CHAPTER VII
SUMMARY OF FINDINGS SUGGESTIONS AND CONCLUSION

7.1 Design of the Study
7.2 Findings of the Study
7.3 Problems and Suggestions
7.4 Conclusion
"We cannot allow the dead hand of the past to stifle the growth of the living present; law cannot be stand still; it must change with the changing social concepts and values. If the law fails to respond to the needs of changing society, it will stifle the growth of the society".  

The present chapter consolidates at one quarter various findings recorded at preceding chapters of this research report.

7.1 DESIGN OF THE STUDY

The sheer complexity and economic vehemence of the corporate phenomenon of modern times are so baffling that the inevitable result is the collapse of legal, audit, and bureaucratic controls over corporate governance in almost all countries, whether it be the German model of supervisory boards or the Japanese model of shareholders silence or the English model of permissive company law or the US model of shareholder vocalism.

The first chapter presents the concept of the company and how it is being governed. The term corporate governance is explained along with the principles, its importance and the consequences of poor corporate governance practices. The genesis of the study is also explained. This chapter also presents the research design adopted for the study. The design part of the study shows that the research is of descriptive type in nature. It is a study of synchronic in nature. The tools used for the survey are explained. The present researcher has also developed a model for measuring the board practices. The methodological issue involved in the construction of the model is also explained. The researcher also explained the plan of analysis adopted in this study along with the scheme of the present research report.

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7.2 FINDINGS OF THE STUDY

The following paragraphs present the findings of the study.

7.2.1 Corporate Governance Models

The second chapter presents different models of corporate governance prevalent in different parts of the world. Company form of organisation is a social institution. It is the gift of Roman empire. The original corporate model as delivered by the Roman Empire is not adopted by the countries around the world. Each and every society adopts the corporate form to suit its socio-political and economical environment. Hence, different models of corporate governance. The prominent models can be arranged in a continuum. At the one end of continuum lies the Anglo-American Model and at the other end, the German Model.

The Anglo-American Model is characterised by unitary board which shall be constituted by the shareholders. Again shareholders are empowered to appoint auditors in some countries, like India, which follows Anglo-American model. In country like U.S.A., the Audit Committee performs the role of auditor, which is constituted by the board. Two-tier board is the unique feature under the German Model. The upper board is constituted by the shareholders as well as the employees which is called supervisory board and the lower-tier is constituted by the supervisory board. The second-tier board is known as management board. The management board looks after the day-to-day business of the company. Dual membership is not permitted, normally, under the two-tier model. The custodians of the shareholders can exercise voting right as per the advice of the shareholders under the German model. In the absence of the instruction, the custodians can exercise the voting rights according to their discretion.
The corporate form is conceived in this continuum with suitable modification, depending upon the need and requirement of a country. The audit committee plays a dominant role in the U.S.A., compared to other countries in which the Anglo-American model is adopted. There is a specific reason for the prominent role assigned to audit committee. In the U.S.A., there is no statutory provision for the shareholders to appoint auditors. Hence, the prominent role for audit committee. Audit committee is a new concept even in U.K. The Japanese board lies in between the German model and Anglo-American model, inheriting some features of both models.

The technology has integrated different countries and to-days’ world can be rightly called as Global village. As different countries started integrating, the customs, conventions and different practices also started converging. Corporate governance is not an exception. The divergent practices, which were prevailing in different countries now, started converging. The researcher hopes that over a period of time, there may not be different corporate governance models as of now.

Besides, this chapter attempts to trace the shareholders movement in different countries. Further, the corporate governance practices prevailing in different countries, especially U.S.A., U.K., and Japan, are also portrayed.

7.2.3 Indian Corporate Governance Practices

The third chapter attempts to trace the evolution of corporate form of business in India. The profile of Indian companies as well as the promoters are also portrayed in this chapter. The reasons for the present state of corporate governance are also highlighted.
7.2.3.1 Introduction

The first Companies Act, was passed in the year 1850 under the title of ‘Registration of Joint-Stock Companies”. The Joint Stock Companies Act of the U.K., was the model on the basis of which the above Act was passed. That is why it was used to say that Indian Companies Acts are the most cherished children of the English brains. The post independent India had passed its own legislation, in order to meet its political, social and economical aspirations. The growth of companies in India, which is astronomical, is also portrayed.

7.2.3.2 Indian Corporate Governance Model

The Indian corporate governance model has the following features:

(i) Shareholders’ approach in the constitution of the board
(ii) Unitary board
(iii) Hybrid of insider and outsider board.

7.2.3.3 Profile of Indian Companies and Business

This chapter portrays the profile of the promoters in India. A snapshot of corporate governance in India is obtained by the presenting the existing practices in the corporate sector. The snapshot revealed that the family run companies dominated the situation. The corporate India is dominated more by family business. In India, the family business accounts for about 70 per cent of the total sales and net profits of the biggest 250 private sector companies. In the beginning, the promoters formed the companies, financed the project and also managed the companies. It was purely a family affair. The company form of organisation is chosen as a vehicle for carrying on the business due to certain conveniences available in the corporate form like limited liability and the capacity to mobilise funds from the public at large. However, over the years,
their involvement had become less and less. Gradually their commitment in the companies were also reduced. The funds needed for the business was provided by the financial institutions and the public in the form of share capital and debentures.

Promoters play a key role not only in promoting the company but also in the process of governance. The promoters control both the governing organ as well as the executive management of the company directly. Most of the companies in India are managed by the promoters either by himself as Managing Director or their representatives as Managing Director. The promoters ran the companies under their control as their personal fiefdoms. The Board of Directors is supposed to be the agents of the shareholders. Hence, they have a fiduciary relationship towards the shareholders. However, it seems that no promoter has realised this truth. The promoters are of opinion that the company belongs to them forever and considers shareholders as legal nuisance. The promoters are the de-facto owners of the company and their legal heir takes the mantle from their fathers as a matter of their right. Many did not have the managerial capacity. As a result, many companies turned sick.

Wealth was measured in terms of the amount siphoned off, out of the company. The promoter was largely not accountable to any one except himself. The composition of the top fifty business families had been completely changed now, if one compares the companies at the time of independence. At the dawn of the new millennium, just three or four families which were in the “first fifty” list at the time of independence are able to stand in the race. The reason for the large number of dropouts can be attributed to the neglect of principles of corporate governance.

7.2.3.4 Reasons For Ineffective Corporate Governance System

The present researcher identified the reasons for the collapse of the corporate governance mechanism due to following factors:
(i) Managing Agency System: The present day malaise of the corporate governance system can be attributed mainly to the managing agency system.

(ii) Ineffective Company Meetings: The method of ascertaining the will of the shareholders is instrumental in deteriorating the level of corporate governance.

(iii) Lack of Unity and Organisation among Members: The shareholders as a group alone can derive the right to manage the company. As they are splintered, they are not able to enjoy their due right.

(iv) Closure of Transfer Books: The register of the members is closed due to administrative reasons. As a result, number of shareholders who are not able to get their shares in their names, are not in a position to exercise their rights.

(v) Lack of Clear and Complete Reporting: The reporting practices further dampens the corporate governance issues.

(vi) Mindset of Indian businessmen: The mental make of businessmen is mainly oriented in making money. Hence, they disregard all rules and regulations. The laws are observed more in violation than in adherence.

(vii) Xenophobia: The political leaders had a mind set, which had landed our companies in such a bad shape vis-à-vis corporate governance.

(viii) Dominance of Public Sector: The presence of public sector units enabled to project the performance of the private sector units as the best, in spite of poor performance. Hence, the shareholders are conditioned to take it for granted even the poor practices of private sector.
(ix) Political Interference: Whenever, the markets interfere to check the under performers, the Government interfered to rescue the inefficient promoters in the pretext of protection or some other reasons.

