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CORPORATE GOVERNANCE & BUSINESS POLICY

"I am not bound to win, but I am bound to be true. I am not bound to succeed, but I am bound to live by the light that I have. I must stand with anybody that stands right, and stand with him while he is right, and part with him when he goes wrong."

Abraham Lincoln

School of Management
Sambhram Academy of Management Studies
Bangalore

SAMSMRITI – The SAMS Journal

SAMSMRITI –The SAMS Journal is a peer reviewed bi-annual flagship publication of School of Management, Sambhram Academy of Management Studies, Bangalore published in January and July every year; the aim is to connect to the Management Fraternity—Academia, Corporate Houses, Public Institutions, NGOs and Civil Society and the Government: by way of motivating basic and applied research and publishing rigorous, clear and widely accessible articles concerning business management and broader society. It culminates creating a platform for researchers, academicians and practitioners from diverse domains of management to share research achievements and practical experiences to stimulate scholarly debate in the development of management science and decision making. It also endeavors to promote and disseminate knowledge in the complex multi-disciplinary management field. The views expressed in the articles and other material published in SAMSMRITI – The SAMS Journal does not reflect the opinions of the publisher. It is always an attempt to ensure that papers published do not contain plagiarized materials. The ultimate onus for ensuring that no plagiarism has been resorted to, however, rests with the authors of published pieces.

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SAMBHRAM GROUP OF INSTITUTIONS

In 1991 a group of experts who were a perfect blend from industry and academic forayed in to Higher Education and established Sambhram Group of Institutions (SGI) at Bangalore. The team led by the founder Chairman Sri R. Venkatesh, consists of eminent educationists, distinguished personalities and philanthropists with a global perspective who have laid solid foundation and are nurturing it to grow phenomenally. The SGI forayed into Higher Education sector and established its cradle in the IT hub Bangalore launching the Management Program at the outset.

With a humble and genuine beginning the SGI from then till now have the following Institutions under its aegis:

- Sambhram School of Management- Bangalore(Post Graduate Wing)
- Sambhram Academy of Management Studies(SAMS)- Bangalore
- Sambhram Institute of Technology - Bangalore
- Sambhram College of Hotel Management - KGF
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Sambhram School of Management is the Post Graduate Wing of Commerce and Management offering MBA and M.Com Programs affiliated to Bangalore University. The Programs are accredited by NAAC and recognized by AICTE, New Delhi; started in 1999 with a vision to impart education in the field of professional management with the mission of providing work-oriented education combined with ethical values and character building in the context of new millennium and successfully marched towards creating its brand name, popularity and reputation in the competitive academic world.

The School is marching towards excellence in all its spheres ranging from teaching to research and consultancy to gain competitive edge in a socially responsible manner. It has been rated as one of the best B-Schools in South India for the past several years; it is also ranked AA^+ by Career 360 in 2015-16.

Our international collaboration has achieved a great milestone in the past. Some of the prominent collaborations include Kenyatta University, Kenya; Geneva Business School, Switzerland; Accounting Research Institute, Universiti Teknologi MARA, Malaysia; State University of New York, Binghamton, New York; University of the West of England; Florida University and Michigan State University.

We strive to explore new horizons across industry and government interfaces, cross sectional learning from one's diverse peer group and involve in current events to shape the economy through academic-corporate engagement. We believe in providing practical exposure to students apart from building strong layers of theoretical base. In this endeavor, we organize number of Guest Lectures-cum- Seminars by inviting experts from industry and academia; arrange frequent industrial visits to imbibe a sense of corporate culture and functionalities. We have both academic and activity clubs that help students to unfold their potentials and add value in order to make them employable. The School has built an excellent faculty pool with experience and a rich intellectual capital base, state-of-the-art infrastructure, technology-savvy campus along with other bests towards ensuring quality.

EDITORIAL

Though Corporate Governance is in vogue for more than a thousand years, its study is less than a century old; till 1980s this was not used. The last century had experienced gross mismanagement in the corporate sector but until recently its governance was overlooked. The Corporations have taken bold steps but the Boards seldom appear in the scene strategically managing and contribution of Directors has seen its mention seldom.

It's true all wisdom have been used for effective use of finance and management of marketing, operations and every other aspects of business except of the role of Directors. It seems change is imminent and foundations have already been laid of modern corporations; names of many entrepreneurs have already been enshrined in the companies they founded with all strides.

To say otherwise, the last century has been the Century of Management, Growth of Management Theories, and Managing through Consultants/Management Gurus: all reflecting a pre-occupation with the whole concept of management. With this back drop, the present era is of Corporate Governance: focus swings to the way power over corporate entities is wielded, made very much to be effective and genuine.
There is plethora of queries to be answered: Control to exercise over those tasks delegated to run the venture, protection of owners' interests, setting a proper direction to the company to ensure its accountability, legitimate power over the company, and to who are all accountable and responsible too. Here, the inherent answer is applying directly rights and duties attached to investment and ownership and Corporate Governance is nothing but exercising such powers/ authority.

Adam Smith would not have been surprised by Enron, Parmalat (dubbed as Europe's Enron) and the rest; the Father of Economics famously believed that Joint Stock Companies could never prosper because managers had no incentive to take care of the interests of widely dispersed shareholders. "Negligence and profusion, therefore, must always prevail, more or less, in the management of the affairs of such a company." Who knows what he would have thought of 'Twenty First Century Corporate Governance'?
Now, it has been well informed in the articles by the authors who have deep insights on the subject they dwell upon that the stakeholders at large have to take stock of the situation and guide the corporations about the best way of corporate governance and business policy. Unless this happens they will not learn such nuances of the delicacies of the topic. No bull market can last forever. The US equity market surge now is in its seventh year making it the longest Bull Run since World War II uninterrupted by a fall of more than 20%. Confidence was shaken in August and September, 2015 by worries over China's growth despite the fact that growth is meeting expectations officially. Now, six key questions may be seen for the investors in 2016:

- Did 2015 mark the peak for risky assets?
- Can China control its slowdown?
- Are we close to the bottom of the downturn in emerging markets and commodity prices?
- Is 2016 The Year Inflation Returns?
- How will Central Banks respond?
- How the political volatility witnessed last year can affects financial markets in 2016?

The purpose of highlighting the above is very clear as unless there is surge in investment market, all best talk on Corporate Governance will fail. Looking at the articles published in this Special Issue it may be concluded that: ***Dr. Kurien*** talks of Business based on the principle of Trusteeship and ultimately giving back to the society. ***Ranjana Smetace*** of OPPI says for the Pharmaceutical Industry, Strengthening Pharmaceutical Systems Program health systems depend on the continuous availability of safe, affordable and high quality drugs to nullify the estimate that almost two billion people have no regular access to essential medicines; so addressing this issue would save 10 million lives a year. The best way to ensure

the Corporate Governance at its fullest value is by making it a Habit for the employees and the stake holders to practice it is the answer from ***P Sritharan.***

The article by ***Subramanyam Mutyala*** and ***Himachalam Dasaraju*** is structured on the corporate governance mechanism based on the existing practices and uses secondary data for analyzing the background and adoptability of good corporate governance practices in the Indian context. ***Prof. Rahul Basu*** talks of perception gap to highlight management of the large corporations in many cases different from the expectations of worldwide regulatory bodies and expected norms regarding treatment of labor and attending to social responsibilities.

The very fact that some corporate houses do not comply with the provisions to have qualified directors and appoint women from amongst the promoter's family and friends irrespective of the fact whether they are qualified for the post or not; appointing family members as woman directors may not really subscribe to the ideal of such a mandatory provision. The researcher ***Dr. Nirmala*** is looking for Director's role achieving good corporate governance practices.

We are confident this issue of our Journal will facilitate debate about this sensitive topic and bring forth some concrete answers in the interest of all. All efforts of the authors are praiseworthy!

Dr. K. C Mishra
Editor-in- Chief

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Editor-in-Chief

Gandhiji's Concept of Trusteeship and its Implication: Case of Melam Charities International

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Introduction

Gandhiji, Father of the Nation, is the first person who actually made me think: his autobiography "My Experiments with Truth" was the first book that touched me when I read it during my School days; all of us should have a vision, mission and passion on earth. All of us are born with a divine vision and I believe that if we identify and fulfill our divine vision, we will be remembered and will also leave an everlasting impression in the minds of future generations. For this, each of us needs to identify our vision and mission like Gandhiji did. Our mission should be in promoting peace and harmony in the society.

No doubt, Gandhiji had a clear vision and dream about India. More than a political leader, Gandhiji was a philosopher, great spiritual thinker and a reformist. His spiritual thinking is what differentiates him from other political thinkers. Let me quote him here:
"Politics without principles, wealth without work, knowledge without character, commerce without morality and science without humanity is a social sin."

Gandhian Concept of Trusteeship

As a spiritual political philosopher, Gandhiji was against the division of society based on caste, income, profession or whatsoever. He was against the domination of one section of the society by the other section. His emphasis was on equality among all and progress of all. We all know the major principles practiced by Gandhiji, which are:

- Sathyagraha: clinging to truth
- Ahimsa : which is non-violence
- Aparigraha or non-possession

Among them it is the principle of non-possession which led to his principle of trusteeship; to possess means, earn, own and accumulate private property for one's own purpose. Anything which is for your own purpose roots from our greedin**ess**. Therefore, everyone is running around for accumulating wealth for themselves out of greed and it results in exploitation, inequality or in other words 'social evils'; the only solution for ending these social evils is 'non-possession' or trusteeship.

We were all born empty handed and so are we going to die. Future generations will not remember us according to the wealth that we accumulated rather according to our deeds and actions. We will be respected and loved by our society if we give our 100% and work towards its welfare. The rich are free to accumulate wealth not for themselves alone but for the society at large or rather with the aim of 'Progress for All'.

Apart from being ethical, as a businessman, I was deeply influenced by the Gandhian concept of trusteeship and voluntary commitment to public welfare. The modern concept of Corporate Social Responsibility is nothing but an applied version of Gandhian principle of trusteeship. I have immense pleasure to say that Melam was the pioneer enterprise to implement the CSR activities in Kerala in 1980s when this concept was hardly spoken about.

Almost all big business houses now are doing some CSR activities primarily for reporting purposes. I am sorry to say that many companies do not put their heart into it. In other words, CSR is secondary to many firms but for Melam it was a mainstream activity.

Evolution of Charity Movement at Melam

My beloved father, M.V.John's death due to a cardiac arrest made me stop, think and realize the value of life. As it was a Sunday, my family could not give him the kind of treatment which could have perhaps saved him. On May 28, 1978 in the prime of my youth, the sudden and shocking demise of my father shook my life. The dying man's last words were, "Oh God free me from this pain" made a lasting impression on me. My helplessness in not being able to do anything that could stop my father's untimely death made me think of ways by which I could help in preventing others from suffering a similar fate or loss. This idea that was born in that tragic movement lingered in my thoughts and laid the foundation for the starting of a noble venture.

On September 10, 1986, I formally started the Melamprambil Varghese John Memorial Charities (Melam Charities) named after my father late Sri. M.V.John; the main objective of which is to help and support poor and needy patients by providing medical treatment for their ailments. All patients who approached me were given treatment irrespective of caste, creed, religion or any kind of prejudice. I made it a point to ensure that whosoever approached me will be given treatment, and eventually made self-dependent to the maximum extent possible. The Charity also extends scholarships to deserving children of the patients, housing, clothing and food to their dependants during the period of treatment when required. With the income received from the family business and contribution from my salary I expanded the scope of my CSR activities.

The Need for More Financial Resources

As the activities of Melam Charities progressed and grew rapidly, I felt the constraints of my own resources and felt the need for urgent funds. I strongly felt that these funds should be generated through some venture of my own and this intense feeling coupled with meticulous planning resulted in the establishment of a small-scale industry named M.V.J.Foods under the brand name MELAM for a range of food products in the year 1992. As the business progressed, the business income was channeled directly to the fund which resulted in the increased activities of Melam Charities.

As an household name Melam brand became the largest exporting brand from the country, received National awards for four consecutive times from the Ministry of Commerce (during 1994 to 1998) and received national award for outstanding entrepreneurship for me from the Ministry of Industries, Government of India in 1999.

My Theory on Corporate Social Responsibility (CSR) based on the Principle of Trusteeship

I prefer to consider myself as a trustee rather than a business man. Whatever excess income I earn is set aside for charitable work. I would like to explain my theory on Corporate Social Responsibility: Corporate Social Responsibility is humanitarianism, not charity but social, moral obligation of each and every individual and institution.

At present, I set apart more than 50% of my income received from my business and I intend to contribute up to 90% depending upon the growth of my income.

Health: The Only Basic Need of the Humanity

Food, clothing and shelter are said to be the basic needs of a human being, but I differ and say sound health to a person, both physically and mentally is what is primarily required to make him self-dependent. Food, clothing and shelter come only next to that. If a person is healthy, he/she will be able to work and satisfy his/her needs. If a society has healthy people there will be self dependency and consequently there will also be less number of social problems/evils. So providing health to a person is of prime importance for a better civilized society; thus healthier the society, higher the self dependency, lesser the social problems/ evils, crime, the richer in peace, prosperity and civilization.

The Modus Operandi of Melam Charity

Melam free medical camp is conducted on every second Saturday in Tiruvalla and Kochi. The application form for free medical treatment is available on every second Saturday at Melam Railway Junction, Tiruvalla and YMCA International, Kochi; such application form is divided into three parts:

First part has to be filled by the patient which include his/her personal details, the second part to be filled by the hospital authorities, i.e., by the concerned doctor who treats the patient and it includes the nature of disease, duration and amount required for treatment.

As I believe in uplifting the democratic principles, the identification and selection of patients are being done by the people's elected representatives; therefore, the third part has to be filled and signed by local ward member / councilor and countersigned by concerned MLA (Member of Legislative Assembly) / MP (Member of

Parliament) if he/she is eligible for treatment. In addition to this the applicant should produce the attested copy of the BPL ration card.

After completing the above said formalities, the applicant through his relative or by himself can submit the application at the office of Melam Charities on any second Saturday 7.30 am onwards. Then the patient or his/her relative will be interviewed personally by me to assess the nature of treatment required and the patient will be referred to the concerned hospital depending upon the nature of the disease. For example, a cancer patient will be sent to an institute like Regional Cancer Centre, Trivandrum while a psychic patient will be sent to a mental health center. The patient will be given a letter of sponsorship; no cash is given directly to the patient. The hospital authorities after giving the treatment will send the bill to my office within 30 days and the bill will be settled accordingly.

Once a needy patient is identified and selected for treatment he/she will be eligible for free medical treatment till he/she recovers. I concentrate and discharge Corporate Social Responsibility through humanitarian work.

Melam Charities has now become one of the biggest charitable projects in India and has provided free medical treatment to more than one lakh fifty thousand patients. We have treatment tie-up with more than 1000 hospitals inside and outside Kerala, about 1400 Doctors have associated with us in this great service venture over the last three decades. We could garner support of138 out of 140 MLAs and 29 MPs of Kerala region by referring patients from their constituencies for the help from Melam Charities. Apart from free medical treatment, Melam has also been providing free lunch at Government hospitals as well as various orphanages.

To me, Melam Charity is a life time mission and therefore, my future plan is to retire from my business responsibilities and fully engage in social activities.

Let us all surrender our lives for the welfare of our society and also be a trustee of our society's resources as our Father of Nation Mahatma Gandhi envisaged. In brief, we must all stick to the principle of "Joy of Sharing" for our peaceful living and for a better world order. First, we should understand that whatever we receive in this wonderful world is free from Nature: air we breathe, water we drink, land we cultivate/ hold, qualities by birth, we inherit. Therefore, we must keep it in mind whatever we earn or accumulate in this beautiful earth is free gift of nature of God –The Almighty.

