CHAPTER - 1

CORPORATE GOVERNANCE-ISSUES AND DEVELOPMENTS

Interest in corporate governance has increased dramatically in recent years, spurred by the increased activism of regulatory bodies, the rise of the institutional investors the take over moves in the corporate world and the advent of investigative reporting in business journalism.

Exciting changes have been taking place in recent years in Economic thinking and the resulting freedom is allowing change and growth in business to occur at a faster rate. There is a need to ensure that companies are strongly directed and controlled. So that when unexpected and unwelcome Economic challenges arise, they continue to survive and prosper. That would not just be good for the economy and the owners but for the employees and the community too.

The 1997 Asian economic crisis witnessed systemic corporate failure, financial collapse and major organizational restructuring. Large companies operated as closely held, inter-locked companies with little regard to transparency to outside shareholders (often minorities) or to investment discipline. Poor performing divisions were cross-subsidized beyond economic justification and financial resources were expropriated by management to further their own goals. These poor corporate governance practices were made worse by a weak set of investor protections as manifested in shareholder rights, bankruptcy law and the operation of the judicial system.

After accounting scandals in companies like Enron and WorldCom, corporate governance practices have become a major concern across the world. If Osama Bin Laden brought down the World Trade Towers, it is a group of highly paid, hugely respected CEOs who have shaken the foundations of American prosperity. They all cooked the books to push up stock prices way beyond where they should have been. Many of America's Wall Street dazzling numbers are turning out to be phony. Xerox boosted its top line by documenting a few billion dollars of revenue that still hadn't come through1. DG Prasuna2 mentions about Worldcom, which sneaked a few billions in regular expenses to the investment account, hoping to deprecate it down the years and buoy its bottom line in the meantime. The Audit firm Andersen let Enron's finance studs strike off-balance-sheet deals with shady firms that turned out to be their own.
The 2001-02 corporate collapses in the USA were also caused by corporate malfeasance and a breakdown in corporate governance and oversight practices. Large companies such as Enron and Tyco had expanded well beyond their core areas of business, and were subjected to management behaviour that sought to increase market capitalization of the firm (and thus their remuneration) without thought to shareholder value maximization. Audit oversight and board of directors' review failed to prevent these collapses due to a mixture of incompetence and lack of information

says Janardhan Rao.

The Enron debacle has made everyone in the system to sit up and think. The question of quality of reporting is now at the center stage. The regulators too are busy trying to improve the discipline in the markets. The regulations requiring the CEOs and CFOs to personally certify the accounts and be responsible for the misstatements, along with the Sarbanes-Oxley Act, are expected to change the behaviour of the top management to a great extent.

General failure of large companies to restructure and redirect themselves in the absence of external compulsions reflects an inadequacy in the corporate governance mechanisms. Corporate Governance is defined as the relationship between owners and managers in directing and controlling companies as separate legal entities. This relationship is complex in modern Corporations where ownership and control are separated. Salaried employees on behalf of owners whose holdings are small and dispersed, control most modern corporations.

During the past 10 years the subject of Corporate Governance has moved from relative insignificance to a major topic of concern throughout the business world, and beyond.

The Cadbury Committee in U.K is the forerunner of study on corporate governance, which was constituted by the Financial Reporting Council, the London Stock Exchange, and the accountancy profession Toronto stock exchange sponsored the Canadian initiative, and OECD initiated the continental effort. Similarly, in India it was the confederation of Indian Industry (CII) that commissioned a study that led to the publication of a document on this subject. Later the recommendations of Kumaramangalam Birla committee have been accepted and legislated through clause 49 of listing agreement.
1a. MEANING AND DEFINITION

A lot has been written on what constitutes Corporate Governance and the debate is an ongoing one. A broad definition given by the doyen of Corporate Governance Sir Adrian Cadbury is exercise of power in a responsible way.

Corporate governance means steering a Corporate to profits and prosperity without seriously eroding the confidence of the vitally interested but dissimilar groups such as shareholders, creditors, bankers, financial institutions, trusts and government agencies.

In academics, corporate governance refers to an economic, legal and institutional environment that allows companies to diversify, grow, restructure and exist, and do everything necessary to maximize long-term shareholders value.

Corporate governance basically consists of two elements namely – (i) the long-term relationship, which has to deal with checks and balances, incentives of managers and communications between management and investors, and (ii) the transactional relationship, which involves matters relating to disclosure and transparency.

Corporate governance means different things to different people. In conceptualizing the idea, we need to be very clear about the basic aspects of corporate governance.

Sound corporate governance should have, as its basis, the following strategies and techniques:

- The corporate values, codes of conduct and other standards of appropriate behaviour and the system used to ensure compliance with them;
- A well-articulated corporate strategy against which the success of the overall enterprise and the contribution of individuals can be measured;
- The clear assignment of responsibilities and decision – making among authorities, incorporating an hierarchy of required approvals from individuals to the board of directors,
• Establishment of a mechanism for the interaction and cooperation among the board of directors, senior management and the auditors;

• Strong internal control systems, including internal and external audit functions, risk management functions independent of business lines, and other checks and balances;

• Special monitoring of risk exposures where conflicts of interest are likely to be particularly great, including business relationships with borrowers affiliated with the banks, large shareholders, senior management, or key decision – makers within the firms.

• The financial and managerial incentives to act in an appropriate manner offered to senior management, business line management and employees in the form of compensation, promotion and other recognition; and

• Appropriate information flows internally and to the public.

An article published in the June 21, 1999 issues of the Financial Times quoted J. Wolfensohn, President, World Bank as saying that "Corporate Governance is about promoting corporate fairness, transparency and accountability".

Sir Adrian Cadbury quoted in the preface to the World Bank publication, corporate governance: A framework for implementation says: "Corporate governance is ... holding the balance between economic and social goals and between individual and community goals. The governance framework is there to encourage the efficient use of resources and equally to require accountability for the stewardship of those resources. The aim is to align as nearly as possible the interest of individuals, corporations and society. The incentive to corporation is to strengthen their economics and discourage fraud and mismanagement"

1b. REASONS FOR SUDDEN INTEREST

Today, Corporate India is on the threshold of entering 21st century with the goal to emerge as an economic power. There has been a paradigm shift in the last five years and many of the State controls have been lifted to move towards a free market regime. The process of reforms was continuous and unabated. Clearly the focus of our Government is changing from 'regulation' to 'management'.
Gradual relaxation of direct and indirect administrative controls by government unleashes the spirit of private enterprise and the responsibility of fair conduct is shifted to the market economy.

AK Rajesh quotes that “Indian corporate practices are unique as is revealed from the following instances throwing away all ethics of corporate governance. CRB Corporations Ltd – total financial failure, Escorts’ Ltd – Chairman and Vice Chairman awarding compensation package to them, Shaw Wallace – poor financial management, ITC Ltd – excise evasion and FERA violations, Apollo tyres – family rift over control. Some of the better run boards include those of Hindustan Lever, Bajaj Auto, HDFC, TISCO, TELCO, ACC, Colgate-Palmolive, ICICI, IDBI, BSES etc”.

Mr. Narayana Murthy explains that India carries the distinction of having the largest number of listed companies in the world and an investor population of roughly 50 million in corporate sector, which includes an illiterate farmer, a pavement shopkeeper and ordinary resident of a moffusil town/village. The profile of an average investor reflects a big transformation in our investment culture. Operational reforms of capital market become absolutely essential in this context.

Faced with mounting criticism, several institutional investors have turned activists. Many of them now express their views strongly with regard to matters such as financial and operational performance, business strategy, management compensation, and so on. They even play an active role, along with non-executive directors on the board, in changing of management, if performance is below the mark.

The next important factor is an enormous increase in the power of companies. Individually and collectively through industry associations, companies often influence policy decisions. Strong corporate governance practices are only hope of countering the absolute power of corporations corrupting them absolutely.

One more factor is growing intensity of market competition in the global economy that is responsible to create a world without economic barriers. Intense market competition has included restructuring of various companies and unprecedented cost cutting.
There have been significant changes in the economic and business scene in the world over in the last 3 - 4 years. India has been no exception. Trade barriers have been lifted, the world is becoming a smaller market, bottom lines are taking precedence and quality is the buzzword to survive in the competitive environment. Corporates now have access to opportunities worldwide. At the same time, they are also faced with threats of global players in India.

There is therefore a question of survival of the fittest. Focus is shifting from diversification to core competence, leading to restructuring and re-engineering.

Judicial activism and investigative journalism also signify new standards of accountability for those commanding power whether political or economic. There are signals that unhealthy practices would not go unpunished. The impact of these changes on companies is precipitated by economic reforms and resultant competition. Market orientation of the economy has brought, along with it, demand for improved quality of market regulation requiring greater transparency and better disclosures.

1c. PLAYERS IN CORPORATE GOVERNANCE

It is possible to broadly identify sets of players in the corporate governance system. They can be identified as law, which is the legal system; regulators; the board of directors, employees, Auditors, financial intermediaries; markets and self-regulatory organisations. There is a dynamic balance among them that determines the prevailing corporate governance system, and the balance varies from country to country.

Regulatory Bodies

The companies act generally guides the legal structure, internal management, control and administration of corporates. The regulatory framework, includes, Company Law Board, Security and Exchange Board of India, Registrar of companies, Statutory Auditors, Stock Exchanges, Financial Institutions and Banks.

Board Of Directors

The board is accountable in various ways to number of different stakeholders. The directors are expected to achieve a harmonious balance between competing interest, viz., shareholders, investors, consumers, employees, government and the society at large. The board should maintain a proper balance between short-term policies and long-term priorities of the company.
Market Forces

What triggered interest in corporate governance issues was replacement of government controls by market forces. Since, by their very nature market forces are dynamic and vibrant, corporate governance cannot be a static set of rules.

