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MBA DEPARTMENT OF BUSINESS MANAGEMENT

Digital Notes

BUSINESS ETHICS AND CORPORATE GOVERNANCE

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BUSINESS ETHICS AND CORPORATE GOVERNANCE

Introduction:

What is ethics?

Ethics is a system of moral principles. They affect how people make decisions and lead their lives.

Ethics is concerned with what is good for individuals and society and is also described as moral philosophy.

The term is derived from the Greek word *ethos* which can mean custom, habit, character or disposition.

Ethics covers the following dilemmas:

- How to live a good life
- Our rights and responsibilities
- The language of right and wrong
- Moral decisions - what is good and bad?

Our concepts of ethics have been derived from religions, philosophies and cultures. They infuse debates on topics like abortion, human rights and professional conduct.

Ethics is about the 'other'

At the heart of ethics is a concern about something or someone other than ourselves and our own desires and self-interest.
Ethics is concerned with other people's interests, with the interests of society, with God's interests, with "ultimate goods", and so on.
So when a person 'thinks ethically' they are giving at least some thought to something beyond themselves.

Levels of Business Ethics:

Macro Level

At a macro level, sometimes called the systemic level, ethics are defined and influenced by the wider operating environment in which the company exists. Factors such as political pressures, economic conditions, societal attitudes to certain businesses, and even business regulation can influence a company's operating standards and policies. Business owners and managers must be aware of how these pressures affect operations and relationships, and how they may impact on markets locally, nationally and internationally.

Company Level

At a company or corporate level, ethical standards are embedded in the policies and procedures of the organization, and form an important foundation on which business strategy is built. These policies derive from the influences felt at macro level and therefore help a business to respond to changing pressures in the most effective way. There can be a gap between the company policy on ethical standards and the conduct of those in charge of running the business, especially if they are not the direct owners, which can present an ethical challenge for some employees.

Individual Level

Since businesses are run by people, the ethical standards of individuals in the business are an important consideration. Individuals may well have a very different set of ethical standards from their employer and this can lead to tensions. Factors such as peer pressure, personal financial position, and socio-economic status all may influence individual ethical standards. Managers and business owners should be aware of this to manage potential conflicts.

Integrated Approach

Ethical standards flow through the entire structure of a business organization, shaping how it plans its strategy, deals with customers, and manages its workforce. The standards have a reach far beyond day-to-day operations, and should be considered in all aspects of a business, from the boardroom to the shop floor and across all functional areas. Supporting this effort, businesses that genuinely understand the value and importance of ethics have appropriate metrics in place to measure achievement and identify problems before they become major issues.

Myths about Business Ethics:

- **Know the Principles**

  In ethical decision making there are three basic principles that can be used for resolution of problem. These three principles are that of intuitionism, moral idealism and utilitarianism.

  The principle of intuition works on the assumption that the HR person or the manager is competent enough to understand the seriousness of the situation and act accordingly, such that the final decision does not bring any harm to any person involved directly or indirectly.

  The principle of moral idealism on the other hand states that there is a clear distinction between good and bad, between what is acceptable and what is not and that the same is true for all situations. It therefore asks to abide by the rule of law without any exception.

Utilitarianism concerns itself with the results or the implications. There is no clear distinction between what is good and what is bad; the focus is on the situation and the outcome. What may be acceptable in a certain situation can be unacceptable at some other place. It underlines that if the net result of the decision is an increase in the happiness of the organization, the decision is the right one.

- **Debate Moral Choices**

Before taking a decision, moral decisions need to be thought upon and not just accepted blindly. It is a good idea to make hypothetical situations, develop case studies and then engage others in brainstorming upon the same. This throws some light into the unknown aspects and widens the horizon of understanding and rational decision making.

- **Balance Sheet Approach**

In balance sheet approach, the manager writes down the pros and cons of the decision. This helps arrive at a clear picture of things and by organizing things in a better way

- **Engage People Up and Down the Hierarchy**

One good practice is to announce ones stand on various ethical issues loudly such that a clear message to every member of the organization and to those who are at the greater risk of falling prey to unethical practices. This will prevent the employees from resorting to unethical means.

- **Integrating Ethical Decision Making into Strategic Management**

Morality and ethical make up for a perennial debate and ethical perfection is almost impossible. A better way to deal with this is to integrate ethical decision making into strategic management of the organization. The way the HR manager gains an alternate perspective rather than the traditional employee oriented or stakeholder oriented view.

Can Business Ethics be Taught and Trained?

The issue is an old one. Almost 2500 years ago, the philosopher Socrates debated the question with his fellow Athenians. Socrates' position was clear: Ethics consists of knowing what we ought to do, and such knowledge can be taught.

- Dramatic changes occur in young adults in their 20s and 30s in terms of the basic problem-solving strategies they use to deal with ethical issues.
- These changes are linked to fundamental changes in how a person perceives society and his or her role in society.
- The extent to which change occurs is associated with the number of years of formal education (college or professional school)

- Deliberate educational attempts (formal curriculum) to influence awareness of moral problems and to influence the reasoning or judgment process have been demonstrated to be effective.
- Studies indicate that a person's behavior is influenced by his or her moral perception and moral judgments.

Can Business Ethics Be Taught?

Recent surveys indicate that most Fortune 500 corporations have developed written codes of ethical business conduct and training programs to communicate those standards to their employees. If ethics cannot truly be "learned" in significant ways by adults, then the value of corporate ethics training programs would indeed be suspect.

Moral Capacities

Almost every human being is born with capacities for sympathy, fellow-feeling, concern about the well-being of others. The proper development of these capacities is not automatic, but the vast majority of us have developed them because we've been raised in loving families and made stable friendships at an early age. Every so often, of course, we get a jarring glimpse of someone who never had the requisite nurturing, an adult who is relatively intelligent but who somehow never learned how to be compassionate.

Ethical Reasoning and Imagination

But applying basic ethical principles like fairness in the workplace isn't always easy. Our consciences can have all of the standard equipment, and yet collectively we may not intuit identical resolutions to specific ethical questions:

- Where should you draw the line between a legitimate business courtesy and a bribe?

- How do you hold to exemplary ethical standards when your competitor fights dirty?

- How do you conduct a layoff in the fairest possible manner?

Deliberation and Discussion

Perhaps most importantly, a corporate ethics program can simply make ethics an acceptable subject of discussion on the job. Most employees want to work for a company where they don't feel they're being asked to abandon their core values in order to succeed in their jobs. Yet unless they're given formal opportunities and encouragement from management to discuss ethics, they're likely to be silenced by the few cynics among them who think that ethics is for "wimps" or is irrelevant to the bottom line narrowly conceived. Employees need to hear from management that the company depends on their individual integrity to maintain its good name, and is willing to hear their ethical concerns on an ongoing basis.

Managing to Reinforce Ethical Conduct

Finally, corporate ethics initiatives must go well beyond written codes and employee workshops. The ethics that are taught in formal settings can be easily undermined in other ways. Employees pay very close attention to the subtle (and not-so-subtle) cues given off by their supervisors in day-to-day interactions. Why should employees believe that management is serious about ethical risks if their bosses either don't listen to their concerns or shoot the messengers of unpleasant news? What sense will it make to preach fairness if promotions and compensation are in fact based on who you know rather than individual merit and performance? What message is sent when management allows a salesman to pad his expense account because he's a top performer?

