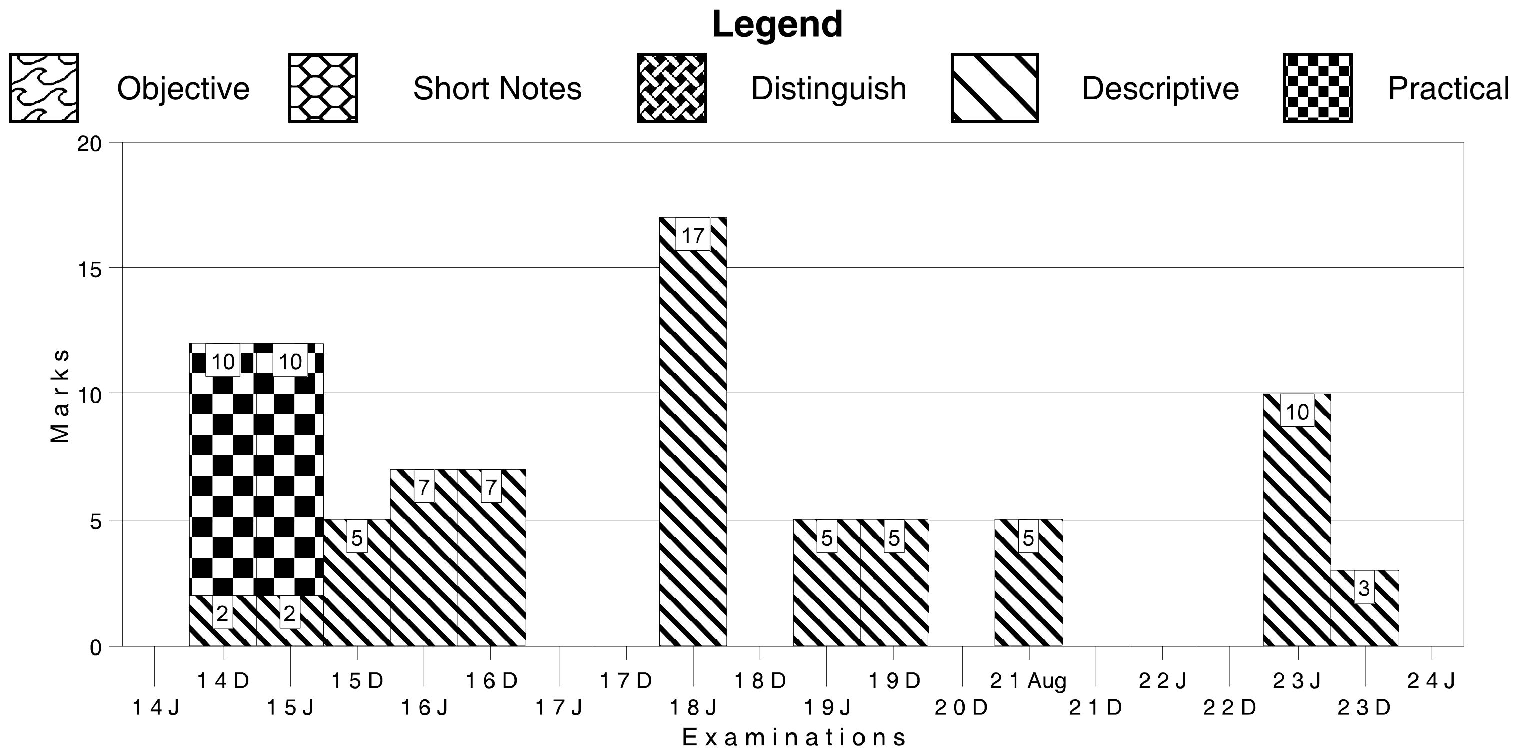
Marks of Objective, Short Notes, Distinguish Between, Descriptive & Practical Questions



1 CONCEPTUAL FRAMEWORK OF CORPORATE GOVERNANCE

THIS CHAPTER INCLUDES

1. Meaning and Definitions of Corporate Governance
2. Advantages of Corporate Governance
3. Need for Corporate Governance
4. Elements/Scope of Corporate Governance
5. Evolution of Corporate Governance
   - Theories of Corporate Governance
   - Concept of Management vs. Ownership
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6. Roots of Corporate Governance in Indian Ethos
7. Corporate Governance in India Contemporary Developments
8. History of development of Corporate Governance
   - Stages of Development of corporate governance in USA
   - Development of corporate governance in UK
9. Corporate Governance Codes in Major Jurisdictions of the World
10. OECD Principles of Corporate Governance

CHAPTER AT A GLANCE

Governance
Relates to "the processes of interaction and decision-making among the actors involved in a collective problem that lead to the creation, reinforcement, or reproduction of social norms and institutions."
Corporate Performance
It is a composite assessment of how well an organization executes on its most important parameters, typically financial, market and shareholder performance.

Triple Bottom Line
It is an accounting framework with three parts: social, environmental and financial. Organizations have adopted the TBL framework to evaluate their performance in a broader perspective to create greater business value.
Sarbanes Oxley Act
An American federal law, 2002, which substantially revised and strengthened securities laws and their administration in the aftermath of high profile corporate accounting scandals such as that involving Enron.
The Italian Corporate Governance Code
The Italian Corporate Governance Code applies to all companies with shares listed on the Italian main market ("Mercato Telematico Azionario") managed by Borsa Italiana ("companies"). Adoption of this Code is voluntary and is disclosed in the report on corporate governance and ownership structures ("corporate governance report").
The Commonwealth Association of Corporate Governance
The Commonwealth Association of Corporate Governance (CACG) was established in April 1998 to promote excellence in Corporate Governance in the Commonwealth. The CACG aims to facilitate the development of institutional capacity that promotes good corporate governance by education, consultation and information in all Commonwealth countries.
The European Corporate Governance Institute
The European Corporate Governance Institute (ECGI) was founded in 2002. It has been established to improve corporate governance through fostering independent scientific research and related activities. The ECGI is an international scientific non-profit association. It provides a forum for debate and dialogue between academics, legislators and practitioners, focusing on major corporate governance issues and thereby promoting best practice.

The Asian Corporate Governance Association

The Asian Corporate Governance Association (ACGA) is an independent, non- profit membership organization dedicated to working with investors, companies and regulators in the implementation of effective corporate governance practices throughout Asia. ACGA was founded in 1999 from a belief that sound and improving corporate governance is fundamental to the long-term development of Asian economies and capital markets.

