CHAPTER-5

CORPORATE GOVERNANCE IN INDIA, ENGLAND AND AMERICA
A. General

Corporate Governance is a system of structuring; operating, and controlling a company with a view to achieve long-term strategic goals to satisfy its shareholders, creditors, employees, customers and suppliers. It aims to comply with the legal and regulatory requirements. It include the policies and procedures adopted by a company to achieve its objectives in relation to its shareholders, employees, customers suppliers, regulatory authorities and the community at large. It prescribes a code of corporate conduct in relation to all the stake-holders. Therefore, a framework of effective accountability to the stake holders is the essence of corporate governance.¹

B. Meaning and Definition of Corporate Governance

In common parlance, the term ‘corporate governance’ simply refers to the processes and structure by which business and affairs of corporate sector are directed and managed. It can also be classified as a field in economics, which studies many issues arising from the separation of ownership and control. It provides an architecture of accountability as well as the structures and processes to ensure that companies are managed in the interest of their owners.²

Corporate governance has succeeded in attracting a good deal of public interest because of its apparent importance for the economic health of corporations and society in general. However, the concept of corporate governance is poorly defined because it potentially covers a large number of distinct economic phenomenon. As a result different people have come up with different definitions that basically reflect their special interest in the field. It is hard to see that this 'disorder' will be any different in the future so the best way to define the concept is perhaps to list a few of the different definitions rather than just mentioning one definition.

i) Corporate governance is a field in economics that investigates how to secure/motivate efficient management of corporations by the use of incentive mechanisms, such as contracts, organizational designs and legislation. This is often limited to the question of improving financial performance, for example, how the corporate owners can secure/motive that the corporate managers will deliver a competitive rate of return.3

ii) "Corporate governance is the system by which business corporations are directed and controlled. The corporate governance structure specifies the distribution of rights and responsibilities among different participants in the corporation, such as, the board, managers, shareholders and other stakeholders, and spells out the rules and procedures for making decisions on corporate affairs. By doing this, it also provides the structure through which the company objectives are set, and the means of attaining those objectives and monitoring performance.4

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4 OECD April 1999 OECD's definition is consistent with the one presented by Cadbury (1992). p. 15.
iii) "Corporate governance is about promoting corporate fairness, transparency and accountability."

iv) The term corporate governance has been defined "as the system by which companies are directed and controlled. The basic objective of corporate governance is to enhance and maximize shareholder value and protect the interest of other stake holder".

v) A complex definition has also been provided by the Advisory Board of the National Association of Corporate Directors (NACD), New York:
"Corporate governance ensures that long term strategic objectives and plans are established and that the proper management structure (organization, systems and people) is in place to achieve those objectives, while at the same time making sure that the structure functions to maintain the corporation’s integrity reputation, and responsibility to its various constituencies."

C. Historical Perspective of Corporate Governance

The term ‘corporate governance’ has become a buzzword these days. There may be two factors for this development. The first is that after the collapse of the Soviet Union and the end of the cold war in 1990, it has become the Conventional Wisdom all over the world that market dynamics must prevail in economic matters. The concept of the Government controlling the commanding heights of the economy has been given up. This, in turn, has made the market the most decisive factor in settling economic issues.

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5 J. Wolfensohn, president of the world bank, as quoted by an article in Financial Times, (New Delhi) June 21, 1999.
6 This piece has been extracted from one of the speech of Sir Adrian Cadbury delivered in India during his visit year 2000.
8 Ibid.
This has also coincided with the thrust given to globalization because of the setting up of the WTO and every member of the WTO trying to bring down the tariff barriers. Globalisation involves the movement of four economic parameters, namely:

i) Physical capital in terms of plant and machinery,

ii) Financial capital in terms of money invested in capital markets or in FDI.

iii) Technology, and

iv) Labour moving across national borders.

The pace of movement of financial capital has become greater because of the pervasive impact of information technology and the world having become a global village. When investments take place in emerging markets, the investors want to be sure that not only are the capital markets or enterprises with which they are investing, run competently but they also have good corporate governance. Corporate governance represents the value framework, the ethical framework and the moral framework under which business decisions are taken. In other words, when investments take place across national borders, the investors want to be sure that not only is their capital handled effectively and adds to the creation of wealth, but the business decisions are also taken in a manner which is not illegal or involving moral hazard.

But historically speaking, after the great depression of the 1930's in Europe and America, it was universally accepted fact that corporate reform was the only way to achieve prosperity. For example in the USA, after the

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9 Ibid.
10 Ibid.
depression and the beginnings of the new deal, interest revived in corporate reform. A vast amount of regulatory legislation was enacted, and Congress at least contemplated the possibility of federal chartering of corporations.\textsuperscript{11} In this context, no one explanation can suffice for the revived interest in basic corporate reform in the 1930’s, except that most of the different stands of thought were depression-related. That is, many believed that the business system had failed and that corporations needed fundamental changes.\textsuperscript{12}

However, current preoccupation with corporate governance can be pinpointed at two events: the East Asian Crisis, 1997 saw the economics of Thailand, Indonesia, South Korea, Malaysia and the Philippines severely affected by the exist of foreign capital after property assets collapsed. Since the emerging economics had abundant natural and human resources and had requisite technical infrastructure, the MNCS targeted emerging economies as potential markets.\textsuperscript{13} The investment made by these companies provided the much needed resource for development and these companies imparted global standards in the emerging economies. However, such countries were opaque closed or inward oriented with market unfriendly systems. The collapse of the South East Asian tiger brought home the fact that if there is no proper corporate governance in the financial sector, it leads to crony capitalism and corruption.\textsuperscript{14} The second event was the American Corporate Crisis of 2001-2002 which saw the collapse of two big corporations: Enron and world com,

\begin{itemize}
\item \textsuperscript{12} Donald E. Schwartz, Federalism and Corporate Governance, 45 Ohio St. L.J. 545, 547.
\item \textsuperscript{13} G.N. Bajpai, corporate Governance and Development: why It matters? Available at, www.sebi.gov.in/chairmanspeech/chsp 7. pdf (Last visited August 1, 2009).
\item \textsuperscript{14} Ibid.
\end{itemize}
and the ensuing scandals and collapses in other corporations such as Arthur Andersen, Global Crossing and Tyco.

