

# International Corporate Governance Code

-- By Institute of Company Secretaries of India

International Corporate Governance Code – ICGC

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## Section – I

### Parenthesis of International Corporate Governance Code

Preface:

ICSI being the professional body and more acclaimed towards excellence of Corporate Governance by its various efforts and measures being taken for the upliftment of the governance in corporate world, a thought process has endured excruciating – coming out with a code which is universally acceptable.

The entire mankind and its evolvement itself is based on certain rules and regulations being formulated for smooth and happy living on this holy earth, without disturbing the cause and existence of other creatures and environment as a whole.

The balancing principle is the pivotal principle, on which the whole universe is revolving. But due to giving biased treatment for the things in which the humans, more specifically to say in which the profit motive has become the main objective, have intervened with such important principle in very unruly manner.

To certain extent various countries and various organisations have taken steps to correct this pattern of behaviour by bringing the four concepts of “Accountability, Transparency, Sustainability and Social Responsibility” into the gamut of corporate governance.

However, even after decades of introduction of corporate governance and its continuous evolution over a period of time, still the objectives of corporate governance has not yet been realised to its fullest extent.

Keeping this motive in mind, the Institute of Company Secretaries of India, a premier institute in India working wholeheartedly towards achieving the real objective of Corporate Governance, is placing this backgrounder seeking the intervention and necessary guidance and support from the International Forum for escalating the entire corporate world to its next level of compliance with the corporate governance in its true spirit.

**Introduction:**

The roots of the Corporate Governance has stranded in the evolutionary form of governance across the globe.

The governance aspects were predominantly been followed even in ancient days to govern their day to day life and also to govern the relationships between two states, two individuals and/or also between the individual and the state. Here state means kingdom.

The evolution of these governance aspects were not only evolved in India, but everywhere in the world based on their demographical requirements and necessities of the society prevailing respectively.

There is an absolute necessity to understand how the governance was evolved over a period of time in various parts of the world to streamline their way of dealing with various issues / matters of those countries. Over a period of time with the development of technology and business requirements, the governance also developed to have proper control and guidance to march ahead with the demands of the societies prevailing in respective countries.

But always the necessity of business comes first to meet the demands of the society, and to curb any malpractices in those new businesses, policy used to be formed little later. This kind of follow on approach is giving leeway to all kinds of leniencies and somewhere or the other the arousal of scams and frauds are being witnessed. This implies that there is a necessity to upgrade and scale up to have a code which is acceptable universally in a uniform manner.

Over a period of time most of the countries and organisations have developed various set of corporate governance norms, practices and different codes on corporate governance. But most of them cater to specific requirements only, may be due to some restraints pertaining to demographic stakeholder or an industry specific.

The 360 degree approach is missing in all those Norms or codes. This is because in the present day corporate world, all the corporate houses are tapping different resources to meet their business objectives. In such case, there is a necessity for the code or norm to have a multifaceted approach to cover all aspects and give a wholesome policy guidance for effective functioning of the corporate leaving no scope for any leniencies.

None of the present norms or codes contain the following aspects which are very vital to bring the wholesome transformation and to reap the real benefits of the corporate governance:

- a. Inclusive approach of social responsibility and Indexation of Humanity
- b. Applicability of Corporate Governance to all kinds of business entities
- c. Inclination towards self-regulation in contra to statutory regulation
- d. Inculcating the business perception rather than the legal perception into CG
- e. Necessity of an uniform code for the entire world

All these concepts are appropriately discussed in detail at respective areas

## International Corporate Governance Code – ICGC

Therefore there is a need to bring a universal code which would be followed uniformly across the globe and also there is a need to have a recourse and evaluation of the same on yearly basis so as to meet the needs of the ever changing corporate world.

In order to give impetus and significance to the concept of Corporate Governance, around the world there is a need to observe and celebrate a day as “International corporate Governance Day”.

**Genesis theory of Corporate Governance:**

Governance is nothing but following certain rules and regulations. This is prevalent even in other forms of creatures of this universe. Every creature is bound by certain rules and regulations. Even the nature itself is bound by certain rules and regulations.

Following ethical practices in every walk of life is the essence and belief emphasised by each and every civilisation. The construction of the human society itself is based on the principle of how ethical, transparent and accountable one is towards thyself and the society.

in case the nature itself violates the rules and regulations, then one can witness all the natural calamities and disasters happening every now and then. Similarly if the human being also violates the rules and regulations there can be catastrophes in the economic and social fronts.

Even from the nomadic times the laying of principle based code of conduct was prevalent and was the guiding force for restoration of peace and tranquillity among the tribes and also worked as a cause of sustainability.

The aspects of governance can be scaled even upto the age of Neanderthals. Neanderthals lived in nuclear families. Discoveries of elderly or deformed Neanderthal skeletons suggest that they took care of their sick and those who could not care for themselves. It is accepted that Neanderthals buried their dead. Neanderthals had some control of fire, and it is even theorized that they built boats and sailed on the Mediterranean (source: <http://www.livescience.com/28036-neanderthals-facts-about-our-extinct-human-relatives.html>)

After Neanderthals the tribal people, nomads also have certain governance principles. The tribal people also have various sets of principles which were more revolving around leadership, common agreeing for any kind of decision making and also they used to follow their traditional principles.

Traditionally, many tribes followed their leaders when a particular circumstance required a certain set of skills. A person or set of people endowed with these skills was called upon to lead, usually through a process of consensus. When the circumstances changed and a different set of skills were needed, that person's "term" as a leader ended, and whomever had the skills or knowledge necessary to help the tribe in the new situation was called upon.

A leader is a leader as long as the people believe in him and as long as he is the best person to lead the people. This is one set of governance norms being followed in tribes.

(Source: <http://www.lessonsofourland.org/lessons/american-indian-governance%EF%BB%BF>)

Along with the evolution of civilisation and formation of proper geographical boundaries defining the countries, each and every country had laid enormous efforts in building their own set of governance norms and principles.

On these lines the governance was evaluated right from the tribals into the modern urban clan society optimising the requirement of governance in each and every part of life.

**India professes corporate governance from ages:**

The concept of corporate governance in every country has ancient connections, which has its base derived from the governance principles.

In India there is a great deal of similarity in the governance structures of the ancient kingdoms and modern corporations as is evident from the ancient text and scriptures like Vedas, Manu Smruthi, Somadeva neeti stuti, Baharspatya Neeti stuti, Kautilya's Arthashastra etc which focuses on governance. All Upanishads, Vedas, and the Epic Kavyas like Mahabharat, Ramayan and Bhagwad Gita emphasize the essence of ethics being followed from within, be it Individual or be it the King or be it the whole kingdom.

Practices followed in ancient period, namely, Vedic, Mauryan and Gupta period gains lot of relevance in today's business world. The Mauryan period was considered as one of the best administrative period over the entire world. It was Kautilya's Arthashastra, written during the period of Chandra Gupta Maurya which made Mauryan Empire stronger in terms of administration. The delegation of authority and span of control discussed in Mauryan and Gupta period is what is propounded in today's business. Today's Management Principles focuses mainly on delegation of authority, responsibility and span of control as the main principles for better performance of duties. In today's competitive world of business, the question of survival depends on effective corporate governance. Adherence to ancient practices can help and guide corporates in better governance.

**Kautilya's Arthashastra:** Kautilya, who wrote his Arthashastra, in the 4th Century B.C. which contains instructions about administration, management, law and justice, economy, foreign policy etc., it is stated that there existed a Governance module in which the king was the head and all the property of the state comes under the king. The rulers and kings had their own set of principles and systems in governing their kingdoms. These principles and their way of governing their kingdoms had the direct influence of their religious leaders and their faith. So, different principles and practices had been adopted by different rulers, but the common thread was the same, being the universal truth. He said that a king (leader) should have no self-interest, happiness and joy for himself or herself, his or her satisfaction lies in the welfare (happiness) of his or her people, i.e. he or she has to submerge his or her personality into the larger personality of his people. Kautilya states that in the happiness of his subjects lies the happiness of the king; and in their welfare lies the welfare of the king. the king shall not consider as good only that which pleases him, but should treat as beneficial to him, whatever pleases his subjects or "Bahujana sukhaya bahujana hitayacha" – the welfare of the many and the happiness of the many. Public good should be ahead of private good. In fact, this concept of the happiness of the many need integrated into the area of sustainable management as the basic principle. (source: <http://www.siv-g.org/index.php/columnists/16-balakrishnan-muniappan/121-the-bhagavad-gita-on-leadership-development-for-sustainability>)

According to Kautilya, king should act according to Dharma and should stick on to the ethics and principles. He insisted on accountability, responsibility, sharing of work and delegation

as the key mantras for good governance. He also explained the correlation between return on investment and social performance of enterprise.

