

areas, it is necessary to know the social costs and if we are to assess them by the same measures as of financial investment, this must be expressed in dollar terms. He further asserts that, sooner or later, the social balance sheet must become a mandatory part of the normal commercial balance sheet of the company.

Objectives and Benefits of Social Audit

1. The basic objective of social audit is to evaluate the social dimensions of the performance of the company.
2. Another principal objective which follows the objective mentioned above is to take measures to improve the social performance of the company on the basis of the feed back provided by the social audit.
3. Social audit increases the *public visibility* of the organisation.
4. If the social audit reveals a socially commendable performance of the company, it will help boost the public image of the company.

Methods of Social Audit

There is no single universally agreed upon method of social auditing. Some of the important methods of social audit developed by different people or organisations are given below.

- (i) **Social Process Audit:** The aim of the social process audit, also known as *Programme management audit*, is to develop an internal management information system that will allow management to create and administer the social programmes in a better way. This involves the determination of the objectives of the social programmes and a social cost benefit analysis of the programmes with a view to determining whether these objectives have been met.
- (ii) **Financial Statement Format Audit:** Under the financial statement format audit, the social information is presented in the conventional financial statement format, *i.e.*, balance sheet and / or income statement.
- (iii) **Macro-Micro Social Indicator Audit:** The macro-micro social indicator audit attempts to evaluate the micro indicators (*i.e.*, the company's performance) against a set of macro indicators such as national policies.
- (iv) **Constituency Group Audit:** Under this audit, the preference and attitudes of various constituencies (like employees, creditors, suppliers and customers) are identified and measured and the firm's performance is evaluated against the criteria developed for each group.
- (v) **Partial Social Audit:** Partial social audit evaluates any particular aspects of social performance like energy conservation or ecological preservation.
- (vi) **Comprehensive Audit:** Comprehensive audit attempts to evaluate the total performance of the organisation including social performance.
- (vii) **Corporate Rating Approach:** In contradistinction to the audits mentioned above, this is an external evaluation of the company's performance by public groups like consumer organisations, social welfare organisations or media.

Given below is the format of social reporting used by the Cement Corporation of India.

Obstacles to Social Audit

Social audit encounters a number of problems. The important obstacles are :

1. Being a relatively new concept, social audit is yet to gain wide appreciation and acceptance.
2. Being a relatively new concept, a clear and generally well accepted methodology for conducting the social audits is not available.
3. There is no agreement as to the items to be included for social audit.
4. It is very difficult, and in several cases even impossible, to quantify the social costs and benefits of different activities or items.
5. There may be resistance within the company to social audit because of the time, effort, and difficulty involved in the task.
6. There may also be resistance because of the fear of a dismal or unsatisfactory picture that may be presented by the social audit.

As the Committee set up by the Tata Iron and Steel Company Limited (TISCO) to conduct the Social Audit of the TISCO points out, though social audits have been undertaken in a number of countries, principally in the U.S.A. (to which the practice owes its origin), Japan, the U.K. and one or two other Western countries, the subject has not yet attained the status of a science. There is no agreement, much less unanimity, among its most ardent proponents, particularly as to its basic principles or its true objectives. It is only a child of the last decade, during which there has been a growing concern about the environment and the problems of pollution, consumer protection, worker' safety and equal employment opportunities. Melvin Anshen, Professor of Public Policy and Business Responsibility at the Graduate School of Business, Columbia University, and an eminent authority on the subject, remarks that "the social audit has been described as an idea whose time has come but which isn't ready to be taken off the drawing board and put to work".

Social Audit in India

Although the idea of social audit originated in the United States about half a century ago, it is only recently that it received serious attention of corporations even in the advance countries.

The first comprehensive social audit in India was conducted by the TISCO in 1980. It was conducted by the Social Audit Committee appointed by the Board of Directors of the company "to examine and report whether, and the extent to which, the company has fulfilled the objectives contained in Clause 3A of its Articles of Association regarding its social and moral responsibilities to the consumers, employees, shareholders, society and the local community." The report of the Committee was a glowing tribute to the endeavours of the company in the discharge of its social and moral obligations to the various segments of the society.

Some companies like the Cement Corporation of India have been making some social reporting in their annual reports.

The High Powered Expert Committee on Companies and MRTP Acts (Sachar Committee) observes that the acceptance of the concept of social responsibility must be reflected in the information and disclosures that the company makes available for the benefit of its various constituents – shareholders, creditors, workers and the community – and has suggested that a provision may be made in the Companies Act that every company shall give a social report which will indicate and quantify, in as precise and clear terms as possible, the various activities relating to social responsibility which have been carried out by the company in the previous year. The

Committee has further suggested that it is possible that a company may be required to alter its Memorandum with respect to the objects of the company so as to carry out its activities as an obligation to the concept of social responsibility.¹⁴ It should be pointed out here that the TISCO had, in 1970, voluntarily incorporated in its Articles of Association its social and moral responsibilities to the consumers, employees, shareholders, society and the local people.

The concept of social audit has not yet taken off in India.

CEMENT CORPORATION OF INDIA LTD.

SOCIAL ACCOUNTS

I. Social Benefits and Costs to Staff

A. Social Benefits to Staff

1. Medical and hospital facilities
2. Educational facilities
3. Canteen facilities
4. Recreation, entertainment & cultural activities
5. Housing & township facilities
6. Water supply, concessional electricity & transport
7. Training & career development
8. Provident Fund, Gratuity, Bonus and Insurance benefits
9. Holiday, leave encashment and leave travel benefits
10. Other benefits.

Total Benefits to Staff

B. Social Costs to staff

1. Lay off and involuntary termination
2. Extra hours put in by officers voluntarily

Total Cost to Staff

Social Income to Staff (A-B)

II. Social Benefits and Costs to Community

A. Social Benefits to Community

1. Local taxes paid to Panchayat / Municipality
2. Environmental improvements
3. Generation of job potential
4. Generation of business

Total Social Benefits to Community

9

CONSUMER RIGHTS, CONSUMERISM AND BUSINESS

An important socio-political environment confronting the business is the growth of consumerism and the legislative measures to protect the consumers. Consumer movement had its conspicuous beginning and development in the United States. There has been a growth of consumer awareness in most countries leading to growth of consumerism and growing demand for consumer protection.

Though consumerism is not well developed in India, there are several consumer organizations in India like the Consumer Guidance Society of India (CGSI), Mumbai, and the Consumer Education and Research Centre (CERC), Ahmedabad, which are doing commendable work. Some of these organisations are very active in conducting product testing and exposing substandard quality and adulteration. The demand for regulatory measures or effective implementation of available measures for consumer protection have been substantiated by the results of such tests. ISI certification of food colours, demanded by the C.G.S.I., is now mandatory. Consumer organisations also play an important role in redressing consumer grievances.

