COURSE: BBA(CBCS)

SEMESTER: IInd

SUBJECT:ETHICS AND CORPORATE SOCIAL RESPONSIBILITY

UNIT I

MEANING OF ETHICS

- The word ethics is derived from the Greek word ethikos meaning custom or character.
- Ethics is a conception of right and wrong behavior, defining for us when our actions are moral and when they are immoral
- Ethics is the discipline that examines ones moral standards or the moral standards of a society.
- It is that branch of philosophy which is concerned with human character and conduct.

MEANING OF BUSINESS ETHICS

- Business ethics are concerned with moral issues in business just as medical ethics are concerned with morality of medical practices and policies.
- Application of general ethical concepts /ideas to the unique situations confronted in business. For e.g.: if a society's ethical rule says that dishonesty is unethical and immoral, then anyone in business, who is dishonest with employees, customers, creditors, or competitors is acting unethically and immorally. Similarly, if protecting people from harm is considered ethical, then business firm that recall a defective and dangerous product is acting in an ethical way.
- It asks what is right or wrong behavior in business and what principles or rules can be used as a guidance in business situations.
- Nine core values have been highlighted for ethical business conduct: (1)Honesty,(2)Integrity,(3)Respect,(4)Fairness,(5)Purposefulness,(6)Trust,(7)Responsibility,(8)Citizenship,
(9)Caring.

DEFINITIONS OF ETHICS AND BUSINESS ETHICS

- According to R.Wayne Mondy,"Ethics is the discipline dealing with what is good and bad ,or right and wrong ,or with moral duty and obligation"
- "Ethics" refers to the code of conduct that guides an individual while dealing in a situation. It relates to the social rules that influence people to be honest in dealing with other people.
- According to John Donaldson," Business ethics can be described as the systematic study of moral (ethical) matters pertaining to business, industry or related activities, institutions or practices and beliefs"
- Business ethics are rules of business conduct, by which the proprietary of business activities may be judged. It also relates to the behavior of managers.

IMPORTANCE OF BUSINESS ETHICS:

- Earlier it was said that "business of business is business". Now there is a sudden change in the slogan, the slogan has taken the form:"the business of business is ethical business"
- Ethical business behavior is expected by the public, it facilitates and promotes good to society, improves profitability, fosters business relations, and employee productivity, reduces criminal penalties against public authorities and regulators, protects business against unscrupulous employees and competitors, protects employees from harmful actions by their employer.

WHY ETHICAL PROBLEMS OCCUR IN BUSINESS

Ethical problems occur in business for many reasons:

- Personal gain: People will be sometimes greedy and put down their own welfare ahead of all others, not bothered about the welfare of the fellow employees, the company or society. this will cause ethical problems.
- Clash of personal values and organizational goals:a company if it pursues goals or uses methods that are not acceptable to some of its employees will create ethical conflicts in business.

- Competitive pressures: when companies compete for a similar product , they sometimes engage in unethical activities in order to wipe out a competitor from the market.
- Cross cultural contradictions: ethical problems occur when certain corporations cannot do business at home, would try to enter other societies where ethical standards differ.

ETHICAL PRINCIPLES IN BUSINESS

Utilitarianism (Weighing Social Costs And Benefits):

- Utilitarianism is a general term for any view that holds that actions and policies should be evaluated on the basis of the benefits and costs they will impose on society.
- The right action or policy is the one that will produce the greatest net benefits or the lowest net costs (when all alternatives have only net costs).
- According to the concept of utilitarianism, the right decision is the one that produces the greatest good for the greatest number of people.
- It is the philosophy used in making ethical decisions that aims to achieve the greatest good for the greatest number.
- Utilitarian Principle: An action is right from an ethical point of view if and only if the sum total of utilities produced by that act is greater than the sum total of utilities produced by any other act the agent could have performed in its place.
- The principle assumes that all the benefits and costs of an action can be somehow measured and thereby determine which action produces the greatest total benefits or the lowest total costs.

RIGHTS AND DUTIES:

- Rights and duties are correlated terms i.e without right ,duty cannot be exercised and without duty,the right cannot be observed. For e.g if I have a right to an education, then I have a justified claim to be provided with an education by society.
- In general terms,a Right is an individuals entitlement to something.
- Rights are powerful devices whose main purpose is to enable the individual to choose freely whether to pursue certain interests or activities and to protect those choices.

Types of rights: Rights are of two types (1) Moral Right or Human Rights, (2) Constitutional or Legal Rights.

- Legal Rights: legal rights are limited to a particular jurisdiction within which the legal system is in force.
- Moral rights: moral rights are based on moral norms and principles that specify that all human beings are permitted or empowered to do something or are entitled to have something done for them. Moral rights are same for all individuals by virtue of being human beings. For eg humans have a moral right not to be tortured, then this is a right that human beings of every nationality have regardless of the legal system under which they live.
- Moral rights can be grouped into two broad categories: Negative rights and positive rights.
- Negative rights such as the right to privacy , the right not be killed or the right to do what one wants with ones property are rights that protect some form of human freedom or liberty. Negative rights imposes a negative duty on all others –the duty not to interfere in certain activities of the person who holds a given right.
- Positive rights are positive in the sense that some agents have the positive duty of providing the holder of the right with whatever he or she needs to freely pursue his or her interests.
- Advocated by Immanuel Kant and lock ethical decisions should protect the legal and moral rights that an individual is entitled to.