“Sukhasya Moolam Dharma” (Root of happiness is doing Right. Cause of happiness is doing right, In right time, right way do the right.)

“Dharmasya Moolam Artha” (Root of doing right is Wealth. Cause of wealth is sure wealth, Generate wealth and be in health.)

“Arthasya Moolam Raajyam” (Root of wealth is Enterprise Means of wealth is enterprise, Organisation is an enterprise.)

It is clear that combination of ethics and compassion is important for good governance. The king should discharge his duties in the best manner keeping in mind his responsibilities and ethics and he should not do anything for his own welfare. This shows that he is bound by his duties and ethics which are driving force today to run the business effectively and efficiently.

**Teachings of Lord Buddha:** Lord Buddha also propounded five principles, which were known as panchsila. These five principles are non-violence, truth, non-stealing, celibacy and non-intoxication. In the 23rd chapter of the Uttaradhyayana Sutra, Kesi Gautama discusses the five teachings of Lord Mahavira. There is no difference between panchsila and these five teachings.

**Mahabharata:** Shanti Parva which is the part of Indian Epic Mahabharata recites the duties of the ruler, dharma and good governance, as counseled by the dying Bhishma to Yudhishtira and various Rishis. Shanti parva recites a theory of governance and duties of a leader. The parva dedicates over 100 chapters on duties of a king and rules of proper governance. A prosperous kingdom must be guided by truth and justice. The duty of a ruler and his cabinet is to enable people to be happy, pursue truth and act sincerely. The proper function of a ruler is to rule according to dharma; he should lead a simple life and he should not use his power to enjoy the luxuries of life. Shanti parva asserts rulers have a dharma (duty, responsibility) to help the upliftment of all living beings. The best law, claims Shanti parva, is one that enhances the welfare of all living beings, without injuring any specific group. (source: <https://www.revolvly.com/main/index.php?s=Shanti%20Parva&sr=50>)

**Ramayana:** The Ramayana, the saga of Rama's life written by Valmiki, is widely acclaimed as among the greatest of all Indian epics. In fact, this famous Grantha carries useful tips on ethics and values, statecraft and politics, and even general and human resources management. With Rama Rajya as a model code for good governance, the Ramayana is a must read for practitioners of statecraft. (source: <http://www.speakingtree.in/blog/management-lessons-from-ramayana>)

The Ayodhya Kanda, the second chapter, contains comprehensive lessons on good governance. When Bharata, the younger brother of Rama, goes to meet the latter in the forest to request him to return to Ayodhya and rule, the two brothers enter into a long and

instructive dialogue. Rama counsels Bharata on governance. From quality of ministers and the importance of strategy sessions, to temperance in administration to justice, Rama expounds on all the subtleties of statecraft in a lucid manner. Apparently, Rama seems to be inquiring of Bharata his well-being, whether all is well at Ayodhya - in fact, however, in the process, the lessons on effective governance are offered in a powerful manner. A critical factor in good governance is the quality of ministers. Rama asks Bharata whether he has appointed courageous, knowledgeable, strong-willed men with a high emotional quotient as his ministers, because quality advice is the key to effective governance.

The emphasis is on competence and confidentiality. Rama's advice to Bharata is to take a decision on a complex issue neither unilaterally nor in consultation with too many people. There should be an efficient core group. A good administrator can ensure high returns from minimum investments. Rama tells Bharata to prefer one wise man to a thousand fools as it is the wise that can ensure prosperity during an economic crisis. Even if there is one minister who is really effective, the king will gain immensely. Appointing tested men of noble lineage and integrity for strategic positions is the key to successful government. Moderate taxes should be levied on the people, lest they revolt. Rama wants Bharata to treat his soldiers well and pay their legitimate wages on time. Delays in payment of wages and other allowances that make the soldiers disturb and depress which can lead to dangerous consequences. Trade and agriculture are important and Rama wants Bharata to ensure good irrigation facilities rather than being overly dependent on rains. Traders need to be ensured of a fear-free environment and their grievances should be redressed promptly. Protecting the forests and maintaining livestock have also been dealt with as important aspects of effective governance.

In fact, the vision of the Ramayana has eternal relevance. Law and justice, finance and business, corruption framing of innocents for monetary gains, injustice to the poor are all mentioned. Rama's words of advice to Bharata are as relevant today as they were in the ancient period. For the benefit of present and future generations, Rama gave valuable advises to Bharata on good governance.

**Bhagwad Gita:** In Bhagwad Gita, Lord Krishna details the divine treasure as fearlessness, purity of heart, steadfastness in knowledge and yoga, charity, self control, and sacrifice, study of scriptures, austerity and uprightness. The Bhagavad-Gita emphasized the concept of duty and its importance for good leadership. In the Bhagavad-Gita, Sri Krishna motivates and encourages leaders who govern to do their duties and not to run away from the duties as he asserted that leaders should perform their prescribed duty, for doing so is better than not working. Besides, one cannot even maintain one's physical body without work. Sri Krishna further stressed that duty needs to be done without attachment and for those who do their duty without attachment will attain the supreme goal. By doing their duties without attachment, the leaders also set examples for their people. Sri Krishna asserted that whatever the leader does, the people will follow and whatever standards or example the leader sets people in general will follow. It is therefore imperative; leaders need to perform their work (duty) in governing effectively for the sake of educating the people in general (leadership by example). This has a great implication for sustainable development as it is a must for leaders to practice what they preach.

A great Tamil woman poet also gave a wonderful advice to the King of her time about how the King can achieve fame. In a beautifully described phenomenon of ‘bottom up glory’ years ago, she said: “When the height of the boundaries of the paddy field increases, the water level in the field increases; when the water level increases, the paddy level increases; when the paddy level increases, the quality of life increases; when the quality of life increases, the quality of governance increases; and when the quality of governance increases, the country flourishes and the greatness of those who govern admired.”

The dynasty kingdom is history now though it exists in politics and business. The vacuum created by the phasing out of the King rule and the kingdom has been slowly and steadily filled by the corporate houses of today. The corporate houses are equivalent to the dynasty kingdom in addition to other kingdoms in other area like politics, culture etc. Thus the principles which applied to the Kings and Rulers of the dynasty Kingdom simply apply to the organisation and their management which manages the organisation. The principle of good governance what was talked of during the ancient period is what which is gaining more prominence today.

**Governance during Vedic Period:** The Vedic period has its roots of governance when coming to the Indian history. During this period even the formation of kingdoms have not happened but whatever the small groups formed as tribes have also governed by the principles adopted by them and gradually evolved to the stage of formation of kingdoms and were known as Mahajanapadas.

The ancient kingdoms in India were ruled by raja and maharajas. In their court rooms they used to have various ministers guiding the king on various legislative, executive and judiciary branches. However the final decision was left to the king.

**Governance during Mauryan Period:** This period is the golden period of governance, and was accoladed by the entire world.

- The administrative structure under Mauryan Empire was assigned in such a way that each of them had clear cut duty assigned and also the accountability and responsibility was clearly fixed.
- The Mauryan King was the head of the state administration holding legislative, executive and judicial powers.
- Judicial system was well organized and there was continues supervision and inspection process which was installed in every walk of administration.
- Secret services played a major role in maintenance of law and order in the kingdom.
- Local authority was controlled by Parishad who in turn used to report to king.
- So there were many provincial heads appointed by the king and the king used to take the updates from the provincials on regular basis.

- Functions of the states were defined under two main categories namely, Constituent functions and Ministrant functions.
- Delegation of power and authority on basis of law and order, security of the people and property, defence, welfare services, economic activities and moral development of individuals were carried out effectively and
- Administration was carried out on the basis of consultation and collective decisions and such decisions were implemented by centralized bureaucracy

**Governance during Gupta Period:** The Gupta period is called as the Golden Period when come to governance. During this period the people responsible for designated administrative activities were more independent and exercised their discretions very judiciously.

#### **Administration during Gupta Period**

- During Gupta period lot of reforms were carried out, the empire was divided in to several provinces each of which was headed by viceroy appointed amongst the member of Royal family.
- Local administration were given full powers to frame their own decisions so there were no controls from center except in few cases where they used to report to center.
- Villages were governed by Village heads who in turn used to report to district heads.
- Urban and Rural administration were more decentralized compared to Mauryan period. So, each of them understood their responsibility and they worked towards achievement of welfare objectives.
- Salaries during Gupta period were given in the form of land, more effective and efficient people were benefited with extra land which they can use for cultivation and earn extra income.
- Gupta period had good contact with the outside world, they had good communication system and also well-developed foreign policy. Fa-Hein, a Chinese traveller who visited the court of Chandragupta II has praised the administration system and governance of Gupta period.

