Chapter-5

Corporate Governance in Private Sector Companies

"I am dismayed at the tardy response of Indian companies to Corporate Governance requirements."

The Union Finance Minister Chidambaram in his address on 'Indian CEOs – Competencies for success' on 22nd January, 2005.

5.1 Introduction

The concept of private sector is as old as the business. Private sector was of a laissez faire variety up to 19th century. At the time of our independence, almost the entire production and trade were in the hands of the private sector and the public sector was insignificant. After 1951, the public sector was expanded fast both by the centre and the states. Even then, the private sector has continued to be dominant in all spheres. We combine both the capitalist and socialist attitude in our economy after independence.

The 1948 Industrial Policy resolution divided industries into four categories: (i) three industries in which state was given a monopoly; (ii) six industries where state was to have the exclusive right to set up new
units but existing private sector units were allowed to operate; (iii) eighteen industries where regulation and direction was necessary; and (iv) all other industries (not included in the above three categories) where private sector was allowed the freedom to operate. The 1956 Industrial Policy resolution divided industries into three categories: (i) seventeen industries (listed in schedule A) whose future development was to be the exclusive responsibility of the state; (ii) twelve industries where the state would increasingly establish new units and increase its participation but would not deny the private sector opportunities to set up units or expand existing units; and (iii) all other industries (not listed in schedules A and B) where the private sector was given the freedom to operate. The Industrial Policy Resolution stated, “Industrial undertakings in the private sector have necessarily to fit into the frame work of the social and economic policy of the state and will be subject to control and regulation in terms of the industries (Development and Regulation) Act and other relevant legislation. The Government of India, however, recognize that it would, in general, be desirable to allow such undertakings to develop with as much freedom as possible, consistent with the targets and objectives of the national plan. When there exist in
the same industry both privately and publicly owned units, it would continue to be the policy of the state to give fair and non-discriminatory treatment to both of them."

In this way, the Government allotted a specific role to the private sector in the field of industries through the Industrial Policy Resolutions of 1948 and 1956. With the passage of time, more and more concessions were granted to the private sector to develop and expand in the certain spheres of the economy. To finance and support the private sector, the government has set up a network of development banking and financial institutions such as NABARD, IFCI, ICICI, IDBI, EXIM Bank etc. The government has also set up a whole range of institutions to assist in the provision of infrastructure, raw material supply, marketing, technology development etc. New entrepreneurs, new industrial activities, new things and new jobs have emerged in this process and stimulate the economic development. In this way, the private sector was supported and encouraged by the government. But the government has also set up some control and regulatory structure even after the Industrial Policy Resolutions of 1948 and 1956. Government has to work with both the ways according to the changing needs of diversified industrial economy.
The new industrial policy enunciated in 1991 abolished industrial licensing, simplified procedures and controls to release the private sector from unnecessary bureaucratic shackles and opened up the economy. As a result, the private sector registered a fast growth in the post liberalization phase. Liberalization and globalization era make the private as well as public sector to think upon the global competition. To have sound and vibrant markets, sound corporates are needed. And to have sound corporates, sound governance in corporates is a primary condition. Sound governance depends on their adopted delivery mechanism and the supportive framework of rules and procedures.

5.2 Assessment of Corporate Governance in Private Companies

An Advisory Group on Corporate Governance (Chairman: Dr. R. H. Patil) made detailed assessment and gave recommendations of which those relating to private companies is an important component. The recommendations are:

- The Board of Directors is the ultimate governing body of a company. The Board should –
- review and guide corporate strategy, major plans of action, risk policy, annual budget, objectives and their implementation, corporate performance.

- Monitor the effectiveness of the governance practice.

- Ensure the integrity of the corporation accounting and financial reporting systems.

- Monitor and manage conflicts of interest of management, board members and shareholders.

- Review key executives and board remuneration.

- Select, compensate, monitor and when necessary, replace key executives.

- Especially non-executive board members should be independent in judgment and decision making.

- Should treat all shareholders fairly.

- Check the quality of information, which they provide to shareholders.

The balance should mention the performance of the company in relation to last couple of years, with reference to other companies in the same/similar industry as also with reference to the industry as a whole.
• The Board should be accountable to the owners of the company, but not necessarily to the stakeholders.

