Chapter Six

THE ADOPTION OF THE CORPORATE GOVERNANCE PRINCIPLES BY INDIAN COMPANIES: AN EVALUATION

This chapter presents the evolution, importance and the adoption of Corporate Governance principles and practices as implemented by Indian companies, in order to foster proper ethical spirits, in the Indian business environment.

6.1 The Corporate Governance Rules in India

In attempting to assess the corporate governance practices of the 18 selected companies, their various annual reports were carefully studied. Examining the annual reports of the 18 companies it was evident that they closely followed the Corporate Governance principles as per SEBI requirements. The companies carefully observed the disclosure requirements of the implementation of the Corporate Governance principles. The revised Clause 49 of the SEBI Corporate Governance rules is applicable to listed companies, in accordance with the following schedule of implementation:

(i) All entities seeking listing for the first time, at the time of listing,

(ii) All listed entities having a paid up share capital of Rs 3 crores and above or net worth of Rs 25 crores or more at any time in the history of the company.

However, for other listed entities, which are not companies, but body corporates (e.g. private and public sector banks, financial institutions, insurance companies etc.) incorporated under other statutes, the revised clause will apply to the extent that it does not violate their respective statutes, and guidelines or directives issued by the relevant regulatory authorities. The revised clause is not applicable to the Mutual Fund Schemes.

The revised Clause 49 requires that the Independent Director should periodically review legal compliance reports prepared by the company and any steps taken by the company to cure any taint. The revised clause specifies that no defence shall be permitted that the independent
director was unaware of this responsibility in case of any proceedings against him in connection with the affairs of the company. The companies are required to comply with the requirements of the clause on or before March 31, 2004. The companies which are required to comply with the requirements of the revised clause 49 have been put under an obligation to submit a quarterly compliance report to the stock exchanges as per sub clause (IX) (ii), of the revised clause 49, within 15 days from the quarter ending 31st March, 2004. The report is required to be submitted either by the Compliance Officer or the Chief Executive Officer of the company after obtaining due approvals.

SEBI has introduced the Corporate Governance code for listed companies and for the companies which enter the market now through listing agreement. ICAI has issued standards for consideration of accounts. All the companies must comply with the standards and principles of Corporate Governance. The Securities and Exchange Board of India (SEBI) is managed by a Board which is charged with the following functions:

(a) regulating the business in Stock Exchanges and any other Securities Markets;

(b) registering and regulating the working of stock brokers, sub-brokers, share transfer agents, bankers to an issue, trustees of trust deeds, registrars to an issue, merchant bankers, underwriters, portfolio managers, investment advisers and such other intermediaries who may be associated with the Securities Markets in any manner; also registering and regulating the working of the depositories, participants, custodians of securities, foreign institutional investors, credit rating agencies and such other intermediaries as the Board may, by notification, specify in this behalf;

(c) registering and regulating the working of venture capital funds and collective investment schemes, including mutual funds;

(d) promoting and regulating self-regulatory organisations;

(e) prohibiting fraudulent and unfair trade practices relating to Securities Markets;

(f) promoting investors' education and training of intermediaries of Securities Markets;

(g) prohibiting insider trading in securities;
(h) regulating substantial acquisition of shares and take-over of companies;

(i) calling for information from, undertaking inspection, conducting inquiries and audits of
the Stock Exchanges, mutual funds, other persons associated with the Securities Market
intermediaries and self-regulatory organizations in the Securities Market: calling for
information and record from any bank or any other authority or board or corporation
established or constituted by or under any Central, State or Provincial Act in respect of any
transaction in securities which is under investigation or inquiry by the Board;

(j) performing such functions and exercising such powers under the provisions of the
Securities Contracts (Regulation) Act, 1956(42 of 1956), as may be delegated to it by the
Central Government;

(k) levying fees or other charges for carrying out the purposes of this section;

(l) conducting research for the above purposes;

(1a) calling from or furnishing to any such agencies, as may be specified by the Board, such
information as may be considered necessary by it for the efficient discharge of its functions;

(m) performing such other functions as may be prescribed by Government or seen as
necessary by the Board. The Board may take measures to undertake inspection of any books,
or register, or other documents necessary for control purposes.

6.2 The Evolution of Corporate Governance
The subject of corporate governance attracted global business limelight in the year 2001,
from relative obscurity, after a string of collapses of high profile companies. Enron, the
Houston, Texas based energy giant, and WorldCom, the telecom behemoth, surprised the
business world with both the scale and age of their unethical and illegal practices. Worse,
they seemed to indicate only the tip of the dangerous iceberg. Hence, corporate practices in
US companies came under scrutiny and it was found out that the problem was far more
widespread. Large and trusted companies from Parmalat in Italy to the multinational
newspaper group Hollinger Inc. revealed significant problems in their corporate governance
practices. Even the prestigious New York Stock Exchange in the year 2003 had to remove its
director, Richard A. Grasso, amidst public outcry over excessive compensation. It was clear
that something was amiss in the area of corporate governance all over the world. The high-profile corporate governance failures in the developed countries brought the subject to media attention. The issue of corporate governance has always been central to Finance and Economics. The issue has particular importance to public limited companies, because it is central to investors’ and stakeholders’ protection. India has one of the best corporate governance laws. However, poor implementations together with socialistic policies of the pre-reform era have affected the usefulness of corporate governance in India. Family ownership of shares, pyramiding and tunneling of funds among group companies mark the Indian corporate landscape. Since liberalization in the early 1990s, serious efforts have been directed at overhauling the system with SEBI instituting the Clause 49 of the Listing Agreements dealing with corporate governance. Corporate governance has been an important field of query within the Finance discipline, making quest for the protection and better treatment of all stakeholders. Effective corporate governance systems promote the development of strong financial systems – irrespective of whether they are largely bank-based or market-based. Good corporate governance also lowers the cost of capital by reducing risk and creates higher firm valuation once again boosting real investments. Effective corporate governance mechanisms ensure better resource allocation and management, increasing the return to capital. The return on assets (ROA) is significantly high in companies with the highest level of equity rights protection than in companies with the lowest protection. Good corporate governance can remove mistrust between different stakeholders, reduce legal costs and improve social and labour relationships. It makes sure that the directors actually act on behalf of the owners of the company – the stockholders – and pass on the profits to them. These are the key issues of corporate governance. Limited liability and dispersed ownership are essential features that the joint-stock company form of organization thrives on. It inevitably leads to a distance and inefficient monitoring of management by the actual owners of the business. Managers enjoy actual control of the business and may not serve in the best interests of the shareholders. These potential problems of corporate governance are universal. The supervisory powers of SEBI are making great efforts in reducing the agency problem in the Indian business environment.
6.3 The Role of Good Corporate Governance

In a study by Bajpai (2006), it was stated that “the Securities and Exchange Board of India (SEBI) continues to raise the bar for good Corporate Governance.” The adequacy and the quality of Corporate Governance implementation helps to shape the growth and the future of any Capital Market and the economy. The concept of Corporate Governance has been attracting public attention for quite some time in India. The concept of Corporate Governance was no longer confined to the halls of academia. It was increasingly finding acceptance for its relevance and underlying importance in the industry and the Capital Markets. The study found out that, progressive companies (i.e. the eighteen companies under the purview of this research work) in India have voluntarily put in place systems of good Corporate Governance. Focus on Corporate Governance and related issues were an inevitable outcome of a process, which led companies to increasingly shift to financial markets as the pre-eminent source for capital. In the process, more and more people are recognizing that Corporate Governance was indispensable to effective market discipline. This consensus was both an enlightened and a realistic view by companies. In an age where capital flows worldwide, just as quickly as information, a company that does not promote a culture of strong, independent Corporate Governance, creates an oversight and thereby risks its very stability and future health. As a result, the link between a company’s management, directors and its financial reporting system has never been more crucial. As the boards provide stewardship of companies, they play a significant role in their efficient functioning. It found out that, markets and savers take notice of well-managed companies, respond positively to them, and reward such companies, with higher valuations. A common feature of such companies was that they have good systems in place, which allow sufficient freedom to the boards and management to take decisions, towards the progress of their companies and to innovate (i.e. empowerment of executives), while remaining within a framework of effective accountability. In other words they have a system of good Corporate Governance and managerial empowerment.

Strong Corporate Governance was thus indispensable to resilient and vibrant Capital Markets and was an important instrument of investor protection. It was the blood that fills the veins of transparent corporate disclosure and high-quality accounting practices. It was the muscle that
moves a viable and accessible financial reporting structure. Without sound financial reporting, the Indian Capital Markets will not function well. This may lead to the lack of stability and sustainability.

Corporate Governance was seen as the manner in which a Corporation was managed, in order to achieve its Objectives, maintain transparency of its operations, adhere to accountability and reporting which leads to Good Corporate Citizenship. The Corporation should adopt the Processes and Operating Relationships that Best Achieve Organisational Goals and Objectives.

Corporate Governance was seen as the system by which Corporate Bodies were directed and controlled. Boards of directors must take responsibility for the proper governance of their various companies. Corporate Governance was the pillar on which the wheel of every Corporate Body rotated. Thus, Corporate Governance has been defined in a variety of ways, starting with Corporate Governance as seen by Sir Cadbury.

