

## A COMPARATIVE STUDY ON CORPORATE GOVERNANCE CODES OF BRICS COUNTRIES

### Introduction:

**Corporate governance** broadly refers to the **mechanisms, processes and relations** by which corporations are controlled and directed. Governance structures and principles identify the distribution of rights and responsibilities among different participants in the corporation (such as the board of directors, managers, shareholders, creditors, auditors, regulators, and other stakeholders) and include the rules and procedures for making decisions on corporate affairs.

The “**Corporate Governance Concept**” dwells in India from the **Arthashastra** time instead of CEO at that time there were kings and subjects. Today, corporate and shareholders replace them, but the principles still remain same, unchanged i.e. good governance. **Kautilya’s** fourfold duty of a king:

- **Raksha:** Literally means **protection**, in the corporate scenario it can be equated with the **risk management aspect**.
- **Vridhhi:** literally means **growth**, in the present day context can be equated to **stakeholder value enhancement**.
- **Palana:** Literally means **maintenance/compliance**, in the present day context it can be equated to **compliance with the law in letter and spirit**.
- **Yogakshema:** Literally means **wellbeing** 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**.

The corporate governance concept emerged again in India after the second half of 1996 due to economic liberalization and deregulation of industry and business. With the changing times, there was also need for greater accountability of companies to their shareholders and customers. The report of the Cadbury Committee on the financial aspects of corporate Governance in the U.K. has given rise to the debate on Corporate Governance in India.

**The BRICS (Brazil, Russia, India, China & South Africa) Countries apply international standards of good corporate governance.** However, several Multi National Enterprises (MNE’S) in BRICS adapt international best corporate governance practices on a voluntary basis, beyond national recommendations. The role of Corporate Governance is increasing in BRICS countries by three ways: Participation in corporate legal networks, Engagement in the integration of the legal industry and the world economy generally, and, Facilitation of global rule of capital.

## Overview

In **Brazil**, The **Brazilian Institute of Corporate Governance (IBGC)** is an organisation solely dedicated to promote Corporate Governance in the Country. The basic principles of Corporate Governance are: **Transparency, Fairness, Accountability, and Corporate Responsibility**. There is no concept of having a Women director on the Board as per the CG Code of Brazil.

In **Russia**, The basic principles of corporate governance are followed and the right is given to shareholder to participate and vote on all matters in the general meeting and also provide proper information to the shareholder with required quality on a timely basis.

In **India**, Corporate governance helps in establishing a system where a director is showered with the duties and responsibilities of the affairs of the company. For effective corporate governance, its policies need to be such that the directors of the company should not abuse their power and instead should understand their duties and responsibilities towards the company and should act in the best interests of the company in the broadest sense. Various Committees (Such as **KUMAR MANGALAM BIRLA, N. R. NARAYAN MURTHY and Dr. J.J. IRANI**) on Corporate Governance was appointed and provided recommendation on it. **The concept of 'corporate governance' is not an end; it's just a beginning towards growth of the company for long term prosperity.**

In **China**, many entities both **inside** and **outside** companies play a role in shaping the behaviour and governance of Chinese Companies. The **inner circle** consists of shareholders' general meetings, boards, and management personnel who are engaged in operating the companies and are directly responsible for their governance. The **outer circle** is composed of regulators (chiefly, the **China Securities Regulatory Commission-CSRC**), stock exchanges (the **Shanghai Stock Exchange (SSE)** and the **Shenzhen Stock Exchange (SZSE)**), the Chinese legal system, the auditing system, and institutional investors. China has made rapid progress in corporate governance, in part because of the gradual removal of ownership and personnel barriers, coupled with an increasingly globalized and mature business environment.

