7.1 RESEARCH BACKGROUND

A company is a voluntary association of persons formed for the purpose of doing business, having a distinct name and limited liability, companies, whether public or private, are an indispensable part of an economy. They are the modes through which a country grows and expands worldwide. Their performance is an important parameter of a country’s economic position.

The Companies Act, 1956 is the principal landmark legislation that governs companies in India. The Act prescribes provisions for protection of the interests of the investors, creditors and public at large but at the same time permits the management to utilize its resources for optimum results and prosperity. The corporate status of a business venture has led to the evolution of innovative culture in the field of economic development the world over. The various types of business talents and the bulk finance required for the marked growth of commerce and industry would not have been possible without the process of innovation conceived and practised through the corporate sector. Companies in our country have by and large played and are playing an important role in our industrial and economic development. Company is a juristic entity and a corporate citizen bearing a social responsibility towards the society in general.
In the midst of grave balance of payment, the Government of India in 1991 redrafted its economic policy to lead new era of deregulation, decontrol, liberalisation and global integration. Since then significant policy initiatives have been taken to provide stimulus to accelerated growth, industrial efficiency, and global competitiveness. As a part of reform process, Government of India has initiated number of legislative reforms and radical changes in the area of Company Laws. New issues, concepts and practices keep on emerging in respect of the working and administration of corporate sector. Many new and unheard concepts have been introduced in the Companies Act and many are in the pipeline. The present research exercises the purposes to dwell on the following issues:

1. To examine the key aspects of the present Company Law pertaining to corporate administration.
2. To study the recent developments in Company Law.
3. To review the amendments in the Companies Act, 1956.
4. To analyse the opinions of the respondents (Professionals) about the Company Law reforms pertaining to management of the company.
5. To identify loopholes of the existing Company Law, if any, and to offer concrete suggestions given by respondents (Professionals) for the betterment of corporate sector.

The required data have been collected both from primary and secondary sources for the present study. For the purpose of eliciting opinion of respondents, the interview schedule was administered to the respondents. Accordingly, a
sample of 50 professionals were chosen and the interview schedule prepared was pre-tested with the professionals. The State of Tamilnadu has been chosen for the study. It is one of the two States having two Registrar of Companies in India in view of large number of companies concentrated in this State. Though professionals are working in all the parts of the State, it was observed that most of the professionals are found working in metros and cities for obvious reasons.

The particulars of professionals were collected from the respective chapters of the professional bodies namely Institute of Chartered Accountants of India (ICAI), Institute of Company Secretaries of India (ICSI) and Institute of Cost and Works Accountants of India (ICWAI) from Chennai, Coimbatore, Tiruchirapalli, Madurai and Salem. It was observed that most of the respondents were found employed in Chennai and Coimbatore in view of large number of companies located in these two cities. The professionals namely Company Secretaries either in whole time employment or practise, Chartered Accountants and experts in law from Tamilnadu were contacted initially over mobile and e-mail. The researcher then met the respondents and distributed the interview schedule and noted their feedback and suggestions.

Judgement sampling was used to select the respondents in the present study. Initially 300 professionals were identified and contacted directly, only 244 respondents gave appointment to the researcher. Again out of 244 respondents only 200 respondents provided complete data. The remaining professionals though
gave appointment, could not be contacted due to their busy schedule. There were also many last minute cancellation of appointments.

After the data collection, the completed interview schedules were scrutinized thoroughly and edited to ensure accuracy, consistency and completeness. The analysis of data of the study on Company Law reforms in India is presented based on the response of 200 respondents selected from Tamilnadu. The respondents are Company Secretaries who are either in whole time employment or in practice, Chartered Accountants and Law Professionals. The response of the respondents were ascertained through an interview schedule covering personal data and the data relating to the reforms related to information on Company Law Reforms, Board of Directors, Auditors, Company Secretary, Other Information on Corporate Governance, Audit Committee, Related Party Transactions and Disclosure Notes, Managerial Remuneration, Small Shareholders, National Company Law Tribunal and New Companies Bill 2009. The opinion of the respondents were analysed using the statistical tools in tune with the objectives of the study.