Second, our existence itself is dependent on others: so for a smooth and peaceful existence we need and have to keep good relationship with others to share everything whatever we earn or accumulate, with the poor and needy. Then only we can exist in peace and harmony; therefore, Joy of Sharing is the base of Trusteeship. Let us share for a better world order and for a peaceful co-existence.

The End Note

The basis for good Corporate Governance is no doubt clear goals, strategies and values that are well understood by all concerned in any organization. Melam's goals are always aimed for the betterment of its stakeholders and the society at large. All at Melam believe that 'Service to Humanity is the best work of life for a better world order and for a peaceful co-existence'. All objectives are designed keeping the society and stakeholders interest in the forefront.

The Universal Value of Good Governance

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Introduction

The right governance framework is critical to achieving good outcomes in healthcare; as Sir Adrian Cadbury, Chairman of the UK Commission on Corporate Governance put it in the Commission's 1992 report, "Corporate Governance is concerned with holding the balance between economic and social goals and between individual and communal goals". The Cadbury Report, as it is called goes on to say: "The aim is to align as nearly as possible the interests of individuals, corporations and society".

Management scholars have since then defined governance in a number of ways, from how Governments exercise authority to protecting public interest, stakeholder involvement, decision-making in organisations and accountability.

For the Pharmaceutical Industry, the Strengthening Pharmaceutical Systems (SPS) Program, a global initiative of the US Agency for International Development (USAID), uses the definition of the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP) "the process of decision making and the process by which decisions are implemented (or not implemented) at all levels, from governments and regulators to healthcare professionals and patients".

The Need for Strengthening Governance in Health

Why does Good Governance matter? Because across the globe, health systems depend on the continuous availability of safe, affordable and high quality drugs – vaccines, medicines, diagnostics, etc. The World Health Organisation (WHO) estimates that almost two billion people have no regular access to essential medicines; so addressing this issue would save 10 million lives a year (WHO, 2004).

In most countries, including India, health systems cover a whole range of inter-dependent activities that occur in several steps, involving numerous agencies and service delivery partners. Combine the complexity of such systems with the financial resources involved, and Pharmaceutical Systems become susceptible to mismanagement and corruption.

Some estimates by the WHO suggest that corruption siphons of 10 to 25 per cent of global public health spending on medicines, reducing their availability for the most vulnerable people. Poor governance has other adverse consequences too: International Medical Products Anti-Counterfeiting Taskforce (IMPACT) reveal that in many regions of several African countries more than 30 per cent of medicines on sale are likely to be counterfeit.

The WHO's Health Systems Framework emphasises governance as the most critical of its six building blocks (the others being healthcare financing, healthcare workforce, products and technologies, research, and service delivery) for a well-functioning health system.

Strengthening such systems involves effective policies and legislation, organizational structures that oversee processes for selecting, procuring and distributing medicines, and underpinned by services targeted mainly at patient care and treatment. To enable the foregoing, a strong management support system that includes financial, organization, human resources and information management is essential. Let's review governance in India against this backdrop.

The Regulatory and Policy Landscape

Given the public interest inherent in healthcare, the Pharmaceutical Industry in most countries is highly regulated as it should be. The domain of the regulatory framework includes measures that control the

availability and distribution of medicines, licensing and oversight of pharmaceutical manufacturers, and establishing the National Regulatory Agency that ensures the quality, safety and efficacy of medicines.

In India the regulatory objectives are met by different agencies at both Central and State Government levels. At the Central Government level, for example, several ministries and agencies are involved in making policy. These include the Ministries of Health (the nodal agency), Chemicals and Fertilisers (Department of Pharmaceuticals), Science and Technology, Commerce and Industry, and Social Justice and Empowerment.

Healthcare is also a State subject and States have their own policies and implementation frameworks add another regulatory layer. To be effective, regulation must be grounded in best practice, be kept updated and be enforceable.

Policies, legislation and regulation and their implementation should ideally reflect the attributes of good governance; while having a system of checks and balances is crucial to the public interest, a complicated regulatory system can make it hard for the Pharmaceutical Industry to do business in India.

The Need for Making Healthcare 'Affordable'

Expenditure on healthcare in India amounts to about 4 per cent of GDP, the lowest among comparable countries, like the other BRIC nations of Brazil, Russia and China; the average of countries at the same stage of development is about 8 per cent of GDP. Public health expenditure is even lower at 1 per cent of GDP, a level at which it has stagnated for nearly five years.

The purpose of public policy in India is to make healthcare accessible to all which is not the same as making healthcare affordable. A study by IMS Health, a Research Agency, found that proximity of a healthcare facility, and the quality and functionality of its infrastructure mattered more than its affordability, insofar as access was concerned.

Affordability is about the ability to pay, and one solution is universal healthcare, covered to some degree by Government-funded health insurance. Additionally, increase in public health expenditure from the present 1 per cent to 2.5 per cent of GDP in the next two years would be a good start.

Healthcare Safety and Quality

Embedded in the concept of good governance is the idea of ethical practices; in the behaviour of healthcare professionals, pharmaceutical companies' staff and all people associated with the healthcare industry. Apart from counterfeiting, theft and fraud, the risks of unethical behaviour rise when decision-making is based on discretion; some of these risks surface in pharmaceutical marketing.

The members of Organisation of Pharmaceutical Producers of India (OPPI) while signing on are immediately committed to following the OPPI 'Code of Conduct' which is a stringent code patterned on the International Federation of Pharmaceutical Manufacturers & Associations (IFPMA) code. The OPPI has also provided extensive input to the draft Uniform Code of Pharmaceutical Marketing Practices (UCPMP) developed by the Department of Pharmaceuticals (in the Ministry of Chemicals and Fertilizers); the DoP's formalization of the UCPMP as a voluntary code from January 01, 2015 is a very welcome measure that can only strengthen the healthcare industry.

Ethical behaviour, like increasing public expenditure on healthcare and investing in health infrastructure, is an investment in good governance. The measure of the efficacy of good governance in healthcare will be in the outcomes it achieves: that of a strong, healthy India. As Prime Minister Narendra Modi said in his reply to the motion of thanks on the President's address to Parliament in June 2014 "A perfectly healthy man can contract a lot of ailments if he starts suffering from diabetes. Bad governance is worse than diabetes".

Corporate Governance: Best Practices and Challenges

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New Business Reality in India

Since the commencement of the liberalization process, India's economic scenario has begun to alter radically; globalization has not only significantly heightened business risks but also has compelled Indian companies to adopt international norms of transparency and good governance. Equally, in the resultant competitive context, freedom of executive management and its ability to respond to the dynamics of a fast changing business environment have become the new success factors. Governance policy recognizes the challenge of this new business reality in India.

The recent financial and economic crises exposed many corporate governance weaknesses but, at the same time, they created momentum for change. Effective governance encourages better organizational decision-making, accountability, and robust scrutiny of organizational performance.
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Most companies strive to have a high level of corporate governance. These days, it is not enough for a company to merely be profitable; it also needs to demonstrate good corporate citizenship through environmental awareness, ethical behavior and sound corporate governance practices.

Corporate Governance is a systemic process by which companies are directed and controlled to enhance their wealth generating capacity. Since large corporations employ vast quantum of societal resources, it is believed that the governance process should ensure that these companies are managed in a manner that meets stakeholders' aspirations and societal expectations.

The system of rules, practices and processes by which a company is directed and controlled form Corporate Governance. Corporate governance essentially involves balancing the interests of the many stakeholders in a company - these include its shareholders, management, customers, suppliers, financiers, government and the community. Since corporate governance also provides the framework for attaining a company's objectives, it encompasses practically every sphere of management, from action plans and internal controls to performance measurement and corporate disclosure.

The Committee on Corporate Governance of Securities and Exchange Board of India (SEBI) defines CG as: "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 & corporate funds in the management of a company." SEBI was established by Government of India on April 12, 1988 and given statutory powers in 1992 with SEBI Act, 1992 being passed by the Indian Parliament.

Core Principles

Corporate Governance initiative is based on the following principles broadly:

- Management must have the executive freedom to drive the enterprise forward without undue restraints; and this freedom of management should be exercised within a framework of effective accountability.

- Companies should believe that any meaningful policy on Corporate Governance must provide empowerment to the executive management of the Company and simultaneously create a mechanism of checks and balances which ensures that the decision making powers vested in the executive

management is not only misused, but used with care and responsibility to meet stakeholder aspirations and societal expectations.

Rights and Equitable Treatment of Shareholders

- Organizations should respect the rights of share holders
- Shareholders should be allowed to exercise those rights
- Effective communication of information, that is understandable, should be provided
- Shareholders should participate in general meetings

Interests of Other Stakeholders

- Organizations should recognize that they have legal and other obligations to all legitimate stakeholders

Role and Responsibilities of the Board

- The board needs a range of skills and understanding to deal with various business issues
- The ability to review and challenge management decisions is a must
- It needs to be of sufficient size and have an appropriate level of commitment to fulfill its responsibilities and duties.

Integrity and Ethical Behaviour

- Integrity and Ethics are the two eyes
- Compliance to laws plays the major role
- Organizations should develop a code of conduct for their directors and executives that promotes ethical and responsible decision making

Disclosure and Transparency

- Roles and responsibilities of board and management should be made clear
- Accountability to the shareholders to be properly defined
- Procedures to be established to independently verify and safeguard the integrity of the company's financial reporting
- Disclosure of material matters concerning the organization should be timely and Balanced to ensure that all investors have access to clear, factual information

Best Practices for Better Corporate Governance

- Corporate governance standards should excel beyond the law and satisfy the spirit of the law, not just the documented law
- Escalate when in doubt, disclose; ensure and maintain a high level of transparency of the required
- Personal needs and corporate needs should be clearly distinguished
- How the Company is run internally should be Communicated externally and truthfully
- Laws of all countries in which the corporate operates should be compiled with
- A simple and transparent corporate structure driven solely by business needs will be a best option
- Develop the running models which will help organizational and operational excellence
- The Management is the trustee of the shareholders' capital and not the owner.

Fostering Corporate Governance Culture

From the above definition and core principles of Corporate Governance there emerge the key governance philosophy, namely:

- Trusteeship
- Transparency
- Empowerment and accountability
- Control and ethical corporate citizenship

The practice of each of these leads to the creation of the right corporate culture in which the company is managed in a manner that fulfils the purpose of corporate governance.

Corporate governance doctrine primarily describes the control rights and related responsibilities of three principal groups:

- The firm's shareholders who provide capital and must approve major firm transactions
- The firm's Board of Directors who are elected by shareholders to oversee the management of the corporation, and
- The firm's senior executives who are responsible for the day today operations of the corporation

Trusteeship

- Large corporate torch bearers need to act as trustees to protect and enhance shareholders' value, as well as to ensure that the Company fulfils its obligations and responsibilities to its other stakeholders.
- Inherent in the concept of trusteeship is the responsibility to ensure equity, namely, that the rights of all shareholders, large or small, are protected.

Transparency

- Company's policies and actions have to be made transparent to those to whom it has responsibilities.
- Transparency must lead to maximum appropriate disclosures without jeopardizing the Company's strategic interests.
- Openness should be maintained in Company's relationship with its employees, as well as the conduct of its business in a manner that will bear scrutiny.
- Transparency enhances accountability.

Empowerment and Accountability

- Empowerment is an essential
- Empowerment is the first core principle of governance that management must have the freedom to drive the enterprise forward.
- Empowerment is a process of actualizing the potential of its employees.
- Empowerment brings out creativity and innovation throughout the organizations it vests decision-making powers at the most appropriate levels in the organizational hierarchy.
- The Board of Directors is accountable to the shareholders.
- Management is accountable to the Board of Directors.
- Empowerment, combined with accountability, provides an impetus to performance and improves effectiveness, thereby enhancing shareholder value.

Control

- Control should be exercised within a framework of appropriate checks and balances.
- Control should prevent misuse of power, facilitate timely management response to change, and ensure that business risks are pre-emotively and effectively managed.

Ethical Corporate Citizenship

Corporations have a responsibility to set exemplary standards of ethical behavior, both internally within the organization, as well as in their external relationships. Unethical behavior corrupts organizational culture and undermines stakeholder value.

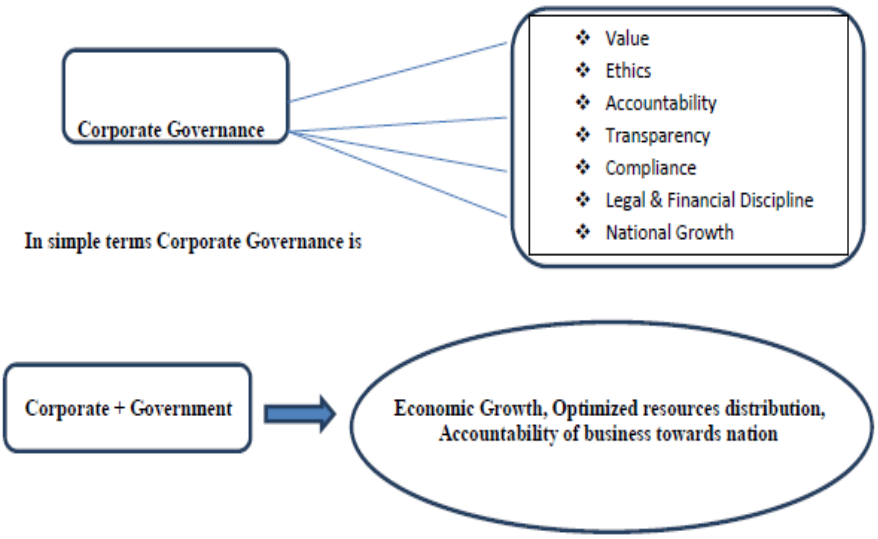
Redefining Corporate Governance in Simpler Terms

Corporate governance has also been more narrowly defined as a system of law and sound approaches by which corporations are directed and controlled focusing on the internal and external corporate structures with the intention of monitoring the actions of management and directors and thereby, mitigating agency risks which may stem from the misdeeds of corporate officers.

This definition of focusing on internal and external corporate structures form the basis for corporate governance from the point of view of practicing managers and corporate leaders; the challenges for the

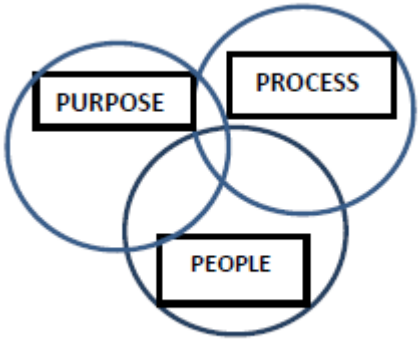
corporate leaders of today is matching the changes that is taking place in the competitive world and excelling and having an edge over others. The importance with which the corporate today approach corporate governance to improve the company's performance for sustainability and profitable growth is the focus of the discussions further down.

Objectives of Corporate Governance

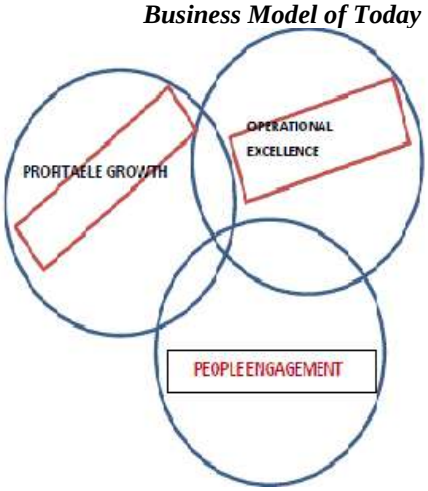


Challenges in the Business Models in the Current Scenario

Business Model of Yesteryears



Business Model of Today



Corporate Responsibilities to Ensure Corporate Governance

To meet the challenges, corporate have to work on benchmarking and standardizing the processes , procedures , laws and rules governing the corporate across their teams , functions linked to the Vision , Mission and set their strategies to bring in the *Best in Class.*

The benchmark consists of more than fifty distinct disclosure items across five broad categories:

- Auditing
- Board and management structure and process
- Corporate responsibility and compliance in organization
- Financial transparency and information disclosure
- Ownership structure and exercise of control rights

To bring in the best, mechanisms and controls are established.