• The Board members should have access to accurate, relevant and timely information.

• The agenda, timings and all other necessary information should be circulated well in advance.

• Presently, the Directors are elected by the shareholders in the general meeting. Each director is appointed or removed by ordinary resolution. 2/3rd of total directors retire by rotation at AGM and 1/3rd of total directors appoint for a fixed duration in the general meeting. A retiring director maybe re-appointed at AGM. Managing Director/whole-time Director is appointed by the approval of Central Government in certain cases.

The nomination committee should recommend the appointments of independent and executive directors. The nomination committee should adopt transparent criteria for the selection of board members.

The criteria for choosing non-executive directors should be disclosed in the annual report.
• Presently, every company has minimum three directors. A company can increase or decrease the number of directors within the limits. Any increase in the number of directors beyond 12 requires Central Government approval.

All listed companies should have eight board members. Companies with net worth of Rs.15 crore or more should have at least 10 directors of which at least 5 should be independent directors.

• Generally, non-executive directors of a company are –
  - not independent.
  - Family members/recently retired CEOs/company managers.

Non-executive directors should be professionally qualified, independent and excellent.

• The definition of independence to be followed by all companies should be the definition recommended by the Blue Ribbon Committee, which is as follows:

“Members........shall be considered independent if they have no relationship to the corporation that may interfere with the exercise of their independence from management and the corporation.”
• Training should be available to any director upon appointment to the board at the cost of the company. For this purpose, an institute of directors could be set up.

• A director should not be a member of more than 10 boards. A director should not be a member of more than 5/6 committees.

• The role of CEO should be separate from the Chairman of the Board. If the CEO is also the Chairman of the Board, more than 50 percent of the board members should be independent.

• Audit Committee of the board of a company should be independent and effective. Majority of its members should be non-official professionals. Audit Committee should have at least three directors, each of whom is financially literate.

• There should be a nomination committee in a company. The committee should have at least three independent board members.

• There should be a remuneration committee comprising of non-executive independent directors. The directors make recommendations on the company’s frame work of remuneration for the full time directors and senior employees of the company.
The directors should be true independent and granted full authority to seek counsel from both inside and outside sources.

- A board committee should be formed to redress shareholders’ complaints relating to transfer of shares, non-receipt of balance sheet, etc.

- The Board of Directors is legally bound to meet at least once every three months and four times in a year. The meetings can be held at any place convenient to the directors. But the board of large companies should meet at least six times a year. Attending of board meetings through video-conferencing facilities should be recognized as valid attendance.

- Presently, the managing director can not be appointed for more than 5 years at a time. But it may be up to 10 years at a time.

- Presently, there is no maximum age limit of any director. But all companies should ideally follow the maximum age limit of 65 years for whole time directors and 75 years for part-time directors.

- Liability of directors in a limited company is limited in nature. The responsibility and liability of all statutory compliance should
solely rest with the CEO/MD. Non-executive directors should have limited liabilities.

- The nominee directors should be appointed to protect the interests of the institutions.

- Sufficient and necessary biographical details of directors should be provided in the Annual Report. All the necessary biographical details of a newly elected director should be given to the shareholders at general meeting.

- Presently, the total remuneration of directors and managers shall not be exceeded 11% of company’s net profit. The remuneration of executive directors should be decided by the board’s remuneration committee.

- The remuneration committee should follow a transparent procedure for determining remuneration to the board. Incentives should be determined after studying the performance and position of the company among companies in the same or similar industry.

- The remuneration packages of all directors should be disclosed in the annual report.
• The annual report should include remuneration policy of that company, membership in the remuneration committee.

• Total remuneration package of directors should be audited.

• Shareholders should involve in the determination of remuneration of full time as well as the non-executive directors.

• The remuneration packages of senior employees should be approved by the board and should be disclosed to the shareholders.

• Presently, all shareholders have right to participate and vote in company meetings and shareholder ballots. They have a right to vote by proxy. Shareholders can approach to CLB, the courts or SEBI for redress when their legal rights are violated.

