CHAPTER - VIII

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Modern corporations constitute a major segment of business across the world. Corporate form of business entity has been preferred due to its advantages and professional approach in its functioning under the overall regulation governing the Corporates. As the Corporates grew in size and complexity, a large number of shareholders faced the challenge of structuring the corporate organization and to regulate its operations in a manner which assures them the attainment of corporate goals of efficiency, profitability, sustainable growth, accountability towards assets, and providing best quality products and services to the customers.

The separation of ownership of the shareholders from the management in the corporations resulted into the problems of governance. The expectations of the Multistakeholders of the Corporates also increased due to changed economic environment and lack of responsibility of the governing agency. Even in most advanced countries, the functioning of Corporates received a critical review by the regulators and other stakeholders. The pace of globalization and economic liberalization announced by developing and developed nations also increased the expanding role of the Corporates in fulfilling the desired objectives with greater accountability for the safety and performance of the corporate assets. The functions of professional management and audit required a thorough scrutiny even by the society, at large.

The corporate sector in India contributed a sizeable portion of the manufacturing output to the GDP and thereby assumed a pivotal role in the economic development of India. The economic reforms announced in India after July 1991 focused more on free market economy and influx of global...
capital through mergers, takeovers, and joint ventures in various products and services. The Indian Corporates redefined their strategies on par with international standards in the wake of global competitiveness and need for creating increased value to the stakeholders.

The subject of corporate governance assumed a renewed urgency as various countries constituted different committees to look into the corporate governance issues/deficiencies with a rightful earnest of ensuring fair disclosure, greater transparency, and accountability, effectiveness of audit functions, and balanced and independent board functions in the functioning of the Corporates. Even though various countries reviewed the system of corporate governance for different reasons, the basic issues of governance remained the same worldwide.

The study on corporate governance in India focused on the objectives of examining the concept of voluntary vs. rule-based corporate governance in the context of economic liberalization and globalization by analyzing role and expectations of the stakeholders by studying the experience at the global level and analyzing the impact of corporate governance on corporate performance in India. The hypotheses formulated were tested and confirmed based on the data of sample companies during pre and post governance legislation periods. The corporate governance systems in select countries viz. USA, Germany, Japan, France, UK, Canada, South Africa, China, Italy, and Russia is analyzed to examine global standards of governance vs-a-vis governance prevailed in India.

The role of corporate governance in the context of globalization policies announced by the Indian Government is analyzed with a special reference to global competitiveness, emerging markets, global business challenges, and need for good corporate governance system as a long-term strategy to enable Indian corporate to be one of the global players.
analyzing the multidimensional aspect of the concept of corporate governance the study has defined the concept in a comprehensive manner

The role of stakeholders their power expectations and conflict in the corporate are analyzed with a special reference to shareholders rights. The stakeholders confidence index (SCI) – a new concept to measure the level of confidence of various stakeholders in the corporate functioning has been suggested.

The role of corporate sector in Indian economy has been analyzed from secondary and data of sample companies. The strengths and weaknesses of corporate sector in India in complying with corporate governance as per the directive of SEBI have been analyzed on the basis of certain parameters. A meaningful comparison between top Indian 500 companies and Fortune Global 500 companies has been done to find out the position of Indian Corporates in the global arena in terms of size, strategy, diversification of business and efficiency.

The impact of corporate governance on corporate performance in India has been assessed on the basis of data of sample companies. Applying corporate performance indicators, ratio analysis techniques and appropriate statistical analyses tools the performance of Corporates during post legislative governance period over pre legislative governance period has been made. The significance of professional management in ensuring good performance and good corporate governance is also examined in detail. The study formulated good governance indicators and applied the same to the sample companies data while rating them. The instances of corporate misgovernance at various levels of power are also highlighted. The study suggested an ideal code of Corporate Governance for India with suggested benchmarks in the form of good governance indicators, Stakeholders Confidence Index, Corporate Performance Indicators and Professional management Level Indicators.
With these backdrops the summary conclusions and suggestions are as follows

8.1 The issues of Corporate Governance worldwide have remained the same despite variations in capital structure regulatory framework historical political socio-economic environment market mechanism and type of government. The process of globalization and economic liberalization adopted in India since July 1991 has given much importance to the subject of Corporate Governance on the lines of global economy. The compliance of corporate governance by the sample companies has revealed that the level of compliance is reasonably good even though the subject received the attention of the corporate leaders only during late 90s. Since corporate culture in any country is not alike the ideal code of corporate governance cannot be devised to give a readymade solution to the corporate sector in India. The market realities and participants are only required to devise a tailor made code of corporate governance.