Modus Operandi

The mechanisms and controls to have the best Corporate Governance are categorized as two elements:

- ❖ Internal
- ❖ External

Internal Mechanisms

The various board mechanisms provide for internal monitoring

- ✓ Monitoring by the board of directors
- ✓ Internal control procedures and internal auditors
- ✓ Balance of power
- ✓ Remuneration
- ✓ Monitoring by large shareholders
- ✓ monitoring by banks and other large creditors

External Corporate Governance Controls

External corporate governance controls, encompass the controls external stakeholders exercise over the organization; such examples include:

- Competition
- Debt covenants
- Demand for and assessment of performance information (especially financial statements)
- Government regulations
- Managerial labour market
- Media pressure
- Takeovers

The focus of this article shall be on Internal Mechanisms and especially on internal control procedures and internal auditors.

Internal control procedures are policies implemented by an entity's board of directors, audit committee, management, and other personnel to provide reasonable assurance of the entity achieving its objectives related to reliable financial reporting, operating efficiency, and compliance with laws and regulations. Internal auditors are personnel within an organization who test the design and implementation of the entity's internal control procedures and the reliability of its financial reporting.

Model for Operational Excellence for Internal Control Procedures

Organizations need to develop their own models to bring the Best Internal Controls, the basic elements to be focused to build a Best Model of Internal Controls are:

- ✓ Analytics and continuous improvements
- ✓ People empowerment and profitable growth
- ✓ Leadership
- ✓ Strategic planning
- ✓ Process management and controls
- ✓ Enrichment of customer satisfaction (Stakeholders)
- ✓ Performance

[This model serves the best for the organizations to build a better environment in creating a culture for corporate governance.]

Table 1 Performance Results Expected by the Stakeholders

Customer	Best Quality , Affordable Cost and Fastest Delivery
Supplier	Continued Business , Fair terms and Timely payments
Employee	Better Working Environment , Good remuneration , Job Security and Empowerment
Investor	High Dividend , Capital appreciation and business Growth , profitable growth
Banks	Timely repayment of loans with interest and further business opportunities
Government	Fair Trading practices , Taxes and Social responsibilities , Compliance To Laws , Corporate Governance , support in nation Building
Society	Social Responsibilities, Job opportunities , Environmental safety , Ecological balance

To have the Performance Results as the Best, corporate have to strive hard with the high levels of operational efficiency, adherence to laws, procedures and maintain a high level of engaged employees with high levels of motivation. If we map the stake holders and their respective expectations a very high standards of internal controls at operational levels within the organizations are required. Every organization has to build their own internal model of operational excellence to meet the expectations of the stakeholders.

Building the House of Operational Excellence for Corporate Governance

When we build a house the most important structure of the building is the Foundations.

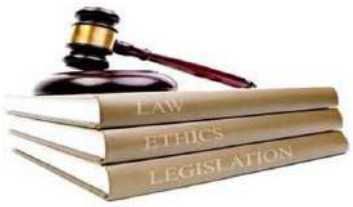
Likewise when we develop a corporate or business, the most important structure which needs to be given the most important priority and careful attention is the Analytics and the Continuous improvement with which only the business can strive and build its future plan.

The equally important structure which needs the most importance is the people who are to going to be the integral part of the growth plans of the business. More The motivated people and the Right people for the right job in the organization the better shall be the growth.

Hence, *analytics* and *people* form the foundations for the business. *Leadership* and the *strategic planning* form the pillars of the planning horizon of the business success.

The process and their management form the platform for the execution part of the business; it is this platform wherein all the integral parts of corporate governance namely adherence to law, practicing the business ethics, compliance to legislation need to be embedded in all the processes.

When these are in place, customer relationships develop better and the teaming up of all the above bring in the best performance levels with ethics and compliance.

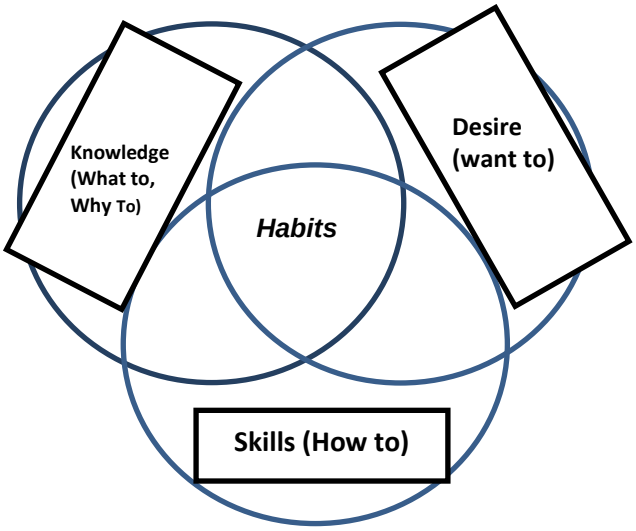


Pioneering the Corporate Governance

The best way to ensure the corporate governance at its fullest value is by making it a habit for the employees and the stakeholders to practice it. This can happen by:

- Creating the desire in the minds of people for adherence to corporate governance (Want to do)
- Developing the knowledge of corporate governance (What to do and why to do)
- Nurturing the skills (How to do)

Practicing these on an everyday basis, it becomes a habit. Once it becomes a habit, the system makes it a natural process and there lies the success of implementation of Corporate Governance.



Once the corporate governance becomes a habit, it automatically becomes nurtured among the employees and that is the need of the hour.

Corporate Governance Practices in IT Sector in India: A Case Study of Tata Consultancy Services (TCS)

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Key words

Corporate governance codes, Corporate governance mechanism, Information technology, Stakeholder value creation, Audit Committee.

Abstract: *The present paper purports to review the existing Corporate Governance (CG) Practices in IT Companies in India. It would stimulate an academic debate on various issues pertaining to the CG practices in promoting corporate performance and stakeholders' value. The paper is structured on the CG mechanisms based on the existing practices and uses both primary and secondary data for analyzing the background and adoptability of good CG practices in the Indian context. The secondary data to the extent of CG practices and reporting in TCS, an Indian IT company, were collected from various published and unpublished reports and websites available on the subject.*

The paper reveals that India has good CG mechanism and disclosure practices on par with the world counterparts as exhibited in a case analysis. It also shows that the CG in India is not an outcome of Corporate failures as occurred in other countries of the world like the US and UK. India has made voluntary effort to tone up the performance and efficiency of the Corporate. The study focuses mainly on some specific aspects of CG and its application with the help of a case study on the CG mechanisms and practices in one of the good IT based company – Tata Consultancy Services Limited.

The paper contributes much to the existing literature on CG in the world in general and in the developing economies in particular. As there is very trivial amount of research on the CG in India, it may be useful to researchers, policy-makers, and research bodies and corporate.

Introduction

The term 'Corporate Governance' [CG] refers to the system through which the behaviour of a Company is monitored and controlled; CG has been gaining a lot of importance and momentum the world over. It has become a buzzword in the corporate world for the last two decades, emerged as a means of achieving corporate excellence and a driving force for accomplishing much better performance, maximising the stakeholder's wealth and corporate value. As such CG affects the creation of wealth and its distribution into different pockets. It shapes the efficiency of firms, the stability of employment, the fortunes of suppliers and distributors, the portfolios of pensioners and retirees, the endowments of orphanages and hospitals, the claims of the rich and the poor (Peter Alexis Gourevitch and James J. Shinn, 2005); getting right kind of CG culture is important to economic prosperity. However, as yet there is little objective evidence that good governance will either prevent further corporate failure or contribute to improved organizational effectiveness (Paul Moxey, 2004). Besides, the corporate scams and frauds coming to light have brought about a change and necessitated substantial external regulations apart from internal controls and regulations. The response of the society to these frauds is reflected in the legislative and regulatory changes brought out by governments, and large institutional investors demand for better CG practices. It has resulted in appointment of several committees and commissions to probe into the various issues in depth and to make appropriate recommendations for better corporate governance practices. A series of events for the last two decades have placed CG issues as of paramount importance both for the international business community and international financial institutions.

The good CG in emerging economies, which is the driving force for corporate performance and overall economic prosperity, is the dire need of the day in view of the global market environment. It generates interest in the structure and the status of CG practices in emerging economies, particularly in India, which is recognised as one of the fast growing economies in the world. It is moving according to the changes in global market conditions and in all dimensions and directions. The corporate sector in India would remain changing and moving ahead as per the developments that were taking place in the other counterparts and developed

economies like the US, the UK and other parts of the corporate world. The notorious collapse of Enron in 2001, one of the America's largest companies, has focussed international attention on company failures and the role that strong CG needs to play to prevent them (Jill Solomon, 2007). The UK responded by producing the Higgs Report (2003) and Smith Report (2003) where as the US enacted the Sarbanes Oxley Act (2002). In fact, the developments in the UK had tremendous influence on India too which triggered off the thinking process in the country; finally led the Government of India and regulators to lay down the ground rules on CG.

As a result of the interest generated in the corporate sector by the Cadbury Committee's report of the United Kingdom, the issue of CG was studied in India in depth and dealt with by the Confederation of Indian Industry (CII), the Associated Chambers of Commerce and the Securities and Exchange Board of India (SEBI). Although some studies have focussed on the shareholders' rights and a few other issues of a general nature, none can claim to be wider and more comprehensive than what the Cadbury report has covered. The amount of research carried out in CG in India is negligible and lacks research evidence to make effective comparisons with its counterparts and developed economies to strengthen the CG's codes and mechanism. It is imperative to generate research literature on the subject. Therefore, the present paper makes an attempt to analyse the CG practices and its effectiveness in the Indian context. It pointedly raises some research questions such as the following: what kind of CG is in vogue in the Indian Corporate context, what is the background of the CG, what are the drivers of CG, what is the need for CG reforms, and what is the compliance of best codes of governance? This paper is based on these questions and it closes with a case analysis of TCS – one of the best Indian IT Companies in CG practices.

Global Scenario

Business failures and frauds in the USA, several scandals in Russia and the Asian crisis (1997) have brought CG issues to the forefront in developing countries and transition economies. The virtual collapse of the Russian economy in 1998 resulted in large measure from the weakness of governance mechanisms. The so called managers are said to have robbed of the shareholders, creditors, consumers, the government, workers and all possible stakeholders; the fact that the consequent distrust predictably resulted in the virtual collapse of external capital to firms, reveals that corporate ill-governance can shake the very foundations of a society.

Likewise, the Asian financial crisis also demonstrated that even strong economies lacking transparent control mechanism, responsible corporate boards and shareholders' rights could collapse due to the dilution of investors' confidence. Consequently various countries in the world have, over the years, adopted the CG reforms as given in table 1.

Table 1 World Scenario of CG Reforms: First Codes of Practice

Year	Country
1992	United Kingdom
1994	South Africa, Canada
1995	Australia, France, Pan-Europe
1996	Spain
1997	USA, Japan, The Netherlands
1998	India, Belgium, Germany, Italy, Thailand
1999	Brazil, Greece, Hong Kong, Ireland, Mexico, Portugal, South Korea, OECD, ICGN, Commonwealth
2000	Denmark, Indonesia, Kenya, Malaysia, Romania, Philippines
2001	China, Czech Republic, Malta, Peru, Singapore, Sweden
2002	Austria, Cyprus, Hungary, Kenya, Pakistan, Poland, Russia, Slovakia, Switzerland, Taiwan
2003	Finland, Lithuania, Macedonia, New Zealand, Turkey, Ukraine, Latin America, Nigeria
2004	Argentina, Bangladesh, Iceland, Norway, Slovenia, OECD, Mauritius
2005	Jamaica, ICGN, Latvia, Lithuania
2006	Estonia, Lebanon, Luxemburg, Nigeria, Sri Lanka, Thailand, Bosnia and Herzegovina, Egypt, Israel, United Nations
2007	Bulgaria, Colombia, Jordan, Kazakhstan, Moldova, Mongolia
2008	Morocco, Qatar, Serbia, Tunisia
2009	Algeria, Croatia, Georgia, Montenegro
2010	Armenia, Bahrain, Baltic States, Ghana, Malawi, Romania, Yemen
2011	Azerbaijan, Guernsey

Source: Jill Solomon (2007), Corporate Governance and Accountability, P-188. & www.ecgi.org

In this situation the CG mechanism gained worldwide attention due to frauds and deficiencies involved in the corporate sector in the US and UK. The prominent among corporate failures in the US was the Collapse of Enron and in the UK, the Maxwell failure (1991), Barings Bank (1995) and the like. Based on the corporate distress in UK several committees were appointed to find out the root causes of their failure and to find appropriate solutions for improving the CG practices. The Cadbury Committee (1992), The Green Bury Committee (1995), The Hampel Committee (1998), The Turnbull Committee (1999), The Higgs Committee (2003), The Tyson Committee (2003), The Smith Committee (2003) and Redraft of the Combined Code (2003) are the prominent committees on the CG in UK. Apart from all these exercises the World Bank, the OECD, McKinsey Survey on Corporate Governance and Sarbanes-Oxley Act, 2002 also contributed to improve the CG practices world over.

Indian Scenario

Interest in CG by policy makers in developed countries had grown significantly by the early 1990s (Stephen Y.L Cheung and Bob Y. Chan, 2004); in India too it had its beginning in the early 1990s. In India the CG represents the value, ethical and moral framework under which business decisions are taken to maximise stakeholders' value. The emergence of CG in India is the result of a spate of scandals in corporate and stock markets, unlike corporate failures in the other parts of the world. A good number of Committees and Commissions have been appointed for improving CG practices in India also. Though in India there have not been such massive corporate failures such as Enron, Maxwell etc., it has resolved wisely and with forethought to incorporate better governance practices in the corporate sector emulating stringent international standards.

Many large corporations are multinational in nature. They have their impact on citizens of several countries across the globe. If things go wrong they are bound to affect many countries, some more severely than others. Therefore, it is necessary to look at the international scene and examine possible international solutions to CG issues and problems; there is the need to create a corporate culture of consciousness, transparency, confidence among investors and prospective investing public. It refers to a combination of laws, rules, regulations, procedures and voluntary practices to enable companies to maximise shareholders' long-term value. It should lead to increasing customer satisfaction, shareholder value and wealth creation.

Corporate Governance Issues in India

Most of Indian CG shortcomings are no worse than in other Asian countries and its banking sector has one of the lowest proportions of nonperforming assets, signifying that corporate fraud and tunnelling in India are not out of control (Rajesh Chakraborthi, William L. Megginson and Pradeep K. Yadav, 2007). The governance of most countries' industrial and business organizations in India has thrived on unethical business practices at the market milieu. These organizations have shown scant regard for human and organizational values while dealing with their stakeholders in the organization. Industrial growth along with the development of corporate culture began in India since independence but most industrial and business organizations relied for their success on unethical practices at the market place. The increasing corruption in the Government and its various services had kept the managements of country's industrial and business organizations above accountability for their misdeeds, encouraging them to indulge in more and more of unethical practices. The dominating and monopolistic state- owned organizations in the country's economy passed on the costs of their corporate ill-governance to the helpless consumers of their products and services. Organizations in the private sector, barring a few exceptions also indulged in all possible unethical practices to fleece their customers and denied the benefits to them. The scams discovered in a number of large privately owned corporations during the last one decade clearly indicate the nature and extent of corporate ill-governance that exists in the private sector. The recently developed interest in CG in India is the result of a spate of corporate scandals that shook the country during the early liberalization era (Goswami, 2000).