JUSTICE AND FAIRNESS

- Justice and Fairness are closely related terms that are often used interchangeably.
- Justice and Fairness is an important moral concept
- Justice means giving each person what he or she deserves or in more traditional terms giving each person his or her due.
- Justice usually has been used with reference to a standard of rightness.

- Fairness often has been used with regard to an ability to judge without reference to one's feelings or interests.
- Justice theories advocate that all persons should be guided by fairness, justice, equity,and by a sense of impartiality.
- Justice is the philosophy used in making ethical decisions to ensure the equal distribution of benefits and burdens. They include a belief that people should be treated equally,and in case some are treated unequally it must be based on some defensible reasons, rules should be applied consistently and that people who harm others should be held responsible and make restitution.
- A justice decision is one that is fair , impartial, reasonable in the light of the rules that apply to the situation.

Kinds of justice: The Ancient Greek Philosopher Aristotle distinguished three kinds of justice(1)Distributive Justice,(2)Compensatory Justice,(3)Retributive Justice.

- Distributive justice deals with the distribution of benefits and burdens.
- Compensatory Justice deals with the matter of compensating persons for wrongs done to them.
- Retributive justice involves punishment to wrong doers.

ETHICS OF CARE

Caring for others is the corner stone of good ethical practice.

- This is the ethics that deals with caring for the concrete wellbeing of those persons who are near to us.
- The view that we have an obligation to exercise special care towards those particular persons
  With whom we have valuable close relationships, particularly relations of dependency is a key concept in an ethics of care.'

INTEGRATING UTILITY, RIGHTS, JUSTICE AND CARING

- Utilitarian standards must be used when we do not have the resources to attain every ones objectives so we are forced to consider the net social benefits and social costs consequent on the actions by which we can attain the objectives.
- Our moral judgments are also partially based on standards that specify how individuals must be treated or respected. These sorts of standards must be applied when our actions and policies will substantially affect the welfare and freedom of specifiable individuals. Moral reasoning of this type forces consideration of whether the behavior respects the basic rights of the individuals involved and whether the behavior is consistent with one's agreements and special duties.
- Our moral judgments are also based on standards of justice that indicate how benefits and burdens should be distributed among the members of a group. These sorts of standards must be employed when evaluating action whose distributive effects differ. The moral reasoning on which such judgments are based will incorporate considerations concerning whether the behavior distributes benefits and burdens equally or in accordance with the needs,abilities,as well as extent of their wrong doing.
- Our moral judgments are also based on standards of caring .Standards of caring are essential when moral questions arise that involve persons embedded in a web of relationships ,particularly persons with whom one has close relationships.

VIRTUE ETHICS (ARISTOTLE'S NICOMACHIEN ETHICS)

- Utilitarian ethics address the question: what actions are right? Virtue Ethics asks instead: What kind of persons we should be?
- This theory holds that Ethics should develop character traits or virtues in a person so that person will do what is morally right.
- Aristotle defines Virtue as a character trait that manifests itself in habitual action. Honesty for e.g. cannot consist in telling the truth once .It is the trait of a person who tells the truth as a general practice. A virtue is something we admire in a

person; A Virtue is an excellence of some kind that is worth having its own sake honesty is a trait that everyone needs for good life.

- Virtues are those traits that everyone needs for the good ones no matter his or her specific situation.
- The virtuous person is the ethical person.
- Aristotle was famous supporter of this view. Aristotle felt that virtue ethics was the way to attain true happiness.

PROFIT MAXIMIZATION VS SOCIAL RESPONSIBILITY:

- Profit earning is the main objective of every economic activity. A business is also started to earn profits. Profits are needed to cover up costs of production and also to create surplus for further expansion and diversification. A business cannot survive long in the absence of profits.
- Though profit earning by a business is essential but profit maximization is not desirable .Maximizing profits without caring for anything else will amount to exploitation of consumers,employees;social inequalities, corrupt practices, lowers human values.
- Corporations whether public or private draw much from society. No corporation is an island in itself. It depends on society for a developed infrastructure such as roads, water supply, electricity and an educated workforce. It also depends on society for the maintenance of law and order, public health, transport facilities and for reaching out to its customers through the mass media. Finally, all consumers of its finished products are drawn from society. Hence business should be socially responsible in the sense that the business enterprise which makes use of the resources of society and depends on the society for its functioning should discharge its duties and responsibilities in enhancing the welfare of the society of which it is an integral part. It has a debt to pay to society. In the first place , a corporation has to behave as a good citizen. This is to be shown in the faithful and full payment of taxes, the observation of all local and national laws and perhaps even going beyond law in matters of pollution, of standards of operational and product safety, and energy and resource conservation. The corporation has to donate

generously towards causes of public welfare and must get itself directly involved, in social welfare programs.

MORAL ISSUES IN BUSINESS:

An organization, whether a business or a government agency, is first and foremost a human society. If an employer does not take steps to create a work environment where the employees have a clear, common understanding of what is right and wrong, and feel free to discuss and ask questions about ethical issues and report violations, significant problems could arise. Mainly ethical issues can be categorized in the framework of their relation with business associates, conflicts of interest, fairness and honesty, and communications.