8.2 The stakeholders in a corporate cannot be the mute spectators for the developments at the corporate. It is the obligation of a corporate to create required awareness on the level of good corporate governance which can ensure the protection of interests of all the stakeholders. The non-compliance of the requirements of corporate governance as per SEBI guidelines by the companies cannot be ruled out. In such circumstances it is the duty of the corporate board to explain the existence of compelling or special factors which justify the deviation from the practice of corporate governance. The corporate should never ever resort to box-ticking culture in complying with the rigor of corporate governance standards. Good corporate governance is like good character which should be improvised over the years and reflect through changed attitudes of all corporate leaders. The sample companies compliance of corporate governance having found reasonably good it is
revealed that some companies have just ticked No parameter without assigning any specific reasons for their doing so.

8.3 The stakeholders' interest is the primary concern of the corporate board. As per statute, the board is accountable to the shareholders and is responsible to the other stakeholders as well. The wider application of good corporate governance requires the protection of stakeholders' interest by the board to ensure value maximization in the long run and create a long-lasting image of the corporate in the minds of general public at large. The concept of stakeholders' confidence index, as suggested in the study, would go a long way in understanding the confidence level of multi-stakeholders of a corporate and implement remedial measures to correct any areas of decline in the confidence level of the stakeholders in the corporate functioning.

As a supplement to the above, it is suggested to constitute a committee known as Stakeholders Welfare Committee to chalk out long-term strategies for the welfare of the stakeholders at large. In the study, it is revealed that the stakeholders' conflict is very much present though at a low level. It is the responsibility of such a committee to resolve the stakeholders' conflict as early as possible. It is also observed that none of the sample companies has ever constituted such a committee. Further, it is suggested to publish a guideline document or manual for each stakeholder setting forth their roles, duties, and powers in enforcing their transactions with the corporate and visa versa. The role played by the stakeholders should be clear to the corporate and visa versa.

8.4 Certain Corporates even though complied with the SEBI directives of corporate governance by classifying the board members into executive and non-executive with specific mention of independent director category have not attempted to remove any dependent or interested director from the Board.
As on the date of application of SEBI directives the corporate neither removed any interested director with suitable disclosure in the Annual Report nor discontinued interested transactions with the said director his associate companies concerns relatives with a view to ensure the strong element of independence in the functioning of the board In certain companies the resignation of director is reported without indicating the reason for resignation In order to uphold the principle of transparency such disclosures must have been made The analysis of sample data of 261 companies in the study has revealed this paradoxical situation Thus the very purpose of disclosure of corporate governance compliance is defeated

8.5 The study revealed that the rule based governance is only prescribing minimum level of compliance of corporate governance The focus of implementation of corporate governance should be more towards voluntary compliance and less towards mandate of law The maximum level of compliance to the code of corporate governance should come by voluntarily enforced system The maximization of long term shareholders value is the outcome of the people teamwork leadership enterprise experience and other resources As there is no single formula to combine these together under well chalked out rules it is inevitable to rely more on voluntary enforced system of ensuring good corporate governance Even though there is mandatory requirement for the compliance of code of corporate governance what is required more is the voluntarily enforced system of corporate governance to satisfy the expectations of the stakeholders The corporate must have a clear vision as to which delivers success — Rule based governance or voluntarily enforced system of corporate governance or both In the present context of open market and competitive regime a self driven self-regulated self disciplined and highly committed corporate alone would emerge out as the fittest and march towards excellence with due regard to the laws of the land The voluntarily enforced system of corporate governance should be institutionalized with an acceptable value system
8 6 From the findings of the study it is observed that only a few sample companies have constituted Corporate Governance Committee. In order to institutionalize the corporate governance with an acceptable value system, every corporate is required to constitute Corporate Governance Committee at the apex level with members drawn from non-executive and independent board. The Chairman of such committee must be a statesman with long term vision for the functioning of the corporate. The terms of reference for such committee broadly to focus on the vision statement, the objectives, the periodicity of conducting meetings, authenticating the proceedings; binding nature of such proceedings on the corporate board, procedure for change in the committee members, member secretary, publicity materials, coordination with other committees, continual updating programmes, justification for deviation in compliance of CG, assessment of the impact of the non-compliance on the corporate both in terms of financial and non-financial aspects, evaluation of corporate performance, suggested course of action for continual value maximization and procedure to punish the evaders of code of corporate governance. Any successful governance system must have an option to replace poorly performing managers.