Driving Forces of Corporate Governance

Good CG is a reflection of quality management with the highest calibre understanding the role that high corporate governance standards play in maintaining checks and balances within the organization, increasing transparency and preventing corporate abuse and mismanagement. Management of good CG companies also understands the importance of investors of long-term, sustained operating performance and tends to be inherently performance-driven (Christopher Leahy, 2004). The CG scenario in India has been changing fast over the past decade, particularly with the enactment of Sarbanes-Oxley type measures and legal changes to improve the enforceability of creditors' rights. India should have the quality of institutions necessary to sustain its impressive current growth rates in the years to come, if the same trend is maintained (Rajesh Chakraborthi, William L. Megginson and Pradeep K. Yadav, 2007).

CG provides a mechanism which improves the efficiency, transparency, accountability of the corporate and builds the confidence of the stakeholders describing the structure of rights and responsibilities among the parties that have a stake in the firm (Augilera & Jackson, 2003). But the kind of responsibility and structure of the firm varies from region to region and country to country indulging the emerging economies. These economies, however, provide unique opportunities and challenges for governance practices and research (Davis, 2005). As pointed out already little research in this area has taken place in these countries. In this context an effort is made here to identify the driving forces for corporate governance in India. There are a number of causes for the emergence of corporate governance in India, apart from the ethically ambiguous business practices and scams in the market environment. There are three major driving forces in the market that can be identified for the emergence of corporate governance in India; these include: unethical business practices and security scams, globalization and privatization.

Corporate Governance Reforms in India

The corporate sector in India could not remain indifferent to the developments of that were taking place in the UK, which had a tremendous influence on India too. They triggered off the thinking process on corporate governance in the country, which finally led to the government and regulators laying down the ground rules on it. As a result of the interest generated in the corporate sector by the Cadbury Committee's report, the issue of corporate governance was studied in depth and dealt with by the Confederation of Indian Industry (CII), the Associated Chambers of Commerce (ASSOCHAM) and the Securities and Exchange Board of India (SEBI). Though some of the studies on the subject did touch upon the shareholders' right to "vote by ballot" and a few other issues of general nature, none can claim to be wider than the Cadbury report. Prominent among them are: Working Group on the Companies Act (1996), Kumar Mangalam Birla Committee (1999), Naresh Chandra Committee (2002), The SEBI's Follow-up on Birla Committee (2002), Narayana Murthy Committee (2003) and J. J. Irani Committee on Company Law (2005).

Clause 49 of the Listing Agreement

Clause 49 refers to the clause number 49 of the Listing Agreement between a company and the Stock Exchanges on which it is listed. The Listing Agreement is identical for all Indian Stock Exchanges, including the NSE and BSE. This clause is a recent addition to the Listing Agreement and was inserted as late as 2000 consequent to the recommendations of the Kumar Mangalam Birla Committee on CG constituted by SEBI in 1999. The Clause 49 was intended to introduce some basic CG practices in Indian companies and bring in a number of key changes in governance and disclosures (many of which we take for granted today). The SEBI constituted the Narayana Murthy Committee in 2002 to assess the adequacy of current corporate governance practices and to suggest improvements. Based on the recommendations of this Committee, SEBI issued a modified Clause 49 on October 29, 2004 (the 'revised Clause 49') which came into operation on 1st January, 2006.

Revised Clause 49 of the Listing Agreement in India requires all listed companies to file every quarter a CG report. According to SEBI guidelines (visit www.sebi.gov.in), the key mandatory features of Clause 49 regulations deal with the following aspects: composition of the board of directors, the composition and functioning of the audit committee, governance and disclosures regarding subsidiary companies, disclosures by the company, CEO/CFO certification of financial results and reporting on CG as part of the Annual Report. Moreover, Clause 49 also requires companies to provide "specific" corporate disclosures of the followings: related-party transactions, disclosure of accounting treatment if deviating from Accounting Standards, risk management procedures, proceeds from various kinds of share issues, remuneration of directors, a management discussion and analysis section in the annual report discussing general business conditions and outlook and background and committee memberships of new directors, as well as, presentations to analysts. In addition, a board committee, with a non-executive chair, is required to address shareholder or investor grievances. Finally, share transfer, a long-standing problem in India, must be done expeditiously (Patel, 2006).
The revised Clause 49 has suitably pushed forward the original intent of protecting the interests of investors through enhanced governance practices and disclosures. The revised Clause 49 moves further into the realm of global best practices. In this connection, Chakrabarti (2008) very aptly commented as: "Similar in spirit and scope to the Sarbanes-Oxley measures in the USA, Clause 49 has clearly been a milestone in the evolution of CG practices in India." It is now mandatory for the Indian listed companies to file with the SEBI, the CG compliance report, shareholding pattern along with the financial statements. The SEBI has created a separate link, known as "Edifar," to post the relevant information submitted by the company. No doubt, the quality and quantity of disclosures have improved (Madan Bhasin and Adliya, Manama, 2009).

The Case Study: Tata Consultancy Services Limited

TCS is an Information Technology (IT) services consulting and business solutions company that delivers measurable results to global enterprises. The Company's full services portfolio consists of Application Development and Maintenance, Business Intelligence, Enterprise Solutions, Assurance Services, Engineering and Industrial Services, IT Infrastructure Services, Business Process Outsourcing, Consulting and Asset Leveraged Solutions. In addition, the Company has launched several new service offerings around Mobility, Social Computing, Big Data and Cloud. The Company has built strong domain capabilities in a range of industry verticals positioning itself as a strategic partner capable of reliably delivering innovative technology-led solutions to business problems. Key industry verticals serviced by the Company are Banking, Financial Services and Insurance, Retail and Consumer Packaged Goods, Telecom, Media and Entertainment, Hi-Tech, Manufacturing, Life Sciences and Healthcare, Energy, Resources and Utilities, and Travel, Transportation and Hospitality.

The Company has also been steadily expanding its geographic footprint. In addition to the traditional markets for its services – namely, North America, United Kingdom and Continental Europe, the Company has been expanding its presence in emerging markets like Asia-Pacific, India, Latin America and Middle East & Africa. In North America, the Company has strengthened its local presence by investing and recruiting talent in local centres such as Cincinnati, OH, Midland, MI and Troy, MI. TCS also opened a state-of-art office facility in Santa Clara, CA, which will serve as customer collaboration centre and headquarter for mobility solutions unit and other upcoming technologies. As by March 31, 2012, TCS had 183 offices in 43 countries and 117 delivery centres in 21 countries.

Corporate Governance Practices in TCS

The sound and effective CG practices constitute the strong foundations on which successful commercial enterprises are built to last. These practices are categorized through principle based standards and not just through a framework enforced by regulation. It develops through adoption of ethical practices in all of its dealings with a wide group of stakeholders encompassing regulators, employees, shareholders, customers and vendors. The strong leadership and effective corporate governance practices have been the Company's hallmark and it has inherited these from the Tata culture. The Company will continue to focus its resources, strengths and strategies to achieve its vision of becoming a truly global leader in software services, while upholding the core values of excellence, integrity, responsibility, unity and understanding, which are fundamental to the Tata companies.

The Company believes in adopting the 'best practices' that are followed in the area of CG across various geographies. By combining ethical values with business acumen, globalisation with national interests and core business with emerging business, the Company aims to be amongst the largest and most respected global organizations. The Company has a strong legacy of fair, transparent and ethical governance practices. The Company has adopted a Code of Conduct for its employees including the Managing Director and the Executive Directors. In addition, the Company has adopted a Code of Conduct for its Non-Executive Directors. Both these codes are available on the Company's website. The Company's corporate governance philosophy has been further strengthened through the Tata Business Excellence Model, the Tata Code of Conduct for Prevention of Insider Trading, as also the Code of Corporate Disclosure Practices. The Company has in place an Information Security Policy that ensures proper utilisation of IT resources.

The Company is in compliance with the requirements stipulated under Clause 49 of the Listing Agreements entered into with the Stock Exchanges with regard to corporate governance. The company has been disclosing the information relating corporate governance practices in their annual report in following sub-heads:

- Company's Philosophy on Corporate Governance
- Board of Directors
- Committees of the Board
- General Body Meetings
- Disclosures
- Subsidiary Companies
- Means of Communication
- General Shareholder Information

Board Structure, Strength and Size

The board structure, strength, size and attendance of TCS have been shown in Table 2

The Board of directors of the company shall have an optimum combination of executive and non-executive directors with not less than fifty percent of the board of directors comprising non-executive directors. Where the Chairman of the Board is a non-executive director, at least one-third of the Board should comprise independent directors and in case he is an executive director, at least half of the Board should comprise independent directors. Provided that where the non-executive Chairman is a promoter of the company or is related to any promoter or person occupying management positions at the Board level or at one level below the Board, at least one-half of the Board of the company shall consist of Independent Directors.

Table 2 Board Strength and Size of TCS

Year	Board size*	Non- Independent Executive Directors	Independent Non-Executive
2004-05	4	1	3
2005-06	6	2	4
2006-07	8	2	6
2007-08	11	5	6
2008-09	11	5	6
2009-10	12	6	6
2010-11	12	6	6
2011-12	12	6	6

Source: Annual Reports 2004-05 to 2011-12

The above table 2, with board strength and size of the TCS, reveals that in 2004-05 the company had a board size of 4. Gradually the size of the board increased up to 12 as the company operations are spread world over. The company had a single digit board up to 2006-07 after that the company had double digit board. It had a large percentage (83% in the year 2005-06) of non-executive directors up to 2007-08; later the company had maintained a board of 50% non-executive independent directors. In between the years form 2006-07 to 2010-11 plenty of changes had taken place in terms of board strength and size of board of directors. At present the company has Board of 12 Directors with optimum combination of Independent Directors. It is observed that TCS has a non-executive chairman in the board; it is not clear whether the company chairman is a promoter director of the company as no such information has been furnished in its corporate governance report.

Directors' Attendance in the Board Meetings

The Directors' attendance details in the board meetings of TCS are shown in table 3.

Table 3 Board Strength, Meeting and Attendance of TCS

Year	Board Size	Number of board meetings held	Quorum	Quorum Satisfied / Dissatisfied
2004-05	4	6	2	Satisfied
2005-06	6	8	2	Satisfied
2006-07	8	8	3	Satisfied
2007-08	11	7	4	Satisfied
2008-09	11	7	4	Satisfied
2009-10	12	8	4	Satisfied
2010-11	12	7	4	Satisfied
2011-12	12	7	4	Satisfied

Source: Annual Reports 2004-05 to 2011-12

The above table 3 discloses the board strength, meetings held and the attendance of the board of directors for the board meetings. In all the meetings the company had a satisfied quorum. In the year 2004-05 the company board had met 6 times, in these meetings out of the four directors two directors did not attend for 1 and 2 meetings. In the year 2005-06 the chairman of the board did not attend the Annual General Meeting. In between the years from 2006-07 to 2010-11 lots of changes took place in terms of board meetings and attendance of board of directors. In the year 2011-12 the board had met 7 times and out of 12 directors only 6 attended for all the 7 meetings and the remaining 6 (Including chairman) attended 5 to 6 meetings only. It is observed that the attendance of the directors in the board meetings appears to be poor and majority of the independent directors are not attending the board meetings, regularly.

Audit Committee

Audit committee size and attendance of the committee meetings are shown in table 4.

Table 4 Audit committee size and attendance of the committee meetings of TCS

Year	Committee Size	Number of meetings held	Quorum	Quorum Satisfied/ Dissatisfied
2004-05	3	5	2	Satisfied
2005-06	4	5	2	Satisfied
2006-07	3	8	2	Satisfied
2007-08	4	7	2	Satisfied
2008-09	4	8	2	Satisfied
2009-10	4	8	2	Satisfied
2010-11	5	7	2	Satisfied
2011-12	5	7	2	Satisfied

Source: Annual Reports 2004-05 to 2011-12

The table explains that in the year 2004-05 the committee had met 5 times and out of 3 directors 2 attended all meetings and 1 director attended only 1 meeting. In between the years from 2005-06 to 2010-11 changes had taken place in audit meetings and attendance of board of directors. In the year 2011-12 the company had met 7 times, out of the 5 directors 3 could attend 7 meetings, 2 attended 6 meetings and 1 attended only 5 meetings. For the entire board meetings quorum had been satisfied. The company complied with the conditions of Clause 49 of the Listing Agreement and is observed that the company did not furnish the information about the literacy and financial expertise of the committee members.

Remuneration Committee

Remuneration committee size and attendance of the company are shown in table 5.

Table 5 Remuneration committee size and attendance of the committee meetings of TCS

Year	Committee Size	Number of meetings held	Quorum	Quorum Satisfied / Dissatisfied
2004-05	3	1	2	Satisfied
2005-06	3	1	2	Satisfied
2006-07	3	2	2	Satisfied
2007-08	3	2	2	Satisfied
2008-09	3	1	2	Satisfied
2009-10	4	3	2	Satisfied
2010-11	4	2	2	Satisfied
2011-12	4	1	2	Satisfied

Source: Annual Reports 2004-05 to 2011-12

The table discloses the information relating to the remuneration committee meetings and attendance of the directors. It is observed that in the year 2004-05 the committee had met 1 time and all the directors attended the meeting. In the years 2006-07 and 2008-09 one director did not attend the meetings, the reason for not attending the meeting was not furnished in the corporate governance report. In the year 2011-12 the committee had met 1 time for which all the directors were present. Quorum had been satisfied in all the meetings. Formation of remuneration / compensation committee in a listed company is a non-mandatory requirement of the Clause 49 of listing agreement. However, the company did set up a remuneration / compensation committee following the conditions stipulated in the listing agreement.

Shareholders / Investors Grievance Committee

The status of the shareholders/investors grievance committee in TCS is shown below. Table 6 reveals the shareholders/investors' grievance committee size and the meetings held. It is observed that in the year 2004-05 the committee had met 2 times in a year, for these meetings all the directors were present. In between the years from 2005-06 to 2010-11 lots of changes had taken place in terms of committee meetings and attendance of board of directors. At present the company has a committee with 3 members. In the year 2011-12 the company had met 1 time for which all the directors attended. The company had satisfied the quorum in all the meetings from 2004-05 to 2011-12. The company had set up a shareholders/investors' grievance committee in line with

the requirements of Clause 49 of the listing Agreement, to look into various complaints and queries of shareholders expeditiously.

Table 6 Shareholders/ investors grievance committee size and attendance of the committee meetings of TCS

Year	Committee Size	Number of meetings held	Quorum	Quorum Satisfied/ Dissatisfied
2004-05	2	2	2	Satisfied
2005-06	2	1	2	Satisfied
2006-07	2	1	2	Satisfied
2007-08	2	1	2	Satisfied
2008-09	3	1	2	Satisfied
2009-10	3	1	2	Satisfied
2010-11	3	1	2	Satisfied
2011-12	3	1	2	Satisfied

Source: Annual Reports 2004-05 to 2011-12

Shareholders Complaints / Requests

Shareholders complaints / requests received by the TCS Company are shown in the below table.