(x) Weak Judicial System: The defect of the judicial system encouraged the business community to violate the law, knowing pretty well that if at all they are caught, they have to be enquired through the court of law, which will decide the case after three or four decades. Hence, they are conditioned to violate the laws.

(xi) Inaction of the Government: The Government follows a crisis management style. Under most of the circumstances, they are reactive only and not proactive. Hence, this situation.

(xii) Fruits of Good Corporate Governance: If the yesteryear businessmen, followed the principles of corporate governance, the present day shareholders would trust the legal heirs of that yesteryear businessmen. Groups like Tata and Birla come under this category.

7.2.3.5 Changing Scenario

Though the promoters are conditioned to ignore the shareholders, the dawn of liberalisation and globalisation initiated changes in the mind set of Indian business community. As a result, they are trying to change. Shareholders also started changing. Now, they are demanding results from the promoters.

7.2.3.6 Regulators

A number of agencies are there to regulate the corporate governance. Chief among them are SEBI (the market regulator), Department of Company Affairs, Ministry of Finance, Registrar of Companies and Company Law Board. Despite the presence of a number of agencies, the effectiveness of this network
is still questionable. Absence of co-ordination among the different agencies leads to a situation, where the promoters have often sneak off with the help of the system itself. Apart from all the limitations in the functioning of SEBI, SEBI is instrumental in bringing the discipline in the corporate sector. Though the prevailing discipline is not far from satisfactory, the position is comparatively better, if one compare the position in the pre-SEBI era.

7.2.4 Board of Directors

The fourth chapter attempts to present the role of board in the mechanism of corporate governance. It is the executive organ through which the company is achieving its objectives and corporate mission.

7.2.4.1 Rationale of the Board

A company is an artificial person functioning through natural individuals. Shareholders are the owners of the company. All the shareholders cannot participate in the board meeting. Hence, shareholders elect an executive organ under the name of Board of Directors. The Board of Directors function to achieve the objectives and the mission of the corporation. Therefore, the board translates the wishes of the shareholders into reality. Thus, there is an essential role to be played by the board, for the existence and survival of the company.

7.2.4.2 Unitary Vs. Two-tier Structure

The board may be constituted either as a single board or a two-tier structure, in which the upper tier is usually called as supervisory board and the lower tier as management board. The two-tier board is popular in countries like Germany, Austria, Argentina etc. Unitary board is popular in countries like the U.K., the U.S.A., and other erstwhile colonial countries of British Empire.
7.2.4.3 Types of Board

The boards can be classified from a number of angles. The present researcher has taken a model, where the boards are classified following an evolutionary progression. There are four types of boards, viz., Constitutional board, Consultive board, Collegial board and Communal board. Constitutional board is one, which is constituted on account of legal compulsion. Consultive board is one, where the board is accommodated with persons who are needed for the CEO, either for consultation or for some sort of advise. In the evolutionary process, consultive board follows the constitutional board. As the company graduates to a higher level, the complexity of the problem increases. As a result, the CEO requires the assistance of experts. Such experts are given berth in the board. The next stage of development in the constitution of the board is Collegial board which is characterised by discussion, debate and disagreement. Communal boards are one where the representation to the board is looked upon from the society’s angle. Representation is given for various segments like employees, customers, creditors, backward people and the like. In the U.S.A., black people are given representation in the board for the societal needs.

The researcher has evaluated the boards of the companies in Tamil Nadu by including three items in the questionnaire. On the basis of the response, the researcher has concluded that 47 per cent of the boards can be classified into constitutional board, 37 per cent into the consultive board and 16 per cent under the collegial model. One can be satisfied with the percentage of collegial model, because even in the U.S.A., people used to say that the model is a distant dream. The responses to yet another item revealed that most of the Indian boards can be classified in between constitutional board and consultive board. One more related information is that none of the companies are managed by a full time manager, as stipulated in the Companies Act, 1956. Similarly, no company is being managed by the board directly, without having a managing director.
7.2.4.4 Functions of a Board

By virtue of section 291, the board is the executive organ of a company. The company is being managed by the board. The board carries out its task by performing the following functions:

(i) To review the performance of the management
(ii) To hire and fire CEO
(iii) To have public relation with the society.

The functions performed by the boards of the companies in Tamil Nadu are evaluated against these three functions. ‘Discussion of financial results’ is at the centre stage of all the boards. All the boards of the respondent companies have assigned the first rank to the above business. ‘Strategic planning’ is in the second rank, followed by ‘discussion about day-to-day operation’. Succession planning has secured the fourth position, in terms of the business transacted by the board. The second function with respect to CEO, is not much bothered about by the board. No board bothers about the third function. Even in the U.S.A., it is a function of dispute. Universal agreement about this function is not arrived at. Therefore, if one wants to conclude critically about the boards of Tamil Nadu vis-à-vis the functions of a board, it is lagging behind in the second function viz., hiring and firing of CEO only. To another query, 90 per cent of the companies never evaluated the performance of the board. There is no practice of setting the objectives for the board in 90 per cent of the company. This is revealed by yet another question.

7.2.4.5 Board Meeting

The performance of the board can be evaluated with the help of a number of attributes of the board meeting. The following paragraphs are devoted to evaluate the effectiveness of board meeting:
(i) Notice

Companies accounting for 45 per cent have given of the companies gave more than 21 days notice, which speaks well about the corporate practice.

(ii) Agenda

Companies constituting 90 per cent have the practice of sending the agenda along with the notice of the company; therefore, it is clear that the majority of companies seriously consider the board meeting.

(iii) Venue

Companies representing 78 per cent have a separate venue for the conduct of the meeting. This fact impresses one about the board practices of the company.

(iv) Attendance

In 22 per cent of the companies, one is able to notice more than 90 per cent attendance of the directors. The overall attendance of the directors for the entire target population is 85 per cent.

(v) Number of Board Meetings

The average number of board meetings conducted per annum works out to 4.98, for the companies taken for the study. The median happens to be 5. Twenty per cent of the companies had conducted six meetings per annum. On the basis of the number of the meetings, one can conclude that 21 per cent of the boards are constitutional boards, i.e., they conducted only 4 meetings, i.e., as per the Companies Act, there is a compulsion of conducting a minimum of four meetings.
(vi) Duration of the Meeting

The survey results clearly exhibit that two-thirds of the boards are only constitutional boards from the angle of this criteria, as the duration of a meeting is less than an hour. Only ten per cent of the companies are conducting the meeting for duration of more than 2 hours.

(vii) Minutes of Board Meeting

Companies forming 55 per cent are maintaining minutes of resolution and only 12 companies are maintaining minutes of narration. 33 per cent of the companies are maintaining the minutes of both. Therefore, 45 per cent of the companies are maintaining detailed records of board meeting. It is a thing to be appreciated.

7.2.4.6 Annual General Meeting

Annual general meeting is the body, through which directors are elected and inducted in to the board. The directors have a moral duty to attend and report to their principal, i.e., shareholders about the company. There is no legal compulsion to attend the annual general meeting. Hence, one can also judge the attitude and involvement of the directors in the company from the attendance records of the directors in the annual general meeting, apart from the attendance pertaining to the board meeting.

The attendance record of the executive directors in the annual general meeting is very poor. Nil attendance is reported by 19 per cent of the companies; 77 per cent of the companies reported that the attendance record of executive directors is up to 50 per cent. Only 4 per cent of the companies reported an attendance record of more than 50 per cent. It is a highly disappointing performance of executive directors vis-à-vis attendance in the annual general meeting. A reason for the poor attendance record of the
executive directors in the annual general meeting is that the management might not have given permission. Lack of independence may be instrumental in this regard. However, a further probe alone can reveal the truth.