International Integrated Reporting Council (IIRC)

The IIRC, is a powerful, international cross section of leaders from the corporate, investment, accounting, securities, regulatory, academic and standard-setting sectors as well as civil society. The IIRC was established in 2010 in recognition of the need to move towards an International Integrated Reporting Framework that is fit-for-purpose for the 21st century. Its mission is to establish integrated reporting and thinking within mainstream business practice as the norm in the public and private sectors.

European Sustainability Reporting Standards

The European Commission adopted European Sustainability Reporting Standards (ESRS) on July 2023. There are 12 ESRS, covering the full range of sustainability issues, in line with EFRAG's (European Financial Reporting Advisory Group) proposal:

Group	Number	Subject
Cross-cutting	ESRS 1	General Requirements
Cross-cutting	ESRS 2	General Disclosures
Environment	ESRS E1	Climate
Environment	ESRS E2	Pollution
Environment	ESRS E3	Water and marine resources

<table>
<tr><td>Environment</td><td>ESRS E4</td><td>Biodiversity and ecosystems</td></tr>
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<tr><td>Social</td><td>ESRS S4</td><td>Consumers and end users</td></tr>
<tr><td>Governance</td><td>ESRS G1</td><td>Business conduct</td></tr>
<tr><td colspan="3">ESRS 1 (“General Requirements”) sets general principles to be applied when reporting according to ESRS and does not itself set specific disclosure requirements.
ESRS 2 (“General Disclosures”) specifies essential information to be disclosed irrespective of which sustainability matter is being considered. ESRS 2 is mandatory for all companies under the CSRD scope.
All the other standards and the individual disclosure requirements and datapoints within them are subject to a materiality assessment. This means that the company will report only relevant information and may omit the information in question that is not relevant (“material”) for its business model and activity.
Disclosure requirements subject to materiality are not voluntary. The information in question must be disclosed if it is material, and the undertaking’s materiality assessment process is subject to external assurance in accordance with the provisions of the Accounting Directive.
The standards require undertakings to perform a robust materiality assessment to ensure that all sustainability information necessary to meet the objectives and requirements of the Accounting Directive will be disclosed.</td></tr>
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DESCRIPTIVE QUESTIONS

2012 - June [1] {C} (a) "Corporate governance extends beyond corporate law. Its fundamental objective is not mere fulfilment of the requirements of law, but in ensuring commitment of the Board of directors in managing the company in a transparent manner for maximising stakeholders' value". In the light of this statement, discuss the various factors which add greater value through good governance. **(10 marks)**

Answer :

The Statement is true. The various factors which add greater value through good governance are:

(1) **Corporate Performance:** Improved governance structure and processes help ensure quality decision making, encourage effective succession planning for senior management and enhance the long- term prosperity of companies, independent of the type of company and its sources of finance. This can be linked with improved corporate performance either in terms of share price or profitability.

(2) **Better Access to Global Market:** Good Corporate Governance system attracts investment from global investors, which subsequently leads to greater efficiencies in the financial sector.

(3) **Enhanced Investor Trust:** Investors consider Corporate Governance as important as financial performance while evaluating companies for investment. Investors who are provided with high levels of disclosure and transparency are likely to invest openly in those companies.

(4) **Enhancing Enterprise Valuation:** Improved management accountability and operational transparency fulfill investor's expectations and confidence on management and corporations and return, increase the value of corporations.

(5) **Combating Corruption:** Corporate Governance enables a corporation to compete more efficiently and prevent fraud and *malpractices* within the organization.

(6) **Easy Finance from Institutions:** Several structural changes like increased role of financial intermediaries and institutional investors, size of the enterprises, investment choices available to investors, increased competition, and increased risk exposure have made monitoring the use of capital more complex thereby increasing the need of Good Corporate Governance, Evidence indicates that well. Governed Companies receive higher market valuations.

(7) **Reduced risk of Corporate Crisis and Scandals:** Effective Corporate Governance ensure efficient risk mitigation system in place.

(8) **Accountability:** Good Corporate Governance practices create the environment where Boards cannot ignore their accountability to these stakeholders.

2012 - June [4] (b) Discuss briefly the following:

(i) Evidence of Corporate Governance from Arthashastra **(3 marks)**

Answer:

Evidence of Corporate Governance from Arthashastra

Kautilya's Arthashastra maintains that for good governance, all administrators, including the king were considered servants of the people. Good governance and stability were completely linked. Kautilya elaborates on the four fold duty of a king as:

1. **Raksha:** literally means protection, in the corporate scenario it can be equated with the risk management aspect.
2. **Vriddhi:** literally means growth in the present day context can be equated to stakeholder value enhancement.
3. **Palana:** literally means maintenance/compliance, in the present day context it can be equated to compliance of the law in letter and spirit.
4. **Yogakshema:** literally means well being and in Kautilya's Arthashastra it is used in context of a social security system. In the present day context it can be equated to corporate social responsibility.

2013 - June [1] {C} (a) "Good corporates are not born, but are made by the combined efforts of all stakeholders, board of directors, government and the society at large." In the light of this statement, bring out the elements of good Corporate Governance in India. **(10 marks)**

Answer:

Elements of Good Corporate Governance

Some of the important elements of good corporate governance are discussed as under:

1. **Role and Powers of Board**

   Good governance is decisively the manifestation of personal beliefs and values which configure the organizational values, beliefs and actions of its Board. The Board as a main functionary is primary responsible to ensure value creation for its stakeholders.

2. **Legislation**

   Clear and unambiguous legislation and regulations are fundamental to effective corporate governance.

3. **Management environment**

   Management environment includes setting-up of clear objectives and appropriate ethical framework, establishing due processes, providing for transparency and clear enunciation of responsibility and accountability, implementing sound business planning, encouraging business risk assessment, having right people and right skill for the jobs, establishing clear boundaries for acceptable behaviour, establishing performance evaluation measures and evaluating performance and sufficiently recognizing individual and group contribution.

4. **Board skills**

   A Board should have a mix of the following skills, knowledge and experience:

   (i) Operational or technical expertise, commitment to establish leadership;

   (ii) Financial skills;

   (iii) Legal skills; and

   (iv) Knowledge of Government and regulatory requirement.

