' complaint

N.R. NARAYANA MURTHY COMMITTEE REPORT ON CORPORATE GOVERNECE

In the year 2002, SEBI analyzed the statistics of compliance with the clause 49 by listed companies and felt that there was a need to look beyond the mere systems and procedures if corporate governance was to be made effective in protecting the interest of investors. SEBI therefore constituted a Committee under the Chairmanship of Shri N.R. Narayana Murthy, for reviewing implementation of the corporate governance code by listed companies and for issue of revised clause 49 based on its recommendations.

Following are the highlights of recommendations.

1) **Audit committees** of publicly listed companies should be required to review the following information mandatorily:
   - ✓ Financial statements and draft audit report, including quarterly/half yearly financial information;
   - ✓ Management discussion and analysis of financial condition and results of operations;
   - ✓ Reports relating to compliance with laws and to risk management;
   - ✓ Management letters/letters of internal control weaknesses issued by statutory/internal auditors; and
   - ✓ Records of related party transactions
2) All audit committee members should be **"financially literate"** and at least one member should have accounting or related financial management expertise.

Explanation 1: The term "financially literate" means the ability to read and understand basic financial statements i.e. balance sheet, profit and loss account, and statement of cash flows.

3) In case a company has followed a treatment different from that prescribed in an accounting standard, management should justify why they believe such alternative treatment is more representative of the underlying business transaction.
4) Companies should be encouraged to move towards a regime of unqualified financial statements.
5) A statement of all transactions with **related parties** including their bases should be placed before the independent audit committee for formal approval/ratification.
6) To inform Board members about the **risk assessment and minimization procedures.**
7) Management should place a report before the entire Board of Directors every quarter documenting the business risks faced by the company, measures to address and minimize such risks, and any limitations to the risk taking capacity of the corporation.
8) Companies raising money through an Initial Public Offering ("IPO") should disclose to the Audit Committee, the uses/applications of funds by major category (capital expenditure, sales and marketing, working capital, etc.), on a quarterly basis.
9) It should be obligatory for the Board of a company to lay down the code of conduct for all Board members and senior management of a company.
10) There shall be no nominee directors.
11) All compensation paid to non-executive directors may be fixed by the Board of Directors and should be approved by shareholders in general meeting.
12) Personnel who observe an **unethical or improper practice** (not necessarily a violation of law) should be able to approach the audit committee without necessarily informing their supervisors.

NARESH CHANDRA COMMITTEE REPORT 2002

In the year **2002, Naresh Chandra Committee** was appointed to examine and recommend inter alia amendments to the law involving the **auditor-client relationships and the role of independent directors.**

Recommendations of Naresh Chandra committee report

1) **In line with international best practices, the Committee recommends an abbreviated list of disqualifications for auditing assignments, which includes:**
   - ✓ Prohibition of any direct financial interest in the audit client
   - ✓ Prohibition of receiving any loans and/or guarantees from or on behalf of the audit client
   - ✓ Prohibition of any business relationship with the audit client
   - ✓ Prohibition of undue dependence on an audit client.
2) **The following services should not be provided by an audit firm to any audit client**

- ✓ Accounting and bookkeeping services, related to the accounting records or financial statements of the audit client.
- ✓ Internal audit services.
- ✓ Actuarial services.

- ✓ Broker, dealer, investment adviser or investment banking services.
- ✓ Outsourced financial services. Management functions, including the provision of temporary staff to audit clients
- ✓ Any form of staff recruitment, and particularly hiring of senior management staff for the audit client.
- ✓ Valuation services and fairness opinion.

3) Compulsory Audit Partner Rotation

- ✓ There is no need to legislate in favour of compulsory rotation of audit firms.
- ✓ However, the partners and at least 50 % of the engagement team (excluding article clerks and trainees) responsible for the audit of either a listed company, or companies whose paid up capital and free reserves exceeds Rs.10 crore, or companies whose turnover exceeds Rs. 50 crore, should be rotated every 5 years.
- ✓ Persons who are compulsorily rotated could, if need be, allowed to return after a break of 3 years.

4) Auditor's disclosure of contingent liabilities

It is important for investors and shareholders to get a clear idea of a company's contingent liabilities because these may be significant risk factors that could adversely affect the corporation's future health.

5) Auditor's disclosure of qualifications and consequent action

Qualifications to accounts, if any, must form a distinct, and adequately highlighted, section of the auditor's report to the shareholders.

6) Auditor's annual certification of independence

Before agreeing to be appointed (along with 224(1)(b)), the audit firm must submit a certificate of independence to the Audit Committee or to the board of directors of the client company certifying that the firm, together with its consulting and specialised services affiliates, subsidiaries and associated companies:

7) Appointment of auditors

The Audit Committee of the board of directors shall be the first point of reference regarding the appointment of auditors.

8) Percentage of independent directors

Not less than 50 % of the board of directors of any listed company, as well as unlisted public limited companies with a paid-up share capital and free reserves of Rs.10 crore and above, or turnover of Rs.50 crore and above, should consist of independent directors

DR. J J IRANI EXPERT COMMITTEE ON COMPANY LAW (2005)

In 2004, the Government constituted a committee under the Chairmanship of Dr. J.J. Irani, Director, Tata Sons, with the task of advising the Government on the proposed revisions to the Companies Act, 1956 with the objective to have a simplified compact law that would be able to address the changes taking place in the national and international scenario, enable adoption of internationally accepted best practices as well as provide adequate flexibility for timely evolution of new arrangements in response to the requirements of ever-changing business models. The recommendations of the committee are:

S.NO.	PARTICULARS	PROVISIONS

1	**Board Composition:**	Law should provide for only the minimum number of directors necessary for various classes of companies. There need not be any limit to maximum number of directors. Other than procedures for appointments, no age limit for directors need be specified in the Act.
2	**Appointment and resignation of director:**	Every company to have at least one director resident in India. Requirement of obtaining approval of Central Govt, under Companies Act for appointment of non- resident managerial persons should be done away with. Duty to inform the Registrar of particulars regarding appointment/resignation/death etc. of directors should be that of the company.
3	**Independent Directors:**	Presence of independent director on the boards of companies will lead to greater transparency in company's dealings. Law should recognize the principle of independent directors and spell out their attributes, role, qualifications and liabilities
4	**Remuneration of Directors:**	Decision on remuneration of directors should not be based on a "Government approval based system" but should be left to the company. However, this should be transparent, based on principles that ensure fairness, reasonableness and accountability and should be properly disclosed. No limits need be prescribed.
5	**Disqualification of director**	Failure to attend board meetings for a continuous period of one year to be made a ground for vacation of office regardless of whether or not leave of absence was granted to such director. Specific provisions to be made in the Law to regulate the process of resignation by a director.
6	**Board meetings:**	Board Meetings by electronic means to be allowed. In the case of companies where Independent Directors are prescribed, notice period of 7 days has been recommended for Board Meetings with provisions for holding emergency meetings at a shorter notice. Consent of shareholders by way of special resolution should be mandatory for certain important matters.
7	**Annual General Meetings:**	Use of postal ballot during meetings of members should be allowed to be more widely used by companies. Law should provide for voting through electronic mode.
8	**Appointment of MD/WTD:**	MD,WTD/Executive Director (ED) should be in the whole-time employment of only 1 company at a time
9	**Key managerial Personnel**	Every company should be required to appoint, a Chief Executive Officer, Chief Finance Office and Company Secretary as its KMP whose appointment and removal shall be by the BOD.

Corporate Governance Voluntary Guidelines 2009

- ✓ Good corporate governance practices enhance companies' value and stakeholders' trust resulting into robust development of capital market, the economy and also help in the evolution of a vibrant and constructive shareholders' activism.
- ✓ Considering the above, the MCA issued Corporate Governance Voluntary Guidelines, 2009 after duly examining committee reports and suggestions received from various stakeholders on issues related to corporate governance.
- ✓ These guidelines provide a set of good practices which may be voluntary adopted by the public companies and private companies, particularly the bigger ones. These guidelines are not substitute for or addition to the existing laws but is recommendatory in nature.