The attendance record of non-executive directors is highly encouraging compared to executive directors; 46 per cent of the companies reported an attendance record of more than 80 per cent, for the non-executive directors. And 45 per cent of the companies reported an attendance record in the range of 60 to 80 per cent. If one insists 80 per cent as a standard, majority of the companies will be indicted. However, compared to executive directors, the performance of non-executive directors is better.

The managing director is the person who is looking after the business. Therefore, it is a must on the part of managing director to attend the annual general meeting. However, about 22 per cent of the managing directors had not attended the annual general meeting, as per the results of the survey. The majority of the managing directors, 78 per cent, had attended the annual general meeting. The failure of the managing directors to attend the annual general meeting is a matter to be condemned. The future Companies Act should be drafted in such a manner that the attendance of managing director for the annual general meeting is a must.

7.2.4.7 Nature of a Board

The following paragraphs are devoted to explain the nature of the board in terms of size of the board and the role of executive and non-executive.

(i) Size of the board

The survey results revealed that the average size of the board in the listed companies of Tamil Nadu was 7.9; the median size of the board of the listed companies in Tamil Nadu was 6.
(ii) Insider Vs. Outsider

The study of corporate governance is incomplete without the study of the composition of the board, i.e., insider directors and outside directors. At the one end of the continuum comes the inside directors, and at the other end comes the outside directors. Inside directors are usually referred to as executive directors and outside directors are called non-executive directors in Indian context. There is no statutory differentiation between executive directors and non-executive directors according to the provisions of the Companies Act, 1956. However, the term whole-time director has been used in the Companies Act, to refer to the executive directors.

The corporate governance codes framed in the nineties insisted an active role for non-executive directors. In India even, the Birla Code also insisted a stronger role for non-executive directors. As pointed out earlier, in the beginning majority of the boards are of constitutional type, i.e., they have been formed only to satisfy the legal requirement. Hence, in the beginning, the board is packed with the friends and relatives of the promoters. As the size of the company grows, the problems and complexities will also increase in a geometric proportion. Hence, the promoters have to opt for some experts to assist them. Such people will be in the pay roll of the company and also in the board.

The average number of directors is 7.9. The average number of executive directors is 1.8 compared to 5.33 for non-executive directors. Nominee directors representation among the responded companies are a meagre 0.11. None of the companies have given representation to workers. Similarly, there is no alternate director in the target population. The species of independent director are also rare, with an average of 0.46. In a majority of the companies, the number of non-executive directors are in the range of 4-6 and the range for the executive directors is 1-3.
The SEBI Committee Report on Corporate Governance recommends for a minimum of 50 per cent representation to be given for the non-executive directors. Similarly the CII code on corporate governance recommends that if the chairman happens to be a non-executive director, 30 per cent of the board should consist of non-executive directors. If the chairman of the company happens to be the managing director also, 50 per cent of the board should consist of non-executive directors. This is a universal consensus, that the board should give more representation for non-executive directors. Only non-executive directors can provide contestability in the board. They alone can be independent. Hence, the consensus is for a majority non-executive directors in the board. However, the mode of appointment of directors in India does not augur well for providing independence to non-executive directors. In many companies, the old boys network is the source from which the directors are selected. The names are recommended by the promoters and the appointment is duly carried out in the annual general meeting. Hence the independence of the non-executive directors is questionable.

The survey results revealed that both executive directors and non-executive directors actively participate in the board meeting discussions in a majority number of companies. Hence, from the angle of board meeting discussion and deliberation, one can conclude that the directors are independent.

(iii) Participation

The survey results revealed that both executive directors and non-executive directors actively participate in the board meeting discussion and deliberation. Hence, from this angle, one cannot claim superiority or otherwise either for executive directors or for non-executive directors.
(iv) Attendance Record

The contribution of executive directors and non-executive directors is evaluated with the help of attendance record also. As showed in the previous paragraph, there is not of much difference between the attendance recorded by these two categories of directors. On an average, non-executive directors have attended 88 per cent of the board meeting, whereas the executive directors attended only 74 per cent of the board meetings. However, executive directors have a credit of cent per cent attendance in 45 per cent of the companies. Cent per cent attendance is not recorded for the non-executive directors.

(v) Directors Related to Promoters

The institution of inside and outside directors is evaluated vis-à-vis the directors related to promoters. In 56 per cent of the companies directors who are relatives to the promoters are appointed as executive directors. However, the percentage is very high for non-executive directors; 90 per cent of the non-executive directors are related to promoters. Another unique feature noticed in the survey is that 44 per cent of the companies do not have any representation from the promoters among the executive directors.

7.2.4.8 Transparency

Transparency is one of the criteria to judge whether the board is discharging its fiduciary duties towards shareholders properly or not. The Indian disclosure practice is very poor. The prevailing accounting standards also help them to disclose as little as possible. They need not divulge as much information as possible, compared to their counterparts in the developed countries. Another paradox is that the same Indian companies reveal more information for the foreign investors from whom they have mobilised funds.
They need not provide such information, to the local investors because of the lax attitude of our Indian accounting standard and legislation. The listing agreement as well as accounting standards compel the boards to disclose the maximum. The survey results disclosed that 78 per cent of the companies have provided some information to the shareholders during the year 1993-94, though not compelled by the legislation. However, the same information which was provided by the companies as mentioned above, have to be provided by all the companies in a phased manner from 31-3-2001. Therefore, the researcher feels that from the angle of transparency, the companies listed in Tamil Nadu are doing well.

7.2.4.9 Independence of the Board

Independence of the board is one of the pre-requisite for the effective functioning of a board.

(i) Independence of the Board and Promoters

One of the influencing variables for the successful functioning of the company is an independent board. More the independence of the directors, more will be the effective functioning of the board. One of functions of the board is to hire and fire the managing director. The results of the survey showed that in 23 per cent of the companies the promoter himself occupy the position of managing director and in another 55 per cent of the companies the relatives of the promoters are occupying the position of managing director. Only in 22 per cent of the companies the managing directors are not related to promoters. The directors are all hand picked by the promoters. Hence, all the members of the board are all puppets in the hands of the promoters. Therefore, one cannot expect the board to be independent of the promoter. The survey results revealed that only in 13 per cent of the companies the board is numerically dominated by the promoters’ relatives.
(ii) Proposals for the Board Meeting

The board manages the company through the decisions taken in the board meeting. The resolutions passed in the meeting are the decisions of the meeting. The proposals submitted in the meeting are the input for the resolutions. Therefore, one can judge the extent of participation as well as independence of the individual directors, on the basis of the proposals submitted in the board meeting. The responses to the above query clearly show that under most of the circumstances the proposals are filed by the Chairman only. In 83 per cent of the companies, it is the chairman who brings a proposal and in 17 per cent of the companies the CEOs are bringing the proposals. The individual directors who are neither chairman nor managing director are not at all filing the proposals.

(iii) Remuneration to Non-Executive Directors

The majority of the non-executive directors are not entitled to any remuneration other than the allowance and sitting allowance. Since they are not in receipt of any monetary remuneration, one need not fear about the loss of independence. However, from another angle, the non-executive directors will not contribute effectively in the board meeting. Whether the company earns or not, they are not at all affected. Hence, they may not be involved in the company affairs. They are not properly motivated to contribute towards the objectives of the company as they are not entitled to any remuneration.