In **South Africa**, The **King Report on Corporate Governance** is a ground-breaking booklet of guidelines for the governance structures and operation of companies in South Africa. It is issued by the **King Committee on Corporate Governance**. Three reports were issued in **1994 (King I)**, **2002 (King II)**, and **2009 (King III)** and a **fourth revision (King IV)** in **2016**. The **Institute of Directors in Southern Africa (IoDSA)** owns the copyright of the King Report on Corporate Governance. The Compliance with the King Reports is a requirement for companies listed on the **Johannesburg Stock Exchange**. The King Report on Corporate Governance has been cited as "**the most effective summary of the best international practices in corporate governance**". The philosophy of the code consists of the **three** key elements i.e. **leadership, sustainability and good corporate citizenship**.

## COMPARATIVE ANALYSIS OF CORPORATE GOVERNANCE IN BRICS

| Sl. No. | BASIS OF DIFFERENCE  | BRAZIL                                                                                                                                                                                                                                                                                                                        | RUSSIA                                                                                                                                                                                                                                                                                                                                                                                              | INDIA                                                                                                                                                                                                                                                                                                       | CHINA                                                                                                                                                                                                                                                                                                   | SOUTH AFRICA                                                                                                                                                                                                                                              |
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| 1.      | Regulatory Bodies    | The Brazilian Securities & Exchange Commission (CVM) & The Stock Exchange (BM & FBovespa).                                                                                                                                                                                                                                    | The Federal Commission for the Securities Market.                                                                                                                                                                                                                                                                                                                                                   | The Securities Exchange Board of India (SEBI) & The Ministry of Corporate Affairs (MCA).                                                                                                                                                                                                                    | China Securities Regulatory Commission.                                                                                                                                                                                                                                                                 | The Institute of Directors.                                                                                                                                                                                                                               |
| 2.      | Name of the code     | (i) CVM Recommendations on Corporate Governance<br>(ii) Code of Best Practice of Corporate Governance issued by IBGC<br>(iii) Brazilian Civil Code for Limited Liability Companies                                                                                                                                            | Russian Corporate Governance Code                                                                                                                                                                                                                                                                                                                                                                   | Securities and Exchange Board of India (Listing obligations and disclosure requirements) regulations, 2015                                                                                                                                                                                                  | Code of Corporate Governance for listed companies in China                                                                                                                                                                                                                                              | The King Reports on Corporate Governance                                                                                                                                                                                                                  |
| 3.      | Structure of Board   | Two -tier<br>1. Fiscal Board/<br>Supervisory Board<br>2. Board of directors.                                                                                                                                                                                                                                                  | Unitary                                                                                                                                                                                                                                                                                                                                                                                             | Unitary                                                                                                                                                                                                                                                                                                     | Two -tier<br>1. Supervisory Board<br>2. Board of directors                                                                                                                                                                                                                                              | Unitary                                                                                                                                                                                                                                                   |
| 4.      | Composition of Board | The Corporate Law of Brazil states that the board of directors must be comprised of at least three members, with no limit on the maximum number of directors.<br><br>However, as per the Brazilian Code, Board of Director may vary in size and can consist of between 5 and 9 members according to the needs of the company. | The Russian Corporate Law does not specify the minimum number of directors for Limited Liability Companies (LLCs). On the other hand, in Joint Stock Companies (JSCs), the minimum number of directors depends on the number of shareholders of the company.<br>(i) Companies with up to 1,000 shareholders: at least five directors;<br>(ii) Companies with between 1,000 and 10,000 shareholders: | Section 149(1) of the Companies Act, 2013 requires that every company shall have a minimum number of 3 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. A company can appoint maximum 15 fifteen directors. | Company Law of the People's Republic of China provides setting up of a board of directors for a limited liability company (LLC) and a joint-stock Limited Company (JSC) with three to thirteen directors for LLC and five to nineteen directors in JSC. Directors' terms are determined by the Articles | The board should comprise of both executive and non-executive directors, with majority of non-executive directors. Further, one-third of the non-executive directors shall retire by rotation each year. In a Private Company - 1 Director Minimum Public |