- As Kings of Gupta period embraced Buddhism, they were kind enough to the subjects. They worked for the welfare of the society and were part and parcel of the development initiatives for poor and needy.

### **How corporate governance grew in the rest of the world:**

In recent years, numerous countries have issued corporate governance codes, and the recommendations of these codes, that typify "good" corporate governance, undoubtedly contribute towards increased transparency and disclosure. Voluntary codes have been increasingly employed across the globe to drive corporate governance reform. These guidelines, which emanate from stock exchanges, securities commissions, investors and investor associations, and supra-national organizations, set forth "best practice" recommendations across a range of topics that listed companies, shareholders, and other relevant parties are encouraged—but not obliged—to follow. (Source: <http://download.xuebalib.com/xuebalib.com.19670.pdf>)

Today corporate governance codes are found in over 70 countries. Whether developed or emerging, all countries have devised and are devising their own approach to developing and successfully implementing corporate governance codes. Apart from this various international organisations have also prescribed robust norms. In spite of all these best efforts, the world is still not witnessing a clean and transparent corporate without any scams/frauds.

There is a general tendency to follow written codes or laws only and not going beyond that. So, there is a necessity for the entire world to have a holistic code which describes each and every scenario and also which is applicable to every form of business entity like Firms, Societies, Trusts, NGOs etc., irrespective of their size and nature.

**United Kingdom:** The development of corporate governance in the UK has its roots in a series of corporate collapses and scandals in the late 1980s and early 1990s. The first version of the UK Corporate Governance Code (the Code) was produced in 1992 by the Cadbury Committee. It has been instrumental in spreading best boardroom practice through the listed sector since it was first issued. It operates on the principle of 'comply or explain'. It sets out good practice covering issues such as board composition and effectiveness, the role of board committees, risk management, remuneration and relations with shareholders.

A requirement was added to the Listing Rules of the London Stock Exchange that companies should report whether they had followed the recommendations or, if not, explain why they had not done so (this is known as 'comply or explain'). Listed companies are required under the Financial Conduct Authority Listing Rules either to comply with the provisions of the Code or explain to investors in their next annual report why they have not done so. If shareholders are not content they should engage with the company. If this is unsatisfactory, they can use their rights, including the power to appoint and remove directors, to hold the company to account.

The recommendations in the Cadbury Report have been added to at regular intervals since 1992. In 1995 a separate report set out recommendations on the remuneration of directors, and in 1998 the two reports were brought together in a single code (known initially as the Combined Code and now as the UK Corporate Governance Code). In 1999 separate guidance was issued to directors on how to develop risk management and internal control systems, which has subsequently been updated.

In 2003 the Code was updated to incorporate recommendations from reports on the role of non-executive directors and the role of the audit committee. At this time the UK Government decided that the Financial Reporting Council (FRC), the independent regulator responsible for corporate governance and reporting, was to take responsibility for publishing and maintaining the UK Approach to Corporate Governance (October 2010) Code. The FRC has updated the Code at again in 2010 to reflect lessons learnt from the problems in the UK's financial services sector.

Throughout all of these changes, the 'comply or explain' approach first set out in the Cadbury Report has been retained. There are a number of advantages to the 'comply or explain' approach. Its inherent flexibility means that it is possible to set more demanding standards than can be done through hard rules. Experience has shown that the vast majority of companies attain these standards. In addition, requiring companies to report to shareholders rather than regulators means that the decision on whether a company's governance is adequate is taken by those in whose interest the board is meant to act.

In 2010 the 'comply or explain' approach was reinforced by the UK Stewardship Code, under which institutional investors report on their policies for monitoring and engaging with the companies in which they invest. This Code sets standards for investors for monitoring and engaging with the companies they own and aims to improve the quality of dialogue between investors and companies to help improve long-term risk-adjusted returns to shareholders. The Stewardship Code sets out a number of areas of good practice to which the FRC believes institutional investors should aspire and also operates on a 'comply or explain' basis. The FCA requires UK authorised asset managers to report on whether or not they apply the Code. In a similar way to the UK Corporate Governance Code, the UK Stewardship Code aims to make investors more accountable to their clients and beneficiaries, as well as helping companies.

The Financial Reporting Council (the "FRC") has published a revised version of the UK Corporate Governance Code (the "Code") containing guidance on risk management and internal controls, remuneration policies and engagement with shareholders in September 2014. The new Code was applicable to accounting periods beginning on or after 1st October 2014 and to all companies with a Premium listing of equity shares regardless of whether they are incorporated in the UK or elsewhere.

Both Codes are normally updated every two years to ensure they stay relevant. Any changes are subject to extensive consultation and dialogue with the market. The most recent UK Corporate Governance Code was published in September 2014 and the most recent UK Stewardship Code was published in September 2012.

**South Africa:** The governance of corporations can be on a statutory basis, or as a code of principles and practices, or a combination of the two. South Africa has opted for a code of principles and practices on a 'comply or explain' basis, in addition to certain governance issues that are legislated.

In 1992, former South African Supreme Court Judge, Mervyn King was asked to chair a private sector body to draft corporate governance guidelines. The body became known as the “King Committee”, and its first report, issued in 1994, was regarded by many as ahead of its time in adopting an integrated and inclusive approach to the business life of companies, embracing stakeholders other than shareholders. Three reports were issued in 1994 (King I), 2002 (King II), and 2009 (King III).

The release of King III report on 1 September 2009 marked a significant milestone in the evolution of corporate governance in South Africa and brought significant opportunities for organisations that embrace its principles. The King III is on an ‘apply or explain’ basis. The ‘apply or explain’ approach requires more consideration – application of the mind - and explanation of what has actually been done to implement the principles and best practice recommendations of governance. The King III Report has also placed great emphasis on an integrated report, which will evaluate the company’s impact on the economic life of the community in which it operates, as well as many other matters.

**Australia:** In order to ascertain that Australian companies are equipped to compete globally and to maintain and promote investor confidence both in Australia and overseas, Australian Stock exchange (ASX) convened the ASX Corporate Governance Council in August 2002. Its purpose was to develop recommendations which reflect international good corporate governance practices. The Council introduced the ASX Corporate Governance Council Principles and Recommendations (“Principles and Recommendations”) in 2003. A substantially re-written second edition was released in 2007 and new recommendations on diversity and the composition of the remuneration committee were added in 2010.

Since the release of the second edition in 2007, there has been considerable focus across the world on corporate governance practices in response to Global Financial Crisis. A number of countries have adopted new legislation regulating corporate behaviour and upgraded their corporate governance codes. The ASX Corporate Governance Council also comprehensively reviewed its principles and issued the third edition of the Principles and Recommendations on 27th March 2014 reflecting global developments in corporate governance and simplifying the structure of the Principles and Recommendations. The revised principles also provide greater flexibility to listed entities in terms of where they make their governance disclosures.

**Singapore:** Corporate governance frameworks and mechanisms are generally targeted at improving a company’s efficiency and/or providing greater transparency and accountability to shareholders and other stakeholders. The regulatory framework for corporate governance in Singapore can be divided into two broad categories –

Legal regulation (including quasi-legal regulation)

Codes and best practices

The regulatory framework for corporate governance in Singapore is underpinned by corporate law and securities regulations. These are reflected in common law rules as well as in statutory enactments such as the Companies Act and the Securities and Futures Act. This is

supplemented by quasi-legislative enactments such as the SGX-ST Listing Manual, which applies only to companies listed on the bourse of the Singapore Exchange Securities Trading Ltd, and the Singapore Code on Takeovers and Mergers.

The Listing Manual in Singapore requires listed companies to describe in company's Annual Reports their corporate governance practices with specific reference to the principles of the Code of Corporate Governance, as well as disclose and explain any deviation from any guideline of the Code. Companies should make a positive confirmation at the start of the corporate governance section of the company's Annual Report that they have adhered to the principles and guidelines of the Code, or specify each area of non-compliance.

**India:** Effective corporate governance requires a sound legal, regulatory and institutional framework. In India after the economic liberalisation and privatisation in 1991, the reform process was initiated in order to suitably respond to the developments taking place world over. On account of the interest generated by Cadbury Committee Report, the Confederation of Indian Industry (CII), the Associated Chambers of Commerce and Industry (ASSOCHAM) and, the Securities and Exchange Board of India (SEBI) constituted Committees to recommend a framework for good Corporate Governance.

