

Governance and Leadership



In a developing economy, Indian corporate leadership faces multiple challenges but if these challenges can be overcome with clear conscience and efficient governance, the fruits of the labour would be quite commensurate and rewarding. When the corporate governance norm reforms are at crossroads in India, the blend of the governance norms with ethics and leadership can transcend the Indian companies beyond conventional anecdotal wisdom to emerge strong in the globalised competitive environment. The Chartered Accountants, perceived to be the elite class of the society, need to play a larger role in shaping up the economy by ensuring transparency and accountability. Being adequately bestowed with the core competency and domain expertise in the audit and assurance as well as finance field, we should aspire to widen our horizon of operation and play a vital role in this regard. They can ably play the role of “Partner in Nation building” if they can contribute to build a credible economy in our incredible India. Read on ...

Introduction

Corporate Leadership has a fiduciary relationship to the stakeholders and are ultimately responsible for the actions and results of the entity. Unless the leadership ensures that governance is administered with conscious adherence to ethical values, the faith reposed would be eroded in the minds of the stakeholders and flow of investments would dry down. Focus should be on nurturing and securing intangibles such goodwill, brand image, quality in deliverables, customer satisfaction, human resource development, so on and so forth. If this is ensured, then the tangibles like asset base, top line, earnings per share and market capitalisation would all follow.

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in India, the blend of the governance norms with ethics and leadership can transcend the Indian companies beyond conventional anecdotal wisdom to emerge strong in the globalised competitive environment.

Governance

Governance is all about utilising the scarce economic resources in an efficient manner so as to enhance the value of investment for the stakeholders of the organisation. Accountability with transparency is an integral part of the governance norms. Indian corporate governance norms have evolved over the last two decades, based on the recommendations of several committees constituted from time to time. Some of the reforms like establishing the Securities and Exchange Board of India and the National Stock Exchange have significantly improved the governance standards prevalent in India.

Without good governance and ethically effective leadership, it would be impossible to inspire confidence in the minds of the stakeholders which in turn would attract investment and sustain progressive growth. The economic prosperity and sustenance of an organisation depends upon efficiency, innovation, quality and adherence to the principles of good governance backed by ethical leadership.

Tracing the Origin

The Confederation of Indian Industry (CII) came up with the first voluntary code of corporate governance in 1998. Subsequently, SEBI set up a committee under Kumar Mangalam Birla in 1999 to promote and raise the standards of good corporate governance. In 2000, SEBI adopted the key recommendations of the Birla committee which became part of clause 49 of the listing agreement of the stock exchanges. Later, in 2002, the Naresh Chandra Committee set up by the Department of Company Affairs made recommendations in terms of financial and non-financial disclosures and independent oversight mechanism. In 2003, SEBI constituted a committee under the chairmanship of Mr. N.R. Narayana Murthy with a view to review the clause 49 and suggest measures to improve the Corporate Governance standards. Subsequently under the chairmanship of Dr. J.J. Irani the Ministry of Corporate Affairs (MCA) constituted an expert committee on Company Law to offer recommendations on the new Companies Bill.

Leadership

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style and the image of the company are dependent upon the ethics of the directors and their competence. When the corporate management understands the expectations of the Board of Directors for a thorough and honest assessment of the financial controls by the statutory auditors and if there is a robust internal audit mechanism, the authenticity of the financial figures enhances and the scope for manipulation reduces. A strong and unencumbered audit committee can review the work of the auditors and ensure that there is absolute transparency in the financial systems, procedures and controls thereby ensuring credible disclosures to the stakeholders in general and the regulators in particular.

Ethical Leadership can ensure that the desired governance norms are actually internalised and practised than treating it as a mere check the box exercise to be observed more in letter than in spirit. Moving from a regime of voluntary guidelines to mandatory law certainly helps in a democratic set up to infuse the required degree of discipline. Indian governance norms have shifted the scenario from least disclosure to plethora of disclosures. When SOX was introduced in US in 2002, the cost of compliance shot up phenomenally and many companies opted for delisting. Subsequently, there have been relaxation measures adopted to strike a balance between the compliance requirement and the cost of such compliance. Similarly, the new reforms proposed as part of the Companies Bill (passed by Lok Sabha and pending before Rajya Sabha) should not bring in more complexity thereby enhancing cost of compliance than what is prudent and affordable. The perceived solution should not be worse than the identified problem.

Satyam Episode

Post the Satyam episode, lot of initiatives have been taken by the regulators, Ministry of Corporate Affairs (MCA) and the ICAI to study the existing norms of

governance and ethics within the domain of their respective jurisdiction. Confederation of Indian Industry set up a task force to make recommendations to strike a balance between over regulation and promotion of strong corporate governance norms through voluntary reforms. The NASSCOM, under the chairmanship of Mr. N.R. Narayana Murthy, constituted the corporate governance and ethics committee which issued its recommendations during 2010. In pursuance of recommendation by such bodies, the Ministry of Corporate Affairs has released a set of voluntary guidelines addressing Myriad Corporate Governance matters.

Enforcement

The glaring deficiency in the Indian regulatory framework is the inefficient enforcement mechanism. It is marred by complacency coupled with procedural bottlenecks and clouded by corruption. Undue delays in investigation coupled with inordinate time taken in the judicial process before a verdict is delivered have put the image of India in poor light to the external world. The First Prime Minister of the country Pandit Nehru remarked that a law is not as good as it is enacted but it is only as good as it is implemented. A good law badly implemented can be disastrous. The effort that goes into the policy making or bringing out reforms, unfortunately, is never channelised to revamp the executive functioning for effective implementation thereof and prune judicial mechanism in the country to ensure expeditious disposal of cases. Such an endeavour, if successfully undertaken, can do a lot good for the country and auger well for the global investment community eyeing India as one of the attractive destinations for their investments.