(iv) Domination in the Board Meeting

The researcher takes in to account some more factor to judge how the affairs of the board is conducted, i.e., whether in a free and independent manner. The survey results revealed that the secretaries of the company sensed the domination of a single individual in as many as 60 companies. Only in 23 per cent of the companies, there is no domination.
(v) Practice of Recording Dissent Note

The effectiveness of the functioning of the board can be judged by observing how seriously the process of deliberation is carried out. If the members are really independent, they may not hesitate to state their objection or take a stand against the proposed decision. Further, the members may even try to record their objection. The survey results showed that directors in 85 per cent of the companies do not insist on recording the their dissent to any decision arrived at the meeting. In the last five years, only 14 resolutions had been passed with dissent note for all the companies taken together. This speaks well about the independence and involvement of the board members. The directors are not involved in the affairs of the company as well as they are not independent.

(vi) Process of Re-election

The survey results showed that in 86 per cent of the companies, all the directors who retired in the last five years had been re-elected. In 10 per cent of the companies the retiring directors had not been re-elected because the concerned director is not alive. Therefore death alone can prevent a retiring director in getting re-elected. Therefore, the above facts lead the present researcher to conclude that the individual directors are not independent of the promoters. They lack independence.

7.2.4.10 Attitude Of The Secretaries Towards The Independence

The present researcher collected the opinion of company secretaries towards the independence of the directors. The opinion was collected and interpreted using the Likert Scale. The percentage of agreement is only 43 per cent. Therefore, the secretaries’ attitude towards the independence of the board is poor. Hence the researcher concludes, on the basis of the information
collected regarding different attributes of the board as well on the basis of the results of the attitude survey, that the directors are not independent.

7.2.4.11 Board Room Practices Model

In an attempt to qualitative aspects of board room practices, the present researcher has built up a model to measure the corporate board room practices. Ten factors are considered with proper weightage for different practices. The factors included are proportion of executive directors to non-executive directors, the practice of sending the agenda to the director along with the notice of the meeting, the duration of the notice given for the meeting, deliberation process in the board meeting, decision making authority inside the board, the practice of recording the dissent note, attendance of executive directors, attendance of non-executive directors, separation of the posts of Chairman and CEO and the proportion of relative directors to total number of directors. Each company will be rated with reference to each factor. The maximum possible score for each company is 100 points. The researcher classifies the board in to three categories on the basis of the total score viz., Best, Good and Poor board. The analysis revealed that 14 per cent of the companies are rated as the best board compared to 28 per cent as poor and 58 per cent of the companies can be rated as good.

7.2.4.12 Current Scenario

The corporate sector did not witness much of changes till the dawn of globalisation. However, with the dawn of globalisation, sporadic incidents appears in the corporate horizon. Family business started moving from the operations to the observation position. The promoters are utilising the professionals to run the company. new models are appearing in the scene. One or two companies even have formed a supervisory boards, which is hitherto unheard of in Indian corporate history. Even some companies from Tamil Nadu,
Murugappa Group of Companies, also joined the race for changing the style of governance.

7.2.5.1 Shareholders vis-à-vis corporate governance

The fifth chapter presents the role of shareholders in the corporate governance mechanism. This chapter attempts to evaluate the rights and responsibilities of the shareholders. Two types of shareholders are in existence, viz., individual shareholders and institutional shareholders. Their role in the corporate governance mechanism is also evaluated.

7.2.5.2 Owners Of The Company

The shareholders are the real owners of the company. Companies cannot be managed either by all of them or by shareholders’ referendum. A company’s management must be able to take business decisions rapidly. Hence the mechanism of the board to run the business of the company. Shareholders have the responsibility of constituting an effective functioning board. It is also the responsibility of the shareholders to review the functioning of the board. If they are not satisfied the composition of the board or the managing director should be suitably changed. Thus, the voting right is the corner stone for both of the above mentioned functions, viz., constitution of the board and the review of the board.

7.2.5.3 Importance of Shareholders

It is an accepted fact that the shareholders are the owners of the company. The major functions of shareholders are: (1) to provide a regular supply of capital through purchase of company’s shares, and (2) to ensure the installation of governance mechanism. But for the shareholders the company would not have come into existence.
7.2.5.4 Rights Of Shareholders

A shareholder by virtue of a member of a company enjoys two types of rights, viz., corporate membership rights and individual membership rights.

(i) Individual membership rights

Shareholders enjoy a set of rights in accordance with the provisions of the Companies Act. Most important right in this category is the voting right enjoyed by the equity shareholders, besides a number of other rights, which help a shareholder to establish his position as a shareholder. In fact, the intention of the Companies Act, 1956 is to safeguard the interest of the shareholders. Thus, there is a radical change in the Companies Act, 1956 if one compares it with its earlier version, viz., Companies Act, 1913 and as amended by 1938 Act.

Of the rights bestowed by the Companies Act, 1956 to the equity shareholders, the most exercised right is the right to transfer the shares and the right of receiving the dividend. More number of correspondences between the company and the shareholders arises only on account of these two rights.

Most of the rights given to shareholders, but for the above two rights, are rarely used by the shareholders. The survey results revealed that many rights are rarely used. In a response to a question, the secretaries revealed that none of the shareholders visited the registered office. The blame cannot be shifted entirely on the shoulders of the shareholders. The companies are resorting to a number of practices which discourage the shareholders in claiming certain rights. As a result, the shareholders are conditioned to abandon their rights.

Of the individual rights given to shareholders, many of the provisions are existing only in papers. They are only paper tigers. They are not of much use in improving the efficacy of the corporate governance system. The failure may be
on the part of the shareholders, besides the incumbent management and Government machinery.

(ii) Corporate Membership Rights

Apart from the individual rights, shareholders are also eligible for rights, which can be collectively exercised. There are three such rights, which can be exercised only as a group.

7.2.5.5 Types Of Shareholders

Basically, there are two types of shareholders, viz., individual shareholders and institutional shareholders. The responses to the survey results revealed that promoters hold 53 per cent of the share capital, institutional investors 7.9 per cent and the individual shareholders to the extent of 39.1. On an average, institutional shareholders hold around 25 per cent and the individual shareholders hold around another 25 per cent of total share capital. The remaining shares are held by the promoters group.

(i) Individual Shareholders:

India carries the distinction of having the largest number of listed companies in the world and an investor population of roughly 50 million in corporate sector which includes an illiterate framer, a pavement shopkeeper and ordinary resident of a moffusil town or village. Though they are numerically stronger, they are helpless citizens in the corporate kingdom. Since their holding is tiny, it is worthless from the voting right point of view. Equity holdings below the top ten holders are individually small. The tenth largest equity holder was found to hold just around 1 per cent of the total equity in most large companies. The percentage would be less as we go down.\footnote{L.C.Gupta, Corporate Management and Accountability} For the mass of shareholders
below the top ten, Galbraith’s sarcastic remark that ‘he can vote but his vote is valueless’ is a fitting remark. By virtue of the Companies Amendment Act 2000, small shareholders with a holding of not more than Rs.20,000 can send at least one director to the board. It is a right step in the process of corporate democracy.

(a) Shareholders monitoring

Shareholders are the owners of the company. The shareholders are running the business in absentia. Therefore, there is a need to monitor the activities of the companies. Shareholders monitoring can be passive or active. If the shareholders are not satisfied with the performance of the management, the shareholders will vote against the management by selling the shares in the market. The shareholders need not wait for the conduct of the annual general meeting to express their disapproval or dissatisfaction. Shareholders of this type are classified as passive shareholders. On the other hand, there is another group which questions the management in the annual general meeting. They demand the management for the results. Individual shareholders in India are neither passive nor active.