7.2 FINDINGS OF THE STUDY

The following are the important findings of the study on Company Law reforms in India with reference to management and administration of the company.
Percentage Analysis

- Most of the respondents (35%) are in the age group of 30–40 and 40–50 years.
- Majority of the respondents (82%) are male.
- Most of the respondents (44%) have ACS qualification.
- Most of the respondents (40%) are in the position of top management.
- Majority of the respondents (53%) are in the experience category of 10–20 years.
- Most of the respondents (48.5%) are in the income group of Rs. 50,000 and above.
- Majority of respondents (55%) strongly agree towards “Companies play a vital role in the industrial and economic development of our country” on Company Law reforms.
- Majority of the respondents (53%) strongly agree towards “The companies concerned has to regularly keep the company directors appraised of various compliances and latest judicial decisions” on the Board of Directors.
- Majority of the respondents (55%) strongly agree towards “A greater exercise of care and skill on the part of the auditors is necessary to sustain public confidence and to avoid debacles in the working of the company” on the auditors.
• Majority of respondents (56.5%) strongly agree towards “Company Secretary has the onerous responsibility to satisfy the customers, both internal and external, without compromising with the provisions of law” on the Company Secretary.

• Majority of respondents (59.5%) strongly agree towards “Corporate Governance is needed to create a corporate culture of consciousness, transparency and openness” on other corporate governance.

• Majority of respondents (60%) strongly agree towards “Accounting and finance literacy is must for the members in the audit committee for better corporate governance” on the audit committee.

• Majority of respondents (54.5%) strongly agree towards “Related Party Transactions helps in improving the quality of financial disclosures for better corporate governance” on the related party transactions and disclosure notes.

• Most of respondents (31.5%) strongly agree towards “There should be board representative for protecting the interests of small shareholders” relating to small shareholders.

• Majority of respondents (57.5%) strongly agree towards “India’s judicial system need to be revamped by better staffing to reduce the enormous backlog of cases and to increase judicial efficiency” relating to National Company Law Tribunal.
Minimum of respondents (11.5%) strongly agree towards “The New Companies Bill (2009) is able to plug the loopholes of the Company Law when compared to Companies Act 1956.”

**Chi-Square Test**

- There is significant influence in the profession of the respondents alone in the agreeability towards the Company Law reforms.
- There is no significant influence of the respondents in the agreeability towards the Board of Directors.
- There is no significant influence of the respondents in the agreeability towards the Auditors.
- There is no significant influence of the respondents in the agreeability towards the Company Secretary.
- There is no significant influence of the respondents in the agreeability towards other corporate governance.

**Analysis of Variance**

- There is no significant difference between the respondents in different age group in the respect of their agreeability on the various aspects relating to Company Law reforms.
- There is no significant difference between the respondents in different age group in the respect of their agreeability on the various aspects relating to Board of Directors.
• There is no significant difference between the respondents in different age group in the respect of their agreeability on the various aspects relating to Company Secretary.

• There is no significant difference between the respondents in different age group in the respect of their agreeability on the various aspects relating to other Corporate Governance.

• There is no significant difference between the respondents in different age group in the respect of their agreeability on the various aspects relating to National Company Law Tribunal.

• There is no significant difference between the respondents in different gender group in the respect of their agreeability on the various aspects relating to Company Law reforms.

• There is no significant difference between the respondents in different gender group in the respect of their agreeability on the various aspects relating to Board of Directors.

• There is no significant difference between the respondents in different gender group in the respect of their agreeability on the various aspects relating to Company Secretary.

• There is no significant difference between the respondents in different gender group in the respect of their agreeability on the various aspects relating to other Corporate Governance.
• There is no significant difference between the respondents in different gender group in the respect of their agreeability on the various aspects relating to National Company Law Tribunal.

• There is significant difference between the respondents in different qualification group in the respect of their agreeability on the various aspects relating to Company Law reforms.

• There is no significant difference between the respondents in different qualification group in the respect of their agreeability on the various aspects relating to Board of Directors.

• There is significant difference between the respondents in different qualification group in the respect of their agreeability on the various aspects relating to Company Secretary.

• There is no significant difference between the respondents in different qualification group in the respect of their agreeability on the various aspects relating to other Corporate Governance.

• There is no significant difference between the respondents in different qualification group in the respect of their agreeability on the various aspects relating to National Company Law Tribunal.

• There is no significant difference between the respondents in different positions in the respect of their agreeability on the various aspects relating to Company Law reforms.
• There is significant difference between the respondents in different positions in the respect of their agreeability on the various aspects relating to Board of Directors.

• There is no significant difference between the respondents in different positions in the respect of their agreeability on the various aspects relating to Company Secretary.

• There is no significant difference between the respondents in different positions in the respect of their agreeability on the various aspects relating to other Corporate Governance.

• There is no significant difference between the respondents in different positions in the respect of their agreeability on the various aspects relating to National Company Law Tribunal.