In related speeches by Cadbury (1992 and 1993), they defined Corporate Governance as the system by which companies were directed and controlled. It had to do with Power and Accountability: who exercised power, on behalf of whom, how the exercise of power was controlled.

The Preamble to the Organisation for Economic Co-operation and Development (OECD) Principles of Corporate Governance, (2004), defined Corporate Governance as involving a set of relationships between a company’s management, its board, its shareholders and other stakeholders. It also pointed out that it was the structure through which objectives of the company were set, and the means of attaining those objectives and monitoring performance.

In a committee’s findings, Birla (2000), presented in a SEBI report, that the fundamental objective of Corporate Governance was the ‘enhancement of the long-term shareholder value, while at the same time protecting the interests of other stakeholders.

A Gandhian definition, stated that Corporate Governance was a Trusteeship obligation inherent in a company’s operations, where assets and resources were pooled and entrusted to the managers for optimal utilisation in the stakeholders’ interests.
It pointed out that Corporate Governance was therefore the set of principles, processes, customs, policies, laws and institutions affecting the way a Corporation is directed, administered or controlled. Corporate Governance also includes the relationships among the many stakeholders involved and the goals for which the Corporation is governed. The principal stakeholders are the shareholders, management and the board of directors. Other stakeholders include employees, suppliers, customers, banks and other lenders, regulators, the environment and the community at large. Corporate Governance was a multi-faceted subject. An important aspect of Corporate Governance was to ensure the accountability of certain individuals in an organization through mechanisms that try to reduce or eliminate the principal-agent problem. The agency problem stems from the fact that in a corporate environment there was a divorce between ownership and control. The shareholders are the owners, while the directors are the controllers.

There has been renewed interest in the Corporate Governance practices of modern corporations since 2001, particularly due to the high-profile collapses of a number of large U.S. firms such as Enron Corporation and Worldcom. In 2002, the US federal government passed the Sarbanes-Oxley Act, intending to restore public confidence in Corporate Governance. Corporate Governance framework described whom the organisation was there to serve and how the purposes and priorities of the organisation should be decided upon. Primary statutory responsibility of the governing body of any corporation should ensure that the organisation fulfils wishes and purposes of the stakeholders. To be good was noble; to tell the people how to be good was nobler.” SEBI was engaged in such a nobler endeavour. If the stakeholders are the subjects, then the corporate was the king. Therefore, the welfare of the King depended on the welfare of the subjects. Joshi (2002), confirmed this with the statement that Stakeholders depended on the organisation to fulfil their own goals and the organisation depends on them to fulfil its goals. Good governance in a corporate environment is the pillar which keeps the King in reign and the subjects happy.

According the Institute of Company Secretaries of India, Corporate Governance is the proper application in an organisational environment of the best management practices, the compliance of the law in the true letter and spirit and to carefully adhere to all ethical standards for the effective management and distribution of wealth and the discharge of social
responsibilities for the sustainable development of the organisation in order take care of all stakeholders. This therefore means that Corporate Governance must be based on the principles of transparency and accountability.

**6.4 Principles of Good Corporate Governance**

Corporate governance relates to the manner in which the business of the organization is governed, including setting corporate objectives and an institution's risk profile, aligning corporate activities and behaviours with the expectation that the management will operate in a safe and sound manner, running day-to-day operations within an established risk profile, while protecting the interests of depositors and other stakeholders. It was defined by a set of relationships between the institution's management, its board, its shareholders, and other stakeholders.

The key elements of sound corporate governance in a bank include:

a) A well-articulated corporate strategy against which the overall success and the contribution of individuals can be measured.

b) Setting and enforcing clear assignment of responsibilities, decision-making authority and accountabilities which are appropriate for the bank's risk profile.

c) A strong financial risk management function (independent of business lines), adequate internal control systems (including internal and external audit functions), and functional process design with the necessary checks and balances.

d) Corporate values, codes of conduct and other standards of appropriate behavior, and effective systems used to ensure compliance. This includes special monitoring of a bank's risk exposures where conflicts of interest are expected to appear (e.g., relationships with affiliated parties).

e) Financial and managerial incentives to act in an appropriate manner offered to the board, management and employees, including compensation, promotion and penalties. (i.e., compensation should be consistent with the bank's objectives, performance, and ethical values).
f) Transparency and appropriate information flows internally and to the public.

Good Corporate Governance principles must be strictly adhered to by all the management groups working in various corporate environments (Table 6.1).

**Table 6.1: Good Corporate Governance Principles**

<table>
<thead>
<tr>
<th>Principle</th>
<th>Details</th>
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<tbody>
<tr>
<td>Principle 1</td>
<td>Lay solid foundation for management, overseeing of all employees</td>
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<tr>
<td>Principle 2</td>
<td>Structure the Board and the organisation to add value</td>
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<tr>
<td>Principle 3</td>
<td>Promote ethical and responsible decision making</td>
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<tr>
<td>Principle 4</td>
<td>Safeguard integrity in financial reporting at all times</td>
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<tr>
<td>Principle 5</td>
<td>Make timely and balanced disclosures</td>
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<tr>
<td>Principle 6</td>
<td>Respect the rights of shareholders/stakeholders</td>
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<tr>
<td>Principle 7</td>
<td>Recognise and manage risks promptly and properly</td>
</tr>
<tr>
<td>Principle 8</td>
<td>Encourage and enhance performance at all levels</td>
</tr>
<tr>
<td>Principle 9</td>
<td>Remunerate fairly and responsibly according to ability</td>
</tr>
<tr>
<td>Principle 10</td>
<td>Recognise the legitimate interests of all stakeholders.</td>
</tr>
</tbody>
</table>

*Source: SEBI (2006)*

The companies selected for this study strictly adhere to all Corporate Governance principles. Hence, management strives to satisfy all stakeholders by engaging on their fiduciary duty as expected by company and Corporate Governance norms. This approach is expected from all directors and their peers to encourage more investment and in improve securities prices in the Capital Market. The Good Corporate Governance Rule as set out by SEBI (2006), stated that each member of the Board of Directors and core management of the company should adhere to the following, so as to ensure compliance with good Corporate Governance practices:
a). What Board Members must do -

i. Attend Board meetings regularly and participate in the deliberations and discussions effectively

ii. Study board papers thoroughly and enquires about follow up reports on definite time schedule

iii. Involve Actively in the matters of formulation of general Policies

iv. Be familiar with the broad objectives of the company and the policies laid down by the government and the various laws and legislations

v. Ensure confidentiality of the company’s agenda papers, notes and Minutes

b). what Board members should not do-

i. Do not reveal any information relating to any constituent of the company to anyone

ii. Do not do anything which will interfere with and/or be subversive of maintenance of discipline, good conduct and integrity of the staff

6.5 The London 1991 Committee on Corporate Governance

The Committee was set up in May, 1991 by the Financial Reporting Council, the London Stock Exchange and the Accountancy Profession to address the financial aspects of Corporate Governance. Its sponsors were concerned at the perceived low level of confidence, both in financial reporting and in the ability of auditors to provide the safeguards which the users of company reports sought and expected. The underlying factors were seen as the looseness of accounting standards: the absence of a clear framework for ensuring that directors kept under review the controls in their business and competitive pressures, both on companies and on auditors which made it difficult for auditors to stand up to demanding boards.

These concerns about the working of the corporate system were heightened by some unexpected failures of major companies and by criticisms of the lack of effective board accountability for such matters as directors’ pay. Further evidence produced by the committee indicated that Action had to be taken to clarify responsibilities and to raise
standards. This was also evidence gather from a number of reports on different aspects of Corporate Governance which had either been published or was in preparation at that time.

6.6 SEBI Guidelines on Corporate Governance

The Birla (2000), Committee on Corporate Governance identified three key constituents of Corporate Governance which are the Stakeholders, the Board of Directors and the Management. They also identified three key aspects of Corporate Governance which must be properly taken care of by the Board of Directors and Management. These key aspects are Accountability, Transparency and Equality of treatment for all Stakeholders. The recommendations of the committee were divided into mandatory and non-mandatory categories. The mandatory recommendations led the Securities and Exchange Board of India to revise the clause 49 of the listing agreement that deals with Corporate Governance. The revised clause 49(1) stipulates inter alia that a code of conduct for all the Board Members and Senior Management (Members of Core Management Committee, including all Functional Heads) must be laid down and this should be posted in the website of the company. The Securities and Exchange Board at its Board Meeting held on 25th April, 2006 adopted the code of conduct and made it applicable to all members of Company Boards and Senior Management Personnel to enhance the smooth running of all corporate bodies.

6.7 Corporate Governance – Code of Conduct

(a). Board of Directors

The board should meet regularly, retain full and effective control over the company and monitor the executive management. There should be clear division of responsibilities at the head of a company, which will ensure a balance of power and authority, such that no one individual has 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, with a recognised senior member. The board should include non-executive directors of sufficient calibre and number for their views to carry significant weight in the board’s decisions. The board should have a formal schedule of matters specifically reserved to it for decision to ensure that the direction and control of the company is firmly in its hands. 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. All directors should have access to the advice and services of the Company Secretary, who is responsible to the board for ensuring that board procedures are followed and that applicable rules and regulations are complied with. Any question of the removal of the Company Secretary should be a matter for the board as a whole.