The Exception Report on the mis-governance in the corporate should be directly addressed to this committee for study, evaluation and suggested corrective steps for consideration of the full board. The recommended course of action from the board should be implemented in right earnest and scope for recurrence of such mis-governance should be eliminated.

8 7 The code of corporate governance is required to be reviewed by a committee comprising of non-executive independent directors or external professionals or non-executive Chairman with independent directors. The practice of the code by the corporate is required to be evaluated with a view to assess the level of implementation, implementation hurdles and such other
factors having direct or indirect bearing on such implementation by the corporate. The quantitative and qualitative assessments of various parameters of governance are to be adopted by the said review committee. In case of top management professionals like MD, ED, CEO, CGM, CFO, CS, etc., it is advisable to have one-to-one review meetings to get first-hand information on the practice of code of corporate governance and their mind setting. The philosophy of corporate governance is required to be reviewed in the light of expectations of the stakeholders and the outcome of implementation of code of corporate governance by the corporates. The review process should highlight the application of principles of corporate governance in right earnest having regard to the various aspects of the corporate functioning. Timely upgradation of governance code is suggested. In the sample companies, data analysis reveals that most of the companies have mentioned the philosophy of corporate governance in line with corporate vision statement.

8.8 The board is responsible to ensure good corporate performance. The professional management is required to support this cause with proper process and structure in place. The findings of the study clearly reveal that good corporate governance improves corporate performance although it does not guarantee good performance. The performance of sample companies during the post-governance period has improved despite no major qualitative changes in some indicators of performance. It is further revealed that adopting professional management by the corporate has enabled good performance over other corporates which lagged behind in bringing professionalism in management. Thus, highly professionalized management and practice of good corporate governance has directly contributed to the improved performance of the corporate during post-governance period over pre-governance period. A reasonably good number of sample companies have been rated as Excellent in complying with corporate governance as per the directive of SEBI. Similarly, sizeable number of sample companies have been able to place professionally managed team which earned them high rating.
while assessing the adoption of professionalized management in the functioning of the corporate

The findings of the study are universal in conclusion of the fact that there is no perfect technique to measure corporate performance. The technique of financial ratios suffers from inherent limitations. The latest statistical techniques lack proper predictability of the corporate performance in the long run. The financial statements being containers of historical data are not inclined to incorporate change in the value of money arising either from inflation or deflation. With this handicap the financial statement as a source of indicators of growth is highly questionable. In the present context of high volatility of top line and bottom line of the corporate in the backdrop of globalized economic process and highly competitive environment the level of reliance on such financial statements should be done with caution. The concept of economic profit as an indicator of performance is highly debatable since measurement of opportunity cost of capital itself is varying from corporate to corporate country to country and time to time.

The element of subjectivity is very much prevalent in the exercise of assessing the level of compliance of corporate governance and corporate performance despite the intention of avoiding subjectivity altogether. The application of latest statistical techniques and financial ratios have introduced great amount of objectivity in the whole exercise of such assessment. The study has been founded on these premises.

8.9 The institutionalized corporate governance should focus on the prediction of corporate failures even. The business itself is largely dependent on the forces of market with ups and downs. Any system of good governance is incomplete without a proper mechanism to predict corporate failures arising out of business vagaries and unforeseen market conditions - may be domestic or overseas. The market warnings on corporate profitability performance and financial stability should be accorded topmost agenda by the
board and the management. Accordingly, timely preventive steps should be taken as a part of surveillance mechanism and also to convert threats into opportunity and bring about a positive impact of such change on the corporate functioning. In the sample companies’ data analysis, it is revealed that the managers are reasonably well placed to analyse the information risks associated with such information as a knowledge worker—employees with specialized knowledge in a specific subject and use such knowledge to add value.

Risk assessment mechanism should form a part of surveillance mechanism as a long-term strategy. The directors and management should have an access to information as a resource to take informed and judicious decisions on various aspects of the corporate.

In the knowledge Corporation, knowledge is treated as an economic resource with availability of such resource to everyone in the corporate instead of symbolizing it as possessive tangible resources like cash/bank balances. The Knowledge Corporation requires building, replenishing, distributing and putting to use the knowledge accumulated by every individual in an organization. The Knowledge Workers’ experiences are critical to the competitiveness of the corporate. The knowledge mapping on a continuous basis in the changed knowledge economy era would only put the corporate as a forerunner in tapping competitive and challenging markets. The information technology revolution is the only answer to the above at all levels of corporate functioning to create high value links without any loss of time.