In other words, managers and employees must regularly make the effort to examine the goals, incentives, pressures, and styles of communication that drive behavior in the organization, and ask themselves, Are these factors reinforcing or undermining the ethical standards we want to uphold?

Lawrence Kohlberg's stages of moral development:

Kohlberg's six stages can be more generally grouped into three levels of two stages each: pre-conventional, conventional and post-conventional. Following Piaget's constructivist requirements for a stage model, as described in his theory of cognitive development.

Level 1 (Pre-Conventional)
1. Obedience and punishment orientation
(*How can I avoid punishment?*)
2. Self-interest orientation
(*What's in it for me?*)
(*Paying for a benefit*)
Level 2 (Conventional)
3. Interpersonal accord and conformity
(*Social norms*)
(*The good boy/girl attitude*)
4. Authority and social-order maintaining orientation
(*Law and order morality*)
Level 3 (Post-Conventional)
5. Social contract orientation
6. Universal ethical principles

Carol Gilligan's Theory:

A community of moles gives shelter to a homeless porcupine. The moles, however, are constantly stabbed by the porcupine's quills. What should they do?

This scenario was used to aid in the development of a theory that argued women and men may have differing paths to moral development. This lesson will introduce and apply that theory, developed by Carol Gilligan.

The field of **moral development** encompasses prosocial behavior, such as altruism, caring and helping, along with traits such as honesty, fairness, and respect. Many theories of moral development have been proposed, but this lesson will focus on the specific theory proposed by Psychologist Carol Gilligan.

Gilligan was a student of Developmental Psychologist **Lawrence Kohlberg**, who introduced the theory of stages of moral development. Gilligan, however, felt as though her mentor's theory did not adequately address the **gender differences** of moral development due to the fact that participants in Kohlberg's study were predominately male and because his theory did not include the **caring perspective**.

Carol Gilligan felt that Lawrence Kohlberg did not address gender differences in moral development

Gilligan argued that males and females are often socialized differently, and females are more apt than males to stress interpersonal relationships and take responsibility for the well-being of others. Gilligan suggested this difference is due to the child's relationship with the mother and that females are traditionally taught a moral perspective that focuses on community and **caring about personal relationships**.

Care-Based Morality & Justice-Based Morality

Gilligan proposed the **Stages of the Ethics of Care** theory, which addresses what makes actions 'right' or 'wrong'. Gilligan's theory focused on both care-based morality and justice-based morality.

Care-based morality is based on the following principles:

- Emphasizes interconnectedness and universality.
- Acting justly means avoiding violence and helping those in need.
- Care-based morality is thought to be more common in girls because of their connections to their mothers.
- Because girls remain connected to their mothers, they are less inclined to worry about issues of fairness.

Justice-based morality is based on the following principles:

- Views the world as being composed of autonomous individuals who interact with another.
- Acting justly means avoiding inequality.
- Is thought to be more common in boys because of their need to differentiate between themselves and their mothers.
- Because they are separated from their mothers, boys become more concerned with the concept of inequality.

Returning to our mole/porcupine scenario, researchers found individuals approached the problem with two perspectives: **justice-based morality** or **care-based morality**. Gender differences were also evident.

Individuals with a **justice-based perspective** tend to see any dilemma as a **conflict** between different claims. The moles want one thing; the porcupine wants something incompatible. They can't both have a valid claim on the burrow, so only one of them can be right. A solution to the dilemma is not a resolution of the conflict; it's a verdict, in which one side gets everything and the other side gets nothing.

Unit – II

Professional Ethics

Ethical Dilemma:

An **ethical dilemma** or **ethical** paradox **is** a decision-making problem between two possible moral imperatives, neither of which **is** unambiguously acceptable or preferable. The complexity arises out of the situational conflict in which obeying one would result in transgressing another.

You control the switch on a set of train tracks. The train is currently going to hit and kill five people on the track. If you switch it, it will only kill one person. But here's the kicker…you are now responsible for the death of that person. Which do you choose? The central question, of course, is "Should the needs of the few be given up for the needs of the many?"

It's also a fun one because you can alter it in subtle but important ways. For example, what if the "one person" on the other track is someone you know? What if that person is your mother? Your spouse? Your child? What if that one person has the potential to cure cancer?

Dilemma and Ethical Dilemma:

	Ethics	**Morals**
What are they?	The rules of conduct recognized in respect to a particular class of human actions or a particular group or culture.	Principles or habits with respect to right or wrong conduct. While morals also prescribe dos and don'ts, morality is ultimately a personal compass of right and wrong.
Where do they come from?	Social system - External	Individual - Internal
Why we do it?	Because society says it is the right thing to do.	Because we believe in something being right or wrong.
Flexibility	Ethics are dependent on others for definition. They tend to be consistent within a certain context, but can vary between contexts.	Usually consistent, although can change if an individual's beliefs change.
The "Gray"	A person strictly following Ethical Principles may not have any Morals at all. Likewise, one could violate Ethical Principles within a given system of rules in order to maintain Moral integrity.	A Moral Person although perhaps bound by a higher covenant, may choose to follow a code of ethics as it would apply to a system. "Make it fit"
Origin	Greek word "ethos" meaning"character"	Latin word "mos" meaning "custom"
Acceptability	Ethics are governed by professional and legal guidelines within a particular time and place	Morality transcends cultural norms

Mounting Scandals:

In the face of mounting scandals, corporations are adopting codes of ethics. Business schools are developing ethical courses and consultants are hired to put integrity into corporate cultures.

What relevance do business ethics have for corporate Managers?

Laws and regulations underlie many matters regarding relationships managers have with staff and customers.

Many diverse groups need to be satisfied and this demands mutual trust.

A breach of ethics breaks down the mutual trust required to maintain individual and organizational moral behavior.

Ethical issues in Business:

The most fundamental or essential ethical issues that businesses must face are integrity and trust. A basic understanding of integrity includes the idea of conducting your business affairs with honesty and a commitment to fairly.

Preparatory Ethics:

1) **Be a Role Model.**
2) **Hire Moral People.**
3) **Stress Standards.**
4) **Be Committed.**

Proactive steps to address unethical behavior:

1 Create a code of ethics:

Codes of ethics should be written in broad, idealistic terms to communicate the company's ethical vision. Be sure to involve key employees in the process of drafting and formalizing the code of ethics. This will ensure that leaders are on board with and committed to the values.

2. Establish a protocol:

Include in your code of ethics instructions about how to report unethical behavior. A clear protocol for reporting, such as requesting a private meeting with the appropriate manager or supervisor.

3. Empower employees:

Grant staff the know-how to appropriately identify and handle ethics violations. Accomplish this by implementing ethics-training programs for all new and existing employees to increase the effectiveness of the code.

4. Continuously review the code:

Each year, share copies of the code of ethics with every employee. Ensure that your employees confirm their understanding of the code by requiring them to sign a form of acknowledgement afterward.

Ethics in Production and Production Management:

While maintaining high ethical standards and complying with laws and regulations are important for all businesses, manufacturing companies face additional challenges because of the potential for harming employees and consumers. When you operate a manufacturing line, the potential for injury to workers and the possibility that your products are unsafe for consumers is always present. Implementing policies, procedures and controls to reduce these risks is not only ethical it is often a legal requirement.