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|    |                                      |                                                                                                                                                                                                                 | at least seven directors;<br>(iii) Company with more than 10,000 shareholders:<br>at least nine directors. There is no maximum number of directors.                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                       | of Association and do not exceed three years, though terms may be renewed.                                                                                                                                                                  | Company/Non Profit Company – 3 Directors minimum                                                                                                                                               |
| 5. | Frequency of Board Meetings          | To ensure the effectiveness of the Board, the number of the Board Meetings will be determined by the company's circumstances. Board meetings should not be more frequent than once in a month.                  | It is recommended that meetings of the Board should be conducted on a regular basis in accordance with an approved plan generally at least once in every 6 weeks.                                                                                                                                                                                                                                        | A minimum of 4 Board meetings must be held in a calendar year. There should not be a time gap of more than 4 months between any 2 Board meetings.                                                                                                                                                     | The Board shall meet twice in a year periodically and shall convene in meetings in a timely manner when necessary and the meetings of the Board of a listed company shall be conducted in strict compliance with the prescribed procedures. | No such provisions are laid down for the frequency of board meetings. But, it was said that the Chairman should meet the CEO prior to Board Meetings to discuss important issues.              |
| 6. | Number of Independent Directors (ID) | Any corporation listed in the special trading segments of the stock exchange, such as the New Market and Level II must have at least 20 percent of the members of the board of directors as independent members | The Board should comprise of at least one-fourth of the total number of members as independent directors. Independent directors ensure that the board of directors forms an objective opinion on matters under discussion, which ultimately increases investor confidence in the company. It is recommended that the company's charter should provide that the board of directors include at least three | As Per Section - 149(4) Companies Act, 2013, 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 Minimum number of independent directors in case of any class or classes of public companies | Article 122 of Company Law of the People's Republic of China as amended in 2013, require the listed companies to have independent directors on its board. The specific procedures thereon shall be stipulated by the State Council..        | King 3 requires boards to be comprised of a majority of non-executive directors, of whom the Majority should be independent. Every year the directors who are classified as independent should |

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|    |                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | independent directors. Independent directors should refrain from actions that may compromise their independent status. It is advisable that information about independent directors is disclosed in the annual report of the company. |                                                                                                                                                                                                                                                                                                                                          |                                                                | have the independence assessed by the board, particularly those that have been on the board for longer than nine years. The results should be reported. |
| 7. | Appointment Of Women Director               | Currently women only hold 6.4% of the board seats within the top 100 companies in Brazil. There is a bill waiting to be heard in Parliament requiring state owned companies to increase their female representation by 10% every two years until they reach 40%. Nothing further has been heard and there is no such requirement within Brazil's governance rules. LGIM (Legal & General Investment Management) would like to encourage companies in Brazil to appoint more women to their boards as academic research has shown that it can improve board performance. | Russian law don't stipulate any requirement to incorporate women in the Board of directors.                                                                                                                                           | The Securities and Exchange Board of India vide its circular dated 17th April, 2014 made it mandatory for all the listed companies to appoint at least one Woman Director on their Board of Directors by 31st March, 2015 in alignment with the requirement of Section 149 of the Companies Act, 2013, under corporate governance norms. | There is no provision on appointment of women director in Law. | There is no provision on appointment of women director in Law.                                                                                          |
| 8. | Separation of positions of Chairman and CEO | In order to avoid concentration of power and to enable an adequate supervision of                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | There is no such provision. However, the "Director General" cannot serve                                                                                                                                                              | There is no such provision. The same individual may perform both the roles.                                                                                                                                                                                                                                                              | There is no such provision.                                    | The CEO and chairman positions should be separate.                                                                                                      |