Mr. Madoff, the promotor of Madoff company in the US, was caught in the financial fraud of the

magnitude of \$ 65 billion. The fraud came to light in December 2008 due to which he was prosecuted. The trial was conducted expeditiously and punishment pronounced on 29th June, 2009 imposing 150 years of imprisonment. Considering the fact that Mr. Madoff was 71 by then, one might wonder on the purpose of such a severe punishment which cannot be fully served by the convict. But such a stringent indictment sends strong signals that no one can think that they can do any such malpractice and get away without being punished and those with fraudulent intentions get to know on what is in store for them. If only the Indian system gears up to absorb these aspects, there would be dynamism and positive approach all around and tremendous scope for economic growth at a pace which could justify India's true potential.

Legislating for the Exception

Yet another drawback in the Indian legal system is the tendency to make changes based on isolated events or exceptional occurrences. It makes lot of sense, no doubt, to pick up lessons in every scam or fraud so as to introspect on the scope for improvement to tie up loose ends but at the same time there should not be a knee jerk reaction to bring about drastic changes. Late Shri Nani Palkhivala, once remarked that the cause of concern about efficacy of the existing law could be a mere aberration warranting just the ironing out of the creases without any need for changing the fabric itself. On the surfacing of any fraud or scam, one may review the existing law and rules to study the scope for refinement or for fine tuning to prevent recurrence but the thought process should not be swayed to take extreme positions which might bring in more complexity and make the lives of those who honestly comply with the laws miserable.

Good people do not require law to tell them what to do and what not to do. On the other hand, bad people would always find ways and means to circumvent the law irrespective of its robustness. If the act of changing the law or bringing in new provision by itself can prevent frauds from being committed, then corporate financial frauds must have stopped in the US after the introduction of SOX. On the contrary, frauds continued and were found to be of bigger magnitude. As Mahatma Gandhi said there is enough for everyone's need but not for anyone's greed. When human desires breach sanity levels and values are compromised, frauds would occur. Although morality cannot be legislated, conduct can be regulated and consequently the need for good governance norms is felt. Therefore, effective implementation of law

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supported by robust investigation, speedy trial and stringent punishment would bring down offences and rebuilt faith in the minds of the stakeholders. Again, it should be system driven and not individual driven for sustenance in the long run.

Triple Bottom line Reporting

In the developed economies, the focus is shifting from a mere financial reporting to “Financial, Social and Environmental reporting” which is recognised as Triple Bottom-line Reporting (TBR). The management, auditors and stakeholders need to be educated about this evolving concept and gear up to play their respective roles. This is not just about corporate social responsibility (CSR). It is far beyond CSR and CSR is a small component of TBR.

Measuring financial results are comparatively easier and so is the function of reporting thereon. But, measuring contribution to social and environmental aspects of the society is challenging. The consciousness to preserve the resources of the society and protect the environment as part of good governance norms is bound to discipline the way the businesses are carried on by the corporate citizens. The present generation cannot be allowed to exhaust or contaminate the natural resources to become prosperous at the cost of making the life of the future generation vulnerable to the hazards of non-preservation of natural resources and environment. This awareness would also lead to innovation in terms of re-cycling of products and ways and means of optimising the usage of resources. Instead of “cradle to grave” approach, it would be “cradle to cradle” approach in the production and consumption cycle of many products. When TBR emerges in India, the governance norms will undergo a paradigm shift. We need to gear up now to kindle the awakening and empower the entrepreneurs and professionals to meet the expectations even before they emerge.

Nation's Perspective

What is discussed hereinabove for a corporate entity would equally apply to any nation as well. India is a nation of immense potential and a promising economic centre in the emerging global order. It is one of the fast growing economies in the world. After independence, the journey during the first four decades was turbulent dominated by poverty and unemployment. However, since 1991, policy reforms have led to liberalisation, globalisation and privatisation, providing a positive outlook to India in the comity of nations. We have excellent natural resources and dynamic human resources. At this critical juncture, India needs tall

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and visionary leadership with impeccable integrity, unblemished patriotism and unquestionable wisdom.

The dream of India shaping up as a strong economic power can be translated into reality if we can make effective use of the natural and economic resources and nurture and groom the human capital with a visionary leadership that provides good governance. As on date, we are not able to reap the full potential due to gross neglect on the education, health, agriculture and infrastructure segments of the economy in view of bottlenecks encountered in bringing the best out of the entrepreneurial and leadership talent in this country. While the illiterate masses of the country appear to be blissfully ignorant of all these, the intellectual segment of the population is ironically indifferent.

Conclusion

One generation of India gave theosophy to humanity; another generation built monuments; yet another brought in agricultural revolution; subsequent generation navigated the industrial revolution and the last one revitalised the economy with the service sector revolution. What should be the present generation's contribution to India is a thought worth pondering about. The response, undoubtedly, is that we should be instrumental in ensuring “probity in public life”.

We, the Chartered Accountants, perceived to be the elite class of the society, need to play a larger role in shaping up the economy by ensuring transparency and accountability. Being adequately bestowed with the core competency and domain expertise in the audit and assurance as well as finance field, we should aspire to widen our horizon of operation and play a vital role in this regard. We can ably play the role as “Partner in Nation building” if we can contribute to build a credible economy in our incredible India. May the leadership recognise the need for impeccable governance and bring in a refreshing change all around and usher in an era that we aspire for India. ■