(b) Shareholders Activism

In the 150 years of corporate history, shareholders activism is new to Indian soil. Serious deliberation and discussion regarding the performance of the board and the management is a rare event. If at there was a scene, in the annual general meeting, it may be an account of a war between two factions. The rift might have led to some acrimonious scenery in the annual general meeting.

For the first time, the corporate world started witnessing shareholders activism in the post LPG-era. An extra-ordinary event in the annals of corporate history is Ralliwolf Industries’ annual general meeting during 1997. The
individual shareholders of the Ralliwolf Company had elected a Chairman for the meeting and passed resolutions rejecting the accounts for 1996-97 and recommended that the Company Law Board appoint different auditor and directors on the board. The new breed of shareholders who entered the scene in the post-LPG era are not hesitant to throw away the under performers. Across the length and breath of the country such incidents occurred occasionally. The turnout of shareholders in the annual general meeting is in thousands in companies during 1992 and up to 1995. Thereafter gradually the number of shareholders attending the meetings had dwindled. The average strength of the shareholders attending the meeting is around 250 only. Hence, the enthusiasm of the shareholders gradually subdued in the latter part of the nineties. However, awareness was there and the shareholders started questioning the management, though the number of shareholders attending the meeting dwindled. In Tamil Nadu also, the corporate watchers witnessed active shareholders participation in the meetings. As a result, some companies have changed the registered office from the city of Chennai to far off places on the pretext of convenience. Similarly, shareholders questioned the move by a TVS group company to defer the payment on the shares taken up by the promoters. The meeting witnessed heated discussions and charges on the management. Thus, the shareholders’ activism gained momentum towards the end of the millennium.

(ii) Institutional Shareholders:

Another important constituent in the shareholders group is institutional investors. The institutional investors have a sizeable investment in the shares of the companies. The major player in the corporate arena from this group is UTI, IDBI, LIC, GIC and State Level Industrial Investment Corporations. For the first time, Government entered the corporate scenario as shareholders in the post independent India. Later, after 1988 mutual funds entered the scenario. In the initial periods, only public sector banks were permitted to enter the business
of mutual funds. Subsequently, the foreign companies were also permitted to open their shops in India. Later, the foreign mutual funds were permitted to invest in Indian stock exchanges. As a result, the corporate mosaic represented shareholders from different countries with different cultures accustomed to different rules of the investment game.

(a) Nominee Director System

The financial institutions in the beginning started their innings with the motive of industrialisation of the country. Hence, in the beginning the financial institutions never demanded board room representation. However, with the recommendations of a number of committees which were constituted to enquire into the problem of concentration of economic power, the financial institutions sought representation in the board. Thus, the nominee director system came to the scene.

The survey results of the present study revealed that only 17 companies have financial institutions' representatives in the board out of 78 companies responded for the study. Of companies for which nominee directors were appointed, about 35 per cent had only one nominee director each and in the remaining companies, the strength of the nominee directors in each company was two. The number of nominee directors depended partly on company size and the investment of the institutions in the concerned company in the form of equity and loan. The State level investment corporation, i.e., Tamil Nadu Industrial Investment Corporation is the single largest institution accounting for 35 per cent of the nominee directors in the sample companies. IDBI, IFCI and ICICI collectively had representation amounting to 53 per cent. UTI, LIC and GIC had their representatives in about 12 per cent of the companies contacted for the study. The average number of nominee directors for the entire sample is 0.36; however, the average for the companies with the nominee directors is 1.64.
(b) Role of Nominee Directors

Basically, the nominee director is a non-executive director. The nominees generally ensure that the need-based information on operating plan, periodical feed-back report on performance as well as certificate on statutory compliance is submitted and discussed at the Board of Directors’ meeting. The nominee director, apart from keeping a vigil on the interest of his nominating institutions, acts as glue for keeping diverse interest attuned to overall well being of enterprise. His role, rights, authority and responsibility are the same as that of any other director. IDBI has released detailed guidelines which will assist a nominee director in discharging his duties.

(c) Role Perception by Nominee Directors

As dominant shareholders, the financial institutions can effectively check the promoters’ group in the board meeting and in the annual general meeting. However, the attitude of the nominee directors alone will bring in the desired effect. A survey was conducted by Prof.L.C.Gupta to identify the role perception of the nominee directors. The nominee directors were asked to assign rank for the roles they were playing in the company.

The following roles are given:

- Providing expert/ professional advice to the chief executive on specific matters
- Acting as watchdogs against managerial abuse;
- Acting as friend-philosopher-guide to the chief executive;
- Generating pressure to drive the executive management to greater effort;
- Ensuring social responsibility.

Respondents forming 38.8 per cent of the assigned the first rank for the third item, i.e., the role of friend and philosopher and 24 per cent for the first item, viz., providing expert advise. Thus, nearly 62 per cent of the respondents have assigned the first rank for the advisory roles. Therefore most of the nominee directors have soft-pedalled their role in the board only in the advisory
capacity. And the remaining 38 per cent of the respondents perceived the role of controlling as significant.

(d) Shareholders’ Monitoring

As the shareholders, the financial institutions have a role to play. If one takes stock of the situation, one will be surprised and shocked to note how the financial institutions have behaved. Financial institutions followed ‘hands-off’ approach, and in most of the cases, played the supportive role to management irrespective of their performances. In many cases, financial institutions have stoically watched promoters loot companies in which financial institutions have as high as 47 per cent stake.

No action has been taken by the financial institutions to change the management. With the arrival of the foreign institutional investors, the rules of the games are restated. The change of the rules of the games revived a hope for toning up the corporate governance mechanism. The foreign institutional investors played a catalyst role in changing the attitude of the financial institutions. Now, the corporate houses think twice before launching any programme which they did carelessly in the pre-LPG era.

The financial institutions can be accused for being a spectator for the daylight robbery. However, the fact is that the politicians through the concerned Ministries tuned the financial institutions. The nominee directors or the financial institutions have to dance according to the tune played by the Government. The political interference damped the situation and prevented the financial institutions to act effectively. Now in the post-LPG era several of changes are visible in the horizon.
7.2.5.7 Corporate Democracy

According to law, shareholders are citizens in the corporate kingdom. They possess effective powers for the control of the company’s affairs. Democracy is supposed to prevail in the corporate kingdom, where the shareholders have the power to change the board. However, in reality, the shareholders are only dummy owners without real power. The corporate democracy remains only in paper. The power is vested only with one or two individuals who are promoters. The management of companies exhibits some marked features of oligarchy. Hence, it is apt to describe the situation only as oligarchy rather than democracy.

7.2.5.8 Reasons for the Oligarchy in Corporate Management

It is apt to quote the great French thinker, Montesquieu of the eighteenth century, who observed that “the tyranny of a prince in an oligarchy is not so dangerous to the public welfare as the apathy of a citizen in a democracy”. A bad Government is the inevitable consequence of indifferent electorate. The same logic can be extended to the corporate kingdom, where the apathy of the shareholders lead to the oligarchic character of corporate management. Many of the reasons which have lead to the oligarchic character in the corporate management can be attribute to the indifferent attitude of shareholders. The reasons for the oligarchic character of the management can be attributed to the following features:

(i) General Body Meetings

The rules for the conduct of the general body meeting are instrumental in preventing the democracy to prevail oligarchy.

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4 Nani A. Palkiwala, We the People. UBSPD, New Delhi.
(ii) Method of Ascertaining the Will of the Shareholders

The existing system of ascertaining the will of the shareholders encourages the management to ignore the sentiments of the shareholders in general. The sense of the meeting is ascertained on the basis of the will of the members who are present in the meeting. As a result, the votes of absentee shareholders, i.e., the shareholders who have not attended the meeting are indirectly cast in favour of the incumbent management. The Companies Act, 1956 has stipulated the postal ballot system in order to take the views of all the shareholders through the postal ballot. The will of the shareholders will be ascertained through the postal ballot scheme with respect to certain important businesses and not all the businesses.

