ETHICO-MORAL ASSESSMENT OF CORPORATE GOVERNANCE IN INDIA

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Abstract:

Purpose – The main object of this paper is to explore the foundational basis of ethics and morality so far as the transactional pattern of corporate governance in India is concerned.

Design/methodology/approach – The proposed study will be based on the mixed model of research methodology. First, we have adopted the combination of descriptive and analytical approach while judging the bases of ethics and morality in Corporate Governance of India. Secondly, the study is also based on the field survey technique with structured questionnaire and scheduled interviews conducted in the sampled corporate houses in India.

Findings – The field surveys conducted while study was revealed to be both dependable and legitimate. Statistics have been derived through descriptive tools. The outcome of the data analysis is adequate to provide information in respect ethical and moral issues in respect of corporate houses. In the process of study various High court and Supreme Court judgments have been referred.

Research limitations/implications – The researchers have limited their research to an extent i.e. mainly to some major corporate houses since it is impossible to move and carry out surveys throughout the India and collect data of each and every corporate house. The truthfulness of the
research is reliant upon the exactness of the data collected in field survey of chosen corporate houses.

**Practical implications** – This research paper will act as a source material for future scholars who would like to work and research in the area of ethics and morality in Corporate Governance of India. It will turn as guideline for corporate. The concern paper is a contribution to the disciple and could reshape and crystallize the confusion in respect of working and governance of corporate. The result of this study will would help corporate to work in ethic-moral manner.

**Originality/value** – The study is highly original in nature. The study and research of this paper is done by relying on primary data collected during individually based field survey. The Secondary data/works of the other authors is being highly appreciable and recognized and thereby duly cited. It would be a positive source of information in relation to ethic-morality in corporate practice and governance.

**Keywords**

Business Ethics, Moral responsibility, Corporate Governance, Profit motive, Corporate Social Responsibility

**Paper type**

This is a Research paper which is analytical and definitional in nature.
Introduction

“Business must harness the power of ethics which is assuming a new level of importance and power.”

- James Joseph

In India, ninety five percent of corporations have a code of business conduct and ethics. The principles of Corporate Governance principles help in decision making for investors, stakeholders and corporations(Bhat, 2006-2007). The area of corporate governance plays pivotal role in attracting foreign investment because it enhances the credibility of the corporations. Corporate governance refers to the set of process, customs, policies, law and institutions, influencing the administration of a corporation. Corporate governance includes the relationship among the many players and the goals of the corporation. The shareholders, management and the board of directors are the principal players(Prabakaran, 2010). Generally speaking, Corporate Governance is an ethical environment in which all business processes are undertaken(Knell, 2006). This study examines the relationship between ethics and morality so far as the issue of corporate decision making is concerned. Ethics and morality are closely related to each other. Ethics is the heart of corporate business and company must be concerned about what they do to all. The ability to tell the truth to public is important for board of directors. In order to show directors role and responsibilities in a corporate house authors have tried to provide a legal perspective by referring one of the major unethical corporative scandals in India. This concerned paper is also an effort to show the significance of business ethics in corporate governance by referring concepts like social contract, corporate social responsibility etc. in the light of corporate governance.
Morals and Ethics: The Interrelationship with Each Other

The terms moral and ethics are considered to be two different terms but an interrelation nexus can be found between them. In one hand moral deals with the right behavior of individuals while on the other hand ethics deals with right character in a given situation. But both terms are closely related to each other. Moral intensity refers to characteristics of the ethical issue that compel the decision maker to employ ethical reasoning (Harvey, 2007). Some of the basic morals like helping others, equal treatment of all etc. are converted in terms of good corporate governance practices. The codes of ethics also demonstrate social responsibility (Stevens, 1994). It is considered that morals are regarded as the underpinning foundation of ethics which can be applied on corporations. In order to understand the relationship between morality and ethics the following agreement can be considered (Prabakaran, 2010):

- Aim of all moral standards is to develop positive standards. Ethical standards also work for the same cause i.e. betterment of the ethical practices in organizations.
- Non compliance of moral standards will be followed by serious and disastrous consequences such as fraud, corruption, crimes etc. Similarly if ethical standards are not adopted there will be fall in the values and decline in the efficiency of corporate houses.
- It is fact that both moral and ethical standards can be instituted only with the active and sincere participation of the people.
- Both concepts give more preference to public welfare instead of private welfare. There is a need to maintain a balance between strategies interests and ethical demands. Both the terms clutch that society should take priority over self interest.
Both moral and ethics are not regarded as positive sciences but also normative sciences. Since a positive science explains “what it is” while normative sciences states “what it ought to be”.

Both the terms are based on impartial deliberation bringing long term benefits since both discourage shorter gains and partial benefits.

The concept of Morality in respect of ethics in corporate governance

Morality refers to system or the rule of moral conduct that people use to decide what is wrong and what is right. Fundamentally morality is concerned with social norms and practices defining right and wrong. Ethics provides guidelines for the right actions needed in a company. The rule of caution promotes self-interest but the system and rules of morality promotes the interests of other people. There is requirement of a good combination of morality, prudence and ethics in order to make good corporate governance for a company(Schwartz, 2005). Such a combination is essential for corporate houses to become successful. Many a time’s application of moral standards and concepts and situations has become the real challenge for companies in the exiting scenario. The holistic growth of a person is the development of physical, emotional, cognitive and moral abilities. Similarly for growth of corporate houses, same concept is applicable, since companies are regarded as an artificial person in the eyes of law. Therefore the concept of morality is essential for attaining good corporate governance in a company.

