Corporate Governance is "the system by which companies are directed and controlled" (Cadbury Committee, 1992).
2.1 Introduction

The civilization is entering into twenty first century, marked by one of the greatest invention of mankind i.e., joint stock company. It is this very invention which is playing a major role in eroding the geographical boundaries of nations across the globe. As the mankind is making strides with the help of this very invention, care is also being taken that these organisations fulfill their objectives in the best possible manner.\textsuperscript{1} With the growth of corporate of corporate organisations into huge sizes, characterised by separation between ownership and control, their internal organisational problems, as also their external relation to the society, have acquired new dimensions, not envisaged in the early era of the corporations. Today’s company affects the average citizen’s life, directly and indirectly, in many ways- he may be its shareholder, employee, supplier, dealer, customer and even if none of these, his life may still be affected by what the company does, e.g. by the pollution that its plant may create and by the company’s impact on the general economy. Thus proper governance of the modern companies is a legitimate social concern expressed these days in both the developed and the developing countries.\textsuperscript{2}

The last few years have seen a marked upsurge of interest in the subject of corporate governance. There is an increasing feeling that Indian companies need to become more transparent and accountable to shareholders. Corporate Governance is a voluntary ethical code of business of companies. Philosophical traditions in West and Eastern need to be reviewed to know the bed rock of ethical standards. A business should benefit from the business like a honey bee which suckles honey from the flower without affecting its charm and beauty is also another thought from Vedas.\textsuperscript{3}

The western thought on the other hand views ethics from the angle of sectoral interests. In management of a business successfully, values system adopted is an important factor and plays a significant role, according to the masters of the art of management. The subject today being ‘Corporate Governance’ let us

\begin{itemize}
\item \textsuperscript{1} Yogesh Upadhyay, Shive Kumar Singh, “Corporate Governance: Role of Corporate Laws”, \textit{Pranjana}, Vol. 3, No.1&2, 2000.
\item \textsuperscript{3} S.B. Mathur, “Corporate Governance-Concept and Issues”, \textit{Charted Secretary}, May 1997 p.A 120.
\end{itemize}
sees how ethical thought in the management of a company is relevant and how it is perceived in the west. West has adopted corporate form of business which involves that its affairs should be managed by a group of persons called ‘Board of Directors’, while the financial resources which are at risk in shape of equity capital are provided by shareholders. The very essence of corporate governance is base upon principles of transparency, accountability, fairness and responsibility. Their application is universal in nature. The concept may be complex but the principles are essentially simple and straightforward stimulating a fine fusion of legislative and ethical frame work.4

2.2 Corporate Governance: Meaning and Concept

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

1. According to Mathiesen, "Corporate governance is a field in economics that investigates how to secure/motivate efficient management of corporations by the use of incentive mechanisms, such as contracts, organizational designs and legislation. This is often limited to the question of improving financial performance, for example, how the corporate owners can secure/motivate that the corporate managers will deliver a competitive rate of return"5.

2. According to Sheilfer and Vishnv, “Corporate governance deals with the ways in which suppliers of finance to corporations assure themselves of getting a return on their investment”, 6

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4 These words has been extracted from one of the speech of Sir Adrian Cadbury delivered in India during his visit in Year 2000.  
6 http://e.viaminvest.com/WhatIsGorpGov.asp, Date:- 20th of December 2011, Time:- 3:57 P.M.
3. According to OECD, "Corporate governance is the system by which business corporations are directed and controlled. The corporate governance structure specifies the distribution of rights and responsibilities among different participants in the corporation, such as, the board, managers, shareholders and other stakeholders, and spells out the rules and procedures for making decisions on corporate affairs. By doing this, it also provides the structure through which the company objectives are set, and the means of attaining those objectives and monitoring performance", 7

4. According to James D. Wolfensohn, President of World Bank, "Corporate governance is about promoting corporate fairness, transparency and accountability" 8

5. According to Sir Adrian Cadbury, “Corporate Governance is the system by which companies are directed and controlled.” 9

6. According to Shann Turnbull, “Corporate governance describes all the influences affecting the institutional processes, including those for appointing the controllers and regulators, involved in organizing the production and sale of goods and services. Described in this way, corporate governance includes all types of firms whether or not they are incorporated under civil law.” 10

7. According to Tricker, “Corporate Governance is concerned with the way entities are governed, as distinct from the way business within those companies are managed. Corporate Governance addresses the issues facing Board of Directors, such as the interaction with top management and relationship with the owners and others interested in the affairs of the company.” 11

8. Monks and Minow have defined corporate governance as “relationships among various participants in determining the direction and performance of a

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7 Ibid. OECD April 1999. OECD's definition is consistent with the one presented by Cadbury [1992].
8 Supra n. 5.
9 Ibid.
corporation which include the primary participants such as the shareholders, the management and the board of directors.\textsuperscript{12}

We have concluded from the above discussion that a proper definition of corporate governance should not just describe directors’ obligations towards shareholders. Different countries have different ideas as to what constitutes good corporate governance. Therefore any satisfactory definition, to be applicable to a modern, global company, must synthesize best practice from the biggest economic powers into something which can be applied across all major countries.\textsuperscript{13}

2.3 Objectives of Corporate Governance

Good Governance is integral to the very existence of a company. It inspires and strengthens investor’s confidence by ensuring company’s commitment to higher growth and profits. It seeks to achieve following objectives:

- A properly structured Board capable of taking independent and objective decisions is in place at the helm of affairs.
- The Board is balanced as regards the representation of adequate number of non-executive and independent directors who will take care of the interests and well-being of all the stakeholders
- The Board adopts transparent procedures and practices and arrives at decisions on the strength of adequate information.
- The Board has an effective machinery to subserve the concerns of stakeholders.
- The Board keeps the shareholders informed of relevant developments impacting the company.
- The Board effectively and regularly monitors the functioning of the management team


\textsuperscript{13} http://www.applied-corporate-governance.com/definition-of-corporate-governance.html, Date 18\textsuperscript{th} of June 2011, Time:- 2.14 P.M.
The Board remains in effective control of the affairs of the company at all times.

The overall endeavour of the Board should be to take the organisation forward, to maximize long-term value and shareholder’s wealth.\textsuperscript{14}

2.4 Theories of Corporate Governance

History has revealed that there is a never-ending evolution of theories or models of corporate governance. One of the reasons is due to the very essence of social consciences that is minimal and profit making took center stage. All over the world, companies are trying to instill the sense of governance into their corporate structure. With the surge of capitalism, corporation became stronger while governments all over the world had to succumb to its manipulations and dominance. The theories of Corporate Governance can be divided in two main theories Fundamental Corporate Governance Theories and Ethical Theories. The fundamental theories in corporate governance began with the agency theory, expanded into stewardship theory and stakeholder theory and evolved to resource dependency theory, transaction cost theory, political theory and ethics related theories such as business ethics theory, virtue ethics theory, feminists ethics theory, discourse theory and postmodernism ethics theory.\textsuperscript{15}

2.4.1 Fundamental Theories of Corporate Governance

Agency Theory Agency theory having its roots in economic theory was exposited by Alchian and Demsetz (1972) and further developed by Jensen and Meckling (1976). Agency theory is defined as “the relationship between the principals, such as shareholders and agents such as the company executives and managers”. In this theory, shareholders who are the owners or principals of the company, hires the agents to perform work.\textsuperscript{16}

\textsuperscript{14}http://www.newagepublishers.com/samplechapter/001167.pdf, Date: - 10\textsuperscript{th} of January 2012, Time 11:48 P.M.

\textsuperscript{15}Haslinda Abdullah and Bendict Valentine, “Fundamental and Ethics Theories of Corporate Governance”, Middle Eastern Finance and Economics http://www.eurojournals.com/mefe_4_07.pdf, Date:- 22\textsuperscript{nd} of June 2011, Time:- 1:12 PM.