Table 7 Shareholders Complaints / Request of TCS

Year	Received Complaints/Requests	Replied Complaints/Requests	Pending
2004-05	60,675	60,658	17
2005-06	3604	3604	0
2006-07	591	590	1
2007-08	424	424	0
2008-09	263	263	0
2009-10	311	311	0
2010-11	355	354	1
2011-12	188	188	0

Source: Annual Reports 2004-05 to 2011-12

Table 7 presents the details of shareholders complaints/requests. It is observed that in the year 2004-05 the company had received 60,675 complaints/requests. The company responded to 60,658 and the remaining 17 were not resolved or replied. In the years 2006-07 and 2010-11 the company had not resolved only one complaint/request. In between the years there was no pending complaint/request. It is found that the company furnished only number of complaints/requests were received and replied but it did not give the details of queries and complaints received and replied in its corporate governance report.

Risk Management Committee

It is found that the company has been disclosing the details of risk management committee in corporate governance report from the year 2009-10 onwards, but in the year 2009-10 it did not disclose about the number of times the committee had met but it disclosed the names of committee members. In the year the 2010-11 the committee had met four times to review the developments in the currency market and the hedging operations but did not furnish how many had attended for the meeting. At present the committee of the company consists of four members in the year the 2011-12, the committee had meeting for three times. Out of the four members, three have attended all the meetings and one Director has attended 2 meetings only.

Other Committees

After the formation of the above committees the company disclosed the details of the following committees but it did not disclose how many times the committee had met.

- Bank Account Committee
- Nominations Committee
- Executive Committee
- Software Technology Parks of India (STPI)/Special Economic Zone (SEZ) Committee
- Health, Safety and Sustainability Committee

Conclusion

The first major stimulus for corporate governance reforms was the Southeast Asian crisis of 1997-98 followed by the Enron debacle of 2001, which necessitated the need for ensuring better corporate governance practices, culminating in the enactment of legal measures like Sarbanes - Oxley Act of 2002 in the United States. In India there was no evidence of any miserable corporate failures as in the west, such as Enron, Maxwell, WorldCom, etc., yet in India interestingly it was a business association, not the government, that took the initiation to formulate and implement a code of corporate governance of international standards. In India, the initial drive for better corporate governance and disclosure, perhaps as a result of the 1992 stock market scam and the fast emerging international competition consequent on the liberalisation of the economy that began in 1991, came from the Confederation of Indian Industry (CII) and the Department of Corporate Affairs. As pointed out earlier, the emergence of corporate governance in different parts of the world has its own history. In the present global environment where economies are integrated with the global market environment, it is imperative to develop a sound system of corporate governance, especially in emerging economies like India.

The emergence of corporate governance in any country is not an overnight occurrence and through which governance issues are brought to light, redesigned, improved just suit to their requirements. A good code of governance is pre-requisite for any economy irrespective of its stage of development and it is much more so for fast developing economies like India. The code of corporate governance in India is a well proven set of governance mechanism on par with the worlds' best governance codes. It is evident from the Global Investor Opinion Survey- Key Findings of Mc Kinsey & Company, July 2002 that companies with good corporate governance mechanisms have performed better than companies with poor governance records. Therefore it is advisable to restructure and redesign the corporate governance codes to meet the global changes to tone up the performance and gain investor confidence of the company. Certainly it will go a long way to have better corporate governance practices and be acclaimed as among the best in the world as the TCS Limited has achieved. This Indian IT company, therefore, warrants particular attention.

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Corporate Governance, Social Responsibility and Gaps in Perception

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Key words

Business,
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Gandhian,
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Abstract: *India was a champion of human rights as the leader of the Third World, with the legacy of the Gandhian Movement, Socialist Democracy, and support for Freedom Struggles worldwide. Movements such as South African self rule, Palestinian Freedom Struggle and Non Aligned Movement were prominent items on the agenda for Indian diplomacy. Unfortunately, with the passage of time, many ideals were eroded and the rights of minorities and workers trampled upon at home by Industrial cartels and large Business Houses with the ensuing growth of Indian Business and Industry under License Raj. After the liberalization schemes of the 1990s and beyond, the human rights issues have resurfaced mainly due to the insistence of Western Financial Institutions, WTO, GATT, World Bank coupled with financial aid schemes. This paper addresses some of the main issues which have been at the forefront in CSR and Corporate Governance. Perception gaps are evident, in that the viewpoints of the Management of the large corporations are in many cases different from the expectations of worldwide regulatory bodies and expected norms regarding treatment of labor and attendant social "responsibilities".*

Introduction

Indian business at rural, urban and international levels has an ancient past. In historical times extensive trade occurred with the West and Far East through sea ports on the east and west coast of India's extensive coastlines. Trade was in the hands of a few communities, guilds and influential persons. India was always a Capitalistic Economy, trading Internationally with Rome, Greece, the Middle East, Malayan archipelago China and Korea by land and sea. Social conditions described by Chinese, Turkish and European Travelers described the people as happy and prosperous (Huen Tsang, AlBeruni, Tavernier).

Western adventurism began after the crusades, with the search for new routes to exploit the spice trade earlier dominated by the city states of Venice. With the advent of the Dutch East India Company, French India company and British East India Company, collective labour of local peasants was harnessed to produce Indigo, tea, opium. Post Independence, many estates were vacated by the colonials and taken over or "inherited" by local landlords, caretakers and companies. Several estates were stranded and left to the tender mercies of local satraps. Except for the East India Companies and their affiliates (Finlays, Jardines, Thomas, Parrys) , the rest were abandoned by individual British owners throughout India- as a rule they were uncertain of the future. Corporate Governance in today's terms did not exist, except in the form of rules to be obeyed, whereas in the Government services, governance was covered through service regulations, civil service rules and various diktats and fiats issued by various authorities. Rules were written in English and interpreted by the whims of local clerks.

Corporate Governance properly has Administrative, Financial, Fiduciary, Labour, and societal components. In case of the societal component, the issue of treatment of Common property, (Commons) , variously termed as waste land, forest land, "No man's Land", etc has yet to be understood properly by Corporates and individuals. For instance, the ocean surrounding the coast line is no one's property and is properly understood as a Commons, yet if overfishing occurs, pollution by chemicals, thermal waste from power plants and untreated sewage are combined, then marine life and fish population gets affected leading to a declining spiral in vegetation, ecology and income for fisher folk. As a result they have to venture farther out into international waters landing in the hands of other countries. The argument extends to other scenarios as well, as for example, open surface mining for Bauxite iron ore and deforestation for teak wood; where the top soil once removed would take generations to recover. In Africa, poaching of Rhino and Elephant horns and tusks could also be interpreted as over exploitation of "Commons" where criminal intent is overlooked. The magnitude of

the poaching has reached a stage, however, that one cannot be mere bystanders and strict penalties have to be imposed with enforcement of wild life conservation laws.

The inheritance of labor problems and corporate governance problems in Jute, Tea and Coffee industries started with the disorderly handover and unauthorized takeover of large plantations in India in a un-professional manner. Labor problems in the tea and jute plantations are evidence of the lack of social responsibility towards the local people, with closure of jute mills in Bengal in the 1960s and 70s and takeovers by local businessmen from the erstwhile foreign owners who closed shop and left India. Although a few companies like the Tata pride themselves on their corporate ethics, recent events tend to dispute this claim; so far it has been Voluntary CSR; however, in 2010 DPE (Dept of Public Enterprises) introduced mandatory CSR for 249 CPSEs.

Traditionally, philanthropy arose out of religious belief; in India, business communities were large family organizations with caste and societal obligations. The British French Portuguese, Norwegians and Dutch came to India for their trade; then various "East India Companies" grew in strength and power. Subsequently, "The East India Company" (Britain) controlled much of India (Gollakota & Gupta, 2006) and during the pre-independence phase, there was little confidence in the British Government's commitment to protecting the rights of Indians (Gollakota & Gupta, 2006). The family business structure was popular and cherished because it lowers the risk of business transactions. Families and communities provided support for Indian businesses; something that was not reliably available through legal or governmental channels (Sundar, 2013)

With the industrialization of India, differentiation between the merchants and industrialists began - in the middle of the nineteenth century (Gadgil, 1959); the Bombay industrialists entered the field of modern philanthropy (Mehta, 1991) and among them the great Father of Modern Indian Philanthropy, Jamsetji Nusserwanji Tata (1839-1904), for his understanding of the rights of workers at a time when they were being exploited even in the West, his insistence on absolute standards of integrity; his sense of trusteeship and his realization that to survive and prosper, free enterprise must serve the needs of society (Harris, 1958).

In 1944 the Bombay plan was mooted by the Tatas, Birlas and the Bajaj group (Srinivasan and Tendulkar, 2003). The Socialist framework designed by Government planners can be regarded as rudimentary societal CSR through employment, townships and welfare measures. After liberalization in 1991, CII introduced the first voluntary CSR code for corporate governance in 1998. CSR disclosures in annual reports were made compulsory. A major event which set minds thinking was the SATYAM scandal, after which voluntary guidelines were suggested (Afra Afsharipour 2010) ,in addition to introducing independent Directors under SEBI(Clause 49).

DPE (Department of Public Enterprises) Framework for CSR

The Framework includes "Mandating, Facilitating, Partnering, Endorsing, and Enforcing"; as 65 % of Indian population is rural, the 13 flagship schemes of Government (like SSA, NREGS, NRHM,) which accounted for 18% of Government spending in 2012, around Rs 220 billion, could be integrated with existing CSR activities of CPSEs so that the fiscal burden could be partially reduced.

[Nikhil Atale and E.J. Hegde, Proposed Framework for Government of India to Effectively Monitor Mandatory CSR Initiatives of Public Sector Enterprises in India. Journal of Human Values 20(1), 75-83, 2014] .

According to Sir Adrian Cadbury, "Corporate Governance is the system by which companies are directed and controlled……" Corporate governance may be defined as the broad range of policies and ethical practices which are adopted by an organization in its dealing with the stakeholders.

A Study of three business houses (ITC, Reliance and Infosys) comparing Corporate Governance has been performed by Chatterjee (2010).

Regarding the problems in implementation in the Indian Scenario, current efforts are laudable, but the wherewithal is not available in several cases (Afra Afsharipour (2009,2011)--directors are appointed by the controlling shareholders, not by independent groups, thus effectively becoming Rubber stamps".

Changes in the Companies Act

Clause 35 of the Companies Act, 2013 enforces mandatory CSR on companies of certain size and profitability. However, this has led to an emphasis on the financial aspect and less on the ethical aspects of CSR which leads to a dimming of the original concepts of CSR.

SEBI clause 49((41. Confederation of Indian Industry, desirable Corporate Governance: a code, (1998), available at http://www.acga-asia.org/public/files/CII_Code_ 1998.pdf. 42. Amendments to clause 49 (2000), supra note 2; circular, corporate governance in listed companies—clause 49 of the listing agreement (Aug. 26, 2003), available at http://web.sebi.gov.in/circulars/2003/cir2803.html [hereinafter clause 49 (2003)].

"The Listing Agreement with stock exchanges defines the rules and processes that companies must follow in order to remain listed companies on an Indian stock exchange.). The Ministry's guidelines include a strong focus on ethics, which it tied back to Indian history and values. The guidelines also view directors from a Gandhian perspective—as trustees with duties to shareholders, stakeholders, and society as a whole. In fact, according to the head of the MCA, directors and senior management are: "custodians of public money, they are the trustees—if we go to the Mahatma Gandhi concept of trusteeship . . . they are actually the trustees of the nation.

Philanthropy Versus Charity

Philanthropy is basically charity on a long term strategic scale. While charity is an impulsive act short lived act performed without regard to the social consequences, Philanthropy is a Strategic decision enacted by many worlds wide organizations (eg Rockefeller, Ford) based on the personal philosophies and beliefs of their founders who believed in the Protestant Ethic of America.

Tata companies: One of the earliest examples of such CSR in India was the Tata Groups' philosophy as stated by the founders of giving back to the community. As stated by late JRD Tata: corporate enterprises must be managed not merely in the interests of their owners, but equally in those of their employees, of the consumers of their products, of the local community and finally of the country as a whole" (**Lala, 2004).** "The community is not just another stakeholder in the business but is in fact the very purpose of its existence"—Sir J.N Tata, Founder of Tata Group. Corporate Houses in the West are moving away from CSR because the Governments there have a strong social security framework in place, but this is not the case in India. The role of CSR in India continues to be required of big corporate houses.

Despite these high flown statements, which look very nice on paper and in the environs of board rooms or AGMS's in 5 star Hotels, Tata's in India have become embroiled in a number of conflicts with communities, eg W. Bengal Nano car plant at Nandigram and Singur , Chilka lake prawn fisheries (1994), Tea plantation workers in S.India and Assam and others. As mentioned by Sundar(2013), Tatas had attempted to replace the prawn fish and crab farming in Chilka lake ,threatening to displace the traditional poor fishermen who depended on the lake for their livelihood. Agitations by NGO's and activists led to the Orissa High Court's ruling in favour of the fishermen, and Tatas had to move away in 1994. Similarly, the Nano car project in Singur W Bengal, led to massive protests by farmers who had been displaced, with the eventual moving away of the plant to Gujarat.

The Union Carbide Bhopal plant which leaked noxious gas remains an example of disregard for the rights of the workers in the surrounding townships, and in terms of CSR the record of Union Carbide is poor, given that they avoided responsibility through takeovers refusing to pay compensation.(Subramaniam2015).

Similarly in the case of the Coca Cola plants throughout the country, the use of common property (underground water) has severely depleted the ground water table and moreover, the water is available for free. Replenishment of the water table by rain water harvesting and other measures would be helpful, yet this does not appear to be forthcoming. Recent cases in the courts point out to the dissatisfaction of the community with the plants, ------ (Permatty Grama Panchayat v state of Kerala**,** W.A.N0.2125 of 2003 and W.A.N0215 of 2004 Judgment 7th day of April 2005**)**

In contrast, the mercury thermometer plant set up at Kodaikanal by Hindustan Lever- Unilevers, was finally closed down and the workers given golden handshakes, after activists disclosed that mercury waste was poisoning the water. It was claimed that mercury pollution was soiling the environment----- (CARAVAN Aug 8 2015). It appears the plant was relocated to Kodaikanal from an off shore location because of similar

problems and in Kodaikanal, of the 1980's where merury poisoning was least expected this is what actually happened. The company fought the case in the courts and eventually had to close the plant down and reimburse the workers. According to Shah (2011), the company brought in environmentalists to test the water and soil within 20 km of the factory. The thermometers were meant for export to Bethlehem Thermometers USA.

Another case is that of the Tea Plantations, especially in Assam, with attendant labour unrest. The plantations have remnants of the colonial dictums of low wages and "social benefits". In the paper " The World Bank, Tata's and Enduring abuses of Indian Tea Plantations", by Columbia Law School Human Rights Institute, Jan 2014, World bank took over 19% stake in the holdings of Tata Global Beverages. As a result of complaints by NGOS and other groups a prolonged investigation by a Professor of Columbia Law Institute has resulted in a report, which mentions human abuse and poor medical and living conditions, low wages etc. The response by Tata's was that the workers were being given free housing etc and paid Rs 100 ($1.6) a day which appeared very high to these Tata executives, who earn crores (D Mishra, 2012). Furthermore, according to the Columbia report, in W.Bengal and Assam, wages are fixed in a tripartite agreement, resulting in half the individual wage for a husband-wife working together.

Other cases of waste (chemical and thermal) being poured into common property (the coastal areas) occurred in the Kutch Mundhra project: To quote: TATA Kutch Coal project: (Report filed by fact finding committee http://www.bankinformationcenter.org/eminent-panel-finds-social-environmental-violations-in-tata-mundra/)

A few panel findings:

- The Environmental and Social Impact Assessments filed by the company were deficient.
- The project blocked access to fishing and grazing grounds.
- The project has caused drastic reduction in fish catches, destroying the livelihoods of local fisher-folk.
- The project failed to thoroughly examine or adequately address the health and environmental impacts of ash contamination from the project.
- The project ignored the potential impacts of radioactivity from the coal ash pond.
- The company significantly underestimated its bid, resulting in cost overruns and increased energy tariffs for customers.