(iii) Attendance of the shareholders in the annual general meeting

The shareholders are scattered over the length and breadth of the country. The small investors are not having necessary motivation to attend the annual general meeting. As a result of thin attendance, the promoters’ group are able to carry over any resolution without much difficulty. The survey results revealed that the arithmetic mean of the shareholders who are attending the annual general meeting is 174.3 and the median is 153. The average number of shareholders per company, for the companies taken for the survey, is 7,985. If one compares the average number of shareholders attended the annual general meeting against the average number of shareholders, it is a paltry 2.18 per cent.

The present researcher tested a hypothesis that the average number of shareholders attending the annual general meeting is 250, using Z test. The survey data lead the researcher to accept the hypothesis. Though the attendance of the shareholders in the 1992-95 had crossed three figure digits, in many companies, the strength has fallen down in the subsequent period.
(iv) **Duration of Annual General Meeting**

The average duration of the annual general meeting in the sample companies is 1 hour and 43 minutes and the median is 2 hours. The researcher framed a hypothesis regarding the average duration of the meeting and tested with Z test. The results confirmed the hypothesis that the average duration of the meeting is 2 hours.

(v) **Venue of the Meeting**

The law of the meeting stipulates that the meeting shall be conducted in the city in which the registered office is located. Even if the companies are located in cities like Madras or Coimbatore, the average attendance is only 2.8 per cent. If that is the case, one need not wonder about the percentage of attendance in the case of the companies where the registered office is located at far off place.

(vi) **Shareholders Participation in the Annual General Meeting**

The laws of the meeting require a minimum of ten per cent of voting right to file a proposal. Hence small shareholders are not able to participate in the general body meeting. Hence it is very easy for the promoters to carry over any proposals.

(vii) **Lack Of Unity and Organisation Among Members**

Companies constituting 88.8 per cent, which have responded, do not have any shareholders association. Hence, the small shareholders cannot effectively challenge the management in the annual general meeting. This is the prevailing position even in developed countries like the U.K.
(viii) Voting rights

Voting right is an asset as well as a responsibility. As the shareholders are not attending the meeting, they are not able to exercise their voting right. As mentioned earlier, the votes of passive shareholders are cast in favour of the incumbent management, hence, the absence of corporate democracy.

(ix) Defective system of directors’ election

The present system of electing the directors is defective. As per the provisions of the Companies Act, 1956 separate resolution is required for the election of each director. Hence, if one group has the majority, say, 20 per cent of the voting right in the particular meeting and other group has just 19 per cent, the group, which holds 20 per cent, can easily carry over the proposal. Though the Companies Act, 1956 provides for proportional representation, none of the companies seems to follow that principle.

(x) Proxy

The term proxy refers to an agent of the shareholder. However, proxies according to Companies Act, 1956 cannot speak in the annual general meeting. It is highly undemocratic. However, this defect has been rectified by an amendment to the Companies Act, 1956. Now the proxies can also speak at the meeting.

(xi) Quorum

The Companies Act, 1956 fixes the quorum for a public company at 5 members and for private companies at 3 members. Though the Articles of Association can fix a higher limit, none of the companies which was taken for the study has fixed a higher number for the quorum; as a result, with negligible limit, the proposals are easily carried out. Hence, the wishes of one or two
individuals were easily carried out though the wishes of a larger number of individuals are ignored.

(xii) Closure Of Transfer Books

As a rule, only the shareholders whose name appear in the companies register of members are entitled to vote at the meeting. Hence the shareholders who are not able to get their names registered in the register of members, cannot vote at the meeting. Accordingly, many shareholders are deprived of their rights to vote.

(xiii) Poor Disclosure Practices

Not only the shareholders’ indifference has lead to such a situation where the power is concentrated with one or two individuals, but also the poor disclosure practices. The poor disclosure practices prevented even the minority shareholders who are actively participating in the proceedings of the meeting from demanding the promoters who are running the company. The varnished version of the information provided by the management deprives the shareholders, though many of the shareholders are indifferent, who are ready to monitor the performance.

(xiv) The ineffectiveness of employee shareholders

The employees will naturally side with the existing management when they know that they are themselves at its mercy.

(xiv) Corporate Industrial Groups

An important finding of Dr. R.K. Hazari and other authorities, committees and commissions is that the existence of a few big business houses or industrial groups in the corporate sector is directly responsible for the present-
day evils of concentration of economic power. The corporate groups were able to perpetuate their dynasty through the managing agency system. Even after the abolition of the managing agency system, they were able to rein over the company because of the indifferent attitude of the shareholders as well as the lacuna in the Companies Act, 1956.

(xv) Failure of Financial Institutions

The failure of corporate democracy can also be attributed to the institutional investors holding shares in the companies. Had the financial institutions exercised their due right by attending the annual general meeting and removing the directors who are not performing and changing the management who fails to deliver the results, a lot more would have been achieved. The institutional investors remained, by and large, inactive.

7.2.6.1 Introduction

The Sixth Chapter presents the role of auditors vis-à-vis corporate governance.

7.2.6.2 Appointment and Related Provisions

The provisions relating to appointment, re-appointment, removal and resignation are presented. The chapter traces the evolution of this institution viz., auditing in the Indian soil. The audit of the company accounts is not mandatory as per the provisions of the first Indian Companies Act, 1857. Gradually, the scope of the Companies Act, 1956 was enlarged. According to section 224 of the Companies Act, 1956 auditor should be appointed in every company in every annual general meeting, else the Central Government will appoint an auditor of its choice. Another note worthy feature is the provisions relating to resignation of an auditor. The existing provision as per the provisions of the Companies Act, is not satisfactory.
7.2.6.4 Independence of Auditor:

The independence of an auditor is an essential attribute to have an effective corporate governance system. The chapter examines various provisions from this angle. In fact, the Companies Act is framed in such a manner to provide complete independence to auditors. In spite of this fact, the auditors in India are more loyal to the incumbent management and not to the shareholders, who are the appointing authorities. One of the reasons for this phenomenon is the mode of appointment in the annual general meeting. Promoter has say in the appointment of an auditor. It is only the promoter group, which submits the proposal for the appointment of the auditor in the annual general meeting. The survey results revealed that nearly in 95 per cent of the companies, no resolution has been submitted by any shareholder who do not belong to the promoter's group. Hence, the auditors are more loyal to the promoters' group rather than to the shareholders for getting subsequent extension.

The attitude of the secretaries towards the independence of auditors, if the auditors have been assigned any remunerative assignment, is measured using Likert Scale. The results of the survey lead the present researcher to reject the hypothesis that the auditors are independent. Hence, the researcher concludes that the auditors are dependent upon the incumbent management or promoters.

7.2.6.5 Expectation Gap:

The Cadbury Committee identified a deficiency in the services of auditors and called it as Expectation Gap. The present researcher focuses upon the concept 'Expectation Gap'. The Expectation Gap with reference to the Indian context is also identified.
7.2.6.6 Accounting Standard:

The auditor is expected to give his comment with reference to the authenticity of accounts presented by the board. He can arrive at a conclusion on the basis the accounting standards. The accounting standard is essential in arriving at the conclusion of the authenticity of accounts. Unfortunately, the number of accounting standards in India is a meagre 15 compared to 39 in the international accounting bodies. The ICAI, which is instrumental in constructing the standards, is not as active as it should be. The absence of the accounting standards enabled the companies to reveal whatever picture they want to disclose to the shareholders and the general public.