\textsuperscript{16}Ibid.
Stewardship Theory

Stewardship theory has its roots from psychology and sociology and is defined by Davis, Schoorman & Donaldson (1997) as “a steward protects and maximises shareholders wealth through firm performance, because by so doing, the steward’s utility functions are maximised”. In this perspective, stewards are company executives and managers working for the shareholders, protects and make profits for the shareholders. Unlike agency theory, stewardship theory stresses not on the perspective of individualism but rather on the role of top management being as stewards, integrating their goals as part of the organization. The stewardship perspective suggests that stewards are satisfied and motivated when organizational success is attained.17

Stake Holder Theory

Stakeholder theory was embedded in the management discipline in 1970 and gradually developed by Freeman (1984) incorporating corporate accountability to a broad range of stakeholders. Wheeler et al, (2002) argued that stakeholder theory derived from a combination of the sociological and organizational disciplines. Indeed, stakeholder theory is less of a formal unified theory and more of a broad research tradition, incorporating philosophy, ethics, political theory, economics, law and organizational science. Stakeholder theory can be defined as “any group or individual who can affect or is affected by the achievement of the organization’s objectives”. Unlike agency theory in which the managers are working and serving for the stakeholders, stakeholder theorists suggest that managers in organizations have a network of relationships to serve – this include the suppliers, employees and business partners. And it was argued that this group of network is important other than owner-manager-employee relationship as in agency theory.18

Resource Dependency Theory

Whilst, the stakeholder theory focuses on relationships with many groups for individual benefits, resource dependency theory concentrates on the role of

17 Ibid.
18 Ibid.
board directors in providing access to resources needed by the firm. Hillman, Canella and Paetzold (2000) contend that resource dependency theory focuses on the role that directors play in providing or securing essential resources to an organization through their linkages to the external environment. Indeed, Johnson et al, (1996) concurs that resource dependency theorists provide focus on the appointment of representatives of independent organizations as a means for gaining access in resources critical to firm success. For example, outside directors who are partners to a law firm provide legal advice, either in board meetings or in private communication with the firm executives that may otherwise be more costly for the firm to secure.19

**Transaction Cost Theory**

Transaction cost theory was first initiated by Cyert and March (1963) and later theoretical described and exposed by Williamson (1996). Transaction cost theory was an interdisciplinary alliance of law, economics and organizations. This theory attempts to view the firm as an organization comprising people with different views and objectives. The underlying assumption of transaction theory is that firms have become so large they in effect substitute for the market in determining the allocation of resources. In other words, the organization and structure of a firm can determine price and production. The unit of analysis in transaction cost theory is the transaction. Therefore, the combination of people with transaction suggests that transaction cost theory managers are opportunists and arrange firms’ transactions to their interests.20

**Political Theory**

Political theory brings the approach of developing voting support from shareholders, rather by purchasing voting power. Hence having a political influence in corporate governance may direct corporate governance within the organization. Public interest is much reserved as the government participates in corporate decision making, taking into consideration cultural challenges (Pound, 1993). The political model highlights the allocation of corporate power, profits and privileges are determined via the governments’ favour. The

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19 Supra n. 15.
20 Ibid.
political model of corporate governance can have an immense influence on governance developments. Over the last decades, the government of a country has been seen to have a strong political influence on firms. As a result, there is an entrance of politics into the governance structure or firms’ mechanism.21

2.4.2 Ethics Theories of Corporate Governance

Other than the fundamental corporate governance theories of agency theory, stewardship theory, stakeholder theory, resource dependency theory, transaction cost theory and political theory, there are other ethical theories that can be closely associated to corporate governance. These include business ethics theory, virtue ethics theory, feminist ethics theory, discourse ethics theory, postmodern ethics theory.

Business ethics is a study of business activities, decisions and situations where the right and wrongs are addressed. The main reasons for this are the power and influence of business in any given society is stronger than ever before. Businesses have become a major provider to the society, in terms of jobs, products and services. Business collapse has a greater impact on society than ever before and the demands placed by the firm’s stakeholders are more complex and challenging. Only a handful of business giants have had any formal education on business ethics but there seems to be more compromises these days.22

Whilst business ethics theory focuses on the “rights and wrongs’ in business, feminist ethics theory emphasizes on empathy, healthy social relationship, loving care for each other and the avoidance of harm. In an organization, to care for one another is a social concern and not merely a profit centered motive. Ethics has also to be seen in the light of the environment in which it is exercised. On the other end, discourse ethics theory is concerned with peaceful settlement of conflicts. Discourse ethics, also called argumentation ethics,

22 Ibid.
refers to a type of argument that tries to establish ethical truths by investigating the presuppositions of discourse.\textsuperscript{23}

Virtue ethics theory focuses on moral excellence, goodness, chastity and good character. Virtue is a state to act in a given situation. Postmodern ethics theory goes beyond the facial value of morality and addressed the inner feelings and ‘gut feelings’ of a situation. It provides a more holistic approach in which firms may make goals achievement as their priority, foregoing or having a minimal focus on values, hence having a long term detrimental effect.\textsuperscript{24}

The emergence of agency theory, stewardship theory, stakeholder theory, transaction cost theory and political theory addresses the cause and effect of variables, such as the configuration of board members, audit committee, independent directors and the role of top management. In addition, ethics in business have been closely associated with corporate governance. This can be seen with the association of business ethics theory, feminist ethics theory, discourse ethics theory, virtue ethics theory and postmodern ethics theory. In today’s business environment, business process should also focus on other critical factors such as legislation, culture and institutional contexts. Corporate governance is constantly changing and evolving and changes are driven by both internal and external environmental dynamics. The current corporate governance theories cannot fully explain the complexity and heterogeneity of corporate business. Governance for different country may vary due to its cultural values, political and social and historical circumstances. In this sense, governance for developed countries and developing countries can vary due to the culture and economic contexts of individual country.\textsuperscript{25}

We can conclude from the above discussion that an effective and good corporate governance cannot be explained by one theory but it is best to combine a variation of theories, addressing not only the social relationships but also emphasize on the rules and legislation and stricter enforcement surrounding good governance practice and going beyond the norms of a mechanical approach towards corporate governance.

\textsuperscript{23} Ibid.
\textsuperscript{24} Ibid.
\textsuperscript{25} Ibid.
2.5 Specification of Relationship

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

- The board of directors
- The managers
- The workers
- The shareholders or owners
- The regulators
- The customers
- The community (people affected by the actions of the organisation)
- The suppliers

2.6 Need for Corporate Governance

Although instituting corporate governance is clearly beneficial for firms and countries, the rapid pace of globalization has made the need urgent. Doing so requires that firms and national governments make some fundamental changes. Companies must change the way they operate, while national governments must establish and maintain the appropriate institutional framework. Without rules and structures of a binding nature, anarchy results. Under such conditions business becomes nothing but “casino capitalism” where investments are simply bets: bets that people will keep their word, bets that the firms are telling the truth, bets that employees will be paid, and bets that debts will be honored. What corporate governance is all about in larger terms is how a structure can be set up that allows for a considerable amount of freedom within the rule of law.26

Public attention through high profile corporate scandals and collapses has forced governments, regulators and boards of corporations to carefully

26 http://www.cipe.org/programs/corp_gov/pdf/CGHANDBOOK.pdf , Date: - 2nd November of 2011, Time:-11:06 P.M.
reconsider fundamental issues of corporate governance as essential for public economic interest. In addition, the volatility and instability experienced in emerging markets in recent times has drawn attention to the implications of corrupt practices and maladministration in national and international financial systems and on public expenditure. Good corporate governance practices are now becoming a necessity for every country and business enterprise, and are no longer restricted to the activities of public-listed corporations in advanced industrial economies.27

2.7 Aim of Corporate Governance

The aim of "Good Corporate Governance" is to ensure commitment of the board in managing the company in a transparent manner for maximizing long-term value of the company for its shareholders and all other partners. It integrates all the participants involved in a process, which is economic, and at the same time social. The fundamental objective of corporate governance is to enhance shareholders' value and protect the interests of other stakeholders by improving the corporate performance and accountability. Hence it harmonizes the need for a company to strike a balance at all times between the need to enhance shareholders' wealth whilst not in any way being detrimental to the interests of the other stakeholders in the company. Further, its objective is to generate an environment of trust and confidence amongst those having competing and conflicting interests. The overall endeavour of the board should be to take the organisation forward so as to maximize long term value and shareholders' wealth.28

2.8 Genesis of Corporate Governance

The key secret of corporate governance practice is to set a goal for attaining the highest standard of good governance, meticulously pursue it and thereby maximize value for the shareholder, customers, employees, general public and last but not the least, the government.