5. **Board appointments**

   To ensure that the most competent people are appointed in the Board, the Board positions should be filled through the process of extensive search.

6. **Board induction and training**
   Directors must have a broad understanding of the area of operation of the company's business, corporate strategy and challenges being faced by the Board.
7. **Board independence**
   Independent Board is essential for sound corporate governance. This goal may be achieved by associating sufficient number of independent directors with the Board.
8. **Board meetings**
   Directors must devote sufficient time and give due attention to meet their obligations. Attending Board Meetings regularly and preparing thoroughly before entering the Boardroom increases the quality of interaction at Board Meetings.
9. **Code of conduct**
   It is essential that the organization's explicitly prescribed norms of ethical practices and code of conduct are communicated to all stakeholders and are clearly understood and followed by each member of the organization.
10. **Strategy setting**
    The objectives of the company must be clearly documented in a long-term corporate strategy including an annual business plan together with achievable and measurable performance targets and milestones.
11. **Business and community obligations**
    Though basic activity of a business entity is inherently commercial yet it must also take care of community's obligations.
12. **Financial and operational reporting**
    The Board requires comprehensive, regular, reliable, timely, correct and relevant information in a form and of a quality that is appropriate to discharge its function of monitoring corporate performance. For this purpose, clearly defined performance measures - financial and non-financial should be prescribed which would add to the efficiency and effectiveness of the organisation.

13. Monitoring the Board performance

The Board must monitor and evaluate its combined performance and also that of individual directors at periodic intervals, using key performance indicators besides peer review. The Board should establish an appropriate mechanism for reporting the results of Board's performance evaluation results.

14. Audit Committees

The Audit Committee is *inter alia* responsible for liaison with the management; internal and statutory auditors, reviewing the adequacy of internal control and compliance with significant policies and procedures, reporting to the Board on the key issues. The quality of Audit Committee significantly contributes to the governance of the company.

15. Risk Management

Risk is an important element of corporate functioning and governance. There should be a clearly established process of identifying, analyzing and treating risks, which could prevent the company from effectively achieving its objectives. It also involves establishing a link between risk-return and resourcing priorities. Appropriate control procedures in the form of a risk management plan must be put in place to manage risk throughout the organization. The plan should cover activities as diverse as review of operating performance, effective use of information technology, contracting out and outsourcing.

2013 - June [4] (b) Discuss briefly the following:

(i) Kautilya's four-fold duty of a king **(3 marks)**

Answer:

Please refer 2012 - June [4] (b) (i) on page no. 17

2013 - Dec [3] (a) Corporate governance is still evolving in India. Trace the major principles of corporate governance in India as recommended by Kumar Mangalam Birla Committee and N.R. Narayana Murthy Committee appointed by the Securities and Exchange Board of India (SEBI).

(7 marks)

(b) "The Board of directors plays a pivotal role in ensuring good governance." In the light of this statement, discuss the role of directors in a company. **(4 marks)**

Answer:

(a) Principles of Corporate Governance

The aim of corporate governance principles is to align the interest of individuals and community goals, corporations and society in the following ways:

1. **Transparency:** Companies have to be transparent. Transparency means accurate, adequate and timely disclosure of relevant information to the stakeholders. Transparency disclosure provide information to the stakeholders that their interests are being taken care of.
2. **Accountability:** Chairman, Board of Directors and chief executive of the company should fulfill their accountability to the shareholders, customers, workers, society and the government. Since they have considerable authority over company's resources, they should accept accountability for all their decisions and actions.
3. **Independence:** For ethical reasons, corporate governance seems to be independent, strong and non-participatory body where all decision-making is based on business and not personal biases.
4. **Reporting:** Good corporate governance involve adequate reporting to shareholders, other stakeholders, for example, a company should publish quarterly, half yearly and yearly performance and opening results in news papers. It should also report the functioning of various committees set by the Board of Directors for efficient administrations. It is important on ethical grounds of the society.

Answer:

(b) The Board of Directors has the following role:

1. **To establish an organizational vision and mission giving strategic direction and advice:** Fundamental to the operation of any business is its strategy. Boards are in an excellent position to provide input and advice to the CEO and the top management regarding the company's strategic direction.

2. **Overseeing strategy implementation and performance:** The board plays a crucial role in advising, evaluating and monitoring strategy implementation.
3. **Developing and evaluating the CEO:** The evaluation of CEO and top management team is a very important activity of the Board. In the rapidly changing (environment, Boards need to be proactive in) evaluating the performance of CEO and top management team.
4. **To ensure, the organization has sufficient and appropriate human resources:** The board is responsible for:
   (i) Hiring the senior staff person;
   (ii) Giving direction to the senior staff person; and
   (iii) Evaluating the senior staff person.
5. **Ensuring effective shareholders relations:** To serve as a communications link with members and others involved in an organization.
6. **Risk Mitigation:** Directors are expected to identify and manage obstacles that may prevent the organisation from reaching its goals.
7. **Procuring resources:** Financial resources, human resources, technological resources, business relationship are the key resources that are essential to an organization's success. Boards play an important role in helping the organization procuring the resources.

2013 - Dec [6] (b) What is understood by the term 'stakeholder'? Enumerate the different stakeholders of any corporate entity. **(5 marks)**

Answer:

Stakeholder: Stakeholders provide resources that are more or less critical to a firm's long-term success. These resources may be both tangible and intangible. Shareholders, for example supply capital, supplier offers material resources or intangible knowledge, employees and managers grant expertise, leadership, and commitment, customers generate revenue and provide infrastructure and the society builds its positive corporate images.

The classic definition of a stakeholder is 'any group or individual who can affect or is affected by the achievement of the organization's objectives'.

Different Stakeholders:

(i) Primary stakeholders are those whose continuous association is absolutely necessary for a firm's survival. These include, employees, investors and shareholders, as well as the governments and communities that provide necessary infrastructure.

(ii) Secondary stakeholders do not typically engage in transactions with a company and thus are not essential for its survival; these include the media, trade associations and special interest groups.

2014 - June [1] {C} (b) Discuss in brief the following:

(i) Arthashastra talks of self discipline for a king and six enemies which a king should overcome. **[Old Syllabus] (2 marks)**

(iii) Corporate governance is integral to the existence of a company. **[Old Syllabus] (2 marks)**

Answer:

(i) Arthashastra talks self-discipline for a king and the six enemies which a king should overcome – lust, anger, greed, conceit, arrogance and foolhardiness. In the present day context, this addresses the ethics aspect of businesses and the personal ethics of the corporate leaders.