The concept of corporate governance basically originated in UK in 1991 on the basis of report of a committee set up by the London Stock Exchange (LSE) and the Financial Reporting Council (FRC) of British under the chairmanship of Sir Adrain Cadbury.\textsuperscript{15}

\textbf{D. Objectives of Corporate Governance}

The concept of corporate governance is multi-faceted and covers a wide range of objectives ranging from managing and maintaining operational transparency to something as simple as follow legal mandatory disclosure norms. Corporate governance is the set of rules and procedures that ensure that managers do indeed employ the principles of value based management. The essence of corporate governance is to make sure that the key shareholder objective-wealth maximization is implemented. Most corporate governance provisions come in two forms. The first in the threat of removal either as a decision by the board of directors or as the result of a hostile takeover. Second and which is most important for the firm’s managers is the fear of loss of job which they need not fear if they are consciously involved in maximizing the value of the resources entrusted to them.\textsuperscript{16}

\textbf{E. Features of Corporate Governance}

There are so many features of corporate-governance in corporate field. Which are as under:

i) It is an economic or financial concept.

ii) Involves organizational and social objectives

\textsuperscript{15} Cadbury Committee Report (1992).
iii) Guiding practices, process and principles.
iv) Motivate management to perform better.
v) Universal approach.
vi) Framework of rules, relationships, systems and processes at all levels in an organisation.
vii) Tool for benchmarking and controlling performance.

F. Corporate Governance: Ethical Conduct of Business

Corporate governance is all about ethical conduct of business. It is concerned with code of values and principles which guide a person to select between right and wrong. Good CG is about selecting that course of action amidst various alternative options and conflicting interest of various parties which seeks to benefit greatest number of stakeholders.17

G. Elements of Good Corporate Governance

There are various elements of Corporate Governance. These elements are:

i) Role and Powers of Board: Good governance is decisively the manifestation of personal beliefs and values which configure the organizational values, beliefs and actions of its Board.18 The absence of clearly designated role and powers of Board weakens accountability mechanism and threatens the achievement of organizational goals. Therefore, the foremost requirement of good governance is the clear identification of powers, roles, responsibilities and accountability of the Board, CEO, and the Chairman of the Board. The role of the Board should be clearly documented in a Board charter.

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17 Dilip Kumar Sen “Corporate Governance Norms for Listed Indian Companies. Have They changed Corporates?” SEBI and Corporate Laws March 8-14, 2010. p. 43.
18 The Board as a main functionary is primary responsible to ensure value creation for its stakeholders.
ii) **Legislation**: Clear and unambiguous legislation and regulations are fundamental to effective corporate governance. Legislation that requires continuing legal interpretation or is difficult to interpret on a day-to-day basis can be subject to deliberate manipulation or inadvertent misinterpretation.

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

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

   (a) Operational or technical expertise, commitment to establish leadership;
   (b) Financial skills;
   (c) Legal skills; and
   (d) Knowledge of Government and regulatory requirement

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vi) Board Appointments :- To ensure that the most competent people are appointed in the Board, the Board positions should be filled through the process of extensive search. A well-defined and open procedure must be in place for reappointments as well as for appointment of new directors. Appointment mechanism should satisfy all statutory and administrative requirements. High on the priority should be an understanding of skill requirements of the Board particularly at the time of making a choice for appointing a new director. All new directors should be provided with a letter of appointment setting out in detail their duties and responsibilities.

vii) Board Induction and Training :- Directors must have a broad understanding of the area of operation of the company’s business, corporate strategy and challenges being faced by the Board. Attendance at continuing education and professional development programmes is essential to ensure that directors remain abreast of all developments, which are or may impact on their corporate governance and other related duties.

viii) Board Independence :- Independent Board is essential for sound corporate governance. This goal may be achieved by associating sufficient number of independent directors with the Board. Independence of director would ensure that there are no actual or perceived conflicts of interest. It also ensures that the Board is effective in supervising and, where necessary, challenging the activities of management. The Board needs to be capable of
assessing the performance of managers with an objective perspective. Accordingly, the majority of Board members should be independent of both the management team and any commercial dealing with the company.

**ix) Meetings of Board** :- Directors must devote sufficient time and give due attention to meet their obligations. Attending Board meetings regularly and preparing thoroughly before entering the Boardroom increases, the quality of interaction at Board meetings. Board meetings are the forums for Board decision making. These meetings enable directors to discharge their responsibilities. The effectiveness of Board meetings is dependent on carefully planned agendas and providing relevant papers and materials to directors sufficiently prior to Board meetings. Also, in the present scenario, Board meetings through modern means of communication like tele-conferencing, video conferencing may be expressly allowed under law.19

**x) Board Resources** :- Board members should have sufficient resources to enable them to discharge their duties effectively. It includes an access for director to independent legal and professional advice at the company’s expense. The costs of supporting the Board should be transparent and reported.

**xi) Code of Conduct** :- It is essential that the organizations explicitly prescribed norms of ethical practices and code of conduct are communicated to all stakeholders and are clearly understood and followed by each member of the organization. System should be in place to periodically measure, evaluate and if possible recognise the adherence to code of conduct.

**xii) Strategy Setting** :- The objectives of the must be clearly documented in along-term corporate strategy including an annual business plan together with achievable and measurable performance targets and milestones.

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19 See, the Companies Act, 1956; section 285.
xiii) Business and Community Obligations :- Though basic activity of a business entity is inherently commercial yet it must also take care of community’s obligations. Commercial objectives and community service obligations should be clearly documented after approval by the Board. The proposed and on going initiatives taken to meet the community obligations.

xiv) Financial and Operational Reporting :- The Board require comprehensive, regular, reliable, timely, correct and relevant information in a form and of a quality that is appropriate to discharge its function of monitoring corporate performance. For this purpose, clearly defined performance measures. Financial and non-financial should be prescribed which would add to the efficiency and effectiveness of the organisation. The reports and information provided by the management must be comprehensive but not so extensive and detailed as to hamper comprehension of the key issues. The reports should be available to Board members well in advance to allow informed decision-making. Reporting should include status report about the state of implementation to facilitate the monitoring of the progress of all significant Board approved initiatives.

xv) Monitoring the Board Performance :- The Board must monitor and evaluate its combined performance and also that of individual directors at periodic intervals, using key performance indicators besides peer review. The Board should establish an appropriate mechanism for reporting the results of Board’s performance evaluation results.

xvi) Audit Committee :- The concept of Audit Committee came in the wake of celebrated American case of Mc Kesson v. Robbins Inc., involving auditor’s liability. However, it was Canada, which first made the constitution of audit committee mandatory for public companies.20

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In our country, thoughts have gone into audit committee as a means to attain better financial discipline in corporate sector by enhancing audit independence and assuring proper functioning of the internal control system. In India every public company having paid-up capital of not less than rupees five crore to constitute an audit committee as a committee of the Board of Director.\textsuperscript{21}

\textbf{xvii) Risk Management:-} Risk is an important element of corporate functioning and governance. There should be a clearly established process of identifying, analyzing and treating risks, which could prevent the company from effectively achieving its objectives. It also involves establishing a link between risk-return and resourcing priorities. Appropriate control procedures in the form of a risk management plan must be put in place to manage risk throughout the organisation. The plan should cover activities as diverse as review of operating performance, effective use of information technology, contracting out and outsourcing.