Likewise, the corporate law in India has concurrently witnessed waves after waves of changes along with streamlining of relevant rules, regulations, code of conduct and corporate governance mandate. Simultaneously, encouraged by salient amendments conducive to perpetual corporate entity vis-a-vis other types of entities, the number of company registration saw a quantum leap. The monumental Securities and Exchange Board of India came in existence. Quickly a host of ancillary acts, regulations and guidelines appeared at the corporate horizon.

2.8.1 Foreground

The insertion of clause 49 by SEBI in the standard listing agreement for implementation by all stock exchanges for all listed companies is the outcome of Kumar Manglam Birla Committee Report on “Corporate Governance”. The basic idea behind this has been that best results can be achieved by companies when they ‘begin to treat the code, not as mere measure of administration but as a way of corporate life.’

Any amendment in corporate law, rules, regulations and guidelines can be rendered effective only when there is compliance not merely with the letter of the law, but also with the underlining spirit. The subject matter, therefore, touches the very brink and the code of ‘human values in corporate behaviour.’

2.8.2 Spectrum

The current national scenario which is correlated with global events in industrial, financial, economic and political fields reflects on alarming situation requiring attention on war footing. As can be observed, the economy remains stagnant, the market is bearish, unemployment prospects are haunting, both indigenous and international competition is growing keener, clouds of slump and depression are in the sky, corporate scandals are surfacing, business are failing and hue and cry is raised by ever expanding security owners.

29 Dr. K. Dileep Kumar, “Genesis of Corporate Governance”, Chartered Secretary, August 2003, p. 1163.

30 Ibid.
2.8.3 Shortcomings

Despite promulgation of strict prescriptive legislative measures and iron-touch rule-making for bodies corporate, whether these happen to be in public or private sector, whether these are public or private companies, all these have their innate limitations, because, as the maxim goes: ‘the law breakers happen to be cleverer that the law makers.’

Most of such law-breaking instances stem from human attitude such as: wanton mischief, motives of self-aggrandizement, get-rich-quickly policy, neglect of interest of common man, lack of personal accountability, carrying two-hoots for response to regulators and legislators, non-appreciation of economic and financial failures, lack of ethical education and open avenues for white-collar crimes.31

2.8.4 Ground Reality

The ground reality is, that as years pass by, entrepreneurs, shall have to face ever more challenges in the face of optimal opportunity. Corporate management shall have to address themselves to measuring their strength and weakness, opportunities and threats, cost-benefit-weightage and such like issues. In doing so, companies shall have to respond to challenges and seize opportunities. They should, therefore, be prepared to pray, in cash or kind, penalties for neglect. Ultimately, it stands to reason that corporate bodies shall have to add value to their organization. If not, they should be prepared to live to regret for their own doings.

Intense competitive climate at international level has indeed improved conditions for investors and has helped push national stock markets to emerge amongst the best in eastern continent. Despite stringent legislative measures, waves after waves of corporate scandals involving several multinational corporations, financial institutions and investment banks are rampant. There is the story of ‘terrible ten ‘companies in United States known to have

31 Id. at 1164.
surreptitiously adopted dubious practices of bribing chief executive officers and have indulged in nefarious practices involving billions of dollars of scams at the cost of public money. At the national level, the media delights in splashing daily news of bungling of one king or another. The core factor to be seriously and expeditiously addressed is to improve corporate conscience and behaviour. The transparency should be such as would mirror clearly the performance of a company as would be open to public gaze and scrutiny, and capable of being investigated, whereupon the culprits ought to be brought to books.

Over the past two decades, the government has taken bold and pragmatic steps to upgrade the Indian investment environment to global standards. National Stock Exchange has emerged as one of the world-class bureau introducing electronic trading, making price rigging impossible via voice mail. Era of forgery was ended as paper scripts were dematerialized into electronic security documents, making it facile to deliver scripts within in a couple of days of purchase.  

2.8.5 The Future

Notwithstanding sluggish governance by bodies corporate, the fact remains that today Indian companies are ranked amongst the best in the developing world. Albeit, lot more is required to be done by our entrepreneurs to rise to even higher echelons. In this regard, the question is not only of prophylactic treatment of corporate accounting, voluntary disclosures or cosmetic window-dressing of quarterly or annual balance sheets, but it is that of practising corporate ethics and providing and using techniques for performing clinical surgery of the corporate heart. Cooking of books would then become a thing of the past.

Companies with good governance practices are always rewarded in terms of self-earned reputation, comfortable share in competitive market, with a reasonable margin of genuine profits, and their ability to contribute its might to the national exchequer, besides maintaining a steady and improved track-record of dividend distribution.

32 Ibid.
In the current era and futuristic development of e-commerce and e-governance, companies cannot afford to ignore to recognize and act for a future resplendent with opportunities and challenges, thereby, to emerge successful even in the face of unfamiliar risks.\(^{33}\)

### 2.8.6 Secret of Success

Risks of failure can be traced to areas such as: lack of self-confidence, lack of mutual trust, non-transparency, neglect of compliance, improper authentication, misapplication of management skills and breaking good governance practices. Laxity of internal vigilance, inadequate controls and ineffective implementation of system and procedures for good governance would open up a Pandora’s Box of frauds and foozles.

Indeed, the very topic of governance is basically a subtle human aspect. As such, to gain what one seeks as good and admirable (as opposed to ‘not good and not admirable’) depends on one’s inner motives and means and not external influences or statutory cajoling.\(^{34}\)

### 2.8.7 Ladder of Success

The paradox is, as stated by Marcus Buckingham, that in spite of their individual differences in style of governance, by and large, those at the helm of corporate governance have one common trait; and that is: they do not hesitate to break virtually every rule held sacred by conventional wisdom.

There, to rise to an order of excellence, persons entrusted with the task of governance ought to climb a six-step ladder, carefully, rung by rung. The very initial rung is that of maintaining an attitude of natural interest in the given field of operation, for which power of concentration and application of spontaneity are called for. Now, one may have such an attitude but if one lacks the inner feeling for carrying out the task in hand with enthusiasm and aspiration, then he would not meet with success. Even if one has the attitude and enthusiasm, but if he does not possess the capability of performing his duties and responsibilities, then he may not be successful. Although one may have the necessary attitude, enthusiasm and capability, but if he does not apply

\(^{33}\) Supra n. 29 p. 1164.

\(^{34}\) Ibid.
his mind diligently to his word, he would be far from success. In spite of one possessing all the four above, if he lacks consistency of application of his skills, even then he may be far from achieving success. And, finally, although one may be endowed with proper attitude, enthusiasm, capability, diligence and consistency in performing his given task, but if he lacks dedication to his work, he may not meet with success in his endeavours.  

2.8.8 Myths Disproved

It is mythical to believe that human beings as such, whether they happen to be responsible for corporate governance or otherwise, are considered to be so-called ‘wanting organisms’; and that fulfillment of basic human needs is merely to induce them to work for the purpose of earning bread and butter; and that one gets more and more engrossed in fulfilling the basic, lowly and mundane needs at the exclusion of all other moral and ethical needs; and that one discovers his finite and ultimate potential through self-actualization; and that one may become more ego-centric as he self-actualizes more and more success; and that at the intellectual level, there is nothing at all beyond self-actualization.

All the foregoing beliefs are disproved and get shattered in the light of Abraham Maslow’s Doctrine of excellence in governance, which is briefly restated as under:

One can only make the most of one-self in getting rid of the negative tendencies in corporate governance, if one honestly knows oneself to re-make oneself, self-revelation of the higher and transcendental aspect of one’s own personality is absolutely necessary.

