# Compliance with Non-Mandatory (Voluntary) Norms of Corporate Governance : Evidence from India

* *Ambrish Gupta*


## Abstract

**Clause 49 of the listing agreement contains the corporate governance code to be complied with by listed companies in India. The code is divided into mandatory requirements and the non-mandatory (voluntary) ones. Non-compliance of any mandatory requirement with reasons thereof and the extent to which the non-mandatory requirements have been adopted/not adopted needs to be specifically highlighted in the annual corporate governance report. It will be reasonable to assume that companies will necessarily comply with the mandatory requirements in view of the penal provisions for non compliance like fine and delisting among others. However, in respect of voluntary requirements, they have a choice. With this background, the paper sought to examine the extent of compliance/non-compliance of these norms by the listed companies to ascertain whether the corporate sector is complying with the regulatory norms in letters or in spirit. The study found a not too encouraging response.**



***Keywords:*** **Clause 49, corporate governance, non-mandatory (voluntary) requirements, BSE Sensex**

**JEL Classification: G34, K2, K220, M410, M480**

**Paper Submission Date : September 2, 2014 ; Paper sent back for Revision : October 6, 2014 ; Paper Acceptance Date : January 5, 2015**


The corporate governance code in our country, India, is enunciated in Clause 49 of the stock exchange listing agreement. The code is divided into mandatory and non mandatory requirements. It is applicable to entities seeking listing for the first time and for existing listed entities having a paid up share capital of INR 3 crore (30 million) and above, or net worth of INR 25 crore (250 million) or more at any time in the history of the company. Clause 49 requires listed companies to annex a separate section on corporate governance in the annual report of the company, with a detailed compliance report thereon. Non-compliance of any mandatory requirement of this clause with reasons thereof and the extent to which the non-mandatory requirements have been adopted/not adopted needs to be specifically highlighted. Furthermore, the companies are also required to submit a quarterly compliance report to the stock exchanges within 15 days from the closure of the quarter in the prescribed format. Again, the companies are under obligation to obtain a certificate from either the auditors or practicing company secretaries regarding compliance of conditions of corporate governance as stipulated in this clause and annex the certificate to the directors' report, which is sent annually to all the shareholders of the company. The same certificate is also to be sent to the stock exchanges along with the annual report filed by the company (Bombay Stock Exchange [BSE, n.d. a]).

## Move Towards Voluntary Initiatives

It is reasonable to assume that companies will necessarily comply with the mandatory requirements in view of the penal provisions for non compliance like fine and delisting, among others, as contained in the listing agreement.

* *Senior Professor- Finance & Accounts,* FORE School of Management, B - 18, Adhitam Kendra, Qutab Institutional Area, New Delhi - 110 016. E-mail: ambrish@fsm.ac.in

However, in respect of non mandatory requirements, they have a choice. It, therefore, becomes important to examine the extent of adoption/non adoption of these norms by them. High standards of corporate governance practices demand that companies must willingly adopt the non mandatory norms in full spirit. In fact, the latest trend in this area of study and practice is the laying down of more and more emphasis on the voluntary initiatives by the companies beyond what is required by the regulatory authorities. The following instances can be quoted to support this statement :

- **Corporate Governance Recommendations for Voluntary Adoption :** Report of the Confederation of Indian Industry's (CII) Task Force on Corporate Governance (Naresh Chandra Committee) stated that :

> Good corporate governance involves a commitment of a company to run its businesses in a legal, ethical and transparent manner - a dedication that must come from the very top and permeate throughout the organization. That being so, much of what constitutes good corporate governance has *to be voluntary*. Law and regulations can, at best, define the basic framework - boundary conditions that cannot be crossed. (Confederation of Indian Industry [CII, 2009], p.5)

- The National Voluntary Guidelines, Principle 1 of Chapter 2 of 'The National Voluntary Guidelines on Socio-Economic and Environmental Responsibilities of Business (2011)' brought out by the Ministry of Corporate Affairs (MCA) emphasized that "businesses should develop *governance structures, procedures and practices* that ensure ethical conduct at all levels; and promote the adoption of this principle across its value chain" (MCA, 2011, p.7).

- SEBI's "Consultative Paper on Review of Corporate Governance Norms in India" in its very first paragraph (1.2) emphasizes :

> Corporate governance is the acceptance by management of the inalienable rights of shareholders as the true owners of the corporation and of their own role as trustees on behalf of the shareholders. It is about commitment to values, about ethical business conduct, and about making a distinction between personal and corporate funds in the management of a company. (SEBI, n.d., paragraph 1.2)

The undercurrent is clearly towards *voluntary initiatives*.

## Review of Literature

Literature is replete with research on various aspects of Indian corporate governance. A study by Srinivasan and Srinivasan (2011) even assessed the status of corporate governance research 'on' India. A few studies which addressed the issue of compliance with the corporate governance requirements of Clause 49, both mandatory and non-mandatory, are briefed here under.

Pahuja and Bhatia (2010) conducted a study on "Determinants of Corporate Governance Disclosures: Evidence from Companies in Northern India." The study examined annual corporate governance reports of 50 listed companies. They found that "there was a substantial scope for improvement in the corporate governance disclosure practices and that the size of the corporation was a significant determinant of the disclosures" (p.88). Bhasin (2010) conducted a case study on Reliance Industries Ltd. for the year 2008-09 and observed that the company had complied with some of the important non-mandatory requirements stipulated under Clause 49 and that the company had a whistle-blower policy and enforcement mechanism in place.

Sareen and Chander (2009) carried out an empirical investigation on "Firms' Attributes and Corporate Governance Disclosure Practices" in India. Their study was based upon secondary data taken from 100 selected

BSE listed companies. They found a positive relationship between selected company attributes and the extent of corporate governance disclosures. Gupta (2006) carried out a comparative study of corporate governance practices in selected companies in the automobile industry in Haryana. The data were collected from the corporate governance reports of the related companies for the year 2004-05. The study did not find any significant deviations in actual practices vis-a-vis the norms stipulated in Clause 49.