The Board has the ultimate responsibility for identifying major risks to the organisation, setting acceptable levels of risk and ensuring that senior management takes steps to detect, monitor and control these risks. The Board must satisfy itself that appropriate risk management systems and procedure are in place to identify and manage risks. For this purpose the company should subject itself to periodic external and internal risk reviews.

\textbf{H. Specification of Relationship}

Corporate governance specifies the relationships between, and the distribution of rights and responsibilities among, the main groups of participants:

(a) The board of directors

(b) The managers (if any)

\textsuperscript{21} See, the Companies Act, 1956, section 292.
(c) The workers
(d) The shareholders or owners
(e) The regulators
(f) The customers
(g) The community (people affected by the actions of the organisation)
(h) The suppliers.

I. General Principles of Corporate Governance

Corporate governance represents the value framework, the ethical framework and the moral framework under which business decisions are taken.\textsuperscript{22} Corporate Governance effectively, therefore, calls for three factors:

a) Transparency in decision-making,

b) Accountability which follows from transparency because responsibilities could be fixed easily for actions taken or not taken and

c) The accountability is for safeguarding the interests of the stake holders and the investors in the organisation.\textsuperscript{23}

Corporate Governance also depends upon two things. The first is the commitment of the management for the principle of integrity and transparency in business operations. The second is the legal and the administrative framework created by the Government. If public governance is weak, we can not have good corporate governance.\textsuperscript{24} Thus, the Government is an important party to corporate governance where other parties include the regulatory body (e.g., the Chief Executive Officer, the board of directors, management and shareholders). Other stake-holders who take part include suppliers, employees, creditors, customers and the community at large.

\textsuperscript{22} Supra note 7.
\textsuperscript{23} Ibid.
\textsuperscript{24} Supra note 13.
Key elements of good corporate governance principles include honesty, trust and integrity, openness, performance orientation, responsibility and accountability, mutual respect and commitment to the organisation. Of importance is how directors and management develop a model of governance that aligns the values of the corporate participants and then evaluate this model periodically for its effectiveness. In particular, senior executives should conduct themselves honestly and ethically, especially concerning actual or apparent conflicts of interest and disclosure in financial reports.

In this way the main principles of corporate governance are:

i) **Rights and Equitable Treatment of Shareholders** :- Organisations should respect the rights of shareholders and help shareholders to exercise those rights. They can help shareholders exercise their rights by effectively communicating information that is understandable and accessible and encouraging shareholders to participate in general meetings.

ii) **Interests of Other Stake Holders** :- Organisations should recognise that they have legal and other obligations to all legitimate stake holders.

iii) **Role and Responsibilities of the Board** :- The board needs a range of skill and understanding to be able to deal with various business issues and has the ability to review and challenge management performance. It needs to be of sufficient size and has an appropriate level of commitment to fulfil its responsibilities and duties. There are issues about the appropriate mix of executive and non-executive directors. The key roles of chairperson and CEO should not be held by the same person.
iv) **Integrity and Ethical Behaviour** :- Organisations should develop a code of conduct for their directors and executives that promote ethical and responsible decision-making. It is important to understand, that systemic reliance on integrity and ethics is bound to eventual failure.

v) **Disclosure and Transparency** :- Organisations should clarify and make publicly known the roles and responsibilities of board and management to provide shareholders with a level of accountability. They should also implement procedures to independently verify and safeguard the integrity of the company’s financial reporting. Disclosure of material matters concerning the organisation should be timely and balanced to ensure that all investors have access to clear factual information.25

**J. Issues Involving Corporate Governance Principles Include**

(a) Oversight of the preparation of the entity’s financial statement;
(b) Internal controls and the independence of the entity’s auditors;
(c) Review of the compensation arrangements for the chief executive officer and other senior executives;
(d) The way in which individuals are nominated for positions on the board;
(e) The resources made available to directors in carrying out their duties;
(f) Oversight and management or risk;
(g) Dividend policy.

**K. Importance of Corporate Governance**

The importance of good corporate governance has also been increasingly recognized for improving the firm’s competitiveness, better corporate performance and better relationship with all stakeholders for which

25 Ibid.
corporations are also required to adhere to the uniform and proper accounting standards, as the standards reduce discretion, discrepancy and enhance not only the degree of transparency in sharing of information with the stakeholders but also reinforce the broader role the directors need to play for achieving corporate objectives in the midst of challenges and adversities.26

The concept of corporate governance in India gains importance from the following factors, which are proven and time-tested.27

(a) It stresses on the need of to have transparency in respect of board matters, disclosures to shareholders and also emphasizes on the need to have an ‘arms-length relationship’ between the promoters/owners and the managers.

(b) It explains the need to adhere to ethical business practices.

(c) It smoothens the process of integration of India into the world economy, thereby enabling the Indian industry to play the game by a set standard of international rules rather than continue anachronistic practices.

(d) It ensures that promoters of a company remain perennially accountable and responsive to shareholders, creditors, consumers and employees.

(e) Corporate governance is a must, not only to gain credibility and trust but also as a part of strategic management for survival, consolidation and growth.

(f) Corporate governance strives to enhance board performance by emphasizing on the contributions of professionally qualified and experienced non-executive directors and board committees.


(g) Corporate governance strives to monitor and ensure absolute compliance with the laws of the land.

(h) The important characteristics of corporate governance, i.e., adequate disclosures, focused approach, streamlined delegation and professional management, ultimately result in maximizing the shareholder-value and protecting the interest of creditors and employees.

However there is no single model of corporate governance and each country over the period of time has developed a wide variety of mechanisms to overcome the agency problems arising out of separation of ownership and control. One of the challenges policy makers are facing is how to develop a good corporate governance framework which can secure the benefits associated with controlling shareholders acting as direct monitors, while at the same time ensuring that they do not impinge upon the development of equity markets. Corporate Governance affects the development and functioning of capital markets and exerts a strong influence on resource allocation. In era of increasing capital mobility and globalization, it has also become an important framework affecting the industrial competitiveness.28

Today, there is a growing dialog among different stakeholders about corporate governance and how it should evolve to cope with the increasingly dynamic and global nature of our capital markets. This has been happening for the last few years, even before Satyam happened (or rather came into light). Post-Satyam, the process has gathered momentum. This dialogue is taking place against a background of legislative and regulatory change (i.e. the revised clause 49 and the expected changes in the company law arising from

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28 Shilpi Thapar “Markets for Corporate Control – An Effective Mechanism of Corporate Governance.” Chartered Secretary, March, 2009 p. 309.
the Dr. J.J. Irani committee report). There has been a significant increase in the scope of audit and other internal control, and risk management along with increased public scrutiny. And that means a few fundamental changes for India, Inc too.\textsuperscript{29}

In this way good corporate governance, being a critical doctrine to the global economic system, enables the business to not only effectively and efficiently achieve its corporate objectives but also provides it the structure and methodology to sustain its very survival in a globally competitive environment.