(b). Non-Executive Directors

Non-executive directors should bring an independent judgment to bear on issues of strategy, performance, resources, including key appointments and standards of conduct. The majority should be independent of management and free from any business or other relationship which could materially interfere with the exercise of their independent judgment, apart from their fees and shareholding. Their fees should reflect the time which they commit to the company.

6.8 The Code of Best Practice for Directors

Non-executive directors should be appointed for specified terms and reappointment should not be automatic. Non-executive directors should be selected through a formal process and both this process and their appointment should be a matter for the board as a whole.

Executive directors’ service contracts should not exceed three years without shareholders’ approval. There should be full and clear disclosure of directors’ total emoluments and those of the chairman and highest-paid director, including pension contributions and stock options.

Separate figures should be given for salary and performance-related elements and the basis on which performance is measured should be explained. The executive directors’ pay must be subject to the recommendations of a remuneration committee made up wholly or mainly of non-executive directors.

6.9 Reporting and Controls

It was the board’s duty to present a balanced and understandable assessment of the company’s position. The board should ensure that an objective and professional relationship is maintained with the auditors. The board should establish an audit committee of at least
three non-executive directors with written terms of reference which deal clearly with its authority and duties. The directors should explain their responsibility for preparing the accounts next to a statement by the auditors about their reporting responsibilities. The directors should report on the effectiveness of the company’s system of internal control. The directors should report that the business is a going concern, with supporting assumptions or qualifications as necessary.

6.10 Need and Objectives of the Code

Clause 49 of the Listing Agreement entered into with the Stock Exchanges requires, as part of Corporate Governance, that all the listed entities should lay down a Code of Conduct for Directors on the Board of an entity and its Senior Management. Senior Management has been defined to include personnel who are members of its Core Management and functional Heads excluding the Board of Directors.

(i). Company’s Belief and Mission Statement

This Code of Conduct attempts to set forth the guiding principles on which the company will operate and conduct its daily business with its multitudinous stakeholders, government and regulatory agencies and anyone else with whom it is connected. Companies must strive to attain market leadership by product and process innovation in their niche areas. They must achieve customer satisfaction through planning, training, skillful execution, upgraded technology and employee commitment. They should create within employees, a culture of passion and pride in the product of the company. They should strive to remain dedicated to the philosophy that the reason for their existence is their custom and they should follow the principle that vendors, employees and customers are equal stakeholders in their endeavours. They should provide a safe, clean and rewarding working environment for all employees. They should be committed to producing and marketing goods of the highest quality to satisfy the needs of customers all over the world. Further, the Company shall work towards creating a culture of continuous improvement in all functions of the company and to achieve this, the company shall set objectives at functions levels and monitor them regularly, involve employees through motivation and training, focus on timely delivery to customs, and strive for total customer satisfaction.
They must recognize the need to develop sustainable value creating business. They must be committed to identifying any adverse impact of their business processes on those who carry it out on the wider environment, so that such adverse impact can be eliminated. Towards this end the company will systematically review its operations to identify sources of health, safety and environmentally related risks. This review will use appropriate standards as required by prevailing laws, expert opinion and any knowledge of best practices and the review will lead to the formulation of clearly described work practices and drills. All the staff shall be trained in the manner required to adhere to these work practices and drills. The Organization will not discriminate on the basis of race, caste, creed, national origin, gender, religion, disability, union membership or political affiliation. The organization will not interfere in the right of the employee to observe tenets or practices based on race, caste, creed, national origin, religion, disability, union membership or political affiliation.

(ii). Philosophy of the Code

a). Adherence to the highest standards, honesty and ethical conduct, including proper and ethical procedures in dealing with Actual or apparent conflicts of interest between personal and professional relationships.

b). Full, fair, accurate, timely and meaningful disclosures in the periodic reports required to be filed by the Company with Government and regulatory agencies

c). Compliance with applicable laws of the land, rules and regulations

d). To address misuse or misapplication of the Company’s assets and resources

e). The highest level of confidentiality and fair dealing within and outside the Company

(iii). General Standards of the Conduct

The Company expects all directors and members of the core management to exercise good judgment, to ensure interests, safety and welfare of Customers, employees and other stakeholders and to maintain cooperative, efficient, positive, and harmonious plus a productive work environment in a business organization. The directors and members of the core management, while discharging the duties of their office, must Act honestly and with
due diligence. They are expected to Act with that amount of utmost care and prudence, which an ordinary person is expected to take in his/her own business. These standards need to be applied while working in the premises of the Company, at offsite locations where the business is being conducted whether in India or abroad, or at company-sponsored business events or at any other place where they Act as representatives of the Company.

(iv) **The Business Judgment Rule**

The business judgment rule is a common-law doctrine which presumes that, absent evidence of fraud, bad faith (including waste of corporate assets) or self-dealing, the directors of a corporation act on an informed basis and with the good faith belief that their actions are in the best interests of the corporation. To defeat the presumption, it must be proven that the directors violated one of their fiduciary duties to the corporation, which are typically classified as the duty of care and the duty of loyalty; if that can be demonstrated, then the burden shifts to the directors to prove that the action taken was “entirely fair” to the corporation and the stockholders. If the presumption is not rebutted, then the rule will continue to apply and operate to uphold the directors’ action, so long as the action can be attributed to any “rational business purpose.” As such, the rule is designed to prevent courts from imposing themselves unreasonably on the conduct of the business of a corporation, and to encourage directors to take actions that may entail an element of risk without fear of legal liability that will turn on the outcome of the action.

(v) **Duty of Care and Duty of Loyalty**

The fiduciary duties owed by directors of a Delaware corporation are the duties of care and loyalty. The fiduciary duty of care requires that directors of a Delaware corporation “use that amount of care which ordinarily careful and prudent men would use in similar circumstances, and consider all material information reasonably available in making decisions.” A violation of the duty of care will be found if the directors’ actions are determined to be “grossly negligent,” which, as indicated by the court in Disney, means “reckless indifference to or a deliberate disregard” for the stockholders as a group or actions that are “without the bounds of reason.” The fiduciary duty of loyalty, on the other hand, requires that “the best interest of the corporation and its shareholders take precedence over any interest possessed by a director, officer or controlling shareholders and not shared by the stockholders generally.” As indicated by the court, the duty is typically implicated when a fiduciary “appears on both
sides of a transaction or receives a personal benefit not shared by all the shareholders.” The court also noted that “deliberate indifference and inaction in the face of a duty to act” constitutes an act of disloyalty to the corporation.

(vi) Duty of Good Faith

The court in Disney addressed the issue of whether there is an independent fiduciary duty of good faith, in addition to the duties of due care and loyalty, noting that the case law on this issue is unclear. While the court did not conclude that a separate duty of good faith exists, stating instead that such a duty was effectively inherent in the two traditional duties of due care and loyalty, it nevertheless analyzed what it means for a director to act in “good faith” because, as is the case with many other Delaware corporations, the charter of The Walt Disney Company included a provision (authorized under Section 102(b)(7) of the Delaware General Corporation Law) that exculpates directors from monetary liability for breaches of the duty of care, so long as the directors act in good faith. According to the court, the appropriate (although not the only) standard for determining whether a director acted in good faith (or, more accurately, “bad faith”) is whether the director evinced an “intentional dereliction of duty, a conscious disregard for one’s responsibilities.” By way of example, the court cites authorization of a transaction for some purpose other than advancing the best interests of the corporation, an intentional violation of positive law or an intentional failure to act in the face of a known duty to act as instances in which bad faith should be found. Furthermore, the court noted that bad faith can “be the result of any emotion that may cause a director to intentionally place his own interests, preferences or appetites before the welfare of the corporation.” However, the court expressly rejected the notion that gross negligence, extreme carelessness or even recklessness is sufficient to support a finding of bad faith; it requires a finding of intentional, deliberate or conscious misconduct.

(vii) Conflict of Interest

A “Conflict of interest” occurs when personal interest of any member of the Board of Directors and of the Core Management interferes or appears to interfere in any way with the interests of the company. Every member of the Board of Directors and Core Management has a responsibility to the Company, its stakeholders and to each other. Although this duty does not prevent them from engaging in personal transaction and investment, it does demand that
they avoid situations where a conflict of interest might occur or appear to occur. They are expected to perform their duties in a way that does not conflict with the company’s interest.

The members of the Core management are expected to devote their total attention to the business interests of the company. They are prohibited from engaging in any Activity that interferes with their performance or responsibilities to the company or otherwise conflicts with or prejudicial to the company.

Business Investment Interests are of paramount importance. This means that any member of the Board of Directors and Core Management considering investing in securities issued by the Company’s customer, supplier or competitor, they should ensure that these investments do not compromise their responsibilities to the Company.

In a banking environment, many factors including the size and nature of the investment, their ability to influence the Bank’s decisions; their access to confidential information of the company or of other entity, and the nature of the relationship between the bank and the customer, supplier or competitor should be considered to determine whether a conflict exists. Additionally, they should disclose to the Bank any interest they have which may conflict with the business of the company.

Related Parties Transactions should be avoided. As a general rule, the directors and members of the core management should avoid conducting company’s business with a relative or any other person or any firm, company, Association in which their relative or other person is associated in any significant role.