Since 1993, the Consumer Education and Research Society (CERS), sponsored by the CERC, has been performing a very bold and commendable task of comparative testing of consumer goods at their in-house laboratory, and since 1998 its publication *INSIGHT – The Consumer Magazine* has been carrying our test results far and near. The media have been publishing the test findings. These test results enable the consumers to evaluate and compare product of different companies. The manufacturers can, therefore, no longer be complacent.

Consumer movement is growing, *albeit* slowly, in India. It may gather momentum from the growing consumer awareness and the growing feeling that the consumer is ruthlessly exploited and taken for a ride. Many products fail to satisfy the quality requirements and many sellers do not favourably respond to the genuine grievances of consumers.

Many products tests conducted by some consumer organisations have brought to light alarming facts regarding product quality and safety and, they have, therefore, been very vehemently demanding governmental action ensuring quality standards. Consumers have been increasingly taking resort to redressal measures. In short, the business can no more take the consumer for granted.

This does not, however, mean that consumerism is necessarily a problem for the business. Consumerism is, in fact, regarded as an opportunity by consumer oriented businessmen, as described later in this chapter.

BOX 9.1 : UNSAFE PRODUCTS

Many popular consumer goods are either unsafe or otherwise defective. Consumers generally hold products of well known MNCs in high esteem. Many consumers prefer Indian products because of the high quality perception. The fact, however, is that a number of these products, from automobiles, tyres and electrical appliances to personal care products, toys and food products, have been subjected to recalls in developed countries. Product recalls are not uncommon in the USA.

Every year, 400,000 Americans die in motor accidents on 25,000 miles of Interstate Highway. Traffic Safety Administration (NHTSA) issued a recall of approximately 47 million Firestone tyres that had been linked to 400 reported and 88 deaths.

Responding to NHTSA suggestions, Firestone on 9 August 2000 ordered a recall of about 14.4 million tyres.

Ford Explorer vehicles equipped with Firestone tyres have been marketed globally, and have resulted in accidents and deaths in several countries. Most of the tyres were original equipment on Ford vehicles, primarily the Ford Explorer, although a small number were used as original equipment on other manufacturers' vehicles. The tyres have also been used as replacement tyres in a wide variety of models.

As per directions from the U.S. Consumer Product Safety Commission (CPSC), Philips Consumer Electronics Company of Atlanta recalled 25,500 Philips Magnavox home audio theatre systems for free repair as it was found that the system's speaker voice coil can overheat and lead to a speaker fire, presenting a fire hazard to consumers. Philips has received four reports of speaker fires, with one resulting in scorched parking. No injuries have been reported.

The US Consumer Product Safety Commission (CPSC) found that 220,000 AC adapters used with certain models of IBM notebook computers and other mobile devices can overheat posing a fire hazard. After receiving nine reports of the AC adapters overheating, including one report of fire causing physical damage to IBM, in cooperation with CPSC, IBM recalled these adapters.

It was reported that Kellogg, manufacturers of Kellogg's brand of breakfast cereals in cooperation with the CPSC, was recalling Kellogg's Pull 'N Go Cereals which were offered free inside specially marked packages certain brands of Kellogg's products as it was found that the tops of these can separate from their meals and present a choking hazard for children under three years.

Many toys available in markets globally are hazardous to the health and life of children.

Now the case of some essential products in India, from loose milk and bottled milk consumers have switched to packed milk, thanks to modern technology. But does packed milk guarantee purity, nutrition, high weight and fair price?

The CERS tested 8 brands of packed toned milk, 10 brands of Standardised variety, 10 brands of Whole Milk and 10 brands of milk samples of all brands were tested to ensure safety, purity and quality.

All the 18 brands of milk were found to be safe and good in quality. The samples were tested for the presence of coliforms, which are harmful bacteria. Generally, the presence of coliforms in milk indicates that the milk is not safe for consumption. The presence of coliforms in milk is a sign of contamination and is a health hazard.

Some brands of milk had other contaminants like...

These microbial results raise a grave concern on the safety of the milk we consume, especially when there are no mandatory standards under the PFA Act. Even the voluntary standards of BIS assess contamination only at the factory level, not at the consumers doorstep. So CERS has proposed that standards should be laid down to assess the milk a consumer gets and what leaves the factory.

In the tests of milk that ensures taste and quality too many brands failed. In a number of samples, the quantity was found to be less than the specified.

Tests have also revealed that many of the brands of mineral water sold in India are either contaminated or do not satisfy the specifications. The hapless consumer spends about RS. 100 monthly for drinking water only to be cheated! The case of soft drinks is not different.

Among the prosecuted cases under the PFA, around 70-80 per cent relate to milk, spices and soft drinks.

Source: **INSIGHT - The Consumer Magazine**, January-February 1999, November-December 2000 and January-February 2001.

Consumer Rights

Consumers in the advanced countries, obviously, are much more conscious of their rights than in countries like India. In 1962 President John F. Kennedy and in 1965 President Johnson emphasised the consumer rights and gave an impetus to consumerism in the U.S.A. and other countries.

Important consumer rights include:

1. Right against exploitation by unfair trade practices.
2. Right to protection of health and safety from the goods and services the consumers buy or are offered free.
3. Right to be informed of the quality and performance standards, ingredients of the product, operational requirements, freshness of the product, possible adverse side effects and other relevant facts concerning the product or service.
4. Right to be heard if there is any grievance or suggestions.
5. Right to get the genuine grievances redressed.
6. Right to choose the best from a variety of offers.
7. Right to a physical environment that will protect and enhance the quality of life.

The Consumer Protection Act, 1986, has listed the consumer rights it seeks to protect in India. Details of the Act are given at the end of the Chapter.

BOX 9.2 : RESPONSIBILITIES OF CONSUMERS

The CERS tested a number of brands of packed milk. 10 brands of standardised variety 10 guarantee purity, nutrition, right weight and fair prices.

Rights do not exist independently. Like a coin which has two sides, consumer rights have the other side - consumer responsibilities. They are:

1. The consumer should not make frivolous or general complaints. Specific complaints with supporting information and proof are to be filed.
2. The consumer should try to understand the view-point of the seller before making a complaint.
3. In some situations, consumers have to cooperate with the seller. For instance, if observing a queue or a situation of cold shortage using the coupon system or the bus transport system.

