



# Understanding Corporate Governance in a Comparative Context of India & New Zealand

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## Abstract:

*Corporate Governance is the mechanism in which companies are governed in a transparent manner by rule of law in which participation of shareholders prevail in a responsive, efficient & effective way so as to ensure sustainability & accountability. The concept of corporate governance is getting prominence with each passing day why this so because each & every country in recent past has seen a disastrous trail of many big corporate failures that shook their entire economy & more importantly the failure of such huge sizes in one country has its spill over impacts or effects on other countries as well so it becomes all the more very important to develop comprehensive policies in regard of corporate governance.*

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**Keywords:** *Accountability, Comprehensive policies, Corporate governance, Sustainability*

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## Section I

### 1. Introduction

To begin with I would like to start with structure of this paper. The paper gives an insight of corporate governance in relation to India & New Zealand. It is a comparative study of these two countries. The paper is divided into certain sections. The first section that is the present section talks about relevance of this topic, brief review of literature, objectives of the paper, & methodology employed. The second section is about the famous theories of Corporate Governance. The third section highlights the major points of differences between the governance mechanism of the two countries followed by section four that concludes the paper & last is section five that provides for references. To start with first it is very essential to know what is the meaning of much hyped & talked about term that's corporate governance. In simplest term it is the way in which companies are controlled or given direction. BOD (Board of Directors) or simply directors are supposed to undertake this function of directing & controlling the organizations. As per Larcker & Tayan "corporate governance is the collection of control mechanisms that an organization adopts to prevent or dissuade potentially self-interested managers from engaging in activities detrimental to the welfare of shareholders & stakeholders"<sup>1</sup>. Sir Adrian Cadbury who is also considered as the father of modern corporate governance also defines Corporate Governance as The system by which companies are directed and controlled.<sup>2</sup> Actually it is very difficult to develop a very comprehensive & exhaustive definition of corporate governance. Till date no unified definition exists different scholars/authors during different times have defined it in their own way. Figure 1 attempt to explain the components of corporate governance.

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<sup>1</sup> Corporate Governance Matters by David Larcker & Brian Tayan FT press(2011) Accessed from Ratan Tata Library, Delhi School of Economics.

<sup>2</sup> Corporate Governance defined taken from [http://corp.gov.net/library/corporate-governance defined/](http://corp.gov.net/library/corporate-governance-defined/)



**Figure 1. Corporate Governance & its constituents<sup>3</sup>.**

## 2. Relevance of the Topic

The prime purpose of writing this paper is to have a notch to notch comparison of corporate governance system, structures, codes, practices, standards etc in these two countries wherein one is developing while the other one is well developed. Also the topic is very relevant in today's time because both the countries are now getting more & more integrated wherein the performance of one's corporate is likely to impact the performance of the other too. Also New Zealand which has not faced any big corporate scandal as such is continuously in the process of enhancing the way in which corporate function & are governed while India very recently faced the collapse of Satyam is now on toes to make sure no Satyam happens ever again.

## 3. Objectives of the paper

1. The first & the foremost objective of this paper is to develop a comparison of Corporate Governance in India & New Zealand.
2. The objective is also to develop some literature on the topic since no literature is as such available on the chosen topic
3. In the age of globalization it is very important for the businesses to understand the corporate governance practices of other countries also & New Zealand is one of those countries to which India is getting integrated more & more so the paper attempts to provide an understanding of various differences.

## 4. Methodology Employed

The paper is based on the information obtained from various secondary sources primarily the previous work & books available on the subject. Also various official websites were visited to get the requisite information. The historical background of the paper is highly inspired by the book-

<sup>3</sup> Adapted from Global Perspectives on Corporate Governance & CSR, Guler Aras & David Crowther (2009)MPG Books Group, UK. Accessed from Ratan Tata Library, Delhi School of Economics.

“Corporate Governance, Business Ethics & CSR” by Prof. J.P. Sharma, Global perspective on Corporate Governance & CSR by Guler Aras and David Crowther (Editors) & many other books.

## 5. Review of literature

**Lalita S. Som (2006)** in her study Corporate Governance Codes in India concluded that ownership concentration, prevalence of insiders and principal promoters, lack of protection for minority shareholders, lack of strict enforcement rights of regulatory authorities, disregard for disclosure norms and transparency are some of the endemic features of Indian corporate governance regime. These features have restricted Indian corporate sector's progress on the path of good governance principles.

**Ananya Mukherjee Reed (2002)** in her study assessed the Anglo American model of corporate governance in recent years in India. The move to an Anglo-American model in India, however, has been contested by certain sectors of the business community and key concessions have been made which will likely function to help large business houses to maintain control of their empires. She focused on three key areas, growth, share holder concerns and employment.