Safe Manufacturing Environment

Ethical businesses prioritize safety in the workplace. In a manufacturing environment, the presence of machines and raw materials make adequate safety procedures both legally mandatory and ethically necessary. In addition to basic safety rules, such as wearing protective gear and refraining from engaging in risky behavior, the main issues relate to a reasonable balance between inconvenience, productivity and safety. Applying too many rules creates compliance problems, while not addressing safety issues can lead to injury. If you give the employees a role in developing safety regulations for a production line, it helps in the implementation of effective rules that strike the right balance.

Reduced Environmental Effects

Manufacturing processes use energy and produce waste. Legal restrictions govern how companies can produce energy while limiting emissions and how they have to treat waste to reduce environmental damage. Ethical concerns influence the overall approach of a company toward environmental degradation caused by its manufacturing operations. Taking into account both legal and ethical factors, you have to reduce your energy use by increasing energy efficiency and exploring the use of alternative technologies. At the same time, you can reduce waste by looking at where it is generated and changing your manufacturing process to produce as little as possible.

Secure Workplace

Employers have a legal and ethical responsibility to ensure workers are not subject to sexual harassment or other forms of workplace hostility and to treat all employees fairly. If your manufacturing environment has mostly male workers, you have to be especially vigilant that female employees feel welcome and comfortable. To meet both the legal and ethical challenges, institute detailed policies against harassment and make sure all employees comply.

Safe Products

In addition to internal issues, manufacturing companies face liability once their products leave the factory. Product safety is governed by legislation, and ethical concerns mean you should only ship products that have been tested for safety. While knowingly shipping dangerous products is illegal and unethical, the use of your products also may have unintended and harmful effects. Going beyond legal requirements to thoroughly test all aspects of the use of your products reduces your exposure to possible law suits and fulfills your ethical duties.

Ethics of Marketing Professionals:

Marketing ethics is an area of applied ethics which deals with the moral principles behind the operation and regulation of marketing.

The following are the code of ethics for marketing professionals.

1) In the area of Product development and Management
2) In the area of Promotion.
3) In the area of Distribution.

Ethics in HRM:

- **Cash and Compensation Plans**

There are ethical issues pertaining to the salaries, executive perquisites and the annual incentive plans etc. The HR manager is often under pressure to raise the band of base salaries. There is increased pressure upon the HR function to pay out more incentives to the top management and the justification for the same is put as the need to retain the latter. Further ethical issues crop in HR when long term compensation and incentive plans are designed in consultation with the CEO or an external consultant. While deciding upon the payout there is pressure on favouring the interests of the top management in comparison to that of other employees and stakeholders.

- **Race, gender and Disability**

In many organizations till recently the employees were differentiated on the basis of their race, gender, origin and their disability. Not anymore ever since the evolution of laws and a regulatory framework that has standardized employee behaviours towards each other. In good organisations the only differentiating factor is performance! In addition the power of filing litigation has made put organisations on the back foot. Managers are trained for aligning behaviour and avoiding discriminatory practices.

- **Employment Issues**

Human resource practitioners face bigger dilemmas in employee hiring. One dilemma stems from the pressure of hiring someone who has been recommended by a friend, someone from your family or a top executive.
Yet another dilemma arises when you have already hired someone and he/she is later found to have presented fake documents. Two cases may arise and both are critical. In the first case the person has been trained and the position is critical. In the second case the person has been highly appreciated for his work during his short stint or he/she has a unique blend of skills with the right kind of attitude. Both the situations are sufficiently dilemmatic to leave even a seasoned HR campaigner in a fix.

- **Privacy Issues**

Any person working with any organization is an individual and has a personal side to his existence which he demands should be respected and not intruded. The employee wants the organisation to protect his/her personal life. This personal life may encompass things like his religious, political and social beliefs etc. However certain situations may arise that mandate snooping behaviours on the part of the employer. For example, mail scanning is one of the activities used to track the activities of an employee who is believed to be engaged in activities that are not in the larger benefit of the organisation.
Similarly there are ethical issues in HR that pertain to health and safety, restructuring and layoffs and employee responsibilities. There is still a debate going on whether such activities are ethically permitted or not. Layoffs, for example, are no more considered as unethical as they were thought of in the past.

Ethics of Finance and Accounting professionals:

Ethics are important to any business, creating trust and customer confidence. When businesspeople make unethical decisions, benefiting themselves only, it can lead to the kind of scandal and outrage that destroy careers and even companies. Nobody wants to deal with shady, unethical individuals, giving preference to those they can trust to behave in an ethical way.

Trust

Ethical behavior creates a comfort zone where people know that they will be treated fairly. Ethics means transparency in accounting and financial matters, building trust within a community and among investors and customers. Once trust is lost, it is very hard to gain it back.

Confidentiality

A key ethical concept dealing with accounting and financial matters is to keep these matters confidential. An ethical person will not disclose private financial matters to people who should not have the information. A lot of damage can be done by an employee or consultant spilling the beans about a firm's or an individual's financial situation or decisions.

Collaboration

An ethical environment fosters collaboration, the sharing of ideas. Collaboration requires a sense of honesty and ethics. If you know that your idea will be stolen by a colleague or that it will be misused, you will not collaborate. Each person brings a set of knowledge and skills to a finance committee or group, and if people refuse to collaborate and share information, good decisions are harder to make.

Code of Ethics

Emphasizing the importance of ethics in accounting and financial matters, the American Institute of CPAs requires members to follow its code of professional conduct. Other organizations also have a code of conduct, such as the California Society of CPAs, the New York State Society of CPAs and the Institute of Management Accountants.

Unit- III

Cyber Crimes

Introduction to Cyber Crime:

Cybercrime is defined as a crime in which a computer is the object of the crime (hacking, phishing, spamming) or is used as a tool to commit an offense (child pornography, hate crimes). Cybercriminals may use computer technology to access personal information, business trade secrets or use the internet for exploitive or malicious purposes. Criminals can also use computers for communication and document or data storage. Criminals who perform these illegal activities are often referred to as hackers.

Cybercrime may also be referred to as computer crime.

Cyber Terrorism:

Cyber terrorism is the use of the Internet to conduct violent acts that result in, or threaten, loss of life or significant bodily harm, in order to achieve political gains through intimidation. It is also sometimes considered an act of Internet terrorism where terrorist activities, including acts of deliberate, large-scale disruption of computer networks, especially of personal computers attached to the Internet by means of tools such as computer viruses, computer worms, phishing, and other malicious software and hardware methods and programming scripts.

Social Issues in Cyberspace:

The internet is perhaps the most useful technological advance today. The quick growth of the internet presents many benefits and drawbacks with respect to Society.

Positive Issues: 1) More people around the world are now turning on computers.

2) The disappearance of cultural barriers.

3) The internet offers a vast amount of information and services.

4) Online business can be done.

5) No time restrictions.

6) Many services are free on the internet.

7) Facilities facilitates communication around the world.

8) Online teaching and learning process.

9) Offers new services every day.

Negative issues:

The internet erases the identity of the person during interaction.