The basic common needs can be grouped into the physiological needs (air, water, food, sleep, shelter, rest, sex and so on), the psychological needs (learning, working, earning, security, insurance, pensions, etc.), the social needs (love, sense of belongingness, recognition, family, socialization, etc), the self-esteem needs (sense of achievement, self-respect, self-confidence, prestige, and so on), and the self-actualization needs (fulfilling one’s full

35 Ibid.
potential, being the best one is capable of, achieving excellence in self-application, etc.

The skills that really distinguish the ‘star performers’ in any given field, right from the entry-level to the topmost office or position in any organization is neither intelligence quotient, not emotional quotient, nor advanced academic qualifications, nor technical or other disciplinary acumen, but is ‘corporate governance wisdom’.36

2.9 Edifice of Corporate Governance

Corporate Governance has become a top priority for the regulatory bodies with the objective of providing better and effective protection to all stakeholders and also to make the market confident as research reveals a positive correlation between corporate governance and share prices.37 The edifice of corporate governance (which includes, among others, board composition, relationship between the Board and the management, internal control mechanisms, independent audit committee) are based on four principles. These are:

- Compliance with all regulatory requirements.
- Equitable treatment of all stakeholders such as suppliers, employees, consumers, etc.
- Full and fair disclosure of all material information with particular emphasis on accurate, objective presentation of financial information, and
- Respect for norms of business ethics and social responsibility.38

Therefore, Corporate Governance comprises the legal infrastructure organizing business (corporate law, security law, accounting rules), business ethics and the overall business environment. Good Corporate Governance is highly correlated with better operating performance and market valuation of companies. By preserving and protecting rights of the shareholders – in

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36 Id. at 1165.
particular those of minority and foreign shareholders – it encourages innovation and long-term investment in human and physical capital, Foreign Direct Investment (FDI), as well as the creation of intellectual property. By stimulating performance, generating higher returns and profitability of companies, it encourages higher total factor productivity growth; the major source of economic growth. By limiting the abuse of power by corporate insiders, it creates an efficient mechanism for transferring wealth between generations. By monitoring managers of companies in both the financial and ‘real’ sectors and making them accountable for their actions, it protects investors’ interests; in turn, this encourages both domestic and foreign direct as well as portfolio investment.39

2.10 Factors Influencing Quality of Corporate Governance

While corporate governance is an important element affecting the long-term financial health of companies, it is only part of the larger economic context in which companies operate. The corporate governance framework depends on the legal, regulatory and institutional environment, business ethics and awareness of the environmental and societal interests of the constituencies in which it operates.

Quality of governance primarily depends on following factors:

I. Integrity of the management.

II. Ability of the Board.

III. Adequacy of the processes.

IV. Commitment level of individual Board members.

V. Quality of corporate reporting.

VI. Participation of stakeholders in the management.40

The degree to which corporations observe basic principles of good corporate governance is an increasingly important factor for taking key investment decisions. International flow of capital enable companies to seek financing from a larger pool of investors. If companies are to reap the full benefits of the

global capital market, capture efficiency gains, benefit by the economies of scale and attract long term capital, adoption of corporate governance standards must be credible, consistent, coherent and inspiring.41

2.11 Good Governance and Value Addition

Good corporate governance ensures that the company has good systems, which allows sufficient freedom to the Board of Directors and the Executives to take decisions for the progress of the company.42 Good Corporate Governance, being a critical doctrine to the global economic system, enables the business to not only effectively and efficiently achieve its corporate objectives but also provides it the structure and methodology to sustain its very survival in a globally competitive environment.

Goods Corporate Governance almost always:

- Enhances investors awareness
- Attracts and retains capital
- Maximizes shareholder value
- Ensures pursuing corporate objectives with utmost integrity
- Highest standards of business ethics and in total compliance with all legal obligations
- Facilitates satisfaction of the social obligations as a corporate citizen.
- Ensures effective and efficient use of corporate resources and management of risks and exposures.

Factors which add greater value through Good Governance, may be summarized as follows:

- Adoption of good governance practices provides stability and growth to the enterprise.
- Good governance system, demonstrated by adoption of good corporate governance practices, builds confidence amongst stakeholders as well as prospective stakeholders. Investors are willing to pay higher price to the

corporates demonstrating strict adherence to internationally accepted norms of corporate governance.

- Effective governance reduces perceived risks, consequently reduces cost of capital and enables Board of directors to take quick and better decisions which ultimately improves bottom line of the corporates.
- In today's knowledge driven economy, demonstrating excellence in skills has become the ultimate tool in the hands of Board of Directors to leverage competitive advantage.
- Adoption of good corporate governance practices provides long-term sustenance and strengthens stakeholders' relationship.
- A good corporate citizen becomes an icon and enjoys a position of respect.\(^{43}\)

2.12 Corporate Ethics

Corporate ethics may vary from company to company. Most people think of corporate ethics as being confined to not giving or taking a bribe. But in reality it covers the entire spectrum of human relationship. In industry, ethics involves corporate conduct with suppliers, customers, creditors, staff, etc. Internally, it means winning the loyalty of the staff. Making profit is not the only objective of the organisation. An organisation should ensure reasonable return for its investors. With outsiders, it must meet its commitments to lenders on time. When you are dealing with the consumers, charge a fair price to its customers and create a feeling among them that they are getting `value for the money'.\(^{44}\)

Towards the government, a corporate is obligated to pay taxes and levies on time and comply with various legislation, rules and regulations. Companies should not resort to litigation to avoid/delay any statutory payments. Environment protection has become an important local/global issue. An organisation should take all measures to reduce pollution. Since a corporate is part of society, it should also take up *suo motu* social welfare programmes or


associate itself with agencies working in the areas of health, education and general public welfare. If an organisation scores in all these aspects, it scores in the corporate ethics rating too.\textsuperscript{45}

A leader is a person who knows shows and goes all the way. If an organisation desires to have a good corporate ethics record, its CEO must evolve and implement best practices for all activities. He should lead by example. This will lead to a percolation of good practices across the organisation, resulting in good corporate ethics.\textsuperscript{46} The values of a corporate culture influence the ethical standards within a corporation, as well as managerial behavior. Senior management may try to determine a corporate culture. They may wish to impose corporate values and standards of behavior that specifically reflect the objectives of the organization. In addition, there will also be an extant internal culture within the workforce. Work-groups within the organization have their own behavioral quirks and interactions which, to an extent, affect the whole system.\textsuperscript{47} Organisations with good corporate ethics will attract investors, customers, and talented people.\textsuperscript{48}

\textbf{2.13 Corporate Governance and Corporate Social Responsibility}

Corporate social responsibility and corporate governance are inextricably intertwined. There is today a growing perception among enterprise that sustainable business success and shareholder value control cannot be achieved solely through maximizing short-term profits, but instead through market oriented yet responsible behavior. Companies are aware that they can contribute to sustainable development by managing their operations in such a way as to enhance economic growth and increase competitiveness whilst ensuring environmental protection and promoting social responsibility.\textsuperscript{49}

Business governance or corporate governance is a phenomenal set of systems and processes to ensure that a company is managed to safeguard the interest of

\textsuperscript{45} Ibid.
\textsuperscript{46} Ibid.
\textsuperscript{47} http://businessworldng.com/web/articles/493/1/Using-Corporate-Culture-to-Achieve-Results-1/Page1.html, Date:- 12\textsuperscript{th} of July 2011, Time:-6:06 AM.
\textsuperscript{48} Supra n. 44.
all the stakeholders. Corporate governance and Corporate Social Responsibility are both extremely important to a company.

We cannot see a good CSR practices without a good corporate governance practices. Corporate governance depends on managerial performance as well as a consideration of social responsibility, the socio-cultural-environmental dimension of business procedure, legal and ethical practices with a focus on customers and other stakeholders of an organization. Therefore we can say the corporate governance and corporate social responsibility are interrelated.

2.14 Whistle Blowing

Any discussion on corporate governance is not complete without addressing the issue of whistle blowing. Corporate governance is the acceptance of the inalienable rights of shareholders as the true owners of the corporation and of the role of the management is perceived as that of trustees on behalf of the shareholders. It encompasses commitment to values, ethical business conduct and strikes a fine distinction between personal and corporate funds in the management of a company. The aftermath of the unexpected Satyam scam awakened India to new set of norms and policies. The Ministry of Corporate affairs realised this and began to undertake measures to patch up the loopholes to prevent future corporate frauds.

Whistle blowing is an act by which an employee in an organization makes public announcements of incidents of mal-practice within the organization or otherwise perpetrated by the organization. Usually, this happens when the person blowing the whistle does not get response from within the organization to check or stop the practices in question. The whistle blower is at great personal risk of losing his/ her job or being punished otherwise by the affected persons in authority. In the context of a corporation, whistle blowers are those who expose malpractices, unethical and corrupt practices of their co-workers.


51 Preamble, Narayana Murthy Report of the SEBI Committee on Corporate Governance.

and seniors, for the benefit of the company, stakeholders and society at large.
In India, corruption needs no elucidation when it comes to companies as the
statistics for white collar crimes keep shooting every year. There is rampant
personal use of company funds, misappropriation and recurrent frauds at
different levels. This is clearly reflected by the Satyam scam and the stamp
paper scams in the past. In India, the whistle blower policy is restricted to the
public servants or in works connected with the Central Government and
there exists no provision for corporate whistle blowers, except a non-
mandatory requirement under clause 49 of the Listing Agreement.