If such a related party transaction is unavoidable they must fully disclose the nature of the related party transaction to the appropriate authority. Any dealings with a related party must be conducted in such a way that no preferential treatment is given to that party (i.e. arm’s length transactions).

In the case of any other transaction or situation giving rise to conflicts of interests, the appropriate authority should after due deliberations decide on its impact. Details must be carefully disclosed.
6.11 Applicable Laws

The directors of the company and core management must comply with applicable laws, regulations, rules and regulatory orders. They should report any inadvertent non-compliance.

(i). Disclosure Standards

The company shall make full, fair, accurate, timely disclosures in the periodic reports to be filed with Government and regulatory agencies. The members of the Core management of the company shall initiate all Actions deemed necessary for proper dissemination of relevant information to the Board of Directors, Auditors and other statutory agencies, as may be required by applicable laws, rules and regulations.

SEBI's objective of adding Clause 49 in the Listing Agreement between a company and the Stock Exchange it is listed on is to effectuate good Corporate Governance practices in Indian companies. The Clause aims to protect the interests of the investors through improved quality and quantity of disclosures. With the increased regulatory oversight and investors' expectations for good governance, it has become imperative for companies to incorporate best practices in their business conduct and compliance programmes.

However, all banks who indulge in bad Corporate Governance practices have two methods of information disclosure:

(i) Firstly, they prepare their accounts to show what they think reflects the good governance situation. This is disclosed to stakeholders in order to keep them satisfied.

(ii) Secondly, they now prepare true accounts, a situation which is known to management only. Remember, that Auditors audit, they do not prepare the accounts and therefore may not be able to point out the truth.

Why does this happen? The management of banking corporations were haunted by grid. They lend more, against bank lending policy in order to make more profit. It is risk taking. In risk taking, when winning, it is happiness all the way, but when a mishap occurs and losses are made or adverse conditions surface, the whole world hears about it. With the cost of finance in the money market ranging from 35 to 40% in India, every bank management is
willing to take the risk. At this juncture the bank is not following the principles of good Corporate Governance, having been blinded with a high profit motive.

It is very difficult for a regulator to check these happenings from a distance. It is only after careful investigations, after a mishap, that the truth is revealed.

This is an indication that not all banks offer equal protection degree to the investors. Investor protections differ among corporations and any company within a country with a weak legal system, distinct itself from others by providing extra protection to their investors. This is done by implementing good Corporate Governance best practices.

In a study by Barua and Varma (1993), it was clear that the government, the RBI and the commercial banks were as much accountable as the brokers for the scam. The brokers were encouraged and abetted by the banks to divert funds from the banking system to the stock market. The RBI too was indicted, because despite the knowledge about banks over-stepping the boundaries demarcating their arena of operations, it failed to control them. The looting was done with Active connivance and sometimes full knowledge of the very individuals who were supposed to guard against such a possibility. This was in direct violation of good Corporate Governance principles.

What has been the response of the government so far and what needs to be done to ensure that such scams do not recur in the future? The response of any government to a scam of this kind would have three main facets:

1. Discover and punish the guilty. This task has been entrusted to the Central Bureau of Investigation (CBI) and to the Joint Parliamentary Committee (JPC).

A special court has also been set up to facilitate speedy trial.

2. Recover the money. The draconian provisions of the Ordinance for attachment of property and voiding of transactions with the consequent creation of "tainted" shares were attempts in this direction.

3. Reform the system. The government's response so far has consisted of measures like banning of RF deals and going slow on liberalization. It can be concluded that there cannot
be two opinions on the need for identifying and punishing the guilty. The principal objective behind punishing the offenders is more to deter future offenders. The government must ensure that not only the obviously guilty (the brokers), but also the not so obviously guilty (the bank executives, the bureaucrats and perhaps the politicians) should be identified and brought to book. Investigations of this kind are very time consuming and expensive. They have to be carried through, so that the credibility of the system is restored. A rule of thumb which is often quoted throughout the world is that investigation of any fraud will cost as much as the magnitude of the fraud itself. One can, therefore, expect the real costs of the scam investigation to be of the order of a couple of thousand crores at least, but its carrying out brings future benefits. While recovery of the money swindled from the banks is important, the method employed by the government to do that must not be extremely diabolical and unfair. While governments have, at all times, claimed special powers to recover dues like land revenue and taxes, the same principle cannot be extended to the recovery of amounts which the government is owned by organizations (or for that matter, the foreign banks). The loss is somehow caused by government’s own negligence.

6.12 Use of Company’s Assets and Resources

Each member of the Board of Directors and the core management has a duty to the company to advance its legitimate interests, while dealing with the company’s assets and resources.

Members of the Board of Directors and Core Management are prohibited from:

(a) using corporate property, information or their position for personal gain. They are not allowed to solicit, demand, accept or agree to accept anything of value from any person, while dealing with the company’s assets and resources.

(b) acting on behalf of the company in any transaction in which they or any of their relative(s) have a significant direct or indirect interest

6.13 Confidentiality and Fair Dealings

The Company’s confidential information is a valuable asset which must be treated care. It includes all trade related information, trade secrets, confidential and privilege information, customer information, employee related information, strategies, administration, research in
connection with the company and commercial, legal scientific, technical data that are either provided to or made available to each member of the Board of Directors and; the core management by the company either in paper form or electronic media to facilitate their work or that they are able to know or obtain access by virtue of their position with the company. All confidential information must be used for company’s business purposes only.

This responsibility includes safeguarding, securing and proper disposal of confidential information in accordance with the company’s policy on maintaining and managing records. This obligation extends to confidential information of third parties, which the company has rightfully receiver under non-disclosure agreement.

The company has many kinds of business relationship with many companies, and individuals. Sometimes, they will volunteer confidential information about their products or business plans to induce the company to enter into a business relationship. At other times, the bank may request that a third party provide confidential information to permit the company evaluate a potential business relationship with that party. Therefore, special board of directors and members of the core management must take Care to handle the confidential information of others responsibly. Such confidential information should be handled in accordance with the agreements with such third parties.

The Company requires that every director and the member of core management should be fully compliant with the laws, statutes, rules and regulations that have the objective of preventing unlawful gains of any nature, whatsoever.

Directors and the members of the core management shall not accept any officer, payment promise to pay or authorization to pay any money, gift or anything of value from customers, suppliers, shareholders, stakeholders, etc.; that is perceived as intended directly or indirectly to influence any business decision, any Act or failure to Act, any commission of fraud or opportunity for the commission of any fraud.

6.14 Waivers

Any waiver of any provision of this code of conduct for a member of the company’s board of directors or a member of the core management must be approved in writing by the Board of
directors of the company. The matters covered in this code of conduct are of most importance
to the company, its stakeholders and are essential to the company’s ability to conducts its
business in accordance with its value system

6.15 The Unique Dimensions in Bank Governance

A bank was known as a business establishment in which money is kept for saving or
commercial purposes or is invested, supplied for loans, or exchanged and the offices or
building in which such an establishment is located. The bank’s Role in good Corporate
Governance was two-fold in that its duty is ensuring good Governance within the bank itself
and making sure that the rule of good Governance is maintained at the Clients’ companies.
As Fund-Providers, banks generate the multiplier impact on the Economy. It provides the
pillars on which the wheels of all economic Activities rotate. This explains why finance is the
life-blood of all economies. The bank has to take good care at the two fronts to help avoid
negligence which may lead to mistakes, mischief and fraud. Greater care, when taken in
conduct business Activities leads to Confidence and Trust, thereby increasing the
shareholders’ wealth.

Lack of good governance at the banking environment means that the following stakeholders
are likely to be hurt:

(i) Depositors – they are creditors of banks who have sacrificed consumption in order to
create credit for the investing community.
(ii) Borrowers – they are debtors of the banks, they utilize the funds deposited at banks
by the creditors for investment.
(iii) Employees – they are the human resources who determine the success of the banks in
the long term. Their positive Activities provide likelihood and growth to the
banks.
(iv) Community – they look up to the banks for employment opportunities and the
creation of potential sub-industries.
(v) Regulators – they have duty to see that investors are protected as they deposit/invest
their hard earned savings in various banks.
(vi) Government – the government needs to collect taxes from banks to fulfill the commitment of the state’s budget

6.16 Companies/Banks must Promote Good Governance practices

They should carefully prescribe good Governance Standards that should be applicable when dealing with borrowers. The banks should encourage good Governance by using preferential lending rates. The directors should develop a measure of strengthening protection of Bank Assets; hence it is good for Bank’s Own Governance and growth.

Bad banking practices should be discouraged. Lending to a firm sends signals to investors regarding the firm’s risk. For example, several major banks provided large loans to Enron without understanding the risks of the company. Investors of these banks and their clients were hurt by such bad loans, resulting in large settlement payments by the banks.

