“Maintaining governance standards requires accountability at all levels of management. Hence corporate conduct and culture, based on attributes of self-regulation and openness contribute most to the essence of corporate governance.”

- Naresh Chandra
  Former Cabinet Secretary
8.1 Recommendations

In view of the above study the researcher suggests the following recommendations for better corporate governance practices in a dynamic capital market.

8.1.1 Transparency and disclosure
Due awareness in the market, almost all the select companies scored high on the transparency and disclosure parameter. The banking sector, contrary to its clean image, is not complying at par with other sectors in the transparency and disclosure parameter. There should be unison in guidelines from RBI, SEBI and ministry of company affairs with regards to transparency and disclosure.

8.1.2 Corporate compliance committee
Apart from mandatory committees, the company should frame corporate compliance committee.

8.1.3 Secretarial Audit
The Secretarial Audit should be conducted by a Company Secretary in Practice. The report on the audit of secretarial records shall be submitted by the secretarial auditor to the Corporate Compliance Committee of the Board of Directors of the company. The Secretarial Audit Report should form part of the Board's Report. The Audit partner/Firm should be rotated on the grounds as to maintain independence of Auditors and to look at an issue from different perspective. Corporate governance audits through selected corporate governance specialist who monitors effectiveness of corporate governance practices at companies.

8.1.4 Remuneration committee
The constitution of remuneration committee should be made mandatory.
8.1.5 Nomination Committee
By having a well functioning Nomination Committee, it will play a significant role in giving investors substantial comfort about the process of Board-level appointments. So the researcher recommends that listed companies should have a Nomination Committee. The constitution of nomination committee should be made mandatory.

8.1.6 Independent director
Independent director should be appointed as per existing guidelines. Clause 49 needs to be suitably amended by specifying positive attributes for independent directors such as integrity, experience and expertise, foresight, managerial qualities and ability to read and understand financial statements etc. Such independent directors should not be for name sake, but should be well aware of the company’s progress, and should actively participate in the process.

The conduct of board meetings needs introspection in terms of frequency and duration, information needs, balance between presentation and discussion, interaction outside the boardroom and most importantly, consultation when in doubt. Independent directors need to conduct various exclusive sessions on a one-on-one basis with management, internal auditors and external auditors.

8.1.7 Stake holders value enhancement
There is a need to build and restore trust among stakeholders and improve the credibility in the independence of the board. In the context of meeting expectations of stakeholders beyond the minority shareholders (eg. employees, customers, suppliers etc.) a number of initiatives need to be embraced such as:

- Openness and transparency in dialogue with stakeholders
- Objective and transparent whistle blower policies that are available to key stakeholders (employees, customers and vendors) and provide adequate safeguards against victimization of whistle blowers.
- Have minority shareholders’ representatives on boards as independent director.
8.1.8 Media as a stake holder

Capacity building in the area of corporate governance, has assumed critical importance in India, given the renewed emphasis on the subject in the light of the recent events. Media has an important part to play in raising general awareness and understanding of corporate governance and potentially as a watch dog in the area of corporate governance. Being a significant stakeholder itself, the media should consider upgrading capacity to carry out analytical and investigative reporting in matters impacting best in practice standards of corporate governance as they can play the role of a responsible and an effective stakeholder in protecting capital markets or securities markets from injury from corporate fraud. Further, the media, especially in the financial analytics and reporting business should invest more in analytical, financial and legal rigor and enhance their capacity for analytical and investigative reporting.

8.1.9 Effectiveness of Board

Boards should look upon the following views to be more effective:

- Board should demand and obtain a holistic view of risks both on and off the balance sheets, their ownership and how they are mitigated.
- Diversity of skills on the board is fundamental to effective risk management.
- The decisions of the board should be held keeping the best interest of company in view. The management should realize that they are the trustees of the wealth assigned to them by the shareholders for social good rather than private profit. In the ultimate analysis, it is an inner process of self-realization and enlightenment and not the outward imposed restrictions, code or stringent enforcement of regulatory framework.
8.1.10 Board systems and procedures
The board should undertake a formal and rigorous annual evaluation of its own performance and that of its committees and individual directors. Individual evaluation should aim to show whether each director continues to contribute effectively and to demonstrate commitment to the role (including commitment of time for board and committee meetings and any other duties). The chairman should act on the results of the performance evaluation by recognizing the strengths and addressing the weaknesses of the board. The board should state in the annual report how performance evaluation of the board, its committees and its individual directors has been conducted.