8.10 The concentration of role of the Chairman and the CEO in one single person has attracted a lot of criticism from various corners. One school of thought maintained that allowing one person to occupy two higher positions would amount to concentration of enormous powers. This school maintained that such concentration of power may create governance issues besides compromising on the level of delegation of power at the highest decision.
making body without any questioning process in the discharge of two functions namely of the Chairman and the CEO. This school further contended that the board should have strong factors justifying the combination of two important positions vesting with an individual under the overall supervision of strong and independent board. In the absence of this, it would be a costly affair to combine both the positions with a single person. Another school of thought contends that the very separation of two distinct positions in the corporate creates two distinct platforms for strategic and independent thinking in resolving complicated issues confronting the corporation. The separation process creates checks and balances in discharge of functions attached to the topmost positions in the corporate. This school is of the opinion that the Chairman is running the board and the CEO is running the company! It is rather difficult to give the expected level of performance by a single person occupying two extreme demanding and challenging positions viz. Chairman and CEO of a corporate. Yet another school of thought is of the opinion that the separation of two important positions is undesirable because of the ambiguity it creates about Who is in charge of corporate leadership? Who exercises power? Who creates influence? Who symbolizes power and influence? Who overrides the other? These are some of the questions posed by this school of thought in the matter of separation of both the positions. This school is opposed to separating the two positions on the ground that it would dilute their power to provide effective leadership creates the potential for rivalry between the two positions leading to certain compromise over decisiveness, protective platform for the CEO by the Chairman or visa versa and creating accountability issues with or without poor performance and confusion about two public spokesmen for the corporate.

The sample companies data is revelatory of the fact that most of the companies are having two positions of the Chairman and CEO vested with two persons. This trend is prevalent during post-governance period in India which may be on account of SEBI directive on the compliance of the
corporate governance The concentration of both the positions in a single person is matter of concern from the analysis of sample companies data. In the family managed companies the concentration of both the positions in a single person is noticed more. In the light of these findings it is suggested that both the positions needs to be vested with two individuals in line with UK where 80% of the largest 500 companies are having both the positions vested with different persons. Good corporate governance is possible wherever both the positions have been separated with proper checks and balances in their realm of power.

8.11 The role of nominee directors in improving corporate governance has resulted in debatable issues. In the sample companies the findings revealed that the nominee director has failed to ensure a strategic role in the governance system of the company. The nominee director while representing the lenders grossly neglected the key role to be played by him as a responsible nominee on the board. The presence of nominee director though available in most of the sample companies did not create a desirable impact on the executive board in curtailing the award of contracts to the interested directors associate companies firms relatives with actual siphoning of funds out of the corporate. The nominee directors befitting to their brief concentrated much on the financial repayment of loans availed from funding agencies and became loyal to their employers without bothering much in introducing the strong element of independence in the board. On vital decisions calling for their active deliberations the nominee directors either remained away from the scene or sent leave note immediately on receiving the agenda for the meeting. The mute spectator regime has been the experience of the corporate having the presence of nominee directors even in the sample companies response data made available for the study. Above all the sample companies have found the expense incurred on the nominee directors at moderately higher end.
The astonishing revelation on the fact of persons occupying nominee 
director's position is that the representatives are from the lending institutions 
with or without professional qualifications required to understand the multi 
dimensional issues of the corporate business. The mismatch in the 
representation and the required level of expertise has been found to be a 
paradoxical situation in the role of nominee directors in Indian companies. The 
sample companies response data revealed that the professionals like CAs, 
CSs, MBAs, and technocrats are preferred for the post of nominee directors 
due to their professional qualifications and independence in their functioning. 
Among these professionals, the CAs have been rated as most preferred for 
the post of nominee directors. In the light of these findings, it is suggested that 
the professionals are available in plenty in India. The corporates, and the 
regulators are required to avail the services of these professionals to the role 
of nominee directors so that with their professional background, code of 
conduct, and awareness of multidimensional corporate business matters, they 
would be of great help in filling the vacuum already created in this direction. It 
is hoped that these professionals would ensure desired element of strong 
independence in the functioning of the board.