4. Consumers, in asserting their rights, should not inconvenience or hurt other sections of the public. For instance, *Rasta Roko*, *Satyagraha*, *Dhama*, *Bandh* etc., are ways of expressing one's anger and generating enthusiasm for a cause among general public, but they result in disrupting normal life for others. This is not justified.
5. The consumers should, as a rule, complain against a system and not attack individuals who are incumbents of posts. In most cases, the system or practices call for a change, not individuals. If 'A' is removed or transferred from a post, 'B' will occupy it, and may be equally helpless in the particular situation to serve consumers!

Courtesy : M.R. Pai, *Guidelines to Consumers – Rights & Responsibilities*, 1987
(Sponsored I public interest by the Rotary Club of Bombay)

Exploitation of Consumers

Consumers are, however, by and large, practically denied most of these rights. They are exploited by a large number of restrictive and unfair trade practices. A situation has developed in which the public have become victims of false claims for products blatantly advertised. Behavioural science is extensively applied to marketing to ruthlessly exploit the consumers by stimulating the weak points and soft corners of their mind. Misleading, false or deceptive advertisements are quite common. Many a time the advertisements deliberately give only half truths so as to give a different impression than is the actual fact. Thus, advertisements may, be misleading because things that should be said have not been said, or, because advertisements are composed or purposefully presented in such a way as to mislead. The situation is such that misrepresentations about the quality of a product or the potency of a drug or medicine can be projected without much risk.

As the High-Powered Expert Committee on Companies and MRTP Acts, popularly known as the Sachar Committee, points out, fictitious bargains are another common form of deception. Many devices are used to lure buyers into believing that they are getting something for nothing or at a nominal value for their money. Prices may be advertised as generally reduced and cut when in reality the goods may be sold at sellers' regular prices.

Thus, apart from the monopolistic and restrictive trade practices that have the effect of restricting competition and increasing the market imperfections to the common detriment, consumer exploitation through unfair trade practices that mislead or dupe the customers has become widespread. And it is this situation that has largely led to the growth of consumerism.

Consumerism

Philip Kotler defines Consumerism as "a social movement seeking to augment the rights and powers of the buyers in relation to sellers".¹ Boyd and Allen state that "although often abused as a term, consumerism may be best defined as the dedication of those activities of both public and private organisations which are designed to protect individuals from practices that impinge upon their rights as consumers."²

In his speech delivered at the 44th Annual General Meeting of *Hindustan Lever Ltd.* in 1977, the Chairman, Mr. T. Thomas, rightly pointed out: "While the producer has the power or the right to design the product, distribute, advertise and price it, the consumer has only the power of not buying it. One may argue that the producer runs the greater risk in spite of having several rights because the veto power remains with the consumer. However, the consumer often feels that while he has the power of veto, he is not always fully equipped to exercise that power in his best interests.

This situation may be the effect of lack of information, too much indigestible information or even misinformation from one or several competing producers. This problem facing the consumer has led to 'consumerism'. It is worthwhile to note that consumerism, like several other social movements, e.g., independence movement Civil Rights movement, etc., has been the result of a social conflict and cannot, therefore, be wished away. It will be with us till the conflict facing the consumer is resolved".

Consumerism, interpreted as a collective endeavour of the consumers to protect their interests, is a manifestation of the failure of the business, including that of the public sector, and the government to guarantee and ensure the legitimate rights of the consumers.

Consumer Protection

For effective consumer protection, a practical response on the part of three parties, *for example*, the business, the government and the consumers, is essential.

Firstly, the business, comprising the producers and all the elements of the distribution channels, has to pay due regard to consumer rights. The producer has an inescapable responsibility to ensure efficiency in production and the quality of output. He should also resist the temptation to charge exorbitant prices in a seller's market. Many a time, the imperfections on the supply side, like hoarding and blackmarketing, mercilessly gouge the consumer. Hence, a socially responsible producer should see to it that whatever is produced reaches the ultimate consumer in time and at reasonable prices.

As T. Thomas observes, "Restraint is best exercised voluntarily than through legislation which will otherwise become inevitable. Advertising agencies and marketing management have a very important role to play in this respect. By overplaying the claims, they will be cutting the very branch on which they are perched."³

Secondly, the Government has to come to the rescue of the helpless consumer to prevent him from being misled, duped, cheated and exploited. It should also take special care of the vulnerable sections.

The UN Guidelines for Consumer Protection points out that "the governmental role in consumer protection is vital and finds expression through policy-making, legislation and the development of institutional capacity for its enforcement. To provide a legal basis for enforcing basic consumer rights, every country needs to have an irreducible minimum of consumer protection legislation, covering physical safety, promotion and protection of consumers' economic interests, standards for the safety and quality of goods and services, distribution facilities, redress, and education and information programmes. Governments also require the necessary machinery to enforce such legislation." The Guidelines encourage Governments to develop, strengthen or maintain a strong consumer protection policy. In so doing, each Government must set its own priorities for the protection of consumers in accordance with its economic and social circumstances and the needs of its population.

The UN Guidelines also calls upon the Government to establish distribution facilities for essential consumer goods and services. It is suggested that Governments should, where appropriate, consider: (a) Adopting or maintaining policies to ensure the efficient distribution of goods and services to consumers; where appropriate, specific policies should be considered to ensure the distribution of essential goods and services where this distribution is endangered, as could be the case particularly in rural areas. Such policies could include assistance for the creation of adequate storage and retail facilities in rural centres, incentives for consumer self-help and better control of

the conditions under which essential goods and services are provided in rural areas; and (b) encouraging the establishment of consumer cooperatives and related trading activities, as well as information about them especially in rural areas.

Further, according to the Guidelines, Governments should establish or maintain legal and/or administrative measures to enable consumers or, as appropriate, relevant organizations to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Such procedures should take particular account of the needs of low-income consumers. Governments should also encourage all enterprises to resolve consumer disputes in a fair, expeditious and informal manner, and to establish voluntary mechanisms, including advisory services and informal complaints procedures, which can provide assistance to consumers. Information on available redress and other dispute-resolving procedures should be made available to consumers.

The motive of private gain tempts business to maximise income by socially undesirable trade practices; and this calls for government intervention. Statutory action to protect the interests of consumers has become quite common. In the United Kingdom, for instance, the Trade Description Act, 1968, prohibits the use of misleading descriptions of goods or services or misleading representation of price reductions. In a number of countries, pro-consumer legislation contains provisions that enable an affected party to seek remedy for compensation for the loss or damage suffered by it at the hands of a person who has indulged in prohibited practices. This is true of the Sherman Act and the Clayton Act of the U.S.A.; the Federal Act of Switzerland, the Act Against Restraint of Competition of Spain, the Act concerning Prohibition of Private Monopoly and Maintenance of Fair Trade of Japan, the Trade Practices Act of Australia, the Combines Investigation Act of Canada, etc.