• There is no significant difference between the respondents with various level of experience in respect of their agreeability on the various aspects relating to Company Law reforms.

• There is no significant difference between the respondents with various level of experience in respect of their agreeability on the various aspects relating to Board of Directors.

• There is no significant difference between the respondents with various level of experience in respect of their agreeability on the various aspects relating to Company Secretary.
• There is no significant difference between the respondents with various level of experience in respect of their agreeability on the various aspects relating to other Corporate Governance.

• There is no significant difference between the respondents with various level of experience in respect of their agreeability on the various aspects relating to National Company Law Tribunal.

• There is no significant difference between the respondents in monthly income in respect of their agreeability on the various aspects relating to Company Law reforms.

• There is no significant difference between the respondents in monthly income in respect of their agreeability on the various aspects relating to Board of Directors.

• There is no significant difference between the respondents in monthly income in respect of their agreeability on the various aspects relating to Company Secretary.

• There is no significant difference between the respondents in monthly income in respect of their agreeability on the various aspects relating to other Corporate Governance.

• There is no significant difference between the respondents in monthly income in respect of their agreeability on the various aspects relating to National Company Law Tribunal.
Average Score Analysis

- Majority of the respondents have given a very high level of agreeability towards (A1) (4.9) “Companies play a vital role in the industrial and economic development of our country.” and a low level of agreeability towards (A10) (3.57) “ROC plays a key role in the administration of the Companies Act and enforcement of corporate compliance and governance” relating to Company Law reforms.

- Majority of the respondents have given a very high level of agreeability towards (B10) (4.73) “The Company’s Board of Directors while appointing independent directors must assess and judge the integrity, expertise and experience of the appointee.” and a low level of agreeability towards (B6) (3.4) “Many companies conduct only Book-Meetings” relating to Board of Directors.

- Majority of the respondents have given a very high level of agreeability towards (C1) (4.71) “A greater exercise of care and skill on the part of the auditors is necessary to sustain public confidence and to avoid debacles in the working of the company” and a low level of agreeability towards (C2) (3.86) “Corporate fraud risk management in spite of anti fraud legislative measures and risk management systems, frauds do take place.” relating to Auditors.

- Majority of the respondents have given a very high level of agreeability towards (D1) (4.7) “Company Secretary has the onerous responsibility to
satisfy the customers, both internal and external, without compromising with the provisions of law” and a low level of agreeability towards (D3) (3.7) “Compliance Certificate acts as an effective mechanism to ensure that the legal and procedural requirements and directly complied with under the Companies Act 1956.” relating to Company Secretary.

- Majority of the respondents have given a very high level of agreeability towards (E11) (4.69) “Corporate Governance is needed to create a corporate culture of consciousness, transparency and openness” and low level of agreeability towards (E17) (3.57) “Whistle Blowing is a tool for improved corporate governance” relating to other Corporate Governance.

- Majority of the respondents have given very high level of agreeability towards (F23) (4.73) “Accounting and finance literacy is must for the members in the audit committee for better Corporate Governance” and low level of agreeability towards (F21) (3.64) “Audit Committee meets the expectations of the committee members, board, shareholders, regulators and capital markets” relating to Audit Committee.

- Majority of the respondents have given a very high level of agreeability towards (G31) (4.71) “Related Party Transactions helps in improving the quality of financial disclosures for better Corporate Governance” and a low level of agreeability towards (G32) (4) “Transactions involving key managerial personnel’s in the nature of payments/receipts are disclosed in the accounts of all related companies” relating to Related Party Transactions and Disclosure Notes.
• Majority of the respondents have given a very high level of agreeability towards (H42) (4.47) “The remuneration package of top management team should be fixed by a compensation committee consisting of independent directors” and a low level of agreeability towards (H41) (3.64) “A very high managerial remuneration cannot be allowed unless market conditions justify depending upon nature, responsibilities and achievements” relating to Managerial Remuneration.

• Majority of the respondents have given a very high level of agreeability towards (I52) (4.07) “There should be Board representative for protecting the interests of small shareholders” and a low level of agreeability towards (I51) (3.5) “The appointment of small shareholder’s director promotes and encourage small shareholders participation in board level decision making.” relating to Small Shareholder.

• Majority of the respondents have given a very high level of agreeability towards (J71) (4.7) “India’s Judicial System need to be revamped by better staffing to reduce the enormous backlog of cases and to increase judicial efficiency” and a low level of agreeability towards (J74) (3.6) “The law and procedure relating to winding up of small company will not be cumbersome, time consuming and costly by the constitution of NCLT” relating to National Company Law Tribunal.