I. Advantages of Good Corporate Governance

There are so many advantages of Good Corporate Governance, which are as follows:

a) Adoption of good corporate governance practices assures stability and growth to an enterprise.

b) Builds confidence amongst stakeholders as well as prospective stakeholders. Investors are willing to pay higher price to the corporates that demonstrates strict adherence to internationally accepted norms.

c) In a knowledge-driven economy, excellence in skills is the ultimate requirement for the Board to excel and to take the benefit.

d) Long-term substance and strengthened stakeholders' relationships.

e) A good corporate citizen enjoys a position of respect.

f) Potential stakeholders aspire to enter into relationships with enterprises whose governance credentials are exemplary.

M. Corporate Governance: Role in Preventing Corporate Scandals

The role of corporate governance is to ensure long-term viability, to steward the company to fulfill its potential while adhering to high ethical standards.

The role of corporate governance, is three-fold:

a) Ensuring the long-term health and viability of the company;

b) Stewarding the company to fulfil its potential and to become as great as it can be; and

c) Adherence to the highest standard of ethics, statutory compliance and social responsibility.

In the case of Satyam, there was an undue concentration of power with the founders, disproportionate to their low shareholding. The board was far less independent than required. The core issue, clearly, is balance of power. The Satyam episode has allowed us to look at the fundamental aspects of corporate governance: on whose behalf the company is governed, and how we can distribute power to ensure the longevity and effectiveness of the institution.\(^{30}\)

In *Harikishore Bhattad v. Union of India*,\(^{31}\) the SEBI, as a part of its efforts to improve governance in stock exchanges notified a scheme, namely, Hyderabad Stock Exchange Ltd. (Corporatisation and Demutualisation) scheme, 2005. In terms of clause 9(ii) of said scheme, company is to ensure that at least 51 percent of equity share are held by public other than shareholders having trading rights in manner and period specified in section 4B(8) of Securities Contracts (Regulation) Act, 1956. The petitioners who were member-broker of Hyderabad Stock Exchange Ltd. (HSEL) filed instant writ petition challenging impugned proceedings on the ground that same were arbitrary illegal and contrary to the provisions of the Act as regulations were issued belatedly and more time should be granted by SEBI for completing demutualisation process. The Andhra Pradesh High Court held that the essence of the corporatisation and demutualisation was to

\(^{30}\) Ibid.

\(^{31}\) (2010)97 SCL 261 (AP).
segregate trading, ownership and management of exchanges, thereby ensuring independence of the stock exchanges from potential conflicts between the brokers and investment communities. In this way High Court dismissed the writ petition of the petitioners.

N. Corporate Social Responsibility (CSR) and Corporate Governance

(a) General :- Corporate social responsibility (CSR) is essentially a concept whereby companies integrate social and environmental concerns in their business operations and in the interaction with their stakeholders on a voluntary basis. Through voluntary commitment to CSR, companies send a positive signal of their behaviour to their various stakeholders, viz. shareholders, employees, investors, creditors, suppliers, customers, regulators, government, and the society at large. In doing so, they make an investment towards future and increase their profitability. In fact, corporate governance and corporate responsibility towards society are inextricably interlinked, intertwined and inseparable from each other.32

(b) Meaning of Corporate Social Responsibility :- Corporate social responsibility (CSR) can be described as an approach by which a company:33

(i) recognises that its activities have a wider impact on the society and that development in society, in turn, supports the company to pursue its business successfully; and

(ii) actively manage the economic, social, environmental and human rights impact of its activities.

This approach is derived from principles of sustainable development and good ‘Corporate Governance’.

(c) **Relevance of Corporate Social Responsibility** :- The relevance of corporate social responsibility is increasingly crucial to success because it gives companies a mission and strategy around which multiple constituents can rely. The business most likely to succeed in today's rapidly evolving global environment will be those best able to balance the often conflicting interests of their multiple stakeholders.\(^{34}\)

(d) **Importance of Corporate Social Responsibility (CSR)** :- There are many factors that have compelled the corporates to recognize and attach tremendous importance to CSR in discharging their day to day activities. Some of these are:\(^{35}\)

(i) New concerns and expectations from various stakeholders in the context of large-scale industrial change due to globalization;

(ii) Increased influence of social criteria on the investment decisions of individuals and institutions, both as consumers and as investors;

(iii) Increased concern about the damage to the environment caused by economic activities;

(iv) Transparency of business activities brought about by the modern information and communication technologies.

In the present era of intense competition, it is imperative for the corporates to generate and sustain 'Goodwill' among their stakeholders and the community at large. Therefore, active participation in various social welfare projects is surely going to improve the corporates visibility and place them on a pedestal of high public esteem. The business firms should understand the fact that economic goals


\(^{35}\) *Supra* note. 33.
and social responsibility objectives need not be contradictory to each other rather both can co-exist and both can be achieved simultaneously.36

In fact, corporate governance and corporate responsibility towards society are inextricably interlinked, intertwined and inseparable from each other. Therefore, it is a well-conceived fact that good corporate governance itself is part and parcel of corporate responsibility towards society.37

(e) E-Form for Filing Corporate Social Responsibility Report: The ministry of corporate affairs had released voluntary guidelines on Corporate Social Responsibility (CSR) during the ‘Indian Corporate Week’ organized in December, 2009. A number of corporates have stated that they would like to have an effective framework for reporting their responsible business practices. Keeping in view this feedback from the corporate sector, Shri R. Bandyopadhyay, Secretary, Ministry of corporate Affairs, stated that the ministry is in the process of designing an e-form under MCA-21 which will enable the corporates to file their CSR report on the portal of the ministry. The availability of these reports at a single place will enable the ministry to take policy decisions on this front and also to showcase the responsible business practices of Indian Corporate Sector to the whole world.38

O. Corporate Governance in India – A Background

The history of the development of Indian corporate laws has been marked by interesting contracts. At independence, India inherited one of the world’s poorest economies but one which had a factory sector accounting for a tenth of national product; Four functioning stock markets (predating the Tokyo Stock Exchange) with clearly defined rules governing listing, trading and settlements; a well-developed equity culture only among the urban rich; and a banking system

36 Id, at 49.
37 Supra note. 33.
replete with well-developed lending norms and recovery procedures. In terms of corporate laws and financial system therefore, India emerged far better endowed than most other colonies. The 1956 Companies Act as well as other laws governing the functioning of joint-stock companies and protecting the investor's rights built on this foundation.