Significance of Business Ethics

“If ethics are poor at the top, that behavior is copied down through the organization.”

- Robert Noyce

Business ethics is regarded as a concept which generally refers to application of ethical values, principles and morals in the areas where corporations make major profits. Business ethics is not only associated with individual but to the whole of corporation. A company that wishes to be in
business for a long time, will be indulging in good business practices and be ethical in its business ethics (Rao, 2000). The significance of business ethics in the light of corporations can be understood through following points (Prabakaran, 2010):

- Business ethics is not merely code of conduct but is concerned with a code of ethics.
- The concept of business ethics is not only concerning morality but also emphasizes the establishment of transparent norms of relationships in corporations. Business ethics is not just philanthropy but promoting social awareness in the business world.
- Business ethics is not just dealing with shareholders but more anxious with the various stakeholders.
- Business ethics not only talks about establishing compliance but also emphasizes on instituting employee morale.
- Employee morale depends upon the good ethical, cultural and moral conditions of a corporation.
- Business ethics objective is to carry commitment from all the stakeholders and this can be achieved by mutual benefits.

**Vital features of corporate governance**

Corporate governance includes the structures, processes, cultures and systems that endanger the successful operation of the organizations. The ‘holy trinity’ of corporate governance has long been seen as shareholder rights, transparency and board accountability (Calder, 2008). Some vital features of corporate governance are

- It promotes an adequate and suitable system of controls operative within a company so that assets can be safeguarded.
- It put a stop to any single individual becoming too powerful.
It is anxious with the relationship between a company’s management, board of directors and all the stakeholders including shareholders.

It helps company to manage in the best interest of all.

It ensures accountability, transparency and intelligibility in the company.

It aims at promoting the best corporate performance through the best corporate management practices.

**Ethics of corporate governance**

Trust, honesty, responsibility, accountability, mutual respect, performance orientation, commitment and openness are the stamp of corporate governance. The board of directors has the ultimate authority to oversee the ethical performance of their corporations (Arthur, 1987). Directors have overall responsibility for the ethics and compliance programs of the corporation (Mark S. Schwartz, 2005). Some of the relevant principles of corporate governance are as follows (Prabakaran, 2010):

1. Protection of the interests of stakeholders: The interest of all the stakeholders should be protected. As it will promote the welfare of all.

2. Rights of shareholders: The business corporate houses should respect the rights of shareholders and help the shareholders to exercise their rights. There should be a interaction with shareholders based on the mutual understanding of objectives. It is the responsibility of BOD to ensure a satisfactory dialogue with shareholders.

3. Equal treatment for shareholders: Equal treatment should be given to all the shareholders. The major shareholders should attend the general meeting and participate in general meetings.
4. Ethical behavior: A code of Conduct should be developed by corporate houses for the directors and executives so as to promote ethical and responsible decision making. It can be seen that a lot of corporations have established compliance and ethics programs to minimize the risk that the firm steps outside of ethical and legal limitations.

5. Transparency and Disclosure: There is need of timely and balanced disclosures of matters related to the organization so that all investors have a access to factual and clear information. Ethics demands that annual reports should record the following points

   - The number of meeting of the board and the committees
   - Performance evaluation of the board
   - A description of the work of the remuneration committee
   - A separate section describing the work of the audit committee in discharging responsibilities.
   - Steps taken by the board to develop an understanding of the views of major shareholders about their company.
   - A statement from the directors that the business is a going concern with supporting assumption.
   - A statement of the operations of the board including decision making.

6. Vital role of Board of Directors: Today the market demands that BOD should be dynamic, efficient and capable of developing a range of skills. It must be have ability of meeting all the challenges. It should be adequate in size and should posses high level of commitment in order to fulfill its duties and responsibilities. It should be kept in mind that BOD should not be too large. It should be of optimum size so as to balance the
experience and skills suitable to the needs of business another point which is needed is appointment of the BOD should be made on merit and care in order to ensure directors have enough time available to devote to the job.