'Comply or Explain' Basis

While the guidelines are expected to be adopted by more and more corporates, there may be genuine reasons for some companies for not being able to adopt them. In such a case it is expected that such companies should inform their shareholders about the reasons ior not adopting these guidelines either fully or partially

Disclosure under Various laws

DISCLOSURES UNDER ICDR REGULATIONS

FILING OF OFFER DOCUMENT (REGULATION 6)

No Issuer shall make

- ✓ A public issue; or
- ✓ A right issue, where the aggregate value of the specified securities offered is ≥ Rs. 50 Lakh,

  Unless a draft offer document, along with fees as specified in Schedule IV, has been filed with the SEBI through the lead merchant banker, at least 30 days prior to registering the prospectus, red herring prospectus or shelf prospectus with the ROC or filing the letter of offer with the designated stock exchange, as the case may be.

COPIES OF OFFER DOCUMENTS TO BE AVAILABLE TO PUBLIC (REGULATION 6)

1. The issuer and lead merchant bankers shall ensure that the contents of offer documents hosted on the websites as required in these regulations are the same as that of their printed versions as filed with the ROC, SEBI and the stock exchanges.
2. The lead merchant bankers and the recognised stock exchange shall provide copies of the draft offer document and final offer document to the public as and when requested.
3. However, the lead merchant bankers or the recognised stock exchange may charge a reasonable sum for providing the copy of the offer document.

MANNER OF DISCLOSURES IN THE OFFER DOCUMENT (REGULATION 57)

The offer document shall contain all material disclosures which are true and adequate so as to enable the applicants to take an informed investment decision.

Without prejudice to the generality of sub-regulation (1):

(a) The red-herring prospectus, shelf prospectus and prospectus shall contain:
  - ✓ The disclosures specified in section 26 of the Companies Act, 2013
  - ✓ The disclosures specified in the Schedule attached to the Regulations.

(b) The letter of offer shall contain disclosures as specified in the Schedule attached to the regulations.

PRE-ISSUE ADVERTISEMENT FOR PUBLIC ISSUE (REGULATION 47)

1. Subject to the provisions of section 30 of the Companies Act, 2013, the issuer shall, after registering the red herring prospectus or prospectus with the ROC, make a pre-issue advertisement in one English national daily newspaper with wide circulation, Hindi national daily newspaper with wide circulation and one regional language newspaper with wide circulation at the place where the registered office of the issuer is situated.
2. It shall be in the format and shall contain the disclosures specified in the schedule attached to the regulations.

ISSUE OPENING AND ISSUE CLOSING ADVERTISEMENT FOR PUBLIC ISSUE (REGULATION 48)

An issuer may issue advertisements for issue opening and issue closing in the formats specified in Schedule XIII of the regulations.

POST- ISSUE REPORTS (REGULATION 65)

In public issue, the lead merchant banker shall submit final post-issue report as specified in Part C of Schedule XVI, **within 7 days** of the date of finalization of basis of allotment or **within 7 days** of refund of money in case of failure of issue.

In rights issue, the lead merchant banker shall submit post-issue reports as follows:-

a) Initial post issue report, within 3 days of closure of the issue;
b) Final post issue report, within 15 days of the date of finalization of basis of allotment or within 15 days of refund of money in case of failure of issue. "

The lead merchant banker shall submit a due diligence certificate in the prescribed format along with the final post issue report.

POST-ISSUE ADVERTISEMENTS (REGULATION 66)

The post-issue merchant banker shall ensure that advertisement giving details relating to

- ✓ Oversubscription,
- ✓ Basis of allotment,
- ✓ Number,
- ✓ Value and percentage of all applications including ASBA (Application Supported by Blocked Amount) number,
- ✓ Value and percentage of successful allottees for all applications,
- ✓ Date of completion of despatch of refund orders or instructions to Self Certified Syndicate Banks by the ROC,
- ✓ Date of despatch of certificates and
- ✓ Date of filing of listing application, etc.

is released **within 10 days** from the date of completion of the various activities in at least one English national daily newspaper with wide circulation, one Hindi national daily newspaper with wide circulation and one regional language daily newspaper with wide circulation at the place where registered office of the issuer is situated.

The post-issue merchant banker shall ensure that issuer, advisors, brokers or any other entity connected with the issue shall not publish any advertisement stating that issue has been oversubscribed or indicating investors' response to the issue, during the period when the public issue is still open for subscription by the public.

DISCLOSURES UNDER SEBI TAKEOVER CODE 2011

DISCLOSURES OF SHAREHOLDING AND CONTROL [REGULATIONS 28-31]

Regulation	Made by	shareholding	Timing	Made to
29(1)	Acquirer	acquiring 5% or more shares of the target company	Within 2 working days	Stock exchange and target company
29(2)	Acquirer	if there has been change in shareholding since last disclosure and such change exceeds 2% of total shareholding or voting rights in the target company by the Acquirer + PAC holding 5% or more shares of the target company.	Within 2 working days	Stock exchange and target company
30(1)	Acquirer	Any Person + PAC holding more than 25% shares or voting rights in the target to disclose their aggregate shareholding and voting rights	Within 7 working days from 31st March	Stock exchange and target company
30(2)	Acquirer	Promoters + PAC to disclose their aggregate shareholding and voting rights	Within 7 working days from31st march	Stock exchange and target company
31(1)	Acquirer	Promoter + PAC pledging or creating encumbrance on the shares of the target company	Within 7 working days from pledge	Stock exchange and target company
31(2)	Acquirer	Invocation or release of the pledge or encumbrance on the shares of the target company	Within 7 working days from invocation	Stock exchange and target company

DISCLOSURES UNDER BOARD REPORT

DISCLOSURES BY BOARD OF DIRECTORS IN THE BOARD'S REPORT

Disclosures under Section 134

(a) An extract of annual return u/s 92(3)

(b) Board report shall report on the highlights of performance of subsidiaries, associates and joint venture companies and their contribution to the overall performance of the company during the period.

(c) Number of Board Meetings.

(d) Director's Responsibility Statement.

(e) Statement on declaration given by independent director u/s 149(6).

(f) Particulars of loan, guarantees or investments u/s 186.
(g) The state of company's affairs.
(h) Particulars of contracts and arrangements with related parties.
(i) Statement relating to risk management policy.
(j) Statement on corporate social responsibility.
(k) The amount proposed to carry to any reserve conservation of energy.
(l) Technology absorption.
(m) Foreign exchange earnings and out flow.

Directors' Responsibility Statement 134(5)

It shall state that -

1. In the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;
2. The directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;
3. The directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;
4. The directors had prepared the annual accounts on a going concern basis; and
5. The directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.
6. The directors, had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

FORMAL ANNUAL EVALUATION [Rule 8(4) of Companies (Accounts) Rules 2014]

- ✓ Every listed company and
- ✓ Every other public company having a PSC ≥ Rs. 25 Cr. calculated at the end of the preceding financial year

Shall include, in its Board's Report, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors

REPORTING OF CORPORATE SOCIAL RESPONSIBILITY (CSR)

According to Rule 8 of the Companies (Corporate social Responsibility Policy) Rules 2014

The Board's Report of a company covered under these rules pertaining to a financial year commencing on or after the 1st day of April, 2014 shall include an annual report on CSR containing particulars specified in Annexure to these rules.

MANAGEMENT DISCUSSION AND ANALYSIS REPORT (MDAR)

In case of listed companies, the MDAR should either form a part of the Board's Report or be given as an addition thereto in the annual report to the shareholders. The MDAR should include a discussion on the following matters within the limits set by the company's competitive position: -

- ✓ Industry structure and developments
- ✓ Opportunities and threats
- ✓ Segment-wise or product-wise performance
- ✓ Outlook
- ✓ Risks and areas of concern
- ✓ Internal control systems and their adequacy
- ✓ Discussion on financial performance with respect to operational performance

MDAR should be considered and approved by the Board in a meeting of the Board and not through resolution passed by circulation. It is desirable that MDAR is signed in the same manner as in the case of the Board's Report.

DECLARATION FROM INDEPENDENT DIRECTORS

Every Independent Director in his 1st board meeting participated after appointment and 1st board meeting in every financial year or whenever there is any change give declaration that he meets the criteria of independence.
The Company may obtain from every independent director a declaration to this effect as a matter of good practice. The declaration placed before the Board shall be reviewed and its decision recorded in the minutes.

Other Disclosures under Companies Act. 2013

a) Appointment of independent director
b) Disclosure about the composition of audit committee u/s 177(8) and also the recommendation of audit committee
c) Details of establishment of vigil mechanism [section 177(9)]
d) Policies by the nomination and remuneration committee
e) Secretarial report given by a company secretary in practice.