Political Issues in Cyberspace:

With the growth of the internet, more activities are being conducted online. Politics is no exception to these phenomena. Political parties are increasingly using the internet to spread their messages by establishing WebPages.

With such a new medium, there are however many unanswered questions.

1) Why use the internet to spread political messages?
2) What internet strategies will be the most effective?
3) What are the possible pitfalls?
4) What will be the short & long term impact on this technology be on politics?

While some one more skeptical, others believe that the internet may help to refresh or revolutionalise politics.

Through enhanced communication, citizens may become more involved or knowledgeable and perform their civic responsibilities well. The internet may also change the way in which political groups conduct election campaigns.

The internet may also enable small groups with limited resources to participate in the political process. Indeed, the internet may have the potential to change many aspects of politics in ways that we cannot predict.

Ethical Issues in Cyberspace:

It has a central role in Industry, Commerce, Government, Medicine, Education etc. but like any other technologies, it also has problematic implications on our society.

It poses and creates some problems related to ethics.

Personal privacy: It enables exchange of information on a large scale from anybody. In this situation there is increased potential for disclosing information violating privacy of individuals.

Intellectual Property issues in Cyberspace:

With the unprecedented advent of Computers and the Internet and growing popularity of E-commerce, the Intellectual property rights have gained tremendous significance. However, there is a downside to this trend of increased dependence upon Internet and Information and communication Technologies (ICT) namely the difficulty posed in the detection & protection of Intellectual property infringements in the virtual space. The quandary is how does one protect one's Intellectual property rights and prevent its unauthorized use in the online medium. The intellectual property infringements to a greater extent occur in the online medium rather than offline, due to the ease with which data can be accessed, copied and transferred and the anonymity associated with the cyberspace.

Intellectual property infringements in cyberspace comprise of any unauthorised or unlicensed use of trademarks, trade names, service marks, images, music or sound or literary matter.

The Patent law provides powerful protection to the inventions & protects processes and invented devices and includes unique form of computer soft wares which lead to technical effect. Under the Patent Act, 1970 penalizes the unauthorized use of patents, and provides for imprisonment for a term which may extend to 2 years or with fine or both for contravention of secrecy provisions under section 118. Section 120, penalizes unauthorised claim of patent rights, and penalizes with a fine of Rupees 1 lakh.

There are many theories advocating the protection of Intellectual property rights, but the common thread in all of the theories is that, the effort and the initiative of the author or creator needs to be protected and rewarded and to promote creativity. The freedom provided by the internet is often abused; this is where the role of law and regulation steps in.

1) False information.
2) Possible addiction to the internet.
3) Illegal issues involving the internet.
4) The loss of conventional forms of interaction with others.

Ethical Dimensions of Cyber crimes:

One of the ethical issues that come into play with the cyber crime is ethical hacking. Ethical hackers are those who try to compromise computer systems for the sake of informing the content owner, so they can fix the problem.

Some security professionals do this for a living. So there are no ethical issues, since the target company is aware of and is playing for this service. On the other hand, some security enthusiasts are freelancing ethical hackers. These people penetrate Software and websites and publish the problem and sometimes solutions to the problems.

Sometimes these ethical hackers send this information privately to the creator and sometimes they publish the hack publically. Software companies and website owners are often upset about people penetrating their systems, no matter what their intentions?

It is okay to hack a website for the purpose of helping the owner. Sometimes motivations of hackers plays into how hacking is viewed in the ethical perspective?

Mind set and Psychology of Cyber Criminals:

Cyber criminals display some of the following characteristics.

1) Some measure of technical knowledge.
2) Disregard for the Law.
3) Need for thrill factor.
4) Enjoyment in outsmarting others.

The following are the motives for cyber crimes.

1) Money: This includes anyone who makes a financial profit from the crime, whether it is a bank employee who uses his computer access to divert funds from someone else's account to his own or an outside who hack into a company database to steal information and sell it to the competitor.
2) Emotion: The most destructive cyber criminals often act out of emotion. Whether anger or revenge.
3) Policies or Religion: Closely related to emotions category because people get very emotion about their political and religious beliefs and commit crimes in the name of those beliefs.
4) Just for fun: This motivation applies to people not for any benefit but simply because they can.

Sociology of Cyber Crimes:

Computer crime comes in different forms and can cause serious amount of damage. Computer crime has been around for a long time. With the continual advancements in technology, it has been made easier for criminals to hide the information of their crimes. These are handled differently than they have in the past because of this fact.

Computer criminals of today are commonly found to be in their teenage years. But hackers of 1960's and 1970's were found to be university graduate students. The reason for such age difference between the times is that fifty to sixty years ago, you could only find computers on college campuses where as today, it is uncommon to find a household without computer.

Technology today is also very different than it used to be. There are now passwords and PIN no. in order to protect the users from having any information stolen. However it also protects the hackers from being easily identified.

Hackers are able to take this advantage and continue to hack into systems of countries' and companies' etc…

Information warfare:

Is a concept involving the battle space use and management of information and communication technology (ICT) in pursuit of a competitive advantage over an opponent. Information warfare may involve collection of tactical information, assurance(s) that one's own information is valid, spreading of propaganda or disinformation to demoralize or manipulate the enemy and the public, undermining the quality of opposing force information and denial of information-collection opportunities to opposing forces. Information warfare is closely linked to psychological warfare.

Information warfare can take many forms:

- Television, internet and radio transmission(s) can be jammed.
- Television, internet and radio transmission(s) can be hijacked for a disinformation campaign.
- Logistics networks can be disabled.
- Enemy communications networks can be disabled or spoofed, especially online social community in modern days.
- Stock exchange transactions can be sabotaged, either with electronic intervention, by leaking sensitive information or by placing disinformation.
- The use of drones and other surveillance robots or webcams.
- Communication management

The U.S. Air Force often attack strategic enemy communications targets, and disabling such networks electronically. This allows them to be quickly re-enabled communications network after the enemy territory is occupied.

The first application of these techniques was used against Iraqi communications networks in the Gulf War.

Unit – IV
Corporate governance-I

An independent board, strong controls, transparency and shareholder rights generally increase market value. But precise impacts of 'good governance' can be hard to pin down. Exact linkages to share price are not often obvious, governance is more important in some periods than in others, and it affects some industries more than others.

Recommendations to meet future Governance challenges:

There have been significant, positive changes in boardroom practices over the past 25 years. The following are the recommendations FOR Directors, CEO's and Shareholders on how to meet future Governance Challenges.

1) **Items for top of every Board's Agenda:** a) the rule of boards of directors is in the spot light. b) Today some experts are calling for tougher regulations on board and a larger role for shareholders in key strategic decision making. C) Also required drastic rethink of how the board can add long term value to the Company.
2) **Transparency, a rising trend in listed Companies:** a) Good corporate governance cannot guarantee that good decisions will always be made. b) What good governance does do is ensure there is accountability and decisions are taken in an appropriate manner. C) The recent experience of publically traded companies has shown that good governance requires both transparency and fluid communication between the major interest groups.