• Majority of the respondents have given a low level of agreeability towards (K81) (3.8) “The New Companies Bill 2009 is able to plug the loop holes of the Company Law when compared to Companies Act 1956” relating to New Companies Bill.
Factor Analysis

- In factor analysis, instead of considering the various aspects it is enough if we consider the three aspects such as economic development (Group 1), Company Administration/Management (Group 2) and Investor Protection (Group 3) relating to Company Law reforms.

- In factor analysis, instead of considering the various aspects it is enough if we consider the three aspects such as Management and Control (Group 1), Board Effectiveness (Group 2) and Independent Directors (Group 3) relating to Board of Directors.

- In factor analysis instead of considering the various aspects it is enough if we consider the two aspects such as Good Governance (Group 1) and Corporate Governance Principles/Tools (Group 2) relating to general information other Corporate Governance.

7.3 LOOPHOLES OF LAW

The following are the areas were still reforms are required to be made in management and administration of the company.

- Composition of the Board.
- Appointment of Independent Directors.
- Appointment of auditors.
- Related Party Transactions.
- Role and appointment of Company Secretary.
• Contracts in which directors are interested (Section 297) is to be amended.
• Board Meetings through video conference.
• Penal provisions for non-compliance.
• Managerial Remuneration
• Corporate Governance practices.
• Stock Exchanges and SEBI Disclosures.
• Protection of the interest of shareholders.
• Compliance management
• Better management of e-recording at Registrar of Companies
• Disclosures in the financial statements and directors report.
• More accountability for the board.
• Mergers and amalgamations.
• Employee nominee to be on the Board.
• Simpler and faster mechanism for provisions of various approvals by MCA/ROC, etc., (e.g. Approvals to be obtained under Section 297/211/212, etc., of the Companies Act).

7.4 SUGGESTIONS

The following are the suggestions received from the Professionals for better management and administration of the company.
7.4.1 SPECIFIC SUGGESTIONS

**Board of Directors**

- Board should be made an independent body with proper mix of qualified independent directors.

- No director to hold office for more than 3 years and should be appointed for second term after a gap of 3 years from the holding of previous directorship of the company.

- Only key personnel, having professional qualifications have to be inducted in the board and not family members of promoters.

- There is an imperative need to provide training and multi-skills to directors periodically, to enhance the competence of directors.

- As a first step, Boards should ensure that only those people who can devote their time for the company matters are being appointed as directors.

- At least one-third of the Board must have relevant professionals to the core business of the company.

- Professional qualification (in their respective field) should be made compulsory for appointment of key managerial personnel.

- Independent directors may be made mandatory for all companies.

- The active participation of the independent directors in the Board meeting

- Independent directors should be reasonably and adequately remunerated for the energy and time devoted by them.
• Apart from various committees, a “Working Committee” should be constituted consisting of independent directors, working executives and CEO/CFO to review the working of the company/follow up action.

• Director’s responsibility should be increased and a performance audit of action of board should be made mandatory.

• It should be statutorily made mandatory for all directors to attend all Board meeting compulsorily (use of video conferencing, etc., may be encouraged to ensure this).

• The Board of Directors, should act honestly and diligently to enable better performance for the company and shareholders. They should be law abiding and take advise from employee if it is a matter of concern for the company and society at large. The Board members should leave back their ego and adhere to the policy and regulations of the company. They should not only formulate policies for the companies, but also should adhere to the norms and set an example by being transparent in all their activities.

• To appoint more judicious independent directors and provision is still required in remuneration to relations.

• Independent directors besides the routine definition mechanism, there shall be check-points to verify whether the independent director is really independent.
• The companies to hold board meetings through video conferencing and take advantage of information technology.

• The directors (both promoters and independent) must focus on the overall growth of the company and also of all stakeholders.

**Contracts entered in to by directors**

• There is a lot of scope in terms of improving corporate governance practices wherever directors develop personal commercial interest and in contracts envisaged when Section 297/299. Government intervention on giving the approvals should be dispensed and it should be governed by good disclosures.

• Section 297 still with Rs. 1 crore paid-up capital is absolutely outdated.

• Section 297 allows directors, who are solicitors, can be exempted from the purview of approvals.

• The approval for contracts in which directors are interested can be delegated to Registrar of Companies instead of Regional Directors.