**Business ethics and corporate governance**

The issue of business ethics is related to functional behavior of the corporations. It determines what is wrong and right and helps in decisions making pattern of the organizations. As far as *Corporate Social Responsibility voluntary guidelines, 2009* are concerned, business ethics policy is a mandatory requirement. It depicts the sense of responsibly of the corporation towards the existing society. As of now, we have understood that corporations are totally dependent on the society for their survival and functioning. It is noteworthy that corporations owes a duty toward the society that they will protect the interest of the society by all means. Therefore, corporations will adopt the reasonable measures in their effective functioning (Seppala, 2010). Under *Corporate Governance voluntary guidelines, 2009*, the governance system of a company must be based on three things, i) Ethics, ii) Transparency, iii) Accountability. Company must not function in any abusive or corrupt business practices. It is pertinent to note that Corporations can no longer adopt unfair practices to earn more and more profits by unlawful means for example cheating, black marketing and fraud (Fisher, 2004). Ethical issues in business can be determined at various levels i.e. individual level, organizational level, association level, societal level and international level (Weiss, 2009). Ethics matters in business because all stakeholders stand to gain when organizations, groups, and individuals seek to do the right thing (Fieser, 2011). Decision making about ethical issues involves the possibility of significant gain or loss. At the extreme, an individual may face a jail sentence for a decision to act unethically (Diana C. Robertson and William T. Ross, 1995). It ensures that individual will consider what the risks and potential costs
and benefits of any decision are likely to be (Diana C. Robertson and William T. Ross, 1995). In India, the entry of big multinationals in certain key sectors of the economy is throwing up new challenges in business ethics (Chakraborty, 1997). The decision making process must follow the societal norms and includes a "social consensus" element. Social consensus generally defines what is good and bad in the society. It determines whether a particular course of action is morally acceptable. The notion of social consensus reduces the degree of moral ambiguity for the individual decision maker (Diana C. Robertson and William T. Ross, 1995). People cannot behave unethically if they are ignorant or uncertain of the ethical standards governing specific circumstances (Jones, 1991).

The term corporate governance is related to the functional structure of decision making at the level of the board of directors and it mandates that the board of directors will act for the benefit of the company. Good corporate governance can significantly reduce the risk of nation-wide financial crises (Chakrabarti, 2005). Strictly speaking, corporate governance deals with a company’s ability to take managerial decisions (Fernando, 2009). The chief duty of the board of directors is to look into the affairs of the company/organization. Under Corporate Governance voluntary guidelines, 2009, three fundamental duties of the board of directors are as follows:

1. **Skilled Directors:** - It is the duty of the company to ensure that directors must have the ability to understand basic financial statements and other related documents of the company. It must be reflected in the annual report of the company. The board is required to adopt suitable measure to enhance the skills of directors.

2. **Enabling Quality Decision Making:** - Board of directors is the representatives of the shareholders. The balance sheets have to be put before the shareholders by the board of directors. Therefore, it is the duty of board of directors to ensure that system, procedure
& resources are put into place within the company for timely delivery or accurate information. Therefore, the board of directors is required to make quality decisions.

3. **Risk Management:** The Board, its audit committee and its executives must identify business risk, minimization & optimization of the risk on the basis of risk management policy. The board must disclose the business risk report to members. The board of directors must put into place in the company’s system to ensure compliance with the law.

**The Code of Business ethics**

Codes of ethics have now become the necessary element of corporations around the world. In India, ninety five percent of corporations have a code of business conduct and ethics. Here, the moot question is why corporations are adopting code of business conduct and ethics. The code of ethics promotes good behavior and helps in evaluating company’s performance in the market. A code of ethics is a written, distinct, formal document which consists of moral standards which are intended to impact employee or corporate behavior (Stevens, 1994). The six universal moral values (Schwartz, 2005) stated in the Aspen Declaration are as follows:

1. Trustworthiness (including notions of honesty, integrity, reliability, and loyalty);
2. Respect (including notions of respect for human rights);
3. Responsibility (including notions of accountability);
4. Fairness (including notions of process, impartiality, and equity);
5. Caring (including notion of avoiding unnecessary harm);
6. Citizenship (including notions of obeying and protecting the environment).

These principles are universally accepted and they play pivotal role in order to construct code of ethics for corporations. As per Corporate Governance voluntary guidelines, 2009, directors and
employees of the company should follow the code of business ethics. Further, the guidelines state that the companies should ensure the institution of a mechanism for employees to report concerns about unethical behavior, actual or suspected fraud, or violation of the company's code of conduct or ethics policy (Corporate Governance Voluntary Guidelines, 2009).

Need of alteration in existing Corporate Governance scenario

Corporate governance has fascinated a great deal of public interest since the last two decades because of its apparent significance for the economic health of corporations and society in general. Putting an eye on the headlines of the previous 2 years in particular, depicts a depressing story of corporate ethics. Lack of corporate ethics is easily noticeable in companies like WorldCom, Anderson, Merrill Lynch, Enron, Martha Stewart, Global Crossing, Qwest Communications, Tyco International, Adelphia Communications, Merck, Computer Associates, Parmalat, Putnam, Boeing, Rite Aid, Xerox, ASEA Brown Boveri, Kmart, Swiss Air, and so on (Arjoon, 2005). The uncertain accounting practices, declining stock markets, abuses of corporate power, fraud, criminal investigations, corporate failures, disproportionate executive compensation point out that the whole economic system upon which investment income and depended is showing symbols of pressure and strain that have destabilized investors' confidence and faith. Some corporations have matured significantly in a comparatively small time through attainment of funds by inflated share prices and promises of even brighter expansion and success in future. While in others companies, it was as if the confirmation and balance needed for protection of shareholder interests were pressed to one side, motivated by a perception of the need to move fast in the pursuit of the bottom line. Factors like fraudulent accounting and other illegal practices was not only there, but many of the companies displayed actual corporate governance risks like overly lucrative compensation, inexperienced directors, conflicts of
interest, unequal share voting rights etc. can also be noticed (Anderson, 2004). Due to such scandals and malpractices, there has been a transformed stress on corporate governance. As a single concept corporate governance itself covers a large number of distinct concepts and phenomenon.