Importance of Corporate Governance:

1. **Changing Ownership Structure**: In recent years, the ownership structure of companies has changed a lot. Public financial institutions, mutual funds, etc. are the single largest shareholder in most of the large companies. So, they have effective control on the management of the companies. They force the management to use corporate governance. That is, they put pressure on the management to become more efficient, transparent, accountable, etc. They also ask the management to make consumer-friendly policies, to protect all social groups and to protect the environment. So, the changing ownership structure has resulted in corporate governance.
2. **Importance of Social Responsibility**: Today, social responsibility is given a lot of importance. The Board of Directors have to protect the rights of the customers, employees, shareholders, suppliers, local communities, etc. This is possible only if they use corporate governance.
3. **Growing Number of Scams**: In recent years, many scams, frauds and corrupt practices have taken place. Misuse and misappropriation of public money are happening everyday in India and worldwide. It is happening in the stock market, banks, financial institutions, companies and government offices. In order to avoid these scams and financial irregularities, many companies have started corporate governance.

4. **Indifference on the part of Shareholders**: In general, shareholders are inactive in the management of their companies. They only attend the Annual general meeting. Postal ballot is still absent in India. Proxies are not allowed to speak in the meetings. Shareholders associations are not strong. Therefore, directors misuse their power for their own benefits. So, there is a need for corporate governance to protect all the stakeholders of the company.
5. **Globalization**: Today most big companies are selling their goods in the global market. So, they have to attract foreign investor and foreign customers. They also have to follow foreign rules and regulations. All this requires corporate governance. Without Corporate governance, it is impossible to enter, survive and succeed the global market.
6. **Takeovers and Mergers**: Today, there are many takeovers and mergers in the business world. Corporate governance is required to protect the interest of all the parties during takeovers and mergers.
7. **SEBI**: SEBI has made corporate governance compulsory for certain companies. This is done to protect the interest of the investors and other stakeholders.

Corporate Governance in India:

What is corporate governance? It is a process set up for the firms based on certain systems and principles by which a company is governed. The guidelines provided ensure that the company is directed and controlled in a way so as to achieve the goals and objectives to add value to the company and also benefit the stakeholders in the long term.

The high profile corporate governance failure scams like the stock market scam, the UTI scam, Ketan Parikh scam, Satyam scam, which was severely criticized by the shareholders, called for a need to make corporate governance in India transparent as it greatly affects the development of the country.

To understand the scope of the legal framework and study the amendments, proxy advisory firms analyze the role of directors and how they are impacted by changes in the amendments. Proxy firms offer analytical data for the shareholders and corporate advisory services to companies.

A company that has good corporate governance has a much higher level of confidence amongst the shareholders associated with that company. Active and independent directors contribute towards a positive outlook of the company in the financial market, positively influencing share prices. Corporate Governance is one of the important criteria for foreign institutional investors to decide on which company to invest in.

The corporate practices in India emphasize the functions of audit and finances that have legal, moral and ethical implications for the business and its impact on the shareholders. The Indian Companies Act of 2013 introduced innovative measures to appropriately balance legislative and regulatory reforms for the growth of the enterprise and to increase foreign investment, keeping in mind international practices. The rules and regulations are measures that increase the involvement of the shareholders in decision making and introduce transparency in corporate governance, which ultimately safeguards the interest of the society and shareholders.

Corporate governance safeguards not only the management but the interests of the stakeholders as well and fosters the economic progress of India in the roaring economies of the world.

A Few New Provisions for Directors and Shareholders

- One or more women directors are recommended for certain classes of companies
- Every company in India must have a resident directory
- The maximum permissible directors cannot exceed 15 in a public limited company. If more directors have to be appointed, it can be done only with approval of the shareholders after passing a Special Resolution
- The Independent Directors are a newly introduced concept under the Act. A code of conduct is prescribed and so are other functions and duties
- The Independent directors must attend at least one meeting a year
- Every company must appoint an individual or firm as an auditor. The responsibility of the Audit committee has increased
- Filing and disclosures with the Registrar of Companies has increased
- Top management recognizes the rights of the shareholders and ensures strong co-operation between the company and the stakeholders
- Every company has to make accurate disclosure of financial situations, performance, material matter, ownership and governance

Additional Provisions

- Related Party Transactions – A Related Party Transaction (RPT) is the transfer of resources or facilities between a company and another specific party. The company devises policies which must be disclosed on the website and in the annual report. All these transactions must be approved by the shareholders by passing a Special Resolution as the Companies Act of 2013. Promoters of the company cannot vote on a resolution for a related party transaction.
- Changes in Clause 35B – The e-voting facility has to be provided to the shareholder for any resolution is a legal binding for the company.
- Corporate Social Responsibility – The Company has the responsibility to promote social development in order to return something that is beneficial for the society.
- Whistle Blower Policy – This is a mandatory provision by SEBI which is a vigil mechanism to report the wrong or unethical conduct of any director of the company.

Corporate Body or Board Structure:

Elected by the shareholders, the board of directors is made up of two types of representatives. The first type involves inside directors chosen from within the company. This can be a CEO, CFO, manager or any other person who works for the company daily. The other type of representative encompasses outside directors, which are chosen externally and are considered to be independent from the company. The role of the board is to monitor a corporation's management team, acting as an advocate for stockholders. In essence, the board of directors tries to make sure that shareholders' interests are well served. (Watch the video, The Board of Directors, to find out more.)

Board members can be divided into three categories:

- *Chairman* – Technically the leader of the corporation, the board chairman is responsible for running the board smoothly and effectively. His or her duties typically include maintaining strong communication with the chief executive officer and high-level executives, formulating the company's business strategy, representing management and the board to the general public and shareholders, and maintaining corporate integrity. The chairman is elected from the board of directors.

- *Inside Directors* – These directors are responsible for approving high-level budgets prepared by upper management, implementing and monitoring business strategy, and approving core corporate initiatives and projects. Inside directors are either shareholders or high-level managers from within the company. Inside directors help provide internal perspectives for other board members. These individuals are also referred to as executive directors if they are part of company's management team.

- *Outside Directors* – While having the same responsibilities as the inside directors in determining strategic direction and corporate policy, outside directors are different in that they are not directly part of the management team. The purpose of having outside directors is to provide unbiased and impartial perspectives on issues brought to the board.

Management Team

As the other tier of the company, the management team is directly responsible for the company's day-to-day operations and profitability.

- Chief Executive Officer (CEO) – As the top manager, the CEO is typically responsible for the corporation's entire operations and reports directly to the chairman and the board of directors. It is the CEO's responsibility to implement board decisions and initiatives, as well as to maintain the smooth operation of the firm with senior management's assistance. Often, the CEO will also be designated as the company's president and therefore be one of the inside directors on the board (if not the chairman). However, it is highly suggested that a company's CEO should not also be the company's chairman to ensure the chairman's independence and clear lines of authority. (See also: 3 Reasons to Separate CEO and Chairman Positions.)

- Chief Operations Officer (COO) – Responsible for the corporation's operations, the COO looks after issues related to marketing, sales, production and personnel. Often more hands-on than the CEO, the COO looks after day-to-day activities while providing feedback to the CEO. The COO is often referred to as a senior vice president.