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|    |                                | <p>management, the two positions should be filled by different person. Moreover, it has been recommended that CEO should not be a member of the Board. The CEO may be a Director, provided the Board also holds regular executive sessions. (The part of the Board meeting attended neither by the CEO nor the Officers).The CEO should attend the Board meetings as a guest. If the positions of Chairman and CEO are exercised by the same person and a separation of roles is momentarily impossible, it is recommended that independent directors undertake the responsibility of leading discussions involving conflicts between the roles of the CEO and the Chairman.</p> | <p>concurrently as the chairman of the Supervisory Board.</p>                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                           | <p>The board should be led by an independent non-executive chairman who should not be the CEO of the company.</p>                                           |
| 9. | Composition of Audit Committee | <p>The Audit Committee should preferably be made up of independent members of the Board of Directors. Directors also serving as Officers should not take part in the Audit Committee. The Committee should set up its own Internal Regulation</p>                                                                                                                                                                                                                                                                                                                                                                                                                                | <p>In order to provide due objectivity, the audit committee should include only independent directors. If, for objective reasons, this is impossible, the audit committee should be headed by an independent director and its members should</p> | <p>As per Company Act 2013, Sec 177, The Audit Committee shall have a minimum of 3 members, all being non-executive directors, majority of the members being independent. The majority of members of Audit Committee including its Chairman shall be the persons with ability to read and understand</p> | <p>The audit committee shall be chaired by an independent director, and independent directors shall constitute the majority of the committees. At least one independent director from</p> | <p>The audit committee should consist of at least three independent members, all of whom should be independent non-executive directors. The chairman of</p> |

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|     |                                          | and consist of at least three members, all of whom familiar with basic financial and accounting matters. At least one member should be more experienced in accounting issues, audits, and financial Management. | be independent and non-executive Directors. The members of the audit committee should possess special knowledge of the basics of accounting and financial reporting. The Audit Committee shall be chaired by an independent director. At least 1 independent director from the Audit Committee shall be an accounting professional. | the financial statement. The chairman, being an independent director, shall remain present at the company's AGM to respond to the shareholders' Queries.                                                                                                                                                                       | the audit committee shall be an accounting professional.                       | the board should therefore not be eligible for appointment as an audit committee member but may be invited to join the audit committee by invitation, subject to any specific legislation prohibiting attendance, such as the Banks Act. The audit committee chairman should be Elected by the board, set the agenda and be present at the AGM. |
| 10. | Frequency of meetings of Audit Committee | The Audit Committee should meet regularly and should also meet with the Board, the Fiscal Council (when established), the CEO, the other officers, and independent auditors.                                    | The audit committee should hold meetings at least once a month and prepare its recommendations for the board of directors of the company.                                                                                                                                                                                           | The Audit Committee must meet at least 4 times a year—once in every 4 months and once before the finalization of accounts. The quorum for the meetings of the Audit Committee will be 2 or one-third of the total number of members, whichever is higher. At least 2 of the members constituting a quorum must be Independent. | There is no specific provision regarding frequency of Audit Committee Meeting. | The audit committee chairman should, in consultation with the company secretary, decide the frequency and timing of its meetings. The audit committee should meet as frequently as necessary to perform its role, but should meet at least twice a year. Reasonable                                                                             |

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|     |                                         |                                  |                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                 | time should be allocated for all audit committee meetings. There should be at least one meeting a year, or part of a year, where the external and internal auditors attend without the management being present.                                                                                                                                                                                                             |
| 11. | Whistle blower Policy / Vigil Mechanism | There is no specific regulation. | Under a recent amendment to the Criminal Code, a person who is a part of a criminal group and who reports a crime to the investigators can ask to enter into a collaboration agreement with the investigation. Under such an agreement the individual may be protected by the State and the punishment may also be reduced. There is no other statutory protection for whistle blowers. | It is mandatory for: -All the listed companies, - Companies which accept deposits from the public, and - Companies which borrow money from Banks and PFI in excess of Rs.50 crores. Under Section - 177(9) of Companies Act, 2013 & Read with Rule-07 Companies (Meetings of Board and its Powers) Rules, 2014. Companies which are required to constitute an audit committee shall oversee the vigil mechanism through the audit committee and if any of the members of the committee have a conflict of interest in a given case, they should recuse themselves and the others on the committee would deal with the matter on hand. For other companies, the Board of directors shall nominate a director to play the role of audit committee for the purpose of vigil | There is no specific provision. | The audit committee should review arrangements made by the company to enable employees and outside whistle blowers (including customers and suppliers) to report in confidence on concerns about possible improprieties in matters of financial reporting, or compliance with laws and regulations, that may have a direct or indirect effect on financial reporting. The audit committee should ensure that the company has |