Gupta, Nair, and Gogula (2003) carried out an analysis of corporate governance practices, on the basis of corporate governance reports for the years 2001-02 and 2002-03, of 30 selected Indian companies listed on BSE. They found variations in the reporting practices of the companies, and in certain cases, even omissions of mandatory requirements of Clause 49.

It is clear that research studies on 'compliance of corporate governance requirements' in India have either focused only on the mandatory requirements or both. Furthermore, most of the studies are limited to just one company, one industry, and one geographical area. It was ,therefore, felt that an exclusive study on compliance with non mandatory requirements covering a larger sample of companies and industry sectors with an all India impact is a must.

## Objectives of the Study

With the given backdrop, the objective of this research is to assess whether India Inc follows the corporate governance code in letters or in spirit. More specifically, the research seeks to examine the extent, if any, to which the non-mandatory norms, as enunciated in Clause 49 of the listing agreement (BSE. n.d. a), are adopted/not adopted by the Indian corporates so as to assess whether the adoption is satisfactory or not.

## Data Collection and Methodology

This paper is based on secondary, nonetheless original, data and proceeds with the following research methodology:

**(1)** Constituent companies of the Bombay Stock Exchange Sensitivity Index (BSE Sensex) numbering 30 were considered as representing the Indian corporate sector since the Sensex stocks represent large, well-established, and financially sound companies across key sectors, and the Sensex itself is considered as the barometer of the Indian capital market (BSE, n.d. b). These companies enjoy leadership positions in their respective industries, and corporate reporting practices followed by them are keenly watched, and influence the reporting practices of the entire corporate sector. Their market capitalization (as on October 30, 2013) at INR 34, 64,702 crore (346,47,020 million) (BSE, 2013a) represents 51.32 % of the total market capitalization of all BSE listed companies amounting to INR 67, 50, 941 crore (BSE, 2013b). The Appendix 1 provides a listing of these companies together with their segmentation based on industry sector (sub sector), business house, and ownership.

**(2)** The corporate governance reports of all these companies as contained in their respective annual reports for the latest financial year 2012-13 were scanned to find out the details about adoption/non-adoption of non mandatory requirements of Clause 49. These details were tabulated and aggregated company wise and requirement wise. The Appendix 2 provides the details.

**(3)** These details were further classified between 'adopted/not adopted' on the parameters of individual companies, ownership (private sector/public sector), industry sectors, and business houses.

**(4)** In a few cases, information on adoption/non adoption of non mandatory requirements was not provided under a separate head. Therefore, information was culled out in bits and pieces from the entire corporate governance report/auditors' report/directors' report. Though every effort was made to ensure accuracy in these cases, inadvertent omissions might be remotely possible.

**(5)** In case of two companies, information in respect of Requirement 2 and Requirements 2, 6, & 7 respectively could not be found. E-mails were sent to their company secretaries for eliciting the same, but both the mails remained unanswered. Details have been provided in Appendix 2 by way of notes.

## Conceptual Framework of Corporate Governance in India

Indian efforts towards corporate governance date back to 1996. Appreciably, the first such effort emanated as a result of the private sector's awareness and initiative itself followed by relentless pro-active regulatory role of SEBI (Gupta, 2012.). In 1996, CII took a special initiative on corporate governance. According to Gupta (2013) :

> CII set up a national task force with Rahul Bajaj (its past President and CMD- Bajaj Auto Limited) as its Chairman, with the objective of developing and promoting a Code for Corporate Governance to be adopted and followed by Indian companies. The task force came out with a document in April 1998 known as 'Desirable Corporate Governance: A Code' for voluntary compliance by the Indian industry. (p.12)

This was followed by SEBI appointed Kumar Mangalam Birla committee report on corporate governance (2000) and then N. R. Narayan Murthy's committee report (2003). Recently, in 2013, SEBI issued a consultative paper on review of corporate governance norms in India, as mentioned earlier.

The foundation of a conceptual framework of corporate governance in India was laid down by the Kumar Mangalam Birla committee report. The report stated :

> Corporate governance has several claimants - shareholders and other stakeholders - which include suppliers, customers, creditors, bankers, employees of the company, government, and the society at large. The Committee, therefore, agreed that the fundamental objective of corporate governance is the 'enhancement of shareholder value, keeping in view the interests of other stakeholders'. This definition harmonizes the need for a company to strike a balance at all times between the need to enhance shareholders' wealth whilst not in any way being detrimental to the interests of the other stakeholders in the company. (Kumar Mangalam Birla Committee. 2000, cl. 4.1 & 4.2)

Clause 49 was inserted in the listing agreement after the recommendations of this report were accepted by SEBI. The Narayan Murthy committee report further strengthened the clause (Murthy, 2003). Coming back to the requirements of Clause 49, details of both mandatory and non mandatory requirements are provided hereunder. Any discussion on non mandatory requirements will be incomplete without a mention of mandatory requirements. Hence, the details of both are discussed.

### Mandatory Requirements

These are the requirements to be met by all listed companies. Non-compliance of any mandatory requirement of this clause with reasons thereof needs to be reported in the annual corporate governance report. The following is a brief listing of these requirements :

**(1) Board of Directors:** (a) composition of the board, (b) non executive directors' compensation and disclosures, (c) other provisions as to the board and committees, (d) code of conduct.

**(2) Audit Committee :** (a) Qualified and independent audit committee, (b) meetings of audit committee, (c) powers of audit committee, (d) role of audit committee, (e) review of information by audit committee.

**(3) Unlisted Subsidiary Companies:** (a) Independent director of parent to be on the board, (b) review of financial statements by the audit committee of the parent, (c) minutes of the board meetings.

**(4) Disclosures :** (a) Basis of related party transactions, (b) disclosure of accounting treatment, (c) Board disclosures - risk management, (d) proceeds from public issues, rights issues, preferential issues, and so forth, (e) remuneration of directors, (f) management discussion and analysis report, (g) Shareholders: quarterly financial statements to them and mechanism for redressal of their complaints, (h) whistle blower policy and affirmation that no personnel have been denied access to the audit committee.