But the turn towards socialism in the decades after independence marked by the 1951 Industries (Development and Regulation) Act as well as the 1956 Industrial Policy Resolution put in place a regime and culture of licensing, protection and widespread red-tape that bred corruption and stilted the growth of the corporate sector. The situation grew from bad to worse in the following decades and corruption, nepotism an inefficiency became the hallmarks of the Indian corporate sector. Exorbitant tax rates encouraged creative accounting practices and complicated emolument structures to beat the system.

For most of the post-independence era, the Indian equity markets were not liquid or sophisticated enough to exert effective control over the companies. Listing requirements of exchanges enforced some transparency, but non-compliance was neither rare nor acted upon. All in all, therefore, minority shareholders and creditors in India remained effectively unprotected in spite of a plethora of laws in the books.

(a) Role of SEBI in Corporate Governance :- The years since liberalization have witnessed wide-ranging changes in both laws and regulations driving corporate governance as well as general consciousness about it. Perhaps the single

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39 Omkar Goswami, Corporate Governance in India, Taking action against corruption in Asia and the Pacific, Asian Development Bank, Manila, Chapter 9, 2002.
40 Ibid.
42 Ibid.
43 Ibid.
most important development in the field of corporate governance and investor protection in India has been the establishment of the Securities and Exchange Board of India (SEBI) in 1992 and its gradual empowerment since then. Established primarily to regulate and monitor stock trading, it has played a crucial role in establishing the basic minimum ground rules of corporate conduct in the country. In the Indian context, the need for corporate governance has been highlighted because of the scams we have been having almost as an annual feature ever since we had liberalization from 1991. We have the Harshad Mehta Scam, Ketan Parikh Scam, UTI Scam, Vanishing Company Scam and so on.44 Recent Satyam Scam is the largest scam in the history of corporate India. These concerns about corporate governance stemming from the corporate sandals as well as opening up to the forces of competition and globalization gave rise to several investigations into the ways to fix the corporate governance situation in India.

One of the first among such endeavours was the CII Code for Desirable Corporate Governance developed by a committee chaired by Rahul Bajaj.46 The committee was formed in 1996 and had submitted its code in April 1998. Later, SEBI constituted two committees to look into the issue of corporate governance, the first chaired by Kumar Manglam Birla47 that submitted its report in early 2000 and the second by Naryan Murthy three years later.48 A committee headed by Shri Naresh Chandra was constituted in August 2002 to examine corporate audit, role

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45 Satyam (Scandal) http://enunipipedia.orwiki/satyam-scandal.
48 Shri Kumar Mangalam committee to Promote and Raise the standard of corporate Governance in India Securities and Exchange Board of India, May 1999.
of auditors, relationship of company and auditor.\textsuperscript{49} The recommendations of the Birla Committee have been implemented by the insertion of clause 49 in the listing Agreement with the Stock Exchanges. The following table summarises the recommendations of the above committees on corporate governance

\textbf{Table 1}

\textbf{(b) A Comparison of the Recommendations of the Various Committees}\textsuperscript{*}

<table>
<thead>
<tr>
<th>Birla Committee Recommendations</th>
<th>N. Murthy Committees Recommendations</th>
<th>Shri Naresh Chandra Committee Report</th>
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<tbody>
<tr>
<td>(a) Applies to listed companies with paid up capital of Rs. 3 crore and above</td>
<td>(a) Strengthening the responsibilities of audit committee</td>
<td>(a) Recommended a list of disqualifications for audit assignments like direct relationship with company, any business relationship with company, any business relationship with client, personal relationship with director.</td>
</tr>
<tr>
<td>(b) Composition of board of directors optimum combination of executive &amp; non-executive directors</td>
<td>(b) Improving quality of financial disclosures</td>
<td>(b) Audit firms not to provide services such as accounting internal audit assignments, etc., to audit clients</td>
</tr>
</tbody>
</table>

\textsuperscript{49} Committee headed by Shri Naresh Chandra to Examine Corporate Audit, Role of Auditors, Relationship of Company & Auditor, August 2002.

\textsuperscript{*} [www.sebi.gov.in/investor//recog.html (Last visited on March 30, 2010)]
| (c) Audit committee with 3 independent Directors with one having financial and accounting knowledge | (c) Utilisation of Proceeds from IPO | (c) Auditor to disclose contingent liabilities and highlight significant accounting policies. |
| (d) Board procedures at least 4 meetings of the board in a year with maximum gap of 4 months between 2 meetings. To review operational plans, capital budgets, quarterly results, minutes of committees meeting. | (d) To assess disclose business risks. | (d) Audit committee to be first point of reference for appointment of auditors |
| (e) Director shall not be a member of more than 10 committee and shall not act as chairman of more than 5 committees across all companies | (e) Formal code of conduct for board | (e) CEO and CFO of listed company to certify on fairness, correctness of annual audited accounts |
| (f) Management discussion and analysis report covering industry | (f) Whistle blower policy to be placed in a company providing | (f) Redefinition of independent directors does not have any |
The concept of corporate governance (initiated by the SEBI on the basis of recommendations of various committees such as Naresh Chandra 2000, Shri Kumar Mangalam Birla 2002 and Shri Narayana Murthy 2003) hinges on complete transparency, integrity and accountability of management, which also includes the non-executive directors. The main aim of corporate governance is to handle corporate frauds and scandals, and it is a system of making directors accountable to shareholders for the effective management of the company and also with adequate concern for ethics and value.\(^{50}\)

Moreover, SEBI has given effect to the Kumar Mangalam Committee’s recommendations by a direction to all the Stock Exchanges to amend their

listing agreement with various companies in accordance with the 'mandatory' part of the recommendations. With its list of recommendations the SEBI clearly addresses the rights, responsibilities and obligations of the different groups of stakeholders in the company. Although these changes are being implemented, one needs to consider that in many cases the most important stakeholder of an Indian company is likely to be the owner/proprietor himself. The owner usually controls management and typically member of the family are involved in the day-to-day supervision of the company. Even though the company may be listed on the stock exchange, shares are mostly held within the family. The Board of Directors may be comprised of family members and close friends of the family.51

(c) Role of Stock Exchanges in Corporate Governance :- In India, stock exchange are formed either as associations or companies under the Companies Act.52 At present, there are 23 stock exchanges in India. Out of them three, i.e. the Bombay Stock Exchange, the National Stock Exchange and Over-The-Trade-Counter Exchange are in Bombay itself. The Bombay Stock Exchange ('BSE') is the oldest in Asia, even older than the Tokyo Stock Exchange. It was established in the year 1875 and is the most active stock exchange in India. Seventy percent of the listed companies of India are listed on the BSE and one-third of the total turnover in securities in India is done on the BSE. The Stock exchanges play an important role in improving the corporate governance in a business organisation by performing the various functions

(a) A strong domestic stock exchange performance forms the basis for well-performing domestic corporate to raise capital in the international

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52 See, the Companies Act, 1956; section 25.
This implies that the domestic economy is opened up to international competitive pressures, which help to raise efficiency. It is also very likely that existence of a domestic securities market will deter capital outflow by providing attractive investment opportunities within domestic economy.  