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|     |                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | mechanism to whom other directors and employees may report their concerns.                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                         | appropriate arrangements in place for the balanced and independent investigation of whistle blowing reports and for taking any action necessary as a result of such report. |
| 12. | Accountability for disclosure | The CEO should make pertinent information accessible to all the parties concerned, as soon as available, in addition to information that is mandatory by law or regulation, with substance prevailing over form. The company should provide balanced and top quality information addressing both positive and negative points, to enable there adherence to correctly understand and appraise the organization. Any information that may influence investment decisions should be disclosed immediately and simultaneously to all parties that may have an interest. | It is advisable that an internal company document setting for the rules of and approaches to disclosure (Regulation on Information Policy) be approved by the Board Of Directors. It is expedient that this document contain a list of items subject to disclosure (in addition to those items requiring disclosure bylaw) as well as rules for their disclosure, including the mass media that should be used for disclosure and the regularity of disclosure. The company should promptly disclose information about all factors that may be material to shareholders and investors. | Listed companies must comply with the mandatory provisions set out in Listing obligations and disclosure requirements) regulations, 2015. The annual report of a listed company comprises the company's financial statements, the directors' report and such other disclosures as are required under the LODR. In relation to unlisted public companies and private companies, the directors must disclose in the directors 'report all the pertinent information. | The secretary of the board of directors shall be in charge of information disclosure. In addition to disclosing mandatory information, a company shall also voluntarily and timely disclose all other information that may have a material effect on the decisions of shareholders and stakeholders, and shall ensure equal access to information for all shareholders. | The board should ensure that the company makes full and timely disclosure of material or matters concerning the company.                                                    |

## CONCLUSION:

The present Research write-up attempts to make a comparative analysis, among major corporate governance codes of five emerging economies in this world – Brazil, Russia, India, China and South Africa on different significant parameters of corporate

governance. The similarities and the disguising feature of corporate governance code are reviewed. Though, the BRICS comprises of countries with diverse cultural background different business orientations, political ideologies, ownership structures and legal origins, the corporate governance framework of each of these countries focuses on protecting and maintaining stakeholders' interest and investors' confidence in general. Some of these have well developed corporate governance codes while others are on a move towards strengthening their corporate governance rules. Some countries have precisely defined provisions while some may have general and broadly defined principles with respect to certain provisions. While, the codes of Russia and India are very precise about the existence of a certain percentage of independent and external directors on the board, as one-fourth (in Russia) and one-third (in India) depending on the merit of individual case, the Chinese and South African Code of Good Governance is very subjective but has a strong inclination towards maintenance of independence in Boards. In a more extreme case, the Brazilian Code is of the view that the Board be formed exclusively by external and independent directors. However, the number of directors may vary according to the organization's industry, size, complexity of activities, stage of its life cycle, and its need to form committees.

However, all the five countries have a common approach towards the formation of a significantly important mechanism for ensuring corporate governance, that is, the formation of Audit Committee comprising of either non-executive directors or independent directors or both. Such similarities are bound to be there in any mechanism ensuring good corporate governance in any part of the world. However, because of the differences in corporate cultures, the country's customs and traditions and legal environment, corporate governance practices have their distinctive features in each of these countries. Thanks to India, who believe in gender diversity and included women director mandatory in Board of Director as per Companies act 2013.

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