**(5) CEO/CFO Certification:** (a) review of financial statements, (b) Transactions: Fraudulent, illegal, or violative of the company's code of conduct, (c) responsibility for internal controls, (d) significant changes in accounting policies and major frauds.

**(6) Report on Corporate Governance:** (a) separate section on corporate governance in the annual report, (b) non-compliance of any mandatory requirements with reasons, (c) extent to which the non-mandatory requirements are adopted, (d) quarterly compliance report.

**(7) Compliance:** (a) certificate regarding compliance of conditions of corporate governance, (b) affirmation on personnel's access to the audit committee.

## Non-Mandatory (Voluntary) Requirements

Clause 49 provides that the non-mandatory requirements may be implemented as per the discretion of the company. However, the disclosures of the adoption / non-adoption of the non-mandatory requirements need to be made in the section on corporate governance in the annual report. The following is a full listing of these requirements as given in the Annexure 1D of Clause 49:

**(1) Non - Executive Chairman's Office :** "A non-executive chairman may 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" (BSE, n.d. a, Annexure 1D. Serial 1, p. 92.).

**(2) Independent Directors' Tenure :** According to Annexure 1D of Clause 49 :

> Independent directors may have a tenure not exceeding, in the aggregate, a period of nine years, on the board of a company. The company may ensure that the person who is being appointed as an independent director has the requisite qualifications and experience which would be of use to the company and which, in the opinion of the company, would enable him to contribute effectively to the company in his capacity as an independent director. (Annexure 1D. Serial 1, p. 92.)

**(3) Remuneration Committee :** According to Annexure 1D of Clause 49:

> The board may set up a remuneration committee to determine on their behalf and on the behalf of the shareholders with agreed terms of reference, the company's policy on specific remuneration packages for executive directors including pension rights and any compensation payment. To avoid conflicts of interest, the remuneration committee, which would determine the remuneration packages of the executive directors may comprise of at least three directors, all of whom should be non-executive directors, the

chairman of the committee being an independent director. All the members of the remuneration committee could be present at the meeting. The chairman of the remuneration committee could be present at the annual general meeting, to answer the shareholder queries. However, it would be up to the chairman to decide who should answer the queries. (Annexure 1D. Serial 2, p. 92.)

**(4) Shareholders' Right to Half Yearly Financial Reports :** "A half-yearly declaration of financial performance including summary of the significant events in the last six-months, may be sent to each household of shareholders" (Annexure 1D. Serial 3, p. 92.).

**(5) Audit Qualifications - Move Towards Unqualified Reports :** "A company may move towards a regime of unqualified financial statements" (Annexure 1D. Serial 4, p. 92.).

**(6) Training of Board Members :** "A company may train its board members in the business model of the company as well as the risk profile of the business parameters of the company, their responsibilities as directors, and the best ways to discharge them" (Annexure 1D. Serial 5, p. 93).

**(7) Mechanism for Evaluating Non-Executive Board Members :**

The performance evaluation of non-executive directors could be done by a peer group comprising the entire board of directors, excluding the director being evaluated; and peer group evaluation could be the mechanism to determine whether to extend / continue the terms of appointment of non-executive directors. (Annexure 1D. Serial 6, p. 93.)

**(8) Whistle Blower Policy**

The company may establish a mechanism for employees to report to the management concerns about unethical behaviour, actual or suspected fraud or violation of the company's code of conduct or ethics policy. This mechanism could also provide for adequate safeguards against victimization of employees who avail of the mechanism and also provide for direct access to the chairman of the audit committee in exceptional cases. Once established, the existence of the mechanism may be appropriately communicated within the organization. (Annexure 1D. Serial 7, p. 93.)

## Compliance/Non-Compliance of Non - Mandatory Requirements : Analysis, Discussion, and Findings

Detailed objectives and methodology of this research study have been stated earlier. This section seeks to ascertain whether India Inc follows the corporate governance requirements in letters or in spirit. The section is divided into five parts.

**[1] Company Wise Compliance/Non-Compliance :** The Table 1 provides details of company wise compliance/non-compliance of non mandatory requirements.

**Main Findings**

**(i)** Sensex companies, put together, have adopted the non mandatory requirements to the extent of 57.50%. Non

**Table 1. Company Wise Compliance/Non- Compliance of Non-Mandatory Requirements**

| Sl. No. | Sensex Companies | Adoption | Non adoption |
|---|---|---|---|
| 1 | Bajaj Auto | 62.50% | 37.50% |
| 2 | Bharti Airtel | 50.00% | 50.00% |
| 3 | BHEL | 50.00% | 50.00% |
| 4 | **Cipla** | **12.50%** | **87.50%** |
| 5 | Coal India | 62.50% | 37.50% |
| 6 | Dr. Reddy's Lab | 75.00% | 25.00% |
| 7 | **Gail India** | **100.00%** | **0.00%** |
| 8 | HDFC Bank | 87.50% | 12.50% |
| 9 | HDFC | 62.50% | 37.50% |
| 10 | Hero MotoCorp | 25.00% | 75.00% |
| 11 | Hindalco | 50.00% | 50.00% |
| 12 | Hindustan Unilever | 25.00% | 75.00% |
| 13 | ICICI Bank | 50.00% | 50.00% |
| 14 | Infosys | 87.50% | 12.50% |
| 15 | ITC | 75.00% | 25.00% |
| 16 | Jindal Steel | 50.00% | 50.00% |
| 17 | L & T | 37.50% | 62.50% |
| 18 | Mahindra & Mahindra | 37.50% | 62.50% |
| 19 | Maruti Suzuki | 25.00% | 75.00% |
| 20 | NTPC | 62.50% | 37.50% |
| 21 | ONGC | 37.50% | 62.50% |
| 22 | Reliance | 75.00% | 25.00% |
| 23 | SBI | 75.00% | 25.00% |
| 24 | SSLT (SESA Sterlite) | 75.00% | 25.00% |
| 25 | Sun Pharma | 62.50% | 37.50% |
| 26 | TATA Motors | 87.50% | 12.50% |
| 27 | TATA Power | 62.50% | 37.50% |
| 28 | TATA Steel | 37.50% | 62.50% |
| 29 | TCS | 50.00% | 50.00% |
| 30 | Wipro | 75.00% | 25.00% |
| | **Total average..................** | **57.50%** | **42.50%** |

adoption is 42.50%.