(iii) Corporate Governance is needed to create a Corporate Culture of Transparency, accountability and disclosure. It refers to compliance with all the moral and ethical values, legal framework and voluntary adopted practices. This enhances customer satisfaction, shareholder value and wealth.

2014 - Dec [1] (b) Briefly comment on the following:

(ii) ICSI principles of Corporate Governance, *inter alia*, include sustainable development of all stakeholders and adherence to ethical standards. **(2 marks)**

Answer:

ICSI Principles of Corporate Governance

Sustainable development of all stakeholders	Ensure growth of all individuals associated with or affected by the enterprise on sustainable basis.

Adherence to ethical standards	Ensure integrity, transparency, independence and accountability in dealings with all stakeholders.

2014 - Dec [5] (a) Explain briefly the following:
(ii) Thesis of stakeholder theory. **[Old Syllabus] (3 marks)**

Answer:

THESIS IN STAKEHOLDER THEORY

There are four thesis viewing stakeholder theory as:

1. **Descriptive:** The theory is used to describe specific corporate characteristics such as nature of the firm, the way managers think about managing, how corporations are managed or how the board members think about the interests of constituencies.
2. **Instrumental:** Instrumental stakeholders are defined by the need of the management to take them into account when trying to achieve their goals.
3. **Normative:** This approach is categorical in effect it says— 'Do (don't do) this because it is the right (wrong) thing to do'.
4. **Broadly managerial:** It recommends attitudes, structures and practices that taken together constitute stakeholder management.

2015 - June [1] (b) (iv) Justify the ICSI principles of Corporate Governance on 'sustainable development of all stakeholders', 'discharge of social responsibility' and 'effective management and distribution of wealth' which seem to be very important principles for corporate. **(2 marks)**

Answer:

Corporate Governance is the application of best management practices, compliance of law in true letter and sprit and adherence to ethical standards for effective management and distribution of wealth and discharge of social responsibility for sustainable development of all stakeholders.

'Sustainable development of all stakeholders' ensures growth of all individuals associated with or affected by the enterprise on sustainable basis. 'Discharge of social responsibility' ensures that enterprise is acceptable to the society in which it is functioning. 'Effective management and distribution

of wealth' ensures that enterprise creates maximum wealth and judiciously uses the wealth so created for providing maximum benefits to all stakeholders and enhancing its wealth creation capabilities to maintain sustainability.

2015 - Dec [4] (c) How important is corporate governance for success of an organisation? **(5 marks)**

Answer:

Importance of Corporate Governance for success of an organization:

1. Improved governance structures and processes help ensure quality decision-making, encourage effective succession planning for senior management and enhance the long-term prosperity of companies, independent of the type of company and its sources of finance.
2. Investors consider corporate Governance as important as financial performance when evaluating companies for investment. Investors who are provided with high levels of disclosure & transparency are likely to invest openly in those companies.
3. Good corporate governance systems attract investment from global investors, which subsequently leads to greater efficiencies in the financial sector.
4. Companies that are transparent, and have sound system that provide full disclosure of accounting and auditing procedures, allow transparency in all business transactions, provide environment where corruption will certainly fade out.
5. Improved management accountability and operational transparency fulfill investor's expectations and confidence on management and corporations, and in return, increase the value of corporations.

2016 - June [1] (b) Briefly comment on the following statement:

(iii) Independent Board is essential for sound corporate governance.

(2 marks)

Answer:

Independent Board is essential for sound corporate governance. This goal may be achieved by associating sufficient number of independent directors

with the Board. Independence of directors would ensure that there are no actual or perceived conflicts of interest. It also ensures that the Board is effective in supervising and, where necessary, challenging the activities of management. The Board needs to be capable of assessing the performance of managers with an objective perspective.

2016 - June [2] Elucidate the following:

(c) Corporate excellence through governance. **(5 marks)**

Answer:

In May 2000, a task force on Corporate Excellence setup by the group under the chairmanship of Dr. P. L. Sanjeev Reddy, Secretary, DCA (Now MCA) produced a report containing a range of recommendations for raising governance standards among all companies in India. The group examined ways to “operationalise the concept of corporate excellence on a sustained basis”, so as to “sharpen India’s global competitive edge and to further develop corporate culture in the country”.

A summary report of Task Force:

(i) Higher delineation of independence criteria and minimisation of interest-conflict potential.

(ii) Directorial commitment and accountability through fewer and more focused board and committee membership.

(iii) Meaningful and transparent accounting and reporting, improved annual report along with more detailed filing with regulatory authorities.

(iv) Setting up of an independent, Autonomous Centre for Corporate Excellence to accord accreditation and promote policy research and studies, training and education, etc, in the field of corporate excellence through improved corporate governance.

(v) Introducing formal recognition of Corporate Social Responsibility.

(vi) Clear distinction between two basic components of governance in terms of policy making and oversight responsibilities of the board of directors.

(vii) Apply the highest and toughest standards of corporate governance to Listed Companies.

(viii) PSUs be relieved from multiple surveillance agencies and simultaneously a commission be appointed to draft a suitable code of public behaviour.

2016 - Dec [1] (b) Answer the following in brief:

(i) An owner selects the agent to work in good faith to protect their interest and remain faithful to their goals. Who do you think are the agents and owners in modern organisations? **(2 marks)**

Answer:

According to agency theory, managers act as 'Agents' of the corporation. The owners set the central objectives of the corporation. Managers are responsible for carrying out these objectives in day-to-day work of the company.

In agency theory, the owners are the principals. But principals may not have knowledge or skill for getting the objectives executed. Thus, principal authorises the managers to act as 'Agents' and a contract between principal and agent is made. Under the contract of agency, the agent should act in good faith. He should protect the interest of the principal and should remain faithful to the goals.

In modern corporations, the shareholdings are widely spread. The management (the agent) directly or indirectly selected by the shareholders (the Principals), pursue the objectives set out by the shareholders, the main thrust of the Agency. Theory is that the actions of the management differ from those required by the shareholders to maximize their return. The principals who are widely scattered may not be able to counter this in the absence of proper systems in place as regards timely disclosures, monitoring and oversight. Corporate Governance puts in place such systems of oversight.