Shareholders

A large number of individual shareholders are scattered across a wide area and hold investments of small size i.e. 100 to 1000 shares on an average basis. The objective of this class of shareholders is to simply make a better return on their investments than is available in the traditional modes of investments. Majority of them do not attach any importance to analyse the information sent by the investee company or keep general track of the affairs of the company.

Auditors

An auditor has a crucial responsibility of certifying the truth and fairness of the financial statements of a company under the Companies Act, 1956. Common criticism of Indian accounting norms is that they enable management hide more than what they reveal in the accounts. In the case of many companies, growth in size was not matched by corresponding growth in accounting controls.

1d. CORPORATE GOVERNANCE ACROSS THE COUNTRIES

Corporate Governance is a subject of great current concern not only in developing countries that are in the process of economic reforms, but also in advanced countries such as the U.S. and U.K. Corporate governance refers to operating environment or infrastructure to ensure and enable proper discharge of assigned responsibilities. It prescribes the accepted conduct under varying circumstances and time frames.

The extensive discussion of the past few years have uncovered many aspects of the governance problem, which are both interesting and illuminating. The international comparisons especially have shown the many sidedness of the problem and also the deep-rootedness of the various diverging systems. Yet changes in the systems do occur and are further to be expected.
Radical reviews of corporate governance are now in progress around the world. In US, nominating committees are challenging the age-old right of incumbent executive directors to select their successors—a development, which, despite the Cadbury recommendations, has yet to take effect in UK.

Around the world, the debate on alleged excessive directors' remuneration shows no signs of abating. In the US Peter Brown, chairman of the Top Pay Research Group, commented recently: "Now that so many class actions are being brought against directors, the danger of the heightened risk premium endangers their own credibility in the rest of the corporate world."

In Britain, the Labour party has been pressing for institutional investors to back an independent call for companies to rethink top management pay or face action on corporate governance rules by the government. In France, a senate commission is reviewing the way stock options for top management are treated, in an attempt to make companies more accountable.

In Australia, the Hilmer report argued that although protection of shareholders was important, the vital task of the board was not conformance but performance—achieving better returns than average in the industry.

These activities resolve into a dichotomy of performance and conformance responsibilities, focusing attention on crucial questions about the true role and responsibility of the ultimate decision making body in the modern organization.

Wherever we look, corporate governance is on the agenda of investors, regulators, politicians, interest groups and the media as well as boards of directors themselves.

The functioning of corporate governance systems varies with different socio-political cultures. It is useful to examine the systems in a few developed countries and the concerns in each.

Corporate Governance relates to the set of rules which guide decision-making in business. This includes both formal regulations and informal customs. These rules do not arise solely from within firms but also exist and change because of societal influences.
Corporate governance problems are becoming increasingly important even in advanced industrial countries where:

1. The average shareholder is very knowledgeable
2. The systems and procedures are streamlined
3. The management and board of directors take their duty of loyalty seriously and democratic norms are well entrenched.
4. The law enforcement is stringent

Different countries have evolved different patterns for achieving a balance between autonomy for managers on the one hand and how managers are to be held accountable to the stakeholders on the other.

1d(i). Corporate Governance in UK

There are about a million registered companies in the UK, of which some 7,000 are public. The laws implicitly assume growth and survival, but the key aim of companies is to make a profit. The shareholders have the main interest in the company. Their interest is a property right, which is limited by the extent of their shareholding. The other stockholders, creditors and providers of finance, have a contract with the company, which defines their interest. The shareholders appoint the directors, though, in practice, the shareholder usually confirms the appointments made by the board between Annual general meetings. The function of the board is a collective function.

Dr. Mitra (1997) mentions that an average UK board consists of 40 percent of outside directors. Generally, the Chief Executive Officer of respective board, nominates the board members and in practice that is ratified by the shareholders. The average size of these boards is nearly 12 to 13 directors.

The British tradition starts with the premise that the ownership structure determines the locus of control. For, the ownership remains with the shareholders by law and they have the right to an appropriate portion of the residual claims since they bear the risk in case of failure.

The idea of Governance is to keep the rules as simple as possible while ensuring that they will function efficiently without the necessity for extensive monitoring. In other words, the choice of corporate governance mechanisms should be such that they need not be changed except when there is a crisis. Otherwise,
governance may become an end in itself instead of being a means to an end. Against this background the attempt has always been to identify the appropriate ownership structure, which can deliver the desired value maximization.

The ownership of companies is more or less equally divided between individual shareholders. Dr. Prasanna Chandra (1995) mentions that though the combined holding of institutional shareholders is often more than fifty per cent, rarely does a single institutional investor have more than 10 per cent stake in a company. This may be because of various restrictions applicable to institutional investment.

The disclosure norms are comprehensive, the rules against insider trading tight, and the penalties for price manipulation stiff. These measures provide adequate protection to the small investor and promote general market liquidity. Incidentally, they also discourage large investors from taking an active role in corporate governance.

In U.K majority directors are executive and inside directors. Company’s main aim is maximizing the wealth of the shareholders and other stakeholders do not play major role in the governance.

In the last two decades, considerable public attention had been drawn to the operations of the Board of the publicly traded large corporations and questions about their accountability and audit had been raised. As a result, appointment of nomination committee has become a common practice in these countries. Similarly, adherence by the board member to an accepted code of conduct is also now insisted upon, if not by law, by the rules of stock exchanges.

Competition from German and Japanese companies however, has compelled the corporations in U.K to rethink about the governance pattern and also to reset the corporate goals. The Cadbury committee report on the financial aspects of corporate governance, itself was a reaction to the governance issues. Excesses of the 1980’s, called for outside directors, audit committees and a separation between chairman and chief executive.

Cadbury committee published its report and code of best practices in December 1992. From July 1993 all companies registered in the UK and listed on the London Stock Exchange have been obliged to state in their Annual Report how far they comply with the code and to give reasons for areas of non compliance.
Later, directors' pay became such a live political issue that a study group on Directors Remuneration was formed under Sir Richard Greenbury at the initiative of the confederation of British Industry. Cadbury committee dealt with board matters of governance in relation to companies, Greenbury solely with directors' pay.

Each country has to deal with the issues of corporate governance in its own way.

1d(ii). Corporate Governance in USA

American Society has placed an abiding faith in the free enterprises system. It has depended on the checks and balances imposed by well-functioning markets and competition, supported by well-enforced legal framework for handling disputes. USA believes that those who govern the least are the best. There is fairly clear separation of ownership and management. Professional managers who have negligible ownership stakes, typically run companies. Though in theory the management is supposed to be chosen by the directors, in practice it is the other way. Hence, directors are rarely independent of management.

Most institutional investors have short-term orientation. If they are not satisfied with company's performance, they simply sell its securities in the market. This outlook of investors builds pressure on management to report good earnings performance to the stakeholders.

There is fairly active market for corporate control that provides a credible threat of takeover to consistent under performers. Dr Prasanna Chandra(1995)\textsuperscript{17} states that indeed there was a significant hostile take over activity in Britain and America during the period 1976 - 1990.

"In a nutshell, Jonatham Charkam\textsuperscript{13} (1994) characterizes the Anglo-American model as the “high-tension” model because of the important role of the chief executive officer, active capital markets, and credible take over threats.

Even then, issues such as how the members of the board of directors are selected, how they are compensated, their sense of right and wrong, and the checks built into their functioning have become issues for public debate from time to time.
The activism of institutional investors changed the role of directors. Even boards of companies which had escaped the pressures of the 1980’s takeover era, found themselves forced to change by public debate. “Chief Executive Officer’s of companies such as IBM, Investment Houses, General Motors and American Express did not survive and Sears Roebuck has been under investor pressure to split the chairmanship from the chief executive’s role”\textsuperscript{14}.

Another long-standing concern in USA has to do with asymmetry of information and knowledge between owners and managers. The solution to this has been to make insider trading illegal and to improve timely disclosures of information to stakeholders.

Another recent concern in the USA is, whether directors are indulging in unreasonable increases in pay and perquisites even as corporate restructuring and downsizing take their toll on employees and local communities. According to a study reported by K.R.S Murty(1998)\textsuperscript{15}, Chief Executive Officers of Corporations in the USA earn 109 times the average base pay, compared to 35 times in UK and 17 times for Japanese Presidents. The growing disparities in income have encouraged some economists to look for reforms in the system of corporate governance.

A market- cum –legal system is the basis for reconciling interests. As Keller\textsuperscript{16} (1998) puts it: “The large business corporations has a firm place in the American imagination as the dark repository of private power. There are no more reliable villains on TV or in movies than these shadowy soulless, omnipresent institutions and the faceless, greedy men and women who serve them. And yet today as much as ever before, corporations are accepted as the driving engines of our economy.”

The tension between the public character and the private purpose of corporations has been handled with caution, ensuring legal and information rights to non-owning stakeholders, while leaving the residual power and autonomy to owners. The separation of ownership and control in large corporations has created problems of trust and accountability to managers, or the board of directors, to the owners or shareholders. “How could non-owner managers be counted on to maximize profits and secure the health of the company, rather than seek perquisites and power for themselves?” asks Keller\textsuperscript{17}, 1998.
Corporate Governance in USA has, in recent years, been responding to the decline in competitiveness of American industry in the 1980's. There has been an increase in the number and role of outside directors on the boards and an emphasis on getting board sub-committees take direct responsibility for:

- Nomination of the members of the board, including the CEO
- Compensation of senior managers, including the CEO
- Audit of accounts and processes of accounting

Hence, in the American system of corporate governance, the emphasis is on institutional structures, which endeavour to monitor corporate activities on a periodic basis to avert crisis rather than act after it occurs.