The Board and Committee Meetings should be facilitated to be attended through Tele-conferencing and video conferencing. E-presence of a director would ensure larger participation at Board/Committee meetings. The decisions may be subsequently recorded as a circular resolution signed by the directors physically present and those participating through audio or video-conferencing.

8.1.11 Audit committees
As per clause 49 guidelines, two-thirds of the members of the Audit Committee must be independent directors as must the chairman, but the rest may be either Non-Executive Directors or executive directors. But this is contrary to the Audit Committee and it must comprise entirely of non-executive directors with independent directors forming the majority. Some may also consider that the presence of executive directors on the audit committee needs to be appreciated since they are well versed with the internal working of the company and bring first hand information to the table which helps an objective and meaningful analysis of the discussions by the Committee.

The researcher suggests that for boosting the independence of the internal as well as the external auditors and ensuring a free and frank discussion with the audit committee, it is important that the Audit Committee must necessarily constitute of Non-Executive Directors. The executive directors can be invited to attend the audit committee meetings to provide the necessary clarifications.
Companies should address the challenges that their audit committees face and focus on enhancing skills in some of the most important areas listed below:

- Better understanding of risk, strategy and business models
- Understanding implications of the external environment on financial forecasts and performance
- Completed complex accounting policies and practices – how their application impacts results
- Monitoring fraud risk especially relating to senior management override of internal controls
- Assessing IFRS readiness and transition plans
- Monitoring “tone at the top” in difficult times
- Effective oversight of internal and external auditors
- Listed companies should have at least a three-member Audit Committee comprising entirely of non-executive directors with independent directors constituting the majority.
- Chairman of the audit committee should have direct oversight of whistle blower incidents.

8.1.12 Shareholder grievance committee

A shareholder grievance committee is mandatory to exist for good corporate governance. The shareholders are one of the major stakeholders in any company. Such a committee will not only help harmonizing the relationship but will also prove beneficial in other ways. If such committees do not meet the expected standards, then the shareholder needs to actively participate in various other forms of confrontation.

Long term institutional investors, pension funds or infrastructure funds can help to develop a vibrant state of shareholder activism in the country. The oversight by such investors of corporate conduct can be facilitated through internal participation of their nominees as directors or external proceedings for preventing mis-management. Such institutional investors should establish model codes for proper exercise of their votes in the interest of the company and
its minority shareholders, at general meetings, analyze and review corporate actions intended in their investee companies proactively and assume responsible roles in monitoring corporate governance and promoting good management of companies in which they invest.

8.1.13 Remuneration policy
Remuneration policy for the members of the Board and Key Executives should be clearly laid down and disclosed. Executive remuneration packages should involve a balance between fixed and incentive pay, reflecting short and long term performance objectives appropriate to the company’s circumstances and goal. The stock options should be invariably linked between the board performance and company performance.

Companies should ensure that the level and composition of remuneration is sufficient and reasonable and that its relationship to performance is clear. Incentive schemes should be designed around appropriate performance benchmarks and provide rewards for materially improved company performance.

8.1.14 Separation of the offices of the Chairman and the Chief Executive Officer (CEO)
Though there is no obvious causality between such a separation and better corporate governance or performance, it is nevertheless true that there is a growing trend internationally of separating the offices of the Chairman and the CEO. Most Indian listed companies are controlled by promoters and family groups, often holding over 50 per cent of the voting stock. Indeed, many in corporate India feel that the separation is not desirable — that the dominant, risk taking shareholder being both the Chairman and Chief Executive of a company gives a greater notion of commitment than otherwise. A counter argument is the absence of evidence supporting that separation of the two offices improves corporate performance or promotes good corporate governance practices. Further, separating Chairman & CEO provides no guarantee of better leadership and can add to a layer of potential conflict. Realizing the realities of India and
keeping the culture in mind, it is recommended to separate the office of the Chairman from that of the CEO.

There should be a clear demarcation of the roles and responsibilities of the chairman of the Board and that of the Managing Director/CEO. The Roles of Chairman and CEO should be separated to promote balance of power. A “comply or explain” approach should be adopted.

8.1.15 Corporate Social Responsibility

While setting the goals and objectives, a company must consider various expectations of the stakeholders into consideration. So companies should formulate strategies and take decisions that promote their economic goals as well as satisfy the social values at the same time. There also must be a regular review of the corporate goals to match the changing expectation of the society.

In order to gain confidence and trust of society, there should be transparent fair and adequate disclosure of social performance by the company.

Corporate social performance analysis and reporting should be widespread, so that the levels of social performance and cost-benefit trade-offs can be better evaluated.