- **Business Relationships:** The behaviour of businesspersons toward customers, suppliers, and, and others in their workplace may also generate ethical concerns. Ethical behaviour within a business involves keeping company secrets, meeting obligations and responsibilities, and avoiding undue pressure that may force others to act unethically. Managers, in particular, because of the authority of their position, have the opportunity to influence employees' actions. Organizational pressures may encourage a person to engage in activities that he or she might otherwise view as unethical, such as invading others' privacy or stealing a competitor's secrets.
- **Conflicts of Interest:** conflict of interest exists when a person must choose whether to advance his or her own personal interests or those of the organisation. A bribe is a conflict of interest because it benefits an individual at the expense of an organization or society. . To avoid conflicts of interest, employees must be able to separate their personal financial interests from their business dealings.
- **Fairness and honesty:** Fairness and honesty are at the heart of business ethics and relate to the general values of decision makers. At a minimum, businesspersons are expected to follow all applicable laws and regulations. But beyond obeying the law, they are expected not to harm customers, employees, clients, or competitors knowingly through deception, misrepresentation, coercion, or discrimination.

- **Communications:** Communications is another area in which ethical concerns may arise. False and misleading advertising, as well as deceptive personal-selling tactics, anger consumers and can lead to the failure of a business. Truthfulness about product safety and quality are also important to consumers.

Employees and workers rights and responsibilities: Following are the rights and responsibilities of workers and employee:

- Employees main moral duty is to work towards the goal of the firm.
- To avoid any activities which might cause harm to those goals,
- To obey organizational superiors.
- Employee right of freedom of speech.
- Right of due process.
- Right to safety.
- Right to privacy.

UNIT II

CORPORATE GOVERNANCE CONCEPT

- Corporate Governance is a central and dynamic aspect of business. The term 'Governance' derives from the Latin word *gubernare*, meaning 'to steer', usually applying to the steering of a ship, which implies that Corporate Governance involves the function of direction.
- Corporate governance involves a set of relationships between a company's management, its board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined.
- Corporate governance is a set of systems and processes to ensure that company is managed to suit the best interests of all stakeholders. The philosophy of corporate governance hinges on total transparency, integrity and accountability of the management.

NEED TO IMPROVE CORPORATE GOVERNANCE STANDARDS

- Current Indian corporate Governance standards are much improved and superior to the previous standards that existed in 2000. This is because of the fact that significant amendments/revisions have been made in the companies Act and also in the clause 49 of the SEBI's Listing Agreement since 2000 onwards.
- More and more requirements have to be included in the regulations and enactments in order to:
    - Ensure Full disclosure and transparency in the functioning of corporate management;
    - Introduce more accountability of the board of directors to the stakeholders;
    - Bring more integrity and fairness in the functioning of corporate towards attaining a new height of achievement of Corporate Governance Standards;
- Further companies at their individual level have to improve Corporate Governance Standards and ensure compliance of the already existing standards in the country for their long term survival and growth.

FEATURES OF GOOD GOVERNANCE

Good Corporate Governance practices instill in companies:

- Essential vision, processes, and structures to make decisions that ensure longer-term sustainability;
- Helps to maintain the confidence of investors;
- Demonstrate strict adherence to norms of Corporate Governance;
- Strengthen stakeholders' relationship and provide stability and growth to the enterprise;
- Timely and accurate disclosure on all material matters.

ROLE PLAYED BY REGULATORS TO IMPROVE CORPORATE GOVERNANCE

Corporate India has a long history of corporate governance systems, which started from 1850, under the British Rule. India follows the Anglo American System of Corporate Governance with a unitary majority executive board structure.

In fact, Corporate Governance system in India started changing with the liberalization of Indian economies in 1991. The regulators play a significant role in improving the corporate Governance system of India.

In late 1990s and early 2000, Government of India, through her own Ministry of Corporate Affairs (MCA) and Securities and Exchange Board of India (SEBI), appointed several committees to suggest measures for improvement in the standards of Corporate Governance system. In an Endeavour to improve the Corporate Governance standards, SEBI introduced a new Clause 49 of the Listing Agreement in 2000 applicable to all listed companies, followed by several amendments. Similarly, several amendments were also made in the Companies Act, 1956 for the same purpose following the recommendations.

Important Steps taken by Indian Regulators for improving the standards of Corporate governance:

A. *Confederation of Indian Industry (CII) - Code of Desirable Corporate Governance (1998)*
B. *SEBI norms based on Kumar Mangalam Birla Committee recommendations on corporate governance (2000)*
C. *Insertion of New Clause 49 of the Listing Agreement by SEBI (2000)*
D. *Reserve Bank of India (RBI) Report of the Advisory Group on Corporate Governance (2001)*
E. *N.R. Narayana Murthy Committee Report on Corporate Governance (2003)*
F. *Revision of Clause 49 of the Listing Agreement by SEBI (2003 and 2004)*
G. *Expert Committee (Dr. J J Irani Committee) Report on Company Law (2005)*
H. *Establishment of the NSE Centre for Excellence in Corporate Governance (2012)*
I. *Companies Act (2013)*: Key Provisions of this Act vis-à-vis Corporate Governance include:
    i. Stakeholders Relationship Committee
    ii. Certificate by the company’s Auditor
    iii. Valuation by Registered Valuer
    iv. One Women Director

v. Appointment of Independent Directors

vi. Corporate Social Responsibility (CSR) (Clause 135)

vii. Serious Fraud Investigation Office (SFIO) (Clause 211

viii. Class action suits (Clause 245)