Companies incorporate under the laws of different states, which differ from each other and, indeed, compete in a sense with each other. The USA has no national corporate law, and therefore, every State has developed its own. In particular, States have developed anti-takeover laws to entice companies to their states. "There is a growing tendency in the US courts to look at the process of decision-making to see whether it is reasonable, coupled with a rise in shareholder activism and law suits.\(^{18}\) Audit committees, in particular, are seen as being central to corporate governance.

The USA's approach to corporate governance is to minimize conflicts of interest between owners and managers. This is attempted by giving managers profit-related incentives such as shares and stocks options.

Employees question the basic assumption that shareholders, as residual claimants to corporate income, should have total voting rights of the corporation. They argue that like shareholders, employees too make substantial firm-specific investments. Without such employee learning, the company's other investments in fixed capital assets would not be as valuable. Hence, employees too should have a say in the legal structure of corporate governance.

Such question bring into the ambit of corporate governance, the larger socio-economic framework that guides the sharing of the risks and rewards of wealth creation. Not all societies have been as averse as the USA to involve other stakeholders than the shareholders into corporate governance.
Germany has built a statutory role to its employees in its corporate governance system, even though the share holding in Germany is far more concentrated than in USA. As per the survey on Corporate Governance published in Economist in 1994, in a majority of the companies listed on the German Stock Exchange a single owner held more than 50% shares. The corresponding figure in the USA was 5 percent. At the end of 1993, Private households held only 17 percent of outstanding equity shares of joint Stock companies listed on the German Stock Exchange, compared to 49 percent in the USA.

They have two-tier system of Governance. The two tiers - the supervisory board and the management board - are both decision-making bodies. The supervisory board is responsible for the company's acquisition and closures, dividends and most importantly for appointment to the management board. The management board is responsible for running the company. K.R.S.Murthy (1998) quotes an instance when the board of a company in Germany did not permit the management to use the insurance money from a plant which caught fire for improving production in another place. The board successfully got the money deployed for the community, which suffered on account of fire in the plant. The involvement of German industry in creating educational infrastructure through technical apprenticeships is another of government - industry Co-operation in practice.

Banks and financial institutions have substantial stakes in the equity capital of companies. Institutional investors view themselves as long-term investors. They play fairly active role in management. In general, the long-term commitment of institutions and the close monitoring provided by them seem to have helped companies immensely.

The system of Corporate Governance in Germany is much less driven by stock market than that of the USA. It runs by consensus in the supervisory and management boards than by an all-important chief executive officer.

The German Corporate governance system is not however free from concern. Questions are raised about - whether the supervisory board is serving any practical purpose.
Does it depend too much on the management board, given that nominations for appointments to the management board usually come from the management board itself? How does the supervisory board handle mistakes in its appointment? Is the threat of hostile take over needed? Is the system flexible enough for adaptation in fast changing industries such as computers?

In Germany, property owners are regarded as having an acknowledged responsibility for public welfare. The dichotomy and conflicts between self and community interests are not considered sharp (Charkham, 1994). The stock market too plays a relatively lesser role in determining the German corporate destiny. As a result, Germany has chosen a governance structure at the enterprises level that integrates the interest of owners, creditors and employees.

Besides providing short and long term finance to companies, banks not only hold their own shares in the company but are also proxies of small shareowners. As a result, they play a powerful role on the supervisory board which can appoint management and change it and is responsible for the company’s accounts, capital expenditure and strategic initiatives.

Differences in approaches to corporate governance appears to be related more to historical evolution of corporations in response to socio-cultural pressures than the extent of concentration or diffusion of shareholding. For example, shareholding in Germany is even more concentrated than in India. Yet, governance systems and the degree of acceptability of the institution of the public limited companies are far different in the two countries. In Germany employees being stakeholders in the firm are also a party in corporate governance.

In this model, a company is monitored not only by watching the share prices but also by observing closely how the company performs in its key relationships. KRS Murthy mentions that in Germany in case of a company employing more than 2000 employees, the employees elect half of the members of the Supervisory Board. The other half of the Supervisory Board is many times controlled by banks that have enough stock holding in the company. The chairman is commonly a representative of the bank. Trading partners and other related companies are also represented on the board. Company is seen as a combination of various interest groups and therefore maximization of the wealth of shareholders alone is not the goal. Instead, interest of the company as a whole is the key concept.
Thus as we can see, although both USA and Germany are market based systems and compete aggressively across the globe, their systems of Corporate governance differ markedly. Each system is based on the assumptions and beliefs of its own people.

1d(iv). Corporate Governance In France

The French believe in strong leadership. It is reflected in the absolute power given to a President Director - General in each company. His position is considered stronger than that of the Chief Executive Officer. An International review\(^\text{23}\) on Corporate Governance published that French Government holds 15 to 20 percent of the shares of major companies, in the national interest. Only nationalised industries have employee's representatives on the board while private ones do not. The French system of corporate governance scores high on initiative and enterprise, although the stock market plays a minor role. * Families control 60% of the top 200 companies*\(^\text{24}\).

France is run by its star pupil. Business is led by the best in French society. What Japan achieves by consensus and groupism, France achieves through elite convergence. French concerns in corporate governance have to do with relative competitiveness of its industries, developing technological thrust areas and globalisation.

The key recommendations of The Vienot report\(^\text{25}\) of 1995 in France are:

- **Elimination of "cross – shareholdings"** where companies hold shares in each other and directors sit on each other’s boards, leading to possible compromising of respective companies’ best interests.

- **Limiting individual director’s board memberships to five.**

- **Banning of chief executives of companies sitting on the remuneration committees of each other’s boards, with the possibility of the familiar mutual back – scratching practices.**

- **Allowing direct access for audit committees to the people drafting financial statements.**
Corporate Governance in Japan

Corporate Governance in Japan is not focused on the board of directors of the company. The Japanese concept of obligation to company, country, family, and their willingness to follow consensus, makes the system’s accountability easier and one based on trust. The system’s dynamism is derived from cross holdings and networks among companies in the group.

John A. Wagner, J.L. Stimpert & Edward I. Fubura26 1998 mentions the important point that the Japanese firms survive and excel in an environment in which internal and external corporate mechanisms, appear very weak. Further more, the managerial labour market consists of lifetime employment contracts in most corporations, thereby dramatically reducing the role of hire and fire as a disciplining mechanism. The board of directors consists of representatives of financial institutions who have large vested monetary interests on the firm’s success. These representatives play a very active role in controlling top management.

As per Jonathan Charkham27 Boards of Japanese companies consist of 20 – 30 directors and over 90 percent of them are present or former insiders. Approximately 80 percent of Japanese boards have no outsiders. In contrast to the Germans approach of structured integration at the enterprise level, the approach to corporate governance in Japan, where also corporate accountability to the community is considered high, is informal and culturally based. Consultation and understanding among key stakeholders takes place at the level of inter-connected groups of companies, which has implicit support, trust, and loyalty of employees.

"Japanese model of Corporate Governance is based more on cultural trends and customs rather than statutory provisions. It is called “Companyism” and it is a subtle blend of both capitalist competition and socialist relationships" says Madhavi Mitra28. Business relationships in Japan are not contract specific short-term relationships but these are long-term relationships.

Banks, major suppliers and major customers generally hold company’s shares, in addition to a large number of individual shareholders. However, the separation of ownership from management is carried to the limit in Japan. The companies are really controlled by employees rather than by shareholders, though there is no statutory provision for giving the employees the rights of governance. Lifetime employment and seniority-based promotion are two important features of corporate personnel policies. Most of the directors of top executives rise from the ranks and many of them are the former union leaders.

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Management rarely aims at high profits but instead its primary goals are maintaining employment, increasing market share or developing new products or technologies. As the stakeholders like creditors, suppliers, customers are also shareholders, the organizational objectives is not merely maximizing the rate of dividend and protect the short-term interest of shareholders but the aim is long-term improvement in productivity and improving the market share. The employees are committed to the corporation and play a positive and very important role in the development. The social culture emphasizes more on co-operation than on litigation and the same is reflected in corporate governance also.

Dr. Amit Mitra\textsuperscript{29} 1997 mentions that Businesses in Japan, which seek the benefit of limited liability with public subscription for their shares, have to register as kabushiki kaisha. These must have a minimum of three directors, elected by the shareholders, but most major company boards have many more: the chairman and president will usually be among the most senior of the representative directors. Corporate governance takes place behind the scenes between the senior corporate official and the major institutional shareholders in whose hands ownership is concentrated.

KRS Murthy\textsuperscript{30} quotes that nearly 99 per cent of the private shares are held in bearer form. Companies do not know who their shareholders are. Shareholders have to vote personally at shareholders meetings. The system strengthens the institutional shareholders, who can access the information they need from the company.

These facts taken together seem to suggest that Japanese top management can operate virtually independent of the interest of the shareholders groups. The monitoring and control of management comes from debt sources of capital provided primarily through banks whose representatives then have an appropriate incentive to monitor the decisions and performance of management. Furthermore the board of directors consists of representatives of capital claimants such as financial institutions who have large vested monetary interests in the firm’s success. Representatives of Japanese banks and other members on the board of directors then, play a very active role in controlling top management. The Japanese example illustrates how capital acquisition patterns may affect the working of corporate governance mechanism.
Jonathan Charkham uses two broad criteria for evaluating corporate governance. First is dynamism that is the extent to which the system permits management to move the enterprise forward. The second is accountability that is the extent to which the system can ensure standards of propriety and initiate timely remedial action. Developing countries have found it hard to achieve a balance between dynamism and accountability.