8 12 The incentive system to the non-executive and independent board 
members has also received much criticism. It is contended that for a small 
incentive of sitting fees, why to shoulder much responsibility by the non 
executive and independent board members? There is no commensuration 
between the responsibilities expected and the incentive system in the present 
corporate setup. It is also pertinent to mention that the collective 
responsibility is very much cast on the entire board members when it comes 
to poor performance, financial scandals, and abuse of duty by the executive 
board. Therefore, it is suggested that there should be a cap on the financial 
liabilities for the non-executive and independent board members with a proper 
incentive system so that there would be a positive role and impact by the 
functioning of these directors in the corporate board. A suitable amendment 
to the existing Companies Act 1956 would resolve this vexed issue.
The Laws of land have not been able to provide effective regulation on the corporates in respect of discharge of corporate social responsibility in the present context of viewing the corporates as a major player in the society. The exercise of corporate power has lead to ill effects as well as prosperity to the society as a whole. The issue of corporate social responsibility has to be analysed in two ways – 1) the company itself is like a society with its own accountability towards the stakeholders and protecting the interests of the company as well as the stakeholders. 2) The company is a player in the society with an obligation to give a credible functioning in the sense higher accountability-greater responsibility towards the society for having drawn resources from the society due respect to the laws of the land and upholding the human as the greatest and invaluable asset not figuring on the Balance Sheets of the company.

The first interpretation may hold good only under the perfect situation in which the company is functioning. This perfection may seem to be good in theory whereas the in practice it may be otherwise. Non accountability towards the stakeholders and any activity contrary to the interests of the company may jeopardize the whole edifice of the corporate itself with cascading effects to all concerned. Hence this interpretation cannot withstand the test of reality.

The second interpretation is a broader one with due recognition to the role of the society in corporate building. This interpretation is in line with the two tier checks and balances on the corporate functioning viz the regulations, contracts and understandings checking the corporate functioning and the society as an extended guardian of the corporate with a mandate of moral regulations and society bonds. The corporate is supposed to regulate its functioning on hearing the whistle blowing of the society and be responsive to the calls of the society. The very substance of good corporate governance lies in this clarion call. This is very well testified the facts that the corporate is...
required to function more responsibly more awake more accountable more performing more ethical means in the economic liberalisation and globalisation of Indian economy. After all, the corporate is an integral part of the society.

The exercise of corporate power must be more inclined towards this larger interpretation of corporate social responsibility than the other one. The findings of the study are also squarely applicable to this interpretation even though the objective of the study is not directly addressing the analysis of corporate functioning in terms of measuring the extent of corporate social responsibility since it is a known fact that the study of good corporate governance is incomplete without referring to the issue of corporate social responsibility.

8 14 The findings of the study are conclusive of the fact that the Board of Directors is having an executive role in corporate governance. The Board being an agent of the shareholders under the mandate must ensure good governance with good performance and professional management and uphold the interests of the corporate, the shareholders, and other stakeholders. There is a direct nexus between the quality of the Board and governance. The study has indicated that a good composition of board members with independence, proper balance between executive and non-executive board members, decentralization of powers and authority between the Chairman and the CEO would largely contribute to the quality of the board as a whole. This in turn results in good governance. This conclusion is very well proved by the results of the study in so far as certain companies have been categorized in excellent rating followed by good in complying with corporate governance in terms of SEBI directives. Conversely, the study also focuses on the fact that certain companies have been rated satisfactory or poor just because of the fact that their board composition is far from the expectations. Since the direct nexus between the quality of the board and
governance is established from the study the board is having an executive role in corporate governance. The professional management no doubt an extended arm of the board has a key role to play in corporate governance. To discharge this executive role in corporate governance effectively the directors must perform their role with objectivity, thoughtfulness, open approach and greater accountability not only individually but also collectively. After all, the Companies Act 1956 refers to collective responsibility of the board members except under delegation of power to the executive members.

8.15 The study has revealed that good corporate governance improves corporate performance even though the extent of improvement in corporate performance cannot be directly linked with corporate governance. In other words, there is a link between good corporate governance and corporate performance. Those companies following the cannons of good governance in later and spirit have been able to demonstrate improvement in corporate performance during post-legislative governance period over pre-legislative governance period.

The study has adopted ratio analysis and statistical techniques in assessing corporate performance even though such measures are not free from ambiguity. Equally it is revealed that there is no acceptable measure for corporate performance due to varied accounting standards, heterogeneous accounting procedures, and reporting methods adopted by multi players viz. private, public, and foreign sector companies in India, especially during pre-legislature governance period. In Indian context, the market value of the corporate measure of corporate performance is not universally acceptable because of inefficient asset utilization and many small and medium corporates both listed and unlisted even though this measure might be suitable with respect to other developed countries which are having good number of large listed companies. Therefore, the study did not favour this measure despite its global acceptance.
It is observed from the sample companies (majority of which are listed) during post legislative governance period that the companies have implemented accounting standards announced by the ICAI and the Companies Act 1956 to the higher end of moderate level. The ratio analysis technique to measure corporate performance has been justified in the light of above findings. Moreover, the company is mandatorily required to follow accounting standards announced in terms of Section 211 of the Companies Act 1956 in presenting the financial statements to which the auditors are also duty bound to ensure this compliance.