**(ii)** GAIL (India), a public sector undertaking (PSU), is the only company with 100.00% adoption. It has adopted all the 8 requirements.

**(iii)** Cipla has surprisingly adopted just 1 requirement (refer to Table 1).

**(iv)** Sixteen companies have achieved *higher adoption* than the overall average ranging from 62.50% to 100.00%. Break up of these companies is given in the Table 2.

**Table 2. Companies Achieving More than Overall Average Adoption of Non-Mandatory Requirements**

| Sl. No. | Adoption | Non-adoption | Number of companies | Company/ies |
|---|---|---|---|---|
| 1 | 100.00% | 0.00% | 1 | GAIL (PSU) |
| 2 | 87.50% | 12.50% | 3 | HDFC Bank, Infosys, TATA Motors. |
| 3 | 75.00% | 25.00% | 6 | Dr. Reddy's Lab, ITC, Reliance, SBI, SSLT (SESA Sterlite), Wipro |
| 4 | 62.50% | 37.50% | 6 | Bajaj Auto, Coal India (PSU), HDFC NTPC(PSU), Sun Pharma, TATA Power |
| | | **Total....** | **16** | |
| **Average of these companies........** | | | | |
| | **74.22%** | **25.78%** | **16** | |

**Table 3. Companies Achieving Less than Overall Average Adoption of Non-Mandatory Requirements**

| Sl. No. | Adoption | Non-adoption | Number of companies | Bottom Company/ies |
|---|---|---|---|---|
| 1 | 50.00% | 50.00% | 6 | Bharti Airtel, BHEL (PSU), Hindalco, ICICI Bank, Jindal Steel, TCS |
| 2 | 37.50% | 62.50% | 4 | L & T, Mahindra & Mahindra, ONGC (PSU),TATA Steel |
| 3 | 25.00% | 75.00% | 3 | Hero MotoCorp, Hindustan Unilever, Maruti Suzuki. |
| 4 | 12.50% | 87.50% | 1 | Cipla |
| | | **Total....** | **14** | |
| **Average of these companies........** | | | | |
| **5** | **38.39%** | **61.61%** | **14** | |

**(v)** Fourteen companies have recorded lower than the average adoption ranging between 12.50% to 50%. The break up of these companies is given in the Table 3.

### Analysis

**(1)** Noteworthy contrasts in adoption:

- Reliance : 75%. TATA Steel just 37.50%.
- HDFC Bank : 87.50%. Parent HDFC only 62.50%.
- SBI : 75%. ICICI Bank just 50%.
- TATA Motors : 87.50%. TATA Steel just 37.50%.
- ITC : 75%. Hindustan Unilever just 25%.

**(2)** Overall, the total average adoption of the Sensex companies at 57.50% is far from satisfactory. Even the largest private sector company, Reliance has not achieved 100% adoption (only 75 %). The score of the largest PSU - ONGC is very dismal at 37.50%. However, the average adoption of 16 companies, achieving more than average adoption of all Sensex companies, at 74.22% is quite high. And the average adoption of 14 companies, achieving less than average adoption of all Sensex companies, at 38.39% is quite low.

**[2] Requirement Wise Compliance/Non - Compliance :** The Table 4 provides details of requirement wise compliance/non-compliance of non mandatory requirements.

### Main Findings

**(i)** No requirement being adopted 100%.

**Table 4. Requirement Wise Compliance/Non - Compliance of Non Mandatory Requirements**

| Req. No. | Requirements | Adoption | Non-adoption |
|---|---|---|---|
| 1 | Non-executive chairman's office | 83.33% | 16.67% |
| 2 | **Independent directors' tenure (limitation of 9 years)** | **13.33%** | 86.67% |
| 3 | **Remuneration committee** | **90.00%** | 10.00% |
| 4 | Shareholders' right to receive half yearly financial reports | 23.33% | 76.67% |
| 5 | Audit qualifications: Move towards Unqualified Report | 80.00% | 20.00% |
| 6 | Training of board members | 56.67% | 43.33% |
| 7 | Mechanism for evaluating non-executive board members | 33.33% | 66.67% |
| 8 | Whistle blower policy | 80.00% | 20.00% |
| | **Total.................** | **57.50%** | **42.50%** |

**Table 5. Sensex Industry Wise Compliance/Non- Compliance of Non-Mandatory Requirements**

| Sl. No. | Sensex Industries | No. of Companies | Adoption | Non-adoption |
|---|---|---|---|---|
| 1 | **Information Technology** | **3** | **70.83%** | **29.17%** |
| 2 | Finance | 4 | 68.75% | 31.25% |
| 3 | Oil & Gas | 4 | 68.75% | 31.25% |
| 4 | Power | 1 | 62.50% | 37.50% |
| **Average of 4 industries scoring more than the overall average.......** | | **12** | **68.75%** | **31.25%** |
| 5 | Metal, Metal Products & Mining | 5 | 55.00% | 45.00% |
| 6 | FMCG | 2 | 50.00% | 50.00% |
| 7 | Healthcare | 50.00% | 50.00% | |
| | 3 | 50.00% | 50.00% | |
| 8 | Telecom | 1 | 50.00% | 50.00% |
| 9 | Transport Equipments | 5 | 47.50% | 52.50% |
| 10 | **Capital Goods** | **2** | **43.75%** | 56.25% |
| **Average of 6 industries scoring less than the overall average.......** | | **18** | **50.00%** | **50.00%** |
| | **Total industries.....10** | | **57.50%** | **42.50%** |

Sources: Sensex industries:www.bseindia.com

**(ii)** Highest adoption : 90% - Remuneration committee.

**(iii)** Lowest adoption : 13.33% - Independent directors' tenure.

**(iv)** Heartening to note a high 80% adoption of 'Audit qualifications: Move towards unqualified report' and Whistle blower policy. Should reach 100%.