7.2.6.7 Reporting:

The logical outcome of carrying out an audit is an auditor’s report. The fairness of the financial statement remains the purpose of the reporting. However, the contents of the report vary from country to country. The responsibility of auditors also varies from country to country. Audit reports in U.S.A., U.K., Canada and a few more countries categorically state the respective responsibilities of directors and auditors. Some countries require the techniques adopted, in the conduct of audit also, to be revealed. The Companies Act, 1956 defines the format of the audit report. However, as in the U.S.A., the responsibilities of the auditors and directors with reference to the annual report are not mentioned in the auditor’s report.

7.2.6.8 Transparency:

Transparency is considered to be one of the pillars of corporate governance. Transparency in accounting sense means “full and clear disclosure of the various business activities in cost and revenue terms, to end users through financial statements. The prevailing accounting practices and the accounting
standards in India enable the promoters to present a picture, which is totally not in tune with the reality. Plethora of incidences can be quoted in this regard. The situation can be summed up that the accounts in a majority of the situations do not project the reality i.e., lack of transparency. In general, the feeling of the general public as well as the corporate circle, the level of transparency is poor. The transparency is not only with the presentation of account, but also in a number of matters, the promoters are not coming out with maximum information. The investors were taken for a ride when the scam changed the whole activity in capital market. The wide fluctuations seen in the capital market have been mainly due to the unlawful and misleading business transactions that have been entered into by some of the organisation, including well established concerns. Even today, there are many companies where the people at the helm of affairs do not deem it fit to run their corporations transparently. The result is that, taking cover under loop holes, shortcomings of certain accounting and disclosure norms and other regulatory mechanisms, they continue to present a completely different picture of their companies to their shareholders.

After the era of SEBI, it is trying to improve the level of transparency. In fact, a committee is there to review the issue of transparency on an ongoing basis. In order to increase the level of transparency, the SEBI is strongly advising the ICAI to harmonise the accounting standards of India with the International Accounting standards. The ICAI is questioning the powers of SEBI to advise the ICAI in this regard. This shows the mentality of the ICAI towards the accounting standard. In order to promote transparency, SEBI mandates the company to disclose quarterly results with limited review and they have to give reasons for the difference between the disclosed information and the actual information at the year end. The SEBI's corporate governance Code recommends the disclosure of additional information, previously not required by the Companies Act. Another noteworthy attempt to increase the level of
transparency, is a compliance certificate to be issued by the statutory auditor, which shall be circulated along with the annual report.

7.2.6.9 Audit Committee:

Audit committee is a sub-committee constituted by the Board of Directors. The powers of the committee depends upon the terms of reference and the legislation of the country. The role of audit committee varies from country to country. In the U.S.A., the statutory frame work does not specify the appointment of auditors. Hence in U.S.A., a greater role is provided to the audit committee. However, in U.K., India and some of the common wealth countries, the Companies Act compels the appointment of auditor by the shareholders. Therefore, till recently, much importance was not given to audit committee in those countries. Subsequent to the Cadbury Committee’s recommendations, audit committee becomes a buzzword in the common wealth countries as well as in U.K.

The Birla Committee on Corporate Governance mandates the appointment of audit committee. The Companies Act was also amended to make audit committees mandatory for public limited companies. The universal consensus regarding the composition of the audit committee is that it should consists of more number of independent directors and non-executive directors. In India, the Birla Committee recommends that an audit committee should have a minimum of three members, all being non executive directors, with the majority being independent, and with at least one director having financial and accounting knowledge. The chairman of the committee should be an independent director. The Company Secretary should act as the secretary to the committee. These are mandatory recommendations.

The Birla Committee also recommends the frequency of the audit committee meeting as well as the quorum requirement. The role of the statutory auditors is critical and may even lead to a conflicting situation vis-à-vis audit
committee. The Companies Act provides that every public company having paid up capital of not less than five crores of rupees shall constitute a committee of the Board to be termed as audit committee. The Companies Act, also provides the composition of the audit committee. However, the provisions of the Companies Act in this regard lack clarity.

In India, the audit committee has not yet gained momentum. Some pioneers like Infosys, Wipro, Ashok Leyland have constituted audit committee voluntarily, even before it becomes mandatory. The committee form of management has not gained popularity in India. Nearly 35 per cent of companies surveyed had not formed any committees. The survey results revealed that 65 per cent of the companies constituted committees for different purposes. Of the committees constituted, share transfer committee is the most popular committee. No company constituted audit committee in the period prior to 1997. In the subsequent period, only 7 companies out of 78 companies formed Audit Committees. The reason for this state-of-affairs is that the constitution of audit committee is not mandatory at that time. With the mandatory stipulation in the Companies Act all the companies may duly appoint audit committee.

7.3 PROBLEMS AND SUGGESTIONS:

One is aware, what fail any social innovation like one of company organisation, is not the individuals or institutions, but the systems that govern the individuals and institutionalized functionaries involved in the running of the show. The systems approach assumes that the cure lies in the inter-relationship among the participant of the system. It is not outside the inter-relationships.

As the fact is, the failure of corporate governance, in any part of the world, must be looked upon as a failure of the system. The remaining parties can check the vested interest of any party, which distorts the corporate governance system, in the system. Apart from the parties involved in the
system, the Government is also a party in the system, who has breathed in life to the company. It has a responsibility to set aright the situation. The following paragraphs offer some suggestions, the present researcher feels, that may be helpful in toning up the corporate governance system.

According to Justice Millin of South Africa, “attempts to control the formation of companies and to improve their administration in the interests of the investors and creditors can never be final”. It is an ongoing process. Therefore, the Government in addition to the steps taken already, should continuously monitor the situation and initiate the measures to reverse the trend, if any unwarranted.

As regulators all over the world will certify, good supervision is a necessary but not sufficient condition for preventing such a collapse. Having said this, one should remember that in the U.S.A., the regulator, viz., SEC, which is functioning since 1934, still has to be vigilant to curb malpractice and punish the erring participant. It is heartening to note that the American regulator is closely watching the steps taken by SEBI with reference to take-over issue. as on the date, the U.S.A., does not have any take-over code similar to the Indian code. The regulator is in the process of learning continuously till they exist, especially in the economic area. In the Indian context, SEBI is the market regulator. Though the functioning of SEBI is satisfactory, yet there are certain deficiencies in its functioning, which can be mainly attributed to the lack of power. People describe SEBI, as a tiger without teeth. Therefore, under such circumstances, one cannot expect the regulator to streamline the scenario, where the mental attitude of the people is to observe the law more in breach than in observation.

Judicial forum similar to consumer forum should be created to deal with shareholders grievances. The shareholders grievances should be speedily disposed. Then only shareholders rely upon the system and approach it. Justice delayed is justice denied. Therefore, many of the shareholders do not prefer to
go to the court of law as it is a costlier proposition and a time consuming job. Hence, cases involving shareholders right should be separately dealt with by a separate judicial forum.

Any misdemeanor on the part of any parties should be penalised and publicised.

The Companies Act should be suitably amended in such a way that shareholders association is organised compulsorily for each company. Such associations can collect proxies from the large mass of small and disinterested shareholders and can use them for their common benefit. A vigilant association may serve much like a gadfly that tickles and pricks the horse and keeps it awake. The shareholders’ association may be led by persons possessing a thorough insight into the working of companies. If this is achieved, the association, can make intelligent and constructive criticism of the working of the company and its accounts. Associations of shareholders may be organised on regional basis or on company basis. To begin with associations may be formed for a selected number of big companies in which the public stake is considerable.