J. *SEBI's Revised Clause 49 of the listing Agreement 2014*: On 17th April 2014 SEBI amended Clause 49 of the Listing Agreement. Some of the key changes are:

i. Appointment of a Woman Director

ii. Tenure of Independent Directors

iii. Formal letter of appointment to Independent Directors

iv. Performance evaluation of Independent Directors

v. Separate meeting of Independent Directors & Training of IDs

vi. Succession Plan for Board/Sr. Management

vii. Compulsory whistleblower mechanism

viii. Constitution of Nomination and Remuneration Committee

ix. Disclosure in Annual Report about Remuneration Policy and evaluation criteria

x. Related Party Transactions

xi. Compulsory Electronic Voting for all shareholders resolutions (new Clause 35B)

ACCOUNTING STANDARDS AND CORPORATE GOVERNANCE

In any country, the awareness and competitiveness among the corporates would be strengthened when they understand each other and compare their performance, for which the simple, understandable and comparable disclosure is an important instrument. The main objective of disclosure would be fulfilled and the utility of the disclosure towards good Corporate Governance would be improved when the disclosure is done on the basis of uniform and consistent accounting standards. Thus, the development and the practice of uniform accounting standards is an essential essence of Corporate Governance, for which various bodies have been thinking to strengthen the standards to make the Corporate Governance more effective in the context of the changing corporate environment and contributed their wisdom.

The Institute of Chartered Accountants of India (ICAI), which is an Apex Body for the development of accountancy in India, has been working for the adoption and improvement of accounting standards. Many of the accounting standards prescribe additional disclosures to be made in the annual report. Some of the key disclosures mandated by the accounting standards include: Disclosure of Accounting Policies (AS 1), Consolidated Financial Statements (AS 21), Segment Reporting (AS 17), Related Party Disclosure (AS 18), Contingent Liabilities (AS 29).

CORPORATE DISCLOSURES

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

In the 'Indian' context, corporate financial reporting has two aspects, viz., statutory (mandatory) and non-statutory (voluntary) disclosures.

(a) Statutory Disclosures: In India, both the Company Act and the Securities and Exchange Rules, laid down by the SEBI, under Clause 49 of Listing Rules.

- Compulsory publication of annual financial statements in the prescribed form, from time to time.
- Basis of related party transactions
- Disclosure of Accounting treatment
- Board disclosures – Risk management
- Proceeds from Public Issues, Rights Issues, Preferential Issues etc.
- Remuneration of directors
- Management discussion and Analysis report
- Information for shareholders viz. Quarterly results shall be put on company's website.
- Report on corporate Governance
- Whistle blower policy

(b) **Non-Statutory (Voluntary) Disclosures:** Many companies are going beyond the mandatory disclosures and are disclosing additional information on voluntary basis. These disclosures do help the company in projecting a positive image and also in meeting the informational need of analysts and institutional investors such as social responsibility and environmental disclosures, value added statement etc.

INSIDER TRADING

- Insider may be a connected person or any person who is in possession of or has access to "unpublished price sensitive information".
- The term "unpublished price sensitive information (UPSI)" means information, relating to a company or its securities, that is not generally available, which upon becoming generally available is likely to materially and adversely affect the price of the securities.
- An insider trading is prohibited under Indian regulations.

THE BOARD:

Section 2(6) of the Indian Companies Act 1956 states that directors are collectively referred to as "Board of Directors" or simply the "Board". As per the Companies Bill, 2009 Section 2(1)(j): "Board of Directors" or "Board", in relation to a company, means the collective body of the directors of the company".

- The board of directors is appointed to act on behalf of the shareholders to run the day to day affairs of the business whilst meeting the interests of its shareholders and other stakeholders.

The other issues involved in respect of board are:

a) Proportion of directors – inside vs. outside directors,
b) Size, structure and style of the board, and
c) The age of the board members.
d) Orientation and training of directors
e) Remuneration of directors
f) Board meetings and matters to be reserved for board decision

g) Board’s performance evaluation

QUALITIES OF BOARD

The qualities of the Board can be exhibited by focusing on its key function areas:

(i) Establishment of vision, mission and values;
(ii) Set strategy and structure;
(iii) Delegation of authority and responsibility to management;
(iv) Exercise accountability to shareholders and be responsible to relevant stakeholders;
(v) Ensure compliance with laws and regulations.

THE BOARD: COMPOSITION

The Board should have an optimum combination of Executive Directors (ED) and Non-Executive Directors (NED), satisfying the following criteria:

- If Chairman is an ED, at-least half of the Board should be Independent Directors (ID).
- If Chairman is a Promoter or related to a Promoter, at-least half of the Board should be IDs.
- If Chairman is related to anyone occupying management position at the Board level or one level below the Board, at-least half of the Board should be IDs.
- If the Chairman is an ID, at-least one-third of the Board should be IDs.
- If the Board doesn’t half a regular non-executive Chairman, at-least half of the Board should be IDs.
- The Board should have at-least one woman director.

OUTSIDE DIRECTORS ON THE BOARD (INDEPENDENT, NOMINEE)

An Outside Director (also sometimes known as an Independent Director or non- Executive director) is a director of a board of directors who does not have a material or pecuniary relationship with company or related persons except sitting fees.

Nominee directors include government nominees and representatives of financial institutions on public enterprise boards. In essence, these directors are a conduct between the enterprise and the government. They, therefore, bring together with them the Government's thinking regarding the various issues for discussion at board meetings and in the case of financial institutions, the effective utilization of invested funds.