**Jayati Sarkar (2009)** assessed the "uncertain" relationship between board independence and governance evident from the extensive literature on the subject seems to run counter to the unambiguous policy position taken across countries irrespective of their governance systems, that board independence is critical for mitigating agency problems in public corporations.

**D. N. Ghosh (2000)** concluded the issues that have a determining impact on the quality of governance by board. The primary responsibility for addressing these issues and creating conditions for transparent corporate governance and for the productive involvement of board members from different interest groups lays with the promoter shareholder(s) groups.

Malla Praveen Bhasa (2004) concluded in his paper that corporate governance problems do not end by imitating best practices of some other country. Instead concerted efforts by countries to understand their internal strengths and develop a model unique to their needs would certainly strengthen their corporate governance practices.

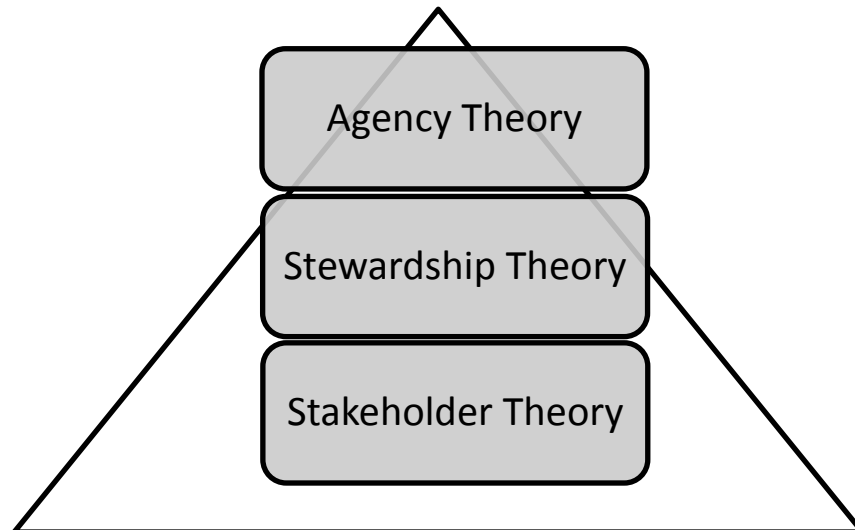
**Michael Rubach and Armand Picou (2005)** suggested that corporate governance guidelines are only one of the numerous mechanisms that boards can adopt to improve governance and investors may not give credence to statements that boards will follow the guidelines in their operations seeing believes, and investors may be looking for more from a firm's actions than merely statements.

**Aik Win Tan and Trish Keeper (2008)** maintained that Institutional investors have an important role to play in corporate governance by being active monitors of their investments and providing another safeguard against management's plans which may reduce shareholders' wealth. To encourage institutional investors to increase their participation in corporate governance, there is a need for a stronger business case and more robust research into studies that link governance to performance.

## Section II

### 6. Theories of Corporate governance

Corporate Governance is not a restricted term & can be defined & explained in various ways. Three theories are prominently discussed while understanding the meaning of Corporate Governance.



**Figure 2. Theories of CG**

### **6.1 Agency Theory**

Agency Theory is based upon the agency relationship. Agency relationship often results in agency problems that arise because managers do not solely act in the best interest of the shareholders rather they start protecting their own interest. Managerial discretion allows managers to serve their own interests over shareholders' objectives. Following agency theory, managers will not act to maximize the returns to shareholders unless appropriate governance structures are implemented.

### **6.2 Stewardship Theory**

Stewardship Theory believes that managers if left alone at their own will in fact act as the responsible stewards of the organization & of the assets they control. This theory provides an alternative of agency theory. As per this theory managers achieve organizational rather than self-serving objectives because a steward perceives greater utility in cooperative than in individualistic behavior, and behaves accordingly.

### **6.3 Stakeholders Theory**

This theory studies the relationship of a company not only with the shareholder but with all others associated with it like employees, customers, suppliers; bondholders etc. empowerment of these stakeholders other than the shareholders' is the key premise of stakeholders theory.

## **Section III**

### **7. A comparative analysis**

Though both the countries are still in the transitional phase & are still moving towards better & more comprehensive governance structures. Be it India or New Zealand the acts & laws are getting stronger each passing day. While India seems to be moving much more faster than New Zealand but New Zealand had taken its first leap years ago. So it is very difficult to distinguish between the corporate governance regimes of the two. Another interesting & important point to be noted here is that both the countries got their independence from British rule in the same year so the major differences arise only after 1947. Both the countries are highly influenced by the rules & regulatory framework of Britain. Some of the major differences on the issue, working, applicability & other related matters are summarized in the table below.