DISCLOSURES UNDER SEBI (PROHIBITION OF INSIDER TRADING) REGULATIONS, 2015

It was issued by SEBI on **15th January, 2015** based on recommendations of Sodhi committee. These Regulations were effective from 120th day of the date of notification i.e. on and from **15th May, 2015,** by repealing SEBI (Prohibition of Insider Trading) Regulations 1992.

The Disclosure requirements under these Regulations are discussed below
Disclosures of trading by Insiders
Regulations 6 (2)

The disclosures to be made by any person shall include those relating to trading by such person's immediate relatives, and by any other person for whom such person takes trading decisions.
It is intended that disclosure of trades would need to be of not only those executed by the person concerned but also by the immediate relatives and of other persons for whom the person concerned takes trading decisions.
These regulations are primarily aimed at preventing abuse by trading when in possession of unpublished price sensitive information and therefore, what matters is

whether the person who takes trading decisions is in possession of such information rather than whether the person who has title to the trades is in such possession.

Regulations 6(3)
The disclosures of trading in securities shall also include trading in derivatives of securities and the traded value of the derivatives shall be taken into account for purposes of this Chapter, provided that trading in derivatives of securities is permitted by any law for the time being in force.

Regulations 6(4)
The disclosures made shall be maintained by the company, for a minimum period of 5 years, in such form as may be specified.

Disclosures by certain persons - Initial Disclosure
Regulation 7 (1)
(a) Every promoter, KMP and director of every Listed company shall disclose his security holding, to the company **within 30 days** of these regulations taking effect;
(b) Every person on appointment as a KMP or a director of the company or upon becoming a promoter shall disclose his security holding of the company as on the date of appointment or becoming a promoter, to the company **within 7 days** of such appointment or becoming a promoter.

CONTINUAL DISCLOSURES
Regulation 7(2)
(a) Every promoter, employee and director of every company shall disclose to the company the number of such securities acquired or disposed of within 2 trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified;
(b) Every company shall notify the particulars of such trading to the stock exchange on which the securities are listed within 2 trading days of receipt of the disclosure or from becoming aware of such information.

CODE OF FAIR DISCLOSURE
REGULATION 8 (1)
The BOD of Listed company, shall formulate and publish on its official website, **a code of practices** and procedures for fair disclosure of unpublished price sensitive information that it would follow in order to adhere to each of the principles set out in Schedule A to these regulations, without diluting the provisions of these regulations in any manner.

Every such code of practices and procedures for fair disclosure of unpublished price sensitive information and every amendment thereto shall be promptly intimated to the designated stock exchanges. This provision is aimed at requiring transparent disclosure of the policy formulated.

Principles of Fair Disclosure for purposes of Code of Practices and Procedures for Fair Disclosure of Unpublished Price Sensitive Information -

Regulation 81:

1. Prompt public disclosure of unpublished price sensitive information that would impact price discovery no sooner than credible and concrete information comes into being in order to make such information generally available.
2. Uniform and universal dissemination of unpublished price sensitive unpublished price sensitive information to avoid selective disclosure.
3. Designation of a senior officer as a chief investor relations officer to deal with dissemination of information and disclosure of unpublished price sensitive information.
4. Prompt dissemination of unpublished price sensitive information that gets disclosed selectively, inadvertently or otherwise to make such information generally available.
5. Appropriate and fair response to queries on news reports and requests for verification of market rumours by regulatory authorities.

Board Effectiveness – Issues and challenges

Role of Director

- ✓ To establish the Vision & Mission Statement
- ✓ Strategic Direction and advice
- ✓ Overseeing Strategy Implementation and performance
- ✓ Appointing and evaluation of CEO and Senior management
- ✓ Ensuring Stakeholder Relations
- ✓ Risk Mitigation
- ✓ Procuring resources

Board of Directors (Sec 2(10))

- ✓ The collective body of directors of the company.
- ✓ A board of directors is a body of elected or appointed members who jointly oversee the activities of a company. They are also referred as board of governors, board of managers, board of regents, board of trustees, or simply referred to as "**THE BOARD**".

Types of Board

1. **Unitary Board**

   The unitary board, remains in full control of every aspect of the company's activities. It initiates action and it is responsible for ensuring that the action which it has initiated is carried out. All the directors, whether executive or outside, share the same aims and responsibilities and are on the same platform.

2. **Two-tier Boards**

   The alternative board model to unitary board is the two-tier board, which was developed in its present form in Germany. A two-tier board fulfils the same basic functions as a unitary board, but it does so through a clear separation between the tasks of monitoring and that of management. The supervisory board oversees the direction of the business and the management board is responsible for the running of the company. The supervisory board controls the management board through appointing its members and through its statutory right to have the final say in major decisions affecting the company. The structure rigorously separates the control function from the management function and members of the one board cannot be members of the other. This separation is enshrined in law and the legal responsibilities of the two sets of board members are different. The supervisory board system was introduced to strengthen the control of shareholders, particularly the banks, over the companies in which they had invested. Shareholdings are more concentrated in Germany and most quoted companies have at least one major shareholder, often a family or another company. Banks play an important part in governance as investors, lenders and through the votes of individual shareholders for which they hold proxies. They are, therefore, well represented on supervisory boards.

Directors
Definition
Sec 2(34) of companies Act 2013 defines the term director as "A director appointed to the Board of the Company."

Governance Functionary
1. Executive Director
2. Non Executive Director
3. Shadow Director
4. Woman Director
5. Resident Director
6. Independent Director

Kumar Mangalam Birla Committee agreed on the following definition of "Independence":
Independent directors are directors who apart from receiving director's remuneration do not have any other material pecuniary relationship or transactions with the company, its promoters, its management or its subsidiaries, which in the judgment of the Board may affect their independence of judgment.

The Naresh Chandra Committee defined an independent director as follows:
An independent director of a company is a non-executive director who -
a) Apart from receiving director's remuneration, does not have any material pecuniary relationships or transactions with the company, its promoters, its senior management or its holding company, its subsidiaries and associated companies;
b) Is not related to promoters or management at the Board level, or one level below the Board (spouse and dependent, parents, children or siblings);
c) Has not been an executive of the company in the last **3 years**;
d) Is not a partner or an executive of the statutory auditing firm, the internal audit firm that is associated with the company, and has not been a partner or an executive of any such firm for the last 3 years.
e) Is not a significant supplier, vendor or customer of the company;
f) Is not a substantial shareholder of the company, i.e. owing 2 % or more of the block of voting shares;
g) Has not been a director, independent or otherwise, of the company for more than 3 terms of 3 years each (not exceeding 9 years in any case):
h) An employee, executive director or nominee of any bank, financial institution, corporations or trustees of debenture and bond holders, who is normally called a "nominee director" will be excluded from the pool of directors in the determination of the number of independent directors. In other words, such a director will not feature either in the numerator or the denominator.

7. Nominee Director
8. Lead Independent Director
9. Chairman
10. Chief Executive Officer (CEO)
11. Company Secretary

Board Composition [Sec 149]
(1) Every company shall have a Board of Directors consisting of individuals as directors and shall

(a) Minimum 3 directors in the case of a public company, 2 directors in the case of a private company, and 1 director in the case of a OPC; and

(b) Maximum of 15 directors:

Provided that a company may appoint more than 15 directors after passing a special resolution:

Provided further that such class or classes of companies as may be prescribed, shall have at least 1-woman director.

(2) Every company shall have at least one director who has stayed in India for a total period of not less than 182 in the previous calendar year.

(3) Every listed public company shall have at least 1/3rd of the total number of directors as independent directors and the Central Government may prescribe the minimum number of independent directors in case of any class or classes of public companies.

Regulation 17 of the SEBI (LODR) Regulations, mandates as under:

(i) The Board of Directors of the company shall have an optimum combination of executive and non-executive directors with at least one-woman director and not less than 50 % of the BOD comprising non-executive directors.

(ii) Where the Chairperson of the Board is a non-executive director, at least 1/3rd of the Board should comprise independent directors and in case the listed entity does not have a regular non-executive Chairman, at least half of the Board should comprise independent directors.

Provided that where the regular non-executive Chairperson is a promoter of the listed entity or is related to any promoter or person occupying management positions at the Board level or at one level below the Board, at least one-half of the Board of the company shall consist of independent directors.

BOARD CHARTER

As a good practice companies may have a Board Charter which is intended as a tool to assist directors in fulfilling their responsibilities as Board members. It sets out the respective roles, responsibilities and authorities of the Board and of Management in the governance, management and control of the organization. This charter should be read in conjunction with the Company's MOA and AOA.