The corporate governance report should have a separate section wherein various steps and action taken by the companies towards their commitment of social responsibility are detailed in the form of a CSR report every year. Also there is a need for undertaking a social audit of the companies.

As per the researcher’s findings, at least 0.2% of sales should be utilized for fulfilling corporate social responsibility.

8.1.16 The Legal and Regulatory Standards

All provisions should be aligned with the existing Listing Agreement and other SEBI legislations to achieve uniformity in corporate governance standards in the country. Yet due to the varying degree of best in practice standards for SMEs,
listed companies and unlisted public companies, which have significant impact on the economy, it is suggested that regulations / prescriptions should be set under the Companies Law and its regulations from time to time and should be in synchronization with SEBI, as far as listed companies are concerned. For that purpose, joint committees of SEBI and the Ministry of Corporate Affairs should be constituted so that uniform, agreed upon standards are prescribed for listed companies under both laws.

Stringent provisions should be made to penalize companies which follow poor and unethical governance under the companies Act and SEBI guidelines. Such provisions should be implemented with utmost diligence.

8.1.17 Concerns regarding Corporate Governance
Monitoring mechanisms are weak in India as well as western countries. Such mechanisms should be strengthened and made evident in their role play. Principle based standards with moderate regulations and strong regulatory review mechanism will enforce corporate governance standards. This will put a brake on the frequent scams and frauds.

Information should be timely and well packaged to enable the decision making smooth and speedy.

The quality of management discussions and analysis of reports of companies should improve and on the basis of which the shareholders can make decision pertaining their investments.

8.1.18. Risk Management Framework
The sources of risk, and their magnitude, have changed dramatically and pose challenges not only to business and governments but also to society and economies. The board must be provided with information on the most significant risks and how they are being managed to integrate risk management in decision making activity. The Board, its audit committee and its executive management must collectively identify the risks impacting the company’s
business and document their process of risk identification, risk minimisation, risk optimization as a part of a risk management policy or strategy. The Board should also affirm that it has put in place critical risk management framework across the company, which is overseen once every six months by the Board.

8.1.19 Lock-in option
Remuneration of CEOs should be significantly linked to the company performance and involve a medium term "lock in" option.

8.1.20 Integrity and ethical values
- Striving to ensure that the code of conduct is understood and adhered to by all members of the organization
- The performance management system should recognize and reward ethical behavior
- Extensive background checks should be performed on the senior employees joining the organization
- Companies should screen third parties (customers, vendors, JV partners) with whom it does business for their commitment and adherence to ethical practices
- Investors, lenders, analysts should pro-actively question/challenge management on areas pertaining to corporate governance comprising protecting minority interests, management compensation, government dealing, risk management practices, related party transactions, fraud risk management and CSR.

8.1.21 Number of non-executive directors.
In case an individual is a managing or whole-time director in a listed company, the number of companies at which such an individual can serve as non-executive director, be restricted to 10, and the number of listed companies at which such an individual can serve as a non-executive director, be restricted to 3. The maximum number of listed companies in which an individual can serve as a director should be restricted to 6.
8.1.22 Investor Relations Cell
Constitution of Investor Relations Cell should be made mandatory for Listed Companies. The Investor Relations meet after declaration of financial results should be compulsorily webcast.

8.1.23 The role of the Audit Committee in related party transactions
Audit Committee, being an independent Committee, should pre-approve all related party transactions which are not in the ordinary course of business or not on “arms length basis” or any amendment of such related party transactions. All other related party transactions should be placed before the Committee for its reference.

8.1.24 Effective and Credible Enforcement
Multiplicity of investigating agencies leads to delay in the overall judicial process and possible misinterpretation of information. Regulators under the Company Law, the Securities Laws and the Serious Fraud Investigation Office should have an inter-se cooperation agreement. During the Harshad Mehta scandal, the Special Courts Act was empowered to consider both civil and criminal actions from the securities fraud transaction. A special bench of the Company Law Board or its successor, the National Company Law Tribunal should be invested with special powers for adjudication of civil recovery actions and for criminal offences and penalties to be levied there under.

So the instances of investigations of serious corporate fraud must be coordinated and jointly investigated. Joint investigations / interrogation by the regulators for example, the SFIO-Serious Fraud Investigation Office and the CBI should be conducted in tandem. On the lines of the recommendations of the Naresh Chandra Committee Report on Corporate Audit and Governance, a Committee should be constituted for each case under a designated team leader and in the interest of adequate control and efficiency, a Committee each, headed by the Cabinet Secretary should directly oversee the appointments to, and functioning of this office, and coordinate the work of concerned department and agencies. Civil recovery for acts of misfeasance, malfeasance, nonfeasance and recovery
from the wrongdoers and criminal offences and penalties and punishments should be adjudicated appropriately, without conflicting reports and opinions, and disposed off between 6 to 12 months.