2016 - Dec [2] Elucidate the following:

(a) Need for corporate governance **(5 marks)**

Answer:

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

It helps organisations to achieve and improve:

(i) Corporate Performance
(ii) Enhance Investor Trust
(iii) Better Access to Global Market
(iv) Combating Corruption
(v) Enhancing Enterprise Valuation
(vi) Reduced Risk of Corporate Crisis and Scandals
(vii) Accountability
(viii) Efficiency with which a corporation employs assets
(ix) Ability to attract low-cost capital
(x) Ability to meet societal expectations.

2018 - June [1] (b) Answer the following in brief:

(iii) Discuss the role and powers of the Board with respect to good corporate governance. **(2 marks)**

(c) "Good Corporate Governance is about intellectual honesty and not just sticking to rules and regulations. It has been observed that capital comfortably flows toward companies that practice this type of good governance". Briefly comment. **(5 marks)**

Answer:

(iii) As an element of good corporate governance the role of the Board should be clearly documented in a Board Charter. The Board as a main functionary is primary responsible to ensure value creation for its stakeholders. The absence of clearly designated role and powers of Board weakens accountability mechanism and threatens the achievement of organizational goals. Therefore, the foremost requirement of good governance is the clear identification of powers, roles, responsibilities and accountability of the Board, CEO, and the Chairman of the Board.

Role and Powers of the Board:

- The Board should retain full and effective control over the company and monitor the executive management.
- Board should exhibit total commitment to the company. An efficient and independent Board should be conscious of protecting the interests of all stakeholders and should attend and actively participates in the meetings.

- The Board should ensure a clearly accepted division of responsibilities at the top level of a company, which will ensure a balance of power and authority.
- The Board should ensure the company's prosperity by collectively directing the company's affairs, whilst meeting the appropriate interests of its shareholders and stakeholders.

(c) Good Corporate Governance is integral to the existence of the company and ensures the following:

(a) Corporate Performance: Improved governance structures and processes ensure quality decision making, encourage effective succession planning for senior management and enhance long-term prosperity of companies.

(b) Enhanced Investor Trust: Investors consider corporate governance as important financial performance when evaluating companies for investment.

(c) Better Access to Global Market: Corporate governance systems attracts investments from global investors.

(d) Combating Corruption: Companies that are transparent, provide environment where corruption would certainly fade out.

(e) Easy Finance from Institutions: The credit worthiness of a company can be trusted on the basis of corporate governance practiced in the company.

(f) Enhancing Enterprise Valuation: Improved management accountability and operational transparency increases the value of corporation.

(g) Reduced Risk of corporate crisis and scandals: Effective corporate Governance ensures efficient risk mitigation systems in place.

(h) Accountability: Good Corporate Governance practices create the environment whereby Boards cannot ignore their accountability to the stakeholders.

The above mentioned factors make it clear that good corporate governance can help companies improve their performance and gain access to capital.

2018 - June [2] (b) "Independent directors are directors who apart from receiving director's remuneration do no have any other material pecuniary relationship or transactions with the company, its promoters, its management or its subsidiaries". Elucidate. **(5 marks)**

Answer:

Pecuniary relationship between a company and its Independent Director raises serious concerns on the independence of the director. Such a relationship may adversely influence an Independent. Director's objectivity when it comes to taking key decisions and also results in conflict of interest of the concerned director.

Section 149(6) (c) who has or had no pecuniary relationship, other than remuneration as such director or having transaction not exceeding 10% of his total income or such amount as may be prescribed, with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year.

2018 - June [3] (a) "The institutional investors should use their powers and influence to ensure the implementation of the best practices set out in the Combined Code (2008)". In the light of this statement state the observations of Kumar Mangalam Birla Committee on the principles of good corporate governance for the Institutional Shareholders in Indian scenario. **(5 marks)**

Answer:

Principles of good corporate governance for the Institutional Shareholders in Indian Scenario:

1. Institutional shareholders should publicly disclose their policy on how they will discharge their stewardship responsibilities.
2. Institutional shareholders should have a robust policy on managing conflicts of interest in relation to stewardship which should be publicly disclosed.
3. Institutional shareholders should monitor their investee companies.
4. Institutional shareholders should establish clear guidelines on when and how they will escalate their stewardship activities.
5. Institutional shareholders should be willing to act collectively with other investors where appropriate.

6. Institutional shareholders should have a clear policy on voting and disclosure of voting activity.
7. Institutional shareholders should report periodically on their stewardship and voting activities.

2019 - June [2] (c) Whether the rule of majority, was established in the case of Foss *v*. Harbottle [(1843) 67 ER 189], is still relevant? Narrate your answer with relevant provisions of the Companies Act, 2013 and in light of the decided case law. **(5 marks)**

Answer:

In the case of *Foss v. Harbottle [1843],* it was held that the Courts would not generally interfere with the decisions of the company which it was empowered to take in so far they had been approved of by the majority and made exceptions to breaches of charter documents, fiduciary duties and frauds or oppression and inadequate notice to the shareholders. The principle is still relevant as the court was right in ruling that every shareholder is bound by the terms and conditions of incorporation of the company, which operated as a set of mutually binding obligations.

However, in the process of implementing the objectives of the company, one should not override the legitimate expectations of minority shareholders. The following are the various sections which deal with the minority shareholders under the Companies Act, 2013.

- Oppression & Mismanagement **[Sections 241-246]**
- Class Action Suits **[Section 245]**
- Appointment of director by small shareholders **(Section 151)**
- Promoting the confidence of minority shareholders (Schedule IV - Code for Independent Directors).

Case: In a judgment by Supreme Court, upholding the landmark judgement passed by Madras High Court (HC), ordered SV Global (SVG) Mill, which was carved out of the 200- year-old textiles major Binny, to pay ₹ 100 crore to minority shareholders to buy them out. The minority shares were owned by S Natarajan, one of the original promoters of Binny and his associates. The Apex court, under Article 142 of the Constitution, directed that a sum of ₹ 100 crore be paid, to the respondents (associates of Natarajan) for the buyout of all the respondents' shares in the company.