EXECUTIVE AND NON-EXECUTIVE DIRECTORS

- Directors who occupy management position in the company are referred to as Executive Directors; and those directors who do not occupy any management position are called Non-Executive Directors and they receive sitting fees only.
- Executive Directors shall be paid remuneration as recommended by the Compensation & Benefits Committee to the board.

ROLE OF BOARD

- The Board should meet regularly, retain full and effective control over the company and monitor the executive management.
- Involvement in employment and dismissal of the CEO.
- BODs promote overall interests of the company and its stakeholders are of paramount importance.
- BODs should monitor corporate performance against strategic business plans, including overseeing operating results on a regular basis to evaluate whether the business is being properly managed and take proper measures at the proper time.

SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI) CLAUSE 49

Based on the recommendations of Kumarmangalam Birla, Listed companies in India with a paid up share capital of Rs. 3 crores and above or net worth of Rs. 25 crores or more have to comply with the Corporate Governance related provisions of Clause 49 of the Listing Agreement of Securities and Exchange Board of India (SEBI), setting out mandatory and non-mandatory provisions for the governance of the listed companies. Through a circular dated April 17th 2014, SEBI released the amendments to Clause 49 of the Listing Agreement.

MANDATORY PROVISIONS RELATING TO DIFFERENT ASPECTS INCLUDE:

A. **CLAUSE 49 ON SHAREHOLDER RIGHTS** Clause 49 gives shareholders right to:

- Participate in and be sufficiently informed on decisions concerning fundamental corporate changes.
- Vote in shareholder meetings.
- Ask questions to the Board and propose resolutions.
- Participate in nomination and election of Board members.
- Exercise their ownership rights.
- Put forward their grievances to the Company.
- Be protected from abusive actions in the interest of controlling shareholders.

B. **CLAUSE 49 ON DISCLOSURE AND TRANSPARENCY**

- The Company should ensure timely and accurate disclosure of information to its shareholders.
- The information should be prepared and disclosed in accordance with the prescribed standards and rules.
- Channels for dissemination of information should provide for equal, timely and cost efficient access to relevant information by users
- The company should maintain minutes of the meeting explicitly recording dissenting opinions.

C. **CLAUSE 49 ON BOARD COMPOSITION**

The Board should have an optimum combination of Executive Directors (ED) and Non-Executive Directors (NED), satisfying the following criteria:

- If Chairman is an ED, at-least half of the Board should be Independent Directors (ID).
- If Chairman is a Promoter or related to a Promoter, at-least half of the Board should be IDs.
- If Chairman is related to anyone occupying management position at the Board level or one level below the Board, at-least half of the Board should be IDs.
- If the Chairman is an ID, at-least one-third of the Board should be IDs.
- If the Board doesn't half a regular non-executive Chairman, at-least half of the Board should be IDs.

- The Board should have at-least one woman director.

D. **CLAUSE 49 ON INDEPENDENT DIRECTORS** Clause 49 defines an Independent Director as a Non-Executive Director who:

- Is NOT a Nominee Director
- Is/Was NOT a promoter / relative of the promoter of the Company or its holding, subsidiary or associate company.
- Has/had NO pecuniary relationship (apart from directorial remuneration) with the Company, its holding, subsidiary, associate company or the promoters or directors during two immediately preceding financial years.
- Whose relatives DO NOT have/had any pecuniary relationship with the Company its holding, subsidiary, associate company or the promoters or directors, amounting to 2% or more of its total income or Rs. 50 lakh during the two immediately preceding financial years.
- Who is/was NOT an employee of the Company its holding, subsidiary, associate company in the any of the three immediately preceding financial years.
- Is/has NOT been an employee/proprietor/partner of an audit /legal /consulting/any other firm which has transaction with the Company its holding, subsidiary, associate company, amounting to 10% or more of gross turnover of that firm, in any of three preceding financial years.
- Is NOT a CEO/Director of a non-profit firm that receives 25% or more of its receipts from the Company its holding, subsidiary, associate company, promoters or its directors, or holds 2% or more voting power of the Company.
- is NOT a material supplier, service provider or customer or a lessor or lessee of the company.
- Is NOT less than 21 years of age.

Clause 49 also enforces certain restrictions on the IDs, some of which are:

- Outside Directorship: A person not to serve as an ID in more than 7 listed companies.

- Outside Directorship: A whole-time director of one company not to serve as an ID in more than 3 listed companies.
- Tenure: An ID can only hold office for two terms of five years each.
- Tenure: Reappointment for the second term has to be sought from shareholders through a special resolution.
- Tenure: If an person has already served as an ID for 5 years or more in a company as on October 1st 2014, he will be eligible for one more term of upto 5 years only.
- Tenure: An ID will be eligible for reappointment as an ID only after allowing a 3 years cooling-off period, after completion of two terms.
- Stock Options: IDs will not be entitled to any stock options of the Company.

Some of the mandatory provisions regarding IDs are:

- Issue of formal letter of appointment to IDs and disclosure of such letter to shareholders.
- Performance evaluation of IDs.
- Separate meetings of IDs.
- Training of newly appointed and existing IDs.