The Companies Act should be amended in such a way that Remuneration Committee and Succession Committee must be appointed in the listed companies. Compared to the audit committee, remuneration and succession committee has a greater role to play in Indian context.

The voting power of certain shareholders on issues that most concern them (such as choice of directors) can be enhanced through “cumulative voting” rules. Though Indian statutes permit cumulative voting, there are certain practical difficulties in implementing the same. It requires the approval of Articles of Association. Moreover, separate resolution is required for electing each director. If cumulative voting is implemented, separate resolution for each director is not possible. Moreover, all the directors are to be elected. Hence, if
cumulative voting is introduced, the company law should be revamped in a suitable manner.

On considerations of justice, fair play and efficiency of management, it would be desirable to make the management of a company's affairs as democratic as possible. It must be admitted that if there is a very large number of shareholders scattered widely, it will not be possible to expect that they will exercise direct and continuous control over the working of the company. Direct democracy is possible through the postal ballot system. Though the Companies Act, is amended to provide postal ballot system, time alone can tell, to what extent it is implemented. The business community lobby is so powerful that at times, the enacted provisions may be kept in pending for want of something or other.

The provision for introducing a proposal should be simplified so that people who can muster a minimum number of votes can submit a proposal. This will lead to more participation in the meeting process. Thus corporate democracy is maintained.

The Government has taken a number of steps in empowering the shareholders to safeguard their rights. However, it is left to the shareholders to exercise their rights. The shareholders on their part have yet to organise themselves and take a keen and intelligent interest in company affairs. It must be recognised that there is no substitute for vigilance on the part of the shareholders. The law can only prescribe rights for them. Their exercises would ultimately depend upon the shareholders themselves.

The survey results also revealed that a number of rights given by the statute to the shareholders are not properly exercised. Had it been exercised, a number of ills facing the corporate sector would not have been there. Therefore, the problem of improving the corporate governance can be attacked from this angle, viz., educating the shareholders to exercise their powers.
Steps should be taken to encourage the shareholders to attend the general body meeting. Some kind of incentives should be offered to the shareholders who are attending the meeting.

Secret ballot must be conducted even in the annual general meeting, as the number of employee shareholders are on the increasing trend so that the employee shareholders can boldly cast their votes without fear or favour.

The institutional investors are a powerful group of shareholders. They are more enlightened, when compared with the individual shareholders. Hence, they should be compelled to attend and vote in all the general body meetings. As they are more knowledgeable and informative, they should be compelled to disclose their stand before the conduct of the general body meeting with respect to each and every issue, so that small shareholders can take decision on the basis of the stand taken by different financial institutions. The financial institutions if play a proper role, the efficacy of the system of corporate governance can be considerably improved.

Statutory amendment is required for informing the shareholders the directors' attendance in the board meeting as well as annual general meeting. Similarly, the bio-data of the directors who are contesting for the position of director should be provided in full. The bio-data should include the directorships in other companies, including the names of such companies. Their directorship in other companies should also be provided.

The present researcher considers that it is important to provide adequate compensation package to the non-executive directors so that these positions become sufficiently financially attractive to attract talent and that the non-executive directors are suitably motivated through right compensation package for undertaking this work.

Another step to improve corporate governance is to encourage corporate governance research centres. Such centres should be organised, which will
build up the data base and disseminate information about the companies with reference to corporate governance. This will enable the shareholders to identify the company with good corporate governance practices. They should be empowered to collect the information from the company. The statute should permit such centres to collect proxies from the individual shareholders who are not able to attend annual general meeting and exercise the voting rights according to the instructions of individual shareholders. The results of the voting should be fully disclosed so that maximum transparency should be maintained. However, steps should be taken to see to that such research centres should not turned into proxies of corporate houses.

7.4 CONCLUSION

The record of corporate governance in India is poor – stories of accounting juggleries, siphoning off funds, investing and selling off associate companies and subsidiaries, benefits to promoters at the cost of other shareholders etc. are not uncommon. Culprits are not necessarily ‘over-the-night operators’, names of blue-chips often appear in these stories. In India, companies were managed on the basis of family ties and managers could get away with poor corporate governance due to laxity of shareholders. Financial institutions were totally ineffective in demanding better standard of corporate governance and others were too small and spread out to put any pressure.

The corporate governance mechanism as stipulated by the Companies Act empowers the shareholders to constitute the board. In turn, the board constitutes the second tier of the management team headed by the Managing Director or whole time director or manager. The shareholders also appoint auditors, to attest the statement of accounts prepared by the board of directors with reference to the authenticity of the accounts. Therefore, in theory shareholders are all powerful. They are the supreme authority in a company. They are the owners of the company. Board of directors are dependent upon the
shareholders for their continuance in their office. If the shareholders are not impressed with the performance of the company, they are empowered to shuffle the board. Auditors are also dependent upon the shareholders. If the shareholders are not satisfied with the performance of the auditors, they can change them. The Managing Director is dependent upon the Board of Directors. If the company fails to deliver the results, the board can fire the Managing Director and hire another suitable person.

The prevailing scenario in Indian corporate sector does not impress one that the shareholders are empowered to shuffle the board, as they are supposed to, whenever the company fails to perform. The reality is the promoters, are in vantage position. Hence, they suggest the names of the directors and submit the proposal in the annual general meeting. By virtue of the strength they have, in terms of voting right vis-à-vis number of votes held by the shareholders who are present in the meeting, they are able to get the directors elected, they have proposed. As a result, the individual directors are more loyal towards the promoters rather than the shareholders in general.

In theory, the board selects the Managing Director and hand over the job of running the day-to-day administration. The reality is the promoter constitutes the board. It is the promoter who decides, who should be the Managing Director and not the Board of Directors. It is the function of the board to review the performance of the Managing Director and take the corrective action, if the Managing Director fails to perform. Since, the board is constituted as per the wishes of the promoters, the individual directors or board collectively do not have the moral authority and even necessary voting right to challenge the promoter. Therefore, they are not in a position to carry out the review function. As a result, they are not in a position to fire or hire the Managing Director. Only a promoter can decide it. The directors are all puppets. Therefore, the proposition that the board is independent of the management or promoter is an illusion.
Similarly, in theory, the shareholders are the supreme authority in a company. However, the vantage position of the promoter never allows the equation to hold good, i.e., the shareholders can reshuffle the board whenever it fails to perform or deliver the results. Therefore, the power enjoyed by the shareholders are existing only in paper. The prevailing notion that the shareholders are the real owners and they are at the apex of the power structure is a legal fiction. Promoter is, really, at the apex of the power structure.

The auditors are independent of the promoters and the management. Their bosses are the shareholders. Shareholders are the appointing authority. However, in reality it is only the promoters who propose the name of the auditor to the shareholders for the annual general meeting for the appointment. If the promoters choose some other auditor, the existing auditor looses his chance of getting appointed. Hence, the auditors are dependent upon the promoters for getting his appointment in the company. He is not at all independent of the management or promoters. Again, it is a fiction to say that the auditors are independent.

Thus the tri-party arrangement in the corporate governance mechanism is only a legal fiction and not existence in reality. Promoters dominate the scene, by virtue of the vantage position they had at the time of incorporating the company.

The researcher presents the study with an earnest hope that it will draw the attention of the future researchers to study the various issues given below

(i) The relationship between the level of corporate governance and profitability.

(ii) The relationship between dispersal of shareholders and level of corporate governance.

(iii) The relationship between the level of corporate governance and the rules for the conduct of board meeting.
(iv) The relationship between the level of corporate governance and the proportion of executive directors and non-executive directors.

(v) The relationship between the resignation of auditor and the market price of shares.