• Transactions involving sale, purchase or supply of goods or services between companies in which Directors are interested (Section 297) requires mandatory prior approval from Central Government (delegated to Company Law Board) if the paid up capital of one company is more than 1 crore even though they are private companies. This has to be dispensed with as it is not going to affect the investors at large being a Private Limited Company.
Managerial Remuneration

- Director’s remuneration is to be based on performance linked to profitability and default as per Schedule XIII. It should be on (%) basis on net effective capital.

- Responsibility for performance must be linked to the remuneration with a ceiling on the remuneration.

- Remuneration package of managerial personnel should be based only on the performance of the company and to be reviewed periodically.

- Remuneration for managerial personnel may be left to respective company’s board to decide rather than Schedule XIII restrictions.

- The remuneration freeze to be regulated.

- There should be a ceiling on managerial remuneration payable to directors.

- Only realized profits to be taken into account for the purpose of remuneration to directors and payment of dividend.

- Approvals from the Central Government for certain cases such as remuneration to non-executive directors.

Corporate Governance

- Practicing good corporate governance standards.

- Implementation of whistle blower policy as a mandatory at all levels in the companies irrespective of either private or public would result in better corporate governance and investor friendly than investor protection.
• The corporate governance practices like audit committee, independent directors followed in true spirit will pave way for the better management.

• Effective application of law in execution of work will ensure that every company adheres to corporate governance.

• Implementation of corporate governance mechanism in the company and regulatory bodies shall be given adequate powers to oversee the implementation of corporate governance measures in companies on a regular basis to ensure investor protection and participation of shareholders in companies.

• Present format of Corporate Governance Report (CGR) provides more or less stereotype information. Publication of such CGR serves hardly any purpose from the point of shareholders. CGR should contain critical analysis of operations compared to earlier projections giving reasons for deviations or non-implementation of plans and programmes. Stock Exchanges should have mechanism to look into the veracity of statements given therein, if not regularly but at least once a while to start with.

• Whistle Blower mechanism should be put in place by according statutory recognition. Such a system for the employees should encourage them to have direct one to one access to the audit committee members instead of CEO/MD of the company.
Auditors

- Make the auditors to be more independent and strictly curb rotation in every 3 years by appointment in the same audit firm.

- Peer audit in cycle of say, once in 5 years, by other firm of auditors to be done for big corporates.

- More powers need to be given to the auditors of the company. They should be made as a permanent invitee, not just for the audit committee meetings, but also for board meetings and other committees of the board. This will ensure that the board or the management do not take any decision in violation of law and which are detrimental to the interests of shareholders.

- The role of internal audit should be strengthened with a clear demarcation of the same with that of the role of statutory auditor. However, periodic exchange of information between these two auditors on the finding of their audit should be made mandatory.

Company Secretary & Secretarial Audit

- The role of company secretary, the appointment, removal and other protection should be like the statutory auditor. Now the company secretary mostly acts like the personal secretary of board. This status should change.

- Secretarial audit standards have to be made rigorous so that effective self compliance will take place giving no room for any malpractice.
• Secretarial audit to be made compulsory for all companies and compliance certificate practice to be abolished so that effective compliance will take place instead mere paper compliance and secretarial audit report to be submitted to shareholders and Government.

7.4.2 GENERAL SUGGESTIONS

• A periodic review system by external agency consisting of multi-disciplinary professionals from ICAI, ICSI and ICWAI totally controlled by the Government, apart from internal, external auditors and audit committee.

• The Registrar of Companies should increase the frequency of inspection of companies.

• Delegation and team work by professional management.

• The reporting to Company Law Board to be tightened.

• The management should get the views of the professionals before doing a new thing, to understand the pros and cons of a situation. In such cases, the interest of the company will be protected to a greater extent.

• Companies should employ more professionals in core areas like strategy formulation, internal audit, corporate planning, etc., to evolve proper methodologies for the betterment of the companies.

• More freedom is to be given for the professionals in giving suggestions and identifying the problematic areas in the company for better management.
greater transparency and strict abidance of code of conduct will certainly pave way for better management and administration of the company.

- More stringent provisions (penal provision) and effective enforcement mechanism is the need of the day.

- The sustained attention to ethical business practices for generation and distribution of wealth amongst all stakeholders, while ensuring maximum compliance of legal requirements voluntarily, can go a long way in improving corporate life.

- Strong implementation of all accounting/audit standards and to make other personnel in the company to be aware of their responsibilities on the need to observe legal provisions.

- A very strong periodic reporting on ‘exceptions’ to the board of directors well before the happening of any important events.