(In its bid for the Mundra UMPP, Tata Power significantly underestimated the material cost of plant construction and the operational cost of fuel namely imported coal resulting in significant cost overruns. With the project only one-fifth completed, the company is already seeking to be released from its negotiated Power Purchase Agreement with five states, asking for an increase of the agreed-upon electricity tariff by 35% for average individual consumers.)

Panel Recommendations: "The company is urged to compute and monetize all the social and environmental costs and add these to the project costs; compensate all local people for their livelihood losses; create a fund for the restoration of mangroves destroyed; restore people's access to fishing and grazing grounds, and to salt-pans unconditionally; and employ all possible pollution control measures on a war footing to save this fragile zone from further damage. The Government of India and Gujarat State Government are urged to put a moratorium on permission to any more industry/power plants in Mundra/Kutch; issue show cause notice to the CGPL/Tata Mundra for multiple violations of clearance conditions; form independent expert committee(s) to thoroughly investigate all pollution, contamination, and radioactivity hazards within a reasonable time frame; and direct all national banks/financial institutions to adopt and enforce mandatory social and environmental safeguard policies at a reasonable timeframe.

The international financial institutions are urged to undertake an immediate review of the project to examine adherence of their safeguard polices; suspend financial assistance until such a review is done; putting in place an independent monitoring mechanism to ensure strict compliance of their safeguard policies. Meanwhile, the national financial institutions should adopt social and environmental policies and implement them scrupulously in this project. The implementation should be monitored by independent agencies, which include the affected people's representatives." In the above cases and many others, multinationals have made use of Common Property without making restitution and reimbursement to the community.

It is difficult to reconcile the high flown statements by these companies with the actual social conditions of their work force. Not much seems to have changed since the days of the Kolar Gold Mines of 1930, when M.A. Sreenivasan filed his report to the Mysore Government in response to a call from the Dewan because of conditions leading to various agitations and police actions against the workers (Labour in India, Socio-economic condition of workers in Kolar Gold Mines, Vikas Publishing House Private Limited, New Delhi 1980). Another reference has been written in Tamil by one of the participants in the struggle, (K S Seetharaman, Kolar Thanga Vyal Varayaluru (History of Kolar Gold Fields) Elushun Electronics Publications, KGF, 1989). The Indian Plantation ethos Pre- Independence carried over into the subsequent years, even as recently as 2014 when the Columbia University report was filed. That the Indian social fabric has advanced to the extent it has today is to a large part due to the policies of the Indian Government who went in for 5 year Plans creating large Public Sector factories, giving employment, townships and schooling for millions of people. Whilst the Private sector grumbled and a few Townships like Jamshedpur had already been established, little else was done in terms of CSR around these private plants where labor had to live in slum like conditions. Several references on the tea plantations in Sri Lanka have appeared (Rachel Kurian).

The basic living conditions of plantation workers in many erstwhile colonial outposts and that of slave laborers in the Americas can be compared and are said to differ little (Rachel Kurian (2013)). That the same could be applicable for the Indian plantations is not farfetched. The reference by World Bank (2014) is a very scathing and damning report on the caste based attitudes still practiced by top corporate houses who flaunt the ideas of CSR initiated by their founders.

In 2012 Companies Bill, passed by Lok Sabha (Lower House of Indian Parliament) on December 18, 2012, included new provisions aimed at improving the governance of public companies. Securities and Exchange Board of India (SEBI's) consultative paper on the "Review of Corporate Governance" call for the splitting of the roles of Chairman and Chief Executive, disclosure of the reasons for an Independent Director's resignation from office, a limit on the term of appointment of Independent Directors and greater involvement of institutional investors. SEBI goes on to propose making radical reforms based on the Anglo Saxon model:

- The appointment of Independent Directors by minority shareholders,
- Independent Directors to receive compulsory training and pass examinations; and
- The adoption of a principle-based approach for certain principles.

In addition, new initiatives which recognize the need for certain obligatory requirements and the need for training in a market that had for centuries been based on a closed board structure and investor base are stated.

OROP Agitation

The extreme case of Government Pensions is a form of CSR, in which the corporate entity (Government) has a social and financial responsibility to their retired employees, many of whom have spent a lifetime in Harness.

Regarding the problem of enforcement in India, in his analysis of RPTs (Related Party Transactions) in India, Batra (2008) notes that case arrears and decade long legal battles are commonplace in India. In spite of having around 10 000 courts (not counting tribunals and special courts) India has a serious shortfall of judges. While the US has 107 judges per million citizens, Canada over 75, Britain over 50 and Australia over 41, for India the figure is slightly over 10. He quotes one study that there are 20 million cases pending in lower courts and 3.2 million in High Courts. A dispute contested until all appeals are exhausted can take up to 20 years for disposal, while petitions in High Courts can take between 8 and 20 years (Batra (2008). Bhardwaj, H. (2011), A report by OECD (OECD (2014), *http://dx.doi.org/10.1787/9789264220652-en)* may be referred to where the long drawn processes of getting dues from the employers is common place in India

Corporate Governance

Not merely Corporate boards and executives vs. Shareholders as some papers focus on (Daily , *Academy of Management Review* 2003, Vol. 28, No. 3, 371-382) but also as in India, the rights of the workers and laborers which are commonly seen in the labor tribunals and in Government concerns. The paper by Pande and Kaushik (Study of Corporate Governance in India, Evolution, Issues and Challenges for the Future, IIM Calcutta) focuses on the oscillation between Mandatory and Voluntary compliance prevalent in India.

An extension of this pay and pollute preference is the Carbon credit system. By buying carbon credits, and international entity can continue to pollute, this seems to be an extension of the domestic practice of paying fines and continue polluting.

Structure of the Corporate Entity and its Relation to Formal Governance

Governance as implemented in the formal structure traditionally encountered is familiar to us, with examples of the military, National and local Government organizations, and the saying "*Dilli Door ast*" (The seat of the emperor (Delhi) is far away). To get redress from the Emperor and bypass local satraps one had to go to Delhi and get an audience. This was in the days of the vertical power structure where one had to bypass the various local corrupt levels. With the advent of different corporate styles and communication, especially email and video conferencing, many barriers have been removed including international barriers. Corporations are no longer vertically aligned, and many have adapted to different structures either by design or by evolution. Studies of the Tata group of companies, (Srivastava 2012, Jaipuria 2002) for example, show them as loosely connected fiefdoms, each one being a separate entity managed entirely independently, having a link to the Tata group only through the top "when it suited their purpose. In fact several of the Tata companies are unaware of what the others are doing (footnote). Similarly, the internal structuring of many IT companies is very flat, with few levels contrasted with the traditional pyramid structure of Government. Communication styles are thus vastly different and Governance would have to be different to suit the communication style and speeds of transmission. This model can be contrasted with the flat InfoTech structures and the Japanese models.

In this regard, a theory of corporate structure has been propounded by T.T. Paterson of Strathclyde University. There are several layers of decision making importance in the organization and the remuneration as per the importance of the decision would vary accordingly. If a pyramidal structure is assumed, each level controls the many levels below it and correspondingly as one rises, the number of subordinates and the importance of the decision making rises exponentially. In fact the theory has been used to fix salary structure in corporations.

From the perspective of banking industry, corporate governance also includes in its ambit the manner in which their boards of directors govern the business and affairs of individual institutions and their functional relationship with senior management. This is determined by how banks:

- Set corporate objectives (including generating economic returns to owners);
- Run the day-to-day operations of the business and;
- Consider the interests of recognized stakeholders i.e., employees, customers, suppliers, supervisors, governments and the community and
- Align corporate activities and behavior with the expectation that banks will operate in a safe and sound manner, and in compliance with applicable laws and regulations; and of course protect the interests of depositors, which is supreme.
- Oversight by the board of directors or supervisory board;
- Oversight by individuals not involved in the day-to-day running of the various business areas;
- Direct line supervision of different business areas; and
- Independent risk management and audit functions.

CSR is the Model of Today in India: Towards a Concept in the Future

Indian CSR as was understood in the "good old days" of License Raj and family owned companies was perhaps the formation of charitable trusts which were largely tax shelters.

Table 1 The Four Model of CSR in India

Model	***Focus***	***Champions***
Ethical	Voluntary commitment by companies to public welfare	M.K. Gandhi
Statist	State ownership and legal requirements determine corporate responsibility	Jawaharlal Nehru
Liberal	Corporate responsibilities limited to private owners (shareholders)	Milton Friedman
Stakeholders	Companies respond to the needs of stakeholders, customers, employees, communities	R.Edwards Freeman

Source*: Adapted from Kumar, Murphy, & Balsari, 2001, p. 2*

Social regulatory systems are still weak in developing countries of Asia (Chapple & Moon, 2005) and hence, Corporate Social Responsibility (CSR), portrayed as a western concept, is facing challenges settling into the mind-set of companies (Aravelo & Aravind, 2011). The most significant obstacles are those related to lack of resources, followed by those related to the difficulty of implementing CSR, and lack of management support at both top and middle levels (Aravelo & Aravind, 2011.)

Current research on CSR in India is limited to nature and characteristics of CSR), and Indian perceptions of CSR (Narwal & Sharma, 2008, (Arora & Puranik, 2004; Sood & Arora, 2006) Business perceptions of CSR, and policies and practices of multinationals (MNCs) towards CSR in India are reported by (Balasubramanian, Kimber, & Siemensma, 2005), corporate social reporting (Raman S., 2006) (CREM, 2004). That there are gaps in the perceptions towards CSR from the Indian Corporate side and the US corporate viewpoint is indisputable, and a recent work highlights some of these also, (A Narayanan 2014). After liberalization of the Indian Economy with new foreign entries, it was necessary for Indian companies to look overseas, as with Tatas Tetley acquisition etc (Goldstein 2008). However, the financial changes were not met with corresponding changes in outlook at home especially to the base of the pyramids (World Bank 2014).

Conclusion

What is termed as Philanthropy on the rationalized individual scale or charity on individual impulsive motives is still alien to the traditional Indian mindset. These have been nurtured from the long dependence on the socialistic Indian model of getting from the Government rather than giving. As an example, most of the students in the premier Indian institutions run by the Government are nominally supposed to pay fees, however it is understood that these would be waived off and the training received in the IITs and IIMs is more or less paid for by the taxpayer. These are the future leaders of industry and if they do not recognize this largesse received at the beginning, how does one expect them to be good corporate social givers later on? Most of the good graduates get plum postings abroad and bid goodbye at Delhi Gate or the Gateway of India Colaba, Apollo Bunder. Ethics and Social studies should be made a part of the curriculum from class 8 to Post graduate level, after which one may see a change in the climate in the way those who benefit from Society give back to it-- if at all.

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Corporate Governance: Are Directors Liable for Performance?

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Key words

Directors,
Good governance,
Responsibility,
Shareholders,
Government

Abstract: *When we discuss about corporate governance [CG] arguably the Directors of the Board come in to picture as they are instrumental for good or bad governance. The Board of Directors of a company is the vital body and are ultimately responsible for stable, highly efficient, and profitable running of a company while safe guarding the interests and progress of all its shareholders. Now the point for consideration is whether the Indian industry is ready to take outsiders in to the Board. The very fact that some of the listed companies did not comply with this provision, even after the set deadline, may be due to non-availability of relatives or friends to fill the vacancies. Some industrialists are defending their delay in appointing a woman director by saying that they are looking for quality directors. Companies are likely to recruit women from amongst the promoter's family and friends irrespective of whether they are qualified for the post or not. If we look at the corporate bodies which appointed women as directors, we find that those 37directors are not outsiders but their family members. Appointing family members as woman directors may not really subscribe to the ideal of such a mandatory provision. The researcher is looking for director's role towards good corporate governance.*

Introduction

Corporate governance is the mechanism, practices, processes and relations by which corporations are controlled and governed. Corporate governance is essentially balancing the interests of stakeholders. The stakeholders are employees, management, customers, suppliers, shareholders, financiers, government and the society. Balancing the interests of all stakeholders is possible only when the company scrupulously follow ethics. We hear quite often a criticism that we have maximum government and less governance. Same is true even in case of corporate bodies. Unless people making decisions in corporate affairs are honest and committed to the objectives of the corporation, good governance is a remote possibility. Corporate history documented the collapse of number of large corporations due to incompetency, bad governance, accounting frauds and scandals of various forms. As a result, public confidence on corporate governance is being shattered.

It may not be out of place to mention the requirements of good governance. Good governance encompasses transparency, accountability; adherence to rules, zero corruption etc. it goes without saying that the matter of good governance will be mainly on the shoulders of company directors and the officers appointed by them. We usefully extract the principles recommended for good corporate governance;

- Directors need to respect the rights of shareholders and help shareholders to exercise those rights. They can help shareholders exercise their rights by effectively communicating information and by encouraging shareholders to participate in general meetings. Further, they need to treat equally all the shareholders.

- It is not enough to protect the rights of the shareholders but it is equally necessary to take care of the interests of non-shareholders (stakeholders) like employees, investors, creditors, suppliers, customers, local communities and government. Directors should realize that they have social, legal and contractual obligations to stakeholders. Interest of stakeholders should be their top most priority.

- Directors are at the helm of company affairs, and hence, should be capable of resolving the problems and manage the affairs of the company with skill and diligence. The directors need to possess sufficient and relevant skills and good understanding on the company affairs. They should be capable of challenging the performance of the officers who are managing the company, on their behalf, in

case of inappropriate decisions. At the same time they should give freehand to the officers and provide sufficient motivation for their best performance.

- The Directors of the Board are appointed by the shareholders and the Board in turn appoints corporate officers to look in to day-to-day affairs of the company. Integrity is the fundamental requirement in choosing corporate officers and board members. Hence, the responsibility is cast heavily on shareholders to carefully select persons of integrity, honesty and commitment as directors of the board. If they don't exercise this caution at the time of appointing the directors, they regret later. It is also necessary to develop a code of conduct for the directors and executives that promotes ethical and responsible decision making.

- Transparency is the foundation for good governance. There are two important documents a company should prepare for its incorporation namely memorandum of association and articles of association. Memorandum of association speaks about the constitution of the company whereas Articles of association specifies the rules of internal administration. These two are the public documents and supposed to be furnished to stakeholders on payment. But the transparency should go beyond these two documents. Whatever contracts the company enters in to, should be made known to the stakeholders to safeguard the integrity of the financial reporting. Disclosure of material information relating to the company must be timely and balanced to ensure that all investors have access to clear, factual information.

Table 1 Outside Directors' Engagement in Managerial Monitoring and Resource Provision in Different Corporate Governance Systems: Types of Corporate Ownership Structure

National Governance Systems	Dispersed Ownership	Concentrated Ownership of Family	Concentrated Ownership of the State
Under-developed National Governance System	Low monitoring Low Resource Provision **(Proposition 1 a)**	Low monitoring High Resource Provision **(Proposition 2 a)**	• Low monitoring Low Resource Provision **(Proposition 3 a)**
Well developed National Governance System	High monitoring High resource provision (**Proposition 1b**)	Medium monitoring High resource provision (**Proposition 2b**)	High monitoring Medium resource provision (**Proposition 3b**)

Organization for Economic Co-operation and Development (OECD) formulated the following principles for Corporate Governance, which mainly focuses on directors' conduct;

- Board members should be informed and act ethically and in good faith, with due diligence and care, in the best interest of the company and the shareholders.
- Review and guide corporate strategy, objective setting, major plans of action, risk policy, capital plans, and annual budgets.
- Oversee major acquisitions and mergers.
- Select, compensate, monitor and replace key executives and oversee succession planning.
- Whatever remunerations paid to executives and board should be in the long-term interests of the company and its shareholders.
- Ensure a formal and transparent board member nomination and election process.
- Ensure the integrity of the corporations accounting and financial reporting systems, including their independent audit.
- Ensure appropriate systems of internal control are established.
- Oversee the process of disclosure and communications.
- Where committees of the board are established, their composition and working procedures should be well-defined and disclosed.