The first institutional initiative in Indian Industry was taken by CII, to develop and promote a code for Corporate Governance to be adopted and followed by Indian companies, whether in the private sector, the public sector, banks or financial institutions, all of which are corporate entities. The final draft of the said Code was widely circulated in 1997 and in April 1998, CII released, a Desirable Corporate Governance Code.

On May 7, 1999, the Securities and Exchange Board of India (SEBI) had set up Kumar Mangalam Birla Committee to promote and raise standards of corporate governance. The recommendations of the Committee, led to inclusion of Clause 49 in the Listing Agreement in the year 2000. These recommendations, aimed at improving the standards of Corporate Governance, are divided into mandatory and non-mandatory recommendations.

Naresh Chandra Committee was appointed in the year 2002 to examine various corporate governance issues. The Committee examined and made recommendations pertaining to the entire gamut of issues pertaining to the Auditor-Company relationship with a view to ensuring the professional nature of the relationship; in this respect to consider issues such as (but not limited to) rotation of auditors/auditing partners, restrictions on non-audit fee/work, procedures for appointment of auditors & determination of audit fees, etc.

In the year 2002, SEBI analyzed the statistics of compliance with the clause 49 by listed companies and felt that there was a need to look beyond the mere systems and procedures if corporate governance was to be made effective in protecting the interest of investors. SEBI therefore constituted a Committee under the Chairmanship of Shri N.R. Narayana Murthy, for reviewing the implementation of the corporate governance code by listed companies and issued revised clause 49 based on its recommendations.

In the year 2002, Reserve bank of India also constituted the Consultative Group of Directors of banks and FIs (Dr. Ganguly Group) to review the supervisory role of Boards in banks. The Group submitted its report in April 2002 and RBI recommended banks to follow these recommendations.

In 2004, the Government constituted a committee under the Chairmanship of Dr. J.J. Irani, with the task of advising the Government on the proposed revisions to the Companies Act, 1956 with the objective to have a simplified compact law that would be able to address the changes taking place in the national and international scenario, enable adoption of internationally accepted best practices as well as provide adequate flexibility for timely evolution of new arrangements in response to the requirements of ever-changing business models. Some of the recommendations proposed were like-

**Board Composition:** Law should provide for only the minimum number of directors necessary for various classes of companies. There need not be any limit to maximum number of directors. Other than procedures for appointments, no age limit for directors need be specified in the Act.

**Appointment and resignation of director:** Every company to have at least one director resident in India. Requirement of obtaining approval of Central Govt. under Companies Act for appointment of non-resident managerial persons should be done away with. Duty to inform the Registrar of particulars regarding appointment/resignation/death etc. of directors should be that of the company.

**Independent Directors:** Presence of independent director on the boards of companies will lead to greater transparency in company's dealings. Law should recognize the principle of independent directors and spell out their attributes, role, qualifications, liability and manner of appointment along with the criteria of independence. However, prescription of the number and proportion of such directors in the Board may vary depending on size and type of company and may be prescribed through Rules.

**Remuneration of Directors:** Decision on remuneration of directors should not be based on a "Government approval based system" but should be left to the company. However, this should be transparent, based on principles that ensure fairness, reasonableness and accountability and should be properly disclosed. No limits need be prescribed. In case of inadequacy of profits also the company to be allowed to pay remuneration recommended by remuneration committee (wherever applicable) and with the approval of shareholders.

**Committees:** Certain committees to be constituted with participation of independent directors should be mandated for certain categories of companies where the requirement of independent directors is mandated. In other cases constitution of such committees should be at the option of the company.

The Ministry of Corporate Affairs issued the Corporate Governance Voluntary Guidelines, 2009. These guidelines sought to provide corporate India a framework to govern themselves voluntarily as per the defined standards of ethical and responsible conduct of business.

The Department of Public Enterprises (DPE) which is the nodal Department for laying down policies and guidelines concerning Central Public Sector Enterprises (CPSEs). It has issued the Guidelines on Corporate Governance for Central Public Sector Enterprises 2010. These guidelines are applicable to both listed as well as unlisted public sector enterprises. DPE has also issued Guidelines on Corporate Social Responsibility for Central Public Sector Enterprises in March 2010. In 2013, these Guidelines were revised having a special focus on employee rights and welfare.

The Ministry of Corporate Affairs (MCA) also issued the Corporate Social Responsibility Voluntary Guidelines in December 2009. This was the first step towards mainstreaming the concept of Business Responsibilities. Through these Guidelines, the Ministry urged the business sector to adopt the principles contained in the Guidelines for responsible business practices.

Keeping in view the feedback from stakeholders, review of 2009 Guidelines was undertaken by the Guidelines Drafting Committee (GDC) constituted by the Indian Institute of Corporate Affairs, resulting into the formulation of “National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business”. These Guidelines were released by MCA on July 8, 2011. The Guidelines have been articulated in the form of nine (9) Principles with the Core Elements. A suggested approach for adopting these guidelines, the steps for building a strategy for responsible business as well as business responsibility reporting framework, have been prescribed under the guidelines.

On August 30, 2013, the Companies Act, 2013 was enacted envisaging radical changes in the sphere of Corporate Governance in India. It provided a major overhaul in Corporate Governance norms and had far-reaching implications on the manner in which corporate operates in India.

In April 2014, SEBI revised clause 49 in line with the norms of Companies Act 2013. Again some amendments were made in September 2014.

On 2nd September 2015 notified SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 for the listed entity who has listed designated securities on recognized stock exchanges.

The Insurance Regulatory and Development Authority of India had also issued Guidelines on Corporate Governance for insurance companies which have been revised in 2016 as per Companies Act 2013.

A need, however, has been felt to have a formal policy document that synthesizes the disparate elements in diverse guidelines, draws on innovative best practices adopted by specific companies, incorporates the current international trends, and anticipates emerging demands on corporate governance in enterprises in various classes and scales of operation.

In the year 2012, the Institute of Company Secretaries of India had prepared a document with the title - “Concept Paper on National Corporate Governance Policy, 2012, Prepared by ICSI”.

The Ministry of Corporate Affairs had constituted a committee under the Chairmanship of Mr. Adi Godrej on 7th March 2012 to formulate a policy document on Corporate Governance on the basis of concept paper prepared by ICSI. The Committee had submitted its report titled “Report of the Committee constituted by MCA to formulate a Policy Document on Corporate Governance” to the MCA on 18th September 2012.

The policy document prescribed various Guiding Principles of Corporate Governance. These Guiding Principles were examined by the Ministry and most of the principles have been suitably incorporated in the Companies Act, 2013 and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

(source:<https://www.coursehero.com/file/22165290/PP-EGAS-2016-Full-Book-2-02feb2016pdf/>)

## **Impetus of Modern Corporate Governance Norms**

The present day Corporate governance can be understood as the process which enables “Enhancement of the return on capital through increased accountability”. It is, in fact, the mechanism by which values; principals, management policies and procedures of a company are made in consonance with the real world. It refers to the entire system by which the company is managed and monitored in a transparent manner.

The present corporate governance norms involves a cohesive set of relationships among the Board of Directors, management, shareholders and stakeholders of an organization. Researchers have found that “Firms with stronger shareholder rights had higher firm value, higher profit, higher sales growth, lower capital expenditure and fewer corporate acquisitions”. The Board of Directors represents the interests of the company’s shareholders i.e. the owners of the Corporation in optimizing long-term value by providing the company with proper guidance and strategic vision on behalf of the shareholders. (source: [https://www.jstor.org/stable/25053900?seq=1#page\\_scan\\_tab\\_contents](https://www.jstor.org/stable/25053900?seq=1#page_scan_tab_contents))

“Right vision, right knowledge and right practice constitute the path to liberation. The term ‘right’ refers to an enlightened state. The vision, knowledge and practice in their enlightened state are the three jewels which illumine the path of liberation. Without faith, there is no knowledge; without knowledge there is no virtuous conduct; without virtues there is no annihilation of karmas and without annihilation of karmas, there is no liberation.” (source: [http://sugaldamani.com/bliss\\_book/religion\\_everyday\\_life.html](http://sugaldamani.com/bliss_book/religion_everyday_life.html))

When it comes to organisation, the liberation comes when the vision and mission are achieved thorough the sustained efforts of the employees of that organisation.

Corporate governance, therefore, is only part of the larger and economic context in which the funds of the shareholders operate. However, sustenance and long term success of a company depends on the factors such as business ethics and corporate awareness of the environmental and societal interest of the communities in which it operates.