**Soul of cult-ethical decision making for corporate houses**

Today the corporate houses are extending their operations throughout the globe which needs a growing demand for global perceptive and understanding of the cultural principles and values of domestic as well as foreign cultures. It can be seen that people are likely much more uncomfortable at the time when they interact with members of other cultures as compared to when they interrelate with members of their own culture. It is usual that when members of diverse cultures deals with each other personal differences are often arises and disagreements consistently occur. These misconceptions are the result of diverse recognized views of the world and society. So operational knowledge of these cultural and cognitive differences will not only results in enhancement in cross-cultural communication and interaction(Graham, 1985), but also gives individuals with a general principle and ethical behavior in the particular countries where corporate houses are at present engaged in business operations and activities(Schneider, 1989).

Even though business ethics through historical view is seen of little interest to corporations in the global scenario, the need and importance of this area has extensively improved over the past ten years(Ciulla, 1991). Similarly in year 1977, the U.S. Congress passed the Foreign Corrupt Practices Act which was an attempt to legislate standards of conduct for multinational enterprises and corporations by making it illegal for U.S. based multinational to make "sensitive payments", or brides, to executives of foreign governments. This act clearly aims at recognition of the unethical behavior by individuals representing U.S. organizations, corporate houses in respect of
their interaction with individuals from different cultures organizations and business corporate (Thomas Donaldson, 2008). It can be witnessed that there has been extensive debate over the influence of culture on ethical values. Some views states the concept of "moral relativism" which states that each culture has its own unique set of values (Rosen, 1980), while some states "universalism" as a contrasting perspective to moral relativism (Kohlberg, 1984), which supports that all cultures are made up of the same value-set but each culture develops at a different moral pace due to cultural environment and other traits of the society.

But it can be acknowledge that from both points of views that that culture does affect the moral structure upon which individuals base ethical decisions in a corporation. As pointed out earlier, individuals from different societies will view ethical issues differently. In other words it can be said that understanding the value and essence of culture and morality are important factors which influences the ethical decision making and thereby needs to be taken into consideration in respect of any corporate house.

**Favoring Business Ethics: The need of modern time**

Business is rising as a powerful force in modern times. Corporate collapses, business frauds and white collar crimes have made business ethics in modern times (Prabakaran, 2010). Studying business ethics can help to identify ethical issues to the stakeholders.

1. Functional Approach: It can be seen that in past two centuries emphasis was given to the production of goods and services and strengthening the market forces. Lot importance is attached to the growth of values and ethical ideas, shareholders in the contemporary environment, and satisfaction of all stake holders are given equal importance like efficiency and profit maximization in a corporative environment.
2. Employee dedication: It is no doubt that ethics significantly helps in the growth process of employee commitment. As employees expend a substantial amount of time at work, an ethical commitment to the corporation improves the employees’ devotion and trustworthiness. Performance of employees is bound to improve under ethical conditions because of its positive effect on corporative environment.

3. Investor reliability: Today modern investors are more concerned with ethical considerations like social responsibilities and reputations of companies as compared to good returns on investment. The relationship with investors should be based on dependability, trust and commitment. An ethical atmosphere provides a basis for efficiency, yield and profits in a corporation. From the viewpoint of investment the performance standards of the company cannot be ignored. Ethics helps in informing the investors about the company’s performance, financial standing and status.

4. Cooperative effort: Ethics and good practices in corporate scenario is needed to any corporation as a corporative action. In a co-operative process of corporation, some ethical standards are necessary for preserving the solidarity of any corporation and its achievements. It can be depicted that through ethical values and practices many stakeholders can be unified.

5. Changing mindset of stakeholders: The diverse stakeholders of corporations relate their values and standards such as client rights, environmental issues etc. Stakeholders look ahead to the expansion and growth of business organization on ideal and effective set pattern. They share their knowledge and experiences and ultimately offer good suggestions for the growth of improved business practices.
6. Higher Profits: Ample ethical practices help any corporate house to increase profits. A lot of researches have proved that a history of superior ethics can bring a history of superior business. Companies like TVS, Johnson and Johnson etc. are few examples of this principle.

7. Consumer and Client Satisfaction: An extended good relationship is the fundamental necessary condition between business organizations and customers. It can be analyzed that develop countries, approx. 62 percent of the people focus on social responsibility ahead of brand reputation. In developing countries the social reputation related activities are encouraged by the consumers and clients of corporate houses.

8. Necessity of least ethics: In current times for corporations has become a corporative activity to have minimum standards of ethics. It is necessary that stakeholders should be integrated and carries and maintain the cause and growth of business or else, there is a every likelihood of collapse of business. Since no business can survive without ethics. A minimum adherence of ethics is anticipated from any form of companies.