(b) In the face of great discrepancies in rate of return, the accumulation of capital does not contribute much to development. A developed stock exchange successful monitors the efficiency with which the existing capital stock is deployed and thereby significantly increases the average return.

(c) The stock exchanges provide a fast-rate breeding ground for the skills and judgment needed for entrepreneurship, risk bearing, portfolio selection and management.  

(d) Listing on the Stock Exchange :- Listing of securities means the admission of a security for trading in a particularly stock exchange. As the dealing in securities in fiduciary in nature and is being susceptible to fraud and undesirable practices. Hence, before granting admission to a security, the stock exchange authorities verifies that the securities must confirm to its standards, and share are widely distributed to offer an assurance that an adequate auction market will exist therein, if it is listed. The company whose securities are listed has to comply with the terms and condition of the concerned stock exchange. The company has to furnish the information about the company to

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54 Id at 81.  
the stock exchange not only at the time of listing but afterwards also till its security is listed in a stock exchange concerned.\textsuperscript{57}

The listing helps the investors in taking their investment decisions as continued information about the company is easily and readily available to the investors, financial advisors and consultants. The stock exchanges ensures that the material information about the listed companies is available to all the investor easily.\textsuperscript{58}

**Procedure for Listing** :- The company seeking listing on the stock exchange make a letter of application first. The letter of application is a request of the company for the securities specified therein to be listed on the stock exchange. Then the application form is to be submitted giving out detailed information about the company to the exchange along with the supporting documents. The information to be supplied in the application form should give a complete and fair picture of the company and include Memorandum and Articles of Association, debenture trust deed, prospectus, underwriting agreements, promoters and collaboration Agreements, Directors' Report, Balance Sheet and Profit & Loss Account and short history of the company giving out the details of its activities and other related matters. Finally, the company has to enter into a listing agreement with the Stock Exchange in a specified form and pay the initial listing fees.\textsuperscript{59}

**Objective of Listing Agreement** :- i) The broader objective of the agreement is to provide a forum of continuing relations between the stock exchange and company and to promote the interest of the shareholders and the general public. Under this agreement, the company is under an

\textsuperscript{58} Ibid.
\textsuperscript{59} V.A. Avadhani, "Investment and Securities Markets in India" (2008) p. 261.
obligation to perform certain acts, make certain disclosures of its affairs and activities, both financial and otherwise, and to provide facility for the free transfer of its share among the public. The protection of the interest of the non-management shareholders in the event of a take-over is also provided for. The company has also to disclose its affairs, its future plans and present performance and publish its financial position in the public interest.\textsuperscript{60}

ii) Under the listing agreement, the company is obliged to provide facilities for prompt transfer, registration, sub-division and consolidation of securities, notify the exchange of any attachment or prohibitory orders, to give due notice of closure of transfer books and record dates, to forward copies of annual reports, balance sheet etc. The company undertakes to notify promptly to the exchange the total turnover, the gross and net profits for the year together with the appropriations and tax liabilities, proposed issue of bonus or right shares or any other exchange in the capital structure. The exchange has to protect the interests of the investors and shareholders and to ensure that fair and prefer practices are followed by the company in this direction.\textsuperscript{61}

iii) It will thus be seen that the listing agreement is an important document laying down the relations between the stock exchange and the company and to ensure that fair practices are followed by the company in the interests of the investing public in general and of the shareholders in particular.\textsuperscript{62}

\textsuperscript{60} Ibid.

\textsuperscript{61} Supra, n. 59 p. 262.

\textsuperscript{62} Ibid.
Recent Changes in Listing Agreement: i) Clause 41 of the listing agreement was amended to make listed companies furnish to Stock Exchange, segment-wise returns, income, capital employed etc., along with the quarterly un-audited financial results from the quarter-ended, as per the prescribed formed.\(^63\)

ii) Clause 32 of the listing agreement was also amended for furnishing consolidated Financial Statement in the annual report in addition to compliance with the accounting standard on “Related Party Disclosures”.\(^64\)

(e) Clause 49 of the Listing Agreement and Corporate Governance: SEBI amended clause 49 of the listing agreement to bring about improvements in corporate governance practices.\(^65\)

(i) All compensation paid to none executive directors to be fixed by board of directors and approved by shareholders.

(ii) Code of conduct for board members and senior management should be laid down by company boards.

(iii) Chief executive and chief finance officer should certify the balance sheet, profit and loss account and cash flow statements in the directors’ report.

In this clause 49 was added to the Listing Agreement, to impose on the listed companies an obligation to observe all norms of good corporate governance.

A new clause 50 was added to provide that companies shall mandatorily comply with all the accounting standards issued by ICAI. The Listing Agreement was also amended to incorporate provision on buy back of shares and to ensure

\(^{63}\) Ibid.
\(^{64}\) Ibid.
\(^{65}\) The revised clause 49 thus has come into effect from January 1, 2006.
that 7 days notice is given to the Stock Exchange about the Board meeting on the proposal for buyback. Stock exchanges were given penal powers to impose penalties up to Rs. 5 Lakhs on companies for any violation of listing provisions. To establish uniformity in listing rules, practices and procedures in all Stock Exchanges in India, a listing authority of India was set up by the government; on the initiative of the SEBI.66

In this way Stock Exchanges play a very important role in improving the quality of corporate governance.

(f) Role of Reserve Bank of India (RBI) in Corporate Governance :- A standing committee under the chairmanship of Dr. Y.V. Reddy, the then Deputy Governor of RBI was set up by the then Governor of the Reserve Bank of India (RBI) on 8th December 1999. The standing committee in its first meeting on 13th January 2000, constituted non-official advisory groups in ten major subject areas, of which 'corporate governance' was identified as one of the areas. Accordingly, an advisor group on corporate governance under the chairmanship of Dr. R.H. Patil, Managing Director, National Stock Exchange (NSE), Mumbai was constituted on 8th February 2000. They submitted report on 24th March, 2001. The report contained several recommendation on corporate governance.67 The Advisory Group of RBI observed: "a distinguishing feature of the Indian Diaspora is the implicit acceptance that corporate entities belong to founding families". ".....in the Indian scenario, the promoters dominate governance in every possible way."68

(g) Role of Accounting in Good Corporate Governance :- Accounting plays a vital role in corporate governance because of its fundamental role in any disclosure regime concerning information about companies' activities. A strong

66 Supra n. 59 p. 262.
67 Subhash Chandra Das "Corporate Governance in India an Evaluation" (2009) p. 28.
68 Id, at 32.
disclosure regime is essential for the exercise of shareholder rights, for monitoring corporate activity and for imposing discipline on management. In this context it is relevant to note that despite the seven statutes under which SEC in America operates, the recurrent theme throughout is disclosure, again disclosure, and still more disclosure. Without effective and uniform accounting standards and practices, however meaningful, disclosure can not take place.