In some countries, statutory bodies are empowered to require the advertiser to substantiate the claims made in the advertisements. For instance, the Federal Trade Commission (FTC) of the United States can seek *affirmative disclosures*. That is, if information in an advertisement is considered insufficient by the FTC, the Commission may require a company to disclose in its advertising some of the deficiencies or limitations of its product or service so that the consumer can judge its negative, as well as, positive attributes. The FTC can also require the advertisers to submit on demand by the Commission data to back-up advertising claims for a product's safety, performance, quality or price comparability. The intent of this *substantiation* is to help consumers make more reasoned choices by having information made available to them. Members of many industry groups, including automobiles, appliances, soaps and detergents, television sets, dentistry, hearing aids, and all over-the-counter drugs have been ordered to provide the Commission with documentation in support of their designated advertising claims. *Corrective advertising* requirements have increasingly been a part of many FTC consent orders. Corrective advertising doctrines are based upon the idea that inaccurate information has already been communicated by advertisers, and that corrective advertising is needed to eliminate the lingering effects of such information.⁴

Thirdly, consumers should accept consumerism as a means of asserting and enjoying their rights. Consumerism should succeed in making the business and the government more responsive to the rights of the consumers. *Consumerism is a social force to (i) make the business more honest, efficient, responsive and responsible, and (ii) pressurise the government to adopt the necessary measures to protect consumer interests by guaranteeing their legitimate rights.*

Peter Drucker has remarked that "consumerism is the shame of the total marketing concept,"⁵ implying that the concept is not widely implemented. Consumerism reflects not only the failure of

General Principles: Governments should develop, strengthen or maintain a strong consumer protection policy, taking into account the guidelines set out below. In so doing, each Government must set its own priorities for the protection of consumers in accordance with the economic and social circumstances of the country, and the needs of its population, and bearing in mind the costs and benefits of proposed measures.

The legitimate needs which the guidelines are intended to meet are the following:

1. The protection of consumers from hazards to their health and safety.
2. The promotion and protection of the economic interests of consumers.
3. Access of consumers to adequate information to enable them to make informed choices according to individual wishes and needs.
4. Consumer education.
5. Availability of effective consumer redress.
6. Freedom to form consumer and other relevant groups or organizations and the opportunity of such organizations to present their views in decision-making processes affecting them.

Governments should provide or maintain adequate infrastructure to develop, implement and monitor consumer protection policies. Special care should be taken to ensure that measures for consumer protection are implemented for the benefit of all sectors of the population, particularly the rural population.

All enterprises should obey the relevant laws and regulations of the countries in which they do business. They should also conform to the appropriate provisions of international standards for consumer protection to which the competent authorities of the country in question have agreed.

Guidelines: The following guidelines should apply both to home-produced goods and services and to imports.

In applying any procedures or regulations for consumer protection, due regard should be given to ensuring that they do not become barriers to international trade and that they are consistent with international trade obligations.

Physical Safety: Governments should adopt or encourage the adoption of appropriate measures including legal systems, safety regulations, national or international standards, voluntary standards and the maintenance of safety records to ensure that products are safe for either intended or normally foreseeable use.

Promotion and Protection of Consumers' Economic Interests: Government policies should seek to enable consumers to obtain optimum benefit from their economic resources. They should also seek to achieve the goals of satisfactory production and performance standards, adequate distribution methods, fair business practices, informative marketing and effective protection against practices which could adversely affect the economic interests of consumers and the exercise of choice in the market-place.

Consumers should also be protected from such contractual abuses as one-sided standard contracts, exclusion of essential rights in contracts, and unconscionable conditions of credit by sellers.

Standards for the Safety and Quality of Consumer Goods and Services: Governments should, as appropriate, formulate or promote the elaboration and implementation of standards, voluntary and other, at the national and international levels for the safety and quality of goods and services

and give them appropriate publicity. National standards and regulations for product safety and quality should be reviewed from time to time, in order to ensure that they conform, where possible, to confirm generally accepted international standards. Where a standard lower than the generally accepted international standard is being applied because of local economic conditions, every effort should be made to raise that standard as soon as possible.

Governments should encourage and ensure the availability of facilities to test and certify the safety, quality and performance of essential consumer goods and services.

Distribution Facilities for Essential Consumer Goods and Services: Governments should, where appropriate, consider: (a) Adopting or maintaining policies to ensure the efficient distribution of goods and services to consumers; where appropriate, specific policies should be considered to ensure the distribution of essential goods and services where this distribution is endangered, as could be the case particularly in rural areas. Such policies could include assistance for the creation of adequate storage and retail facilities in rural centres, incentives for consumer self-help and better control of the conditions under which essential goods and services are provided in rural areas. (b) Encouraging the establishment of consumer cooperatives and related trading activities, as well as information about them especially in rural areas.

Measures Enabling Consumers to Obtain Redress: Governments should establish or maintain legal and/or administrative measures to enable consumers or, as appropriate, relevant organizations to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Such procedures should take particular account of the needs of low-income consumers.

Governments should encourage all enterprises to resolve consumer disputes in a fair, expeditious and informal manner, and to establish voluntary mechanisms, including advisory services and informal complaints procedures, which can provide assistance to consumers. Information on available redress and other dispute-resolving procedures should be made available for consumers.

Education and Information Programmes: Governments should develop or encourage the development of general consumer education and information programmes, bearing in mind the cultural traditions of the people concerned. The aim of such programmes should be to enable people to act as discriminating consumers, capable of making an informed choice of goods and services, and conscious of their rights and responsibilities. In developing such programmes, special attention should be given to the needs of disadvantaged consumers, in both rural and urban areas, including low-income consumers and those with low or non-existent literacy levels.

Consumer education should, where appropriate, become an integral part of the basic curriculum of the education system, preferably as a component of existing subjects.

Consumer education and information programmes should cover such important aspects of consumer protection as the following: (a) Health, nutrition, prevention of food-borne diseases and food adulteration; (b) Product hazards; (c) Product labelling; (d) Relevant legislation, how to obtain redress, and agencies and organizations for consumer protection; (e) information on weights and measures, prices, quality, credit conditions and availability of basic necessities; and (f) As appropriate, pollution and environment.

Governments should encourage consumer organizations and other interested groups, including the media, to undertake education and information programmes, particularly for the benefit of low-income consumer groups in rural and urban areas.

The aim of the Committee is to stem the sale of fake products in India. The committee includes members from consumer non-durable companies, research agencies, and consumer agencies such as CERC. The Committee proposes to stress on enforcement of anti-counterfeiting laws, highlight negative economic impact of counterfeits and create consumer awareness. It also plans to take action against counterfeiters with the help of the regulatory authorities.