9. Long term implications: Corporations, like any other superior association should keep in mind the long term complications like higher profits, good revenues, and better consumer satisfaction. If any business exploits the stakeholders like customer, employees’, shareholders and others, they will retaliate in a different way. For example employees will not be good in their work, customers may not buy and suppliers will be irregular in their supplies. This type of situation will lead to a chain of unethical events which can have adverse effect on any corporate house.
General causes of unethical behavior

The moral standards are based on values, norms and beliefs of people. That is why moral standards are different from place to place and time to time (Prabakaran, 2010).

General causes of unethical behavior are

1. Companies in present scenario are facing competitive threats. Because of such competitive pressures more and more unethical acts are performed by many companies.

2. Unnecessary fear of future can make even big corporate houses to indulge in unethical activities. Today, the fear of uncertain future and the idea of saving one’s job drive many corporate execute to involve in unethical behavior.

3. The companies lay down targets that may be difficult for its employee to achieve.

4. Today many companies survive at any cost. In a competitive environment there is a need for survival due to which false statements and exaggerations are made.

5. Trying to rationalize that others also do it. In a corrupt and competitive world, the tendency of a person with unethical behavior is to rationalize that everybody is doing the same.

Ethics in Corporate Houses: Justice Perception

The aim of business ethics is to attain justice within the corporation as well as outside. There are mainly three types of justices which ethics emphasis are as follows (Prabakaran, 2010):

- Procedural Justice: the Decision making processes and activities should be done in a reasonable and justifiable approach.
Distributive Justice: Equity in reward is regarded as the core of distributive justice. The income and earning of corporate houses should be distributed in relation and in terms of risk undertaken, contribution and efforts to all.

Interactional Justice: Truth is a factor which plays a vital role in any corporate house. The interaction among the corporations or in other words communication between individual and groups holding interest should be thereby based on truth, respect and courtesy.

Ethics and law: An inseparable Relation

Business people should follow ethical rules and must take laws seriously (McCarty, 1988). Ethics and law are having a common area in their respective subset as they touch each other in the society and cannot function independently in the existing corporate environment.

- Ethics are the expression in a company’s operations and activities of the values and moral principles i.e. the ideology used in the society in which they exist and operate
- A commitment to basic ethical principle is regarded as the basics needed for booming markets and corporate performance associated with the interests of individuals, corporations and society.
- Ethical principles are generally regarded as the company’s formal conduct necessities i.e. generally stated values that direct a company’s preferred behavior or conduct.
- Many companies have laid down code of ethics for its employees to conduct themselves in a particular behavior while doing business.

Corporate Governance: Unethical Scandals

A sound system of corporate governance ensures that managers and directors of enterprises carry out their duties within a framework of accountability and transparency (Abugu, 2011). The Satyam scam had raised many uncertainties about the corporate governance system in India. As a

**Appointments to the board:** - The Company is required to issue formal letters of appointment to Non-Executive Directors and Independent Directors and it must include details such as the term of appointment, provision for D&O insurance, code of business ethics and remuneration (Corporate Governance Voluntary Guidelines, 2009). The letter should form a part of the disclosure to shareholders. Under these guidelines, there should be a clear demarcation of the roles and responsibilities of the chairman of the board and that of the MD/CEO in order to prevent unfettered decision making power (Corporate Governance Voluntary Guidelines, 2009).

**Nomination Committee:** - The chairman of the nomination committee & the majority of its members must be independent directors. The main function of this committee is to evaluate and recommend appropriate independent directors/non-executive directors and executive directors (Corporate Governance Voluntary Guidelines, 2009).

**Remuneration Committee:** - This committee must lays down and discloses the remuneration for the board members and executive while determining the principles, the criteria and the basis of the remuneration policy (Corporate Governance Voluntary Guidelines, 2009). The committee must keep in mind the following principles:

  i) Performance, benchmarks and remuneration are clearly stated
  ii) Rewards are given for materially improved company performance

**Audit Committee:** - The Audit Committee should have the responsibility to -
- Monitor the integrity of the financial statements of the company
- Review the company’s internal financial controls, internal audit function & the risk management system.
- To recommend the appointment, re-appointment & removal of the external auditor and to approve the remuneration and the terms of engagement of the external audit.
- Review and monitor the external auditor's independence and objectivity and the effectiveness of the audit process.
- Monitor and approve all related party transactions to see that the directors are not abusing their position.
- The Annual details of all party transaction are to be included in the report for disclosure to various stakeholders. The audit committee has to see that the auditor has given all information by the company and which information was not given to him by the company.

**Secretarial Audit:** - The responsibility of the Secretarial audit is to ensure transparent, ethical and responsible governance of the company by the board. The Board must give its comments report to the shareholders on the Secretarial Audit report (Corporate Governance Voluntary Guidelines, 2009).

**Whistle Blowing Mechanism:** - The board should set up a mechanism for employees to report concerns about unethical behavior, actual or suspected fraud, or violation of the company's code of conduct or ethics policy. The board must ensure that the company provides for adequate safeguards against victimization of the whistle blower. Whistle blowing employee should not be allowed to direct access to the Chairperson of the Audit Committee in exceptional cases (Corporate Governance Voluntary Guidelines, 2009).
Clause 49 of the Listing Agreement provides for mandatory measures. These guidelines are not mandatory in nature but they help in governance system of the company by all means.