How does one combine the divergent interests in an increasingly interdependent world? Global Corporations, which embody a significant portion of world trade, technology, capital and organisation, have an important role in mediating across different systems of Corporate Governance. Can a Corporation adopt different standards of governance in different countries? Mechanisms have to be found to ensure that global corporations conform to a code of conduct acceptable to all concerned. Failure to rise above national systems and work towards evolving a global system of corporate governance would weaken the quality of life in the years to come.

1e. CORPORATE GOVERNANCE IN INDIA

The system of corporate governance in India operates in an administered environment. Administrative control is seen as arbitrary and enforcement as poor, as many recent scams have demonstrated.

Directors from the promoter's family have traditionally dominated the Indian boards. Professionals and other persons close to them constitute the majority on the board. Positions of chairman and managing director and executive directors are filled in from among the above persons. In most of the Indian companies there is no separation of roles of the Chairman and Managing Directors and one individual combines both the positions.

Most boards of directors, in spite of having nominees of Government controlled financial institutions, have little information about illegal or unethical conduct of their executives. The boards find it difficult to monitor the compliance of the company to the various legal requirements. Regulatory enforcements are left to the government departments and authorities. The monitoring of professional standards by professional association such as of chartered accountants and auditors is also considered lax and discretionary.
In government corporations, the boards are a mere legal formality. The elaborate system of accountability of public enterprises operates through the means of parliamentary committees, independent vigilance officers and the comptroller and auditor general of India. Accountability has remained more in form than in substance. Major decisions such as appointments, investments, purchase contracts, selling arrangements, collaborations, and industrial relation agreements have moved out of the corporations ambit into the bureaucracy and the political arena, bringing into focus the widespread corruption. None of the stakeholders - boards, the stock market, the bankers, the financial institutions, the trade unions, and government - exercise major monitory role over the inappropriate actions taken by the top management in the corporate sector.

The Indian corporate sector, largely represented by family - owned companies, has come to realize that managing company affairs demonstrably in the interest of shareholders is the only way to attract capital. There is evidence of a fundamental shift from management-dominated boards to shareholder sensitive ones and this strength is likely to be further strengthened.

T.N.Pandey (1997) comments "Most of the board meetings of the directors come to an end without even reading the agenda. In some meetings, the agenda is given on the date of meeting itself leaving no time for the directors to read these in advance and apply their minds in activities, the retiring directors reappointments are voted without anybody's questioning about their performance during their tenures as directors. Shareholders hardly take interest in such matters. Most of them merely clamour for sumptuous refreshments and gifts in such meetings."

T.N.Pandey (1997) observes that "Over the last two decades directorships of companies was looked upon as something like becoming a member of an old boy's club. There are many lawyers and chartered accountants who sit on as many as twenty boards. Going by the sheer number, it is doubtful that they would be able to make any meaningful contribution to the growth and progress of any of these companies. Getting on the board depends generally on how well he knows the company or the family that owns the business. Board appointments do some what reflect the old school-tie network or golfing buddies. Since meetings are usually held in hotels or clubs, we often have not even seen the offices or officers of the company. So how can we be held responsible for what goes on?" says advocate directors. Company boards are packed with relatives and friends who are mere nodders at the meetings. Ex-Governors and Deputy Governors of Reserve Banks of India, India's
only field Marshal, Retired defense personnel, ex-chairman of CDBT, retired Chief Commissioner of Income – Tax, ex-chairman of insurances companies and PSU’s, ex-CMD’s of banks, ex-chairman of financial institutions, ex-bankers and retired bureaucrats adorn several boards. Some of them sit in U.K, Switzerland, Canada or Dubai. Barring a few companies, the board is nothing more than a statutory imposition and in any case is far from being an instrument of collective thinking”.

1e(i). Corporate Governance Down The Ages

T.V.S.Rammohan Rao\textsuperscript{34}(1998) explains that Corporate Governance in India must be understood against the following backdrops.

Firstly, promoters who belong to the business houses control a very large proportion of the corporate sector. Their attitudes are mostly feudalistic and the general impression they seek to create is that the consumers of their products as well as the shareholders obtain value addition as a result of their benevolence. This appears to be basic underlying attitude despite some of them swearing by total quality management and delighting the consumers. Democratic tenets of corporate governance, even if they are defined in the legal procedures, are not a virtue of corporate India.

Secondly, the multinational corporations control a significant proportion of the corporate sector. The one fundamental fact that strikes even a casual observer is that the courts are overburdened and are unable to punish the errant corporates making it nearly impossible for the small shareholders to obtain any protection.

The third important point is that unless the political process discourages major shareholding by a few, it is virtually useless to create corporate governance mechanisms fashioned after industrialized societies

1e(ii). Managing Agency 1850 - 1955

Traditionally “managing agency” system occupied the most important place in corporate governance in India. The managing agents were the promoters, financiers and managers of the companies and they contributed in a significant way in the early industrial development in India. Managing agency houses had dominated in major business families in India. Due to several shortcomings and increasing malpractices in the managing agency system, many restrictions were initially imposed on the
working of managing agents and subsequently the system was completely abolished. After that the board of directors as the top most corporate governing organ was superimposed through the legislative provisions by the government. Thus the rise of board of directors was not through evolutionary process but was artificially created from their socio-cultural background.

Managing agents were individuals or partnership firms who enter into a contract with joint stock companies to manage the affairs of the latter. The provisions within the contract would help them to ensure that the shareholders could not readily remove them. Managing agents had wide range of powers. They were not only the managers but also exercised the functions of corporate governance. In many cases the companies, which the managing agents managed, did not even have boards, or if they did, the boards were entirely composed of the managing agents. As per Darryl Reed\(^3\) the number of firms under managing agencies increased from 75% in 1936 to 95% in 1955.

Managing agencies employed various strategies to achieve and secure their position by having multiple directorships on the various boards of the firms; they could consolidate their business empires and strengthen business ties with key partners. Through inter corporate investments, with a minimal injection of own capital, they could retain control and expand their empires.

The two significant aspect of corporate governance - i.e. shareholders control, maximizing their wealth were sidetracked. Financial irregularities, lack of professional management, concentration of economic power resulting in oligopolistic markets were the major criticisms against this model. Thus corporations systematically acted in ways that were contrary to shareholders rights and spirit of fair market competitions.

1e(iii). The Promoter Model 1956 - 1970

The terms "promoter" and "promoter system" are widely referred to in the Indian industrial literature. The post Independence economy was characterized by the combination of import substituting industrialization, economic planning, and wide range of government support programs. The companies Act, 1956 had shaped new form of corporate governance referred as promoter model.
The word promoter refers to any person or group of people who floated new ventures. Later times, it referred not only to founders but also to a controlling individual or a group in a company.

With the shift from the managing agency model to a promoter model a variety of changes were made in company law, which were designed to promote the shareholders to exercise their control over the firm. These included disclosure norms, rules for AGMs, standards for maintenance of records, limits on the number of directorships an individual could hold, restrictions on members of the same family serving on a board, the ability to remove directors etc. In practice, however, little changed with respect to the ability of private investors to exercise any control over the firm. Through out in the 1960s and beyond, a large percentage of companies continued to have “Dummy boards” stacked with friends and relatives of the promoter. In an analysis by Baig, 67% of the companies examined, had directors belonging to the same family.

This occurred despite a prohibition in the Companies Act on the appointment of directors from the same family without a special resolution passed by 75% of the shareholders. Because of their control over the board, promoters were regularly able to get these resolutions passed. As Sengupta notes, due to an increase in the dispersion of shareholders this situation held not only in family business houses, but in larger independent companies run by “Professional Management” as well. The shareholder - owners have no effective voice in modern corporations. That they select the directors and management is a myth. The directors being eligible, offer themselves for re-election irrespective of age or competence. The AGMs became a mere formality. The only right the shareholders enjoy, is to walk out by selling their holdings in the stock exchange.

R.K.Talwar, the noted banker, said in 1983. “The board is generally sought to be controlled by a single individual or a small group of individuals within the board or sometimes even outside, as a kind of extra- constitutional authority. The individual or group may be averse to expression of views not exactly in tune with his or its own. The company has more or less one – man rule by its non-executive chairman who also holds the controlling interest. The whole time directors seem to be terribly afraid of the chairman. The company needs a board, which can be independent of the promoter’s control as this is essential for restoring the company’s credibility and for preventing irregularities taking place.
But the world over the promoters have lost control. Promoters have to change and prepare for tomorrow. Change will not be easy, but change they will have to. "They should remember that in the United States, shareholders and non-executive directors got together to throw out the bosses at IBM, Westinghouse and Kodak. Those companies where the promoters continue to believe that they own the company and everything that they do is in their own interest are in trouble", according to the Managing Director of an automobile company. He further added that "The success of a business will depend on professional management. Gone are those days when an inefficient promoter could also do well." It has been found that family owned companies that survive are increasingly run by professionals. The sons of the founders have gone to business schools and are qualified. Thus they work in tandem with the professionals.

Hence promoters who seek to survive and prosper would do well to remember that the main aim of their business is to maximize shareholders returns. No promoter should be allowed to improve his position at the expense of the shareholders. Good corporate governance improves the capital market, the willingness of the people to save and invest in equity and thus improve the whole economy. The attempt of the promoters to increase control should attract the take over code provisions.