- Chief Financial Officer (CFO) – Also reporting directly to the CEO, the CFO is responsible for analyzing and reviewing financial data, reporting financial performance, preparing budgets, and monitoring expenditures and costs. The CFO is required to present this information to the board of directors at regular intervals and provide it to shareholders and regulatory bodies such as the Securities and Exchange Commission (SEC). Also usually referred to as a senior vice president, the CFO routinely checks the corporation's financial health and integrity. (For additional reading, see What Does a Chief Financial Officer (CFO) Do?)

The Bottom Line

Together, management and the board of directors have the ultimate goal of maximizing shareholder value. In theory, management looks after the day-to-day operations, and the board ensures that shareholders are adequately represented. But the reality is that many boards include members of the management team.

When you are researching a company, it's always a good idea to see if there is a good balance between internal and external board members. Other good signs are the separation of CEO and chairman roles and a variety of professional expertise on the board from accountants, lawyers and executives. It's not uncommon to see boards that consist of the current CEO (who is chairman), the CFO and the COO, along with the retired CEO, family members, etc. This does not necessarily signal that a company is a bad investment, but as a shareholder, you should question whether such a corporate structure is in your best interests.

Corporate Board Process and Evaluation:

Good governance requires boards to have effective processes and to evaluate their performance and appraise directors at least once a year. Companies, act 2013 has introduced significant changes in the board processes.

1) **Number of Directors**: Specifically provides that a company may have a maximum of 15 Directors. It permits every company to appoint directors above the prescribed limit of 15 by authorizing such increase through a special resolution.
2) **Resident Director**: It introduces the requirement of appointing a resident director i.e; a person who has stayed in India for a total period of not less than 182 days in the previous calendar year.
3) **Independent Director**: At least one third of the Board to be comprised of independent directors. He should be a person of integrity, relevant expertise and experience.
4) **Woman Director**: Listed companies shall be required to appoint at least one Woman director on its board. It shall be required to comply with this provision within 6 months from the date of incorporation.

Conclusion: Companies, Act 2013 has introduced significant changes regarding Board processes. These changes would institutionalize good corporate governance and not make governance over-dependent on the presence of certain individuals on the board.

Corporate Board Committees:

The following are some of the important committees of the Board-

- Audit Committee
- Shareholders Grievance Committee
- Remuneration Committee
- Risk Committee
- Nomination Committee
- Corporate Governance Committee
- Corporate Compliance Committee
- Ethics Committee

1) Audit committee

- Oversight of the company's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible.
- Recommending the appointment and removal of external auditor, fixation of audit fee and also approval for payment for any other services.
- Reviewing with management the annual financial statements before submission to the board, focusing primarily on;
- Any changes in accounting policies and practices.
- Major accounting entries based on exercise of judgment by management.
- Qualifications in draft audit report.
- Significant adjustments arising out of audit.
- The going concern assumption.
- Compliance with accounting standards.
- Compliance with stock exchange and legal requirements concerning financial statements
- Any related party transactions
- Reviewing with the management, external and internal auditors, the adequacy of internal control systems.
- Reviewing the adequacy of internal audit function, including the structure of the internal audit department, staffing and seniority of the official heading the department, reporting structure coverage and frequency of internal audit.
- Discussion with internal auditors any significant findings and follow up there on.
- Reviewing the findings of any internal investigations by the internal auditors into matters where there is suspected fraud or irregularity or a failure of internal control systems of a material nature and reporting the matter to the board.
- Discussion with external auditors before the audit commences about nature and scope of audit as well as post-audit discussion to ascertain any area of concern.
- Reviewing the company's financial and risk management policies.
- To look into the reasons for substantial defaults in the payment to the depositors, debenture holders, shareholders (in case of nonpayment of declared dividends) and creditors.

Review of information by Audit Committee*:*

The Audit Committee shall mandatorily review the following information:

- Financial statements and draft audit report, including quarterly / half-yearly financial information;
- Management discussion and analysis of financial condition and results of operations;
- Reports relating to compliance with laws and to risk management;
- Management letters / letters of internal control weaknesses issued by statutory / internal auditors; and
- Records of related party transactions
- The appointment, removal and terms of remuneration of the Chief internal auditor shall be subject to review by the Audit Committee

Shareholders grievance committee

In terms of Clause 49-IV(G)(iii) of the Listing Agreement, a board committee under the chairmanship of a non-executive director shall be formed to specifically look into the redressal of shareholder and investors complaints like transfer of shares, non receipt of balance sheet, non receipt of declared dividends etc. This committee shall be designated as “Shareholders/ Investors Grievance Committee”.

The terms of reference of our Shareholders’/ Investors Grievance Committee are given below: “To allot the Equity Shares of the Company, and to supervise and ensure:

- Efficient transfer of shares; including review of cases for refusal of transfer transmission of shares and debentures;
- Redressal of shareholder and investor complaints like transfer of shares, non-receipt of balance sheet, non-receipt of declared dividends etc;
- Issue of duplicate / split / consolidated share certificates;
- Allotment and listing of shares;
- Review of cases for refusal of transfer / transmission of shares and debentures;
- Reference to statutory and regulatory authorities regarding investor grievances; and to otherwise ensure proper and timely attendance and redressal of investor queries and grievances.

The Shareholders/ Investor Grievances Committee looks into redressal of shareholder and investor complaints, issue of Duplicate/ Consolidated Share Certificates, Allotment and Listing of shares and review of cases for refusal of Transfer/ Transmission of shares and debentures and reference to Statutory and Regulatory Authorities. The scope and functions of the Shareholders/Investor Grievances Committee are as per Clause 49 of the Listing Agreement.

Remuneration committee

The role of a Remuneration Committee is:

- To decide and approve the terms and conditions for appointment of executive directors and/ or whole time Directors and Remuneration payable to other Directors and matters related thereto.
- To recommend to the Board, the remuneration packages of the Company's Managing/Joint Managing/ Deputy Managing/Whole time / Executive Directors, including all elements of remuneration package (i.e. salary, benefits, bonuses, perquisites, commission, incentives, stock options, pension, retirement benefits, details of fixed component and performance linked incentives along with the performance criteria, service contracts, notice period, severance fees etc.);
- To be authorized at its duly constituted meeting to determine on behalf of the Board of Directors and on behalf of the shareholders with agreed terms of reference, the Company's policy on specific remuneration packages for Company's Managing/Joint Managing/ Deputy Managing/ Whole-time/ Executive Directors, including pension rights and any compensation payment;
- To implement, supervise and administer any share or stock option scheme of the Company.
- to review the overall compensation policy, service agreements and other employment conditions to Executive Directors and senior executives just below the Board of Directors and make appropriate recommendations to the Board of Directors.
- to review the overall compensation policy for Non-Executive Directors and Independent Directors and make appropriate recommendations to the Board of Directors;
- to make recommendations to the Board of Directors on the increments in the remuneration of the Directors.
- to assist the Board in developing and evaluating potential candidates for senior executive positions and to oversee the development of executive succession plans;
- to review and approve on annual basis the corporate goals and objectives with respect to compensation for the senior executives and make appropriate recommendations to the Board of Directors.
- to review and make appropriate recommendations to the Board of Directors on an annual basis the evaluation process and compensation structure for our Company's officers just below the level of the Board of Directors.
- to provide oversight of the management's decisions concerning the performance and compensation of other officers of our Company.