**Table 1. Showing various points of Comparisons between Corporate Governance in India & New Zealand**

Basis of Comparison	Corporate Governance in India	Corporate Governance in New Zealand
<b>1. Founding Context</b>	In India Corporate Governance norms are founded in the context of society at large	Corporate Governance norms are founded in the context of shareholders.
<b>2. Role of Tradition/Culture</b>	Culture & Tradition play a very significant role in formalizing system & procedure of Corporate Governance	Culture doesn't play a very crucial role rather the experiences of other countries do.
<b>3. Distribution of power</b>	Power of various bodies are distributed unequally where one institutions have got a very significant role to play as compare to the others	Powers are vested to a very few bodies & not much deviations are to be seen as regard to the distribution of the power amongst them.
<b>4. Major Focus</b>	Focus on various issues such as disclosure requirements, independence of the directors, and prominence of non-executive directors.	Major concern is the disclosure requirements; all other requirements are subordinate to this requirement.
<b>5. Financial Statements</b>	All financial statements are to be included such as profit & loss account, balance sheet, cash flow statements/fund flow statements etc.	In New Zealand entities are requires to show only the annual reports.
<b>6. Reporting o shareholders about Corporate Governance practices</b>	Not explicitly mandatory.	Mandatory to report the Corporate Governance practices to the shareholders.
<b>7. Clauses requiring disclosure on Corporate Governance</b>	Clause 49 of Listing Agreement.	NZX listing rule 10.5.3(h).
<b>8. Market regulator</b>	Securities & Exchange Board of India along with other regulators.	Securities Commission, New Zealand along with other regulators.
<b>9. Accountability for behavior that is at variance from the Codes</b>	In order to fix accountability & liability no distinction is made between executives & all are treated equally to hold them responsible.	In order to fix accountability first it is seen as to who has committed the breach of codes; e.g. executives to the board & other personnel to executives.
<b>10. Independent directors defined</b>	An independent director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director,— (a) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience; (b) (i) who is or was not a promoter of the company or its holding, subsidiary or associate company; (ii) who is not related to promoters or directors in the company, its holding, subsidiary or associate company; (c) who has or had no pecuniary relationship 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; (d) none of whose relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is	The NZSE proposal defines an independent director as a director who is not an executive of the company. He or she must also have no material relationship with or interest (direct or indirect) in the company which could reasonably interfere with that person's ability to freely act in the best interests of the company and its shareholders. A six-month cooling off period has been included to recognize the period of time that must elapse before a person can be considered independent of their previous interest. <sup>5</sup>

<sup>5</sup><http://www.bellgully.co.nz/resources/resource.00061.asp>

	<p>lower, during the two immediately preceding financial years or during the current financial year; (e) who, neither himself nor any of his relatives-(i) holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed; (ii) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of- (A) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or (B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent. or more of the gross turnover of such firm; (iii) Holds together with his relatives two per cent. or more of the total voting power of the company; or (iv) is a Chief Executive or director, by whatever name called, of any nonprofit organization that receives twenty-five per cent. or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent. or more of the total voting power of the company; or (f) who possesses such other qualifications as may be prescribed.<sup>4</sup></p>	
<p><b>11. Number of independent directors.</b></p>	<p>Every listed public company shall have at least one-third of the total number of directors as independent directors and the Central Government may prescribe the minimum number of independent directors in case of any class or classes of public companies.<sup>6</sup></p>	<p>The NZSE listing rules require that listed companies have at least three directors, two of which must be ordinarily resident in New Zealand. Beyond this, there are no requirements prescribed or guidance given by statute or regulations.<sup>7</sup></p>
<p><b>12. Formal inclusion of provision on Corporate Social Responsibility</b></p>	<p>With the introduction of Companies Act 2013 &amp; by virtue of section 135 India is now amongst those few countries which have adopted a provision on CSR in their statutes.</p>	<p>No formal procedures exist only suggestive measures are there.</p>
<p><b>13.Number of directors</b></p>	<p>(a) a minimum number of three directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company; and (b) a maximum of fifteen directors: Provided that a company may appoint more than fifteen directors after passing a special resolution.<sup>8</sup></p>	<p>A company must have at least 1 director<sup>9</sup></p>
<p><b>14. Presence of woman director</b></p>	<p>It is must to have at least one woman director on the board.</p>	<p>No such compulsion.</p>
<p><b>14.Composition of audit committee</b></p>	<p>(1) The Board of Directors of every listed company and such other class or classes of companies, as may be prescribed, shall constitute an Audit Committee. (2) The Audit Committee shall consist of a minimum of three directors with independent directors forming a majority: Provided that majority of members of Audit</p>	<p>Each publicly owned company should establish an audit committee of the board with responsibilities to: recommend the appointment of external auditors; to oversee all aspects of the entity-audit firm relationship; and to promote integrity in financial reporting. The audit committee should comprise:</p>