1e(iv). 1970s' An Era Of Nominee Directors

The 1970's marked the significance of nominee directors. The Central Government issued guidelines in 1971 to public financial institutions for the appointment of nominee directors. The purpose of having nominee directors is to prevent economic concentration and to guide the corporations to serve public interest.

The Nominee directors are expected to devote their wholehearted attention to the affairs of the concerns on whose boards they are nominated and safeguard the interest of institutions. They are accountable to the institutions, which they represent. They should prevent any abuse of powers by promoters and offer Constructive suggestions to the management in all-important operational matters.

Sengupta estimated that by early 1980's there were roughly 700 nominee directors, representing public financial institutions. A survey conducted by Gupta indicated that the companies of different sizes had nominee directors on their boards.
The incidence of their presence however was highly correlated with the size of the firm, with 87% of the largest firms (Paid up capital of Rs 1,000 lakhs and above) having nominee directors. However the nominees of financial institutions could not do much when gross mismanagement took place and many units turned sick. Bad managements were not unseated, the institutions waived their loans and the promoters went scot-free.

1e(v). The Decade of 1980s' - Professional Investors Being Major Players

By early 1980s' the concept of Professional investors came to light. IDBI, IFCI, ICICI, UTI and GIC had become among the largest shareholders in 63% of all publicly held companies. The tremendous increase in equity holdings by Public institutions implied great potential for improving shareholder democracy. However there were several obstacles on this path. Initially government institutions were largely passive shareholders. For this very reason, promoters liked institutions such as UTI, because they provided them equity without threatening their control over the firm.

It was only after the recommendations of Dutt Committee were implemented, that these institutions became more active demanding board representation on the companies in which they held equity. Board representation did not translate into improved shareholder control. The directors were not aware and certain of their roles and responsibilities. They saw their responsibilities as being limited to protecting the interests of the institutions, which nominated them.

In a study conducted by Gupta42, about the performance of nominee directors: -

1. Largest percentage - 38 % understood their role to be acting as a friend, philosopher, guide to the Chief Executive.

2. 24% viewed the main function as providing expert professional advice to the Chief Executive on specific matters.

3. 10% only viewed their primary role as generating pressure to drive the executive management to greater effort.

4. Only 4.4% saw their primary function as ensuring social responsibility.
Virtually all of them complain that the information supplied to the board was inadequate; they were usually in minority position on board controlled by the promoter. This indicates the reason that they were not able to effectively perform even in cases where they inclined to

1e(vi). 1990’s A Revolution Of Corporate Governance

The Decade 1990 brought into effect lot of revolutionary changes in the Corporate Sector. Economic policy reforms introduced in 1991 had brought in an era of liberalization, privatization and globalization. Change in the profile of corporate ownership, capital market reforms, disinvestments by Government of India in Public Sector undertakings are all the factors to the growing significance of corporate governance.

The CII had taken the initiative to find ways of changing this culture of corporate governance. It had to educate the promoter on the proper role of the board, on the long-term advantage of good corporate governance practices and show that these practices contribute to improving long-term corporate performance. It had to convince business leaders that corporate governance will not be as irrelevant as in the past and that the success of Indian businesses in the liberalized market environment depends on the legitimacy and acceptability of Indian corporations in a global society. As Rao\(^{43}\) (1998) points out, governance is a problem “that all our society must resolve if we are not to decline into wholly lawless and criminal society.”

1f. THE LEGISLATIVE FRAMEWORK – THE FORMAL STRUCTURE OF CORPORATE GOVERNANCE IN INDIA

Corporate governance deals with the laws, procedures, practices, rules etc. relating to corporate functioning in our country. There are number of Legislations in India to ensure fair functioning of corporate sector. They are:

- **Companies Act, 1956**: It covers the provisions about – board of directors, meetings, appointment or removal of auditors or directors, corporate restructuring, mergers, inter-corporate activities etc.

- **Monopolies and Restrictive Trade Practices Act 1969**: Its scope is limited to the control of restrictive and unfair trade practices.
• Foreign Exchange Regulation Act, 1978 – It controls and monitors the activities of foreign flow of funds, investments and investors. Later Foreign Exchange Management Act (FEMA) has come into operation.

• Securities and Exchange Board of India Act, 1992. Rules and Regulations, made there under relating to disclosure practices, insider trading, takeover and mergers, raising money from market, regulation of secondary markets etc.

• Securities Contract Regulation Act, 1956.

• Listing Agreement of Stock Exchanges

• The Depositories Act, 1996.

• Consumer Protection Act, 1986.

• Arbitration and Conciliation Act, 1996.

**Companies Act**

The Companies Act, 1956 is the principal legislation providing formal structure for the corporate governance. It contains several provisions that aim at directing the conduct and behaviour of the directors in relation to their companies towards ethical standards, transparency and accountability. Some of these are:

• Holding Board meetings at regular intervals to deliberate on matters concerning business and affairs of the company. Directors absenting from meeting without leave of absence to be disqualified.

• Disclosure of material facts resulting in conflict of interest with duty, by the board.

• Disclosure of material facts pertaining to special business to be transacted at general meeting.

• Restrictions on remuneration and other benefits from the company.

• Restrictions on holding of office or place of profit in the company by the directors themselves or by their relatives and disclosure of information in connection therewith.
• Disqualification for directorship and prohibition against fraudulent persons from managing companies, removal from office when found guilty of fraud, misfeasance.

• Maintenance of books of accounts, audit auditor's report, director's report etc.

• Restriction on loans to directors and their associates.

• Disclosure of interest in contracts, appointing managing director, manager etc.

• Certain powers to be exercised only at board meetings and certain powers to be exercised with shareholder's consent

• Inspection, investigation into the affairs of the company.

The Companies Act imposes restriction on the number of companies in which one person can act as a director, at a time, with a view to ensuring that one person does not accept too many directorships to make it impossible for him to devote sufficient time and pay attention to his duties and responsibilities as directors. The Act also requires the directors to prepare Annual Report for each financial year, which give true and fair view of the state of affairs of the company at the end of the year and of the profit or loss of the company for that period. In preparing the annual accounts, the directors are required to select suitable accounting policies, apply consistency and make judgments and estimates that are reasonable and prudent. The directors are also responsible for the maintenance of adequate accounting records in compliance with the Companies Act, for safeguarding the assets of the company and for preventing and detecting frauds and other irregularities, and to submit these books to the auditors of the company besides providing explanations and clarifications required by them.

Duties of directors

The companies act also imposes on directors, civil and criminal liabilities for misrepresentation in offer documents and annual accounts, failure to refund subscription money to the investors, and also generally for contraventions of the law.
Besides, the directors have several duties to discharge under common law some of which have been evolved by courts from time to time, having regard to the position of directors in the company. Some of these duties are

- Duty of care and skill in the discharge of function as directors
- Duty to attend board meeting and devote sufficient time and attention to the affairs of the company.
- Duty not to be negligent.
- Duty not to exceed powers.
- Duty to have regard to and act in the best interests of the company and its stakeholders and customers.
- Duty to creditors if business is conducted with intent to defraud them.
- Duty to confidentiality.
- Duty not to make secret profits.
- Duty not to exercise powers for a collateral purpose.
- Duty not to misapply company assets.
- Duty not to compete with the company.

The Report of the working group 1997 on redrafting of the Companies Act 1956 recommended that a specific statement of the responsibilities of the directors of a company to be published in the Annual Accounts. The Report states that the code of corporate governance should not be limited to director's responsibilities. In fact, the governance standards need to be recommended by industry associations and other professional bodies and may go beyond the scope of their legal or regulatory codes of conduct. Professionals like company secretaries, charted accountants, lawyers, consultants as well as financial institutions and their nominee directors could also be covered by the concept of a code of corporate governance, as their actions impinge upon corporate functioning.
Shareholders' rights

Shareholders of a listed company can be divided as follows:

- Management shareholders
- Institutional shareholders
- Small shareholders

Salient rights of shareholders under the Companies act are summarized under following sections.

- Right to have financial information – section 219
- Right to receive notice of general meeting – section 171
- Right to vote – section 87
- Right to appoint proxy – section 176
- Right to receive dividend – section 208
- Right to approach central government – section 236, 397, 398.
- Right to voluntary winding up – section 484.

Some important provisions of the companies (amendment) act, 2000

Directors Responsibility Statement

The first change relates to the Directors Report, which is attached to every Balance Sheet laid down before the company in annual general meeting. In addition to what was being specified therein as per the existing law, such Report would now be required to have one additional report, known as, ‘Directors Responsibility Statement’.

Limit on number of directorships by an individual directors sec 275

It relates to the number of companies in which a person can be director. The amendment has reduced the number of such directorship to fifteen from existing twenty companies, possibly with the hope that now the Directors would be able to devote more time and attention to the policy making and affairs of companies in which they act as directors.
Representaiton Of Small Shareholders On The Board

The amended sec 252 enables the small shareholders to have 'Nominee Directors' in public limited companies where the paid-up share capital is Rs. 5 crore or more and the number of small shareholders is 1000 or more. But, election of Nominee Directors representing small shareholders has been made 'optional' and is not a mandatory requirement.

Directors Compensation

In tune with the liberalized regime of adequately compensating the best managerial personnel, limits for calculation of managerial remuneration has been liberalized.

Constitution Of Audit Committees

The Amendment Act, 2000 has inserted, vide section 140, a new section 292A in the 1956 Companies Act, which read as under: 292A. Audit Committee (1) Every public company having paid-up capital of not less than five crores shall constitute a Committee of the Board known as Audit Committee which shall consist of not less than three directors and such number of other directors as the Board may determine of which two thirds of the total number of members shall be directors, other than managing or whole-time directors. Every Audit committee constituted under sub-section (1) shall act in accordance with terms of reference to be specified in writing by the board.