8.2 Most important Recommendations

The researcher has given his view for changes to be incorporated into the system with regard to Corporate Governance.

The most important recommendations can be summarized as below:

8.2.1. Legal and regulatory standards:
The researcher firmly believes that the legal and regulatory standards should be enforced in such a way that the stakeholders’ value is enhanced. There should be an effective and credible enforcement of the legal standards which will give (a) better transparency and effective disclosures.

Since there are different rules followed by the listed companies under the Companies Act and SEBI guidelines, the researcher recommends joint committees of SEBI and the Ministry of Corporate Affairs to be constituted so that uniform, agreed upon standards are prescribed for listed companies under both laws.

The stakeholders are the backbone of any company. The researcher suggests that there should be Openness and transparency in the dialogue with stakeholders, have transparent whistle blower policies as well as having minority shareholders’ representatives on boards as independent directors. This will lead to more participation, control and transparency in the system. Stakeholders have become more aware of the changing environment within the companies, due to various factors such as voluntary and mandatory disclosures, technological advancement, legal rights etc. Due to such awareness of stakeholders in the capital market, and to maintain a clean image and goodwill
by the company, there should be unison in guidelines from RBI, SEBI and ministry of company affairs with regards to transparency and disclosure.

8.2.2. Committees:
The researcher has found that various committees play an important role in enhancing and controlling good corporate governance. So the researcher recommends that various committees such as corporate compliance committee, Remuneration committee, Nomination Committee, etc., should be formed and followed, whereas the norms pertaining to the Audit committee and Shareholder grievance committee, which are mandatory, should be strictly adhered to.

8.2.3. Independent Directors:
As per the observations of the researcher, many times the independent director exists for name’s sake only. This jeopardizes the company’s progress and endangers its growth. So the researcher recommends that Independent director should be appointed as per the existing guidelines. Clause 49 needs to be suitably amended by specifying positive attributes for independent directors such as integrity, experience and expertise, foresight, managerial qualities and ability to read and understand financial statements etc.

8.2.4. Effectiveness of Board, its systems & procedures:
The observation of the researcher regarding the effectiveness of the Board is not very promising. If the Board functions in a true enlightened manner, there would be growth and progress in a holistic manner. The researcher recommends that the effectiveness of the boards be intrinsic. Similarly the Board systems and procedures should undertake a formal and rigorous annual evaluation of its own performance. There should be individual evaluation to show whether each director continues to contribute effectively.

8.2.5. Corporate Social Responsibility, Integrity and ethical values:
Not being biased and prejudiced due to reports from various sources and own findings, the researcher does find that there is less Corporate Social Responsibility, Integrity and ethical values incorporated within the companies.
The researcher recommends that to have a better social value and to gain confidence and trust of society, there should be transparent fair and adequate disclosure of social performance by the company. As per the researcher’s findings, at least 0.2% of sales should be utilized for fulfilling corporate social responsibility.

8.3 Least Important Recommendations

The least important recommendations, though not avoidable, can be summarized as below:

8.3.1. Remuneration policy:
The researcher wants the remuneration policy to be fixed. Though board of directors and key executives’ remuneration packages should have a balance between fixed and incentive pay, it generally does not reflect on the functioning of the top management. So the researcher gives low priority to this recommendation.

8.3.2. Separation of the offices of the Chairman and the Chief Executive Officer (CEO):
The researcher has recommended that there should be separation of the offices of the Chairman and CEO. But though there is no obvious causality between such a separation and better corporate governance or performance, it is nevertheless true that there is a growing trend internationally of separating the offices of the Chairman and the CEO. Since most Indian listed companies are controlled by promoters and family groups, many in corporate India feel that the separation is not desirable. Further, separating Chairman & CEO provides no guarantee of better leadership and can add to a layer of potential conflicts. So the researcher lists this recommendation as one of the least priority ones in the Indian context.
8.3.3. Investor Relations Cell:
Since there is a recommendation for a strong separate functioning shareholder grievance committee, the recommendation for Constitution of Investor Relations Cell should be made mandatory for Listed Companies falls in the second phase. So the researcher feels that this recommendation should be one of the least important ones.