<sup>4</sup> sub-section (5) of section 149 of companies act 2013

<sup>6</sup> Sub-section (4) of section 149 of companies act 2013

<sup>7</sup> <http://www.bellgully.co.nz/resources/resource.00061.asp>

<sup>8</sup> Sub-section (1) of section 149 of companies act 2013

<sup>9</sup> Section 150 of Companies act 1993(New Zealand)

	Committee including its Chairperson shall be persons with ability to read and understand, the financial statement. <sup>10</sup>	<ul style="list-style-type: none"> <li>• all non-executive directors, a majority of whom are independent;</li> <li>• at least one director who is a chartered accountant or has another recognized form of financial expertise; and</li> <li>• A chairperson who is independent and who is not the chairperson of the board<sup>11</sup>.</li> </ul>
<b>15. Certification of Financial Reports.</b>	The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board at least by the chairperson of the company where he is authorized by the Board or by two directors out of which one shall be managing director and the Chief Executive Officer, if he is a director in the company, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of a One Person Company, only by one director, for submission to the auditor for his report thereon. <sup>12</sup>	Financial Reports are to be certified by the CEO, CFO & by at least one other director.
<b>16. Rotation of Auditors/Audit firms</b>	It is now mandatory to rotate Individual Auditors every five years & audit firm every 10 years.	The rotation of audit firm is not mandatory only individual auditors are to be rotated.
<b>17. Supremacy of interest</b>	Interest of stakeholders is as importance as the interest of the shareholders.	The interest of shareholder is considered to be supreme.
<b>18. Governing Statutes.</b>	The Companies Act 2013 Securities & Exchange Board of India Act 1992 Securities Contract (Regulation) Act 1957. etc	The Companies Act 1993 Takeovers Act 1993 and takeover codes The Financial Reporting Act 1993 The Securities Amendment Act 1988. Etc
<b>19. Listing Rules</b>	As prescribed by the Stock exchanges where listing is sought; also as specified by various clauses of listing agreement.	As prescribed by New Zealand Stock Exchange listing rules.
<b>20. Voting right of the interested director</b>	An interested director can neither vote nor participate in the meeting in which the matter of his interest is being discussed.	There is no such condition; interested director may participate & vote as if he is not interested.
<b>21. Status of the Companies Act</b>	Companies Act 2013 comprises -29 chapters -470 sections -7 schedules	Companies Act 1993 comprises -22 parts -401 sections -9 schedules

## Section IV

### 8. Conclusions

To conclude, Corporate Governance has gained the momentum across the globe now. It is one of the fastest emerging issues for corporate world. It is undoubtedly clear that no company/corporation can sustain itself in long run if it doesn't adhere to good governance practices. Though Corporate Governance has now become the talk of the town & some big countries like US, UK, Japan have done phenomenal work in order to bring stronger governance practices across their corporates the emerging & underdeveloped worlds are still in the process of developing more comprehensive codes & standards on Corporate Governance. India is also one of those countries which have started adopting more formal & stringent codes & standards on Corporate Governance. Though India has recently gone through a complete change in regard of its Corporate laws with the adoption of Companies Act, 2013 that has replaced the ages old Companies Act 1956. Similar is the case for New Zealand wherein the process of reforms has just been initiated and a lot needs to be done in order to make sure that corporations play by the rules

<sup>10</sup> Section 177 of Companies act 2013

<sup>11</sup> Corporate Governance in New Zealand Principles & Guidelines

<sup>12</sup> Sub-section (1) of section 134 of the companies act 2013

of the game. In various sections of the paper a comparison of Corporate Governance in India & New Zealand has been made. Various studied aspects show that there exist various similarities & differences in the codes & standards & most importantly the level of maturity in Corporate Governance practices within the two countries. India though an emerging nation has already surpassed many nations of the world & New Zealand is not an exception. India is far ahead in terms of Corporate Governance as compared to New Zealand. The reason for this may be that India has very recently seen the hilarious scam of Satyam but New Zealand has not seen any such corporate frauds so whatever improvements are taking place in this country is on the borrowed grounds of failure in other countries such as Australia & America. The paper talked about what is corporate governance, various models & theories of corporate governance in detail. Comprehensive historical background suggest that both the countries viz. India & New Zealand have large number of similarities & the prime reason for this may be the British control of these two countries for a good period of time. The corporate laws of both the countries were taken from British laws even the procedure & practices of governance seem to be highly affected by British way of corporate governance. It is only after the independence of the two countries that the freely started forming their own laws & statutes. Undoubtedly India has surpassed New Zealand in Corporate Governance practices. Various points of differences such as number of independent directors on board, provision of class action suit & the provision on Corporate Social Responsibility are exclusively reserved for India where India has done phenomenal work. Though both the countries are trying their best to achieve higher level of good corporate governance it seems like a long path to be walked upon till the countries reach a very practical & comprehensive corporate governance level.

## Section V

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