The members of the Audit Committee shall elect a Chairman from amongst themselves. The annual report of the company shall disclose the composition of the Audit Committee. The Auditors, the internal auditor, if any and the director-in-charge of finance shall attend and participate at meetings of the Audit Committee, but shall not have the right to vote.

The Audit Committee should have discussions with the Auditors Periodically about internal control systems, the scope of audit including the observation of the Auditors and review the half-yearly and annual financial statements before submission to the board and also ensure compliance of internal control systems.
The Audit Committee shall have authority to investigate into any matter in relation to the items specified in this section or referred to it by the Board and for this purpose, shall have full access to information contained in the records of the company and external professional advice, if necessary.

The recommendations of the Audit Committee on any matter relating to financial management, including the audit report shall be binding on the board. If the Board does not accept the recommendations of the Audit Committee it shall record the reasons therefor and communicate such reasons to shareholders.

The chairman of the Audit Committee shall attend the annual general meetings of the company to provide any clarification on matters relating to audit. If a default is made in complying with the provisions of this section, the company, and every officer who is in default shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to fifty thousand rupees or with both.

Apart from these legal provisions there were number of noted committees, which prescribed a code on corporate governance. The recommendations of these committees were based on the current business environment and are of paramount importance.

1g. COMMITTEES ON CORPORATE GOVERNANCE

The function of a code of desirable conduct of corporate governance, is to enhance the degree of acceptability of the corporate form as a public limited company in perpetuity and the board of directors as a body responsible to the stakeholders. There is no universal method to do so, although the corporate form and the board structure have become nearly universal.

A number of reports and codes on the subject have already been published internationally. Notable among them are the report of Cadbury committee, the report of the Greenbury committee, the combined code, the OECD code on corporate governance, The Blue Ribbon committee on corporate governance in U.S., CII code, Birla committee, Nareshchandra Committee Report in India etc.

1g(i). Cadbury Committee

This code is not prescriptive. It does not say that there is only one way to govern a company. It recognizes that every company, every board and every
The chairman is different. It sets out the principles and guidelines, which boards should follow in directing and controlling their companies. It is up to each individual board to implement these principles in the ways which best suit their particular circumstances and which carry the approval of their shareholders.

The code is based on the need for an adequate level of disclosure and for appropriate checks and balances within the governance structure. Disclosure enables those with rights and responsibilities towards companies to have the information, which they need in order to exercise them. Openness by companies is the basis of public confidence in the corporate system. Checks and balances, especially at board level, guard against undue concentration of power.

The code deals with the role of the board of directors and covers such matters as the duties of a board, its composition – especially the balance between executive and non-executive directors and the separation of the posts of the chairman and of the chief executive.

It also prescribes role of the outside, non-executive directors and independence had been defined as “free from any business or other relationship which could materially interfere with the exercise of their independent judgment”.

The non-executive directors should be appointed for specific terms, with the possibility of reappointment, depending on the contribution, which the director concerned was making to the work of the board. Non-executive directors should be selected through a formal process that should involve the board as a whole. This was to avoid directors, considering that they owned their place on the board to the chairman’s patronage.

The code also covered executive directors and their remuneration. It also addressed important questions of financial reporting and financial controls. It recommends properly constituted audit committees of the board and that directors should report on the effectiveness of their systems of internal financial control.

It is in the self-interest of companies to comply with this code. By doing so they are seen to meet the standards now expected of well-run companies. This will strengthen their position in their market – place and assist their credit – worthiness.
The financial aspects of corporate governance, financial transparency and the related role of directors and auditors were dealt at length by Cadbury committee report. The following recommendations of the committee need special attention:

1. The board should meet regularly, retain full and effective control over the company and monitor the executive management.

2. No one individual should have unfettered powers of decision. Where the chairman is also the chief executive, it is essential that there should be a strong and independent element on the board.

3. The board should have a formal schedule of matters specifically reserved to it for decision, to assure the directors, that the control of the company is firmly in their hands.

4. The Committee emphasis on the establishment of audit committees consisting of at least 3 non-executive directors.

5. The board should include non-executive directors of sufficient caliber and number, for their views to carry significant weight in the board’s decisions. There should be a minimum of three non-executive directors on board.

6. There should be an agreed procedure for directors in the furtherance of their duties to take independent professional advice if necessary, at the company’s expense.

7. Setting up of a “Nomination Committee” to assist the board in making appointments.

8. The executive directors pay should be subject to the recommendations of a Remuneration committee, made up wholly or mainly of non-executive directors.

9. The non-executive directors should have formal terms of appointment.

10. The director’s tenure should not exceed 3 years without shareholders approval.
1g(ii). Hampel Committee & Combined Code (U.K.)

Ron Hampel was given the task of chairing the “Committee on Corporate Governance” with an objective to keep up the momentum by assessing the impact of Cadbury Committee and developing further guidance.

The final report submitted by the committee chaired by Ron Hampel had some important and progressive elements, notably the extension of Directors’ responsibilities to business risks assessment and minimizing the risk of fraud.

The Combined Code was subsequently derived from Ron Hampel Committee’s Final Report and from the Cadbury Report and Greenbury Report. The Combined Code is appended to the listing rules of the London Stock Exchange. As such, compliance is mandatory for all listed companies in the U.K.

The stipulations contained in the Combined code require, among other things, that the Boards should maintain a sound system of internal control to safeguard shareholders’ investment and the company’s assets. The directors should, at least annually, conduct a review of the effectiveness of internal control system. The review should cover all controls, including financial, operational controls and risks management.

Subsequent developments with regard to corporate governance in U.K, led to the publication of Turnbull Guidance in September 1999, which required the board of directors to confirm that there was an on-going process for identifying, evaluating and managing the key business risks.

In this context, it was observed that the one common denominator behind the past failures in the corporate world was the lack of effective Risk Management. As a result Risk Management subsequently grew in importance and is now seen as highly crucial to the achievement of business objectives by the corporates.

It was clear, therefore, that Boards of Directors were not only responsible but also needed guidance not just reviewing the effectiveness of internal controls but also for providing assurance that all significant risks had been managed and embedded risk management process was in place.
1g(iii). Blue Ribbon Committee (U.S.A.)

The Blue Ribbon Committee was formed under the auspices of the United States Securities and Exchange Commission to develop a series of recommendations to enable audit committees to function as the ultimate guardian of investor interests and corporate accountability. It has recommended that exchange-listing requirements be amended to require audit committees to adopt a formal written charter and review and assess it annually. The following points are worth noting:

1. Members of the Audit Committee shall be considered independent if they have no relationship to the corporation that may interfere with the exercise of their independence from management and the corporation.

2. All the members of the Audit committee should be Financial Literates.

3. Requirement that the audit committee has to disclose whether it has satisfied its own responsibilities during the prior year in compliance as per its charter.

4. Requirement that all companies have to include a letter from Audit Committee in the companies Annual Report to the Shareholders.

5. The Generally Accepted Auditing Standards (GAAS) requires that a company's outside auditor discuss with the Audit Committee, the auditors judgement about the quality and acceptability of the company's accounting principles.

1g(iv). The Organisation For Economic Cooperation And Development (OECD) Principles Of Corporate Governance

The OECD has laid down certain principles in April 1999, which can be globally adopted. These are:

1. Requirement that the company's outside auditor has to conduct Interim Financial Review.

2. Basic rights of shareholders cover registration as an owner, transfer of shares, providing relevant and timely information on a regular basis.

3. The corporate governance framework should recognize the legal rights of stakeholders and the sustainability of financially sound enterprises.
4. Timely and accurate information should be disclosed on all matters regarding the financial situation, performance, ownership and governance of the company. An independent audit committee is essential.

5. Accountability of the board to the company and its shareholders is a basic tenet of sound corporate governance. It is the duty of the board to act fairly with respect to all groups of shareholders and to assure compliance with applicable laws.

6. A company aims primarily at maximising shareholders value in the long-term. Companies should clearly state (in writing) their financial objectives as well as their strategy.

7. Major decisions, which have a fundamental effect upon the nature, size, structure and risk profile of the company, and decisions which have significant consequences for the position of the shareholder within the corporation, should be subject to shareholder’s approval or should be decided by the AGM.

8. Anti-takeover defences or other measures, which restrict the influence of shareholders, should be avoided.

9. The process of mergers and takeovers should be regulated and compliance with these regulations should be supervised.

10. If a shareholder’s stake in the company passes a certain threshold, that shareholder should be obliged to make an offer for the remaining shares under reasonable conditions, that is, at least the price that was paid for the control of the company.

11. Companies should immediately disclose information, which can influence the share price, as well as information about those shareholders who pass (upwards or downwards) 5% thresholds. There should be serious penalties in case of non-compliance.

12. Auditors have to be independent and should be elected by the general meeting.

13. Shareholders should be able to place items on the agenda of the AGM.
14. In addition to the regular channels, electronic means should be used by the company to provide shareholders with price-sensitive information.

15. Shareholders shall have the right to elect members of the board and shall also be able to file a resolution for dismissal. Prior to the election, shareholders should be able to suggest candidate members to the board.

16. The membership of non-executives on the board, whether in a one-tier or two-tier system (member of the supervisory board), should be limited to a maximum period of twelve years.

17. No more than one non-executive board member should have served as an executive member of the company.

1g(v). King Committee-Africa

In the year 1994, a committee was set up in South Africa consisting of 15 individuals who in their own right were all experts in the area of corporate governance, with Merilyn King as the chairman. This committee was set up at the instance of the Institute of Directors in South Africa, with support from the South African Chamber of Business and the Chartered Institute of Secretaries and Administrators, The South African Institute of Chartered Accountants, The Johannesburg Stock Exchange and the South African Institute of Business Ethics.