As the CERS suggests, the role of the consumers include the following:

- Deal with reputed shops.
- Check the brand name, logo and name of the manufacture carefully for any discrepancies.
- Be wary of unusually low-priced products.
- Return fakes. Do not use under any circumstances.
- Retain the bill, product carton or photograph of a fake.
- Write to the concerned company.
- Inform consumer groups.
- Log on to the website www.fake-busters.com and report the matter.

There are a number of laws under which legal action can be taken against manufacturers or sellers of counterfeit and pass-off products. These are: (1) Trademarks Act, 1999; (2) Prevention of Food Adulteration Act, 1954; (3) Drugs and Cosmetics Act, 1940; (4) Consumer Protection Act, 1986; (5) Bureau of Indian Standards Act, 1986; (6) Indian Penal Code, 1860; (7) Monopolies and Restrictive Trade Practices Act, 1969; (8) Standard of Weights & Measures Act, 1976; (9) Drug & Magic Remedies (Objectionable Advertisements) Act, 1954. A recent proposal by the government to amend the Copyright Act and to empower the customs and excise officers to investigate cases involving counterfeit product is a step in the right direction.

Courtesy : INSIGHT – The Consumer Magazine, Nov. – Dec., 2000.

Government Measures

In India, the Government has taken a number of measures to protect consumer interests. The various Government measures may be classified into (i) statutory regulation of private business, and (ii) development of the public sector.

Statutory Regulation: Government of India has armed itself with a number of statutory weapons to control the production, supply, distribution, price and quality of a large number of goods and services. It is empowered to regulate the terms and conditions of sale, the nature of trade and commerce, etc. There is a feeling that, “unlike in the West, the Government in India has a large number of controls on industry and is, therefore, in a position to respond more swiftly and effectively than Western Governments. In some ways our bureaucracy has perfected the art of assuming the guardianship of all interests of the consumers and the vulnerable sections.”¹²

Important legislations in this respect include the MRTP Act, Industries (Development and Regulation) Act, Essential Commodities Act, Prevention of Food Adulteration Act, Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, Trade Marks and Merchandise Marks Act, Sale of Goods Act, Indian Patents and Designs Act, Agricultural Products Grading and Marketing Act, Indian Standard Institute’s Certification Act, Standard Weights and Measures Act, Imports and Exports Control Act, Packaged Commodities Order, Price and Stock Display Order, Consumer Protection Act etc.

There are, thus, a good number of laws to protect consumer interests. But a common complaint is that these laws are not effectively implemented.

The Monopolies and Restrictive Trade Practices Act, 1969, contains provisions to deal with monopolistic, restrictive and unfair trade practices that are prejudicial to public interest.

Growth of Public Sector: There had been a significant growth and expansion of the public sector in India. One of the most important objectives of the public sector was the enhancement of consumer welfare by increasing production, improving efficiency in production and supply, making available goods and services at fair prices, curbing private monopolies and reducing market imperfections, improving the distribution system, and so on. The public sector, in fact, is expected to implement the societal marketing concept.

There is, however, a general feeling that the public sector in India has still a long way to go to realise these objectives. It has established monopolies or near-monopolies in public utilities, whose performance is far from satisfactory.

The irony, further, is that certain laws like the MRTP Act are not applicable to the public sector. As the Sachar Committee has observed, "There is no justification for exempting Government and Government-controlled/owned undertakings from the provisions relating to control and prohibition of monopolistic and restrictive trade practices and the....provisions relating to unfair trade practices..... The beneficiary of monopoly legislation is the consumer and it is only fair and reasonable that undertakings owned or controlled by the Government should be subject to the same type of rigour and discipline as the private sector undertakings where the interests of consumers are involved."¹⁴

The Government has developed the public distribution system to reduce the hardships of consumers, especially of the vulnerable sections, by making essential consumer goods available more equitably and at fair prices. There is, however, a common complaint that some of the items, especially the foodgrains supplied by the system, are of inferior quality.

Consumerism

Consumerism is still in its infancy in India. There have been occasional mass consumer demonstrations against market imperfections, mainly shortages and exorbitant prices. But several of these demonstrations have been organised with vested political interests and consumer involvement and dedication have been limited. Of course, a number of consumer organisations have been formed in different parts of the country. But with the exception of a very few, they are yet to demonstrate their practical utility. Further, whatever little organised consumer movement there is in India is almost confined to urban areas, leaving the large majority of the Indian consumers high and dry.

A well developed consumerism is essential for the protection of consumer rights. Consumerism has the following important roles to play:

1. **Consumer Education:** The consumer is given information about various consumer goods and services. This relates to prices, what the consumer can expect, standard trade practices, etc. Consumers are also made aware of their rights and responsibilities and the ways of getting the grievances redressed.
2. **Product Rating:** In order to guide the consumer in his choice of products, some of the agencies (for example, CERS, Ahmedabad) carry out tests and reports the results of such tests.
3. **Liaison with Government and with Producers:** Another important role of consumer organisations is to maintain liaison with producers on the one hand and Government

- (i) A *District Forum* in each district of every State. If the State Government deems it fit, more than one District Forum may be established in a district.
- (ii) A *State Commission* in each State.
- (iii) A *National Commission*.

The National Commission was established by the Central Government in August 1988. The responsibility for the establishment of the other two agencies, with the prior approval of the Central Government, rests with the respective State Government.

The District Forum shall consist of (a) a person who is, or has been, or is qualified to be a District Judge nominated by the State Government who shall be its President, (b) a person of eminence in the field of education, trade or commerce, and (c) a lady social worker.

Each State Commission shall consist of a person who is or has been a judge of a High Court, appointed by the State Government (who shall be its President) and two other members who shall be persons of ability, integrity and standing and have adequate knowledge or experience of or have shown capacity in dealing with problems relating to economics, law commerce, accountancy, industry, public affairs or administration, one of whom shall be a woman.

The National Commission shall consist of a person who is or who has been a judge of the Supreme Court, appointed by the Central Government (who shall be its President) and two other members who shall be persons of ability, integrity and standing and have adequate knowledge or experience of or have shown capacity in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration, one of whom shall be a woman.

A complaint where the value of the goods or services and the compensation, if any, is less than rupees five lakhs is to be dealt with the District Forum; where such value exceeds rupees five lakhs but does not exceed rupees twenty lakhs it is to be dealt with the State Commission and cases involving more than rupees twenty lakhs fall within the jurisdiction of the National Commission.

The State Commission will also entertain appeals against the orders of any District Forum within the State. Appeals against the orders of the State Commission can be made to the National Commission. Appeals against the orders of the National Commission can be made to the Supreme Court.

The State Commission is empowered to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Forum within the State, where it appears to the State Commission that such District Forum has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity. The National Commission has similar jurisdiction over the State Commissions.