**(v)** Crucial requirement of shareholders' right to receive half yearly financial reports adopted very poorly. Just 23.33% (refer to Table 4).

**Analysis :** Overall, it is clear that the same independent directors are preferred for reappointment. This tendency is bound to create conflict of interest. Companies also need to be investor friendly and keep the investors regularly informed of the financial performance. However, it is commendable that adoption of 'Audit qualifications: Move towards unqualified report' is a high 80%. In the backdrop of financial scandals that led to the genesis of corporate governance, this adoption level is quite significant. Again, whistle blower policy adoption at

**Table 6. Business House Wise Compliance/Non-Compliance of Non-Mandatory Requirements**

| Sl. No. | Sensex Business Houses | No. of companies | Adoption | Non-adoption |
|---|---|---|---|---|
| 1 | Aditya Birla | 1 | 50.00% | 50.00% |
| 2 | Azim Premji | 1 | 75.00% | 25.00% |
| 3 | Bajaj | 1 | 62.50% | 37.50% |
| 4 | Bharti | 1 | 50.00% | 50.00% |
| 5 | Dilip Singhvi | 1 | 62.50% | 37.50% |
| 6 | **Dr. Reddy's** | **1** | 75.00% | 25.00% |
| 7 | Govt. of India | 6 | 64.58% | 35.42% |
| 8 | **HDFC group** | **2** | 75.00% | 25.00% |
| 9 | ICICI group | 1 | 50.00% | 50.00% |
| 10 | L & T group | 1 | 37.50% | 62.50% |
| 11 | Mahindra | 1 | 37.50% | 62.50% |
| 12 | MNC Associate | 3 | 41.67% | 58.33% |
| 13 | **Mukesh Ambani** | **1** | 75.00% | 25.00% |
| 14 | Munjal (Hero) | 1 | 25.00% | 75.00% |
| 15 | **N.R. Narayan Murthy** | **1** | **87.50%** | **12.50%** |
| 16 | O. P. Jindal | 1 | 50.00% | 50.00% |
| 17 | TATA | 4 | 59.38% | 40.62% |
| 18 | **Vedanta** | **1** | 75.00% | 25.00% |
| 19 | **Y. K. Hamied** | **1** | **12.50%** | 87.50% |
| | **Total..................** | **30** | **57.50%** | **42.50%** |

**Table 7. Business Houses Achieving More than Overall Average Adoption of Non-Mandatory Requirements**

| Sl. No. | Adoption | Non-adoption | Number of Business houses | Business House |
|---|---|---|---|---|
| 1 | 87.50% | 12.50% | 1 | N.R. Narayanmurthy |
| 2 | 75.00% | 25.00% | 5 | Azim Premji, Dr. Reddy's, HDFC group, Mukesh Ambani, Vedanta |
| 3 | 62.50% | 37.50% | 2 | Bajaj, Dilip Singhvi |
| 4 | 64.58% | 35.42% | 1 | Govt. of India |
| 5 | 59.38% | 40.62% | 1 | TATA |
| | | **Total....** | **10** | |
| **Average of their companies........** | | | | |
| | **67.76%** | **32.24%** | **10** | |

80% is also quite significant because this policy is perceived as instrumental in maintaining financial discipline.

**[3] Sensex Industry Wise Compliance/Non - Compliance :** The Table 5 provides the details of the Sensex industry wise compliance/non-compliance of non mandatory requirements.

### ➷ Main Findings

**(i)** Information technology industry has the highest adoption of 70.83% followed by Finance and Oil & Gas, both at 68.75%.

**Table 8. Business Houses Achieving Less than Overall Average Adoption of Non-Mandatory Requirements**

| Sl. No. | Adoption | Non-adoption | Number of Business houses | Bottom Company/ies |
|---|---|---|---|---|
| 1 | 50.00% | 50.00% | 4 | Aditya Birla, Bharti, ICICI Group, O. P. Jindal |
| 2 | 41.67% | 58.23% | 1 | MNC Associate |
| 3 | 37.50% | 62.50% | 2 | L & T group, Mahindra |
| 4 | 25.00% | 75.00% | 1 | Munjal (Hero) |
| 5 | 12.50% | 87.50% | 1 | Y. K. Hamied |
| | | **Total....** | **9** | |
| **Average of their companies........** | | | | |
| | **39.77%** | **60.23%** | **9** | |

**(ii)** Lowest adoptions in Capital Goods industry-just 43.75%. Lot more desired at the end of the manufacturing sector. The corporate sector needs to strive to achieve 100% adoption on both these counts in their annual reports.

**(iii)** Four industries - IT, Finance, Oil, & Gas and Power (12 companies) have a scoring adoption of more than the average of 57.50%.

**(iv)** Rest of the 6 industries scoring adoption is less than the average.

**Analysis:** Overall, only 40% of the industry sectors have recorded more than the overall average adoption at 68.75%. A high 60% of the industry sectors have recorded less than the overall average adoption at 50.00%. The manufacturing sector, at 53.75% adoption, is lagging behind the most.

**[4] Business House Wise Compliance/Non- Compliance :** The Table 6 provides the details of Sensex business house wise compliance/non-compliance of non mandatory requirements.

**Main Findings**

**(i)** No business house could score 100% adoption.

**(ii)** Next in line, the business house of N.R. Narayan Murthy (1 company) recorded 87.50% adoption.

**(iii)** Five business houses (total 6 companies) of Azim Premji, Dr. Reddy's, HDFC Group, Mukesh Ambani, and Vedanta scored 75% adoption.