Good corporate governance contributes to sustainable economic development by enhancing the performance of companies and increasing their access to outside capital. Corporate governance is one of the key factors that determine the health of the system and its ability to survive economic shocks.

Corporate governance is fundamental to well-run companies that have controls in place to ensure that individuals or groups connected with the company do not adversely influence the company and its activities and that assets or profits are not used for the benefit of a select group to the disadvantage of the majority. Good corporate governance helps to engender confidence in the stock market and hence in the economic environment as a whole, creating a more attractive environment for investment.

Effective corporate governance requires a sound legal, regulatory and institutional framework. This corporate governance framework typically comprises elements of legislation, regulation, self-regulatory arrangements, voluntary commitments and business

practices that are the result of a country's specific circumstances, history and tradition. The desirable mix between legislation, regulation, self-regulation, voluntary standards, etc., varies from country to country.

Many developed and developing countries have introduced corporate governance codes to restore and sustain investor confidence in the wake of a financial crisis or corporate scandal. Corporate governance codes are formulated to raise standards and drive corporate governance reforms.

Corporate governance codes are important tools for enhancing governance systems and practices nationally. They serve as benchmarks for monitoring and implementing corporate practices and policies at the company level.

Corporate governance codes are sets of nonbinding recommendations aimed at improving and guiding the governance practices of corporations within a country's specific legal environment and business context. These codes are typically based on principles and focus on country-specific issues. They differ in their focus or scope and are more or less detailed.

Corporate governance codes are now adopted by many countries as a way to introduce international standards and adapt them to the local environment.

### **Business ethics link in Corporate Governance**

Corporate governance resides on various cardinal ethical values. There are various codes that highlight the ethical feature of good corporate governance. Some of the values that can be counted upon are the values of Transparency, responsibility, accountability and probability. Such values should pervade all features of corporate governance and projected in every action of the board (Walker, 2004). There are various features of corporate governance like functional reporting, disclosure, risk management, etc that are instrumental in gaining the cardinal values of corporate governance. Apart from the values that are underlying in corporate governance, it even contains moral obligations of specific nature that the board, as well as the company needs to follow (Robert, 2009). The noteworthy fact is that the company should act on standards that are high in terms of ethics so that the goodwill of the company will be safeguarded and the rights of the shareholders are given due respect. It is to be noted that a strong structure of corporate governance establishes a structure that works for the benefit of everyone and complies with all the ethical standards.

Ethics are not mentioned in the code of corporate governance yet any fault leads to an ethical issue. Most importantly business ethics guides the company and governs them. Business ethics are part and parcel of corporate governance and not an optional exercise. Ethics is linked to behavior and business ethics is related to the behavior in business and the behavior of the business (Robert, 2009). The decision making should have an ethical base and that stretch to the board room, organization, and various other activities. The board and the management have the main task of ensuring ethical behavior. The company's risk profile is determined by the board in consultation with the top management by considering the appropriate level of risk. Some companies have a higher risk appetite as compared to others.

Establishing a defined level of ethical should be a vital part of every organization strategy, policy making, and risk management (Gillan, 2006). Often many dilemmas happen in the course of business and it needs to be determined what the best course is for the company and those influenced by the actions. Boards need to understand and ensure a proper decision making. It is a prime function of corporate governance that needs to be established considering the business ethics. The future course of action of corporate governance depends immensely on the development of business ethics (Willis, 2005).

## **CG Norms by various organisations**

Some of the prominent Forums and Institutions of Corporate Governance are given here-

**Organisation for Economic Co-operation and Development (OECD):** The Organisation for Economic Co-operation and Development (OECD) was established in 1961. The OECD was one of the first non-government organizations to spell out the principles that should govern corporates. 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 privatisation. The mission of OECD is to promote policies that will improve the economic and social well-being of people around the world. In order to contribute to the development of the world economy, the OECD's focus includes a growing number of other countries, in addition to its 30 members. It now shares its expertise and accumulated experience with more than 70 developing and emerging markets.

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 have used the OECD Principles to formulate regional reform priorities and are now actively engaged in implementing these recommendations. Following principles are developed by OECD -

- G20/OECD Principles of Corporate Governance 5 September 2015
- OECD Principles of Corporate Governance (Draft for public comment) November 2014
- OECD Guidelines on Corporate Governance of State-owned Enterprises May 2014
- OECD Guidelines on Corporate Governance of State-Owned Enterprises September 2005
- Corporate Governance of Non-Listed Companies in Emerging Markets 2005
- Draft Guidelines on Corporate Governance of State-owned Enterprises 20 December 2004
- OECD Principles of Corporate Governance 22 April 2004
- Draft Revised Text: OECD Principles of Corporate Governance January 2004
- OECD Principles of Corporate Governance May 1999

**GLOBAL CORPORATE GOVERNANCE FORUM (GCGF):** The Global Corporate Governance Forum (the Forum) was founded in 1999 by the World Bank and the Organisation for Economic Co-operation and Development (OECD) 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 Forum contributes to the efforts of the international community to promote the private sector as an engine of growth, reduce the vulnerability of developing and transition economies to financial crises, and provide incentives for corporations to invest and perform efficiently, in a socially responsible manner. It fosters cooperation with various corporate governance programs and plays a coordinating role among donors, founders and other relevant institutions. The Forum seeks to address the corporate governance weaknesses of middle-income and low-income countries in the context of broader national or regional economic reform programs.

**THE INSTITUTE OF DIRECTORS (IoD), UK:** The IoD is a non-party political business organisation established in United Kingdom in 1903. The IoD seeks to provide an environment conducive to business success. The objectives of IOD include-

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 interests 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, and to provide facilities, services and benefits for them.

**COMMONWEALTH ASSOCIATION OF CORPORATE GOVERNANCE (CACG):** The Commonwealth Association of Corporate Governance (CACG) 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. There are 53 countries of the

Commonwealth, of which 46 are currently Commonwealth Foundation members. Membership of the Foundation is voluntary, and is open to all Commonwealth governments. The CACG aimed to facilitate the development of institutional capacity that promotes good corporate governance by education, consultation and information in all Commonwealth countries. CACG has issued CACG Guidelines: Principles for Corporate Governance in the Commonwealth in November 1999.

**INTERNATIONAL CORPORATE GOVERNANCE NETWORK (ICGN):** The International Corporate Governance Network (“ICGN”) is a not-for-profit company limited by guarantee and not having share capital under the laws of England and Wales founded in 1995. The Network's mission is to develop and encourage adherence to corporate governance standards and guidelines, and to promote good corporate governance worldwide. Membership of ICGN is open to those who are committed to the development of good corporate governance. ICGN has developed “ICGN Global Governance Principles 2014”.

**THE EUROPEAN CORPORATE GOVERNANCE INSTITUTE (ECGI):** The European Corporate Governance Institute (ECGI) was founded in 2002. It has been established to improve corporate governance through fostering independent scientific research and related activities. The ECGI is an international scientific non-profit association. It provides a forum for debate and dialogue between academics, 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 undertake 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.

The Institute articulates its work by expanding on the activities of the European Corporate Governance Network, disseminating research results and other relevant material. It draws on the expertise of scholars from numerous countries and brings together a critical mass of expertise and interest to bear on this important subject.

**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 marketplace to help businesses strengthen their performance and better serve society. It works as a 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 programs help companies improve their processes, inspire public confidence, and ensure they are complying with regulations. The Conference Board Global Corporate Governance Research Center brings together a distinguished group

of senior corporate executives from leading world-class companies and influential institutional investors in a non-adversarial setting. In small groups of prominent senior executives, all discussions are confidential, enabling a free-flowing exchange of ideas and effective networking. This highly unique forum allows industry leaders to debate, develop, and advance innovative governance practices, and to drive landmark research in corporate governance.

**THE ASIAN CORPORATE GOVERNANCE ASSOCIATION (ACGA):** The Asian 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 a belief that corporate governance is fundamental to the long-term development of Asian economies and capital markets. ACGA is funded by a network of sponsors and corporate members, including leading pension and investment funds, other financial institutions, listed companies, multinational corporations, professional firms and educational institutions.

**CORPORATE SECRETARIES INTERNATIONAL ASSOCIATION (CSIA):** CSIA, a Geneva- registered body, which was established on March 2010 is an international organization whose members comprise national bodies of professionals at the frontline of governance. It is dedicated to promoting the values and practices of governance professionals in order to create, foster or enhance the environment in which business can be conducted in a fair, profitable and sustainable manner.