- The company management should have professional approach in managing the affairs of the company and the family oriented company should shift their strategy to professional approach.

- More self regulation should be need based, and regulations should be based on size of the company. Stringent punishments have to be given for wrongdoers and for non-compliance of statutory requirements.

- The compliance certificate of a public company should be more exhaustive rather than just covering peripheral areas. More emphasis on the managerial
remuneration/related party transactions disclosures/loans and advances to
directors should be covered in depth.

- Companies must give legal compliance certificate (like audit report and
secretarial compliance certificate. All companies must give report within
Corporate Social Responsibility initiatives.

- Managing a corporate is a team game. Each constituent in the team should
try to play their part in true spirit with total integrity and transparency.
Goodwill is built over a life time and it is not to be shattered by one wrong
move. The corporate shall try to shoulder some social responsibility, this
will build tremendous credibility for them to mobilise more capital in
future.

- Proper reporting system should be in place and all major deviations should
be reported to the Board/committee.

- There is a pressing need to improve the integrity of top management
through spiritual courses conducted by organisations like Art of Living,
Isha Yoga, etc.

- There should always be a balance between regulation and promotion of
business enterprises to help the economy grow. Whenever deviations are
noticed the penalty should be stringent. Laws should be observed in spirit
and not in paper.

- Laws and regulations should facilitate solving the conflict of interests in
ownership and management. Directors and shareholders shall work towards
mutual benefits.
• Usage of more technology has to be encouraged to carry out normal compliances as transparency would definitely reduce chances of corruption.

• Law should be more strict on erring directors and penalty should be heavy.

• A Committee consisting of managerial personnel should be constituted in each company to review the performance of the functional executives of various departments of the company.

• Promoters who have tainted background should not be allowed for incorporating a new company.

• No compromise to be made on caste creed or religion subject to the reservations policy as may be laid down by the GOI.

• Compensation package for the above managerial personnel should be suitably evolved to retain the best talent.

• It is feared that the Companies’ Bill 2009, paves way for a regime of excessive delegation.

• Conscious efforts of promoters and active involvement of shareholders during annual general meeting by raising questions relating to company’s performance will awaken the management to have better management and administration of the company.

• Standards for Board meeting have to be set separately for listed and non-listed companies.
• Disclosure of financial results half yearly to shareholders for non-listed companies is recommended.

• It shall be made compulsory for the companies to disclose fines, compounding fees, penalties, etc., paid by the company in their annual report so that members may become aware of such irregularities.

• The legislations are well intended. The gaps in Companies Act 1956 Act will be substantially taken care of in the new version, by virtue of lessons learnt and experiences. The weak areas are in its implementation. Firstly, most companies do not follow the law in spirit (which is what required in fact). Secondly, some professionals who are vested with the responsibility of certification collude with those indulging in corrupt practices. To overcome these, the overseeing authority should be strong and the punishment for any non-compliance, fraud etc. should be prompt and exemplary.

• The Law enforcing authorities such as Secretary, Ministry of Corporate Affairs, Regional Directors and Registrar of Companies should be persons having qualifications obtained from professional bodies like ICAI, ICSI and ICWAI.

• Government interference on internal matters may be discouraged like a clerk in the Ministry of Corporate Affairs, deciding on the remuneration of a highly qualified and experienced individual.
• The Companies Act, rules and regulations should be user friendly, for easy understanding even by technical and non-finance professionals will go a long way in good corporate governance and compliances of various statutes of MCA and SEBI.

• Government of India with all concerned Ministries to introduce suitable legislation to avoid more than two stage appeal in all provisions of various statutes in order to render justice in time on each and every vexatious issues and necessary judicial reforms are to be introduced for proper accountability, integrity and consistency in delivering judgements.

• It should be made mandatory for all companies, whether listed or unlisted, having effective capital of not less than Rs.100 crores -
  a. To have an independent Chairman.
  b. To have the audit committee comprised of independent directors only.
  c. To have the Board comprised of majority of independent directors.
  d. To have the Internal Audit Department headed by a Chartered Accountant.

• Communication with shareholders should be more effective. Publication of results are generally through an English daily and a local vernacular language paper. There is no newspaper which has all India circulation or reach. Majority of shareholders are not able to access such published information. The existing method is nothing but a source of revenue for
newspapers. Instead, the company could send circular letters to shareholders, which some companies are doing presently, apart from displaying the working results, etc., on their websites.

- Performance reporting to be made mandatory even for non-listed companies.

- Accounts finalisation shall not be inordinately delayed. Six months is good enough and any extension should be discouraged.