There should be an electronic voting system at the AGMs. Institutional investors should check and balance by regular and systematic contact with senior executive officers and other officers and exchange views and information on strategy, performance, board membership and quality of management. Institutional shareholders should involve in the appointment of independent non-executive directors. Shareholders can approach
to the courts when their legal rights are violated but the process of Indian courts is very slow. Investor complaints should be brought under the purview of the Arbitration Act so that quick relief could be granted.

- The AGMs should be held at the town/city, where the CEO of the company is located/headquartered. One or two general meetings of shareholders should be hold at different placed where large number of shareholders reside so that common shareholders have opportunities to interact with the board and management of the company. The timings of general meetings should be convenient to shareholders.

- There should be a disclosure about company's governance policies, business ethics, and the environment and other public policy commitments. The disclosure should help shareholders and others to evaluate the company's statement and explanations. The evaluation of a large company should be done by an independent agency. The evaluation report should be sent to all the shareholders.
- Shareholders have a right to participate in all major decisions. But the small shareholders seldom get an opportunity to say something in the meetings. Thus, there should be a provision of the selection of the representatives of the small shareholders.

- The reports of the boards including financial situation, performance, ownership and governance of the company should have integrity and consistency.

- Companies should be required to prepare and present consolidated financial statements. Information for each significant product or service segment and for each significant geographical market, should be prepared, audited and disclosed in accordance with high standards of accounting, financial and non-financial disclosures, and audit.

- Companies should prepare and present the aggregate amount and period of defaults on repayment obligations on, loans, bonds, debentures and public deposits.

- An annual review of the effectiveness of the company’s internal controls over financial, operational and compliance matters should be conducted and reported to shareholders.
• The auditors play a vital role in the functioning of a company. Thus, the Board should take measures to enhance the independence and stature of auditors. The selection of the auditors should be transparent, according to the qualifications. The audit committees should have say in the selection of auditors.

• The head of the audit firm should report to the board or the audit committee in an independent manner.

• The board should have obligation, but not accountability to stakeholders.

• Managers must disclose any material interests in transactions or matters affecting the corporation like outlook, risk and concerns and internal control systems.

• There should be a separate section on corporate governance in the annual reports of the companies.

The government proposed and constituted a committee on Regulation of Private Companies and Partnership (Chairman: Naresh Chandra) to suggest a more scientific and rational regulatory environment with particular reference to the Companies Act, 1956 and The Indian Partnership Act, 1932. The recommendations are given by
the committee to provide adequate flexibility to companies/firms conducting, or intending to conduct business or provide professional services to provide a structural environment conducive to growth and prosperity of the entities, and to simplify and rationalize entry and exit procedures. The recommendations are:

- The committee recommends the criteria for determining small private companies. Companies Act, 1956 provides a distinction among private companies, public companies and private companies that are subsidiaries of public companies. The committee recommends not to change this type of distinction. A small private company would be a private company that:
  - has a paid up capital and free reserves of Rs.50 lacs or less, or as may be prescribed from time to time.
  - has an aggregate annual receipt from sales/services, not exceeding Rs.5 crores.
  - has other receipts not exceeding Rs.5 crores
  - is registered as SSI Unit.

- There is no standard format for incidental object clause. Thus there is a lack of clarity regarding the question of what constitutes
incidental objects. Companies have to draft lengthy incidental objects clause. The committee recommends a standard format of incidental objects for all private companies including small private companies. The proposed format for the incidental objects clause is:

"In connection with the main objects, the company shall have the power to invest its funds in real property and securities, to borrow and make advances, to acquire, own and dispose of real and personal property, and to do all other acts incidental and necessary, as may be prescribed, for the accomplishment of the purposes stated in the main objects clause."

- The object clause of a company is required to proclaim its main purpose and to ensure that third parties dealing with the company and the members understand the objectives of the company. Any change in company’s activities would require an amendment of the documents of incorporation and sanction of the members. The committee notices that some companies have lot of 'main objects' to change. And the company avoids the sanction of members which is essential. Normally, a small company has a single main
object. If it has more than one object then it may misuse them. Thus, the committee recommends that only companies that have single main object will qualify as SPC and enjoy the exemptions available to SPCs. If a company wants to avail the benefits of SPCs then it should amend its object clauses to single main object clause.

- Presently, the validity of share transfer forms is two months from the date of presentation before the prescribed authority. The validity of such forms should be one year from the date of presentation before the prescribed authority.

