

CORPORATE EXCELLENCE AS A PRODUCT OF GOOD CORPORATE GOVERNANCE : ROLE OF PROFESSIONALS

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The emerging discipline of Corporate Governance is gaining its grounds. The crux of Corporate Governance is the harmony amongst various constituents of a Company. The fruit of Corporate Excellence can be harvested only by proper tapping and irrigating good corporate governance practices.

Nobody talked of corporate governance a decade back. World over, several committees and task forces have strongly advocated for corporate governance. Some of the corporate governance practices would include independent oversight of management and accounts, fair and equitable treatment for all shareholders, fair voting processes, prohibition of insider trading and abusive self dealing, open and efficient markets, timely and effective disclosure of financial and operating results, foreseeable risk factors and matters related to corporate governance and regulation and legal recourse if principles of fair dealing are violated. The management must have freedom to drive the enterprise forward. The board of directors is accountable to shareholders and the management is accountable to Board. The empowerment, combined with accountability provides an impetus to performance and improves effectiveness, thereby enhancing shareholder value leading to excellence.

BACKDROP

Corporate Governance has been advocated by number of committees, first one bring Sir Adrian Cadbury Committee (1992) followed by King's Committee, Greanbury Committee, calPERS of California, Hample Committee, Blue Ribbon Committee, Higgs Report, Organization of Economic Cooperation & Development (OECD) principles and Common wealth CACG principles. In India, it has been examined by Department of Company Affairs (Naresh Chandra Committee), CII, FICCI, SEBI (Kumar Manglam Committee and N.R.Narayana Murthy Committee)

and professional institutes.

World over, Governments and regulators have in last few years expedited the process of legal reforms to ensure that a conducive efficient and effective governance mechanism is put in place to allow constituents of reforms process to withstand the convulsions unleashed by the globalization process, in terms of growing competition and increasing incidence of corporate sickness and insolvency.

Corporate governance and Professionals are inseparable and one can not expect to practice the good practices without involvement of a finance professional. The paper makes an attempt to understand the concept of corporate governance and role of Professionals including company secretaries in practicing good corporate governance. Both in India and abroad, a significant work has been done in this area and the core recommendations of various codes and committees relating to this aspect of governance find place.

CONCEPT OF CORPORATE GOVERNANCE

Increasing strategic importance of professional management probably constitute the most important aspect of changing profile of corporate governance. Growing importance of professions, which never figured predominantly in the ideological thinking in the nineteenth century has dominated public discussions in twentieth century and will continue to dominate in times to come. Given the global challenges, only choice left with business and economic enterprises is to follow the corporate governance practices – the path for living, working, surviving, succeeding and excelling in the future.

Corporate governance is a process or a set of systems and processes to ensure that company is managed to

* FCA, FCS, ACIS (UK), CFC (Canada)

suit the best interest of all stakeholders. The stakeholders may be internal (promoters, members, workmen and executives) and external (shareholders, customers, lenders, dealers, vendors, bankers, community, government and regulators etc.). It is an interplay between companies, shareholders creditors, capital markets, financial sectors, institutions and law. Corporate governance is concerned with the establishment of a system whereby the directors are entrusted with responsibilities and duties in relation to the directions of corporate affairs. Maximization of shareholder's wealth is the corner stone of good governance.

The concept of corporate governance hinges on total transparency, integrity and accountability of the management, which includes non-executive directors. The importance of corporate governance lies in its contribution both to business prosperity and to accountability.

Corporate governance is about the nitty-girtties of how a company fulfills its obligations to investors and other stakeholders. It is about commitment to values and ethical business conduct and a high degree of transparency.

Corporate Governance is not merely about enacting legislation. It is about establishing a climate of trust and confidence. Ethical business behaviour and fairness cannot be legislated. Strengthening corporate governance is fundamentally a political, social and cultural process in which government and the private sector have to synergies.

Corporate Governance extends beyond corporate laws. Its fundamental objective is not mere fulfillment of requirements of law ensuring commitment of the board to transparency in managing the company, modernizing long-term shareholder value.