- Provisions relating to just paid-capital alone require attention. It shall be linked with the free reserves also, for e.g., Section 292A speaks for requirement of audit committee for companies having paid-up capital of Rs. 5 crore or more. In this scenario, it is a must to consider free reserves also, which is nothing but shareholders fund.

- All listed companies, while publishing the quarterly financial results, shall also publish cash flow statement. This is required in the light of Satyam episode.

- Gap between remuneration of managerial personnel and least paid staff shall not be more than 25 times to ensure social progress and to avoid disparity of income.

- Private companies and closely held companies (managed by family members) shall be free to conduct related party transactions/managerial remuneration without intervention by the Government.
• There should be inbuilt safety mechanism for independent, professional directors on liability and greater accountability for managing and whole time director.

• In view of the vast nature and existence of large and varied number of corporate entities, their administration should be effectively supervised with the appointment of Company Law Regulator-in line with SEBI.

• The Company Law should focus more on day to day administration.

• Corporate Social Responsibility should be brought under Companies Act.

• There should be some leeway for closed held companies and same set of rules should not be followed for the company with 7 lakh shareholders and more outside stakeholders and a company which is closely held and has only seven shareholders.

• All companies compulsorily should allot shares to confirmed employees to feel the sense of ownership for better performance

• SEBI members should be fully qualified and thorough in corporate affairs. Now SEBI is considered as a haven for retired/retiring bureaucrats. While a Company Secretary/Auditor/Cost Auditor needs a qualification, it is funny that the members of controlling/regulating bodies need no qualification.

7.5 SCOPE FOR FURTHER RESEARCH

The present study has made an attempt to analyse the opinion of professional respondents about the Company Law reforms pertaining to
management and administration of companies. There is scope for doing further research in the following areas of Company Law, among others:

- A comparative study can be made on Company Law reforms in India with Company Law reforms in foreign countries.
- A study can be made on Company Law reforms related to incorporation, share capital and debentures and winding up of companies under the Companies Act 1956.
- A study can be made on the Companies Act 1956 with that of new Companies Bill 2009.

7.6 CONCLUSION

The Companies Act, 1956 is a ever changing legislation regulating the formation and functioning of Indian corporate world with complex provisions spread over XIII Parts, 658 Sections and XV Schedules, also various rules and regulations framed and Guidelines/Notifications, issued under the Act by the Government of India and other regulatory bodies such as SEBI, Stock Exchanges, RBI.

The primary purpose of Company Law is to provide a legal framework for those who wish to undertake business activities efficiently, in a way, which they consider to be best, suited to attain success. The focus moving forward should be on the development and implementation of Company Law mechanisms that enhance the efficiency and competitiveness of business.
The Companies Act, 1956 has been amended from time to time in response to the demands of the corporate sector and sometimes to plug the holes detected by the administration in enforcing various provisions. Apart from this phenomenon another reason for changing the law is to bring the ancient piece of legislation in line with the developments taking place in the modern society. A strong reason to amend the provisions of the Companies Act is to bring them in tune with the requirements of the modern knowledge based society. The present law was enacted when the means of communication were not as developed as they are today. In the electronic age some of the provisions are proving to be detrimental.

Legal modernisation is required when development in science and industry coupled with policy reforms greatly accelerate the pace of change. Accordingly, the Company Law reform process was initiated in India to make the legal framework compatible with global standards.

Relevant quotation of Lord Denning (House of Lords) regarding reform of Company Law. “There is no ideal time for consolidation of companies legislation. Company Law is not static and if consolidation were to wait until all the measures in the pipeline at the time were enacted, it would be delayed indefinitely”. This quotation is very relevant when considering the history of the Company Law reform in India. The process has been unique in the sense that there have been too many committees, plenty of Draft Bills and a plethora of recommendations for a massive overhaul of the law and yet we remain in dark about the real outcome. A look at the following facts will make their remark all the more interesting.
The Amendment Bill of 1993, The Companies Bill of 1997 and the Companies (Amendment) Bill of 2003, failed to survive. The Draft Company Bill of 2004 (pursuant to the draft concept Paper 2004) is not clear. The following Expert Committees worked namely, the Naresh Chandra Committee, R.D. Joshi Committee, N.R. Narayana Murthy committee (confined to Corporate Governance related provision), Justice Eradi Committee, Shardul Shroff Committee on reform on the law relating to private companies. The results achieved so far are, apart from the amendment in bits and pieces in the years 1998, 2000, 2002, there has not been in any major development in reforms of the Company Law. Company Law is paramount in investments, joint ventures, take over, etc.