It is also relevant to mention how in India the corporate governance is defined by Security Exchange Board of India. The Committee on Corporate Governance in SEBI defines corporate governance as 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 & corporate funds in the management of a company."

In order to contain corporate frauds and to have better regulatory measures The Companies Act 2013 was subjected to many crucial and important amendments. One amongst them was appointment of women directors and 30% independent directors in the board. Let us now try to understand how these provisions would help in good governance.

Women in the Board

If one looks at the work place it is apparent that there is no gender equality in employment as enshrined in the Indian constitution. Men always get the top positions in the companies whereas women do not have equal opportunities. In order to empower women, Indian Government made several legislations and one such aspect is reflected in the amendments to the Companies Act 2013, in which a provision has been created to appoint at least one woman as director in the board of management. The second provision to section 149(1) mandates all listed companies with SEBI to appoint at least one woman director within one year of commencement of the Act. New companies are given time up to six months to comply with this requirement. In case of any vacancy of woman director, such vacancy should be filled within 3 months. It is a positive step towards empowerment of woman in the corporate world. This is not a unique feature of Indian Companies Act. The same is implemented in many countries throughout the world.

Bringing a legislative provision is one aspect and implementing the legislative intent is another aspect. Many companies are using dilatory tactics in appointing woman directors to the board. SEBI took up this matter seriously with the listed companies. Despite the warnings 180 out of the 1,456 companies listed on the National Stock Exchange have not yet appointed a woman director as of April 1, 2015. The deadline for appointment of woman director has been extended to 1st April 2015, giving more time for companies to find out capable directors.

How does Women Make a Difference

Is it only to maintain gender equality women directors are proposed or for any other benefits. Many studies have been conducted to find out the advantages and disadvantages of appointing women as directors of the Board. Studies show that the presence of at least three women is necessary to change boardroom dynamics. In fact, one analysis found that operational performance and share prices were both higher in the case of companies where women made up over 20% of board members than those with lower female representation. Female directors serve as role models, and therefore, improve female employees' performance and boost companies' images. Those who support the concept of woman directors say the following advantages in support of their argument.

- Women executives build better workplace relationships
- Women executive reduce expenses
- Women executives make better decisions
- Women are compassionate, smart, strategic and emotionally balanced. "Women who sit on corporate boards are more open to new ideas than their male counterparts-skills that often translate into better decisions and financial success for the company", according to a new study. The survey, recently published in the International Journal of Business Governance and Ethics, found that of the 624 board directors polled in Canada, women were more likely to use "co-operation, collaboration and consensus building" when dealing with complex issues, while male directors more often made decisions by using "rules, regulations and traditional ways of doing business."

Popular Directors

Some woman directors also serve on multiple boards. For instance, Renu Sud Karnad and Ramni Nirula are Directors in seven company boards each. The companies with the highest number of women directors include Apollo Hospitals Enterprise, Taj GVK Hotels & Resorts, Indraprastha Medical Corporation and Monte Carlo Fashions, with four women directors each, according to PRIME database.

However, there are some other studies which reveal that "there's zero positive correlation—and sometimes even negative correlation—between female board members and business success". Whatever might be the benefits and setbacks, many nations around the world accorded priority to women empowerment and gender equality, that gave fillip to equal opportunities to women in the corporate sector and accordingly legislations

were passed. Hence, there is no need, at this stage, for measuring advantages and disadvantages. In global business there is overwhelming enthusiasm for more women on boards and in leadership roles. Hence, it doesn't require any debate. What is needed is a significant shift in corporate culture and in the attitudes and behaviours of those who occupy positions of power. Change is occurring globally, and there is no dearth for talented, qualified and experienced women seeking to serve on boards.

Table 2 Women Directors on Board

Women Directors on Board	Companies they serve
Karnad, MD, HDFC Corporation	ABB India
	Bosch
	EIH
	Gruh Finance
	HDFC Bank and HDFC Corp
	Indraprastha Medical Corp
Nirula, VP, ICICI Foundation.	Jubilant Foodworks
	Mcleod Russel India
	P.I.Industries
	Sona Koyo Steering Systems
	Usha Martin
	DCM Shriram

Now the point for consideration is whether the Indian industry is ready to take outsiders in to board. The very fact that some of the listed companies did not comply with this provision, even after the set deadline, may be due to non-availability of relatives or friends to fill the vacancies. Some industrialists are defending their delay in appointing a woman director by saying that they are looking for quality directors. Companies are likely to recruit women from amongst the promoter's family and friends irrespective of whether they are qualified for the post or not. If we look at the corporate bodies which appointed women as directors, we find that those directors are not outsiders but their family members. Appointing family members as woman directors may not really subscribe to the ideal of such a mandatory provision.

Independent Directors

Usually we find only promoters of the company or the largest shareholders or their relatives becoming its directors because no law prohibits them from becoming so. When appointment of independent director's provision is made in The Companies Act, the companies started searching for the persons either from industry or from academics for appointment as independent directors. It is an open secret that they appoint an independent director who is loyal to them and who does not dispute their decisions in the board. Over a period, some independent directors develop their own interests and ignore the illegal activities of the Board. As these directors receive substantial amounts from the company they do not wish to displease the board by decent. As a result the very purpose of appointing an independent director is vitiated. The independent director is expected to play the role of a whistle blower. But in the Indian corporate sector, this objective could not be achieved but for one or two stray incidents.

Some researchers have complained that firms have appointed "independent directors who are overly sympathetic to management, while still technically independent according to regulatory definitions."

In fact, an Independent director is a member of the board who does not have a material or pecuniary relationship with the company or related persons, except receiving sitting fees. Independent Directors do not own shares in the company. Clause 49 of the listing agreements defines independent directors as follows:

"For the purpose of this clause the expression 'independent directors' means directors who apart from receiving director's remuneration, do not have any other material pecuniary relationship or transactions with the company, its promoters, its management or its subsidiaries, which in judgment of the board may affect independence of judgment of the directors."

The Companies Act, 2013, which came in to force from 1st April 2014, has mandated all listed public companies to have at least one-third of the total Directors to be independent. Whereas in the case of unlisted public companies, the following class of companies shall have at least two directors as independent directors:

(i) Public companies having paid up share capital of ₹10 or more; or
(ii) Public companies having turnover of ₹ 100 crore rupees or more; or
(iii) Public companies which have, in aggregate, outstanding loans, debentures and deposits exceeding ₹ 50 crore or more.

Table 3 Requirements under the two statutes for public companies

Sl.No.	Provision	Act and Rules	Listing Agreement
1.	***Applicability to kinds of companies***	Act is applicable to listed companies and Rules to some classes of public companies.	Applicable to all listed companies, except the ones excluded by the September Amendment.
2.	***Criteria for independent directors***	Criteria listed under section 149 (5) of the Act and Rule 5.	In addition to the criteria mentioned under the Act and the Rules, two additional criteria are prescribed.
3.	***Board composition***	Certain classes of public company (if they cater to the criteria laid down under the Rules) – at least two independent directors. Listed company-at least one third of the board.	Where chairman of the board is a non-executive director at least one-third of the board. Where the non-executive chairman is a promoter or is related to any promoter or person occupying management positions at the board or where the company does not have a regular non-executive Chairman-at least one half of the Board

The compensation offered to such Independent Directors in the form of "sitting fee" has also been increased from ₹ 20,000 to a maximum of ₹ 1, 00,000/ per meeting. Can we truly justify a sitting fee of a lakh from each company in a country where the average wage is very less?

Some experts bitterly criticize the rules pertaining to the appointment of Independent directors. An independent director of a company can be a director on the board of 15 listed companies simultaneously. Each company is paying 8 to 12 lakhs per year and their earnings as sitting fees may be more than ₹ 1 crore. It is obvious that these independent directors may develop vested interests and become hand in glove in the corporate frauds.

It is not to belittle the performance of Indian industry but the fact remains that majority of listed companies has destroyed shareholder's value in corporate India. A survey by the Society for Capital Market Research & Development indicated that out of the 6330 BSE listed companies only 21.5% had paid dividend in 2002-2003. Of all the 9644 listed companies only 16% declared dividend. 83% of the listed companies in B2 Group, T Group and Z Group have destroyed shareholders value. Hence, it is hoped that independent directors can play a positive role to enhance shareholders value by preventing wasteful expenditure and shady deals.

Company Act simply prescribes appointment of independent directors but not specify what type of people is to be appointed as independent directors. The board of directors will have absolute freedom to appoint any person they like, as an independent director. This freedom is the root cause for several maladies in corporate sector. This freedom should be restricted by giving choice to the companies to appoint only persons of integrity and honesty, enlisted by SEBI or any authority. Till such time at least SEBI should closely monitor the conduct of these independent directors and their contributions to the progress of the company. The sitting fee and other allowances to the independent directors should be paid by SEBI that can be recovered from the respective companies. This eliminates the nexus between the company and independent directors.

Warren Buffet in a recent statement felt unhappy about the failure of independent directors to protect the interest of shareholders. He blamed the "boardroom culture" with "well-mannered people" who find it almost impossible to suggest replacing the chief executive. He said that questioning their remuneration would be like "Belching at the dinner table". Independent directors are our only hope to instill some discipline in the murky world of corporate finance. We have to make sure that greed plays no part in their appointment - even if it means "belching at the dinner table".

An independent director, not being promoter or key managerial personnel, shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently.
However, there are certain benefits from the independent directors.

Benefits of an Independent Board Member

An independent director can offer a company a number of distinct benefits, services and business advantages.

1. **No director probably would function without self interests and hence acts with bias.** Even if they act in the best interests of the company, their opinions are formed by personal agendas and value systems. An independent board member can take a fresh, objective look at business challenges and opportunities, and offer advice keeping in view all parties while enabling the company to pursue short- and long-term business objectives.

2. When majority of directors are relatives or friends deciding benefits and perquisites is always a tough job. Experienced independent directors can help in deciding suitable compensation package. As an unbiased third party, independent director can also help in appointing potential candidates to fill positions with non-family members fixing fair compensation packages.

3. Investors confidence on corporate management is very low because of collapse of large industrial undertakings due to accounting scandals. So, they are now reposing confidence on independent directors who may not have extraneous considerations. Same is the case with lenders. They are assured if an independent director with high levels of integrity and objectivity sits on the board.

4. An independent director can also help negotiate solutions to the competing interests of family members or minority and majority shareholders. This can be especially helpful when it comes to succession planning. As was the case in our opening example, the gap between what a retiring CEO believes is best for the company and the opinions of other family members can be quite large. By helping negotiate an effective succession plan, an independent director can contribute to the long-term viability of the business. Likewise, if disagreements arise among family members after the founder of a company retires, having had an independent board member involved in the pre-retirement discussions may help reassure family members and resolve disputes before they end up litigation.

5. Independent directors are viewed by the investors and creditors that they would bring with them a number of advantages, including independence in their views and the ability to bring an outside perspective into the board meetings. Further, as their primary function is to comment on corporate strategy and to direct general policy and overall supervision of the company, they can help to provide effective leadership. Independent directors also aid in the balancing of the interests of the shareholders, employees and creditors. This balancing role is particularly important in situations where conflicts arise between the interests of the executive directors and the shareholders, for example, in a management buyout scenario. The presence of independent directors serves in bringing about impartiality in the board as a whole. Such impartiality effectively means that considered advice would be provided and developed for the purposes of steering the company strategy as a whole by the board of directors. It is a fact that whilst independent impartial advice can also come from the professional advisers appointed by the board, including financial and legal advisers, however, the independent director’s role goes further. He is, for one, able to directly contribute and possibly shape the deliberations of the board.

The Board of Directors has two important duties to perform in addition to other duties. Commitment to perform these duties scrupulously, in letter and spirit, might pave way to good governance. These duties are:

- A director of a company shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.
- A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates.

In both these duties the basic requirement is transparency. If there is transparency in board decisions and company activities, stakeholders would come to know whether the directors are performing the above duties or not. Transparency of company activities depend mostly on the directors' attitudes. If they close the doors, out of fear of exposure to public, there would be no transparency. It is needless to say that more the transparency, better the governance. Companies take shelter under the Doctrine of constructive notice. According to this doctrine, it will be deemed that any person dealing with the company knows about the constitution of the company, its business and its limitations. As memorandum of association and articles of association are made available to any person on payment, it will be deemed that he had knowledge of the company. He is prohibited to plead at a later stage that he is not aware of it. Though this doctrine protects the interest of the company, it cannot be said that the company activities are transparent. When the directors purposefully keep certain activities hidden, for reasons best known to them, the stakeholders will be in dark. But Doctrine of Indoor Management is an exception to the rule of constructive notice. A person dealing with the company may not have knowledge of what is happening within the doors that are closed to him. Thus, this doctrine seeks to protect outsiders against the company. The transparency should extend beyond these two public documents namely memorandum of association and articles of association. If somebody is found hiding something from the stakeholders, then it is clear that the intention is dubious to defraud somebody.

Hence, it is relevant at this stage, to know what fraud is. "Fraud" in relation to affairs of a company or any corporate body, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss.

Conclusion

The directors are the backbone of the corporate bodies and hence should conduct themselves as real trustees of stakeholders' interests. SEBI which has wider reach to these corporate bodies must mould these directors in the correct perspective. It should organize training/awareness programs to the directors of the companies, as they do for investors. At present there is no training imparted on these company directors. There are many directors who are ignorant of provisions of Companies Act and the SEBI rules. Under these circumstances, it is very much necessary to provide training to these directors and to the woman and independent directors separately.

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Fostering Better Corporate Governance Culture: A Conversation with Nouzab Fareed*, Chief Executive Officer, Fijian Holdings Limited, Fiji

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Introduction

Fijian Holdings Limited (FHL) is a highly successful investment company and a major player in the corporate sector that is 100% owned by indigenous Fijians. Established in 1984, Fijian Holdings Limited fulfill the objectives of the leaders of the itaukei people of Fiji creating that meaningfully represented itaukei in the business sector and ensured their meaningful participation in the Fijian economy. FHL shareholders include provincial councils, the itaukei Land Trust Board, the itaukei Affairs Board, tikina and village groups, Itaukei co-operatives, individual itaukei's and family companies. Its investment gives the itaukei significant shareholdings in major companies thus helping to achieve the national objective of bringing the itaukei's fully into the mainstream of Fiji's economy.

Fijian Holdings has also broadened the scope of its training program wherein young itaukei's are prepared and groomed for business utilizing the resources of its associates and subsidiary companies.

With investments in various sectors such as tourism, finance, manufacturing, properties, building & construction, media and retailing, FHL is able to provide its shareholders with great returns through a diverse portfolio.

Fijian Holdings is a success story of how indigenous people in the Pacific can become successful in doing business.

Core Values and Purpose

FHL Group Core Values are:

- Integrity in our dealings
- Innovative in our solutions
- Progressive in or culture
- Play together to win
- Grow our people

FHL Group Core Purpose

"To accelerate the participation of itaukei in the commercial sector and in doing so, enhance their socio-economic standings"

Vision and Mission Statement

FHL Group Vision

"To be the most innovative investment Group in the South Pacific"

Mission Statement

The FHL Group is committed to the achievements of the mission statement as set out below:

a) Create sustainable and consistent value for our shareholders & stakeholders.