2.15 Corporate Governance-Substance not Process

The governance structure should be such that it strengthens the “will to act”.
The governing arrangements either make it easier or harder to exercise
courage in influencing the construction of broad agendas, participating
actively in setting strategic directions and monitoring the performance of the
management. The essence of corporate governance is to get the directors to
focus on substance rather than process. Governance is a means to an end. It is
the lack of attention to this aspect that creates endless debates about decision
making processes in widely held corporate. More money might solve the
vexing problem of corporate governance. Large and growing companies might
attract stronger directors. Unfortunately, the troubled companies that most
need firm, independent guidance from their boards are least likely to get it .
Experienced and qualified people need a powerful inducement to join these
hapless companies. Stock options and higher fees might help.

Boards, which are normally in a state of slumber, often perform best when
confronting extraordinary situations such as a takeover. If directors on the
board make choices and decisions regarding the use of corporate resources to
benefit them personally at the cost of the company, especially in the context of
large public limited companies, dispersed shareholders cannot efficiently
monitor the board and the top management.

53 “104 White Collar Criminals Caught in 3 Months”, The Times of India (Chennai), 17th September, 2009.
54 The Central Vigilance Commission Act, 2003; Section 8.
55 S Raghunath, “Governing Corporate Governance”, Management Review, July-September, October-
December, 1996, p.96.
Directors must realize their job is to represent the shareholders and other stakeholders, not offer themselves as the rubber stamp of the Managing Director’s ideas. Ultimately it is the market response that regulates the seriousness with which corporate governance is taken. The market signals what it approves and disapproves of. For those companies that do not still take corporate governance concern seriously cannot retain the confidence of the investor, customer and government etc.\footnote{Id. at 97.}

2.16 Corporate Governance and Capital Structure

Strategic decisions of the firm are either under the control of the board of directors who act on behalf of the shareholders (governance mechanism) or delegated to the management (implied contract). The decision regarding the capital structure (usually represented by the debt equity ratio) depends on the locus of control. Hence, it is possible to infer the nature of the organizational mechanism by examining the factors which determine the choice of the capital structure.\footnote{Ranjul Rastogi and T.V.S. Ramamohan Rao, “Corporate Governance and Capital Structure,” \textit{Finance India}, Vol. XI No. 4, December 1997, p.951.}

The typical modern corporation operates in an uncertain market environment. To reduce the impacts of business risk\footnote{Turnover (1970, p. 1064) defines the business risk as the variability in the earnings of the firm resulting from the uncertainty in the demand for the products of the firm. This will be distinct from the financial risk associated with a specific choice of the capital structure. For, the capital assets of the firm can be financed by both debt and equity. Hence, the fixed interest obligation of debt financing as a proportion of net sales defines the financial risks.} the firm:

(a) Chooses a diversified product range.

(b) Finances capital through equity participation to ensure limited liability, and

(c) Attempts to define an appropriate organizational structure to achieve efficient monitoring and control of corporate resources.

The shareholders, or the board of directors as their representatives, endeavor to define firm specific organizational structures. For, equity usually contain the provision that the rights regarding the decisions that affect the net cash flows are largely in the realm of the equity holders since they bear all residual risks. The extent and directions of product diversification, allocation of
investment to different product lines, and the method of financing investments. The capital market would perform these roles if it is efficient. However, its inadequacy makes the operation of an internal capital market a necessary supplement to the operation of the capital markets.\textsuperscript{59}

If these risks are sufficiently low the board may keep control for efficient functioning. When the risks increase the optimal organizational arrangement consists of delegating decisions to the group which has the best information to make a specific type of decisions. This can have the effect of reducing financial risks in a given market environment. That is, there is a necessity to involve the management to ensure that

(a) the decisions made are commensurate with the organizational capabilities to execute them, and

(b) efficiency is maintained at the operational level, i.e., the management bonds with the shareholder objectives.\textsuperscript{60}

However, if the capital structure decision is an implicit contract, power seeking managers may commit the firm to greater financial risks. The board of directors may then regain control with respect to the capital structure decision.\textsuperscript{61}

2.17 Shareholder Value Analysis and Corporate Governance

Corporate governance, the system by which companies are directed and controlled has received increasingly global attention during the last decade. While governance is concerned with both the accountability of the board of directors and with board effectiveness, it is the accountability aspect that has generally received greater attention among stakeholders and more specially the shareholders of corporations.\textsuperscript{62}

Hence for maximizing shareholder value, shareholders should have full information at all times to understand the value creation performance as well as to make their own assessment of the future value creation potential under a

\textsuperscript{59} Supra n. 57 p. 952.
\textsuperscript{60} Id. at 964.
\textsuperscript{61} Id. at 965.
\textsuperscript{62} B.B. Pradhan and S. Pattnaik, “Corporate Governance and Shareholder Value Analysis”, \textit{Journal of Accounting & Finance} Volume 17 No. 1 October 2002- March 2003 , p.73.
management and they should have a say in transactions that might lead to
significant value transfer to other security holders. Corporate governance
becomes a powerful force in the emerging deregulated and globalized capital
market to increase the share value through product exercise by:
- Expanding the role and duties of the board of directors.
- Emphasizing the role of institutions shareholders’ activism.
- Strengthening financial reporting, internal control and the audit function.
- Reporting on the compliance.\(^63\)

Corporate governance, then, reflects the standards of a company, which, in
turn, collectively reflect the societal standards. Thus, in many individual
corporations, shareholders are striving to hold top-level managers more
accountable for their derisions and the results they generate. As with
individual firms and their boards, nations that govern their corporations
effectively may gain a competitive advantage over rival countries.\(^64\)

Shareholder value analysis assumes significance in the conduct of corporate
governance. It can be a valuable tool for bridging the information asymmetry
between shareholders and managers and thus contribute to the effective
conduct of corporate governance.

2.17.1 Shareholder Value

With the growing globalization of business and the financial markets,
shareholder value has become an increasingly important concern of firms.
Market-based performance indicators like shareholder value have greater
relevance than ‘fundamental’ based on financial ratios like the profit margin
or sales growth. The greater liquidity of the stock market and the
globalization of business and investment opportunities have meant that capital
has greater mobility and is more readily able to switch between investment
opportunities. The measurement of shareholder value analysis is based on the
cash flow of the firm. Shareholder value is determined by comparing the cash
flow return on capital with the cost of capital. Shareholder value drivers will
have to be interpreted in the specific context of every firm taking into account

\(^{63}\) Id. at 74.
\(^{64}\) Id. at 79.
the complexities of the business environment and the corporate culture of the firm.⁶⁵

Shareholder value analysis can contribute towards the effective conduct of corporate governance in three ways. First, it provides the necessary pre-commitment towards the goal of the firm. This simplifies the process of expectation formation in the interdependent relationship between shareholders and managers. Second, shareholder value analysis emphasizes firm-specific information flows and thus, provides the learning mechanism for the sustaining of incomplete contracts between shareholders and managers. Third, it increases the interdependence between strategy formation and goal setting within the organization and thus, improves the framework within which the top management decides.⁶⁶

2.17.2 Pre commitment in Shareholder Value Analysis

The incomplete contracts between shareholders and managers make it difficult for shareholders and managers to form expectations that are necessary for strategic cooperation between the two parties. In the strategically interdependent relationship between shareholders and managers, shareholder value analysis by indentifying shareholder wealth maximization as the objective of the firm provides the basis of such a formal commitment.⁶⁷

Corporate governance is visualized as an institutional arrangement that not only addresses the agency problem between shareholders and managers, but also provides the context for the decisions taken by the top management of the firm.

The objective of a corporate governance framework is to identify a basis for strategic co-operation between shareholders and managers such that the agency problem is reduced and a basis for the decisions that promote the competitiveness of the firm is provided.