- Presently, if a company wants to shift its registered office then a special resolution is required to ensure that every investor would be able to participate and their consent would become important for any decision of the company. In reality, few members are involved and most of them are directors or nominee directors of the company. So, the directors approve the resolution and the consent of members about resolution is a mere formality. Thus, the committee recommends that the decision of shifting of registered office should be approved by directors and information
should be provided to all members before its actual implementation.

- The register of members and debenture-holders can be closed only after giving seven day’s notice through advertisement and for a maximum of 45 days. But the committee believes that there is no need of any advertisements in newspapers about closing of the aforesaid registers of private companies.

- Presently, the foreign registers maintained by a company can be closed only after giving an advertisement in some newspaper circulating in the district wherein the foreign register is kept. The committee notices that few private companies have foreign registers and public have no interest in it. Thus, there should not be any requirement of advertisement. The details of the foreign registers maintained by a private company should be mentioned in the annual return or director’s report.

- A company files annual return within 60 days from the date of holding an AGM. Annual return mentions the capital structure, the registered office, the board of directors, the members and the debenture holders and indebtedness of the company. The
information on these particulars is as on the date of the AGM. But these ordinary disclosure of a private company is not important because these companies are closely held and controlled, and change in the shareholding is not a regular feature and not so easy. Normally, the board of directors approves the annual accounts and the director's report, some day before the date of holding of the AGM.

Thus, the aforesaid information should be given as of the date of the meeting of the board of directors approving the annual accounts in the director's report.

- Presently, if a company has to call an extra ordinary general meeting then it needs to follow a very detailed procedure. The relationship between members and the company is determined according to the Articles of Association (AOA) agreed upon by the members. A private company should be allowed to provide in its AOA the manner and time-frame in which an extra ordinary general meeting of such company can be called on requisition of its member(s).
• The circulation of members’ resolution has an expensive procedure and most members of private companies are able to participate in the finalization of the AOA. A private company should be allowed to provide in its AOA the manner of circulation of members’ resolutions.

• The company has no specific provisions about the constitution of an ordinary or a special resolution. Holding general meetings to pass such resolutions is cumbersome and involves unnecessary expenditure. Moreover, non-conformance with the statutory requirements lends to invalidation of the resolution. This is an excess burden on private companies. Private companies should adopt simple procedure. Private companies should pass written resolutions by circulation. Ordinary resolution should require a simple majority and special resolution should require three-fourth majority of those eligible to vote. Such resolutions should be recorded in the minutes book within 30 days of passing thereof. If there is only two members in a company, then they should hold AGM by circulation. Written resolutions can be passed through various forms of electronic communication.
• Presently, a company is prohibited to appoint or employ both a M.D. and a Manager at the same time. A company should decide according to its own managerial resources.

• A private company deposit dividend in a separate bank account, quantum of profit to be transferred to reserves prior to declaration of dividend and transfer of unpaid dividend to a special dividend account. But a private company should not deposit the funds for dividend in a separate bank account and transfer the unpaid dividend amount to a special dividend account.

• Dividend of a company is to be paid within 30 days and to be deposited within 5 days in a separate bank account, from the date of declaration. Unclaimed dividends are held by a company in trust for the members until their transfer to investor Education and Protection Fund pursuant to the provisions. Private companies should have the freedom to deal with the unpaid dividend until its transfer to Investor Education and Protection Fund pursuant to the provisions.
• Private companies should be exempted from the restrictions and the requirement of having to seek the approval of the Government, for payment of interest out of capital.

• The persons other than retiring directors to stand for directorship have certain rights such as he shall be eligible for appointment to the office of a director if a notice signifying his candidature is sent to the company not less than fourteen days before the general meeting.

• The board of directors of a company held four meetings in a calendar year. But this is a tough job for SPCs. Thus, SPCs should have relaxations from the four board meetings in a year. SPCs should hold board meetings at least once in a year.

• The appointment of Sole Selling agents is approved by members selected by board and government. This process should be changed.

• The AOA of private companies should provide for the manner, terms and conditions on which sole selling agents can be appointed.
• Certain contracts of directors and other persons are required to be sanction by the Board. If the paid up Capital of a company is Rs.1 crore or more then the approval of the government to enter into such contracts is also required. This provision should not be applicable to private companies.