(source: [https://www.icsi.edu/docs/webmodules/Publications/EGAS\\_04\\_Sep\\_14%20pdf.pdf](https://www.icsi.edu/docs/webmodules/Publications/EGAS_04_Sep_14%20pdf.pdf))

**What changes are required to bring in the present CG to make it more appropriate?**

**Inclusive approach of social responsibility and Indexation of Humanity:** The present day corporate governance in every corner of the world is concentrated on the interests of shareholders and of course few of the codes have given emphasis to the social responsibility also.

Every corporate which is doing business is utilising the resources be it natural or be it human or any other resources. But a quintessential question arises is – whether we are considering any monetary value for all those resources and if at all we are valuing those resources in monetary terms whether the same is adequately covered.

The concern should be to provide adequate compensatory value to replenish the resources being utilised in order to maintain the balance. This balance could be either related to environment or related to economic or related to human parity.

Therefore there is an absolute necessity to include the social responsibility aspect into the gamut of corporate governance. The logic behind this can be explained with an example.

**Example:** Let's take a company whose object is to generate power by using thermal technology. Such company would obviously utilise the natural resources which is excavating coal from its ore.

Do we know how many thousands of years are required to form that ore under natural process? But within no time the ore is being excavated. Moreover the licence fee etc., charged for handing over the ore is very less compared to the monetary value if really arrived after considering the natural phenomenon of formation of an ore.

Not only that the level of deforestation happening because of that industry and also the emission of pollution into the atmosphere is not at all valued under monetary terms and is not compensated or paid to the government.

The present day corporate governance disclosures is not having any transparent disclosure about the number of hectares of deforestation, the cause of damage to the natural resources, the amount of pollution released into the atmosphere, any rectificatory measures being taken up by the company.

There should be a disclosure about the loss vs. benefit analysis in the Annual reports under a separate heading – “Obligations under the social responsibility” in the section of corporate governance.

There should be a separate mention about the activities undertaken by the corporate to benefit the society. This should be a parameter for incentivising those companies who undertake those activities on voluntary basis and will be a boost to the company for doing more good to the society.

Another aspect of inclusive approach is making the common man i.e, every citizen of the country as part and parcel of this corporate governance. This is because the entities which

are earning profits by following good corporate governance measures is the base for levy of the tax by respective governments and that tax itself is utilised for the welfare of the citizens or for the welfare of any state etc. And hence each and every person is entitled to know about the entity and what corporate governance measures are being followed by such entity.

Apart from this a model for indexation of humanity has to be developed and set the scaling for companies, so as to give an impression where they are falling in that index. The highest slab is the best and should be incentivised accordingly.

**Applicability of Corporate Governance to all kinds of business entities:** When corporate governance is relating to ethics, transparency, accountability, sustainability etc., then another moot question arises is – Are these attributes applicable only to big listed entities and is not required for small unlisted companies, societies, NGOs, Firms etc.?

If we are trying to preach something good, then that should be made applicable to everyone without any exceptions. When corporate governance is going to provide multifaceted benefits to various stakeholders and the corporate itself, then the other forms of business entities are also supposed to get those benefits and do the same good to the other stakeholders with whom they are dealing.

Are the other forms of business entities not utilising any resources from external environment? Or are those entities not utilising any bank loans etc., which forms part of public money? Or are those entities not supposed to follow the safeguarding measures prescribed in corporate governance norms?

Let's take the example of the recent scandal involving Sir Philip Green and BHS Ltd (British Home Stores) and also the example of small private limited entities in the case of Satyam in India. All these incidents provoke the requirement of corporate governance applicability to these small and unlisted entities.

Similarly there are numerous societies and Firms which are doing business and dealing with public and also with the society at large.

In addition to that the percentage of the other companies in relation to big listed entities is very huge and there is absolute necessity to bring the ethical mode of transactions and behaviour into those forms of business entities.

If we take the scenario of NGOs, seldom they are accountable in any of the narrowest possible sense in many countries. And this kind of leeway is allowing those NGOs to play with the funds according to the whims and fancies of the owners. But this has to be curbed out by making corporate governance even applicable to those forms of entities also.

Similarly there is another problem associated with these small entities and other forms of business. Generally they have the problem of one person management and lack the institutionalised structure. Therefore applying corporate governance can provide a solution to these other forms of business entities.

There should not be any exception on the size of the entity and form of the entity with respect to the applicability of corporate governance. However, certain clauses in corporate governance can be exempted based on the size and form of the entity.

**Inclination towards self-regulation in contra to statutory regulation:** In the initial days of implementation of corporate governance, there was necessity for the statutory authorities to intervene for providing necessary guidance, procedures and surveillance etc.

But for the fact to be stated corporate governance is not to be monitored by some external agency but it has to be imbibed from within the organisation and in its culture itself. However, there were no steps in this regard so far.

If the real benefits of corporate governance have to be reaped, then there should be a mechanism to be adopted for imbibing automatically into the DNA of the organisation without any surveillance by any statutory authorities.

This is because the statutory regulation lacks the innovation and creativity. Seldom it is prepared by few people sitting at the helm of affairs of making the law. The innovation and/or creativity restricts only to the extent of the capability of those few people alone. But if the same is left open with minimal control measures, then the whole innovation will flock in abundance because of the involvement of the entire corporate world. The rule based approach leads to excessively prescriptive regimes and gives importance to the ‘form’ rather than ‘substance’.

A rule based approach spells out in precise terms, the manner in which corporates must conduct their affairs. Rules are often made to promote precision, formal equality, predictability, certainty, uniformity, and judicial restraint and reduce the likelihood of bias, arbitrariness, and abuse of power by decision makers (Ford, 2008, p. 7, fn. 24). In the process of meeting standards or complying with regulations, it is often forgotten that rules are not the end but are only a means to the end.

Do regulations imply the inability to self-regulate? It may be argued that ethical behaviour is a form of responsible behaviour to self and to others which is merely compelled by compliance. Hence, making ethics and ethical behaviour subject to regulation is counterproductive to instilling an ethical culture. Despite the fact that self-regulation is voluntary, it may ironically have to be sought through the language of regulation and compliance, as such language carries strong normative connotations that incentivise behaviour change, having the potential to overcome the ‘market failures’ associated with non-compliance-based paradigm.<sup>1</sup> It, therefore, becomes imperative to quote the famous jurist John Austin’s definition of law as a command of a sovereign backed by a sanction as the change must start from regulation and evolve into enabling regulation and further move to self-regulation.

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<sup>1</sup>Norman, Wayne, (2012, January 19), Business Ethics as Self-Regulation: Why Principles that Ground Regulations Should Be Used to Ground Beyond-Compliance Norms as Well, *Journal of Business Ethics*, <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.463.8989&rep=rep1&type=pdf>

One way with self-regulation the burden on the statutory authorities is reduced to a large extent and they only need to monitor for any ill deeds being practiced by any corporate. On the other hand the whole gamut of corporate governance will take a new shape and is automatically imbibed into the DNA of the corporate.

In the present structure of corporate governance, the entire compliance of these norms has become like a check box tick list. The spirit behind the corporate governance and its compliance is totally lost. It has restricted only to paper compliance.

For bringing this kind of phenomenal change and make corporate governance a real aspect in the corporate dealings, a whole new environment should be created wherein the corporates should compete with one another to comply on their own with the corporate governance principles.

Let's examine this with an example. Till a decade back in the old city of Hyderabad, India there were religious fights between Muslims and Hindus. But somehow an environment of software industry, BPO industry and a place for more happening Hyderabad was created. All the youth who used to participate in those fights, slowly turned to learn the requisite technologies and joined those companies with good salaries. In this scenario none of the authorities have guided the public or advised the public suggesting not to participate in quarrels etc. But an environment was created in such a fashion that the youth themselves have realised their purpose and stayed away from such ill practices.

Similarly an environment has to be created, wherein the corporate should feel like adopting the corporate governance for its own good and for the good of the society at large.

This can be created by way of incentivising those corporates, who adopt good practices in the form of concession in tax rates, or giving nation wide publicity or providing them with Corporate Governance Credits etc.

**Inculcating the business perception rather than the legal perception into CG:-** So far the compliance with corporate governance has been observed by all the corporate with a legal sense. They used to think that this is a legal compliance which needs to be adhered and feel like an additional burden on them.

But for the fact, the corporate governance is a stream of compliance which is entwined with total business sense. This was not at all advocated by any of the countries when they deal with corporate governance and its importance to the corporate.

Any entity which is doing good and following best practices which are more transparent, accountable and safeguarding the sustainability aspect will have more opportunities in the market to broad base its existence.