Risk committee

The committee comprises a minimum of three independent non-executive directors, as well as the chief executive and financial director. The chair of the board may not serve as chair of this committee. Members of the committee are individuals with risk management skills and experience. The committee's responsibilities include:

- Review and approve for recommendation to the board a risk management policy and plan developed by management. The risk policy and plan are reviewed annually.
- Monitor implementation of the risk policy and plan, ensuring an appropriate enterprise-wide risk management system is in place with adequate and effective processes that include strategy, ethics, operations, reporting, compliance, IT and sustainability.
- Make recommendations to the board on risk indicators, levels of risk tolerance and appetite.
- Monitor that risks are reviewed by management, and that management's responses to identified risks are within board-approved levels of risk tolerance.
- Ensure risk management assessments are performed regularly by management.
- Issue a formal opinion to the board on the effectiveness of the system and process of risk management.
- Review reporting on risk management that is to be included in the integrated annual report.
- Review annually the charters of the group's significant subsidiary companies' risk committees, and their annual assessment of compliance with these charters to establish if the Naspers committee can rely on the work of these risk committees.
- Perform an annual self-assessment of the effectiveness of the committee, reporting these indings to the board.

Nomination committee

The primary role of the Nomination Committee of the board is to assist the board by identifying prospective directors and make recommendations on appointments to the board and the senior most level of executive management below the board. The committee also clears succession plans for these levels. The Nomination Committee is responsible for making recommendations on board appointments and on maintaining a balance of skills and experience on the board and its committees.

Succession planning for the board is a matter which is devolved primarily to the Nomination Committee, although the committee's deliberations are reported to and debated by the full board. The board itself also regularly reviews more general succession planning for the senior management of the group.

Corporate governance committee

Together with the audit and compensation committees, the nominating/corporate governance committee rounds out the three standing committees of a public company's board of directors. It plays a critical role in overseeing matters of corporate governance for the board, including formulating and recommending governance principles and policies. As its name implies, this committee is charged with enhancing the quality of nominees to the board and ensuring the integrity of the nominating process. Given the recent focus on board composition and diversity, director elections, and proxy access, the role of nominating/corporate governance committee is in the spotlight.

Corporate compliance committee

The primary Objective of the Compliance Committee is to review, oversee and monitor:

- The company's compliance with applicable legal and regulatory requirements.
- The company's policies, programs, and procedures to ensure compliance with relevant laws, the company's code of conduct, and other relevant standards
- The company's efforts to implement legal obligations arising from settlement agreements and other similar documents
- Perform any other duties as are directed by the board of directors of the company.

The committee's specific responsibilities in this area include:

- Overseeing the corporate compliance program, including policies and practices designed to ensure the organization's compliance with all applicable legal, regulatory, and ethical requirements.
- Recommending approval of the annual corporate compliance plan and reviewing processes and procedures for reporting concerns by employees, physicians, vendors, and others.
- Recommending organizational integrity guidelines and a Code of Conduct.
- Reviewing and reassessing the guidelines and Code of Conduct at least annually

Ethics committee

The possible roles for an Ethics Committee are:

- Contribute to the continuing definition of the organization's ethics and compliance standards and procedures.
- Assume responsibility for overall compliance with those standards and procedures.
- Oversee the use of due care in delegating discretionary responsibility.
- Communicate the organization's ethics and compliance standards and procedures, ensuring the effectiveness of that communication.
- Monitor and audit compliance.
- Oversee enforcement, including the assurance that discipline is uniformly applied.
- Take the steps necessary to ensure that the organization learns from its experiences.

But an ethics committee can do much more. The committee can be charged to meet all seven requirements for an effective ethics management process. For each of the above arenas of responsibility there may be several specific roles.

Independent Director:

Independent directors as the name suggests are directors on Board of a company who are independent individuals, not having any other relationship or transaction with the company.

Following class of companies are required to appoint at least 1/3 of total number of directors on their Board of Directors as independent directors:

- Listed Companies,
- Public Companies having paid up share capital of one hundred crore rupees or more; or
- Public Companies having turnover of three hundred crore rupees or more;
- Public Companies which have, in aggregate, outstanding loans or borrowings or debentures or deposits, exceeding two hundred crore rupees.

The compensation offered to independent directors in the form of “sitting fee” has been increased from rupees 20,000 to max of rupees 1,00,000 per meeting. Some researchers have complained that firms have appointed “Independent directors who are overly sympathetic to management, while still technically independent according to regulatory definitions.

One complaint against the regulations is that CEO’s may find loopholes to influence directors. The real question is since independent directors only play a supervisory role, should they be penalized in the event of a discrepancy in their responsibilities. They are expected to be independent from the management and act as the trustees of the shareholders. This implies that they are obligated to be fully aware of and question the conduct of the organization on relevant issues. The problem is that independent director cannot commitment to ethical practices.

Indian model of Corporate Governance

Post liberalization, India has adopted the market model i.e; liberalized foreign investment in Indian Companies. This has led to increasing public investment in the equity capital of companies.

Now the focus is equally on the monitory shareholders interest, enterprise performance and corporate social responsibility. Ownership structure is affecting the implementation of the code of ethics. Concentrated ownership has certain positive and negative influences on corporate governance.

Tunneling of funds is one of the negative influences. In practice independent directors are appointed by Management. And therefore it is likely that they will be loyal to the business family.

India is weak in the implementation of rules and regulations. Endeavour on the part of the government to improve the same in minimal. However, there is a need to speed up the process of implementation by strengthening existing institutions and creating new ones if required.

Unit-V

Corporate governance-II

Information Communication and Disclosure:

1. Lay solid foundations for management and oversight
2. Structure the Board to add value
3. Promote ethical and responsible decision making
4. Safeguard integrity in financial reporting
5. Make timely and balanced disclosure
6. Respect the rights of shareholders
7. Recognize and manage risk
8. Remunerate fairly and responsibly
9. Diversity Policy

Well run organizations often fail to recognize the importance of corporate communication.

IRANI Committee report

The report contains recommendations on various aspects relating to the functioning of the companies, the scope of this article is limited to some of the recommendations that are directly affecting the interest of investors. The Committee has recommended that effective measures be initiated for protecting the interests of stakeholders and investors, including small investors, through legal basis for sound corporate governance practices. An underlying theme of the recommendations is that an increasing stress is sought to be laid on shareholders' democracy. While in theory, shareholders' democracy is indeed a great concept and needs to be encouraged.

Unfortunately, in actual practice, shareholders' democracy means total control by the majority to the virtual exclusion of the minority. Hence, there is a need to provide adequate checks and balances to ensure that unscrupulous promoters do not misuse the system.

The Committee has suggested that a proper framework for responsible self-regulation with clear accountability for such decisions should be in place, thereby obviating the need for a regime based on Government approvals. If such a system were effectively implemented, it would be a great boon for the shareholders as also the companies. However, I have serious doubts on this score.

The Committee has recommended there is no reason for providing a relaxed framework in respect of corporate governance of financial institutions. According to the Committee, such institutions should be put through similar requirements of financial and management prudence as other FIs. Therefore, the Committee does not see any reason why the special regime for Public Financial Institutions provided under the Companies Act, 1956, should continue.