• A private company is required to make separate disclosures to the members informing them of the terms of or variations in management contracts. This should not be applicable to private companies. Private companies should be required to get the terms of the management contracts or variations therein approved at the meeting of their board of directors.

• An alternate director is appointed to act for a director of board during his absence for a period of not than 3 months. The AOA of private companies should provide for the manner of appointment of an alternate director.

• The office or place of profit in a company is held by a director or the specified person who has consent of the members of company. But with today’s tough competition, a company should take its decisions of management more professionally.
• If the payment of remuneration exceeds the prescribed limit then there is a requirement of government approval. The decisions should be taken by management of private company.

• Only managing or whole-time director or directors who hold the office of managers are given payment as compensations for loss of office, or consideration for retirement from office, or in connection with such loss or retirement. But the compensation should be contractually determined on the basis of contract law. Private companies may provide for compensation for loss of office in the AOA of the company.

• Presently, over 6 lakhs companies are registered and 90% of these companies are private companies. Half of these companies do not file their annual accounts and annual return. Some companies are fail to secure their purposes, their projects due to failure of a proposed joint venture, failure to obtain finance, differences among promoters, change in government policy etc. A simplified and quick exist scheme is needed for private companies. The procedure involved in the simplified exit scheme should not take
more than 120 days in any case. In fact, this may be extended to all companies.

- In today's business environment, a person takes very risky step if he wants to be a member of a partnership firm with unlimited personal liability. There should be a legal structure like limited liability partnerships (LLP). Now Indian professionals transact with or represent multi-nationals in international transactions where the LLP is needed very much. There should be a law for establishing LLP. The LLP form should be initially made available only to those providing defined professional services like lawyers, company secretaries, accountants and the like. To be eligible for this form of partnership, the profession must be governed by a regulatory Act that adequately controls and disciplines, errant professional conduct. Such professions may be notified by the Department of Company Affairs from time to time. After sometime, LLP should be extended to other services and business activities. Once the experience gained with the LLP form of organization has been evaluated and tested.
• The professionals should subscribe their names in an 'incorporation' document in the prescribed form if they want to provide an identified professional service together.

• The LLP agreement should contain information as may be prescribed by the Department of Company Affairs.

• Any person, who wants to be a partner, can be entered into an agreement with the existing partners in the LLP. There is no limit of the number of partners in the LLP.

• A partner having resigned from an LLP would continue to be liable for acts done by him during his tenure as member of the LLP.

• Many state governments have inadequate infrastructure and expertise for ensuring effective regulation. Thus, central government should regulate and administer LLP to ensure uniform standards.

• The liability for partners in a LLP should be limited. If a partner of LLP is liable to any person or entity as a result of his wrongful act or omission in the course of the business of LLP, the LLP would be liable in such circumstances. The partner would be
liable only to extent of his/her contribution to LLP. If the partner of LLP do the act without authority given by LLP, the LLP would not be liable such type of acts. If a fraud act is carried out by LLP or its partners, the liability would be unlimited. A partner shall not be liable for the personal acts or misconduct of any other partner.

Provisions dealing with insolvency, winding up and dissolution of an LLP should be similar to those provided for private companies in the Companies Act, 1956. The provisions of the liability of partners should be mentioned in detail.

- All LLPs should have compulsory insurance policy to protect the interest of the persons. There should be insurance cover and/or funds in specially designated, segregated accounts for the satisfaction of judgments and decrees against the LLP in respect of issues for which liability may be limited under law. The extent of insurance should be known to, and filled with the ROC, and be available for inspection to interested parties upon request.

- The standards of financial disclosures should be applicable to an LLP to minimize the chances of fraud and mismanagement. The standards should be different for different professions.
• The LLPs should be governed by a taxation regime that taxes the partners as individuals, rather than taxing the LLP itself, i.e., the LLPs should be treated in the same manner as the firm under the tax laws.