A Model Charter may include the following:

The Role of the Board

The principal functions and responsibilities of the Board relating to

- ✓ Strategies
- ✓ Corporate Governance
- ✓ Financial Management
- ✓ Relationship with Senior Management
- ✓ Directors Code of Conduct
- ✓ Conflicts of Interests
- ✓ Related Party transactions
- ✓ Board Members
- ✓ Qualifications,
- ✓ skills
- ✓ Board Meetings
- ✓ Delegation of Authority by the Board
- ✓ Board Evaluation

✓ Protocol for media contact and comment

RESPONSIBILITIES OF BOARD

The purpose of having a board in a company is:

✓ To contribute to the business of the company through their knowledge and skills.
✓ To advise on such matters as need their attention and influence.
✓ To critically analyze the performance and operations of the company.
✓ To be able to act as a professional aide.
✓ To be able to offer their professional expertise in the relevant field.
✓ To establish sound business principles and ethics.
✓ To act as a mentor to the management.

The responsibilities of the directors can be summarized as below:

Responsibilities towards the company

The board should ensure that:

a) It acts in the best interest of the company.
b) The decisions it takes do not serve the personal interests of its members.
c) It helps the company in increasing its profits and turnover by following principles of equity, ethics and values.
d) It helps the company in building its goodwill.
e) It shares with the management the decision taken by them and the reasons thereof.
f) That the company has systems and means to best utilize the resources of the company and especially its intangible resources.

Responsibilities towards management

The board must ensure that:

a) It gives its guidance, support and direction to the management in every decision.
b) It acts as leader to inspire and motivate the management to perform their duties.
c) It encourages compliance and disclosures.
d) It trusts the management and gives it the freedom to act.
e) It does not dictate terms but take objective decisions.
f) It follows the company's code of conduct and the other rules and the regulations of the company.

Responsibilities towards stakeholders

The board must ensure that:

a) Its every decision helps in the increasing the stakeholders value.
b) It does not act in a manner by which any stakeholder is prejudiced.
c) One stakeholder should not be benefited at the cost of the other.
d) It must discourage restrictive or monopolistic activities for the undue benefit of the company.
e) That proper system is established and followed which helps in resolving the grievances of the stakeholders.
f) The company has policies for different class of stakeholders which are equally applicable. Such policies should be based on the principles of equity and justice.
g) The company discloses its policies to all the stakeholders.
h) The stakeholders are able to establish long term relationships based on trust and confidence.

Corporate Social Responsibility
The board must ensure that

a) The company has policies which encourage social activities on purely non profitable basis.
b) Such policies are followed ethically and resources are provided to give effect to these policies.
c) The actual benefit is actually passed on to the society by doing such activities.
d) That these policies cover activities such as upliftment of society, providing education to the needy, promoting employment, preservation of environment, etc.
e) That the company's products are eco-friendly and comply with all the related norms.
f) That the company does not take any decision which affects the society adversely.

Responsibility towards government
The board must ensure that:

a) The company complies with all the laws applicable to it whether they are the central laws or state laws.
b) There are systems and checks to ensure that the above is complied.
c) That all the dues towards the government in the form of taxes, rates, etc. are paid on time.
d) It supports the initiatives taken by the government for the promotion of welfare and security of the nation.

Inter-se responsibilities

The board must ensure that:

a) True and full disclosure of all the transactions, where there is an interest, is made to the other members of the board.
b) It follows board decorum and code for conduct of meetings.
c) All relevant information is shared among themselves for a proper decision making.
d) It is able to take independent, unbiased and objective decisions.
e) The executive directors respect and give due regard to the presence and opinions of the non-executive independent directors.

Barriers to Visionary Leadership

(i) Lack of Time Management
(ii) Resistance to risk taking
(iii) Lack of Strategic Planning
(iv) Complexity
(v) Micro Management
(vi) Clinging to Tradition
(vii) Confused Roles
(viii) Past Habit

Board Committees

Introduction

A board committee is a small working group identified by the board, consisting of board members, for the purpose of supporting the board's work. Committees are generally formed to perform some expertise work. Members of the committee are expected to have expertise in the specified field.

Committees are usually formed as a means of improving board effectiveness and efficiency, in areas where more focused, specialized and technical discussions are required. These committees prepare the groundwork for decision-making and report at the subsequent board meeting. Committees enable better management of full board's time and allow in-depth scrutiny and focused attention.

Committee may be formed for the following purposes:

- ✓ To select Board members, to select a CEO, to select KMP and senior management personnel.
- ✓ To look after/ administer/support Board members and committee members and other executive positions.
- ✓ For advising to the board for investments.
- ✓ To report to the board about potential risks factor and to suggest action point for risk mitigation.
- ✓ Safety, Health & Environment Committee.
- ✓ To inquire into particular questions (disciplinary, technical, etc.).
- ✓ To be responsible for financial reporting, organising audits, etc.
- ✓ To identify new markets; build relationship with media and public, etc.

Committees thus have an important role

a) **To strengthen the governance arrangements** of the company and support the Board **in the achievement of the strategic objectives** of the company.

b) To strengthen the role of the Board in **strategic decision** making and supports the role of non-executive directors in challenging executive management actions;

c) To maximise the value of the input from non-executive directors, given their limited time commitment;

d) To support the Board in fulfilling its role, given the nature and magnitude of the agenda.

RATIONAL BEHIND BOARD COMMITTEES:

1. To improve Board effectiveness and efficiency
2. Minor details need to be evaluated/ analysed to arrive at a logical conclusion- This requires body having expertise in subject matter, a Board Committee shall in such cases assist the Board and give well considered recommendations to the Board. e.g. Audit Committee go through minor details of internal audit reports which is not possible and

give suitable recommendations, this is not possible for entire Board to consider.
3. Insulate Board from potential undue influence of controlling shareholders and managers
4. Committees prepare groundwork for decision making & submit their recommendations to the Board for decision making.
5. Enables better management of Board's time and allows in-depth scrutiny of proposals
6. Establishing committees is one way of managing the work of the Board and strengthening the Board's governance role.

Mandatory committees of Board

1. **Under Companies Act 2013**
   a) Audit
   b) NRC
   c) SRC
   d) CSR committee
2. **Under SEBI (LODR) Regulation 2015**
   a. audit
   b. NRC
   c. SRC
   d. Risk Management committee

Audit Committee

Sec 177 read with Rule 6 of companies (meeting of board & its power) Rules 2014

The Board of directors of following companies are required to constitute a Audit Committee of the Board-

1. All listed companies
2. All public companies with a paid up capital ≥ Rs. 10 Cr.;
3. All public companies having turnover ≥ Rs. 100 Cr.
4. All public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding Rs .50 Cr. or more.

Composition

As per companies Act 2013	As per SEBI (LODR)
Minimum of 3 directors	Minimum of 3 directors
Majority should be independent directors	2/3rd members shall be independent directors
Majority of members of Audit Committee including its Chairperson shall be persons with ability to read and understand the financial statement.	All members shall be financially literate and at least 1 member shall have accounting or financial management related expertise. The chairperson shall be independent

	director. The CS shall act as the secretary to the audit committee.

Function/Role of Audit Committee

As per companies Act 2013	As per SEBI (LODR)
1. the recommendation for appointment, remuneration and terms of appointment of auditors of the company. 2. review and monitor the auditor's independence and performance, and effectiveness of audit process; 3. examination of the financial statement and the auditors' report thereon; 4. approval or any subsequent modification of transactions of the company with related parties; 5. scrutiny of inter-corporate loans and investments; 6. valuation of undertakings or assets of the company, wherever it is necessary; 7. evaluation of internal financial controls and risk management systems; monitoring the end use of funds raised through public offers and related matters	1. oversight of the listed entity's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible; 2. recommendation for appointment, remuneration and terms of appointment of auditors of the listed entity; 3. approval of payment to statutory auditors for any other services rendered by the statutory auditors; 4. reviewing, with the management, the annual financial statements and auditor's report thereon before submission to the board for approval, with particular reference to: a) matters required to be included in the director's responsibility statement to be included in the board's report in terms of Section 134(3)(c) of the Companies Act, 2013; b) changes, if any, in accounting policies and practices and reasons for the same; c) Major accounting entries involving estimates based on the exercise of judgment by management; d) Significant adjustments made in the financial statements arising out of audit findings; e) Compliance with listing and other legal requirements relating to financial statements;

	f) Disclosure of any related party transactions; g) Modified opinion(s) in the draft audit report; 5. Reviewing, with the management, the quarterly financial statements before submission to the board.