Over the years, the functioning and operation of the Act brought to light several lacunae and defects in its provisions. In order to remove these defects, the Act was amended from time to time, comprehensively. But, despite these extensive amendments and alterations, the Act continues to comprise of certain deficiencies.

The Companies Act, 1956, though it requires some reforms as mooted through Companies Bill, 2009, is one of the finest legislations. Each provision or the section under the Companies Act, 1956 has a sound logic though there exist very few sections which are to be deleted or modified suitably.

The process of reforming the Company Laws is still on and the Government is actively considering the proposals of J.J. Irani Committee, which has recommended complete overhaul of the Company Law. A number of
legislations have been enacted/introduced in Parliament and it is hoped that an entirely new regulatory environment conducive to the economic growth of the country will be in place in times to come.

The recent amendments constitute a good step towards improving corporate governance in this country. If another amendment, incorporating further changes relating to insolvency and the Company Law Board and few other suggested amendments are brought about, the pending comprehensive Bill can easily be withdrawn. Coupled with these changes, if appropriate improvements in administration, especially in the attitude of officials and computerisation of records are brought about, India can really boast of having conducive conditions for good and sound corporate governance, which will no doubt attract large investments both from within the country and abroad.

With the notification of many of the provisions already brought in by the Companies (Second Amendment) Act, 2002 and with some of the suggested changes of the J.J. Irani Committee being implemented by way of amendments to the Companies Act, Company Law reform would, by and large, have been achieved. Re-codification of the Company Law at this time may be a long-drawn process without commensurate results. It is meaningless to have Modern Company Law without a credible administration. Therefore, administrative reform should be taken up in tandem with legal reform.

In short, one may safely assume that the process of reforming Company Law provisions in tune with the changing needs of the economy is more or less fulfilled by the existing Act itself, of course through a spate of requisite
amendments made from time to time. The re-codification of law at this stage will be limited to renumbering of the Act consequent to deletion of redundant provisions. Many other important pieces of legislation such as the Factories Act, 1948, the Indian Contracts Act, 1872, the Negotiable Instruments Act, 1881, and so on, legislated long before the Companies Act, are still continuing. Viewed in this background, it seems that the Government can simply pass and legislate the Companies (Amendment) Bill, 2009 incorporating the suggestions from all interested parties rather than venture into a new Companies Act.

Another point in favour of codification is to reduce the size of the Act from 781 Sections to 289 Sections and from 15 Schedules to a few Schedules. Prima facie, the logic seems to be sound, but reduction does not necessarily lead to simplification and effective rationalisation. The number has come down mainly due to delinking of procedural aspects from substantive law. This means many provisions forming part of the present Act will be notified by the Department of Company Affairs in the form of Rules.

The new Act will have less number of Sections and Schedules but will be flooded with a number of Rules, akin to the SEBI Act, which contains less Sections but more rules and regulations. If one considers the total bulk of the legislation, including the Act and the relevant rules and regulations there under, the total reduction will be minimal. This cannot be construed to be proper rationalisation and simplification. The Act may remain comparatively sleek but one may have to refer to the various Rules to understand the legal provision correctly at any point of time. The Companies Act has met the myriad
requirements of the corporate sector, corporate professionals and other interested persons, including investors and the general public. It is also familiar to every one concerned. Hence, effecting amendments to the Act is a time tested and effective method compared to notifying a new Act in toto. No Act is perfect or can remain static. Even if a new Companies Act is passed, amendments may have to be made in keeping with the changing times, subject to parliamentary debate and scrutiny. As the new bill proposed does not offer any path-breaking direction with tangible and substantial benefits to the corporate sector, introduction of the same has to be reviewed.

In fine, law has to grow in order to satisfy the needs of the fast changing society and keep abreast with the economic developments taking place in the country. As new situations arise, the law has to be evolved in order to meet the challenges of such new situations. Law cannot afford to remain static. We have to evolve new principles and lay down new norms which would adequately deal with the new problems which arise in a highly industrialized economy.

In a nutshell, if the suggestions that have emerged out of this study are incorporated in the Act, it will improve and strengthen the effectiveness of corporations and their accountability to ensure proper management of corporate affairs and enlarge investor protection. There is no need for new legislation; some fine-tuning of existing law can meet the desired objectives of reform. Thus, the Companies Act, 1956 in India, is always a step ahead of other corporate and economic legislations towards ensuring the good corporate Governance in the liberalized global economy.