**(iv)** Surprisingly, a low adoption at TATAs (4 companies : 59.38% adoption only) is witnessed. In contrast, Govt. of India (6 companies) scored higher at 64.58%.

**(v)** Y. K. Hamied (1 company) has the lowest adoption of 12.50%.

**(vi)** Ten business houses (19 companies) scored adoption of more than the average 57.50%. The Table 7 provides the details.

**(vii)** Nine business houses (11 companies) scored adoption of less than the average of 57.50%. The details are depicted in the Table 8.

**Analysis :** Overall, only 10 business houses have scored more than the average adoption of 57.50%. Within them, the lowest adoption is that of TATA at 59.38%. Nine business houses have scored less than the average adoption of 42.50%. Among these, Y. K. Hamied is at the bottom at 12.50%.

**Table 9. Ownership Wise Compliance/Non - Compliance of Non-Mandatory Requirements**

| Sl. No. | Sensex Ownership Details | Adoption | Non-adoption | Aggregates |
|---|---|---|---|---|
| 1 | Private sector | 55.73% | 44.27% | 100% |
| 2 | **Public sector** | **64.58%** | 35.42% | 100% |

**[5] Ownership Wise Compliance/Non - Compliance :** The Table 9 provides the details of ownership wise compliance/non-compliance of non mandatory requirements.

↳ **Analysis:** Surprisingly, the public sector has outperformed the private sector in the adoption of non mandatory requirements. It shows that the managements of public sector companies are more open to follow the non-mandatory norms.

## Conclusion

The present research proves that the Indian corporate sector has to go a long way in complying with the non-mandatory voluntary requirements of corporate governance. Total average compliance of the Sensex companies at 57.50% is far from being satisfactory. Only Gail India (a PSU) recorded 100% adoption. Only 40% of industry sectors (at 68.75%) recorded more than the overall average adoption. Only 10 business houses scored more than the average adoption of 57.50%. Within them, the lowest adoption surprisingly is that of TATA at 59.38%. It is commendable that the public sector has outperformed the private sector in the adoption of non mandatory requirements. It shows that the managements of public sector companies are more open to follow the non-mandatory norms.

It is again commendable that compliance with 'Audit qualifications: Move towards Unqualified Report' is as high as 80%. In the backdrop of financial scandals that led to the genesis of corporate governance, this adoption level is quite significant. Again, whistle blower policy adoption at 80% is also quite significant because this policy is perceived as instrumental in maintaining financial discipline. The corporate sector needs to strive to achieve 100% adoption on both these counts in their annual reports.

Some disturbing issues also emerged. Corporate performance in complying with the other key norms of independent directors' tenure to be limited to 9 years (13.33%), mechanism for evaluating non-executive board members (33.33%) and shareholders' right to receive half yearly financial reports (23.33%) is very dismal. Clearly, the same independent directors are preferred for reappointment. This tendency is bound to create conflict of interest. Non-executive board members' training needs to be taken up seriously. Companies also need to be highly investor friendly and keep the investors regularly informed of the financial performance so as to increase the faith and trust of the investors, which ultimately leads to the growth of the capital markets, benefiting both the groups.

Finally, the Indian corporates would do well to achieve 100% compliance with voluntary requirements in the nearest short term before it could be claimed that they follow the corporate governance norms in spirit.

## Implications

↳ **Research Implications :** This study has lessons for the corporates to be pro-active in setting on their own and following the highest standards of transparent corporate governance systems and structures set by themselves as well as by the regulator irrespective of their voluntary nature. In fact, it is their pro-activeness that alone will shape the highest standards of corporate governance and will become an enabler of enacting financial discipline and control and reporting thereof to the shareholders.

↳ **Policy Implications :** SEBI needs to consider converting those voluntary norms, where compliance is low as evidenced above, to mandatory requirements. In fact, all regulatory requirements should be mandatory and no discretion should be left to the corporates. Over and above that, the corporates should go in for more voluntary practices.

## Limitations of the Study and Scope for Further Research

This study is based on BSE Sensex covering 30 companies. Though these are the best-known blue chip companies, this study can be further extended to cover larger samples represented by indices such as BSE 100, BSE 200, Nifty, CNX 200, and CNX 500, and so forth. Industry wise, business house wise, or region wise, studies can also be conducted. Comparative studies between two or more indices, industries, business houses, and regions can also be undertaken.

## References


Bhasin, M. L. (2010). Corporate governance disclosure practices: The portrait of a developing country. *International Journal of Business and Management, 5* (4), 150-167. DOI: 10.5539/ijbm.v5n4p150

Bombay Stock Exchange (BSE). (2013a). *Market capitalization of all BSE listed companies* (October 30, 2013. 12.03 PM). Retrieved from http://www.bseindia.com/

Bombay Stock Exchange (BSE). (2013b). *Market capitalization of BSE Sensex companies* (October 30, 2013. 12.01 PM). Retrieved from http://www.bseindia.com/SensexView/SensexView.aspx

Bombay Stock Exchange (BSE). (n.d. a). *Clause 49 of the listing agreement.* Retrieved from http://www.bseindia.com/Static/about/Listing_Agreement.aspx?expandable=2

Bombay Stock Exchange (BSE). (n.d. b). *S&P BSE sensex - The barometer of Indian capital markets*. Retrieved from http://www.bseindia.com/indices/DispIndex.aspx?iname=BSE30&index_Code=16&page=B16FEF6B-3A5C-45B8-89F9-C79E884CC716

Confederation of Indian Industry (CII). (2009, November). *Corporate governance : Recommendations for voluntary adoption. Report of the CII Task Force on Corporate Governance (Naresh Chandra Committee, 2009)*, p. 5. Retrieved from http://www.mca.gov.in/Ministry/latestnews/Draft_Report_NareshChandra_CII.pdf

Gupta, A. (2012). *Financial accounting for management: An analytical perspective* (4th Edition, pp. 493 - 496). Delhi : Pearson Education.