**Corporate Governance: Legal System and corporate ethics**

The legal system of a nation is regarded as vital source of business ethics. The legal system of India comprises of Indian constitution, prevailing laws and judiciary. It is fact and law that of the legal system is alert, ready to act, aware and update, the unethical practices are dejected and discouraged. The legal system of a country offer the guidelines for business and corporations related to production, location, conditions and environment of employment, pricing and consumer and client care. One of the examples of the above mentioned legal system is the competition Act, 2002 which prohibits anti-competitive measures and encourages the growth of competition among various corporate houses. The concerned act has established the competition commission of India, which can enquire into any violation of the provision of the Act. Various criteria have been provided in respect of corporation, enterprises by the act in order to determine whether a corporation and enterprise command a dominant position in the market. Some of them are the size of the competitors, size of market, monopoly, barriers to entry, social responsibility and costs etc. The legal system aims at protecting the interest of stakeholders in a corporation. There is a need for protection of the rights of the clients. Several rights have been provided to clients and consumers like right to protection, right to be heard, right to redressal, right to information (through Right to Information Act) etc. It is noteworthy that apart from the rights of client in purview of ethics, the social and natural environment of corporation have to be taken care of with due diligence.
The sense of social responsibility in corporate governance

The concept of Corporate Social Responsibility proposes that company must have respect for human rights so as to provide reasonable care to the society at large. The CSR policies of the companies contribute towards the nation’s sustainable development goals. It is pertinent to note that the industries provide employment opportunities to the people and protect the interest of the society at large. It clearly depict that businesses depend on society for their existence. Therefore, the adoption of CSR policies develops the relationships with the various stakeholders such as investors, customers, suppliers, employees, communities and governments. The concept of CSR is also related to various issues such as environmental protection, education, health, and healthy relations with the consumers, community and suppliers. CSR help to legitimize the privatization of labor and environment standards (Marques, 2010). It becomes the duty of the corporate houses to incorporate issues of social and environmental concerns in their operations. Currently speaking, education has now become the part of CSR policies of various corporate houses. For instance, Aditya Birla Group has commenced projects which promote the education of the disadvantaged sections of the society. Companies are an integral part of society and are committed to operating in a responsible and sustainable manner (Prasad, 2009). Various companies like BHEL, Mahindra and Mahindra, TATA etc. in order to achieve the Triple Bottom line are putting enormous efforts. Companies like WIPRO has established itself as an onward looking company which sufficiently works with school children, mainly in sections who are underprivileged.

Clause 49 of Listing Agreement on Corporate Governance:-

Para 6 of listing agreement requires that there shall be a separate section on corporate governance in the annual report of the company with a detailed compliance report on corporate
governance. There shall be a detailed compliance report on clause 49 of the agreement. Report shall contain reasons for non-compliance of clause 49 of the agreement. The report should also have the extent of adoption by the company of the non-mandatory requirements of clause 49 of listing agreement. The non-compliance and the adoption should be specifically highlighted in the company’s annual report. The company must obtain a compliance certificate from its auditors or practicing company secretary regarding its compliance with the condition of corporate governance given in the clause 49 of the listing agreement. A mandatory governance code is there under clause 49.

**Corporate governance requirements:**

a. The board must lay down code of conduct for all board members & the senior management person.

b. The company will also put the code of conduct on his website.

c. The board must ensure that the company sets up a qualified and independent audit committee.

d. The audit committee must have a minimum of three directors out of these 2/3 must be independent.

e. All the members of the audit committee must be financial literate. Financial literate means the ability to read and understand the balance sheet, the profit & loss account and the statement of cash flow.

f. At least one of the members of the audit committee must have accounting related financial management expertise.

g. The chairman of the audit committee must be an independent director.
As per SEBI (April 8, 2008) circular, the minimum age of the independent director shall be 21 years. This is mandatory and amongst the non-mandatory provisions, all the stock exchange are advised to communicate to SEBI the status of implementation of the requirements of this circular in the monthly development report.

**Triple Bottom Line and Ethics: A necessary element for the corporations**

In the present corporate environment concept of Triple Bottom Line is gaining importance among the corporate houses within the broader concept of Corporate Social Responsibility. Triple Bottom Line is regarded as a management tool which takes into account the social and environmental responsibilities along with financial responsibility (MacDonald, 2004) and ethical role of a corporation. The fundamental principle behind the Triple Bottom Line (TBL) concept is that a corporation’s reputation or success should be measured not only by the financial bottom line, but also by the social and environmental activities/performance and level of ethical measures undertaken by the corporations. It is pertinent to note that the responsibility of the company is not only to make profit but also to protect the environment and the societal interest and ethical values of different culture pertaining in the environment in which corporations exists. Many a times, the moot question which arises is how the corporations render its positive impact on individuals or society at large. The adoption of TBL in the business strategy gives the positive signal in the market that the corporation has done a splendid work of maintaining environment and public interest and ethical principles which are essential for its survival. It adds importance to the transparency and accountability of the corporation. So in other words, it can be said that TBL provides a framework within which corporate performance and social responsibilities, ethico-moral values are measured and evaluated (Agarwal, 2008).
Corporate Social Responsibility and Ethics in Corporate Governance: A changing social contract between corporations and employees