2019 - Dec [2] (a) In year 2017, the SEBI has constituted a Committee on Corporate Governance under the Chairmanship of Mr. Uday Kotak with the aim of improving standards of Corporate Governance of listed companies in India. List out the recommendations given by this Committee. **(5 marks)**

Answer:

In 2017 the SEBI had constituted a Committee on Corporate Governance under the Chairmanship of Mr. Uday Kotak with the aim of improving standards of corporate governance of listed companies in India. The recommendations of the Committee were as follows:

- Composition and Role of the Board of Directors i.e. Minimum no. of Directors on a Board, Gender Diversity on Board, Attendance of Directors, Quorum for Board Meetings, Minimum no of Board Meetings, Maximum no. of Directorships etc.
- The Institution of Independent Directors i.e. Minimum nos. of Independent Directors, Eligibility Criteria for Independent Directors, Minimum compensation to Independent Directors, Lead Independent Directors, Casual vacancy of Independent Directors etc.
- Board Committees i.e. Composition and Role of Audit Committee, Nomination, Remuneration and Stakeholder Relationship Committee etc.
- Enhanced Monitoring of Group Companies i.e. Obligation on the Board of the Listed Co. with respect to subsidiaries, Secretarial Audit) etc.
- Promoters/ Controlling Shareholders and Related Party Transactions i.e. Disclosure and Approval of Related Party Transactions, Royalty and Brand Payments to Related Party, Remuneration to Executive Promoters Directors and Non- Executive Directors etc.
- Disclosures and Transparency pertaining to Submission of Annual reports, Disclosures pertaining to Credit Rating, Disclosures pertaining to Directors, Disclosures pertaining to Disqualification of Directors, Disclosures pertaining to Subsidiary Accounts, Prior Intimation of Board meeting to discuss Bonus Issue, Disclosure on Website etc
- Accounting and Audited related issues i.e. Audit Qualifications, Independent External opinion by Auditors, Group Audits, Quarterly financial controls, Internal financial control, IND-AS adoption, Disclosure of Audi fees of Auditors etc.

- Investors participation in Meetings of Listed Entities i.e. Timeline for AGM in listed entities, E-voting and webcast of proceedings of meeting, Treasure Stock, Stewardship code).
- Governance aspects of Public Sector Enterprises.
- Leniency Mechanism.
- Capacity building in SEBI for enhancing Corporate Governance in Listed Entities.

In its board meeting on March 27, 2018, SEBI, after detailed consideration and due deliberation, accepted several recommendations of the Kotak Committee without any modifications and accepted a few other recommendations with certain modifications as to timelines for implementation, applicability thresholds among others.

2021 - Aug [2A] (Or) (ii) The Finnish Corporate Governance Code 2020 (2020 CG Code) came into force and applicable to listed companies on Nasdaq Helsinki Ltd. (Helsinki Stock Exchange). What is the key recommendation with respect to Related Party Transaction in this Code?

(5 marks)

Answer:

The Finnish Corporate Governance Code, 2020 is a collection of recommendations on good corporate governance for listed companies. The recommendations of the Corporate Governance Code supplement the obligations set forth in legislation.

On the matter of related party transactions, the code contains that the company procedure concerning related party transactions is also a part of good corporate governance. Whenever the company conducts business transactions with related parties, the company must ensure that the transactions are appropriate from the perspective of the company and the shareholders. The company must take into account the legislation that sets specific requirements for the monitoring, assessment, deciding, and disclosure of related party.

Recommendation 27 requires that Companies define and report their principles for monitoring and evaluation of related party transactions. The purpose of the principles is to ensure proper decision making in related party transactions in accordance with new requirement of the Limited Liability Companies Act.

The Board of Directors should consider in particular how the company identifies related party transactions who shall be the receiving party for related party transaction reports and how the procedure will be supervised. The relevant 'related party transaction' is defined as a transaction that is carried out outside the ordinary course of the Company's business or that is not carried out on normal business terms. To identify these transactions, the company must be liable to identify its related parties and the transactions carried out by the Company with the related parties.

The main features of the related party transactions principle will be disclosed in the Company's CG report. As a result of that, Company listed on the Helsinki Stock Exchange should without delay review and if needed, update their related party transactions principles to enable them to fulfil the CG reporting requirement.

2023 - June [5A] (Or) (i) As a Company Secretary of a growing multinational deeply rooted with the belief of Triple Bottom Line (TBL) approach, specify the areas where and how the company can focus. **(5 marks)**

Answer:

Within the broader concept of corporate social responsibility, the concept of Triple Bottom Line (TBL) is gaining significance and becoming popular amongst corporates. Coined in1997 by John Ellington, “People” (Human Capital) pertains to fair and beneficial business practices toward labour and the community and region in which a corporation conducts its business.

“Planet” (Natural Capital) refers to sustainable environmental practices. It is the lasting economic impact the organization has on its economic environment. A TBL enshrined company endeavours to benefit the natural order as much as possible or at the least do no harm and curtails environmental impact.

Therefore, the company can work for any issues addressing to the needs in any manner. For people issues faced by the organisation includes:

- Health
- Safety
- Diversity
- Ethnicity

- Education and literacy
- Prevention of child labour
- Differently-abled.

The planet concerns include:

- Climate change
- Energy
- Water
- Biodiversity and land use
- Chemicals, toxics and heavy metals
- Air pollution
- Waste management
- Ozone layer depletion
- Ocean and fisheries
- Afforestation.

The Profit includes:

- Creating Employment
- Generating Innovation
- Paving Taxes
- Wealth Creation

2023 - June [2A] (Or) (ii) “The corporate governance framework should protect and facilitate exercise of shareholders' rights and ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redressal for any violation of their rights." Explain the provisions of the Companies Act, 2013 to protect the interests of minority shareholders.

(5 marks)

Answer:

As an equity shareholder, minority have the right to:

- participate in the profits of the company.
- information about the company.
- participation in general shareholder meetings and influence corporate actions through voting on proposal.