E. **CLAUSE 49 ON OTHER BOARD PROVISIONS**

- Board meeting to be held at-least four times a year with a maximum gap of 120 days between two meetings.
- A director can't be a member in more than 10 committees (Audit and Stakeholders' Relationship) and Chairman of more than 5 committees across all the Boards of Indian listed companies.
- IDs who resign or are removed, are to be replaced with new IDs within 3 months or immediate next Board meeting, whichever is earlier, in case the requirement of IDs is not met.
- Board members have to affirm compliance with a 'Code of Conduct' on an annual basis.
- IDs to be held liable in acts of omission or commission, which occurs in their knowledge.

- Company has to mandatorily establish a whistle blower mechanism.

F. **CLAUSE 49 ON BOARD COMMITTEES** Clause 49 has the following provisions regarding Audit Committee:

- Members: At-least three members, two-thirds of which shall be IDs
- Chairman: Chairman to be an ID
- Attendance: Chairman of the Committee to be present in AGM
- Meeting: At-least four times a year and not more than four months gaps between meetings
- Quorum: Two or one-third of the members, whichever is greater, but minimum two IDs should be present
- Role: Role of the committee also includes reviewing and monitoring auditor independence, approval of related party transactions, intercorporate loans, valuations, etc.

Clause 49 has the following provisions regarding Nomination and Remuneration Committee:

- Members: At-least three members, all non-executive directors and at-least half to be IDs
- Chairman: Chairman to be an ID

Clause 49 has the following provisions regarding Risk Management:

- The Company should form a Risk Management Committee
- The Board should be responsible for framing, implementing and monitoring the risk management plan.
- The company should lay down procedures to inform Board members about the risk assessment and minimization procedures.

G. **CLAUSE 49 ON SUBSIDIARIES** Clause 49 has the following provisions regarding subsidiary companies:

- At-least one ID of the company should be a director on the Board of a material non-listed Indian subsidiary.

- The audit committee should review financial statements of and investments made by the unlisted subsidiary.
- No company can dispose of shares in the material subsidiary, reducing its shareholding below 50%, without passing a special resolution in its general meeting.
- Selling, disposing or leasing of more than 20% of assets of the material subsidiary will require approval of shareholders by way of special resolution.

H. **CLAUSE 49 ON RELATED PARTY TRANSACTIONS** Clause 49 has tightened the provisions and disclosures requirements for related party transactions (RPT). Some of the requirements are:

- RPTs to require prior approval of the audit committee.
- Material RPTs to require shareholder approval though special resolution and concerned related parties to abstain from voting on such resolutions.
- Disclosure of all material RPTs on a quarterly basis with compliance report on corporate governance.
- Disclosure of policies on dealing with RPTs, in website and Annual Report.

I. **CLAUSE 49 ON DIRECTORIAL REMUNERATION** The provisions relating to directorial remuneration are kept unchanged. They include:

- Disclosure of all pecuniary relationships of non-executive directors with the company.
- Disclosure of detailed information on remuneration to directors.
- Disclosure of criteria of making payments to non-executive directors.
- Disclosure of shares/other instruments held by non-executive directors.

J. **CLAUSE 49 ON OTHER DISCLOSURES** Clause 49 stipulates mandatory disclosure of many corporate actions. Some of these are:

- Directorial Resignation: Disclosure of letter of resignation of directors along with reasons, on the company website and stock exchange, within one working day of receipt of the letter.

- Letter of Appointment: Disclosure of letter of appointment of an ID along with detailed profile, on the company website and stock exchange, within one working day of date of appointment.
- Disclosure of training imparted to IDs, in the Annual Report.
- Disclosure of details of establishment of vigil mechanism, in company website and Board's report.
- Disclosure of the remuneration policy and the evaluation criteria in the Annual Report.

NON-MANDATORY REQUIREMENTS OF CLAUSE 49:

The non-mandatory requirements in the new Clause 49 are:

- The Board may appoint a non-executive Chairman who should be entitled to maintain a Chairman's office at the company's expense and also allowed reimbursement of expenses incurred in performance of his duties.
- Disclosure of half-yearly financial performance including summary of the significant events.
- Moving towards a regime of unqualified financial statements.
- Appointment of separate individuals to the posts of Chairman and MD/CEO.
- Reporting of the internal auditor directly to the audit committee.

DIRECTORS AND FINANCIAL INSTITUTIONS (FIs) IN ENHANCING CORPORATE GOVERNANCE

The directors have overall responsibility in enhancing the Corporate Governance of the financial institution by providing:

- oversight over executive management;
- approving the strategic objectives;
- overseeing the implementation;
- by taking a lead in setting corporate values, professional standards or codes of conduct of FIs;

- regularly reviewing the complexity of the structure of the FIs,
- Safeguard the interests of depositors and other stakeholders;
- Oversee the alignment of the corporate strategy with the risk appetite and taking timely action.

CRITICAL ISSUES IN CORPORATE GOVERNANCE OF BOARD DIRECTORS

- Structure and strength of the board
- Chairman and CEO duality
- Disclosure of definition of Independent director, financial expert, and selection criteria of board members including independent directors
- Disclosure of other provisions as to boards and committees
- Disclosure of remuneration policy and remuneration of directors
- Board committees
- Disclosure and transparency
- Means of communication, and general shareholder information
- Compliance of corporate governance and auditor's certificate
- Disclosure of stakeholders' interests

CEO DUALITY

CEO duality – the practice of one person serving both as a firm's CEO and board chair.