It is implied that there exist a social contract between corporations and consumers and public. Mutual trust is regarded as the fundamental of such contract (Weiss, 2009). In the past the theory of social contract has defined the employer (Corporations) and employee relationship. Their relationship was based on employment at will doctrines i.e. all may dismiss their employees at will, be they many or few for good cause, for no cause or even by ignoring moral and ethical principles or without being guilty of legal wrong (Gerrit de Geest, 1999). In other words the employer vested discretionary power i.e. having right to fire an employee without giving reason and without considering the ethical perspective. The concept corporate social responsibility in corporate governance serves as a change to such social contract. Presently CSR has completely changed the picture of social contract in corporative environment. The mutual rights and duties toward respective party cannot be ignored in current business environment. The employee-employer social contract should be viewed in the context of changing national and global competition, technology innovations and the information revolution, increasing growth of service sector and most importantly ethical principles prevailing in the existing environment. CSR helps to achieve a balance in the societal relationship toward each other. Employers are not allowed to violate public policy principles and consider ethical norms (Weiss, 2009). It can be seen that globalization has led to emergence of corporate social responsibility thereby acting as an awareness mechanism, supporting both employee and employers. Employees of an organization are one of the stakeholders on which corporate houses stand responsibility. Values of integrity and trust are considered to be the fundamental basis of corporate governance (Arjoon, 2005). In the present global dynamic phase, initiative by big corporate houses in respect CSR has resulted
in protection of social status of employee-employer relationship (Brink, 2011). Now employer
could not act arbitrary with its employees regarding termination decisions when considering
factors like duration of employment, lack of direct criticism of work, employers acknowledged
policies etc. corporations are obliged to pay employees fair wages for work performed and
provide safe working conditions. Due to the significant shift in business ethics today affects the
overall success of a corporation since it relates to the employers relationship to the employee
within a work environment (Karnes, 2009). Employer-employee relationship is regarded as one of
the strength in SWOT analyses and CSR has emerged as one of the concept which would help
companies in strengthening their ethical aspect also which will result in better efficiency and
competitive edge over others and improved societal relationship with society.

Corporate Governance: Role and Need for Ethics in framing Corporate Decisions

It can be seen that behind every decision making there is ethics. Occasionally sometimes ethical
aspects are explicit and many times it is implicit. Decision making and ethics are highly
interrelated. Effective and efficient decision making is regarded as the central to growth for
corporations and ethics plays a crucial role in decision making. Good decision-making involves
enhancing the competitive position of a business while staying within the legal and ethical
boundaries of society (Min, 1993). Ethical elements have to be introduced in unstable times too,
because decision without ethical touch will lead to the acute problem of frustrations, apathy,
stagnation and resistance to change. There are some criteria’s of good ethical decision some of
them are like utilitarianism which Seeking the greatest food for the greatest numbers. Rights are
also other criteria which aims protecting the basic rights of individuals. One of the important
criteria is Justice whose objective is imposing and enforcing rules in an impartial way. In fact,
many a time’s ethical decisions are being taken according to the local cultural norms. Creative
ethical decisions are far better and higher to the ordinary decisions (Prabakaran, 2010). There is a need for ethics in corporate governance due to the following points (Prabakaran, 2010):

- **Prevention of litigation:** Generally speaking, litigation is the time consuming process where we find a solution to conflicts. In corporations any form of conflict is a negative force not contributing a positive value, addition conflict with customers, employers, suppliers and even competitors can be minimized and avoided in course of time through ethics.

- **Regulatory freedom:** The notion of complete and unconditional freedom is a myth and the relative freedom is a reality in the present corporative environment. Ethics with freedom with some regulation can empower each person to perform with consciousness and to the most excellent ability.

- **Public acceptance:** In the present corporative scenario ethical practices are very much respected and valued in contemporary days. The customers and clients want to have business relationship with the well known and reputed companies because of their credit worthiness thereby role of ethics cannot be ignored.

- **Investor assurance and confidence:** During times of trouble and disorder, the investors are naturally interested in the safe returns of investment. In normal times, the investors are happy with good returns of investment. Ethically managed companies can provide both safety and good returns for the investments made by the investors.

- **Suppliers and partners:** Suppliers and partners are always happy to be associated with the business organization following ethical guidelines. Apart from the economic returns, people give importance for the various well fare schemes and ethical considerations.
Customer and client loyalty: Customarily speaking, customers and clients were concerned with quantity, price, and offers. In modern days, the customers give a lot of importance to quality of the product and service in organizations, corporate houses etc. as well as the ethical considerations like made of production and freedom to the stakeholders. For example people do not want to buy product of those organizations which are produced by child labor or under exploitation.

Employee performance: Generally, an employee in a corporation is much concerned about the way in which others are getting treated. As human beings, they feel a decent treatment makes them happier. Many researches and studies have proved that the loyalty of the employee increases along with the better treatment.

Pride: In the present competitive environment many employees prefer certain employers for the fact that these employers are promoting ethical practices. For example many computer professionals prefer for example INFOYSIS because of the good practices promoted by this company.