Number of Meetings and Quorum:

SEBI Listing Regulations, 2015 provides for the minimum number of meetings and quorum of the audit committee.

1. The Audit Committee of a listed entity shall meet at least four (4) times in a year and not more than 120 shall elapse between two meetings.
2. The quorum for audit committee meeting shall either be

✓ 2 members or
✓ 1/3rd of the members of the audit committee, whichever is greater;
✓ with at least 2 independent directors.

The requirement of minimum 2 independent directors in the meeting of Audit Committee is new provision which must be complied by all the listed entities.

Disclosure in Board's Report

Section 177(8) of the Act provides that the board's report shall disclose following –

✓ Composition of an Audit Committee
✓ Where the Board had not accepted any recommendation of the Audit Committee, the same shall be disclosed in the report along with the reasons therefor.

Nomination and Remuneration committee

Constitution of the Committee

a. All listed companies
b. All public companies with a paid up capital ≥ Rs. 10 Cr.
c. All public companies having turnover ≥ Rs. 100 Cr.
d. All public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding 50 crore rupees or more.

Composition

Under companies Act 2013	Under LODR 2015
Comprise of three or more directors; all directors shall be non-executive directors;	comprise of at least 3 directors all directors of the committee shall be non-executive directors;

not less than one-half shall be independent directors; The chairperson of the company (whether executive or non-executive) may be appointed as a member of the Committee but he shall not chair such Committee.	at least 50% of the directors shall be independent directors. The chairperson of the listed entity, may be appointed as a member of the Committee but shall not chair such Committee. The Chairperson of the committee shall be an independent director. The Chairperson of the committee may be present at the annual general meeting, to answer the shareholders' queries.

Functions of the Committee

Under Companies Act 2013

1. Identify persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, recommend to the Board their appointment and removal. Further it has been attached with a wider responsibility of carrying out evaluation of every director's performance.
2. Formulate the criteria for determining qualifications, positive attributes and independence of a director and recommend to the Board a policy, relating to the remuneration for the directors, key managerial personnel and other employees.
3. While formulating the policy, the Committee shall consider the following:
   (a) the level and composition of remuneration is reasonable and sufficient to attract, retain and motivate directors of the quality required to run the company successfully;
   (b) relationship of remuneration to performance is clear and meets appropriate performance benchmarks; and
   (c) remuneration to directors, key managerial personnel and senior management involves a balance between fixed and incentive pay reflecting short and long-term performance objectives appropriate to the working of the company and its goals.

The remuneration policy formulated by the Committee is required under the Act to be disclosed in the Board's report.

Under SEBI (LODR) Regulation 2015

(1) formulation of the criteria for determining qualifications, positive attributes and independence of a director and recommend to the board of directors a policy relating to, the remuneration of the directors, key managerial personnel and other employees;
(2) formulation of criteria for evaluation of performance of independent directors and the board of directors;
(3) devising a policy on diversity of board of directors;
(4) identifying persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, and recommend to the board of directors their appointment and removal.

(5) whether to extend or continue the term of appointment of the independent director, on the basis of the report of performance evaluation of independent directors.

Stakeholders Relationship committee

Constitution of the Committee

Sec 178(5) of companies act 2013	Regulation 20 of LODR 2015
Any company which have more than 1000 security holder	Every Listed entity

Composition

- ✓ A chairperson who shall be non executive director
- ✓ Other members to be decided by board

Functions

To consider and resolve the grievances of security holders of the company.

CSR committee

Section 135 (1) read with rule 3 of Companies (Corporate Social Responsibility Policy) Rules, 2014, mandates that every company which fulfils any of the following criteria during any of the three preceding financial years shall constitute a CSR Committee -

Companies having

- ➢ Net worth ≥ Rs. 500 Cr. or
- ➢ Turnover ≥ Rs. 1000 Cr. or
- ➢ Net profit ≥ Rs. 5 Cr.

Composition of the Committee

- ✓ The CSR Committee shall consist of three or more directors.
- ✓ At-least one director shall be an independent director.

Functions

In accordance with section 135 the functions of the CSR committee include:

a) Formulating and recommending to the Board, a CSR Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII;
b) Recommending the amount of expenditure to be incurred on the CSR activities.
c) Monitoring the Corporate Social Responsibility Policy of the company from time to time.
d) Further the rules provide that the CSR Committee shall institute a transparent monitoring mechanism for implementation of the CSR projects or programs or activities undertaken by the company.

Risk Management Committee

A company needs to have a proactive approach to convert a risk into an opportunity. It is important for the company to have a structured framework to satisfy that it has sound

policies, procedures and practices in place to manage the key risks under risk framework of the company. A risk management Committee's role is to assist the Board in establishing risk management policy, overseeing and monitoring its implementation.
Regulation 21 of the SEBI (LODR) Regulations, 2015 provides that the BOD of top 100 listed entities, determined on the basis of market capitalisation, as at the end of the immediate previous financial year shall constitute a Risk Management Committee.

The majority of members of Risk Management Committee shall consist of members of the board of directors.

The Chairperson of the Risk management committee shall be a member of the board of directors and senior executives of the listed entity may be members of the committee.

The board of directors shall define the role and responsibility of the Risk Management Committee and may delegate monitoring and reviewing of the risk management plan to the committee and such other functions as it may deem fit.

The committee shall be constituted with at least three directors, majority being independent directors.

Major functions include:

1. Assisting the Board in fulfilling its risk management oversight responsibilities with regard to identification, evaluation and mitigation of operational, strategic and external environment risks.
2. To ensure that management has instituted adequate process to evaluate major risks faced by the company
3. Establishing the role and responsibilities of officers/team who shall be responsible for:
   i. Facilitating the execution of risk management practices in the enterprise
   ii. Reviewing enterprise risks from time to time, initiating mitigation actions, identifying owners and reviewing progress
   iii. Reporting risk events and incidents in a timely manner.
4. Monitoring and reviewing risk management practices of the Company
5. Reviewing and approving risk-related disclosures.

Corporate Governance and Shareholders Rights

INTRODUCTION

Protection of shareholder rights is very important for good corporate governance.
It is one of the pillars of corporate governance.

INVESTOR PROTECTION IN INDIA

SEBI is the capital market regulator and nodal agency in India who regulates the security market. One of the objectives of the SEBI is to provide a degree of protection to the investors and to safeguard their rights, steady flow of savings into market and to promote the development of and regulate the securities market. Investors should be safeguarded not only against **frauds** and **cheating** but also against the **losses arising out of unfair practices.**

Such practices may include:

- ✓ Deliberate misstatement in offer statements to investors.
- ✓ Price manipulations.
- ✓ Insider trading.

SEBI has issued many guidelines and regulations to regulate the capital market and to protect the investors.

Some of the guidelines are:

- ✓ SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009
- ✓ SEBI (Ombudsman) Regulation 2003 - designed to redress the investor's grievance against listed companies or intermediaries or both for amicable settlement
- ✓ SEBI (Prohibition of fraudulent and unfair Trade Practices relating to securities market) Regulations 2003
- ✓ SEBI (Prohibition of Insider Trading) Regulations 1992 and amended in 2002. The basic objective is to prohibit persons who have more access to company's information which can be used to benefit the individual or group of individual or agency.
- ✓ SEBI has set up a separate cell to address the grievances of investors - SEBI Complaints Redressal System (SCORES)

Companies Act, 2013 provides for some measures to protect the interest of minority shareholders.

It includes the following:

Where a company, which has raised money from public through prospectus and still has any unutilized amount out of the money so raised and which proposes to change its objects, then the promoter and shareholders having control of a company are **required to provide an exit to the dissenting shareholders** in accordance with regulations to be specified by SEBI.

Where any benefit accrues to promoter, director, manager, KMP, or their relatives, either directly or indirectly **as a result of non-disclosure or insufficient disclosure** in the explanatory statement annexed to the notice of general meeting then such persons shall hold such benefit in trust for the company and shall be liable to compensate the company to the extent of the benefit received by him.

Class action suit:

In case of oppression / mismanagement, specified number of members or depositors are entitled to file class action suit before NCLT for seeking prescribed reliefs. They may also claim damages / compensation for fraudulent / unlawful / wrongful acts from or against the company / directors / auditors / experts / advisors etc.