6.17 Some Unique Attributes and Responsibilities of Bank Boards and Directors

In a study by Charkham (2003), it was pointed out that a bank director must assume responsibility for effective and efficient management, through overseeing all the bank’s working mechanisms. As a result the bank director must have integrity and Act as a “Role Model Director” providing an excellent example to all employees. He should consider transparency as the norm and confidentiality should not lead to opacity. The ultimate responsibility for true and fair presentation resides with the Board. The Board takes all necessary decisions good and bad. The evidence in the corporate management environment indicates that the Securities and Exchange Board of India (SEBI), can make rules and regulations on good Corporate Governance for companies and banks, but it is very difficult to force them to implement such rules and regulations. Some directors deliberately abuse Corporate Governance, while others inadvertently Act on the spur of the moment and take unnecessary risks, motivated by high interest benefits. It is only discovered that there exist an abuse of Corporate Governance in a bank or any corporate body, when risk taking goes wrong. This means that corporate bodies abuse Corporate Governance more often, because of the advantage of very high benefits. This is typically a practice that prevails in the banking environment. It is a bad practice, but very difficult to stamp out. Abuse of Corporate Governance by corporations is difficult to detect, since it is always done off the company’s
records. SEBI cannot be held responsible for the bad Corporate Governance initiated by directors of companies. SEBI is an advisory body charged with the formulation of good Corporate Governance rules, which should be implemented and followed by all corporations.

6.18 Corporate Governance Practices of the Selected Companies: An Evaluation

This evaluation attempts to carefully assess the degree of corporate governance practiced by the 18 selected companies. It assesses whether the corporate governance has been effective and efficient and whether the directors have provided sufficient accountability and channel for the stakeholders to have their views heard. The evaluation analyses the corporate governance of the 18 companies based firstly on four parameters, these are effectiveness, efficiency, responsibility and accountability.

(a) Effectiveness – it refers to the capacity of the companies to deliver high returns to all it stakeholders. It is indicative that the directors are designing and implementing goals and strategies which are producing desired results.

(b) Efficiency – it refers to ability of the companies to management their costs properly. It indicates that the directors are designing and implementing efficient internal controls in the process of managing the affairs of the companies. Efficient governance requires a clear coherent division of labour, avoids duplication of efforts and adopts a broad span of control.

(c) Responsibility – it refers to the companies’ ability to take care of all the stakeholders as required by good corporate governance principles. It is the board of directors’ responsibility to carefully distribute the companies’ returns to the various stakeholders. The distribution is in the form of interests, dividends, wages, salaries, taxes and social costs. This means that the directors must take proper care of the ownership and stakeholders interests, protect shareholders and stakeholders rights, there should be transparency, proper information disclosure and regular audits, there should be a proper management structure and supervision.

(d) Accountability – it refers to the ability of the companies’ shareholders to hold the board of directors to a set of standards, to carefully judge whether they are meeting the set standards and to set rewards or sanctions, accordingly. Accountability requires a standard against which performance should be judged. It requires that clear lines of
authority and the capacity to sanction the directors where they fail to meet such standards.

The benefits of the observation of corporate governance principles are twofold:

(i) With corporate governance the companies can reduce their vulnerability to financial crisis. That is why the India economy was not heavily affected by the world’s financial crisis of 2008/2009. The companies operating in the capital market are keen on observing good corporate governance practices.

(ii) Markets and investors take notice of well managed companies and reward them with the purchase of more shares and debentures. They are also rewarded with high market valuation of their shares.

Clause 49 of the Listing Agreement with the Indian Stock Exchanges (“the Listing Agreement”) requirements have been made it mandatory for listed companies from 2000-01 onwards and all companies should be fully compliant with these recommendations, as detailed out:

1. The Board should have an optimum combination of Executive and Non-executive Directors and at least 50% of the Board should comprise of Non-executive Directors. Further, at least one-third of the Board should comprise of independent Directors where the Chairman is non-executive and at least half of the Board should be independent in case of an executive Chairman.

2. The Board should set up a committee under the chairmanship of a Non-executive/Independent Director to specifically look into shareholder issues including share transfer and redressing of shareholder complaints. The Company has a “Shareholders Grievance / Allotment and Transfer Committee” at the Board level to look into various issues relating to Investors Grievances including non-receipt of dividend, annual report, shares after transfer as well as delays in transfer of shares etc.

3. To expedite the process of share transfers, the Board should delegate the power of share transfer to an officer or a committee or to the registrar and share transfer agents. The delegated authority should attend to share transfer formalities at least once in a fortnight. The Company’s shares are compulsorily traded in the dematerialised form and have to be delivered in the dematerialised form in all Stock Exchanges. To expedite the transfer in the
physical segment, officers of the Company have been authorised to approve transfers of up to 5000 shares in physical form under one transfer deed and one Director jointly with 2 officers have been authorised to approve transfers of above 5000 shares under one transfer deed. The Board has designated the Company Secretary, as Compliance Officer. Details of complaints received, number of shares transferred during the year as well as time taken for effecting transfers are highlighted in the “Shareholder Information” section of the Annual Report.

4. The Corporate Governance Section of the Annual Report should make disclosures on remuneration paid to directors in all forms including salary, benefits, bonuses, stock options, pension and other fixed as well as performance linked incentives paid to the Directors. Details of remuneration paid to the Non-Executive and Independent Directors are given in Para 5 of this section. Grasim has a policy of not advancing any loans to its Non-Executive and Independent Directors.

5. The Board meetings should be held at least four times in a year, with a maximum time gap of four months between any two meetings and all information recommended by the SEBI Committee should be placed at the Board. The Board met 7 times during the past year and agenda papers were circulated well in advance of each meeting of the Board of Directors. The Company placed before the Board, the working of all units and statements containing status of various matters pursuant to Corporate Governance practices, as required by Clause 49 of the Stock Exchange Listing Agreement.

In an attempt to solve the agency problem, companies are designing and implementing various internal controls which are beneficial to all stakeholders. The following tables show how the companies are making efforts to observe the corporate governance as per SEBI Clause 49 Listing Agreement. Table 6.2 shows the various committees which are instituted in order to take effective care of the companies’ stakeholders. Table 6.3 shows a division between executive directors and independent directors in order to bring in balanced views in the decision making environment of the various companies. These arrangements provide the necessary elements of effectiveness, efficiency, responsibility and accountability which are greatly desired for the proper functioning of a good corporate governance system. None of the eighteen companies were acting in contravention to the corporate governance rules as per SEBI’s Clause 49 Listing Agreement, (see Tables 6.2 and 6.3).
Table 6.2: Committee Meetings of the Selected Companies

<table>
<thead>
<tr>
<th>Serial Number</th>
<th>Company</th>
<th>Audit, Risk and Compliance committee</th>
<th>Board Governance and Nomination Committee</th>
<th>Remuneration and Compensation Committee</th>
<th>Investors Grievance and Ethics Committee</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Wipro Corporation</td>
<td>5</td>
<td>4</td>
<td>4</td>
<td>Nil</td>
</tr>
<tr>
<td>2</td>
<td>Tata Steel</td>
<td>9</td>
<td>10</td>
<td>4</td>
<td>1</td>
</tr>
<tr>
<td>3</td>
<td>Tata Motors</td>
<td>9</td>
<td>9</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>4</td>
<td>Reliance Industries</td>
<td>6</td>
<td>4</td>
<td>1</td>
<td>6</td>
</tr>
<tr>
<td>5</td>
<td>Reliance Energy</td>
<td>5</td>
<td>7</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>6</td>
<td>Maruti-udyog</td>
<td>4</td>
<td>6</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>7</td>
<td>Larsen and Toubro</td>
<td>6</td>
<td>10</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>8</td>
<td>Indian Tobacco Company Ltd (ITC)</td>
<td>9</td>
<td>5</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>9</td>
<td>Hindalco Industries Ltd</td>
<td>6</td>
<td>7</td>
<td>Nil</td>
<td>1</td>
</tr>
<tr>
<td>10</td>
<td>Hindustan Unilever Ltd</td>
<td>7</td>
<td>8</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>11</td>
<td>Hero Honda</td>
<td>4</td>
<td>5</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>12</td>
<td>HDFC Bank</td>
<td>3</td>
<td>9</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>13</td>
<td>Grasim Industries</td>
<td>4</td>
<td>7</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>14</td>
<td>Dr Reddy's Labs</td>
<td>4</td>
<td>4</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>15</td>
<td>Cipla</td>
<td>5</td>
<td>7</td>
<td>1</td>
<td>*Assigned</td>
</tr>
<tr>
<td>16</td>
<td>Bajaj Auto</td>
<td>4</td>
<td>6</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>19</td>
<td>BHEL</td>
<td>5</td>
<td>7</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>18</td>
<td>Ambuja Cement Ltd.</td>
<td>5</td>
<td>7</td>
<td>2</td>
<td>4</td>
</tr>
</tbody>
</table>