The public will also receive that company with open hands and will like to deal with such companies only.

The whole intention of complying with corporate governance norms is to make the company a good legal person which is acceptable to the society, but not to foresee it as a mere legal compliance and filing one more document with the statutory authorities.

But this concept was not at all given preference in the existing norms anywhere in the world. And now it becomes imperative to advocate this concern in wide manner.

**Necessity of a uniform code for the entire world:** Now-a-days the corporate houses are not sticking to the country of their origin. Each and every corporate is becoming a big conglomerate and extending to different countries laying their footage in each place.

This necessitates the understanding of different laws prevailing in each country. But the purpose of the corporate is to do business rather than tangling in a legal junta of each and every country.

Moreover uniformity in corporate governance principles will help each and every country about understanding the corporate and the kind of compliances they are supposed to do.

The logic of having IFRS is applicable even for the corporate governance too. This will bring harmony in the existing codes which are followed in different countries and all the stakeholders will have same understanding about what a corporate has to comply and what their rights are as stakeholders.

This will also enhance the relationship between different stakeholders and corporate from different countries.

The developing countries will also tend to follow the most advanced law as is followed by the advanced countries. This will assist in modernisation of their laws and also the rights and responsibilities will be known to every stakeholder irrespective of country demographic barrier.

Not only this, even harmony is established between various countries to deal with corporate governance on similar lines with a better understanding.

A healthy competitive environment will be developed among the corporate from different countries to showcase themselves as more CG compliant companies.



**Approach for ICGC continuous evolution:**

In order to have an effective system of rules, practices and processes by which a corporate is directed and controlled, the world needs a platform to discuss and enumerate the possible methods and procedures for the adoption by corporate beyond the horizons of the respective countries.

The below mentioned model code for corporate governance should be continuously be monitored and improvised from time to time by all the countries by meeting in regular intervals.

The deliberations are required to resolve all contentious issues and also to bring harmony in the principles being framed and to be followed by all the countries across the world.

## Section – II

# Model International Corporate Governance Code

**Model International Corporate Governance Code:**

In the new era of globalization and modernization the corporate houses are not restricted to their own country of functioning but spearheading across the globe and the entire world is becoming a stakeholder.

All the countries and organizations are following the corporate governance principles either independently based on the geographical limitations or otherwise bonded by principles of those international organisations for the purpose for which those organizations were established.

There is a need to bring a uniform consensus among all the countries as well as all the organizations to follow the most best global corporate governance practices.

Corporate Governance is needed to create a corporate culture of Transparency, accountability and disclosure. It refers to compliance with all the moral and ethical values, legal framework and voluntarily adopted practices.

Complying with the best corporate governance principles will endure the company's a swift edge over generating capital required for their operations and more so from global financial markets. This will also ensure the development of that particular country's economy.

The demand from the global trends in order to be more effective and compliance vigilant by the corporate of all the nations, there is a need to have a more developed version of the corporate governance principles which are acceptable by all the countries.

Because of this scenario the legislations of all the countries need to be reviewed and harmonised with the International standards and a sort of uniformity to the extent possible is highly desirable.

In addition to the above, high quality compliance of corporate governance means low cost of capital market access and even the image of the country will also be enhanced in the eyes of International forum.

Though single corporate governance model may not suit each and every country, but there are few basic tenets on which the entire corporate governance is structured is same for all the countries.

Similarly the basic tenets of equality, transparency, accountability, sustainability etc., are also applicable to other forms of business entities like Unlisted Companies, Firms, Societies, NGOs etc.

***The most important perception difference brought in these regulations is – these are only recommendatory and not mandatory, but at the same time due recognition is acknowledged in all possible means for those companies who comply with these regulations and disclose accordingly.***

However, there is a caution which we are proposing for this voluntary compliance of corporate governance. Since publicity for the initiatives of the business entities is being provided by way of corporate governance credit and disseminating on the Index, similarly there shall be a note of non-compliance also will be made and all the entities are cautioned for accepting the risks pursuant to that disclosure of non-compliance also.

The principles mentioned in this model “International Corporate Governance Code” are majorly derived from the OECD Principles and other major principles prevalent in various parts of the world.

The entire model code is divided into eight parts as under:

- Part I: Establishing the efficient Framework of Corporate Governance in the entity
- Part II: Rights and Obligations of the Promoters/Owners/Contributors of the entity
- Part III: Stakeholder Activism and removal of impediments
- Part IV: Constitution of effective Board (Directors/Managing Committee etc) and Responsibilities
- Part V: Indexation of Humanity
- Part VI: Ecological Balance in Nature
- Part VII: Inclusive approach of Social Responsibility
- Part VIII: Obligations of Disclosure and Transparency

**The principles of “International Corporate Governance Code”:**

Part I

**1. Establishing the efficient Framework of Corporate Governance in the entity**

- 1.1 For establishing the most transparent, ethical, accountable and sustainable corporate world there should be a framework of corporate governance for each and every business entity detailing the framework, responsibilities assigned to various levels of officers.
- 1.2 The corporate governance framework should aim for the development of transparent and efficient markets.
- 1.3 The framework established should be in synchronisation with the existing rules and law of the land
- 1.4 The framework should also demarcate the rights and obligations for each category of owners/contributors, Board etc., and at each and every level of employees
- 1.5 The framework should be in such a manner that it takes care of the public interest and interest of the society at large

Part II

**2. Rights and Obligations of the Promoters/Owners/Contributors of the entity:**

- 2.1 The corporate governance should protect the rights of the promoters/owners/contributors and at the same time it should also provide a congenial atmosphere where they can exercise and safeguard their rights like safeguarding their ownership, or transfer their ownership rights, or participating and voting in general meetings, or electing the board level members to run the organisation, or participate in the profits of the entity.
- 2.2 The owners/contributors should possess the right to have the knowledge of important transactions like amendments to the constitutional documents or any material transactions like sale of substantial portion of assets etc., or transfer of shareholding etc.
- 2.3 The owners/contributors should possess all the relevant information of general meetings like Venue, Time, Date, Agenda of the items proposed to be passed etc., and they should also be informed about all material transactions undertaken by the entity during that year.
- 2.4 The provision facilitating the voting even by the owners/contributors who are not present at the meeting shall also be provided and they shall be given equal weightage to such votes who casted in absentia also.
- 2.5 The different rights accruing due to variety of ownership/contribution shall be disclosed appropriately.
- 2.6 Any major transactions like merger or sale of substantial assets etc., should be disclosed to all the owners/contributors detailing their rights and the eventual effect of these kind of transactions on their rights.
- 2.7 A proper platform should be provided to all the owners/contributors to deliberate among themselves for protecting their rights.
- 2.8 All the owners/contributors of respective class shall have equal rights and there should not be any discrimination amongst the same class.
- 2.9 Any changes in voting rights should get the approval of that class who are going to get effected.
- 2.10 There should not be any scope for insider trading and creating an adverse scenario to any class of owners/contributors.
- 2.11 The promoters/Owners/Contributors should keep away from managing the operations of the company and have to allow the managers to manage the affairs of the company.

Part III

**3. Stakeholder Activism and removal of impediments:**

- 3.1 The corporate governance framework should establish proper mechanism to dwell with the interests of various stakeholders in relation to that entity both on micro and macro levels.
- 3.2 It should safeguard and abide by the rules and regulations of the law of the land in relation to the protection of the stakeholders in all possible means.
- 3.3 There shall be a redressal mechanism within the framework to seek remedy or to take preventive actions in relation to any transaction which may affect wide variety of stakeholders.
- 3.4 The framework should establish an all-round development and involvement mechanism to the stakeholders and accordingly requisite information should be made available on timely manner.
- 3.5 Stakeholder relationship committee to play the key role to establish connectivity between the stakeholders and the management.

#### Part IV

#### **4. Constitution of effective Board (Directors/Managing Committee etc) and Responsibilities:**

- 4.1 The Board size and the composition of wide variety and diversity in the board shall depend on the size and complexity of the entity.
- 4.2 The members of the Board shall have an induction program to make themselves familiar and acquaint with the company and the expectations from them in discharging their duties.
- 4.3 The Board shall ensure efficient conduct of board and committee meetings and participation of the board and committee members.
- 4.4 The Board shall ensure efficient flow of information to the Board so that effective discussions and deliberations can take place and board can take informed decisions.
- 4.5 The members of the Board should disclose their interest in any transaction which is affecting the entity.
- 4.6 The members of the Board should act very diligently and on fully informed basis.
- 4.7 The members of the Board should always avoid conflict of interest under all circumstances.
- 4.8 The meetings of the board should be structured well in order to have a fruitful deliberation on all matters and facilitate them in discharging their duties.
- 4.9 The onus of the responsibility lies immensely on the board because of the fiduciary responsibility towards stakeholders.
- 4.10 The corporate governance framework should bestow more ethical responsibility on the board while rendering their services.
- 4.11 While taking any decision on important matters, the Board should keep the interests of various stakeholders in mind and act accordingly.