Some of the actions that can be taken are as under:

1. Restrain company from any act which is ultra vires the AOA / MOA.
2. Restrain company for breach of provisions of MOA / AOA, act or any other law.
3. Declare a resolution void if material facts are not provided.
4. Restrain company/ directors from acting on such resolutions.
5. Restrain company from taking action contrary to any resolution passed by shareholders.
6. Claim damages or compensation or demand any other suitable action.
7. Seek other remedies as tribunal may deem fit.

RIGHTS OF SHAREHOLDERS

GENERAL RIGHTS OF SHAREHOLDERS

1) Voting rights on issues that affect the corporation as a whole.
2) Rights related to the assets of the company.
3) Rights related to the transfer of stock.
4) Rights to receive dividends as declared by the BOD of the company.
5) Right to receive financial statements.
6) Rights to inspect the records and books of the company.
7) Rights to bring suit against the corporation for wrongful acts by the directors and officers of the company.
8) Rights to share in the proceeds recovered when the corporation liquidates its assets.

SHAREHOLDERS RIGHT UNDER COMPANIES ACT 2013

1. Right to receive copies of the Audited Financial statements.
2. Right to receive copies of the Report of the Cost Auditor, if so directed by the Government.
3. Right to receive copies of the Contract for the appointment of the MD or WTD.
4. Right to receive copies of the Notices of the general meetings of the company
5. Right to inspect Debenture trust deed.
6. Right to inspect Register of Charges.
7. Right to inspect Register of Members, Debenture holders and Index Registers, Annual Returns.

SHAREHOLDER ACTIVISM

Shareholder activism refers to the active involvement of stockholders in their organization.

Shareholders can ensure that the company follows good corporate governance practices and implements beneficial policies.

THE SHAREHOLDER ACTIVISM MEANS

a. Establishing dialogue with the management on issues that concern.
b. Influencing the corporate culture.

c. Using the corporate democracy provided by law.
d. Increasing general awareness on social and human rights issues concerning the organization.

BENEFITS OF SHAREHOLDER ACTIVISM

1) Shareholders can ensure that the company follows good corporate governance practices and implements beneficial policies.
2) Active participation in company meetings is a healthy practice. They can resolve issues laid down in the annual and other general meetings and can raise concerns over financial matters or even social causes such as protection of the environment.
3) Shareholder activists include public pension funds, mutual funds, unions, religious institutions, universities, foundations, environmental activists and human rights groups.

INVESTOR RELATIONS (IR)

Investor Relations (IR) is a **strategic management responsibility** that integrates finance, communication, marketing and securities law compliance to enable the most effective **two- way communication** between a company, the financial community, and other constituencies, which ultimately contributes to a company's securities achieving fair valuation.

Typically, investor relation is a department or person reporting to the Chief Financial Officer. In some companies, investor relation is managed by the public relations or corporate communications departments, and can also be referred to as financial public relations or financial communications.

The investor relations function must be aware of current and upcoming issues that an organization or issuer may face, particularly those that relate to fiduciary duty and organizational impact.

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

OECD Principles of Corporate Governance were 1st released in May 1999 and revised in 2004. The principles are **one of the 12 key standards** for International Financial stability of the Financial Stability Board and form the basis for the corporate governance component of the Report on the Observance of Standards and Codes of the World Bank Group.

The OECD Principles of Corporate Governance are:

1) Ensuring the Basis for an Effective Corporate Governance Framework.
2) **The Rights of Shareholders and Key Ownership Functions**
3) **The Equitable Treatment of Shareholders**
4) The Role of Stakeholders in Corporate Governance
5) Disclosure and Transparency
6) The Responsibilities of the Board

The OECD Principles II and III are very much relevant for this chapter and are described as under:

Principle II :

The Rights of Shareholders and Key Ownership Functions

1) Shareholders should have the right to participate in, and to be sufficiently informed on, decisions concerning fundamental corporate changes

2) Shareholders should have the opportunity to participate effectively and vote in general shareholder meetings and should be informed of the rules, including voting procedures, that govern general shareholder meetings:
3) Capital structures and arrangements that enable certain shareholders to obtain a degree of control disproportionate to their equity ownership should be disclosed.
4) Markets for corporate control should be allowed to function in an efficient and transparent manner.
5) The exercise of ownership rights by all shareholders, including institutional investors, should be facilitated.
6) Shareholders, including institutional shareholders, should be allowed to consult with each other on issues concerning their basic shareholder rights as defined in the Principles, subject to exceptions to prevent abuse.

Principle III:
The Equitable Treatment of Shareholders
1) All shareholders of the same series of a class should be treated equally.
2) Insider trading and abusive self-dealing should be prohibited.
3) Members of the board and key executives should be required to disclose to the board whether they, directly, indirectly or on behalf of third parties, have a material interest in any transaction or matter directly affecting the corporation.

ROLE OF INSTITUTIONAL INVESTORS IN CORPORATE GOVERNANCE
Institutional investors are organizations which pool large sums of money and invest those sums in companies. Their role in the economy is to act as highly specialized investors on behalf of others.

In India, there are broadly the following types of institutional investors
1. Development oriented financial institutions such as IFCI, IDBI.
2. State financial corporations & Insurance Companies- LIC, GIC.
3. Banks.
4. Mutual funds etc.

INSTITUTIONAL SHAREHOLDERS SHOULD REFLECT THE FOLLOWING CHARACTERISTICS:
1. Take active interest in the composition of BOD.
2. Be vigilant.
3. Ensure that voting intentions are translated into practice.
4. Evaluate Corporate Governance performance of the company.

THE PROS AND CONS ON THE ROLE OF THE INSTITUTIONAL INVESTORS IN PROMOTING THE GOOD CORPORATE GOVERNANCE

Pros	Cons
The institutional investors have significant stakes in the companies and so of the voting power.	Mutual fund investors have the **short term vision** hence their performance measurement may not be a significant evaluation in assessing the corporate governance while making the investment decision.

They are in better position to have the access of the information about the company.	The investment objectives are also a deciding factor while making the investment decision.
The stock market performance can visualised with the adoption of the better corporate governance.	Institutional investors may off-load the holding if there is mis-matching in their asset-liability / liquidity position.
They may influence in attracting the FDI in India.	A common man's investment portfolio is effected with the decision of the investment by the institutional investors.

INSTITUTIONAL INVESTORS — GLOBAL TRENDS

THE UK STEWARDSHIP CODE

The UK stewardship code traces its origins to 'the responsibilities of institutional shareholders and agents: statement of principles,' 1st published in 2002 by the institutional shareholders committee (ISC), and which the ISC converted to a code in 2009.

Following the 2009 walker review of governance in financial institutions, the Financial Reporting Council (FRC) was invited to take responsibility for the code. In 2010, the FRC published the 1st version of the UK stewardship code, which closely mirrored the ISC code.

This edition of the code does not change the spirit of the 2010 code.

1) Stewardship aims to promote the **long term success** of companies in such a way that the ultimate providers of capital also prosper. Effective stewardship benefits companies, investors and the economy as a whole.
2) In publicly listed companies responsibility for stewardship is shared. The primary responsibility rests with the board of the company, which oversees the actions of its management. Investors in the company also play an important role in holding the board to account for the fulfilment of its responsibilities.
3) The UK corporate governance code identifies the principles that underlie an effective board. The UK stewardship code sets out the principles of effective stewardship by investors. In so doing, the code assists institutional investors better to exercise their stewardship responsibilities, which in turn gives force to the "comply or explain" system.
4) For investors, stewardship is more than just voting. Activities may include monitoring and engaging with companies on matters such as strategy, performance, risk, capital structure, and corporate governance, including culture and remuneration. Engagement is purposeful dialogue with companies on these matters as well as on issues that are the immediate subject of votes at general meetings.
5) Institutional investors' activities include decision-making on matters such as allocating assets, awarding investment mandates, designing investment strategies, and buying or selling specific securities. The division of duties within and between institutions may span a spectrum, such that some may be considered asset owners and others asset managers.
6) Broadly speaking, asset owners include pension funds, insurance companies, investment trusts and other collective investment vehicles. As the providers of capital, they set the tone for stewardship and may influence behavioural changes

that lead to better stewardship by asset managers and companies. Asset managers, with day-to-day responsibility for managing investments, are well positioned to influence companies' long-term performance through stewardship.