Gupta, A. (2013). *Corporate governance reporting requirements: Malaysia vs. India* (Working Paper No: 2013/09, p. 12). Delhi : FORE School of Management.

Gupta, A., Nair, A.P., & Gogula, R. (2003). Corporate governance reporting by Indian companies: A content analysis study. *The ICFAI Journal of Corporate Governance, 2* (4), 7-18.

Gupta, K.C. (2006). A comparative study of corporate governance practices in selected companies of automobile industry in Haryana. *Punjab Journal of Business Studies, 1* (2), 58-71.

Kumar Mangalam Birla. (2000). *Corporate governance - The objective (Cl. 4.1 and 4.2). Report of the Kumar Mangalam Birla Committee on Corporate Governance, 2000.* Retrieved from http://www.sebi.gov.in/commreport/corpgov.jsp

Ministry of Corporate Affairs, Government of India. (2011). *National voluntary guidelines on social, environmental & economic responsibilities of business* (p.7). Retrieved from http://www.nfcgindia.org/pdf/National_Voluntary_Guidelines.pdf

Murthy, N. R. N. (2003, February 8). *Report of the SEBI committee on corporate governance*. Retrieved from http://www.sebi.gov.in/cms/sebi_data/attachdocs/1293094958536.pdf

Pahuja, A., & Bhatia, B.S. (2010), Determinants of CG disclosures: Evidence from companies in Northern India. *The IUP Journal of Corporate Governance, 9* (3), 69-88.

Sareen, V. K., & Chander, S. (2009). Firm's attributes and corporate governance disclosure practices: An empirical investigation. *Indian Journal of Corporate Governance, 2* (1), 117-137.

Securities and Exchange Board of India (SEBI). (n.d.). *Consultative paper on review of corporate governance norms in India*. Retrieved from http://www.sebi.gov.in/cms/sebi_data/attachdocs/1357290354602.pdf

Srinivasan, P., & Srinivasan, V. (2011). *Status of corporate governance research on India: An exploratory study* (Working Paper No: 334, p.2). Bangalore : Indian Institute of Management.

# Appendices

**Appendix 1. Constituent Companies of S&P BSE Sensex (As on October 29, 2013)**

| Sl. no. | Company | Scrip code | Industry sector (sub sector) | Business house | Ownership |
|---|---|---|---|---|---|
| 1 | Bajaj Auto | 532977 | TE (2/3 wheelers) | Bajaj | Private |
| 2 | Bharti Airtel | 532454 | Telecom (Telecom services) | Bharti | Private |
| **3** | **BHEL** | **500103** | **CG (Heavy Electrical Equipment)** | **Govt. of India** | **Public** |
| 4 | Cipla | 500087 | Healthcare (Pharmaceuticals) | Y. K. Hamied | Private |
| **5** | **Coal India** | **533278** | **MMPM (Coal)** | **Govt. of India** | **Public** |
| 6 | Dr. Reddy's Lab | 500124 | Healthcare (Pharmaceuticals) | Dr. Reddy's | Private |
| **7** | **Gail India** | **532155** | **Oil & Gas (Utilities: Non-Elec.)** | **Govt. of India** | **Public** |
| 8 | HDFC Bank | 500180 | Finance (Banks) | HDFC group | Private |
| 9 | HDFC | 500010 | Finance (Housing Finance) | HDFC group | Private |
| 10 | Hero MotoCorp | 500182 | TE (2/3 wheelers) | Munjal (Hero) | Private |
| 11 | Hindalco | 500440 | MMPM (Aluminium) | Aditya Birla | Private |
| 12 | Hindustan Unilever | 500696 | FMCG (Personal Products) | MNC Associate-Unilever | Private |
| 13 | ICICI Bank | 532174 | Finance (Banks) | ICICI group | Private |
| 14 | Infosys | 500209 | IT (IT Consulting & Software) | N.R. Narayanmurthy | Private |
| 15 | ITC | 500875 | FMCG (Cigarettes, Tobacco Products) | MNC Associate-ITC | Private |
| 16 | Jindal Steel | 532286 | MMPM (Iron & Steel/Intermediate Products) | Om Prakash Jindal | Private |
| 17 | L & T | 500510 | CG (Construction & Engineering) | L & T group | Private |
| 18 | Mahindra & Mahindra | 500520 | TE (Cars & Utility Vehicles) | Mahindra | Private |
| 19 | Maruti Suzuki | 532500 | TE (Cars & Utility Vehicles) | MNC Associate-Suzuki | Private |
| **20** | **NTPC** | **532555** | **Power (Electric Utilities)** | **Govt. of India** | **Public** |
| **21** | **ONGC** | **500312** | **Oil & Gas (Exploration & Production)** | **Govt. of India** | **Public** |
| 22 | Reliance | 500325 | Oil & Gas (Integrated Oil & Gas) | Mukesh Ambani | Private |
| **23** | **SBI** | **500112** | **Finance (Banks)** | **Govt. of India** | **Public** |
| 24 | SSLT (Sesa Sterlite) | 500295 | MMPM (Iron & Steel/Intermediate Products) | Vedanta | Private |
| 25 | Sun Pharma | 524715 | Healthcare (Pharmaceuticals) | Dilip Singhvi | Private |
| 26 | TATA Motors | 500570 | TE (Commercial Vehicles) | TATA | Private |
| 27 | TATA Power | 500400 | Power (Electric Utilities) | TATA | Private |
| 28 | TATA Steel | 500470 | MMPM (Iron & Steel/Intermediate Products) | TATA | Private |
| 29 | TCS | 532540 | IT (IT Consulting & Software) | TATA | Private |
| 30 | Wipro | 507685 | IT (IT Consulting & Software) | Azim Premji | Private |

Notes:

1. Sesa Sterlite was known earlier as Sterlite Industries.
2. Industry sectors/sub sectors have been identified as per the information available at www.bseindia.com
3. Business houses have been identified as per the information available at www.bseindia.com and Capitaline Neo database.