- Separation of the function of the chairman and CEO has been widely advocated by the regulatory bodies.
- Unless the articles of a company provide otherwise, an individual shall not be the chairperson of the company as well as the managing director or CEO of the company at the same time [proviso to Section 203(1) of the company's Act, 2013].

UNIT III

ROLE OF AUDITORS IN ENHANCING CORPORATE GOVERNANCE

- Provides a check on the information aspects of the governance system.

- Check whether the financial information given to investors is reliable.
- Enhances financial transparency and improves the controls in place.
- Look for misstatements caused by errors or fraud.
- Review the functioning of the Whistle Blower mechanism
- Approval of appointment of CFO after assessing the qualifications, experience & background, etc.

DUTIES AND RESPONSIBILITIES OF AUDITORS

There are some specific duties on the auditor as per Indian Company's Act, 2013. These include:

1. Duty to make report of the company on the accounts examined by him under section 143
2. The auditors are also required to specifically report on certain matters under Companies (Auditor's Report) Order, 2015 (CARO).
3. Compliance with auditing standards
4. Duty to assist investigators
5. Duty to certify the Statutory Report
6. Duty to report fraud

CORPORATE GOVERNANCE AND INTERNAL AUDIT

Internal Audit is an independent appraisal activity within an organization for review of accounting, financial and other operations of the organization. Internal Audit by its nature plays a great role in ensuring corporate governance practices in the organization by:

- Determination of policies
- Determination of work standard
- Compliance with legislation
- Reliability of financial information
- Prevention and control risks of not reaching targets.

WHISTLE BLOWING

Whistle blowing is a mechanism established by a company for directors and employees to report concerns about unethical behaviour, actual or suspected fraud or violation of the company's code of conduct or ethical policy. The mechanism also provides protection to individuals who expose offences, involving fraud.

KINDS OF WHISTLE BLOWING:

7. Internal Whistle blowing: is made to someone within the organization.
8. Personal Whistle blowing: is blowing the whistle on the offender, here the charge is not against the organization or system but against one individual.
9. The impersonal: is the external whistle blower.

NEED FOR WHISTLE BLOWING

- Its acts as a vigil mechanism for the company;
- Helps in finding out unethical behavior;
- Helps in detection of fraud;
- Reports about violation of company's code of conduct or ethics policy;
- Helps in timely action against any unethical practice or violation.

DISCRIMINATION: AFFIRMATIVE ACTION AND REVERSE

Discrimination is defined as the poor or unfair treatment of a person based on his or her race, ethnicity, gender, religion, or disability. Because employment and social practices have *historically favored those who participate in the activities in the largest number*, the members of certain minority groups have been the butt of discrimination e.g., many colleges had a greatly higher population of White students Vs Black students, many employers employed women only in certain positions.

"Affirmative action (also known as positive discrimination) is defined as an effort to correct past injustices, positive steps to correct past discrimination generally: fairness, just treatment, opportunities, remedial change specially plan for increased representation for minorities, plan for increased representation for women, racial quotas." Some countries, such as India, use a quota system, whereby a certain percentage of government jobs, political positions, and school vacancies must be reserved for members of a certain group viz. any minority group.

Reverse Discrimination refers to discrimination against members of *historically majority, or "advantaged*," group. The term grew in popular use in the U.S. in the late 20th century, as legislation required special emphasis be put on offering advantages to minority populations, such as women, blacks and Hispanics, and the disabled. For example, Z Company requires their employees to take an aptitude test as part of the process of promoting them.

DISCRIMINATION: EQUAL EMPLOYMENT OPPORTUNITY, AFFIRMATIVE ACTION, PREFERENTIAL HIRING

Equal Employment Opportunity prohibits discrimination against anyone. It attempts to ensure that all applicants, males-females and all races have a fair opportunity in a hiring process, in competing for promotions, and equal access to training/professional development opportunities.

As for Affirmative Action, it is a remedy to address past practices of discrimination. Affirmative Action was designed to level the playing field for females, individuals with disabilities and minorities. The minorities group includes Blacks, Hispanics, Asians and American Native Indians.

Preferential hiring is to prefer someone or something over another. Preference turns into discrimination if favorable treatment is shown to a person based on individual traits and characteristics covered by equal-opportunity laws.

UNIT IV

MEANING OF CORPORATE SOCIAL RESPONSIBILY

- The concept of CSR originated in the 1950's in USA and the concept came into prominence in public debate during the 1960's and 1970's.
- Corporate Social Responsibility (CSR) is a concept that organizations have an obligation to consider the interests of customers, employees, shareholders, communities, and ecological considerations in all aspects of their operations. This obligation is seen to extend beyond their statutory obligation to comply with legislation.
- CSR is closely linked with the principles of Sustainable Development, which argues that enterprises should make decisions based not only on financial factors such as profits or dividends, but also based on the immediate and long-term social and environmental

consequences of their activities, especially taking into consideration the needs of future generations..

DEFINITIONS OF CSR

- The World Business council for Sustainable Development defines CSR as:"Corporate Social Responsibility is the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large"
- According to Business for Social Responsibility,USA, CSR is "operating in a manner that meets or exceeds the ethical,legal,commercial and public expectations that society has of business"
- The most significant and simplest definition of CSR was given by Mahatma Gandhi who said: "wealth created from society has to be ploughed back into society".