Source: Internet Search (2010), * Assigned to an official of the company
<table>
<thead>
<tr>
<th>Company</th>
<th>EXECUTIVE DIRECTORS</th>
<th>INDEPENDENT And NON EXECUTIVE DIRECTORS</th>
<th>CORPORATE GOVERNANCE COMPLIANCE</th>
<th>NUMBER OF STATUTORY MEETINGS HELD PER YEAR (AGM)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wipro Corporation</td>
<td>3</td>
<td>6</td>
<td>compliance with Clause 49</td>
<td>1</td>
</tr>
<tr>
<td>Tata Steel</td>
<td>1</td>
<td>13</td>
<td>-do-</td>
<td>1</td>
</tr>
<tr>
<td>Tata Motors</td>
<td>2</td>
<td>10</td>
<td>-do-</td>
<td>1</td>
</tr>
<tr>
<td>Reliance Industries</td>
<td>4</td>
<td>9</td>
<td>-do-</td>
<td>1</td>
</tr>
<tr>
<td>Reliance Energy</td>
<td>6</td>
<td>8</td>
<td>-do-</td>
<td>1</td>
</tr>
<tr>
<td>Maruti-udyog</td>
<td>1</td>
<td>6</td>
<td>-do-</td>
<td>1</td>
</tr>
<tr>
<td>Larsen and Toubro</td>
<td>7</td>
<td>8</td>
<td>-do-</td>
<td>1</td>
</tr>
<tr>
<td>Indian Tobacco Company Ltd (ITC)</td>
<td>12</td>
<td>7</td>
<td>-do-</td>
<td>1</td>
</tr>
<tr>
<td>Hindalco Industries Ltd</td>
<td>3</td>
<td>6</td>
<td>-do-</td>
<td>1</td>
</tr>
<tr>
<td>Hindustan Unilever Ltd</td>
<td>5</td>
<td>5</td>
<td>-do-</td>
<td>1</td>
</tr>
<tr>
<td>Hero Honda</td>
<td>4</td>
<td>12</td>
<td>-do-</td>
<td>1</td>
</tr>
<tr>
<td>HDFC Bank</td>
<td>4</td>
<td>7</td>
<td>-do-</td>
<td>1</td>
</tr>
<tr>
<td>Grasim Industries</td>
<td>1</td>
<td>11</td>
<td>-do-</td>
<td>1</td>
</tr>
<tr>
<td>Dr Reddy's Labs</td>
<td>3</td>
<td>6</td>
<td>-do-</td>
<td>1</td>
</tr>
<tr>
<td>Cipla</td>
<td>3</td>
<td>6</td>
<td>-do-</td>
<td>1</td>
</tr>
<tr>
<td>Bajaj Auto</td>
<td>8</td>
<td>8</td>
<td>-do-</td>
<td>1</td>
</tr>
<tr>
<td>BHEL</td>
<td>5</td>
<td>8</td>
<td>-do-</td>
<td>1</td>
</tr>
<tr>
<td>Ambuja Cement</td>
<td>4</td>
<td>8</td>
<td>-do-</td>
<td>1</td>
</tr>
</tbody>
</table>

Source: Internet Search (2010)
6.19 The Observance of the Corporate Governance Practices

(i) Wipro Corporation Ltd.

Securities and Exchange Board of India (SEBI) had at its meeting held on January 25, 2000 considered the recommendations of the Kumaramangalam Birla Committee on Corporate Governance and decided to implement the recommendations through an amendment to the Listing Agreement of companies listed with the stock exchanges.

It was found out that over the years, Wipro has shown a commitment towards effective corporate governance and has always been at the forefront of benchmarking its internal control systems and policies with global standards. Consistent with this commitment, Wipro believes that it needs to show a great degree of responsibility and accountability. Hence, “we are happy to inform you that our company’s existing practices and policies are significantly in conformity with the requirements stipulated by SEBI.”

(ii) Tata Steel Ltd.

It was found out that Tata Steel, which has also adopted the Tata Code of Conduct which entitles it to use the Tata Brand name, has been on the forefront on corporate governance. The company was conferred with the second National Award for Excellence in Corporate Governance for 2002 by The Institute of Company Secretaries of India. The governance checklist currently includes annual operating plans, budgets and updates, capital budgets, quarterly results, minutes of all meetings of various committees, remuneration of senior executives, legal issues, among others. It was also found out that the company believes that good corporate practices enable the board to direct and control the affairs of the company in an efficient manner and to achieve its ultimate goal of maximising shareholders value. Over the last few years, the company has adopted many practices, even when there were no mandatory requirements in this regard. For instance, the company has complied with a number of provisions regarding corporate governance prescribed by the Listing Agreement.

Tata Steel bagged the Best Governed Company Award 2006 for corporate practices, which enabled the steel major to direct and control its affairs in an efficient manner and maximize its shareholders value. The company has set itself the objective of expanding its capacities and becoming globally competitive in its business. As a part of its growth strategy, the company has adopted the best practices which are followed in the area of Corporate
Governance across various geographies. The company emphasizes the need for full transparency and accountability in all its transactions, in order to protect the interests of its stakeholders. The board considers itself as a Trustee of its shareholders and acknowledges the responsibilities towards them for the creation and proper safeguarding of their wealth.

(iii) Tata Motors Ltd.

It was found out that as part of the Tata group, the Company's philosophy on Corporate Governance was founded upon a rich legacy of fair, ethical and transparent governance practices, many of which were in place even before they were mandated by adopting highest standards of professionalism, honesty, integrity and ethical behaviour. The Board, being elected by the shareholders, was their representative and a bridge between them and the executive management. Since shareholders are residual claimants, the value creation and sustainability of all the other stakeholders viz. customers, creditors, employees, vendors, community and the Government (of the countries in which the Company operates) are of paramount significance to the Company and its shareholders. The Board, therefore, has a fiduciary relationship and a corresponding duty to all its stakeholders to ensure that their rights are protected. Through the Governance mechanism in the Company, the Board along with its Committees endeavour to strike the right balance with its various stakeholders. The Corporate Governance philosophy has been further strengthened with the implementation, a few years ago, by the Company of the Tata Business Excellence Model, the Tata Code of Conduct applicable to the Company, its subsidiaries, directors and employees. The Company was driving in full gear of compliance with the requirements of Corporate Governance under Clause 49 of the Listing Agreement with the Indian Stock Exchanges (“the Listing Agreement”). The Company's Depository Programme is been listed on the New York Stock Exchange, the Company also complies with US regulations as applicable to Foreign Private Issuers (non-US listed companies) which cast upon the Board of Directors and the Audit Committee, the onerous responsibilities to improve the Company's operating efficiencies. Risk management and internal control functions have been geared up to meet the progressive corporate governance standards.
(iv) **Reliance Industries Ltd.**

It was found out that Corporate Governance at Reliance was based on the following main principles:

- Constitution of a Board of Directors of appropriate composition, size, varied expertise and commitment to discharge its responsibilities and duties.
- Ensuring timely flow of information to the Board and its Committees to enable them to discharge their functions effectively.
- Independent verification and safeguarding integrity of the Company’s financial reporting.
- A sound system of risk management and internal control.
- Timely and balanced disclosure of all material information concerning the Company to all stakeholders.
- Transparency and accountability.
- Compliance with all the applicable rules and regulations.
- Fair and equitable treatment of all its stakeholders including employees, customers, shareholders and investors.

(v) **Reliance Energy Ltd.**

It was found out that the Golden Peacock Award for Corporate Governance, the Institute received 79 odd nominations and the same were evaluated in depth by an eminent Jury under the chairmanship of Justice Shri P.N. Bhagwati. The Jury, carried out indepth evaluation of these nominations and shortlisted 17 companies for making detailed presentations on corporate governance initiatives beyond statutory/regulatory compliances, to the members of the Jury at a conference on Corporate Governance held at Le Meridien, New Delhi. After the presentations, the Jury selected Reliance Energy Limited and other awardees, and at a function held, the Honourable Chief Minister of Delhi Smt Sheila Dixit presented the Award
to Reliance Energy. Reliance Energy has in recent years taken a series of initiatives in corporate governance benchmarking with the global best practices.

(vi) Maruti-udyog Ltd.

It was found out that Maruti Suzuki (the new name of the Company) was fully committed to practicing sound corporate governance and upholding the highest business standards in conducting business. Being a value-driven organisation, the Company has always worked towards building trust with shareholders, employees, customers, suppliers and other stakeholders based on the principles of good corporate governance, viz., integrity, equity, transparency, fairness, disclosure, accountability and commitment to values. The Company fosters a culture in which high standards of ethical behaviour, individual accountability and transparent disclosure are ingrained in all its business dealings and shared by its Board of Directors, Management and Employees. The Company has established systems and procedures to ensure that its Board of Directors is well-informed and well-equipped to fulfill its overall responsibilities and to provide the management with the strategic direction needed to create long-term shareholder value.

(vii) Larsen and Toubro Ltd.

It was found out that there were no incidents of non-compliance with relevant laws and regulations and no fines were imposed. The company has a structured system in place for ensuring compliance. The project division was also proactively taking actions to go beyond compliance, ensuring minimum adverse impact on the community near the company’s project sites. The quality of governance process was reflected in the accountability, credibility and shareholder confidence was influenced by the organizational structure, allocation of responsibilities and the reporting of achievements. The company’s structure was created to make good governance an ongoing reality.

(viii) Indian Tobacco Company (ITC) Ltd.

It was found out that at Indian Tobacco Company Ltd. (ITC), Corporate Governance initiative was based on two core principles. These are:

(i) Management must have the executive freedom to drive the enterprise forward without undue restraints.
(ii) this freedom of management should be exercised within a framework of effective accountability.