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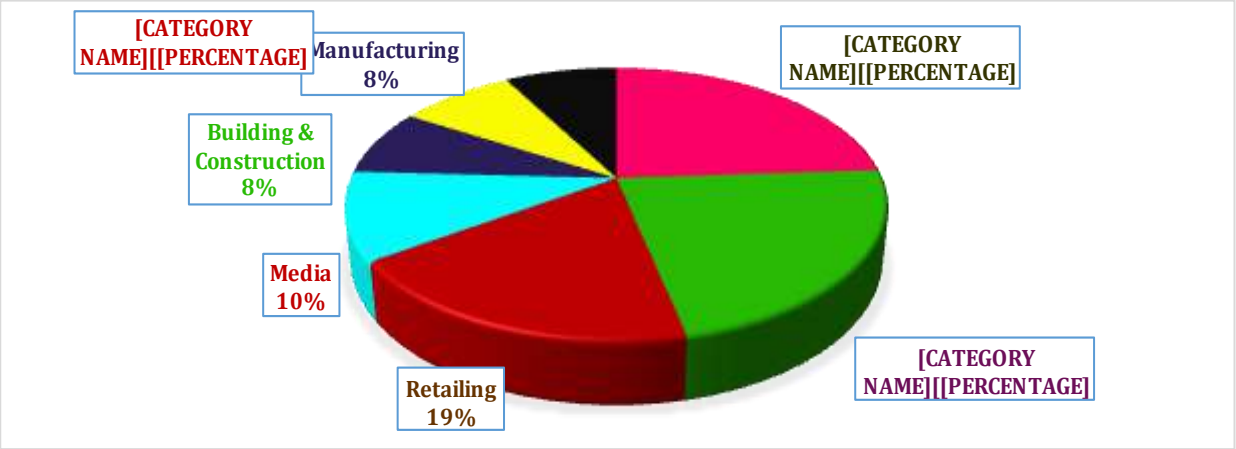
* ***Nouzab Fareed*** *is the Chief Executive Officer, Fijian Holdings Limited, Fiji. He can be reached at nouzab.fareed@fijianholdings.com.fj*

b) Actively promote the growth & development of our people to excel in the business and fulfil their purpose in life.
c) Maintain the highest standards of professional integrity, diligence, responsibility and care in carrying out all aspects of our business.
d) Strive to lead in all our chosen areas of business through creativity, innovation, passion and by putting our customers first at all times.

FHL Investment Portfolio by Sector



Fijian Holdings Limited (FHL) integrates corporate social responsibility (CSR) into all its business activities with the belief that success is measured by more than financial results. FHL believes that creating shareholder value through disclosing of fair transparent and appropriate information has been one of the factors contributing to the company success. FHL is committed to continue to do so to further strengthen and enhance this long-term relationship building process with shareholders, customers, government, the community and employees to ensure that our shareholders continuously make sound investment decision.

FHL is committed to strengthening the communities in which we operate and we continuously aim to make our country a better place to live and work. Our approach mainly involves advocating academic excellence in iTaukei schools, supporting non-profitable organization such as the Fiji Red Cross Society and other projects which are not limited to charitable work only.

Fijian Holdings Group is an employer to more than 1,500 permanent employees. Our employees are our most valuable asset. We actively support and reward their efforts to pursue their passions in the workplace, at home, and in the community. We know that each person's ideas, personal and professional well-being, and enthusiastic involvement are essential to the sustained success of the FHL Group.FHL also takes priority in investing in training and development of our staff. We are of the firm brief that upgrading essential skills and knowledge of staff produces gains in competitive recruitment, careers and productivity overall.

Fijian Holdings Limited supports the Reserve Bank of Fijis Corporate Governance Code for Capital Markets. We are committed to delivering best practice in corporate governance and transparency in reporting.

The FHL Group turned in another year of strong financial performance with consolidated profit after tax before for the FY2015 was $20.5m reflecting a 12% increase from the previous year. Consolidated revenue was recorded at $276m reflecting a 9% growth compared to the previous year.

Fijian Holdings Ltd as a holding company recorded a 38% growth in revenue leading to a 32% increase in after tax profits for the financial year. FHL has achieved an average annual revenue growth of more than 15% for past 4 years. Total investment portfolio at holding company level grew by 9% to reach $231m.

Excerpts of the Interview

K C Mishra (KCM): *Could you please tell us the changes, very specific, you have initiated that have been implemented for better governance of your organization?*

Nouzab Fareed (NF): We have created Sub-Committee, introduced Independent Director, 6 months external audit reporting & quarterly internal audit reporting and Compulsory Compliance Report of the month. This has improved the reliability, integrity, transparency, and quality of financial reports, the effectiveness of internal controls over financial reporting and related risk management assessment, the independence and objectivity of other gatekeepers such as legal counsel and financial analysts and shareholder monitoring and democracy.

We have all the FHL Directors through the AICD [Australian Institute of Company Directors] course and registered them as members so that frequent updates and knowledge is shared for good governance from the Director's level.

Staffs is encouraged to upgrade studies to the highest level so that it broadens knowledge of business, corporate governance and instils professionalism in them for maximum productivity. FHL pays for studies while bonding the staff.

KCM: *What have been the challenges for you in governance of your organization? How do you overcome the same?*

NF: There is lot of challenges especially in a business as big as ours; however, it needs to be managed at each level. Media has been the toughest challenge so far being public discussion for some time. The major challenge arises when there is a difference in opinion between the Board and the Management. Other challenges include Quality & Competency of Directors, Conflict of Interest, Lack of Expertise, Board Evaluation, Meeting Evaluation, Annual Appraisal of Directors, Directors Code of Conduct and Annual Directors Retreat without Management.

To overcome the above the management has to go back and redesign papers to influence the Board or just hold back and accept the Board's decision, set an appropriate "tone at the top," promoting personal integrity and professional accountability, reward high-quality and ethical performance, discipline poor performance and unethical behaviour and maintain the company's high reputation and stature in the industry and the business community.

KCM: *What do you think was your best business decision?*

NF: We have implemented investment policy with new criteria and horizon, e.g., we converted loss making investment through the sale of subsidiary and acquiring the purchaser.

However, there is no best decision. All decisions come with its own pros and cons and the decision made is the most efficient and effective one at that point in time. Sometime the decision made at a particular time can be challenged in the future depending on the situation and scenario that might have changed.
We learn lessons from them and try to improve each time we get the opportunity to do so.

KCM: *How does your company handle the departure of senior executives?*

NF: There is succession planning for key risk position and this is followed across the group to avoid any downtime in business. In addition, when key staff is on leave we rotate the acting position. Policy of pushing competent in the deep ocean where a star employee given industry is pushed into unknown territory, e.g. Head of Human Resources promoted as the General Manager of Logistic Company and Head of Investment promoted as the CEO of Media Company.

Through the succession planning process, we recruit superior employees, develop their knowledge, skills, and abilities, and prepare them for advancement or promotion into ever more challenging roles. As our

organization expands, loses key employees, provides promotional opportunities, and increases sales, our succession planning guarantees that we have employees on hand ready and waiting to fill new roles.

Succession planning is a critical component for Fijian Holdings Limited and Group. It is typically done in different stages:

- Identification of key positions and when vacancies might crop up.
- Determining the skills and performance standards for these positions.
- Identifying potential candidates for development.
- Developing and coaching the identified candidates.

It is identifying and preparing the right people for the right jobs. Though applicable at all levels, it is at the highest level that the most formidable challenge exists. For example in FHL Group:

General Manager/	CEO, GCEO
Manager Finance/Group Manager Finance	GCFO
Accountant/Manager Finance	Head of Production /Head of Operation
Branch Manager	CEO/GM
Accountant	Manager Finance

In addition, FHL has Graduate Training program in place together with multitasking.

KCM: *Corporate Governance is about promoting corporate fairness, transparency and accountability; please elaborate.*

NF: Corporate Governance is about doing right thing at the right manner in the best interest of the shareholders; transparency in decision making and alignment of strategy towards long term objectives of the company.

This is to create a balance of power-sharing among shareholders, Directors, and Management to enhance shareholder value and protect the interests of other stakeholders.

KCM: *When it comes to scaling up of operations what role you play as the CEO?*

NF: CEO not only plans and needs to act as well. Leaders should lead and do since corporate world revolves around action role modelling.

As the CEO, I play the lead role and provide guidance on whichever task that needs up scaling. I only provide guidance; the work has to be done by the staff. I get frequent updates on the progress; any change that is needed is advised accordingly.

KCM: *Do you select the present employees for overseas assignments or you recruit new employees for the same?*

NF: It's always important to have a bit of existing culture in the new investment as such present employee will be sent to overseas assignments who may recruit locals and align them towards organizations culture.

When you promote from within or fill new positions with internal candidates, there is a positive effect on staff morale. Employees feel that the company rewards hard work by offering an opportunity to take on new responsibilities or move to a department in which an employee has an interest. Internal recruiting also can inspire employees to perform at peak productivity. When the reward is an opportunity to move into a better position, the staff will work hard to maintain a high level of productivity, it's cost effective and competition where company can offer incentive for employees to perform well, but it also can create an atmosphere of competition that can be counter productive.

KCM: *What kind of contributions do you expect from your staff members and what role do they play in the matters relating to corporate governance?*

NF: All employees of the company need to maintain transparency in decision making adopt ethical behaviour, upholding the values and objectives of the organization and act with integrity avoiding or declaring personal conflicts of interest.

KCM: *Do you think Corporate Social Responsibility plays a vital role in the corporate governance? How is it being managed in your company?*

NF: Yes, CSR plays a vital role in the corporate governance. CSR is a balancing act where business must balance economic performance, ethical performance and social performance and these balances must be achieved among various stakeholders interest.

FHL integrates CSR into all its business activities with the belief that success is measured by more than financial results. It also measured by customer satisfaction and employee engagement, strong governance practices and support for shareholders and communities the company serves such as advocating academic excellence in Itaukei Schools, supporting non-profitable organizations such as Red Cross Society and other projects which are not limited to charitable work only.

Through CSR, company becomes more visible and accountable of the public as such manufacturing company should promote health and safety in the company and in public domains CSR.

KCM: *What sort of management style do you think your company should imbibe?*

NF: The creative industry will differ from cement manufacturing. As a group of company we do core set of principle or model and the rest is customized towards industry.

The most appropriate style will depend on the people (their experience, values, and motives) and the situation (stable/changing, new/seasonal team, short/long term focus); the key to being an effective leader is to have a broad range of styles and to use them appropriately.

The participative (democratic) style has the primary objective of building commitment and consensus among employees. We encourage employee input in decision making and reward them for teamwork.

KCM: *What is the ideal corporate governance system as per the Government regulations in your country?*

NF: Conflict of interest: where Board members, partners, owners and key executives should sign conflict-of-interest disclosure statements as part of any company's corporate governance. In addition, they should agree to abide by conflict-of-interest policies, such as disclosing outside business relationships with vendors, suppliers, clients and customers and personal or family relationships to these parties or job applicants.

Build a strong, qualified Board of Directors and evaluate performance; Boards should be comprised of Directors who are knowledgeable and have expertise relevant to the business and are qualified and competent, and have strong ethics and integrity, diverse background and skill sets, and sufficient time to commit to their duties.

These Directors can then set strategies and direct management on implementation of these strategies. Monitoring can be done on a bi-monthly basis and reports submitted to see progress of the companies as per the timeline of each strategy.

In addition, there should be a minimum of 1/3 Independent Directors in the Board.

KCM: *What are the compliance and ethics related challenges you face most frequently in your current role towards better corporate governance?*

NF: Due to the country been small conflict of interest cannot be eliminated but it can be managed.

KCM: *How do you treat someone who violates the company's code of conduct and compliance? How do you take it when it is done by a staff of the company whose contributions are praiseworthy?*

NF: All staff is treated equally regardless of the contribution. If the employee or employer breaches the law, it is an offence, as such requires punishment.

Employers of all stripes want their employees to behave according to their rules, and these rules are commonly referred to as the "Code of Conduct." This code determines what is and is not acceptable behaviour for an employee, and it may include behaviour that occurs outside of the confines of the organization's walls. Breaking the code of conduct guarantees a response by the organization -- and the consequences may be severe.

Employees who commit severe violations of the Code of Conduct may find their employment terminated even if it's a first offense. Theft or violence may result in immediate termination; it may also involve the police and criminal charges if the violation is serious enough. Some companies may also have a policy about employees who commit a severe infraction outside the workplace. Top level executives, especially fiduciaries, may find termination is the result of breaking the law.

KCM: *What advice would you give to the next generation of entrepreneurs?*

NF: Take risk but do not put all investment into one sector. Without any attempt, it's not possible to be successful, therefore, action is required, Focus, Focus & Focus and know what you do. Do what you know.

KCM: *What does money mean to you? What drives you then if not money?*

NF: Money is just a medium of exchange. People who invest in the company need return on investment; therefore, most businesses are money driven or have profit motive. This does not mean a CEO always focuses on money. In my case profit motive exist but we cannot be greedy at all times; challenges and success of venture drives me.

KCM: *Please give the best Corporate Governance Model of yours.*

NF: Be honest, ethical, consider human side and do the right. At all times ensure shareholders value is sustain Good Corporate Governance structure comprise of a good balance of Directors in terms of skills and experience who understand the operation of the business and are able to make informed decision with the corporate matters of the organizations. There has to be one Executive Director or CEO who is the link between the Board and the Management in disseminating Board decision to the Management or the stakeholders and monitoring the performance of the organization as a whole and reporting back to the Directors on the overall performance of the company.

Good governance comes with actions of responsibility, accountability, fairness and transparency.

Conclusion

One of the key issues here is how to deal with the realities of corporate culture and the management environment, and ensure that management is emphasizing on shareholder value. It is an affirm belief that a corporation is an organic living structure which is formed by its employees, and where each member should be motivated and energetic in their work. If the company fails to be an aggregation of employees who are full of aspirations and vitality, then in the long term it will never be able to maximize its corporate value/ culture. It might sound a bit too idealistic, but it is required that employees and shareholders share the common dream, and management should always endeavour to help everyone realize this.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About the Conference

Of the many explanations relating to the catastrophic global financial crisis of 2008 some view it as a crisis confined to the banking and securities industry while others see it to be more fundamental than that. The financial crisis was a reflection of a much deeper crisis within traditional economics and finance which can also be regarded as a crisis of Western Institutional design-financial architectures based upon flawed principles of lending. A growing number of influential thinkers see the crisis as a series of institutional failures in how the financial services industry is governed and have examined in some depth the structure and regulation of financial services, questions of governance, issues of ethics and financial innovation. These individual subjects are, however, interrelated and some can complement others but they have not been examined together as a total system; nor have alternative approaches to institutional design founded on a set of alternative ethical principles. The big unanswered questions are what mix of regulation, governance, innovation and ethics will fix the financial system and what insights can non-western thinking contribute to the discussion?

The present Conference is expected to provide a forum for discussion and critical analysis of the major challenges in finance and banking sector and networking amongst academics, policy-makers, research students, practitioners and Post Graduate students in the subject. The conference organizers would like to invite the submission of papers relating to all aspects of banking and finance; both theoretical and empirical papers are encouraged in areas which include, but are not limited to:

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Selection of papers for presentation will be based on abstracts. An abstract must include a clear indication of

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Length of Abstract	: The abstract should not exceed 250 words.
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Title Page	: The abstract should be accompanied by a separate title page. The title page should include the title of the paper, the authors along with their institutional affiliation and contact details.
Keywords	: The authors are requested to provide at least four keywords.

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Last date for submission of abstract	: May 10, 2016
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Registration closes	: August 31, 2016
Conference dates	: September 7-8, 2016

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