Consumer Complaints

A complaint, in relation to any goods sold or delivered or any service provided may be filed with the redressal agency by –

- (a) the consumer to whom such goods are sold or delivered or such service provided;
- (b) any recognised consumer association, whether the aggrieved consumer is a member of such association or not;
- (c) one or more consumers, where there are numerous consumers having the same interest; or
- (d) the Central or State Government.

Remedial Action

If the consumer disputes redressal agency is satisfied that any of the allegations contained in the complaint is true, it shall issue an order to the opposite party directing him to take one or more of the following things, namely:

- (i) to remove the defect pointed out by the appropriate laboratory from the goods in question;
- (ii) to replace the goods with new goods of similar description which shall be free from all defects;
- (iii) to return to the complainant the price, or, as the case may be, the charges paid by the complainant;
- (iv) to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party;
- (v) to remove the defects or deficiencies in the services in question;
- (vi) to discontinue the unfair / restrictive trade practice or not to repeat them;
- (vii) not to offer the hazardous goods for sale;
- (viii) to withdraw the hazardous goods from being offered for sale;
- (ix) to provide for adequate costs to parties.

Penalties

If a trader or person against whom a complaint is made or the complainant fails or omits to comply with any order made by a redressal agency, he shall be punishable with imprisonment for any term not exceeding three years or with fine not exceeding ten thousand rupees or with both.

Conclusion

The Consumer Protection Act, 1986, which was modified by the Amendment Act of 1993, is a very important means to protect the consumer rights. However, the effective functioning of the consumer redressal agencies and, consequently, the achievement of its objectives, are hindered by several problems.

The posts of president and / or other members of the fora remaining vacant are not uncommon. Many redressal agencies are not adequately staffed. They also suffer from financial problems.

The Act has been hailed for the time frame set for the disposal of the cases. In fact, the Act envisages a simple, inexpensive and speedy redressal of consumer grievances related to defective goods, deficient services and unfair and restrictive trade practices. But the problems mentioned above come in the way of expeditious disposal of the cases.

Further, taking recourse to the law is affected by the lack of consumer awareness and education.

One redeeming feature of the Consumer Protection Act is that it applies not only to the private sector but also to the public sector and government agencies. As against this, it may be noted that, the undertakings in the public and cooperative sectors and those undertakings the management of which has been taken over by the Government are exempted even from the provisions dealing with *unfair trade practices* under the MRTP Act.

10

CORPORATE GOVERNANCE

The concept of corporate governance, which emerged as a response to corporate failures and widespread dissatisfaction with the way many corporates function, has become one of wide and deep discussions around the globe recently. Although it did not receive much attention until the dawn of the 1990s, it has become very popular within a short period.

Meaning

Although the idea of corporate governance has received wide attention, there is considerable variations in the conceptual definition, even resulting in inconsistencies in the usage of the term.

BOX 10.1 : THE AIM AND PURPOSE OF CORPORATE GOVERNANCE

Corporate governance is concerned with holding the balance between economic and social goals and between individual and communal goals. The governance framework is there to encourage the efficient use of resources and equally to require accountability for the stewardship of those resources. The aim is to align as nearly as possible the interests of individuals, corporations, and society. The incentive to corporations and to those who own and manage them to adopt internationally accepted governance standards is that these standards will help them to achieve their corporate aims and to attract investment. The incentive for their adoption by states is that these standards will strengthen the economy and discourage fraud and mismanagement.

The foundation of any structure of corporate governance is disclosure. Openness is the basis of public confidence in the corporate system, and funds will flow to the centers of economic activity that inspire trust.

— Sir Adrian Cadbury in the Foreword to M. E. Iskander and N. Chamloo, *Corporate Governance: A Framework for Implementation*

In its narrowest sense, the term may describe the formal system of accountability of senior management to the shareholders. At its most expansive, the term is stretched to include the entire network of formal and informal relations involving the corporate sector and their consequences for the society in general. Corporate governance, however, as generally understood, includes the structure, process, cultures and systems that engender the successful operation of the organizations.¹

“Governance is the process whereby people in power make decisions that create, destroy or maintain social systems, structures and processes. Corporate governance is therefore the process

whereby people in power direct, monitor and lead corporations, and thereby either create, modify or destroy the structures and systems under which they operate. Corporate governors are both potential agents for change and also guardians of existing ways of working. As such, they are therefore a significant part of the fabric of our society.”²

“The concept of corporate governance primarily hinges on complete transparency, integrity and accountability of the management... There is also an increasingly greater focus on investor protection and public interest.”³

It is pointed out that “the concept of corporate governance is to some extent similar to the quality practices adopted under the ISO standard. The key question is to ensure how effectively organizations are managed. This would also include defining of the powers of Directors, particularly non-executive ones, making available information on the Company’s current state of affairs to all the Directors, and systems control to ensure the authenticity, timeliness and effectiveness of the information.”⁴ According to the Kumar Mangalam Birla Committee, the fundamental objective of corporate governance is the “enhancement of long-term shareholder value while, at the same time, protecting the interests of other stakeholders.”

BOX 10.2 : PUBLIC AND PRIVATE PERSPECTIVES OF CORPORATE GOVERNANCE

Just what constitutes corporate governance is still a topic of debate. From a corporation’s perspective, the emerging consensus is that corporate governance is about maximizing value subject to meeting the corporation’s financial and other legal and contractual obligations. This inclusive definition stresses the need for boards of directors to balance the interests of share-holders with those of other stakeholders—employees, customers, suppliers, investors, communities—in order to achieve long-term sustained value for the corporation. From a public policy perspective, corporate governance is about nurturing enterprises while ensuring accountability in the exercise of power and patronage by firms. The role of public policy is to provide firms with the incentives and discipline to minimize the divergence between private and social returns and to protect the interests of stakeholders.

These two definitions—from public and private perspectives—provide a framework for corporate governance that reflects an interplay between internal incentives (which define the relationships among the key players in the corporation) and external forces (notably policy, legal, regulatory, and market) that together govern the behavior and performance of the firm.

M.R. Iskander N. Chaudhry, *Corporate Governance: A Framework for Implementation*

Now there is a growing recognition of the difference between corporate governance and corporate management and the need to align corporate management with corporate governance.

Corporate governance is concerned with the values, vision and visibility. It is about the value orientation of the organization, ethical norms for its performance, the direction of development and social accomplishment of the organization and the visibility of its performance and practices. Corporate management is concerned with the efficiency of the resource use, value addition and wealth creation within the broad parameters of the corporate philosophy established by corporate governance. “In short, the concept of good corporate governance connotes that ethics is as important as economics, fair play as crucial as financial success, morals as vital as market share.”