The King’s Committee\textsuperscript{48} recommended that

1. The boards should be balanced between executive and non-executive directors.

2. Roles of chairperson and chief executive officer should be split and in the board, in the absence of split, there should be at least two non-executive directors.

3. The director’s report should incorporate statement on their responsibilities in respect of financial statements, accounting records, accounting standards, internal audit, adherence to the code of corporate practices and conduct and details of non-adherence.
4. Shareholders should properly use the meetings by asking questions on the accounts for which forms should be provided in the annual reports.

5. Corporates should have an effective internal audit function and establish an audit committee with written terms of reference from the board.

6. In respect of external audit, the committee recommended observance of highest level of business and professional ethics, legal backing for accounting standards and it should be brought in line with international standards etc.

1g(vi). Company Directors Code- Malaysia

In Malaysia, the registrar of companies, ministry of Domestic Trade has evolved ‘Company Director’s Code of Ethics’ to enhance the standard of corporate behaviour with a view to achieving the following objectives:

- To establish standards of ethical conduct for directors based on acceptable belief and values one upholds.
- To uphold the spirit of social responsibility and accountability in line with the legislation, regulation and guidelines governing a company.

The principles on which this code relies are those concerning transparency, integrity, accountability and corporate social responsibilities. In the performance of his duties, a director is expected to observe the standards laid down in this Code.

1h. COMMITTEES IN INDIA

1h(i). The CII Report

Confederation of Indian Industry was the first to publish a code on Corporate Governance in 1997. CII in its draft code of corporate governance lays down the following recommendations for directors:

1. Full board should meet at least six times a year.
2. Board agenda should require at least half a day’s discussion.
3. Non-Executive directors should constitute at least 30% of the board members where the chairman is a non-executive director and 50% where the chairman is an executive director.

4. Directors should not hold more than 10 directorships (excluding subsidiaries and associate companies).

5. Non-executive directors to be active participants in the board meeting should have defined responsibilities.

6. Audit committee to be constituted with at least three non-executive directors.

7. Directors who are absent for 50% or more meetings as a practice should not be re-appointed.

8. Nominee directors – Financial Institutions should withdraw their nominee directors from companies where they have little or no debt exposure or where their individual shareholding is 5% or less.

9. For all companies with a paid-up capital of 20 crore or more, the quality and quantity of disclosure should be the same that accompanies a GDR issue because it is not justified to present one set of accounts for domestic investors and another one for overseas shareholders.

10. All stock exchanges should gradually insist that overall reports of all listed companies be accompanied by compliance certificate signed by chief executive officer and chief financial officer. This would include a certification that the management is responsible for the preparation, integrity and fair presentation of the financial statements and other information in the annual report and that the accounting principles and policies conform to standard practices. This would imply that the board has overseen the company’s system of internal accounting and administrative controls and reviewed the financial disclosures.

11. As additional information to shareholders, listed companies should give data on high and low averages of share prices in all stock exchanges where they are listed.
12. Companies should also give a statement on value addition i.e. total income less the cost of all inputs and administrative expenses as well as details on business segments/divisions up to five percent of turnover.

13. The consolidation of group accounts should be optional and subject to the financial institutions allowing companies to leverage on the basis of groups assets and the revenue department using the group consent in assuming corporate tax. According to the report, corporate governance should be of great value to Indian and Foreign companies, which would enhance long-term shareholders value.

The recommendations of the CII can discipline the corporate management if a code of conduct is formed and adhered to by the captains of industry, trade and commerce.

1h(ii). Birla Committee Report

The SEBI, as the custodian of investor interests on May 7, 1999, constituted an 18 – member committee, chaired by the young and forward looking industrialist Mr. Kumaramangalam Birla, on Corporate Governance, mainly with a view to protecting the investors’ interests, the committee made 25 recommendations 19 of them mandatory in the sense that these were enforceable. The listed companies were obliged to comply with these on account of the contractual obligation arising out of the listing agreement with stock exchange.

The mandatory recommendations:\n
1. The board of a company should have an optimum combination of executive and non-executive directors with not less than 50 percent of the board comprising the non-executive directors.

2. The board of directors is a combination of executive and non-executive directors. The non-executive directors comprise of promoter directors and independent directors. Independent directors are those, who, apart from receiving directors’ remuneration, do not have any material pecuniary relationship or transactions with the company, its promoters, its management or its subsidiaries that in the judgement of the board may affect their independence of judgement.
3. The board of a company should set up a qualified and an independent Audit Committee. The Audit Committee should have minimum three members, all being non-executive directors, with the majority being independent, and with at least one Director having financial and accounting knowledge. The chairman of the audit committee should be an independent director. The Chairman of the Audit Committee should be present at Annual General Meeting to answer shareholders queries.

- The Company Secretary should act as the secretary to the Audit Committee.

- The Audit Committee should meet at least thrice a year. The quorum should be either two members or one-third of the members of the Audit Committee.

- The Audit Committee should have powers to investigate any activity within its terms of reference, to seek information from any employee; to obtain outside legal or professional advice, and to secure attendance of outsiders if necessary.

- The Audit Committee should discharge various roles such as, reviewing any change in accounting policies and practices; compliance with Accounting Standards; compliance with Stock Exchange and legal requirements concerning financial statements; the adequacy of internal control systems; the company’s financial and risk management policies etc.

- The Board of Directors should decide the remuneration of the non-executive Directors.

- Full disclosure should be made to the shareholders regarding the remuneration package of all the directors.

- The Board meetings should be held at least four times a year.

- A director should not be a member in more than ten committees or act as the chairman in not more than five committees across all companies in which he is a Director. This is done to ensure that the member of the board give due importance and commitment of the meeting of the Board and its committees.
The management must make disclosures to the board relating to all material, financial and commercial transactions, where they have personal interest.

In case of the appointment of a new director or reappointment of a director, the shareholders must be provided with a brief resume of the directors, his expertise and the names of companies in which the person also holds directorships and the memberships of committees of the board.

A board committee should be formed to look into the redressal of shareholders complaints like transfer of share, non-receipt of balance sheet, dividend etc.

There should be a separate section on corporate governance in annual reports of the companies with a detailed compliance report.

Apart from these, the Kumaramanagalam Committee also made some recommendations that are non-mandatory in nature. Some of the non-mandatory recommendations are

- The board should set up a Remuneration Committee to determine the company’s policy on specific remuneration packages for executive directors.

- Half-yearly declaration of financial performance including summary of the significant events in the last six months, which should be sent to each shareholder.

- Non-executive chairman should be entitled to maintain a chairman’s office at the company’s expense. This will enable him to discharge the responsibilities effectively.

The desirable code of Corporate Governance, which was drafted by CII and was voluntary in nature, did not produce the expected improvement in corporate governance. It is in this context that the Kumaramanagalam Committee felt that under the Indian conditions, a statutory rather than a voluntary code would be far more effective.
1h(iii). Basel Committee-For Banking Organisations

Basel Committee published its report on Corporate Governance for Banking Organisations in Sep. 1999. According to the committee, the boards of directors add strength to the corporate governance of a bank when they:

- Understand their supervisory role and their "duty of loyalty" to the bank and its shareholders;
- Serve as a "checks and balances" function vis-à-vis the day-to-day management of the bank;
- Feel empowered to question the management and are comfortable insisting upon straightforward explanations from management;
- Recommend sound practices gleaned from the other situations;
- Provide dispassionate advice;
- Are not overextended;
- Avoid conflicts of interest activities with, and commitments to, other organisations;
- Meet regularly the senior management and internal audit to establish and approve policies, establish communication lines and monitor progress toward corporate objectives;
- Absent themselves from decisions when they are incapable of providing objective advice;
- Do not participate in day-to-day management of the bank.

It is found that in a number of countries, bank boards have found it beneficial to establish certain specialized committees. Let us look at a few of them:

- Risk Management Committee. It provides oversight of the senior management's activities in managing credit, market liquidity, operational, legal and other risks of the banks.
• Audit Committee: it provides oversight of the bank's internal and external auditors, approving their appointment and dismissal, reviewing and approving audit scope and frequency, receiving their reports and ensuring that management is taking appropriate corrective actions in a timely manner to control weaknesses, non-compliance with policies, laws and regulations, and other problems identified by auditors.

• Compensation Committee: It provides oversight of remuneration of senior management and other key personnel ensuring that compensation is consistent with the bank's culture, objectives, strategy and control environment.

• Nomination committee: it provides important assessment of board effectiveness and directs the process of renewing and replacing board members.

1h(iv). Financial Institution's Study Report

The highlights of a recent study conducted by the financial institutions on the practices of corporate governance by major Indian corporates and the recommendations of the committee are:\n
• The best practices of corporate governance have generally been followed by corporates with low promoters holding and those where the influence of multinational collaborations is strong.

• There should be at least six board meetings per year to ensure effective governance by the board.

• Non-executive directors together with nominees of financial Institutions / banks should form a simple majority in the board.

• The tenure of independent directors on the board could be restricted to two – three terms so as to ensure their independence.

• Prudent norms on short-term investments should be evolved and refined.

• The constitution of audit sub – committees should be made a statutory requirement.
The crucial pre-defined areas, where the nominee directors are expected to play effective roles include investment in subsidiaries and loans, awards of contracts, mergers and acquisitions, expansion and diversification, dividend and accounting policy and subsidiarisation and desubsidiarisation. The important directives include:

There should be a check on reckless fund mobilization in the form of equity or loans. Expansion of capacities, diversification and joint ventures are to be carefully examined.