Companies Act, 2013 provides for some measures to protect the interest of minority shareholders which are discussed as under:

1. **Oppression and Mismanagement:** Part XVI consisting of Sections from 241 10 246 of Companies Act, 2013 deals with prevention of Oppression and Mismanagement. When a shareholder's rights are violated it can be termed as oppression. Oppression occurs when the majority shareholders misuse their rights and take company's business as their personal property resulting in loss to the minority shareholders
2. **Class Action Suit:** A class action suit is a legal proceeding in which shareholders bring suit as a group against the company or its directors or officers and the judgment or settlement received from the suit covers all the shareholders equally.
3. **Special Rights:** As "the will of the majority prevails' the decision of majority shareholders in a company binds the minority. They exercise their rights without considering the interests of minority. They may misuse their power to exploit the rights of minority. Hence Companies Act. 2013 provides some special powers to small shareholders to prevent exploitation of their rights.
4. **Representation on Board:** Section 151 provides that a listed company may have one director elected by such small shareholders as prescribed under Rule 7 of the Companies (Appointment and Qualification of Directors) Rules. 2014.
5. **E-Voting:** Voting by electronic means is a facility given to the members of a company with more than 1000 shareholders to cast their votes on the resolutions through electronic mode. It provides an opportunity to shareholders residing in far-flung area to take part in the decision-making process of the company. Shareholder scan therefore exercise their voting rights even when they cannot be physically present for meetings and without spending too much time or money.
6. **Exit Rights:** In the event of an acquirer, or a person acting in concert with such acquirer, becoming registered holder of 90% or more of the issued equity share capital of a company, or in the event of any person or group of persons becoming ninety percent majority or holding 90% of the issued equity share capital of a company, by virtue of an amalgamation, share exchange. conversion of securities or for any other

reason, such acquirer, person or group of persons, as the case may be, shall notify the company of their intention to buy the remaining equity shares [Section 236(1)].

7. **Related Party Transactions:** Section 188(1) provides that except with the consent of the Board of Director given by a resolution at meeting of the Board, not company shall enter into any contract or arrangement with a related party with respect to(a) sale, purchase or supply of any goods or materials; (b) selling or otherwise disposing of, or buying, property of any kind (c) leasing of property of any kind, (d) availing or rendering of any services; (e) appointment of any agent for purchase or sale of goods, materials, services or property; (f) such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and (g) underwriting the subscription of any securities or derivatives thereof, of the company.

8. **Application to Tribunal for Relief:**
   Section 244(1) provides that any member of a company who complains that-
   (a) the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company;

   or

   (b) the material change, not being a change brought about by, or in the interests of, any creditors. including debenture holders or any class of shareholders of the company, has taken place in the management or control of the company, whether by an alteration in the Board of Directors, or manager, or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members, may apply to the Tribunal, provided such member has a right to apply under section 244, for an order under Chapter XVI.

2023 - Dec [3] (e) Explain Section 302 of SOX Act i.e. Corporate Responsibility for Financial Reports. **(3 marks)**

Answer:

SOX Section 302 i.e. Corporate Responsibility for Financial Reports

(a) CEO and CFO must review all financial reports.
(b) Financial report does not contain any misrepresentations.
(c) Information in the financial report is "fairly presented".
(d) Chief Executive Officer (CEO) and Chief Financial Officer (CFO) are responsible for the internal accounting controls.
(e) Chief Executive Officer (CEO) and Chief Financial Officer (CFO) must report any deficiencies in internal accounting controls, or any fraud involving the management of the audit committee.
(f) Chief Executive Officer (CEO) and Chief Financial Officer (CFO) must indicate any material changes in internal accounting controls

PRACTICAL QUESTIONS

2012 - Dec [1] {C} (a) "Kautilya's Arthashastra maintains that 'for good governance, all administrators, including the king were considered servants of the people. Good governance and stability were completely linked.' If the king is substituted with the Board of directors, the same principle can be applied with Corporate Governance."

In the light of the above statement, discuss the fourfold duties of the Board of directors with regard to Corporate Governance as enunciated by Kautilya and explain the six enemies of governance, which should be overcome by the Board of directors for ensuring good Corporate Governance. **(10 marks)**

Answer :

"Kautilya's Arthashastra maintains that for good governance, all administrators, including the king were considered servants of the people. Good governance and stability were completely linked".

If the king is substituted with the Board of Directors and the subjects with the shareholders, the concept of good governance prevails. This is because the concept of corporate governance believes that public good should be ahead

of private good and that the corporation's resources cannot be used for personal benefit. The four fold duties of a king as mentioned in Arthashastra are as follows:

1. Raksha - literally means protection
2. Vriddhi - literally means growth
3. Palana - literally means maintenance/compliance
4. Yogakshema - literally means well being

Arthashastra mention self-discipline for a king and the six enemies which a king should overcome-lust, anger, greed, conceit, arrogance and foolhardiness. In the present day context, this addresses the ethics aspect of businesses and the personal ethics of the corporate leaders.

2014 - Dec [1] (a) "The Board of directors plays a pivotal role in ensuring good governance. The role of the Board is two-dimensional; as a cornerstone in evolving sound, efficient, vibrant and dynamic corporate for attaining of high standards in integrity, transparency, code of conduct, accountability as well as in promoting social responsibility. The contribution of the directors on the Board is critical to the way a corporate conducts itself. An effective Board evaluation requires the right combination of dynamic factors of performance of the Board as entrepreneurial leader of the company within the framework of prudent and effective controls, which enables risk to be assessed and managed." **(10 marks)**

Answer:

The Board of Directors plays a pivotal role in ensuring good governance. The contribution of directors on the Board is critical to the way a corporate conducts itself. A board's responsibilities derive from law, custom, traditional and current practice. In the present times transparency, disclosure accountability, issues of sustainability, corporate citizenship, globalization are just some of the concerns that the Boards have to deal with. In addition, the Boards have to respond to the explosive demands of the marketplace. This two dimensional role of the Board of Directors is cornerstone in evolving sound, efficient, vibrant and dynamic corporate sector for attaining of high standards in integrity, transparency, code of conduct, accountability as well as the social responsibility.

As per **Section 2(10) of the Companies Act, 2013** “Board of Directors” or “Board”, in relation to a company means the collective body of directors of the company.

A board of directors is a body of elected or appointed members who jointly oversee the activities of a company. They are also referred as board of governors, board of managers, board of regents, board of trustees or simply referred to as “the board”.

Sub Section (2) of Section 178 of the Companies Act, 2013 provides that the Nomination and Remuneration Committee shall identify persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, recommend to the Board their appointment and removal and shall specify the manner for effective evaluation of performance of Board, its committees and individual directors to be carried out either by the Board, by the Nomination and Remuneration Committee or by an independent external agency and review its implementation and compliance.

Further, **Schedule IV of the Companies Act, 2013** provides for the following evaluation mechanism of independent directors:

(i) The performance evaluation of independent directors shall be done by the entire Board of Directors, excluding the director being evaluated.