It is very relevant to note in this context that the Eicher group has a two-tier Board. At the top is the Corporate Board, consisting of veterans, which examines issues related to ethics, mission,

directors and its financial reporting system has never been more crucial. As the boards provide stewardship of companies, they play a significant role in their efficient functioning.

Studies of firms in India and abroad have shown that markets and investors take notice of well-managed companies, respond positively to them, and reward such companies, with higher valuations. A common feature of such companies is that they have systems in place, which allow sufficient freedom to the boards and management to take decisions towards the progress of their companies and to innovate, while remaining within a framework of effective accountability. In other words they have a system of good corporate governance.

Strong corporate governance is thus indispensable to resilient and vibrant capital markets and is an important instrument of investor protection. It is the blood that fills the veins of transparent corporate disclosure and high-quality accounting practices. It is the muscle that moves a viable and accessible financial reporting structure. Without financial reporting premised on sound, honest numbers, capital markets will collapse upon themselves.

Another important aspect of corporate governance relates to issues of insider trading. It is important that insiders do not use their position of knowledge and access to inside information about the company, *and* take unfair advantage of the resulting information asymmetry. To prevent this from happening, corporates are expected to disseminate the material price sensitive information in a timely and proper manner and also ensure that till such information is made public, insiders abstain from transacting in the securities of the company. The principle should be 'disclose or desist'. This, therefore, calls for companies to devise an internal procedure for adequate and timely disclosures, reporting requirements, confidentiality norms, code of conduct and specific rules for the conduct of its directors and employees and other insiders. However, the need for such procedures, reporting requirements and rules also goes beyond corporates to other entities in the financial markets such as Stock Exchanges, Intermediaries, Financial institutions, Mutual Funds and concerned professionals who may have access to inside information.

Good corporate governance, besides protecting the interests of shareholders and all other stakeholders, contributes to the efficiency of a business enterprise, to the creation of wealth and to the country's economy. In a sense both these points of view are related and during the discussions at the meetings of the Committee, there was a clear convergence of both points of view.

According to Charkham, good corporate governance is considered vital from medium and long-term perspectives to enable firms to compete internationally in sustained way and make them flourish and grow so as to provide employment, wealth and satisfaction, not only to improve standard of living materially but also to enhance social cohesion.⁶

Prerequisites

A review of the literature on corporate governance, including the Reports of various Committees, suggests that there are some pre-requisites for good corporate governance. They are:

- A proper system consisting of clearly defined and adequate structure of roles, authority and responsibility.
- Vision, principles and norms which indicate development path, normative considerations, and guidelines and norms for performance.
- A proper system for guiding, monitoring, reporting and control.

Regulatory and Voluntary Actions

The Organisation for Economic Cooperation and Development (OECD) formed the Business Sector Advisory Group in 1996 and a task force to distill a set of core principles of good corporate governance. The advisory group's report (OECD 1998) emphasized that good corporate governance can best be achieved through a combination of *regulatory and voluntary private actions*.

On the regulatory side, it noted that government interventions are most effective when consistently and expeditiously enforced. They should focus on:⁷

- *Fairness*: protecting shareholder rights and ensuring the enforceability of contracts with resource providers.
- *Transparency*: requiring timely disclosure of adequate information on corporate financial performance.
- *Accountability*: clarifying governance roles and responsibilities and supporting voluntary efforts to ensure the alignment of managerial and shareholder interests, as monitored by a board of directors—or in certain nations, a board of auditors—with some independent members.
- *Responsibility*: ensuring corporate compliance with the other laws and regulations that reflect society's values, including a broad sensitivity to the objectives of the society in which corporations operate.