Vanishing companies are a major bug bear for the Ministry of Company Affairs. With a view to check this menace of vanishing companies, the Committee has suggested that preventive action should begin at the registration stage itself and should be sustained through a regime that requires regular and mandatory filing of statutory documents. With introduction of electronic filing, this process would become convenient to companies as well as the stakeholders.

The Committee has strongly recommended that companies indulging in non-filing of documents or incorrect disclosures should be dealt with strictly. In addition, there should be a system of random scrutiny of filings of corporates, which should be carried out by the registration authorities. The Committee has recommended levy of heavy penalties for the companies found inadequate in their disclosures and filings.

Another significant suggestion is that an inter agency coordination system should be put in place so as to track down the persons behind such companies and bring them to book. More importantly, the law should be amended to make them disgorge their ill-gotten gains by lifting the corporate veil. In other words, those guilty of corporate scams and frauds should not be allowed to hide behind the cover of the companies and the law should penetrate the shield and punish the culprits.

Similarly, there have been instances where some promoters have cheated unsuspecting investors by changing the name of their company. So the Committee wants that the authorities should carefully review the whole system for change of name. The Committee has desired that, while providing the freedom to a company to change its name care should be taken to avoid frequent change of name and prevent cheating investors.

With a view to protect the interest of various stakeholders in a company, the Committee has recommended the constitution of a "Stakeholders' Relationship Committee". This provision should be applicable to Companies having a combined shareholder/deposit holder/ debenture holder base of a thousand or more. The job of the Committee will include monitoring of redressal of stakeholders' grievances.

Interestingly, though the directors are the persons responsible under the law to run the company, the Companies Act itself is not very eloquent about their duties. The Committee wants that the law should include certain duties for directors, with civil consequences to follow for non-performance. At the same time, the law should provide only an inclusive and not exhaustive list of such duties of directors.

According to the Act, every company is required to hold its AGM in the place where its registered office is located. However, the Committee wants that an AGM may also be held at a place other than the place of its Registered Office, provided at least 10% members in number reside at such place. This in any case has to be in India. If implemented, then all those companies who have their registered office in a village would feel the pressure from the shareholders to hold the AGM at a place convenient to a large number of shareholders.

It is an open secret that the demand for a poll made by small shareholders is usually done to harass the management. So the Committee has suggested that the demand for poll can be made by shareholder(s) holding 1/10th of the total voting power or shares of paid up value of Rs.5 lakhs, whichever is less.

OECD Principles of Corporate Governance:

The Organization of Economic Cooperation and Development

The six OECD Principles are:

- Ensuring the basis of an effective corporate governance framework
- The rights of shareholders and key ownership functions
- The equitable treatment of shareholders
- The role of stakeholders in corporate governance
- Disclosure and transparency
- The responsibilities of the board

Ensure the basis of an effective corporate governance framework

The corporate governance framework should promote transparent and efficient markets, be consistent with the rule of law and clearly articulate the division of responsibilities among different supervisory, regulatory and enforcement authorities.

The rights of shareholders and key ownership functions

The corporate governance framework should protect and facilitate the exercise of shareholders' rights.

Basic shareholder rights should include the right to:

1. Secure methods of ownership registration;
2. Convey or transfer shares;
3. Obtain relevant and material information on the corporation on a timely and regular basis;
4. Participate and vote in general shareholder meetings;
5. Elect and remove members of the board; and
6. Share in the profits of the corporation.

The equitable treatment of shareholders

The corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights. The principles also state that:

- All shareholders of the same series of a class should be treated equally
- Insider trading and abusive self-dealing should be prohibited
- Members of the board and key executives should be required to disclose to the board whether they, directly, indirectly or on behalf of third parties, have a material interest in any transaction or matter directly affecting the corporation.

The role of stakeholders in corporate governance

The corporate governance framework should recognize the rights of stakeholders established by law or through mutual agreements and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises.

Disclosure and transparency

The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company.

The responsibilities of the board

The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders.

Risk in Corporate Governance:

Corporate Governance is the combination of processes that lead organization towards achieving goals. Risk Management is predicting and managing risks that could hinder the organization to achieve its goals.

An organization implements different strategies in order to meet these goals. Each strategies has related to risks that must be managed in order to meet its goals. Following strong corporate governance principles that focus on risk management allows organizations to reach their goals.

Below are descriptions of the roles of the board, management and shareholders related to corporate governance with specific emphasis on risk management.

1) The board's role: Should be to stress on corporation towards corporate governance policies. A) Eliminate policies that promote excessive risk taking for the sake of short term gains. B) Establish compensation plans taking into consideration incentive risks.
2) The management's role: To set the tone at the top specifically regards to risk management. A) Establish and monitor processes and procedures for risk management. B) Ensure risk processes are operated by competent personnel.
3) The shareholder's role: To vote from a long term perspective.

Internal control:

Internal control in corporate governance companies' act 2013 provides more power in the hands of shareholders and government. It is an attempt to focus on tightening of the internal controls through following measures.

1) Self regulation.
2) New mechanism and organizations.
3) Transparency and disclosures.

Self regulation: Every listed public company shall have at least 1/3 of the total number of independent directors. It should be a person of integrity with relevant expertise and experience. The companies' act 2013 provides for class action law suits which can allow large number of people with a common interest can sue as a group. Listed companies may have one director elected by small shareholders.

New mechanism and organizations: Sec 177 (9) - Establish a vigil mechanism

- Every listed company or such class or classes of companies, as may be prescribed, shall establish a vigil mechanism for directors and employees to report genuine concerns.
- The vigil mechanism shall provide for adequate safeguards against victimisation of persons who use such mechanism
- Provided that the details of establishment of such mechanism shall be disclosed on the company website and in the Board's report.
- The central government shall establish an office to be called SFIO (Serious Fraud Investigation Office) to investigate frauds relating to company. The SIFO shall be headed by a director and consists of experts in field of corporate affairs.

Transparency and disclosures: E-Governance has been proposed for various company processes like maintenance and inspection of documents in electronic form. Online services will be able to reduce the need of hard copy and improve the standards of disclosure and transparency. It provides real time information and services to the stakeholders. Shareholders and depositors can now claim damages from auditors for negligence in the audit report.

The normal punishment for auditors is a fine between rupees 25,000 and rupees 50,00,000. Other punishment will be imprisonment up to 1 year or fine between 1,00,000 and 25,00,000.

Banks and Corporate Governance:

Effective corporate governance is critical to the proper functioning of the banking sector and the economy as a whole. While there is no single approach to good corporate governance, the Basel Committee's revised principles provide a framework within which banks and supervisors should operate to achieve robust and transparent risk management and decision-making and, in doing so, promote public confidence and uphold the safety and soundness of the banking system.

The following are the revised principles for the committee.

- Strengthen the guidance on risk governance, including the risk management roles played by business units.

- Expand the guidance on the role of the board of directors in overseeing the implementation of effective risk management systems.
- Emphasis the importance of the board's collective competence as well as the obligation of individual board members to dedicate sufficient time to their mandates and to keep abreast of developments in banking.
- Provide guidance for bank supervisors in evaluating the processes used by banks to select board members and senior management.
- Recognize that compensation systems form a key component of the governance and incentive structure through which the board and senior management of a bank convey acceptable risk-taking behavior and reinforce the bank's operating and risk culture.