P. Corporate Governance Models Around the World

There are many different models of corporate governance around the world. These differ according to the variety of capitalism in which they are embedded. The liberal model that is common in Anglo-American countries tends to give priority to the interests of shareholders. The coordinated model that one finds in Continental Europe and Japan also recognizes the interests of workers, managers, suppliers, customers, and the community. Both models have distinct competitive advantages, but in different ways. The liberal model of corporate governance encourages radical innovation and cost competition, whereas the coordinated model of corporate governance facilitates incremental innovation and quality competition.

Q. Corporate Governance in England

(a) General :- Although Companies have always had governance in one form or another, a review of corporate governance was not conducted in the England (U.K.) until the establishment of the Cadbury Committee in 1991. The so-called

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69 The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation performance, ownership and governance of the company. Art IV, OECD Principles of Corporate Governance.


Cadbury Committee, chaired by Sir Adrian Cadbury and set up by the Financial Reporting Council, the London Stock Exchange and the accountancy profession, was established because of perceived concern over the level of confidence in financial reporting and the ability of auditors to provide the necessary safeguards. The Cadbury Report, titled Financial Aspects of Corporate Governance, is a report by Adrian Cadbury that sets out recommendations on the arrangement of company boards and accounting systems to mitigate corporate governance risks and failures.

In the wake of certain events involving corporate scandal, namely, Polly Peck, BCCI and the Robert Maxwell affairs, the scope of the report was widened and the committee recommended that the code of best practice should be addressed to all listed companies registered in the England. But it also recommended that ‘...as many other companies as possible...’ should be encouraged ‘... to aim at meeting its requirements’. After the Cadbury Committee, a number of other committees were established in the England, prominent among which are – The Greenbury Report (1995) and the Hampel Committee 1998. The Hampel Report was charged with producing a combined code on corporate governance. The London Stock Exchange took the consultation forward and in June 1998 the Principles of Good Governance and Code of Best practice was published. The resulting combined code deals with directors’ conduct and remuneration, relations with shareholders, accountability, audit and institutional investors. Next in the line of reforms was the Higgs Review where, as a result of the findings of the Company Law Review steering group, Derek Higgs was asked by the Department of Trade and Industry (DTI) to conduct a

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72 Ibid.
review of the role and effectiveness of non-executive director later becoming known as the Higgs Review.\textsuperscript{74} Higgs was tasked with assessing:

i) the population of non-executive directors in the England (U.K.) – who are they, how are they appointed, how the pool might be widened, etc;

ii) their independence;

iii) their effectiveness;

iv) accountability; their relationship – actual and potential – with institutional investors;

v) issues relating to non-executive directors’ remuneration;

vi) the role of the combined code;

vii) what, if anything, could be done – by individual boards, by institutional investors, by the Government or otherwise – to strengthen the quality, independence and effectiveness of non-executive directors.

Following up a recommendation in Chapter 10 of the Higgs Review, Professor Laura Tyson was asked to lead a group to look at how companies might draw on broader pools of talent with varied and complementary skills, experience and perspectives to enhance board effectiveness. The Tyson Report ‘Recruitment and Development of Non-Executive Directors’ was published in June 2003.\textsuperscript{75} A month later the new combined code on Corporate Governance was published, superseding the combined code published as a result of the Hampel Committee in 1998.\textsuperscript{76} For most listed companies, the primary obligations for corporate governance stem from the combined code. The code is annexed to the listing

\textsuperscript{74} The Higgs Review (2003), together with full details of the research conduct for the review and related information, available at, http://www.dti.gov.uk/eld/non_exec_review, (Last visited August 4, 2009)


rules, which are published by the UK (England) Listing Authority (UKLA), and with which listed companies in the UK must comply.77

(b) Principles for Good Governance in England (UK)78:-(i) shareholders have a right and an obligation to exercise and responsibilities as a corporate owner.
(ii) Existing England (UK) codes of Best Practice should be strengthened not weakened
(iii) Periodic review and updating of best practice guidelines should continue and reviewing bodies should include investors board outside the United Kingdom.
(iv) A Board’s structure should be built upon the twin concepts of independence from management and accountability to corporate owners.
(v) Best governance and practices in the United Kingdom (England) should include several elements that strengthen management accountability to corporate owners through the director shareholders relationship.

R. Corporate Governance in America (USA)
(a) General: Like the UK, the USA has a well-developed market with a diverse shareholder base including institution investors, financial institutions and individuals. It also has many of the agency problems associated with the separation of corporate ownership from corporate control.79 The present corporate reform movement in the United States is the third such serious effort during this century. In the early 1900’s, active consideration was given to federalizing the law of corporations, and both presidents, Theodore Roosevelt and William Howard Taft, made proposals. Following World War I a mood of euphorbia about American business swept the country and scant attention was paid to reform. But

after the depression and the beginnings of the New Deal, interest revived in corporate reform. A vast amount of regulatory legislation was enacted, and Congress at least contemplated the possibility of federal chartering of corporations.\textsuperscript{80} IN the 1970's new advocated of fundamental corporate reform urged federal chartering, or at least an enhanced federal role. These reform efforts were not brought on by economic failings, at least not at the start of the decade, but were mainly a social reform movement. Probably the most important group to focus on reform of the corporations was the consumer movement, led by Ralph Nadar and others who sought to demonstrate the connection between ordinary business activity and a wide range of social problems, including unsafe products, pollution, and race and sex discrimination.\textsuperscript{81} As mentioned above, the effort to reform the corporations has gained much importance in recent years and has been the topic of numerous symposia and has received much scholarly attention.\textsuperscript{82}

The USA (America) is somewhat unusual in not having had a definitive corporate governance code in the same way that many other countries have and do. Rather there have been various state and federal developments over a number of years. Some idiosyncratic features include: the Delaware General Corporation Law, which essentially gives companies incorporated in Delaware certain

\textsuperscript{80} Donald E. Schwartz, Federalism and Corporate Governance, 45 Ohio St. L.J. 545, 547. Ralph Nadar and his colleagues popularized the idea in 1976. R. Nadar, M. Green, & J, Seligman, Taming the Giant Corporation (1976). This well-publicized effort prompted congressional interest and senate hearings were held. Corporate Rights and responsibilities: Hearings before the committee on Commerce, U.S. Senate, 94\textsuperscript{th} Cong., 2nd Sess. (1976). Other academic writings also urged new federal law to govern corporations. Cary, Federalism and Corporation Law: Reflections upon Delaware, 83 Yale L.J. 663 (1974); Schwartz, A case for Federal Chartering of corporations, 31 Bus. Law. 1125 (1976).