(ii) On the basis of the report of performance evaluation, it shall be determined whether to extend or continue the term of appointment of the independent director.

Section 134(3) (p) provides that in case of a listed company and every other public company having such paid up share capital as may be prescribed, a statement indicating the manner in which formal annual evaluation of the performance of the Board, its Committees and of individual directors has been made.

Regulation 17(10) of the SEBI (Listing Obligations & Disclosure Requirements) Regulations, 2015 provide that the evaluation of independent directors shall be done by the entire board of directors which shall include –

(a) performance of the directors; and

(b) fulfillment of the independence criteria as specified in these regulations and their independence from the management:

Provided that in the above evaluation, the directors who are subject to evaluation shall not participate.

Performance evaluation of the board:

(i) How well has the board performed against any performance objectives that have been set?

(ii) What has been the board's contribution to the testing and development of strategy?

(iii) What has been the board's contribution to ensuring robust and effective risk management?

(iv) Is the composition of the board and its committees appropriate, with the right mix of knowledge and skills to maximize performance in the light of future strategy? Are inside and outside the board relationships working effectively?

(v) How has the board responded to any problems or crises that have emerged and could or should these have been foreseen?

(vi) Are the matters specifically reserved for the board the right ones?

(vii) How well does the board communicate with the management team, company employees and others?

(viii) How effectively does it use mechanisms such as the AGM and the annual report? Is the board as a whole up to date with latest developments in the regulatory environment and the market?

(ix) How effective are the board's committees? (Specific questions on the performance of each committee should be included such as, for example, their role, their composition and their interaction with the board.)

2015 - June [1] (a) Ebbers built World Com from a small telecommunications company into a global giant. It all started back in 1984, when he invested in a local long-distance phone company. Soon he was invited to manage it. He made it grow through a series of aggressive, even audacious mergers. Eventually, it became a publically traded corporation with annual revenues of $39 billion. As the company grew, so did Ebbers's wealth, but his

extravagant spending forced him to use all of his WorldCom stock as collateral for bank loans to pay his debts. If its price fell too far, he would be bankrupt. About this time in 1990s, the dot-com investment bubble burst. WorldCom's revenue declined and expenses for its world-spanning fibre optic network rose more than anticipated. According to later investigations, in 2000, Ebbers gave the first in a string of instructions to his Chief Financial Officer to report false revenues and use accounting tricks to disguise rising expenses. The share prices held. However, internal auditors discovered the deceit and reported it to the Securities and Exchange Commission (SEC). The agency started an investigation. WorldCom's Board of directors forced Ebbers to resign. Soon the truth came out and WorldCom shares lost 90% of their value. In 2002, WorldCom set a record in failure, breaking Enron's previous total for the largest bankruptcy in American history. Although the company ultimately survived, 17,000 workers lost their jobs and investors lost billions.

The purpose of Corporate Governance is to improve governance in the corporate but the story of WorldCom presented above puts a question mark on the sanctity of Corporate Governance.

Analyse the failure of Corporate Governance and give recommendations to keep future company operations in order and avoid others from following the footsteps of Ebbers even though he was forced by the Board of directors to resign. **(10 marks)**

Answer:

Worldcom failure is one of the largest bankruptcy cases in American history, breaking even Enron's record. Ebbers invested in a local long-distance phone company in 1984, which he was invited to manage later. He made it grow into a global giant through a series of mergers Ebbers played a major role in the fraud. His extravagant spending forced him to take massive amount of bank loans by securing his Worldcom shares. When telecom industry was experiencing a down turn, at the same time Worldcom stock prices also started falling. In order to avoid margin call, he needed company's stock to perform well. Ebbers used unethical means to keep the company's stock price up. The fraud was directed by Ebbers and it was

implemented through his CFO by reporting false revenues and using accounting tricks to disguise rising expenses. It came out when internal auditors discovered the deficit and reported the same to SEC.

There were major corporate governance failures in Worldcom which, mainly, were:

— internal control failure
— ineffective board
— lack of transparency

Recommendations to keep future company operations in order and avoid other from following the footsteps of Ebbers.

1. **An Active, Informed and Independent Board:**
   A very high standard is required for the appointment of independent directors who should have adequate experience and qualification. With the exception of the CEO, majority of the members of the board must be fully independent.
2. **A Non-Executive Chairman of the Board of Directors:**
   This recommendation requires every company to create the position of non-executive chairman of the board. The non-executive chairman shall have defined responsibilities relating to coordination with the board's work, chairing meetings, coordinating with committee chairs, organizing CEO and board performance reviews, and similar issues. The non-executive chairman shall not be involved in the day to day management duties. The CEO remains fully responsible for all management decisions, subject to board oversight. The clear separation of the role of Chairman and CEO between two persons will maintain the balance of power and the CEO will be guided and reviewed by the Board.
3. **Independent Director:**
   An independent director shall hold office for a term up to five years on the Board of a company, but shall be eligible for reappointment on passing of a special resolution by the company for another five years. This recommendation will ensure the independence of Independent Director.

4. **Active Board Committees:**
   This recommendation prescribes that every company shall constitute an Audit Committee, Governance Committee, Nomination and Remuneration Committee and a Risk Management Committee. The CEO shall not serve as a member of any of these committees, so that each committee is composed entirely of independent directors.
5. **Auditor Independence:**
   The statutory auditor shall be appointed for a maximum period of 10 years which will ensure the audit quality. An auditor shall provide to the company only such services as are approved by the Board of Directors of the audit committee, which shall not include non audit services. This recommendation will ensure the independence of statutory auditor.
6. **Compensation Limits:**
   The Nomination and Remuneration Committee shall establish a maximum compensation level for any individual in any year without shareholder approval. A substantial part of the compensation shall not be linked to the share price, as this leads to the manipulation of the financial statements by the top management of the company to secure their own remuneration.
7. **Enhanced Transparency, Internal Controls and Finance Department:**
   The recommendations suggest that the Company should intensify efforts to develop disclosure practices that will result in transparency of financial information beyond legal requirements.

Repeatedly Asked Questions		
No.	**Question**	**Frequency**
1	Discuss briefly the following: Kautilya's four-fold duty of a king. 12 - June [4] (b) (i), 13 - June [4] (b) (i)	2 Times