⁶⁶ Id. at 9.
⁶⁷ Ibid.
2.17.3 Firm-specific Communication in Shareholder Value Analysis

Firm specific information is important for sustaining the strategic co-operation between shareholders and managers because of the incomplete contracts between the two. Thus, there is an overlap in shareholder value analysis and corporate governance in terms of their need to be based on firm-specific information. Shareholder value analysis, with its inherent emphasis on firm specific information, can provide the learning mechanism that not only meets the information requirement of the incomplete contracts, but also reduces the scope for opportunism.\textsuperscript{68}

Shareholder value analysis encourages a greater volume of firm-specific communication. This contributes towards the effective conduct of corporate governance in two ways. First, it sustains the strategic co-operation between shareholders and managers. The incomplete contacts between shareholders and managers imply that the strategic co-operation between the two parties can be maintained and opportunism reduced only through a continuous exchange of information on matters that affect the relationship. The second favorable effect of the greater volume of firm-specific communication is that it promotes the ‘feeling for the entity.’\textsuperscript{69}

2.17.4 Decision Making and Shareholder Value Analysis

Corporate Governance is not only about shareholder-management relations but also about the framework it provides for top management decisions. Shareholder value analysis will have a number of implications for the process of top management decision making. The use of shareholder value analysis has led to a decision-making framework where targets do not determine the boundaries for strategy and target setting but the choice of strategy and target setting is an iterative process.

The iterative process of strategy formulation is superior to the top-down approach, as the challenge facing the modern corporation is entrepreneurialism and knowledge management. Entrepreneurialism represents the level of motivation amongst the top talent within the organization to seize

\textsuperscript{68} Ibid.
\textsuperscript{69} Id. at 11.
opportunities. Knowledge management relates to the ability to develop, apply and capture value from new technologies and practices and to create value-creating linkages between processes, business units and core functions.  

Shareholder value analysis meets both the requirements of disaggregation and commitment expected from an organization geared to meet the challenges of entrepreneuralism and knowledge management. It analysis also has the potential to support superior managerial decisions. Effectiveness of corporate governance is increased because every decision can be made within a framework where its impact on shareholder value can be measured and strategy formulation instead of being a top-down process becomes an iterative process in which every business units enjoys considerable freedom. It can also serve as a useful tool in the conduct of corporate governance as it encourages firm specific financial information flows.

2.18 Unlisted Companies and Corporate Governance

The general concern about corporate governance so far has been centered only around large companies, and more specifically, on listed companies. One has completely ignored a large chunk of Indian Business purely because they are not listed. It is not expected that good corporate governance is not required of unlisted companies because they are not accountable to the capital market. All the rules, regulations, debates on corporate governance are concerning private and pubic sector listed companies. Practically, unlisted companies have been spared and kept away from observing the code of corporate governance. There are many large, family-run, multinational, public sector unlisted companies which are very well known and have large other stake holders. It is said that due to considerably higher level of corporate governance, listed companies are better performers and hence have greater access to additional capital. There is necessity to have good corporate governance in sizeable unlisted companies for the protection of the interest of the other stakeholders, if not the shareholders. It is generally argued that listing is synonymous with greater transparency. Many of the large Indian companies started as family-owned businesses and later on became public. If a listed company feels that the

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70 Id. at 14.
71 Ibid.
market is not valuing the company rightly, then it may be motivated to go for delisting.²²

2.19 Role of Financial Institutions

Over a period of time, Financial Institutions have made an entry into corporate boards though financial participation and assistance. They have also brought about some measure of discipline and objectivity in the decision making process by the corporates. Rightly, Financial Institutions have supported existing managements as loans are sanctioned on the track record of promoters running the business and repayment of loans depended on the ability of promoters to run the business successfully. This would also ensure a fair return on their investments in the capital of the company. While this is in the self-interest of Financial Institutions the larger interest of the corporation seems to have taken a back seat. In recent years, the role Financial Institutions have come in for severe criticism because of the passive role they have played so far. Their nominated directors who are mostly their own employees, have not been able to act independently in regard to the decision making process. They are not to be blamed as they have not been told of the larger vision in corporate management not have they received specialized training in this regard. Financial Institutions should also insist on more and more items to be brought before the board, as this would give better opportunity of participation in the decision making process, by the nominee directors and non-executive directors as well.²³

2.20 Corporate Governance Rating

The issue of Corporate Governance is essentially one of ‘substance over form’ and that it is indeed possible for corporate to follow the form of the various guidelines without in any way improving the actual corporate governance standards. In other words, good corporate governance cannot be legislated, it has to evolve from within the organization. The Corporate Governance Rating (CGR) is meant to indicate the relative level to which an organization accepts

and follows the course and guidelines of corporate governance practices. CGR is not an audit and the rating is not to be interpreted as an indicator of statutory compliance by the rated company, its future financial performance or stock market prices. The CGR of a company is not affected in case of a downturn in the company’s financial performance attributable primarily to industry specific factors.74

2.21 Corporate Governance and Democracy

In as much as government expects the private sector to adhere to the highest standards of corporate governance, government itself and government agencies must be subjected to the same kind of scrutiny. With the introduction of the amendment in the Companies Act, government aspires to the type of society that is characterised by the tenets of good governance, i.e. accountability, democratic participation, transparency, responsibility, and fairness. Good corporate governance is concerned with managing the balance between the economic and social goals and between individual and communal goals. Today's corporations should strive to strike the balance between the demands to become globally competitive with its responsibilities to the society in which they function. Business need to actively participate in the policy development process to ensure that private sector interests are taken into consideration and also develop a strong and vibrant local identity and strengthen community linkages.75

Concerned and active citizenry is a necessary condition for an effective democracy; concerned, aware, and active stakeholders are a necessary condition of good corporate governance. If we take the broad description of stakeholders as mentioned above, then what this implies is that concerned, aware, and active citizens are necessary for good corporate governance. This is where corporate governance and democracy come together.76

A fair and transparent system that governs markets, treat investors and creditors fairly and provide a chance for every entrepreneur with a good product to be successful are every bit as important to democracy as the political institutional establishments. The main aim of corporate governance is to instill corporate democracy in a firm with well defined rights of all the stakeholders in a company which in turn will strengthen them. Therefore, the real need of the hour is to empower the investors’ associations and educate the investors in terms of their rights and liabilities. Thus ensuring corporate democracy is the first step in obtaining corporate governance.

2.22 Corporate Governance through Strategic Leadership

A leader is a person who guides others toward a common goal, showing the way by example, and creating an environment in which other team members feel actively involved in the entire process. A leader is not the boss of the team but, instead, the person that is committed to carrying out the mission of the Venture. The corporate governance requires several core competencies and skills, which go into the making of an effective corporate leader. The competencies and skills analysed are intrinsic in nature-antarmukhi- since they develop from within the leader. These can be best developed by experience and observations, clubbed with an attitude of change. This creates and internal drive which helps acquire the necessary expertise. Whereas all the competences and skills indentified are relevant under diverse situations, their relevance may be in varying degrees. Hence, an appropriate blend of the different factors would determine strategic leadership for success in corporate governance.

Leadership is an extremely vital competency required for effective corporate governance. Leaders must not only posses the requisite competencies but also the skills which make them excellent corporate leaders. Moreover, the role of ethics and values is equally essential for corporate governance. This is one

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77 Supra n. 75.
dimension, there is not compromise or negotiation, and hence, it constitutes a non-negotiable element of governance.

2.22.1 Leadership

Leadership has been described as the “process of social influence in which one person can enlist the aid and support of others in the accomplishment of a common task”. Alan Keith of Genentech states that, "Leadership is ultimately about creating a way for people to contribute to making something extraordinary happen." Garry Wills: “Leadership is mobilizing others toward a goal shared by the leader and followers.” Leadership will be determined in the knowledge era by its ability to generate excitement and enthusiasm, prompting ideas to surface that will result in a sustainable competitive advantage for the organization. It will have to emerge through a strategic balance of the “mind and heart”, resulting in a perfect blend of “result and relations”. Management academics and education too will need to undergo a transition, incorporating the ethical dimension and focus on felt needs of the human beings through a strong value system which will constitute the corporate culture in successful industries.

The following core competencies constitute effective leadership of the future.

- **Effective Trend Spotting for Appropriate Value System:**- This can be achieved by looking out for tools and techniques of spotting hidden changes, new trends, etc. within the organization as well as in the environment.

- **Unhooking Prejudices:** - It comprises of the hidden biases, thinking ruts, unchallenged assumptions blinding new possibilities and techniques to free prejudicial thinking related to all areas of work.

- **Idea Orientation:**- This involves inspection of idea as factor and technique for gathering more ideas related to the implementation of values for following the ethical standards.