advantages, and the Employee Retirement Income Security Act 1974 (ERISA), which mandates private pension funds to vote their shares.\textsuperscript{83}

However the main thrust on Corporate Governance in the United States has come by the passing of the Sarbanes – Oxley Act in 2002 by the Federal Government of the United State of America.\textsuperscript{84} These reforms came in the wake of a number of major corporate and accounting scandals including those affecting Enron, Tyco International and World com (now MCI). These scandals resulted in a decline of public trust in accounting and reporting practices. The Sarbanes – Oxley Act 2002 is wide ranging and establishes new or enhanced standards for all U.S. public company Boards, management and public accounting firms. The Act contains 11 titles or sections, ranging from additional corporate Board responsibilities to criminal penalties, and requires the Securities and Exchange Commission (SEC) to implement rulings on requirements to comply with the new law. The effects of this new law are yet to be seen in the corporate domain; although some critics believe that the new law does more economic damages than it prevents, yet others observe how essentially modest in the Act is compared to the heavy rhetoric accompanying it.

\textbf{(b) The Sarbanes Act, 2002} \textsuperscript{85} – Oxley Act provides for far-reaching reform and has caused much disquiet outside the USA because the Act applies equally to US and non-US firm with a US listing. However, some of the provisions of the Sarbanes-Oxley Act are in direct conflict with provisions in the law/practice of other countries. In reality, this has led to some companies delisting from the NYSE and has deterred other non-US firms from applying to be listed on the NYSE.\textsuperscript{85}

\textsuperscript{83} \textit{Supra} n. 67.
\textsuperscript{84} Sarbanes – Oxley Act, 2002 was drafted by Senator Paul Sarbanes and Representative Michael G. Oxley, the Act was approved by the House by a vote of 423.3 and by the Senate 99-0.
\textsuperscript{85} \textit{Supra} n. 79 at p. 39.
The Sarbanes – Oxley Act 2002 provides the following provisions:

i) Penalty for corporate fraud. It includes up to twenty years imprisonment for altering/destroying documents which are subject to federal inquiries.

ii) CEOs are liable to ten to twenty years of imprisonment with fines one to five million US dollars if they certify false accounts.

iii) Time period for engaging in law suits by defrauded investors was enhanced.

iv) Accounting firms are prohibited from providing consultancy and any non-auditing service to their client organization.

v) New rules to be framed for financial analysts by the Security and Exchange Commission in order to highlight conflict in interest, in particular, in investment banking system.

vi) Accounting profession to be under strict scrutiny by a five-member private sector board which will have disciplinary as well as court/subpoena powers.

(c) Whistle Blowing Policy

In America whistle blowing is defined as disclosing information that an employee reasonably believes is evidence of illegality, gross waste or fraud, gross mismanagement abuse of power, or a substantial and specific danger to public health and safety. Whistle Blowing policy may include:

i) Reporting wrong-doing or a violation of the law to the proper authorities.

ii) Refusing to participate in a workplace of wrong-doing.

iii) Testifying in a legal proceeding.

iv) Leaking evidence of wrong-doing.

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87 Dr. Neetu Prakash “Managing Corporate Frauds : Need of the Millennium” SEBI and Corporate Laws September 3-9, 21007, p. 88.
A whistle blowing policy helps better corporate governance through:

i) early detection of wrong doings, wastages, illegal activities etc.
ii) check on senior executive and functionaries
iii) fair dealing with employees
iv) check on compliance with code of conduct.

In this way in England and America there are various legislations on corporate governance. In both these countries stock exchanges also played a very crucial role in improving the standards of corporate governance. In England the London Stock Exchange played a very important role in strengthening the corporate governance norms by constituting the Cadbury Committee and Ron Hampel Committee on Corporate Governance. Both these committees made various recommendations regarding the corporate governance in the companies in England. Some recommendations of these committees were mandatory. In America also some famous Stock Exchanges like New York Stock Exchange, NASDAQ played a very important role in improving the standard of corporate governance in the companies by making the listing agreement more stringent.

Listing requirements are vigorous for the NYSE. The listing requirements for NYSE include a track record of profitability for three years by the company, minimum value of tangible assets (say $ 16 million and an acceptable level of market capitalization, minimum earnings record, adequate floating stock and wide ownership. Their disclosure requirements are also rigorous for companies with four quarterly earnings reports, in a year.

The NASDAQ is a self-regulatory organization (SRO). The dealers who are members to trade on OTC, have to pass a qualifying test and observe a code of

conduct and code of procedure. They register themselves either as principal dealer or representative (agent). These tight listing rules and regulations ensure good corporate governance in corporates. In this way the stock exchanges in England and America played a very important role in improving the standards of corporate governance.

In regard to market for corporate control unlike the USA and the UK, the capital market and stock exchanges in India are not strong enough or developed due to high level of concentration of control rights and dominance of internal capital market system. Even the takeover market is not developed in India as compared to these countries for check and removal of inefficient management.

S. Epilogue

Corporate Governance is getting greater attention with the series of corporate failings after which the markets, investors and the society have begun to lose faith in the corporate sector. This concept was basically developed in the form of surveillance of system to be enforced under the corporate laws; but in actual sense, it does not take care of the spirit of the concept nor the extent of coverage required since the role of directors including independent director, audit committee, disclosure made by the corporate sector, etc., has been questioned in a number of cases. Realistically speaking, corporate governance is concerned with wider accountability and responsibility of the director including non-executive directors, auditors towards every stakeholder of the corporation. Now-a-days, the conduct of those who take care of public money is being questioned. They are being tested on ethical standards, therefore re-look on corporate governance is urgently required. In this connection, some suggestions are given below:-

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90 Ibid.
i) There should be adequate law relating to the functioning of business enterprises, covering the entire spectrum from registration of companies, their structure, and settlement of disputes, laws relating to the capital and punishment for bad practices like insider trading.

ii) The corporate sector should understand that corporate governance and ethical conduct in business stems from the culture and mindset of the management, and it is beyond the realm of law.

iii) There should be greater awareness on the part of directors regarding their duties and responsibilities not only under the law but also towards the society and outsiders.

iv) There should be an effective association with Department of Company Affairs (DCA) and different industry associations like (CIT, FICCI), ASSOCHAM, ICAI, etc., to frame policies and guidelines for the overall growth and development of the industries and the economy.

v) There should be genuine annual report by the audit committee without being influenced by the board of directors or chairman.

vi) The role of media should be increased and it should constantly highlight the good and bad corporate governance practices of various companies so that corporate sector may have compliance with all the regulatory framework.

vii) There is need for stronger corporate governance norms to prevent recurrence of scandals like Satyam in future.