All investments in unlisted companies and subsidiaries where promoters have an interest is to be carefully scrutinized.

Transfers of profitable divisions and hiving off will require approvals while transfer of non-profitable divisions should be allowed after detailed examination of valuation reports.

In brand driven Companies, while transferring divisions relating to consumer durables, proper values ought to be assigned to brand names and distribution networks.

In approving case of mergers and acquisitions, changes in equity shareholding pattern are to be analyzed to ensure that the cost of acquisition is proportionate to the earnings of the acquired company.

All contracts awarded to related companies in which directors are interested are to be scrutinized to prevent siphoning of funds.

The increase in managerial remuneration and commissions payable to directors has to be in line with the financial position of the companies.

Equity dilutions to promoters on preferential basis should be strictly within government guidelines, while at the same time offerings should not be made only for increasing equity of promoters directly or indirectly, unless warranted by circumstances of the concerned companies.
Report Of The Study Group On Corporate Excellence Set Up By The Department Of Company Affairs

In order to effectively operationalise the concepts of excellence in corporate governance on a sustained basis, to sharpen India's global competitive edge and to further foster and develop corporate culture in the country, the department of Company Affairs (DCA) had, under the chairmanship of Dr. P.L. Sanjeev Reddy, Secretary, DCA, Set up on 15.5.2000 a Study Group. The study group had subsequently constituted a Task Force on 22.5.2000 under the chairmanship of S. Rajagopalan, former chairman, MTNL, Bangalore. The Study Group had the benefit of the presentations of various Chambers of Commerce and Professional Institutes.

The report of the Study Group contains several recommendations that would take standards of Corporate Governance in the country to Commanding Heights and compares very favourably with international practices:

- Setting up of an Independent, Autonomous Center for Corporate Excellence: to mainly accord accreditation and promote policy research and studies, training and education and awards etc, in the field of corporate excellence through improved corporate governance.

- Introducing formal recognition of Corporate Social Responsibility as a first step towards Triple-Bottom line Accounting and Reporting.

- Introducing measures for greater shareholders participation through multiple – location meetings, electronic-media – assisted display of corporate information and views on proposed resolutions etc.

- Clearer distinction between directors and management that would ensure that the executive directors are held responsible for legal and other compliance and the non-executive directors charged with strategic and oversight responsibilities for the company’s business.

- Highlighting directorial commitment and accountability through fewer and more focused board and committee memberships, tighter delineation criteria and minimization of interest-conflict potential.
• Suggesting application of corporate governance principles to Public Sector Undertakings, certainly in cases of listed companies, and preferably even in case of unlisted companies, in terms of freeing them from multiple surveillance agencies and upgrading their boards with independent directors.

Accounting Scandals of 2002

The fall of corporate giants, one after another, remained under intense debate at all levels throughout the year 2002. In the United States, series of studies/investigations were undertaken to look into the depth of the malaise leading to collapse of the corporates, role and responsibilities of different constituents of corporate governance mechanism and the consequent various corrective and preventive measures to be taken. The debate also dominated the financial crisis world over.

After the Enron debacle of 2001, came other scandals involving large US companies such as WorldCom, Qwest, Global Crossing, and the Auditing lacunae that eventually led to the collapse of Andersen. These scandals triggered another phase of reforms in corporate governance, accounting practices, and disclosures--; this time more comprehensive than ever before. In July 2002, less than a year from the date when Enron filed for bankruptcy, the Sarbanes-Oxley Bill (popularly called SOX) was enacted.

The said Act brought with it fundamental changes in virtually every area of corporate governance including auditor’s independence, conflict of interest, and corporate responsibility and enhanced financial disclosures. The following reforms have been advocated by the Act:

• Establishment of Public Company Accounting Oversight Board

• Audit Working Papers should be kept and maintained for a Period of 7 years.

• Auditing Quality Control and Financial Standards by a concurring or a second partner

• Defined the scope of Quality Control Standards.
- Provided Penal Provisions for Auditors
- Extended Jurisdiction Over Foreign Accounting Firms.
- Accounting Standards Setting Body Was Empowered
- Non-Audit Services was prohibited to the same audit firm.
- Audit Partner Rotation once in every 5 years.
- Improper Influence on Conduct of Audits is declared as unlawful.
- Enhanced Review of Periodic Disclosures by Issuers.

The Sarbanes-Oxley Act, raised the standards of financial reporting by forcing companies to provide information earlier than what they were used to and on the whole, demanded more transparency from companies. It is predicted by the reformers that the SOX Act will do more to change the board structure, auditing, financial reporting and corporate disclosure than any other previous law in US history.

1h(vi). Nareshchandra committee

The initial drive for better corporate governance and disclosure came from all-India industry and business associations, and in the Department of Company Affairs. The Accounting profession in India has responded to the recent developments in a positive manner. The perceived possibility of corporate failures in the context of United States experience made the Government, regulators and the professional institutes in India to revisit the entire gamut of corporate governance mechanism, and company-auditor relationship. The profession looked upon the developments as an opportunity for enhancing its role as valued trustee of stakeholders, and to bridge up the gap that currently exists between the corporate responsibility and the public accountability.

The Ministry of Finance and Company Affairs of the Central Government constituted on 21st August, 2002 a high powered Committee to examine the Auditor-Company relationship and regulating auditors etc. The Naresh Chandra Committee submitted its report to the Finance Minister on Monday the 23rd December, 2002. In its report, the Naresh Chandra Committee has commented on the poor structure and composition of the Board of Directors
of Indian companies, scant fiduciary responsibility, poor disclosures and transparency, inadequate accounting and auditing standards, the need for experts to go through thoroughly the nitty-gritty of transactions among companies, banks and financial institutions, capital markets etc. The Committee highlighted that in India companies need to follow very stringent guidelines on corporate governance and that sadly there is a wide gap between prescription and practice and the Committee pinpointed the adverse legal consequences because of which the defaulters almost always get away due to the web of inefficiency, corruption and the intricate dilatory legal system.

The committee recommends\(^{56}\) that

In line with international best practices, the Committee recommends an abbreviated list of disqualifications for auditing assignments.

- Prohibition of any direct financial interest in the audit client.
- Prohibition of receiving any loans and/or guarantees.
- Prohibition of any business relationship.
- Prohibition of personal relationship.
- Prohibition of service or cooling period.
- Prohibition of undue dependence on an audit client.
- Listed out prohibited non-audit services.
- Independent Standards for Consulting and Other Entities that are affiliated to Audit Firms.
- Compulsory Audit Partner Rotation.
- Auditor’s disclosure of contingent liabilities.
- Auditor’s disclosure of qualifications and consequent action.
- Qualifications to accounts to be adequately highlighted.
• It should also be mandatory for the audit firm to separately send a copy of the qualified report to the ROC, the SEBI and the principal stock exchange (for listed companies), about the qualifications

• Management's certification in the event of auditor's replacement

• The explanatory statement to explain the reasons for replacement of Auditors.

• 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 specialized services affiliates, subsidiary and associated companies are not disqualified from audit assignments.

• The Audit Committee shall recommend to the board, with reasons either the appointment/re-appointment or removal of the external auditor, along with the annual audit remuneration.

• CEO and CFO certification of annual audited accounts.

• Setting up of independent Quality Review Boards.

• Proposed disciplinary mechanism for auditors

• It has classified offences and suggested prosecution

• It made suggestions for Improving facilities in the Department of Company Affairs offices

• Suggested to set up Corporate serious fraud office (CSFO) in the department of company affairs.

"The recommendations of the Naresh Chandra Committee are expected to play an important role in strengthening the composition and effectiveness of the regulatory framework for good corporate governance and will have tremendous impact on the role, functioning and effectiveness of the professionals like Chartered Accountants, Company Secretaries, Cost and Work
Accountants, Legal Practitioners, Chief Executive Officers and Chief Financial Officers of Indian Companies,” says Ravi Madapat. The Committee has recommended drastic changes in corporate disclosures, corporate responsibility and corporate governance which will have significant ramifications for the future of Indian economy, corporate sector, investors and professionals. It is hoped that the recommendations of the Committee would be implemented soon by the Government and will strengthen the functioning and standards of corporate governance in the country and restore investors confidence in the corporate sector and the much needed respect and confidence in the regulatory systems of the country.

Thus there were number of reforms and legal enforcements introduced in the recent past to improve the corporate governance standards world wide. However it should be acknowledged that law couldn’t be a substitute for the code of ethical standards and no law can imbibe ethics in corporate functioning in its true spirit. In other words law cannot substitute but can only supplement the code of best practice for effective corporate governance. Dr. K.R. Chandratre (2000) “The law states minimum standard of conduct. But it does not and cannot embody the whole duty of man; and mere compliance with the law does not necessarily make a good citizen or a good company”, Law of course, can effectively support corporate governance as is sought to be done through the Companies Act. Ideal corporate governance needs a legal framework, managements desire and determined will to implement the law and to maintain high standards of corporate conduct. Considerable research effort will be required to formulate these improvements based on fact rather than intuition. One hopes that enlightened corporates should support such initiatives, as the end results will be to their collective advantage.

This chapter examined the governance systems and issues across the countries. It also brought to light the recent developments in the corporate world which have drawn attention world wide on the governance issues, the resultant committees and their recommendations, the legal amendments and reforms that have been introduced to improve the corporate practices.

It will also be useful to scan the research work and methodology on the subject of corporate governance, which is attempted in the next chapter. The research methodology is also equally important because the corporate governance issues also involve measurement, monitoring and management.
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