• The Indian law of partnership in India is based on the provisions of the English Law of partnership. The Indian Partnership Act of 1932 was the result of a report of a special committee. The partnership act is a comprehensive framework for contractual relationships among partners, and the basis for a most popular form of organization for small businesses. The committee feels that the Partnership Act does not require any major change. But there should be some modification in Act with the changing business environment. The partnership act should be appropriately amended to provide a legal framework for registration of charges, on the lines of the provisions of the companies Act, 1956 or the recruitment and reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

• Banks and financial institutions have no provisions for registration of changes. Thus, the corporates find it difficult to obtain loans.
Banks and financial institutions should be permitted to file the papers for registration of change, wherever, they provide assistance against the security of assets. The firms can themselves get the charges registered. In either case, the documents would have to be authenticated by both the secured creditor and the lender.

- The Partnership Act allows payment or advance beyond the amount of agreed share of capital, to the partners at an interest of 6% per annum. The rate of interest of 6% was fixed in the 1932 and has remain static but it should be prescribed by government, form time to time.

- A suitable legal provision is needed to register the partnership firms so that all relevant information could be obtained by inspection of the register or by obtaining a certified copy. But this provision has certain problems. The Partner Act should be amended to the effect that ‘a right arising from a contract’ shall mean ‘a right arising from a contract made in the course of businesses. Amendments as suggested by the Law Commission should be expeditiously introduced in Parliament.
• Banks, financial institutions, and third parties do not have any interest to deal with partnership firms because of the inadequate records in various states. State Governments should update all the computerized records pertaining to partnership firms within a given time-frame.

• Failing that, government should consider taking over the administration of partnership firms, once DCA’s computerization programme has been successfully implemented.

• The appointment and payment of managerial personnel is determined by company and not by government. Approval of government is required only if a company has losses or inadequate profits. Current thinking is that managers have been reckless at times in rewarding themselves. Payment of managerial remuneration should be liberalized further for companies that are implementing projects that require long gestation periods (such as infrastructure projects, or insurance companies) even if there is inadequacy or absence of profits. Payment of managerial remuneration should similarly be liberalized further for companies that are being nursed back to health; this could be related, for
example, to reduction in losses or increase in net worth. The other
disclosure requirement of remuneration should be limited to
functional directors and relatives of directors or significant
shareholders (holding more than 2% of the company’s shares),
and should not cover other employees. Remuneration of other
employees should be treated as confidential information and not
published.

- The government should define a public company, through the
  Companies (Amendment) Act, 2000 and remove the confusion
  that exists in interpretation and applicability in relation to a
  private company which is a subsidiary of a public company.

- The principles governing voting agreements, poling agreements
  and shareholders’ agreement is a subject matter of several
  judgements. These agreements conduct business in a particular
  way or method. Shareholding agreements should be a binding
  agreement. The shareholders shall not have the rights to use the
  company’s funds to litigate the enforcement of the shareholder
  agreement or to defend the contractual right of any shareholder
  under the shareholder agreement.
• Adequate remuneration is to be paid to attract professional and highly qualified independent directors. "The statutory limit on sitting fees should be reviewed, although ideally it should be a matter to be resolved between the management and the shareholders. In addition, loss-making companies should be permitted to pay special fees to any independent director, subject to reasonable caps, in order to attract the best restructuring and strategic talent to the boards of such companies."

• Non-executive and independent directors should be exempted from criminal and civil liabilities.

• The government may consider appropriated modification in the proposed Section 252A sought to be inserted by the Companies (Amendment) Bill, 2003.

• The resignation (in duplicate) of a non-executive director should be send to the company and another copy to ROC. The ROC should take it on record and acknowledgement together with action taken should be sent to the director who has resigned.
• A company should appoint another director within a reasonable period if the minimum number of director is not fulfilled due to the resignation of one director.

• "Law should also be amended to provide for a fine of 0.001% of the paid up capital, subject to a minimum of Rs.500/- per day and a maximum of Rs.5000/- per day, for each day of delay in not forwarding Form 32 to the ROC, or for not meeting the other requirements of law, enabling registration of Form 32, from 10 days after receipt of resignation of independent director."

• If a company has a paid up capital of Rs.1 crore, then certain contracts in which directors are interested is approved by government. Now, there is a need to change with changing business environment. There are a lot of checks and balances to safeguard stakeholders' interest. Government should frame rules in a manner that prior approval of government is not normally required, subject to certain safeguards that would protect public/stakeholder interest.