ITC believes that any meaningful policy on Corporate Governance must provide empowerment to the executive management of the Company, and simultaneously create a mechanism of checks and balances which ensures that the decision making powers vested in the executive director is not misused, but is used with care and responsibility to meet stakeholder aspirations and societal expectations. The core principles of Corporate Governance cornerstones of ITC's, governance philosophy, are: trusteeship, transparency, empowerment and accountability, control and ethical corporate citizenship. ITC believes that the practice of each of these leads to the creation of the right corporate culture in which the company is managed in a manner that fulfills the purpose of Corporate Governance.

(a) Trusteeship

ITC believes that large corporations like itself have both a social and economic purpose. They represent a coalition of interests, namely those of the shareholders, other providers of capital, business associates and employees. This belief therefore casts a responsibility of trusteeship on the Company's Board of Directors. They are to act as trustees to protect and enhance shareholder value, as well as to ensure that the Company fulfills its obligations and responsibilities to its other stakeholders. Inherent in the concept of trusteeship is the responsibility to ensure equity, namely, that the rights of all shareholders, large or small, are protected.

(b) Transparency

ITC believes that transparency means explaining Company's policies and actions to those to whom it has responsibilities. Therefore transparency must lead to maximum appropriate disclosures without jeopardising the Company's strategic interests. Internally, transparency means openness in Company's relationship with its employees, as well as the conduct of its business in a manner that will bear scrutiny. We believe transparency enhances accountability.
(c) Empowerment and Accountability

Empowerment is an essential concomitant of ITC's first core principle of governance that management must have the freedom to drive the enterprise forward. ITC believes that empowerment is a process of actualising the potential of its employees. Empowerment unleashes creativity and innovation throughout the organisation by truly vesting decision-making powers at the most appropriate levels in the organisational hierarchy. ITC believes that the Board of Directors are accountable to the shareholders, and the management is accountable to the Board of Directors. We believe that empowerment, combined with accountability, provide an impetus to performance and improve effectiveness, thereby enhancing shareholder value.

(d) Control

ITC believes that control is a necessary concomitant of its second core principle of governance that the freedom of management should be exercised within a framework of appropriate checks and balances. Control should prevent misuse of power, facilitate timely management response to change, and ensure that business risks are pre-emptively and effectively managed.

(e) Ethical Corporate Citizenship

ITC believes that corporations like itself have a responsibility to set exemplary standards of ethical behaviour, both internally within the organisation, as well as in their external relationships. We believe that unethical behaviour corrupts organisational culture and undermines stakeholder value.

(ix) Hindalco Industries Ltd.

It was found out that the Company was fully in compliant with the requirements of the prevailing and applicable corporate governance code and was committed to ensure compliance with any proposals for modifications, well ahead of their implementation timelines. The Company's compliance with requirements was presented in the relevant sections of the directors’ Report. The company's Board comprises of 9 Non-Executive Directors with considerable experience in their respective fields. Of these, 6 Directors are
Independent Directors. Clause 49 of the Listing Agreement as amended in April, 2008 requires that if the Non-Executive Chairman of the Company should be the promoter, then at least half of the Board of Directors of such Company should consist of Independent Directors and this is in compliant with the above requirement of Clause 49 of the Listing Agreement. None of the Directors on the Board is a Member of more than 10 Committee or a Chairman of more than 5 Committee (as specified in Clause 49), across all the Company in which he/she is a Director. All the Directors have intimated periodically about their Directorship and Membership in the various Board Committees of other companies, which are within permissible limits of the Companies Act, 1956 and Corporate Governance Code. A certificate from the Statutory Auditors confirming compliance with all the conditions of Corporate Governance as stipulated in Clause 49 of the listing agreement of the Stock Exchanges in India forms part of the directors’ report. Status of compliance of non-mandatory requirement:

1. The Company maintains a separate office for the Non-Executive Chairman. All necessary infrastructure and assistance are available to enable him discharge his responsibilities effectively.

2. The Company does not have a Remuneration Committee. The Board of Directors fixes the remuneration of the Managing Director.

3. During the period under review, there was no audit qualification in the financial statement. The Company continues to adopt best practices to ensure unqualified financial statements.

4. During the duration of the Audit and Board Meetings, the management and the executive Director give extensive briefings to the Board members on the business model of the Company. The Company has also formed a Risk Management Board comprising of Directors and Executives of the Company which meets periodically to review Commodity and Foreign Exchange exposures of the Company.

5. All the Aditya Birla Group Companies have common "Corporate Principles and Code of Conduct", applicable to all the employees. Inter alia, it provides for mechanisms to enforce and report violations of the principles and the code.

(x) Hindustan Unilever (Hindustan Lever) Ltd.

It was found out that the Company was in full compliance with all mandatory requirements of Clause 49 of the Listing Agreement. In addition, the Company has also adopted the non-
mandatory requirements of constitution of the Remuneration Committee, tenure of office of Independent Directors and establishing of Whistle Blower mechanism. Transparency and accountability are the two basic tenets of Corporate Governance. Hindustan Unilever, feels proud to have visionary founders, who had laid the foundation stone for good governance long back and made it an integral principle of the business. Responsible corporate conduct was integral to the way the company does its business. All actions are governed by the company’s values and principles, which are reinforced at all levels within the Company. At Hindustan Unilever, the company was committed to doing things the right way which means taking business decisions and acting in a way that was ethical and was in compliance with the applicable legal requirements. The Company’s Code of Business Principles was an extension of the values and reflects the continued commitment to ethical business practices and regulatory compliance. The directors acknowledge their individual and collective responsibilities to manage all business activities with integrity. To succeed, the Company believes, requires the highest standards of corporate behaviour towards everyone we work with, the communities we touch, and the environment on which we have an impact. This is the Company’s road to sustainable, profitable growth and creating long-term value for the shareholders, the people, and the business partners. The Board of Directors of the Company was responsible for and committed to sound principles of Corporate Governance in the Company. The Board plays a critical role in overseeing how the management serves the short and long term interests of shareholders and other stakeholders. This belief was reflected in the Company’s governance practices, under which the Company strives to maintain an active, informed, and independent Board. The Company keeps its governance practices under continuous review and benchmarks them to the best governed companies across the globe.

(xi) Hero Honda Ltd.

It was found out that at Hero Honda, it was the company’s firm belief that the essence of Corporate Governance lies in the phrase “Your Company”. Thus, it is your Company, because it belongs to you - the shareholders. The Chairman and Directors are Your fiduciaries and trustees. Their objective was to take the business forward in such a way that it maximises Your long-term value. The Company was committed to benchmarking itself with global standards for providing good Corporate Governance and has put in place an effective Corporate Governance System, which ensures that the provisions of Clause 49 of the Listing
Agreement are duly complied with. The Board has also evolved and adopted a Code of Conduct based on the principles of Good Corporate Governance and best management practices being followed globally. The Code is available on the website of the Company www.herohonda.com. A report on Corporate Governance along with the Auditors Certificate on its compliance was presented to the company. Hero Honda has a proper and adequate system of internal controls. This ensures that all assets are safeguarded and protected against loss from unauthorised use or disposition and those transactions which are authorised, recorded and reported correctly.

(xii) **HDFC Bank Ltd.**

It was found out that HDFC Bank recognizes the importance of good corporate governance, which was generally accepted as a key factor in attaining fairness for all stakeholders and achieving organizational efficiency. This Corporate Governance Policy, therefore, was established to provide a direction and framework for managing and monitoring the bank in accordance with the principles of good corporate governance. Corporate governance rules for Indian listed companies are set forth in the Clause 49 of the Listing Agreement entered into by the companies with the Indian Stock Exchanges as amended from time to time by the Securities and Exchange Board of India (SEBI). Companies listed on the New York Stock Exchange (NYSE) must comply with certain standards of corporate governance as mentioned in Section 303A of the NYSE's Listed Company Manual. Listed companies that are foreign private issuers (as the term is defined in Rule 3b-4 under the Exchange Act) are permitted to follow home country practices in lieu of the provisions of this Section 303A, except that such companies are required to comply with the requirements of Sections 303A.06, 303A.11 and 303A.12(b) and (c). As per these requirements, a company (i.e. foreign private issuer) must:

1. Establish an independent audit committee that has specified responsibilities
2. Provide prompt certification by its Chief Executive Officer of any material non-compliance with any corporate governance rules
3. Provide periodic written affirmations to the NYSE with respect to its corporate governance practices and
4. Provide a brief description of significant differences between its corporate governance practices and those followed by U.S. companies.

(xiii) **Grasim Industries Limited**
Grasim Industries Limited, part of the Aditya Birla Group, believes in adopting the best corporate governance practices and protecting rights and interests of stakeholders. The directors, further believe that the shareholders have the right to know complete information about the Board of Directors and the management, their interests in the organisation as well as governance practices followed by them. Towards this end, Grasim has been making extensive disclosures on the Company and its Board of Directors and also have been benchmarking its practices with the recommendations of the SEBI Committee on Corporate Governance, since 1999-2000. The directors have continued the practice even during the year and are highlighted in this report. The recommendations of the Kumar Mangalam Birla Committee on Corporate Governance had been accepted by the Securities and Exchange Board of India (SEBI) in December 1999 and had since formed part of Clause 49 of the Listing Agreement with Stock Exchanges. Grasim’s Board consists of 11 directors comprising of 10 Non-Executive and Independent Directors and 1 Whole Time Director. The Non-Executive and Independent Directors together account for 91% of the Board. Of this, 7 Directors are Independent, as defined by SEBI, and have no personal / professional relationship with the Company and includes two nominee directors, one each representing Industrial Development Bank of India (Lender) and Life Insurance Corporation of India (Investor).