Right approach: In Modern times the most admired companies have shifted their concern from shareholders to stakeholders. Business is no longer profit-making proposition. It takes care of other areas like customer care and social responsibility. Most modern theories of economics and ethics encourage ethical behavior in business. The real costs of unethical behavior are greater than those incurred because of ethical behavior. Economist Dwight Lee and Richard McKenzie argue that, “An economy in which people deal with each other honestly produce more wealth than one in which people are chronically dishonest because more exchange occur directing resources into their most productive employments”. Most of their decisions are based on perception which is a process by
which individuals interpret their sensory impressions and find a meaning to the environment. It is a fact that the behavior of the people is based on their perception.

**Ethical values to be considered in ethical decision making of corporations**

Corporate decision makers are agents of the shareholders and thus are expected to represent shareholder interests almost exclusively as they guide corporate activities (Risser, 1993). There are some ethical values to be considered with the reference to ethical decision making in corporations.

- **Autonomy:** It means the freedom to make one's own decision. Under a broad framework, the employees can have a limited freedom.
- **Beneficence:** Doing what is best in a given situation. Prompt reporting to duty and using the working time for the productivity of the organization.
- **Justice:** Another ethical value which needs to be studied is being fair to all and treating all employees equally so that justice could prevail.
- **No maleficence:** The concerned ethical value is one of the vital for companies i.e. avoiding harm by deciding not to spread gossip.

In the same way in all discussions, the ethical values like compensation, confidentiality, loyalty, honestly and respect have to be followed (Prabakaran, 2010).

**Restrictions and constraints in ethical decision making for corporations**

There is no doubt that ethical values, principles and morals play a key role in any corporation for corporative decision making. But implementation of ethics is not an easy task. There are many
constraints and factors which act as a barrier in this relevant process (Prabakaran, 2010). Some of them are

1. Formal Rules and Regulations: The formal rules are not framed in current time. Generally these set of rules are replica from other offices or corporations. The problem which arises is that such rules do not have a conditions and provisions for ethical practices and thus ultimately act as barrier to ethical decision making in companies.

2. Performance evaluation: It is seen that evaluation process does not give sufficient significance to ethical practices. It mainly focuses on performance or perish and thereby acting as only maxim of performance evaluation.

3. Reward Systems: Another barrier to ethical decision making is the existing reward system as they are not giving weight to intangible ethical practices. The reward systems keep their focal point only on tangible success.

4. Time limitation: Today in the dynamic environment nobody likes to wait for anything. In a fast moving world, it is hard and complex to introduce ethical decisions since people are not able to wait.

5. No past Precedence: Another form of restriction for ethical decision making is that there is no precedence based on ethical values. Most of the decisions are from a realistic platform and therefore very less scope is left for ethical decision making.

6. Cultural differences and variations: It can be seen that there are different ethical practices in different cultural environment and circumstances. Relativism is playing an chief role in ethical management so it becomes very difficult for companies to make uniform ethical decision making for all prevailing cultural variations.
Conclusion

Morality and ethics are closely related to each other. As of now, it can be stated that the notion of good corporate governance is based on disclosure and transparency which is not possible without morality and ethics. The adoption of ethics and morality policies in corporate system not only attracts customer loyalty but also add more values to employee loyalty. It is noteworthy that the responsibility of the company is not only to make profit but also to protect interest of the society at large. Companies must make decisions regarding profit maximization within ethical bounds. Ethics is an essential element for business success and it enhances the company’s image and reputation in the market. In current scenario values of integrity and trust are consider to be the primary foundation of corporate governance, which ultimately helps companies to achieve competitive advantage for attracting and retaining ability. The ethical practices in a corporation aids in producing positive reactions in the dynamic marketplace. Effective corporate governance can be achieved by agreeing to a set of principles and best practices. In India, a large majority of companies have been focusing on code of conduct and business ethics as a fundamental of good corporate governance as they know standing for ethical behavior in corporative environment will not only maintains customer loyalty but also employee loyalty.

In the process of good governance, the board of directors plays a critical role and it has the ultimate authority to oversee the ethical performance of their corporations. It is submitted that mere compliance with the code of ethics will not be sufficient to show that company will act in an ethical manner. As far as the issue of good governance is concerned, a company must have a responsibility to adopt standards of ethical behavior. As pointed earlier, there is close nexus between ethics and morality which have direct as well as indirect implications on corporate
governance. Today in the competitive and corporative environment ethics plays an important role in the success and survival of any corporation.

A modern view can be depicted that in a country such as India, its legal system propagates corporate ethical practices since it lays emphasis on protection of consumer, clients, stakeholders etc. In no way the role of ethics in corporate governance can be ignored. Ethics and morality act as a restructuring mechanism of social contract within as well as outside the corporations. It is remarkable for those corporations who haven’t touched the concerned practices and principles till now, to introduce these with immediate effect, in order to achieve good corporate governance. And as far as those corporations who are already applied them, needs to tackle its constraints so as to advance with competitive edge. Therefore, it can be concluded that ethics and morality are must and plays a vital role in corporate governance in India.

References