8.16 The study established corporate performance indicators (CPIs) taking into account various parameters applied to measure corporate performance worldwide. The sample companies performance analysis during post legislative governance period has been made based on CPIs by rearranging the data collected to suit comparability principle. The study has not considered such of the performance indicators which are not possible with the available sample companies data. The CPIs are:

- Growth in Sales
- Growth in Profit
- Dividend Distribution
- Positive Earnings per Share
- Higher Return on Capital
- Balanced Debt Equity Ratio
- High Net worth and Growth in Assets

8.17 Some of the sample companies have adopted global standards of governance under inevitable conditions just because they have accepted global resources or funding from global level agencies listed their stocks on International Stock Exchanges invited foreign equity participation in joint venture projects adopted technology from multinational companies and established overseas operations divisions in multi-locations worldwide. The study has found that Indian companies performance has improved on the acceptance of global standards of governance and practice of good governance in line with international governance standards. The very interesting aspect revealed from the study is that the Indian companies are
not finding place in top 500 or 1000 companies in the world in large numbers due to scale of investment size multi country locations and marketing network Even though some of the sample companies adopted global standards of governance – both voluntary and under compulsions – their performance is nowhere matching with those of global level companies This has also been testified by the analysis of comparison of top Indian 500 companies with fortune global 500 companies

In the globalized economic environment the study found that Big is Beautiful with diversification and turnaround strategies Mere tasting the flavour of global standards of governance without creating massive scale of operations with diversification projects with a focus on cost effective profit centers worldwide would not result in higher value addition in the corporates The study has further found that higher value addition has happened only in few sample companies who embarked to attain these strategies in the process of globalizing their business activities

8 18 The study highlighted the fact that the corporate mis governance has resulted in undermining the confidence of the stakeholders in the corporate system The corporates never ever sincerely attempted to resolve the grievances of the investors until the statistics of such grievances are mandatory required to be disclosed as a part of disclosure of corporate governance requirements The issue of investors protection though having a rigor of law is yet to see the light of the day in terms of resolving multifarious grievances of the investors – both institutional and small investors Had there been real attempt to solve genuine problems of the investors the capital market (primary and secondary) would not have behaved in the way it has behaved in the recent past with security scams scandals manipulations insiders abuse clash of rights and duty by the people of helm of affairs etc Few of the instances of mis governance include non declaration of dividend consistently default in repayment of public deposits bonds or debentures evasion of taxes involvement of directors and management in criminal acts 293
award of tenders/contracts to the relatives or associates, diversion of the funds, mis-utilisation of public issue proceeds, bogus exports, frauds in accounts, NPA level of advances taken from banks, employment of relatives in key posts, no link between pay and performance, hazardous pollution effects, and lack of accountability towards the shareholders and stakeholders.

The cumulative or singular effect of all these led to dilution of stakeholders' confidence in the corporate system itself. The study has found corporate misgovernance strings which should be avoided to restore confidence of the stakeholders. As mentioned supra, certain companies in sample size are categorized in the rating of satisfactory or poor just because the misgovernance instances were more prevalent when compared to other companies.

It is suggested to improve the effectiveness of law application or compliance by the corporates with stringent penal measures and publication of such corporates' names in leading newspapers and other media to create awareness of caution and desist from economic terrorism.

8.19 It is suggested to form Minority or Small Shareholders Confederation in line with some countries' experience to protect the interests of the minority shareholders and give a strong representation to the company on par with dominant shareholders. The Company Law should be amended to incorporate minority shareholders' representation on the board of companies, especially for listed companies. The director on the board may be drawn from the professionals representing the said confederation.

8.20 The manner of conducting general meetings both in terms of procedure and voting mechanism needs to be changed to uphold the relevance of greater participation, especially by small or minority shareholders. The venue of the general meeting must be a center place for the members and not necessarily the Regd Office of the company. The Company Law requires an amendment in this regard. Timely information about the company...
performance directors and statutory auditors reports may be made available to the members well in advance by using information technology and free access to the members only under the category of privileged information. Any clarifications on such information may be furnished through the net. This measure would bring about greater awareness and transparency in the reporting practices besides its educative value to the investor.