Importance of CSR: CSR has become an important issue because of the following factors:

■ CSR helps in strengthening the relationship between companies and stakeholders.

■ It enables continuous improvement and encourages innovations.

■ attracts the best industry talent as a socially responsible company.

■ Provides additional motivation to employees.

EVOLUTION OF CORPORATE SOCIAL RESPONSIBILITY

CSR in India has evolved through different phases, like community engagement, socially responsible production and socially responsible employee relations. Its history and evolution can be divided into four major phases.

PHASE 1 (1850 TO 1914):- The first phase of CSR is known for its charity and philanthropic nature. CSR was influenced by family values, traditions, culture and religion, as also industrialization. The wealth of businessmen was spent on the welfare of society, by setting up temples and religious institutions. In times of drought and famine these businessmen opened up their granaries for the poor and hungry. With the start of the colonial era, this approach to CSR underwent a significant change. In pre-Independence times, the pioneers of industrialization, names like Tata, Birla, Godrej, Bajaj, promoted the concept of CSR by setting up charitable foundations, educational and healthcare institutions, and trusts for community development. During this period social benefits were driven by political motives.

PHASE 2 (1914TO 1960): The second phase was during the Independence movement. Mahatma Gandhi urged rich industrialists to share their wealth and benefit the poor and marginalized in society. His concept of trusteeship helped socio-economic growth. According to Gandhi, companies and industries were the ‘temples of modern India’. He influenced industrialists to set up trusts for colleges, and research and training institutions. These trusts were also involved in social reform, like rural development, education and empowerment of women.

PHASE 3 (1960 to 1990) :This phase was characterized by the emergence of PSUs (Public Sector Undertakings) to ensure better distribution of wealth in society. The policy on industrial licensing and taxes, and restrictions on the private sector resulted in corporate malpractices which finally triggered suitable legislation on corporate governance, labor and environmental issues. Since the success rate of PSUs was not significant there was a natural shift in expectations from public to private sector, with the latter getting actively involved in socio-economic development. In 1965, academicians, politicians and businessmen conducted a nationwide workshop on CSR where major emphasis was given to social accountability and transparency.

PHASE 4 (1990 ONWARDS): In this last phase CSR became characterized as a sustainable business strategy. The wave of liberalization, privatization and globalization (LPG), together with a comparatively relaxed licensing system, led to a boom in the country’s economic growth. This further led to an increased momentum in industrial growth, making it possible for companies to contribute more towards social responsibility. What started as charity is now understood and accepted as responsibility.

CORPORTE SOCIAL RESPONSIBILITY OF BUSINESS TOWARDS DIFFERENT GROUPS OF STAKEHOLDERS:

As an economic institutioni, business comes into contact with several people such as shareholders,employees,customers,govt etc business is responsible to all these groups.

Responsibilities towards shareholders:

- To provide a fair return or dividend on the capital invested.
- To provide regular,accurate,and adequate information on the financial position of the company
- To give equal treatment to all shareholders.

Responsibility towards employees:

- To pay fair and reasonable wages to labourers and fair salaries to executives.
- To provide good working conditions, job security.
- Workers participation in management.
- To provide opportunities for education and self development.

Responsibility towards customers:

- To provide goods of standard quality.
- To charge fair prices
- To avoid unfair trade practices such as adulteration, hoarding, under-weighing.

Responsibilities towards Government:

- To pay taxes promptly and regularly;
- To avoid monopolistic and restrictive trade practices.
- To abide by the law of the land.

Responsibilities towards public:

- To provide more and more employment opportunities.

- To protect environment from various pollutions.
- To preserve social and cultural values.

EVALUATION OF CSR ACTIVITY: Experts suggest three basic principles to measure the impact of CSR- Sustainability, Accountability, and transparency.

- Sustainability of CSR activity implies that there must be a clear linkage established between use of resources and their regeneration for eg a paper manufacturing company that destroys thousands of trees to make paper pulp replacing an equal number of saplings.
- Accountability lies in an organization assuming responsibility for the effects of its action that have impacted the external environment. This will call for the organization compensating for the cost of damages caused by its actions, by creating benefits that exceed costs to all affected stakeholders.
- Transparency means that the organization reports the impacts of its action to all stakeholders truthfully without misguiding them in any manner. This will enable stakeholders to have a full and fair view of the situation.

REPORTING SOCIAL RESPONSIBILITY MEASURES IN AN ANNUAL REPORT

It is mandatory for companies to mention corporate social responsibility in their annual report under below mentioned regulations:

1. Corporate social responsibility report as per clause 135 of companies Act, 2013
2. Business responsibility report as per clause 55 of SEBI’s listing agreement

Illustrations of different social responsibility functions by various Indian companies:

- **BHEL** has contributed to the development of the quality of life in rural areas, healthcare, family welfare and adult education.
- **Infosys** through its Infosys foundation, provide assistance to social development, art and culture, schools, libraries, higher education and research.

- **Hindustan lever** focuses on health, empowerment of women, and education of special children.

Illustrations from Kashmir valley:

- **Khyber pvt ltd** is helping people by various means like hospital, helping low income group, orphans, widows, charitable trusts etc.
- **J & K Bank** is developing various amusement parks like iqbal park,phalgam amusement park and financing bus stops for public convenience. It also helps people by various other means like providing ambulances to various hospitals, wheel chairs to handicapped patients, providing subsidized loans for education and eradication of unemployment like Dastkaar finance.