- **Taping Intuitions:**- The competency revolves around revealing the secrets of success of the famous personalities and how to tap the intuitions for better

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82 Ibid.
decisions and implementation of ideas in a fair and ethical manner. A few prominent successful personalities include Shri Azim Premji, Shri Ratan Tata, Shri Kumaramangalam Birla and Late Shri Dhirubhai Ambani.

- **Selling Ideas:** The conceptions must be realistic and implementable, bringing out new methods to overcome resistance to change and improved ways of sharing them amongst all in the organisation.

- **Team Building:** Selling of the ideas is possible only through gaining the support from the team members and team environment, comprising of employees from within the organisation.

- **Constant Feedback:** This involve pulling peer groups and others for better insights to serve their needs, and have ideas related to the values and ethics to be well received. Constant review of plans and ideas constitutes as important factor of success.

- **Persistence:** This is the most vital competency required to bring out what it takes to lead innovation, the timing and having faith in ideas.  

These core competencies have been effectively implemented by successful business world over in governing their corporations and steering them to great heights of excellence.

### 2.22.2 Prominent Core Faculties

The acquisition of these core competencies requires several skills. The Corporate world today needs leaders of change more than ever before. Management of change is an important characteristic of managerial effectiveness, but incomplete without consideration of values and ethics in the corporate governance. The prominent core faculties are listed below:

#### 2.22.2.1 Customer Focused Vision

Leaders must articulate a compelling customer focused vision. Vision is like a lighthouse, pointing the way and showing the hazards. It must be powerful enough to ignite the combined imagination of the employees and provide a rallying point to reach a positive stretch. The vision must always be slightly

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beyond reach, but should not be an impossible dream either. The leader must thus communicate the vision in a way that it generates enthusiasm. Customer does not only relate to the marketing but is equally relevant even within the organization—the internal customer.  

2.22.2.2 Value Based Foundation

Leadership has to be built on a strong foundation of values. If vision given direction, values set road-map and the boundaries. Values not only make success enduring but also help in building strong, resilient organizations that can stand up any crisis along the way. Values need leaders to be absolutely transparent in whatever they do. Every action of the leader must withstand public scrutiny. Values transmit trust, which is very powerful cementing force for the organization in the changing times. This leads to a strong corporate culture, which paves the way for growth and excellence.  

2.22.2.3 Self Confidence

Leaders must possess self-confidence, which comes from a positive attitude even in adverse situations. Self confident leaders assume responsibility for their mistakes and share credit with their team members.  

2.22.2.4 Aggressive Commitments

Leaders must constantly make and meet aggressive commitments. Playing to win is not the same as playing dirty. It is one of the finest things that a leader can do, if winning becomes a means to develop high expectations. This helps the leader to demand more from him or herself and also from others. Global expectations are continuously on the rise. The leader has no choice but to constantly raise the bar.  

2.22.2.5 High Energy

The leader must possess and demonstrate high energy. There is no longer any debate on whether a person should work smart or hard. The leaders must work

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84 Id. at 14.
85 Ibid.
86 Ibid.
87 Ibid.
both hard and smart, long and intensely. It is the only way to keep on top of the demands.\footnote{Ibid.}

\subsection*{2.22.2.6 Deep Commitment to Excellence and Quality}

Customers want more quality for lower cost. This is an absolute global truth. One of the greatest contributions of globlisation has been pitching the demand for higher quality. Customers want the best of what is available globally, because unlike in a protected economy, the customer today travels, reads and possibly surfs the net to know what is available outside the country. Emphasis on quality is a fundamental requisite for leadership.\footnote{Supra n. 84.} TQM\footnote{Total Quality Management (TQM) is an approach to improving the competitiveness, effectiveness and flexibility of an organisation for the benefit of all stakeholders. It is a way of planning, organising and understanding each activity, and of removing all the wasted effort and energy that is routinely spent in organisations.} ensures the leaders adopt a strategic overview of quality and focus on prevention not detection of problems.\footnote{http://www.businessballs.com/dtiresources/total_quality_management_TQM.pdf, 12\textsuperscript{th} of July 2011, Time:- 5:38 AM.}

\subsection*{2.22.2.7 Build Star Performers and Teams}

They must not only attract the best minds to join the organization but also create a strong sense of ownership in them. Ownership is not just offering stock options. It has more to do with an emotional engagement and integration with the organization. The leader must actively pursue the development needs to create star performers. Simultaneously, the leader must create high performing teams. This may appear to be a paradox at first sight; the truth is that only a group of strong individuals can make strong teams. No matter how talented the individual is, nothing can be accomplished without teamwork. Cross organizations have to remain competitive.\footnote{Vinod Javeri, “Corporate Governance Through Strategic Leadership”, Business Perspective, 2003 July December Volume 5 , Number 2, p. 14.}

\subsection*{2.22.2.8 Innovative and Creative Idea Generation}

Leaders need to recognize that ideas have limited shelf life. The only way to sustain the advantage is by continuous innovation. Large organizations are not necessarily less innovative so long as they retain the “look and feel” of a small
company and not to let bureaucracy dominate. Innovation is applied creativity. It is more important than creativity for its own sake. Also, innovation should lead to significant jump in what is offered to the customer and not just an incremental improvement that happens in the course of business. Leaders must create a culture of innovation, where ideas thrive. An essential part of this culture building is creating leaders who understand innovation, because it is led by senior and top management. Leaders have a responsibility in not only breaking familiar thinking habits that stall innovation but also in defending the idea generators against critics and helping innovators work through the system.  

2.23 Corporate Governance Forums

The world has become a borderless global village. The spirit to implement internationally accepted norms of corporate governance standards found expression in private sector, public sector and the Government thinking. The framework for corporate governance is not only an important component affecting the long-term prosperity of companies, but it is critical in terms of National Governance, Human Governance, Societal Governance, Economic Governance and Political Governance since the activities of the corporate have an impact on every aspect of the society as such.

The need to find an institutional framework for corporate governance and to advocate its cause has resulted in the setting up and constitution of various corporate governance forums and institutions the world over. Some important forums and institutions of corporate governance are as following:

2.23.1 National Foundation for Corporate Governance

With the goal of promoting better corporate governance practices in India, the Ministry of Corporate Affairs, Government of India, has set up National Foundation for Corporate Governance (NFCG) in partnership with Confederation of Indian Industry, Institute of Company Secretaries of India and Institute of Chartered Accountants of India. The mission of NFCG is

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93 Id. at 15.
To foster a culture for promoting good governance, voluntary compliance and facilitate effective participation of different stakeholders.

To create a framework of best practices, structure, processes and ethics.

To make significant difference to Indian Corporate Sector by raising the standard of corporate governance in India towards achieving stability and growth.

NFCG endeavours to build capabilities in the area of research in corporate governance and to disseminate quality and timely information to concerned stakeholders. It works to foster partnership with national as well as international organisations. At national level, NFCG works with premier management institutes as well as national reputed professional organisations to design and administer Directors Training Programmes.95

2.23.2 Organisation for Economic Co-operation and Development

The Organisation For Economic Co-operation and Development (OECD) was established in 1961. The OECD was one of the first non-government organisations to spell out the principles that should govern corporates. The OECD Principles of Corporate Governance set out a framework for good practice which was agreed by the governments of all 30 countries that are member of OECD. They were designed to assist governments and regulatory bodies in both OECD countries and elsewhere in drawing up and enforcing effective rules, regulations and codes of corporate governance. They also provide guidance for stock-exchanges, investors, companies and others that have a role in process of developing good corporate governance.

The OECD Steering Group on Corporate Governance co-ordinates and guides the Organisation’s work on corporate governance and related corporate affairs issues, including state-owned assets, market integrity, company law, insolvency and privatization. The mission of OECD has been to help its member countries to achieve sustainable economic growth and employment and to raise the standard of living in member countries while maintaining financial stability-all this in order to contribute to the development of the world economy. In order to contribute to the development of the world economy.

economy, the OECD’s focus include a growing number other countries, in addition to its 30 members. It now shares its expertise and accumulated experience with more than 70 developing and emerging market.