8.21 As a supplementary to the protection of investors' rights, there must be a sincere approach for shareholders activism to discuss issues on constructive base in various forms. The paradox of thin attendance in various general meetings of the corporates itself is indicative of the fact that the shareholders are passive in most of the crucial decisions on performance, financial allocations, appointment of board members and statutory auditors, fixation of compensation to the executive board as well as to key managerial personnel. The reasons for thin attendance are obvious – far off location of Regd. Office of the company, dispersed minority shareholdings, lack of incentive measures, cost-effectiveness of attending, lack of awareness on financial data and accounting intricacies, contentment about the dividend on their investment, lack of affordable legal advice on company law matters, promoter directors' dominant shareholding with vote mastering capabilities, and so on.

In Korea, shareholders activism has stirred up considerable interest among the management, government, and shareholders, particularly foreign shareholders. The shareholders' activism has also acted as a source to correct poor governance and put the corporates on the right track. This system has worked even to protect the interest of the minority shareholders. Similarly in USA and other developed countries, the shareholders have the right to file derivative suits against the management. In contrast to these developments, the study from the sample companies and secondary data points out that no such initiatives have been taken in India to strengthen shareholders' activism as a long term strategy and protect the interests of the
minority shareholders. The study has not found any major instances wherein
the shareholders being the supreme owners of the company have divested
the board and management from the reigns of governance on the basis of
poor performance, faulty accounts, misappropriation of funds, acting in excess
of delegated powers, and the like. The lack of legal support under the
governing law to the corporate is also one of the reasons for such state of
affairs in India. The study revealed that the rights of the shareholders under
the Companies Act 1956 are not well protected in the changed corporate
scenario. In the globalised economy, the shareholders' activism should receive
universal acceptance in disciplining the dominant or institutional shareholders
while also protecting the minority shareholders' interest. The fruits of such a
movement may not be immediately forthcoming. However, in the long run, the
effect of such activism on the corporate and its governance quality cannot be
overruled.

8.22 The statutory auditors are having a significant role to play in ensuring
checks and balances on the actions of the executive role players in corporate
governance viz. the Board of Directors and the managerial team. The output
of audit function is reporting to the shareholders on the financial state of
affairs and true working results of the corporate for a given period. The
effectiveness of audit function can be seen from the improvement or
otherwise of corporate governance. Furthermore, the effectiveness of audit is the
factor of audit planning, audit quality, independence of auditors, balanced
remuneration for audit and other services, rotation of auditors, and adherence
to disqualifications criteria laid down in the Companies Act 1956. The findings
from the study go to say that the auditors of listed companies are continued
year after year without resorting to the system of rotation of auditors. The
respondent sample companies have indicated the reasons of no provision in
the existing Companies Act 1956, no recommendation from ICAI, and no
rationale in adopting the system of rotation of auditors by the corporates. If
rotation is required, the respondents have indicated a 3-year term.
The recent findings and conclusions of Naresh Chandra Committee on Corporate Audit & Governance (Dec 02) have indicated compulsory audit partner rotation instead of legislating in favour of compulsory rotation of audit firms. The committee also recommended in line with the provisions of the European union and the IFAC persons who are compulsorily rotated could if need be allowed to return after a break of 3 years. The study also finds this suggestion all the more practical and logical even in consideration of the code of conduct of ICAI and the Institute of Chartered Accountants of India Act 1948.

8 23 The study revealed that most of the samples companies constituted audit committees to improve corporate governance both under voluntary and statutory requirements. Three member committee was favoured as an ideal size. The composition of the audit committee was more inclined towards non-executive and outside consultants with a view to ensure independence in functioning of an audit committee. The secondary data revealed a key role for the internal audit in corporate governance.

8 24 The findings of the study during post legislation governance period indicated a positive compliance of corporate governance requirements in terms of SEBI directives to the listed companies. All the sample companies favoured mandatory reporting on the compliance of corporate governance in the Annual Report. The transparency principle of corporate governance has emerged unanimously in the response data of all the sample companies. Further the sample companies opted for a periodic review or modification of corporate governance at an interval of 2-3 years by a Governance Committee consisting of non-executive directors. On the issue of more governance of corporate by law in India the sample companies have answered affirmative. The sample companies preferred a combination of rule based and voluntary based corporate governance module to ensure good governance. Towards the mix of rule based and voluntary based governance module the...
respondent companies preferred a simple majority to the rule based and absolute majority to the voluntary based module.