- 4.12 The board shall ensure that there is proper succession plan for the entity and all the decisions in relation to that are done fairly well.
- 4.13 The Board shall ensure the integrity of the entity while preparing the accounts and financial reporting.
- 4.14 The Board shall exercise independent judgment in relation to the affairs of the entity without any bias towards their personal interest or to the interest of any particular section of the stakeholders.
- 4.15 The board is empowered to create any number of sub committees to ensure the proper functioning of the entity.
- 4.16 The board is under a moral obligation to foresee the future risk aspects and with possible solutions to mitigate them.
- 4.17 There should be an effective Board evaluation process which needs be conducted in a very confidential manner.
- 4.18 The board should ensure a clear role demarcation between the Chairman, Board, Independent Directors/Members, Board Committees, Management and other Stakeholders.
- 4.19 The Board shall ensure quantitative, qualitative and timely dissemination of information to the general public and shareholders.

## Part V

### **5. Indexation of Humanity:**

- 5.1 There shall be a predefined parameters to identify and quantify in the “Indexation of Humanity”.
- 5.2 Those activities shall be measured on the scale of “Indexation of Humanity” as developed to meet the International standards.
- 5.3 All the entities shall disseminate their activities undertaken by giving due weightage and preference for the approach of Humanity.

## Part VI

### **6. Ecological balance in nature**

- 6.1 Every organisation shall give priority to maintain the ecological balance in nature.
- 6.2 The concept of optimum utilisation of natural resources without affecting the biological, ecological, and environmental elements of the nature shall be taken into account in the effectiveness and evaluation of corporate governance.
- 6.3 The impact study on positive and negative aspects of organisation’s activities from the angle of ecological balance in nature shall be recognised, measured, accounted and reported by disseminating to the stakeholders.

## Part VII

### **7. Inclusive approach of Social Responsibility**

- 7.1 The element of social responsibility should be imbibed in all the activities of the organisations with respect to utilisation of all resources.
- 7.2 Liberal criteria shall be adopted by the organisations for undertaking the activities under social responsibility.
- 7.3 All the entities shall disclose their activities on social responsibility in the requisite format devised for this purpose in order to make the organisation more prudent socially.

## Part VIII

### **8. Obligations of Disclosure and Transparency**

- 8.1 The Corporate Governance framework should establish proper means and modes of disclosure requirements, so as to disseminate necessary information to maintain the accountability, transparency and sustainability.
- 8.2 The disclosures should be as elaborative as possible, so that all facets of understanding about the entity is possible in the best effective manner.
- 8.3 The indicative but not exhaustive list covers the items of Financial and non-financial results, objectives, ownership details, Remuneration to Board and one level below the board, Related party transactions, Risk factors and their mitigating

measures, employees related, policy decisions, government related, CSR related activities etc.

- 8.4 There shall be exclusive loss vs. benefit analysis on each measure of corporate governance in the annual reports under a separate heading – “Obligations under the social responsibility”.
- 8.5 An audit of the corporate governance compliance shall be undertaken by an external auditor and he is accountable to the entire stakeholders.
- 8.6 The matters to be disclosed shall be as per the requirements of “Corporate Governance Credit Index” to be established in this regard.

Section III

A. Indexation of Corporate Governance

B. Advocacy of Corporate Governance and branding of the  
CG Compliant Companies

## **A. Indexation of Corporate Governance**

All the principles enumerated in the International Corporate Governance Code shall be earmarked for appropriate indexation for the purpose of giving Corporate Governance Credits and ultimate listing in the Index to be established for this purpose.

### **A1. Concept of Corporate Governance Credits:**

This is the concept we are proposing to encourage the companies to follow and adopt the self-regulated corporate governance principles.

Anyone in the world desires to be recognised for their good deeds. This gives ample satisfaction and inclination to do more of such good deeds. At the same time it is the moral responsibility on government's part to acknowledge and provide necessary publicity for the good deeds done by any corporate.

For this we are proposing to establish a mechanism of devising “Corporate Governance Credits” similar to carbon credits.

This mechanism should have predefined parameters which can measure any of the activity on the given scale of corporate governance.

The number of points will be accorded based on the good, it made to the society at large. This is only an indicative approach. However this needs to be developed by all the countries to have a uniform scale of corporate governance in order to issue the credits to each and every corporate.

### **A2. Indicative parameters for determining the credits:**

Various parameters can be considered as under when the scale of corporate governance is prepared and credits are going to be given:

- The kind of empowerment to the shareholders
- The kind of benefit provided to the government
- The number of people in the society got benefitted by those deeds
- The value addition to the economy of the country of its origin
- The increased international relationships with those deeds

### **A3. Creation of Transparency Culture**

So far, all the organisations have an inhibition or some kind of fear about being transparent and allowing various stakeholders to know about their activities and conduction of affairs. With this Corporate Governance credit Index listing, there is an enormous amount of transparency will come into the system and moreover this will form part of the culture of the organisations to be more transparent and tend to disclose everything to the maximum extent it

is pertinent until and unless the disclosure is too confidential and may lead to collapse of the business.

**A4. Inculcation of propensity among organisations towards adhering to corporate governance norms**

The corporate governance credits Index will gradually imbibe the competitive spirit among each and every organisation to show case their adherence to good corporate governance and try to grab as many credits as possible in order to be on top of the respective lists of categories under which that particular organisation may fall.

**A5. What government should do towards the entities which are doing remarkably well in corporate governance?**

At the same time the good deeds has to get publicity and there should be some kind of incentive to the company. For this the following measure can be adopted:

- Publicity in all means like print or electronic both nationally and internationally
- Publishing the articles about the impact created by such companies
- Providing Tax rebates/concessions
- Providing duty free clearances
- Making available the research resources either for free or at concessional rates to those companies

Gradually the Corporate Governance Credits should pick up the momentum and every business entity should strive for more credits.

A similar structure of dissemination of information by stock exchanges in relation to the listed entities should also be made available for all kinds of business entities. The should be termed as “Corporate Governance Credit Index”.

Under Corporate Governance Credit Index, various business entities shall disclose their information about the compliance and the kind of innovative and good deeds done by those entities. This will facilitate the public to understand about that particular entity without any trouble. This will also give a kind of publicity to that particular entity.

**A6. Benefits to the organisations which adhere to good corporate governance norms and embarked on this Index**

Various benefits as enumerated below can be reaped because of this Corporate Governance Credit Index based on the activities and transparency maintained by those entities:

- All companies whether listed or unlisted, Firms can improve their sales
- The societies and NGOs can get more donations from the public

- Mutually aided farmer societies can get proper market price for their harvests
- The listed entities will get a boost in their share prices.
- People will have access to wide variety of entities to suit their requirements
- A synergy is accomplished in all kinds of activities being taken up in that particular country in whatever form by all the entities
- The economy of that country will be in a streamlined manner
- This will boost the image of that country in the international forum
- More foreign funds will flock into the country in the form of Investments
- An increased possibility for all the entities to become global giants or MNCs

**A7. Preponderance of corporate governance by Individuals – Eligibility criteria to be appointed as Independent Directors**

The knowledge/awareness along with the experience in dealing with corporate governance related issues by an individual should be considered as one of major selection criteria for appointing him/her as an Independent Director on board of the organisations. In such scenario the real aspect of corporate governance and its benefits can be experienced by that organisation and it turn the whole society.

**B. Advocacy of Corporate Governance and branding of CG compliant companies**

Bringing the awareness among different kinds of stakeholders is utmost important in order to bring the real impact of corporate governance.

The following activities can be undertaken for bringing the awareness:

- Creation of story board articles about the greatness of the initiatives and its results
- Conducting awareness campaigns among various sections of public including the rural population
- Introduce the ethical code of conduct as an extra-curricular activity for the children right from the initial school days. Because they are the future entrepreneurs
- Imbibing the culture of corporate governance among various stakeholders
- Make the people understand what the future world is and its impediments.
- Educate them how corporate governance can be a panacea for those problems
- Developing a resource pool for improving the Corporate governance further with innovative solutions to the present and future unforeseen problems