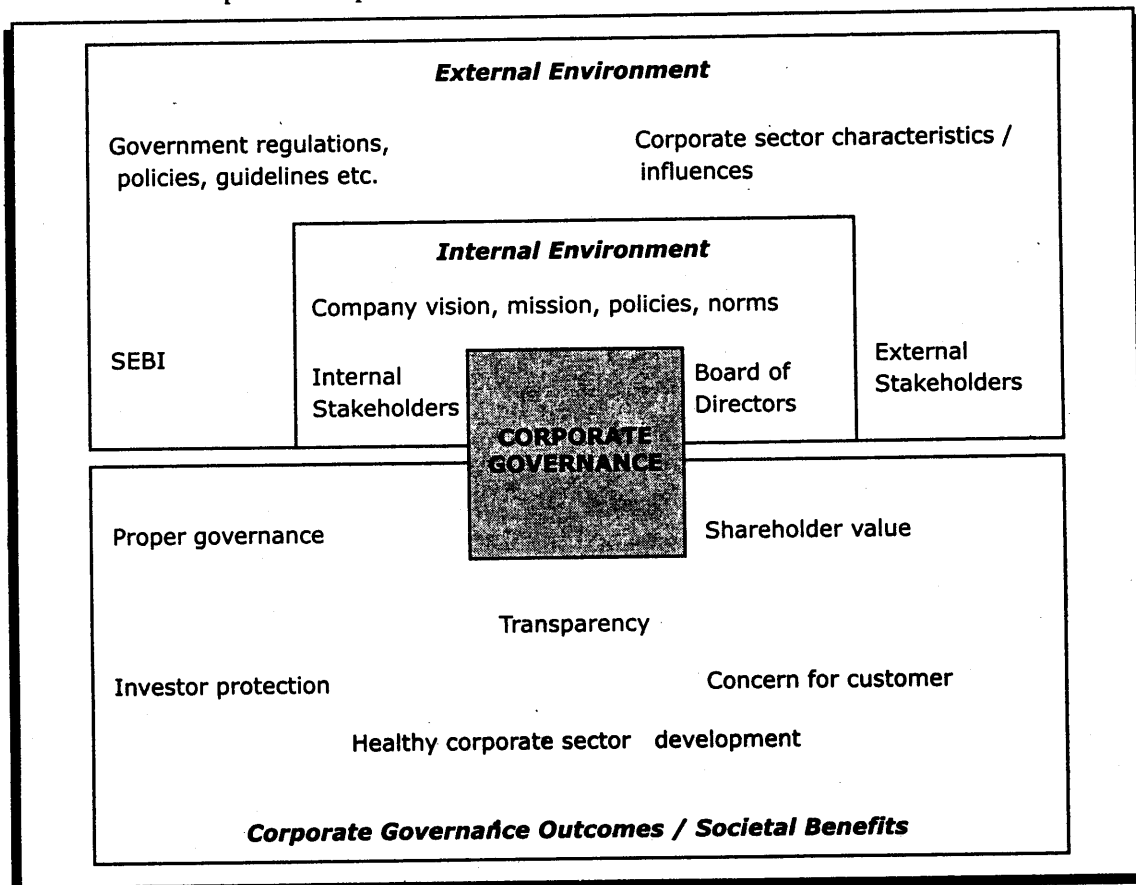


Fig. 10.1 : Corporate Governance Environment and Outcomes

- Assisting the board in its decision making process in respect of the company's strategy, policies, code of conduct and performance targets, by providing necessary inputs.
- Implementing the policies and code of conduct of the board.
- Managing the day to day affairs of the company to best achieve the targets and goals set by the board, to maximize the shareholder value.
- Providing timely, accurate, substantive and material information, including financial matters and exceptions, to the board, board-committees and the shareholders.
- Ensuring compliance of all regulations and laws.
- Ensuring timely and efficient service to the shareholders and to protect shareholder's rights and interests.
- Setting up and implementing an effective internal control systems, commensurate with the business requirements.
- Implementing and complying with the Code of Conduct as laid down by the board.
- Co-operating and facilitating efficient working of board committees.

As a part of the disclosure related to Management, the Committee recommends that as part of the directors' report or as an addition there to, a Management Discussion and Analysis report should form part of the annual report to the shareholders. This Management Discussion and Analysis should include discussion on the following matters within the limits set by the company's competitive position: Industry structure and developments; opportunities and threats; segment-wise or product-wise performance; outlook; risks and concerns; internal control systems and their adequacy; discussion on financial performance with respect to operational performance; and, material developments in human resources/industrial relations front, including number of people employed.

These are mandatory recommendations.

Shareholders: The shareholders are the owners of the company and as such they have certain rights and responsibilities. A good corporate framework is one that provides adequate avenues to the shareholders for effective contribution in the governance of the company while insisting on a high standard of corporate behaviour without getting involved in the day to day functioning of the company.

The Committee believes that the General Body Meetings provide an opportunity to the shareholders to address their concerns to the board of directors and comment on and demand any explanation on the annual report or on the overall functioning of the company. It is important that the shareholders use the forum of general body meetings for ensuring that the company is being properly stewarded for maximising the interests of the shareholders. This is important especially in the Indian context. It follows from the above, that for effective participation shareholders must maintain decorum during the General Body Meetings.

The effectiveness of the board is determined by the quality of the directors and the quality of the financial information is dependent to an extent on the efficiency with which the auditors carry on their duties. The shareholders must, therefore, show a greater degree of interest and involvement in the appointment of the directors and the auditors. Indeed, they should demand complete information about the directors before approving their directorship.

The basic rights of the shareholders include right to transfer and registration of shares, obtaining relevant information on the company on a timely and regular basis, participating and voting in shareholder meetings, electing members of the board and sharing in the residual profits of the corporation.

The Committee has, therefore, recommended that as shareholders have a right to participate in, and be sufficiently informed on decisions concerning fundamental corporate changes, they should not only be provided information as under the Companies Act, but also in respect of other decisions relating to material changes such as takeovers, sale of assets or divisions of the company and changes in capital structure which will lead to change in control or may result in certain shareholders obtaining control disproportionate to the equity ownership.

The Committee has recommended that information like quarterly results, presentation made by companies to analysts may be put on company's web-site or may be sent in such a form so as to enable the stock exchange on which the company is listed to put it on its own web-site.

The Committee has also recommended that the institutional shareholders take an active interest in the composition of the Board of Directors and evaluate the corporate governance performance of the company.

Conclusion: The Committee also took note of the various steps already taken by SEBI for strengthening corporate governance, some of which are:

- Strengthening of disclosure norms for Initial Public Offers following the recommendations of the Committee set up by SEBI under the Chairmanship of Shri Y H Malegam.
- Providing information in directors' reports for utilisation of funds and variation between projected and actual use of funds according to the requirements of the Companies Act; inclusion of cash flow and funds flow statement in annual reports.
- Declaration of quarterly results.
- Mandatory appointment of compliance officer for monitoring the share transfer process and ensuring compliance with various rules and regulations.
- Timely disclosure of material and price sensitive information including details of all material events having a bearing on the performance of the company.
- Despatch of one copy of complete balance sheet to every household and abridged balance sheet to all shareholders.
- Issue of guidelines for preferential allotment at market related prices.
- Issue of regulations providing for a fair and transparent framework for takeovers and substantial acquisitions.

With the Birla Committee Report, the stage is set for ushering in good corporate governance in India. The codes are to be implemented through the stock exchanges. While new listings would have to comply with the norms immediately, companies with a minimum capital of Rs. 10 crore and net worth of Rs. 25 crore would have to adhere to the corporate governance guidance by April 2000. It is heartening to note that even before many codes have been made mandatory, several companies have voluntarily adhered to the codes suggested by the CII. It is obvious that a vital missing factor was a generally accepted set of codes and guidepost.

constituents, their roles and responsibilities as also their rights in the context of good corporate governance. Fundamental to this examination and permeating throughout this exercise is the recognition of the three key aspects of corporate governance, namely; accountability, transparency and equality of treatment for all stakeholders.

The pivotal role in any system of corporate governance is performed by the board of directors. It is accountable to the stakeholders and directs and controls the Management. It stewards the company, sets its strategic aim and financial goals and oversees their implementation, puts in place adequate internal controls and periodically reports the activities and progress of the company in a transparent manner to the stakeholders. The shareholders' role in corporate governance is to appoint the directors and the auditors and to hold the board accountable for the proper governance of the company by requiring the board to provide them periodically with the requisite information, in a transparent fashion, of the activities and

progress of the company. The responsibility of the management is to undertake the management of the company in terms of the direction provided by the board, to put in place adequate control systems and to ensure their operation and to provide information to the board on a timely basis and in a transparent manner to enable the board to monitor the accountability of Management to it.

REFERENCES

1. Cited by Kevin Keasey, Steave Thomson and Mike Wright (ed.), *Corporate Governance: Economic, Management and Financial Issues*, Oxford, Oxford University Press, 1997, p. 2.
2. Lynn McGregor, *The Human Face of Corporate Governance*, Palgrave, New York, 2000, p. 11.
3. K. Gopal, "Emerging Trends in Corporate Governance", *Indian Management*, October 1998, p. 12.
4. *Ibid*, p. 10.
5. Magdi R. Iskander and Nadereh Chamlou, *Corporate Governance : A Framework for Implementation*, World Bank Group, Washington DC, 2000.
6. Jonathan Charkham, *Keeping Good Company: A Study of Corporate Governance in Five Countries*, Oxford, Cleardon Press, 1994, p. 1.
7. Cited in Iskander Chamlou, *op. cit.*, p. 19.