**Appendix 2. Break-up of Requirement Wise Adoption/Non - Adoption of Non - Mandatory Requirements of Clause 49**

| | | Requirement No.......... | | | | | | | | Aggregates | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Sl. No.** | **Company** | **1** | **2** | **3** | **4** | **5** | **6** | **7** | **8** | **Y** | **N** | **NA** |
| 1 | Bajaj Auto | NA | N | Y | Y | Y | N | N | Y | **4** | **3** | **1** |
| 2 | Bharti Airtel | NA | N | Y | N | Y | N | N | Y | **3** | **4** | **1** |
| 3 | **BHEL** | NA | N | Y | N | Y | Y | N | N | **3** | **4** | **1** |
| 4 | Cipla | NA | N | N | N | N | N | N | N | **0** | **7** | **1** |
| 5 | **Coal India** | NA | N | Y | N | Y | Y | N | Y | **4** | **3** | **1** |
| 6 | Dr. Reddy's Lab | NA | N | Y | N | Y | Y | Y | Y | **5** | **2** | **1** |
| 7 | **Gail India** | NA | Y | Y | Y | Y | Y | Y | Y | **7** | **0** | **1** |
| 8 | HDFC Bank | Y | Y | Y | N | Y | Y | Y | Y | **7** | **1** | **0** |
| 9 | HDFC | Y | N | Y | N | Y | Y | N | Y | **5** | **3** | **0** |
| 10 | Hero MotoCorp | NA | N | Y | N | N | N | N | N | **1** | **6** | **1** |
| 11 | Hindalco | Y | N | N | N | Y | Y | N | Y | **4** | **4** | **0** |
| 12 | Hindustan Unilever | N | N | Y | N | N | N | N | Y | **2** | **6** | **0** |
| 13 | ICICI Bank | Y | N | Y | N | Y | N | N | Y | **4** | **4** | **0** |
| 14 | Infosys | Y | Y | Y | Y | Y | Y | Y | Y | **7** | **1** | **0** |
| 15 | ITC | NA | N | Y | Y | Y | Y | N | Y | **5** | **2** | **1** |
| 16 | Jindal Steel | NA | N | Y | N | N | Y | N | Y | **3** | **4** | **1** |
| 17 | L & T | NA | N | Y | N | N | N | N | Y | **2** | **5** | **1** |
| 18 | Mahindra & Mahindra | N | N | Y | N | Y | N | N | Y | **3** | **5** | **0** |
| 19 | Maruti Suzuki | Y | N | N | N | N | N | N | Y | **2** | **6** | **0** |
| 20 | **NTPC** | NA | N | Y | N | Y | Y | Y | N | **4** | **3** | **1** |
| 21 | ONGC | NA | N | Y | N | Y | N | N | N | **2** | **5** | **1** |
| 22 | Reliance | NA | N | Y | Y | Y | Y | N | Y | **5** | **2** | **1** |
| 23 | SBI | NA | Y | Y | N | Y | Y | Y | Y | **5** | **2** | **1** |
| 24 | SSLT (Sesa Sterlite) | Y | N | Y | N | Y | Y | Y | Y | **6** | **2** | **0** |
| 25 | Sun Pharma | NA | N | N | N | Y | Y | N | N | **4** | **3** | **1** |
| 26 | TATA Motors | Y | Y | Y | N | Y | Y | Y | Y | **7** | **1** | **0** |
| 27 | TATA Power | N | N | Y | Y | Y | N | Y | Y | **5** | **3** | **0** |
| 28 | TATA Steel | N | N | Y | N | Y | N | N | Y | **3** | **5** | **0** |
| 29 | TCS | N | N | Y | Y | Y | N | N | Y | **4** | **4** | **0** |
| 30 | Wipro | NA | N | Y | N | Y | Y | Y | Y | **5** | **2** | **1** |
| | **Aggregates:** | ... | ... | ... | ... | ... | ... | ... | ... | **121** | **102** | **17** |
| | **Y** | **8** | **4** | **27** | **7** | **24** | **17** | **10** | **24** | **121** | ... | ... |
| | **N** | **5** | **26** | **3** | **23** | **6** | **13** | **20** | **6** | **102** | ... | ... |
| | **NA** | **17** | **0** | **0** | **0** | **0** | **0** | **0** | **0** | **17** | ... | ... |
| | **Requirement No.** | **1** | **2** | **3** | **4** | **5** | **6** | **7** | **8** | ... | ... | ... |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **Adoption (%)** | **83.33** | **13.33** | **90.00** | **23.33** | **80.00** | **56.67** | **33.33** | **80.00** | ... | ... | ... |
| **Non adoption (%)** | **16.67** | **86.67** | **10.00** | **23.33** | **20.00** | **43.33** | **66.67** | **20.00** | ... | ... | ... |

Legend:

Req. 1 : Non-executive chairman's office

Req. 2: Independent directors' tenure (limited to 9 years)

Req. 3: Remuneration committee

Req. 4: Shareholders' right to receive half yearly financial reports

Req. 5 : Audit qualifications: Move towards unqualified report

Req. 6: Training of board members

Req. 7: Mechanism for evaluating non-executive board members

Req. 8: Whistle blower policy

Notes:

1. Y: Adoption
2. N: Non-adoption
3. NA: Not applicable (As the chairman is executive in these cases). Treated as adoption.
4. In a few cases, information on adoption/non adoption with non mandatory requirements was not provided under a separate head. Therefore, the information was culled out in bits and pieces from the entire corporate governance report/auditors' report/directors' report. Every effort was made to ensure accuracy in these cases. However, inadvertent mistake could be possible.
5. Information on Req. no. 2, 6, and 7 in the case of ICICI Bank and on requirement no. 2 in the case of NTPC were not found in their respective corporate governance reports. E-mails sent to their company secretaries remained unanswered. It was, therefore, assumed that both of them are non-compliant in that respect.