(xiv) **Dr Reddy's Labs. Ltd**
The governance framework in Dr. Reddy’s integrates the environmental, social and economic dimensions of our performance. We receive high-level guidance on our approach to sustainability, which covers a diverse range of issues at Dr. Reddy’s. The Board supports our investments in environmental protection, provides guidance to initiate progressive employee practices and regularly reviews regulatory compliance, all of which add value to our sustainability efforts. At Dr. Reddy’s, the integration of sustainability thinking with our core business processes happens on two levels. The corporate level, where overall policies and strategic direction are set and capital is allocated. The business groups, which generate
revenue and where the impact on communities and the environment is most immediate The Board of Directors helps set the strategic direction for the Company. It ensures timely disclosures and transparent accounting policies. It reviews broad corporate policies, overall performance, corporate social responsibility measures and other areas of significance to the organization. The Company’s commitment to sound governance is reflected in the Board’s composition and independence. The Board comprises individuals of diverse backgrounds with broad relevant experience. As on March 31, 2009, the Board of Dr. Reddy’s had nine Directors, comprising three executive Directors, including the Chairman and six independent Directors as defined under Listing Agreement with Indian Stock Exchanges and the Corporate Governance Guidelines of the NYSE. Detailed profiles of Directors have been discussed in the annual report 2008-09. As on March 31, 2009, the Committee consists of Mr. Anupam Puri as Chairman and Dr. Omkar Goswami as member. The role of the Governance Committee was:

(i) Shortlisting of nominees for induction to the Board of the Company;
(ii) Selection of nominees on the Board of the Company;
(iii) Recommendation, appointment and handle resignations of members to the Board for its consideration; and
(iv) Reviewing the principles of corporate governance of the Company.

The Board of Directors, in their meeting held on May 18, 2009, had merged the Governance Committee and Compensation (Remuneration Committee) into one and named it as the Governance and Compensation Committee, with all 6 (six) Independent Directors as its members. The existing terms or reference of both Governance Committee and Compensation Committee prevails to exercise its functions

(xv) Cipla Ltd.

The company was committed to ethical values; sincere practices and responsible business conduct in every aspect of business operations. It is managed enterprise that seeks success in terms of growth in the business and social arenas. It is practically embarked on identifying and rewarding potential and performance. Encouraging employees to understand and adopt the vision of dynamic growth. Good Governance moves beyond the mere veneer of ensuring
compliance and engages in the proactive creation of a value-system that leverages resources and aligns activities to ensure customer satisfaction, stakeholder benefits and employee growth. Good governance is an established process that is consistently refined to ensure truth, transparency, accountability and responsibility in all dealings, both internal and external. The rewards of running a well-managed enterprise that seeks not just to succeed in terms of business growth, but also empowers social growth, are manifold. Good governance is the key driver of long-term sustainable growth and value-creation. In the pursuit of good governance it is vital that the company infuse the people with a vision of dynamic growth and entrepreneurship and creating a system that ensures stability, while allowing for flexibility and combines consistency with the room for necessary changes and expansion. Employees, working on the twin parameters of potential and performance form the core of the organization. The employee development programme seeks to ensure that every employee seeks personal growth, while developing skills and knowledge, while working with the company. The board views corporate governance as a trusteeship; a philosophy to be professed; a value to be imbibed and an ideology to be ingrained in corporate culture. All these practices are in full compliance with Clause 49 of the Listing Agreement with the Bombay Stock Exchange Limited and SEBI.

(xvi) Bajaj Auto Ltd.

The company has obtained the certificate from its statutory auditors regarding compliance with the provisions relating to corporate governance laid down in clause 49 of the listing agreement. This report is annexed to the directors’ report, and will be sent to the stock exchanges along with the annual return to be filed by the company. The London Stock Exchange has formulated a combined code, which sets out the principles of good governance and code of best practice. The code is not legally applicable to the company. However, given that Bajaj Auto’s GDRs are listed on the London Stock Exchange, the company has examined the code and has noted that it is substantially in compliance with the critical parameters, especially in matters of transparency and disclosures.
(xvii) Bharat Heavy Electricals LTD. (BHEL)

As per the requirements of Clause 49 of the Listing Agreement a detailed report on Corporate Governance together with the following was given at Annexure-3 of the directors’ report:

(i) CEO/CFO Certificate [as per Clause 49(V)] and

(ii) Certificate from the Company’s Auditors [as per Clause 49(VII)].

Information in accordance with the provisions of Section 217(1)(e) of the Companies Act, 1956 read with Companies (Disclosure of Particulars in the Report of the Board of Directors) Rules, 1988 regarding conservation of energy, technology absorption and foreign exchange earnings and outgo are given in the annual report. None of the employees of the Company is drawing remuneration in excess of the limits prescribed under section 217(2A) of the Companies Act, 1956 read with Companies (Particulars of employees) Rules, 1975.

(xviii) Ambuja Cement Ltd.

The Company has complied with the Corporate Governance Code in accordance with the listing agreement with Stock Exchanges. A separate section on Corporate Governance, along with a certificate from the Auditors confirming compliance is annexed and forms part of the Directors’ Report.

The three-legged corporate compliance stool — disclosure, accounting standards, and boardroom practices — has lifted India to a global pedestal in Corporate Governance. In a study titled What Works in Securities Laws? Professors Rafael La Porta, Florencio Lopez de Silanes, and Andrei Shleifer comment, “India scores 100% as far as disclosure standards are concerned.” The Indian accounting standards are aligned with international accounting standards and are “principle based. One of the most sophisticated pension fund managers, CalPERS, gave a score of three (the maximum that could be awarded) via permissible equity market analysis when voting for India as an investment destination. Its September 2004 report, CLSA–CG Watch says, “In terms of consolidation, segmental reporting, deferred tax accounting and related party transactions, the gap between Indian and U.S. Generally Accepted Accounting Principles (GAAP), is minimal.” Regarding Corporate Governance it might be worthwhile to recall what an Economist Intelligence Unit 2003 study said: “Top of
the Country class, as might be expected, is Singapore followed by Hong Kong SAR and somewhat surprisingly, India where overall disclosure standards have improved dramatically, accounting differences between local and U.S. standards have been minimized and the number of companies with a majority of independent directors has risen significantly.” The CLSA – Emerging Markets Study on Corporate Governance gives India a score of 6.2, which is next only to 7.5 for Singapore and 6.7 for Hong Kong SAR, and this happened before the implementation of the Narayana Murthy Committee recommendations, said to be effective from January 1, 2006. None of the Indian companies listed on the New York Stock Exchange (NYSE) or on the NASDAQ, to public knowledge, has sought the benefit of transition time for the implementation of SOX requirements. What could possibly be more comforting to any regulator or investor than the CLSA–Emerging Markets Study comment “The Securities and Exchange Board of India (SEBI) continues to raise the bar for good Corporate Governance.” The Indian Securities Market is next only to the U.S. market in terms of size. Though by all criteria of economic research, market capitalization and trades in U.S. dollar terms determine market size, in Actual operations, the market participants and the regulators have to grapple with the number of listed securities, market participants, and the volume of transactions— areas where India stands out. The National Stock Exchange (NSE) is the third-largest exchange in the world, next only to the NYSE and NASDAQ, in the number of transactions, followed by the Bombay Stock Exchange, the fifth largest in the world. India has the largest electronic order book; NYSE and NASDAQ books are quote driven. In the matter of single-stock futures, India leads the world, followed by EURONEXT, which is not even 25 percent its size. Even in index futures, NSE volumes are next only to the Chicago Mercantile Exchange and Eurex. No other market in the world, including that of Japan, compares with the volume of transactions of Indian markets. The focus of development and the quality of regulation have not centered only on primary and secondary markets, they have also been directed at quality of intermediation and enforcement. The mutual fund industry of India, which has gone through a host of reforms via regulatory interventions, today has some outstanding features such as benchmarking mutual fund schemes, valuation norms, uniform cutoff time, and comprehensive risk management. An independent study organized by the Asian Development Bank, the Cadgorn report testifies to this. Investors and issuers can take comfort and make transactions with confidence if intermediaries and their employees:
(1) follow a code of conduct and deal with probity and
(2) are capable of providing professional services.

All intermediaries in the Securities Market are now registered and regulated by SEBI. A code of conduct has been prescribed for each intermediary as well as for their employees, in addition to applicability of fit and proper person regulatory standards. Further, capital adequacy and other norms have been specified and a system of monitoring and inspecting their operations has been instituted to enforce compliance. Disciplinary Action is taken against them for violating any ground rules. All the intermediaries in the market are mandated to have a compliance officer, who reports noncompliance observations directly and independently to SEBI.

It is evident from the above discussion that SEBI has brought in encouraging reforms and companies are motivated to take up and implement the good Corporate Governance practices. No company amongst the selected companies is acting in breach of laid down corporate governance principles. The idea of the independent director’s role is very good. Hence, SEBI is putting on remarkable efforts to protect the investors and keep the Indian capital market running in a smooth and sustainable gear.