7) Compliance with the Code does not constitute an invitation to manage the affairs of a company or preclude a decision to sell a holding, where this is considered in the best interest of clients or beneficiaries.

Seven Principles for Institutional Investors under UK Stewardship

1) They should publicly disclose their policy on how they will discharge their stewardship responsibilities.
2) They should have a robust policy on managing conflicts of interest in relation to stewardship which should be publicly disclosed.
3) They should monitor their investee companies.
4) They should establish clear guidelines on when and how they will escalate their stewardship activities.
5) They should be willing to act collectively with other investors where appropriate.
6) They should have a clear policy on voting and disclosure of voting activity.
7) They should report periodically on their stewardship and voting activities.

PRINCIPLES FOR RESPONSIBLE INVESTMENT (PRI)

The united nations-supported Principles for Responsible Investment (PRI) initiative is an international network of investors working together to put the 6 principles for responsible investment into practice. Its goal is to understand the implications of sustainability for investors and support signatories to incorporate these issues into their investment decision making and ownership practices.

The principles are **voluntary and aspirational**. The principles are designed to be compatible with the investment styles of large, diversified, institutional investors that operate within a traditional fiduciary framework.

Principle 1: we will incorporate ESG issues into investment analysis and decision-making processes.
Principle 2: we will be active owners and incorporate ESG issues into our ownership policies and practices.
Principle 3: we will seek appropriate disclosure on ESG issues by the entities in which we invest.
Principle 4: we will promote acceptance and implementation of the principles within the investment industry.
Principle 5: we will work together to enhance our effectiveness in implementing the principles.
Principle 6: we will scrutinise each report on our activities and progress towards implementing the principles.

CODE FOR RESPONSIBLE INVESTING IN SOUTH AFRICA (CRISA)

The code for responsible investing in South Africa (CRISA) gives guidance on how the institutional investor should execute investment analysis and investment activities and exercise rights so as to promote sound governance.

CRISA applies to:

Institutional investors as asset owners, for example, pension funds and insurance companies.

Service providers of institutional investors, for example, asset and fund managers and consultants.

Purpose:

The king code was written from the perspective of the board of the company as the focal point of corporate governance.

CRISA is intended to give guidance on how the institutional investor should execute investment analysis and investment activities and exercise rights so as to promote sound governance. Read together, the king code and CRISA provide a framework that relates to the function of all role players in the overall governance system, including boards of companies, institutional shareholders, their service providers And the ultimate beneficiaries.

The objective of providing such a framework is to ensure that sound governance is practised

which results in better performing companies that deliver both economic value as well as value within its broader meaning.

CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM (CALPER) (MARCH 16, 2015)

The California public employees' retirement system (CALPERS, system) is the largest U.S. Public pension fund, with assets totalling approximately $300 billion spanning domestic and international markets **as of June 30, 2014.**

Its mission is to provide responsible and efficient stewardship of the system to deliver promised retirement and health benefits, while promoting wellness and retirement security for members and beneficiaries. This mission was adopted by the CALPERS board of administration in serving more than 1.6 million members and retirees.

The CALPERS board of administration is guided by the CALPERS board's investment committee, investment beliefs and core values: quality, respect, accountability, integrity, openness, and balance.

CALPERS management and more than 380 investment office staff carry out the daily activities of the investment program.

The CALPERS board, through its investment committee, has adopted the global governance principles (global principles). The global principles create the framework by which CALPERS:

1) Executes its shareowner's proxy voting responsibilities.
2) Engages investee companies to achieve long-term sustainable risk-adjusted returns.
3) Requests internal and external managers of CALPERS capital to take into consideration when making investment decisions.

THE SARBANES-OXLEY ACT

The Sarbanes-Oxley Act of 2002 significantly increased the importance of investor relations in the financial markets. The act established new requirements for corporate compliance and regulatory governance, with an increased emphasis on accuracy in auditing and public disclosure. Notable provisions of the act which apply to investor relations include enhanced financial disclosures and accuracy of financial reports, real-time disclosures, off- balance-sheet transaction disclosures, pro-forma financial disclosures, management assessment of internal controls, and corporate responsibility for financial reports.

REPORTING STANDARDS

Companies these days need to disclose much more. The current legal requirements are prompting companies to refine their reporting standards too.

CORPORATE GOVERNANCE AND OTHER STAKEHOLDERS

STAKEHOLDER CONCEPT

In a business context, customers, investors and shareholders, employees, suppliers, government agencies, communities, and many others who have a "stake" or claim in some aspect of a company's products, operations, markets, industry, and outcomes are known as stakeholders. These groups are influenced by business, but they also have the ability to affect businesses.

STAKEHOLDER CONCEPT DEPENDS UPON TWO PRINCIPLES

Principles of corporate legitimacy

The corporation should be managed for the benefit of its stakeholders:

- ✓ Customers
- ✓ Suppliers
- ✓ Owners
- ✓ Employees & local communities.

The rights of these groups must participate, in some sense, in decisions that substantially affect their welfare.

Stakeholder fiduciary principle

- ✓ Management bears a **fiduciary relationship** to stakeholders and to the corporation as an abstract entity.
- ✓ It must act in the interest of the stakeholders as their agent, and it must act in the interests of the corporation to ensure the survival of the firm, **safeguarding the long-term stakes of each group.**

TYPES OF STAKEHOLDERS

Primary stakeholders

Those whose continued association is absolutely necessary for a firm's survival; these include employees, customers, investors, and shareholders, as well as the governments and communities that provide necessary infrastructure.

Secondary stakeholders

They do not typically engage in transactions with a company and thus are not essential for its survival; these **include the media, trade associations and special interest groups.**

STAKEHOLDER ENGAGEMENT

Stakeholder engagement is an alliance-building tool. Corporations practice stakeholder engagement in an effort to understand the needs of their stakeholders, create partnerships and to promote dialogue. Stakeholder engagement identifies stakeholders, assesses stakeholder needs, develops stakeholder relations plans and forms alliances with stakeholders.

STAKEHOLDER ENGAGEMENT leads to increased transparency, responsiveness, compliance, organizational learning, quality management, accountability and sustainability.

STAKEHOLDER ENGAGEMENT is a central feature of sustainability performance. Stakeholder engagement is undertaken for numerous reasons which include:

- ✓ Improved corporate responsibility and financial performance across the globe.
- ✓ To avoid conflict through negotiation, mediation and collaborative learning.
- ✓ Development of a shared vision to direct future business decisions and operations.
- ✓ To innovate through collaboration.

STAKEHOLDER ANALYSIS

Stakeholder analysis is the identification of a project's/activity's key stakeholders, an assessment of their interests, and the ways in which these interests affect project riskiness and viability.

Doing a stakeholder analysis can:

- ✓ Draw out the interests of stakeholders in relation to the problems which the project is seeking to address (at the identification stage) or the purpose of the project (once it has started).
- ✓ Identify conflicts of interests between stakeholders,
- ✓ Help to identify relations between stakeholders which can be built upon, and may enable establish synergies
- ✓ Help to assess the appropriate type of participation by different stakeholders.

ACTIVITY ANALYSIS

The ethical dimension of an activity can be determined with the help of the following grid which is self-explanatory:

Activity Analysis **(Ethical)**

1) Parasite Helping self Injuring Others	**3) Win-win Situation** Helping self Helping Others
2) Martyr Helping Others Injuring self	**4) Total Loss** Injuring self Injuring Others

THE CAUX ROUND TABLE

The Caux Round Table (CRT) is based on the belief that the world business community should play an important role in improving economic and social conditions.

The Caux Round Table was founded in 1986 by Frederick Phillips, former President of Philips Electronics and Olivier Giscard d'Estaing, former Vice-Chairman of INSEAD, as a means of reducing escalating trade tensions. The CRT Principles for Business were formally launched in 1994, and presented at the United Nations World Summit on Social Development in 1995.

The Principles are comprehensive statement of responsible business practice formulated by business leaders for business leaders.

THESE PRINCIPLES ARE ROOTED IN TWO BASIC ETHICAL IDEALS

KYOSEI

The Japanese concept of "Kyosei" means living and working together for the common good enabling cooperation and mutual prosperity to coexist with healthy and fair competition.

HUMAN DIGNITY

"Human dignity" refers to the sacredness or value of each person as an end, not simply as a mean to the fulfilment of others' purposes or even majority prescription.