8.25 The findings of the study are very clear on the maximizing long term shareholders value as the only objective of good corporate governance. The inference to be drawn from this is that a well performing corporate with maximized shareholders value would result in maximizing the interest of other stakeholders of the corporate. The other stakeholders namely lenders, employees, regulators, customers, suppliers and the society at large stand to gain better from a well performing corporate wherein maximization of shareholders value has occurred. The findings from the sample companies during post legislative governance period over pre legislative governance period have revealed the importance of good governance in improving corporate performance. The sample companies which adopted good corporate governance have shown superior performance with increase in shareholders value. Conversely, such of the companies adopting corporate governance at a moderate level have shown less performance during post legislative governance period. The study has further established the cause and effect relationship between good corporate governance, good performance and maximizing shareholders value by utilizing the resources of the corporate body effectively.

8.26 It is revealed from the sample companies that the suitable nature of board members in the context of good corporate governance must be drawn from professionals, promoters and nominee directors category. The non-executive directors appointment purely on merit is also suggested with a periodical rotation in 2-3 years. It is also revealed that ceiling on directorship in companies be limited to 10 companies having regard to their time resources and contribution to the corporates. As regards concentration of power, it is a clear pointer towards BOD and CEO. None of the sample companies preferred the two tier Board system in governance in India.
Almost all companies preferred for publication of the statement of directors responsibilities in the Annual Report of the corporate for the better understanding of the shareholders. This has been implemented by the corporates subsequent to an amendment to the Companies Act 1956.

The sample companies data revealed that the corporates have appointed committees only to fulfill the requirements of corporate governance as per SEBI directives. The corporates in India are yet to give a comprehensive thought on the modus operandi of committee form of governance in contrast to global practice of more reliance on committees.

The binding nature of committee findings on the board is yet to be recognized in the Companies Act 1956 except the findings of the audit committee.

8.27 The introduction a cumulative voting system (CVS) is desired to protect the interest of minority shareholders. This system of voting would enable the minority shareholders to elect directors to represent them in management meetings and proposing agenda for discussion in such meetings. This system should be made mandatory requirement of listing so that the management cannot arbitrarily eliminate the same by amending the articles of the association of the corporate. It is the only system to give minority shareholders a chance to elect outside directors of their own choice preferably professionals. The proxy voting system may also be strengthened to make matured corporate democracy along with CVS.

8.28 The disclosure requirements in the annual reports of the corporate needs to be expanded to ensure more transparency and on par with accepted global standards of disclosures. The study has suggested a separate list of contents in annual reports in the appendices.

8.29 The defaulting directors and managerial personnel on the issues of good corporate governance must be dealt with stringently as economic offenders and wide publicity must be given to expose such mis governance.
practices to the general public. A suitable legislative amendment is also recommended on par with Sarbanes-Oxley Act of 2002 USA that has sent red signals worldwide on corporate offenders.

8.30 The study has achieved its objectives of examining the rule-based governance and voluntary-based governance in the context of economic liberalization and globalization of Indian economy. Adoption of global standards of governance has improved corporate performance. Examining the role of different stakeholders and their expectations, analyzing that the good corporate governance improves corporate performance and suggesting suitable policy measures including devising a code of corporate governance to improve corporate governance in India with reference to empirical data during post-legislative governance period over pre-legislative governance period. The hypotheses formulated for the study have been tested and confirmed. The policy suggestions have been made after taking into account the existing legislatures, opening up of Indian economy, need for good governance on global standards of governance, safeguarding the interests of stakeholders, and also strengthening the shareholders' activism in India after considering the views of companies, outcome of interactions with corporate leaders & shareholders, and practicability of such policy measures.

8.31 The implementation of these suggestions and policy measures in a right earnest would certainly usher in a new era in the corporate sector in India with regard to imbibing the high culture of good corporate governance at all times irrespective of the size of the corporates. The corporate sector, being the forerunner in shaping country's economy, has a pivotal role to play in making India an emerging economic power. Practicing good corporate governance can discharge this responsible role. The advantages of practicing good corporate governance are manifold. Good corporate governance system enables a continual process of mobilizing scarce resources, reliable supply-chain system, attracting professional and challenging decision-making leaders and optimum allocation of all these to create higher
value in the corporates which ensures a fair return to the stakeholders. The strength of governance system is the efficiency with which core functions are handled and the corporates are ethically geared in a self-driven environment without much whistle blowing by the law. This would make the corporates march forward for excellence.