The OECD Principles of Corporate Governance has provided governments, regulators and other standard setters with an international benchmark. The OECD works closely with a large number of developing and emerging market countries. In particular, the OECD organises Regional Corporate Governance Roundtables in Asia, Latin America, Eurasia, Southeast Europe and Russia. These Roundtables has used to OECD Principles to formulate regional reform priorities and are now actively engaged in implementing these recommendations.\textsuperscript{96}

\subsection*{2.23.3 Global Corporate Governance Forum}

The Global Corporate Governance Forum was founded in 2001 by the World Bank and the Organisation for Economic Co-operation and Development following the financial crises in Asia and Russia in the latter part of the 1990’s. It was established to promote initiatives to raise corporate governance standards and practices in developing countries and emerging markets, using the OECD Principles of Corporate Governance as the basis for its work. The Forum’s work program was launched in 2002 in Monterrey, Mexico at the Financing for Development meetings organized by the United Nations. It is a multi-donor trust funded IFC facility hosted by the Joint IFC-WB Corporate Governance Department, in Washington D.C. The Forum is also funded by the governments of Canada, France, Luxembourg, Norway, Sweden and Switzerland.

The Forum promotes sustainable economic growth and poverty reduction within the framework of agreed international development targets. The Forum focuses on practical, targeted corporate governance initiatives at the local, regional and global level. The work program of the forum is executed, managed and implemented by the Secretariat, which is the executive arm of the Forum. The Secretariat is also responsible for disbursing funding in

\textsuperscript{96} \textit{Supra n.} 94 p. 28.
accordance with the procedures and criteria agreed by the Steering Committee of Donors and Founders.\textsuperscript{97}

\textbf{2.23.4 The Institute of Directors, UK}

The Institute of Directors is an non party-political business organisation established in United Kingdom in 1903. The day to day running of the Institute is managed by the Executive Director, headed by Director General. It seeks to provide an environment conducive to business success. The objects of the Institute of Directors are:

- To promote for the public benefit high levels of skill, knowledge, professional competence and integrity on the part of directors, and equivalent office holders however described, of companies and other organisations.

- To promote the study, research and development of the law and practice of corporate governance, and to publish, disseminate or otherwise make available the useful results of such study or research.

- To represent the interest of members and of the business community to government and in all public forums, and to encourage and foster a climate favourable to entrepreneurial activity and wealth creation and

- To Advance the interests of members of the Institute, an to provide facilities, services and benefits for them.\textsuperscript{98}

\textbf{2.23.5 Common Wealth Association of Corporate Governance}

The Common Wealth Association of Corporate Governance was established in 1998 with the objective of promoting the best international standards germane to a country on corporate governance through education, consultation and information throughout the Commonwealth as a means to achieve global standards of business efficiency, commercial probity and effective economic and social development.

The association also aims to facilitate the development of institutional capacity that promotes good corporate governance by education, consultation

\textsuperscript{97} Id. at 30.  
\textsuperscript{98} Id. at 31.
and information in all Commonwealth countries. It is funded principally through annual contribution made by member governments. Board of Governors comprising, in the main, UK-based representatives of member governments and five representatives of civil society, determiners the policies. There are 53 countries of Commonwealth, of which 46 are currently Commonwealth Foundation members. Membership of the Foundation is voluntary, and is open to all commonwealth governments.99

2.23.6 International Corporate Governance Network

The International Corporate Governance Network (ICGN) is a non-for-profit company limited by guarantee under the Laws of England and Wales. It has four primary purposes:

i. To provide an investor-led network for the exchange of views, and information about corporate governance issues internationally.

ii. To examine corporate governance principles and practices.

iii. To develop and encourage adherence to corporate governance standards and guidelines.

iv. To generally promote good corporate governance.

Membership of ICGN is open to those who are committed to the development of good corporate governance. The Membership section explains the benefits of membership, the different types of membership and how to join the ICGN. The ICGN is governed by the ICGN Memorandum and Articles of Association.

The management and control of ICGN affairs are the responsibility of the Board of Governors. The Board in turn appoints a number of committees to recommend policy positions, to implement approved projects and to perform such functions that the Board may specify. The functions of ICGN Secretariat were first undertaken by the Association of British Insurers (ABI) and then in 2000, by the Institute of Chartered Secretaries and Administrators (ICSA) in London.100

99 Supra n. 94 p.32.
100 Ibid.
2.23.7 European Corporate Governance Institute

The European Corporate Governance Institute was founded in 2002. It has been established to improve corporate governance through fostering independent scientific research and related activities. This institute is an international scientific non-profit association. It provides a forum for debate and dialogue between academic, legislators and practitioners, focusing on major corporate governance issues and thereby promoting best practice.

Its primary role is to undertake commission and disseminate research on corporate governance. Based upon impartial and objective research and the collective knowledge and wisdom of its members, it advises on the formulation of corporate governance policy and development of best practice and undertakes any other activity that will improve understanding and exercise of corporate governance.

It acts as a focal point for academics working on corporate governance in Europe and elsewhere, encouraging the interaction between the different disciplines, such as economics, law, finance and management. 101

2.23.8 Conference Board

The Conference Board was established in 1916 in the United States of America. The Conference Board is a not-for-profit organization. The Conference Board creates and disseminates knowledge about management and the market place to help business strengthen their performance and serve the society in a better way. It works as global, independent membership organization in the public interest; it conducts research, convenes conferences, makes forecasts, assesses trends, publishes information and analysis, and brings executives together to learn from one another.

The Conference Board governance programmes helps companies improve their processes, inspire public confidence, and ensure they are complying with regulations. The Conference Board Directors’ Institute is premier provider of governance education for directors. Through the Directors’ Institute, the

101 Id. at 33.
program provides corporate directors with a non academic, impartial forum for open dialogue about the real-world business challenges they face.\textsuperscript{102}

\textbf{2.23.9 The Asian Corporate Governance Association}

The Asia Corporate Governance Association (ACGA) is an independent, non-profit membership organisation dedicated to working with investors, companies and regulators in the implementation of effective corporate governance practices throughout Asia. ACGA was founded in 1999 from belief that corporate governance is fundamental to the long-term development of Asian economies and capital markets. ACGA’s scope of work covers three areas:

1. \textbf{Research:}
   Tracking corporate governance developments across 11 markets in Asia and producing independent analyses of new laws and regulations, investor activism and corporate practices.

2. \textbf{Advocacy:}
   Engaging in constructive dialogue with financial regulators, stock exchanges, institutional investors and companies on practical issues affecting the regulatory environment and the implementation of better corporate governance practices in Asia.

3. \textbf{Education:}
   Organizing conferences and seminars that foster a deeper understanding of the competitive benefits of sound corporate governance and ways to implement it effectively.

ACGA is funded by a network of sponsors and corporate members, including leading pension and investment funds, other financial institutions, listed companies, multinational corporation, professional firms and educational institutions. It is incorporated under the laws of Hong Kong and is managed by a secretariat based there. Its governing Council comprises directors from around Asia.\textsuperscript{103}

\textsuperscript{102} Id. at 34.
\textsuperscript{103} Ibid.
2.24 Review

We can conclude from the above discussion that corporate governance is not just corporate management. It is something much broader to include a fair, efficient and transparent administration to meet certain well defined objectives with a system by which the operations are well streamlined. The systems facilitate a set of incentive, safeguards and dispute resolution mechanisms so as to co-ordinate and control the activities by the Board of Directors. Hence corporate governance relates to a code of conduct that the management of the company observes while exercising its powers.\textsuperscript{104}

Corporate Governance is not restricted to the organisation or profession. Its ambit envelops the society by holding a balance between economic and social goals and between individual and communal goals. The governance framework is there to encourage the efficient use of resources and equality to require accountability for the stewardship of human resources. The aim to align as nearly as possible the individuals, corporation and society. The incentive for states is to strengthen their economies and discourage fraud and management.\textsuperscript{105}

Due to corporate frauds and scandals, the image of corporation has become shattered in the eyes of public, public feeling fear to invest their money. It is the corporate governance through which the confidence of the public could be strengthened. The ultimate aim of good corporate governance must be to make corporations good corporate citizens. Corporate citizenship calls for creating value for the society as a whole and goes well beyond corporate social responsibility or corporate philanthropy. Good Corporate Governance ensures that the company has good systems, which allow sufficient freedom to the board of directors and the executives to take decisions for the progress of the company. They can implement innovative measures while remaining with in the framework of the system.

\textsuperscript{104} M.Sarngadharam & Mini Mol, “ Corporate Governance in India”, \textit{Yojna} April 2003. p. 42.

\textsuperscript{105} Ibid.