• Certain relaxations should be provided to small private companies (SPCs) such as various measures of corporate governance,
internal management and another corporate practice. A suitable provision be added to the Act to empower it to grant further relaxations to SPCs. Such a provision should also allow government to prescribe adequate safeguard and imposition of fines incase the liberalized provisions are misused.

- The environment for private companies is quite liberal but regulatory regime should be liberalized. A private company whose aggregated receipts during the financial year exceed 100 times its paid-up capital and free reserves should be subjected to the regulatory regime applicable to public companies.

- There are many measures to safeguard the public interest. Despite of this, there are many cases in which depositors have lost their money or are not able to recover the interest and/or the principal sum. Initially, the committee feels that the companies should be prohibited from accepting deposits from public. Now, the committee is not agreed with this view. Bur the safeguard of depositors is an important aspect. Thus, there should be amendment in rules to give special safeguards in regard to public deposits.
- The maximum number of partners of a firm is not mentioned in the Partnership Act. The Companies Act, 1956 limits the number of partners to 10 for firms carrying on the business of banking, and 20 for others. The Companies Bill, 2003 proposes to enhance the limit of partners to 50. There should not be a limitation of partners in today globalizing world. The government should be empowered to enhance the limit of maximum number of partners, from time to time.

- The protection of small shareholders is a very tough job. In some cases, the shareholders have such a small amount of share that the cost of sending them a copy of annual report or other information is much big. Thus, government may consider measures encouraging very small shareholders to sell their shares to company or to allow the company to buy back the shares from such small shareholders, having to begin with, a total investment of Rs.2000/- or less. Mutual funds or financial institutions may also be encouraged to mop up the small number of shares by offering a fair price to them.
• Matters of the companies are disclosed in the balance sheet and the profit and loss account of the companies. There is a requirement to disclose quantitative details of sales and purchases of goods and materials, stocks and turn-over, etc. Thus, a lot of applications of quantitative details are received in DCA. These both increase the work load in the DCA, and the difficulties and the costs to the companies. DCA may exempt a class of companies so that the need for prior approval by individual companies would be minimized. The government may be empowered to exempt a class of companies.

• The Act may be amended to enable adoption of consolidated financial statements, and in respect of companies that attach consolidated financial statements, the requirement of attaching the accounts of subsidiaries with their own accounts be done away with.

• There is a simplified exit scheme for private companies. There could be certain public companies which would like to exit but are not able to exit because of high costs involved in winding up. The government should prescribe a simple exit scheme for public
companies on the lines of the recommendations of private defunct companies.

- "There should be an amendment to provide for approval of shareholders by special resolution instead of government approval for payment of dividend out of reserves of profits earned in the earlier years, in case of companies incurring losses. The appointment of sole selling agents, in case of a company with a paid-up capital of Rs.50 lacs or more, should not require approval of government. Approval of shareholders by special resolution should suffice. The government should build safeguards for all the above cases."

5.3 Conclusion

The government purposes to amend the present Companies Act, 1956 and simplify it by reducing the number of Sections. Simultaneously, certain new provisions may be introduced. A holistic view needs to be taken of the entire Act and changes brought about in tune with the changing global conditions. And another committee on corporate governance is constituted by SEBI, under the Chairmanship of Mr. Narayan Murthy to suggest how best to further improve corporate
governance practices. The basic structure of corporate management is remaining same in the draft Companies Bill with few changes.

At the same time, mere legislation with its brittleness and rigidity may not be sufficient to tame the rogue corporate. There is about 6000 listed companies in India and only 30% have provisions of corporate governance in an acceptable and meaningful manner. The top 200 or so companies are subject to fairly intense scrutiny by media and investors as far as compliance level are concerned. ‘RELIANCE’ company is recently recognized for best corporate governance. Corporate governance practices are often question even in such better known companies and the same ‘RELIANCE’ company is in the doghouse of poor governance. What happens in the rest of listed companies can only be conjectured. We can only imagine how conducive the environment is for shareholders, financial investors in an unlisted company. Companies rated high on corporate governance are few in number. The regulators have done their job to form the good corporate governance. Now shareholders should come in front to play their role and get the governance they want.