CRT PRINCIPLES FOR BUSINESS

SECTION 1 : PREAMBLE

The mobility of employment, capital, products and technology is making business increasingly global in its transactions and its effects.

Law and market forces are necessary but insufficient guides conduct. Responsibility for the policies and actions of business and respect for the dignity and interests of its stakeholders are fundamental.

SECTION 2: GENERAL PRINCIPLES

Principle 1: The Responsibilities of Businesses

Principle 2: The Economic and Social Impact of Business

Principle 3: Business Behaviour

Principle 4: Respect for Rules

Principle 5: Support for Multilateral Trade

SECTION 3: STAKEHOLDER PRINCIPLES

- ✓ Customers
- ✓ Employees

- ✓ Owners/Investors
- ✓ Suppliers
- ✓ Competitors
- ✓ Communities

THE CLARKSON PRINCIPLE OF STAKEHOLDER MANAGEMENT

Principle 1

Managers should acknowledge and actively monitor the concerns of all legitimate stakeholders, and should take their interests appropriately into account in decision-making and operations.

Principle 2

Managers should listen to and openly communicate with stakeholders about their respective concerns and contributions, and about the risks that they assume because of their involvement with the corporation

Principle 3

Managers should adopt processes and modes of behaviour that are sensitive to the concerns and capabilities of each stakeholder constituency

Principle 4

Managers should recognize the interdependence of efforts and rewards among stakeholders, and should attempt to achieve a fair distribution <5f the benefits and burdens of corporate activity among them, taking info account their respective risks and vulnerabilities.

Principle 5

Managers should work cooperatively with other entities, both public and private, to insure that risks and harms arising from corporate activities are minimized and, where they cannot be avoided, appropriately compensated.

Principle 6

Managers should avoid altogether activities that might jeopardize inalienable human rights (e.g., the right to life) or give rise to risks which, if clearly understood, would be patently unacceptable to relevant stakeholders

Principle 7

Managers should acknowledge the potential conflicts between (a) their own role as corporate stakeholders, and (b) their legal and moral responsibilities for the interests of all stakeholders, and should address such conflicts through open communication, appropriate reporting and incentive systems and, where necessary, third party review.

GOVERNMENT AS A STAKEHOLDER

Government is the largest stakeholder. Government policy and the legal environment set the tone for the desired corporate governance practices by the corporate sector. Government in any country plays a key role in setting the mandatory limit and recognition of voluntary efforts of corporate sector. Since, it is a well maintained proposition that you can't legislate good behavior, therefore, the Government role is to differentiate between the voluntary and mandatory measures becomes more important so that in regulatory role, it should not burden the corporate sector with the legal compliances.

In India, MCA prescribed the following voluntary measures in the context of Corporate Governance:

1. Corporate governance voluntary guidelines 2009
2. Corporate social responsibility (CSR) voluntary guidelines, 2009
3. National voluntary guidelines on social, environmental & economic responsibilities of business

SOCIETY AS A STAKEHOLDER

1. What society wants from good governance in the aggregate is maximum production of economic well-being.
2. This requires innovation and experimentation as well as it also requires control, probity, and risk management to seize the activities involving hazard to the local community.
3. Now a day's Companies are spending voluntarily for the social and community development which is well recognized by the society and government as well.
4. Business was perceived to maximize profit by exploiting environmental and social systems. These perceptions and attitude forced society to revalue their expectations from business.
5. It was realized that increased economic development at all costs would not be desirable.
6. Only industrial development which does not reduce the quality of life should be encouraged. Thus if businesses do not have in a socially responsible manner, their activities will have a negative impact on the society and the society will have a negative impact.
7. As a result of change in society's attitude towards business, relations between society and business firms first became strained, and this change triggered a sense of frustration for corporate management in the early stage of this awareness.

Risk Management and Internal Control

INTRODUCTION

What Do We Mean by Risk Management & Internal Control?

Organizations face a wide range of uncertain internal and external factors that may affect achievement of their objectives—whether they are strategic, operational, or financial. The effect of this uncertainty on their objectives can be a positive risk (opportunities) or a negative risk (threats).

RISK MANAGEMENT focuses on identifying threats and opportunities, while INTERNAL CONTROL helps counter threats and take advantage of opportunities.

Why are Risk Management and Internal Control Important?

Proper risk management and internal control assist organizations in making informed decisions about the level of risk that they want to take and implementing the necessary controls to effectively pursue their objectives.

Risk management and internal control are therefore important aspects of an organization's governance, management, and operations. Successful organizations integrate effective governance structures and processes with performance-focused risk management and internal control at every level of an organization and across all operations.

However, risk management and internal control are not objectives in themselves. They should always be considered when setting and achieving organizational objectives and creating, enhancing, and protecting stakeholder value.

RISK MANAGEMENT

Any organization, public or private, large or small, faces internal and external uncertainties that affect its ability to achieve its objectives. The effect of uncertainty on an organization's objectives is "risk." Risk management, commonly known in the business community as enterprise risk management (ERM), can provide for the structured and explicit consideration of all forms of uncertainty in making any decision.

Risk management can enhance the environment for identifying and capitalizing on opportunities to create value and protect established value.

MEANING OF RISK

Risk may also be defined as the possibility that an event will occur and adversely affect the achievement of the Company's objectives and goals.

A business risk is the threat that an event or action will adversely affect an organisation's ability to achieve its business objectives/targets.

Classification of risks

Risk may be classified according to controllability, i.e controllable risk and uncontrollable risk. In other words, the controllable risk is categorised as unsystematic risk and uncontrollable risk is categorised as systematic risk. The concept of controllable and uncontrollable risk may be further explained as under:

Systematic risk:

- ✓ It is uncontrollable by an organisation,
- ✓ It is not predictable, o It is of macro nature.
- ✓ It affects a large number of organisations operating under a similar stream,
- ✓ It cannot be assessed in advance.
- ✓ It depends on the influence of external factors on an organisation which are normally uncontrollable by an organisation.
- ✓ The example of such type of risk is interest rate risk, market risk, purchasing power risk.

Unsystematic risk:

- ✓ It is controllable by an organisation, o It is predictable, o It is micro in nature, o It affects the individual organisation.
- ✓ It can be assessed well in advance and risk mitigation can be made with proper planning and risk assessment techniques.
- ✓ The example of such risk is business risk, liquidity risk, financial risk, credit risk, operational risk.

Types of risks

The risk may broadly be segregate as financial risk and non-financial risk.

Financial risk:

The risk which has some financial impact on the business entity is treated as financial risk. These risks may be market risk, credit risk liquidity risk, operational risk, legal risk and country risk. The following chart depicts the various types of financial risks.

TYPES OF FINANCIAL RISK

Political Risks:

These risks relate to political uncertainties namely: Elections, War risks, Country/Area risks, Insurance risks like fire, strikes, riots and civil commotion, marine risks, cargo risks, etc. And Fiscal/Monetary Policy Risks including Taxation risks.

Interest rate risk:

The financial assets which are connected with interest factors such as bonds/ debentures, faces the interest rate risk. Interest rate risk adversely affects value of fixed income securities. Any increase in the interest reduces the price of bonds and debts instruments in debt market and vice versa. So it can be said that the changes in the interested rates have an inverse relationship with the price of bonds.

Liquidity Risks:

These are financial risk factors namely:

1. Financial solvency and liquidity risks
2. Borrowing limits, delays
3. Cash/Reserve management risks
4. Tax risks.

Currency risk:

The volatility in the currency rates is called the currency risk. These risks affect the firms which have international operations of business and the quantum of the risk depends on the nature and extent of transactions with the external market.

Credit Risks:

These risks relate to commercial operations namely:

- ✓ Creditworthiness risks
- ✓ Risks in settlement of dues by clients

Equity risk:

It means the depreciation in one's investment due to the change in market index. Beta (β) of a stock tells us the market risk of that stock and it is associated with the day-to-day fluctuations in the market.

Legal Risks:

These risks relate to the following Contract risks, Contractual Liability, Frauds, Judicial risks and Insurance risks.

Non-financial risk:

This type of risk does not have immediate financial impact on the business, but its consequence are very serious and later may have the financial impact. This type of risk may include, business/industry & service risk, strategic risk, compliance risk, fraud risk, reputation risk,

TYPES OF NON-FINANCIAL RISK:

Disaster risk: on account of natural calamities like floods, fire, earthquake, manmade risks due to extensive exploitation of land for mines activity, land escalation, risk of failure of disaster management plans formulated by the company etc