8.3.4. Media as a stakeholder:
The researcher recommends that the media should consider upgrading its capacity to carry out analytical and investigative reporting in matters impacting best in practice standards of corporate governance. Media already have an important part to play in raising the general awareness and understanding of corporate governance and potentially act as a watch dog in the area of corporate governance. Since it is a significant stakeholder itself, the study does not give undue importance to this recommendation.

8.3.5 Risk Management Framework:
The researcher recommends that the Board should affirm that it has put in place a critical risk management framework across the company, which is overseen once every six months by the Board. The purpose of this recommendation was to have a proper risk management framework. But if the recommendations of various board committees are accepted and function as per recommendations, then this recommendation would carry less significance.

8.4 Conclusion
Capital Markets exerts an influential role on companies by imposing certain rules and regulations relating to firm’s governance roles. Capital markets play a major role in and also impart some forces on both the sides. To reframe or understand the spectrum of fields of corporate governance, it becomes important to focus on listed companies in capital markets. The key to better corporate governance in India today lies in a more efficient and dynamic capital
market. Markets play an invisible hand in imparting justice. The market appreciates well-managed companies and rewards them.

Corporate Governance has assumed great importance in the wake of frauds, scams as well as increasing competition and globalization. It stipulates parameters of accountability, control and reporting functions of the board of directors. It also emphasizes the proper relationship among various participants - the board, management, shareholders, banks, financial institutions, suppliers, creditors and the state - in determining the direction and performance of companies.

Tougher legal and regulatory provisions of corporate governance are required to check and prevent default by companies, as noted by the company secretaries’ opinions. Such provisions should be implemented strictly as to bring about a positive change. So, apart from tough provisions, the larger issue is that of implementation. Since India is well known for its diversity and subtle acts, such implementation would be a mammoth task. In the study of 50 select blue-chip companies, 20 companies were not able to manage a respectable 60% compliance. Such appalling situation leads to the doubt if they would be able to implement the stringent rules and Acts of corporate governance.

Looking at the complexity of the situation, it is quite evident that only law cannot ensure good corporate governance without code of conduct and self-regulation. Laws, rules and regulations are required to strike a balance in the objectives sought to be achieved by different interest groups in companies, but the aim of corporate governance is commitment to values, business ethics and distinction between personal money and corporate funds.

The company secretaries’ questionnaire survey shows that corporate governance’s implementation should be enforced by laws and Acts, as well as a moral duty. The survey confirms that the major corporate governance concern in listed companies should be done to prevent controlling owners from expropriating minority shareholders. There is substantial room for improvement
in recognizing the rights of shareholders. Shareholders are inadequately protected with such rights as priority capital subscription, approval of major related-party transactions, and dissenters’ rights.

One fourth of the companies studied had too few independent directors as per guidelines. The functions of boards and board committees in the countries under review are generally weak. The boards seem to be somewhat inactive in selecting, monitoring, and replacing CEOs and reviewing the remuneration of key executives and directors. Outside or independent directors are inadequately supported with necessary and timely information. Over a half of the select companies did not meet with such compliance.

Corporate governance practices have been scored to come up with aggregate scores that can be used to investigate the link with company’s financial performance. The scores are based only on practices related to transparency and disclosures, the effectiveness of boards, board systems and procedures and many other such parameters. Yet many of the companies who did not score high on such parameters, are financially sound, strong and well reputed in the market.

Even though the select companies under study may not embrace the guidelines wholeheartedly, the market obviously discriminates among companies, suggesting that companies will move toward meeting more of these guidelines. The study also provides evidence of a potential governance role in all parameters. The study indicates that the on-going corporate governance reform efforts should be continued to encourage companies to pay more attention to substance than to form. To enhance the effectiveness of boards, the provision of adequate support for outside directors seems to be the most important factor, as well as the promotion of a boardroom culture that encourages constructive criticism and alternative views. More broadly, as indicated by the respondents,
priorities should be given to making internal corporate governance mechanisms work better and enhancing the standards for information disclosure, accounting, and auditing. Critically important for these tasks are the roles of regulatory agencies, independent directors, and professional associations and institutions, inclusive of professionals like statutory auditors and company secretaries.

Overall, the research results indicate that a huge gap between the regulatory framework and actual corporate governance practices probably does not exist in form, but that a substantial gap exists in substance or spirit. Larger gaps and variations exist in areas where regulations and guidelines are less demanding or enforcement is difficult. For all the select companies there is clear evidence that corporate governance matters in the valuation of firms and that the market seems to be smart in evaluating the quality of firms’ corporate governance, in that it tends to differentiate among firms more on the basis of substance than of form.