Today, corporations are not bound by geography. They function in different countries and under different legal frameworks. Some of them are even bigger, in terms of their financial outlay, compared to many governments. Their power is enormous. While corporations require some degree of freedom to perform, there also is a need for some level of checks. This, perhaps, is the starting point for the emergence of role of Professionals in corporate governance.

With the changes occurring as a result of globalization of corporate activities, advancement of information technology, capital market reforms and awareness for good governance, it is inevitable for Professionals to

update their working skills and adapt strategies within the legal framework of global economic competitive environment.

CORPORATE GOVERNANCE IN INDIAN ENVIRONMENT

Qualitative improvement in corporate governance in India based on a code of good corporate governance, ethical standards and meaningful disclosure of information to shareholders hold the key of corporate success and eventually professional success. This is necessary in the context of changing profile of corporate ownership, with the increasing flow of foreign investors, preferential allotment of shares to promoters of companies and new role of mutual funds and FIs. The e-governance will become a necessity in digital economy and all of us will have to be a part of it.

For Corporate Governance to lead to Corporate Excellence, it must be structured according to the principles of the Vedas, aligned with natural law. In the Indian context, corporate governance can be drawn from the following age-old '*mulyas*' (values):

- (a) *Lok Sangraham*, public good which means greatest possible good of all;
- (b) *Dhanam*, creation of wealth through competence (kaushalam) and productivity (utpadakta);
- (c) *Swatantrata*, autonomy and independence, in business decisions;
- (d) *Vishwastata*, trusteeship, implying that management is a trustee of stake-holder;
- (e) *Dharm yudh*, fair battle, providing a level playing field to all and ensuring fair competition.
- (f) *Vividhata*, variety or innovation ensuring flexibility in approach.

Corporate governance means being true to own belief and it constantly teaches the value of understanding the stakeholders. It is important to be genuine in purpose, straight forward in execution and learn not to repeat mistakes.

Managing Corporate governance is a complicated task, and complacency is the worst enemy of excellence. The challenge is to institutionalize knowledge. Corporate governance brings about equilibrium between the expectations of owners, employees, customers and all other stakeholders. It builds enduring bonds with shareholders, employees, investors, depositors, borrowers, suppliers, customers and business constituents.

Qualitative improvement in the corporate governance in our country based on a code of good corporate practices and meaningful disclosure of information to shareholders hold the key to corporate success. This is necessary in the context of changing profile of corporate ownership, with the increasing flow of foreign investment, preferential allotment of shares to the promoters of companies and the new role being given to mutual funds. This means better governance and management of corporate bodies, prompt compliance of legal and financial obligations and adherence to ecological and environmental standards. The benefit of such a governance must accrue to the investors, customers, lenders of finance and to the society at large.

FACTORS INFLUENCING QUALITY OF GOVERNANCE

Quality of governance is influenced by integrity of the management, ability of the board, adequacy of the processes, commitment level of individual board members, quality of corporate reporting and participation of stakeholders in the management.

Quality of governance depends on the following factors :

- (i) *Integrity of Management* : A Board of directors with a low level of integrity is tempted to misuse the trust reposed by shareholders and other stakeholders to take decisions that benefit a few at the cost of others.
- (ii) *Ability of the Board* : The collective ability, in terms of knowledge and skill, determines the effectiveness of the Board.
- (iii) *Adequacy of the process*: Board of Directors cannot effectively supervise the executive management if the process fails to provide sufficient and timely information to the Board, necessary for reviewing plans and the performance of the enterprise.
- (iv) *Commitment level of individual board members* : The quality of a board depends on the commitment of individual members to tasks which they are expected to perform as board members.
- (v) *Financial Reporting* : Accuracy and transparency in financial statements and disclosure, internal controls and independence of professionals.
- (vi) *Participation of stakeholders in the management* : The level of participation of stakeholders determines the number of new ideas being generated in optimum utilization of resources and for improving the administrative structure and the process.

(vii) *Quality of Corporate Reporting* : The quality of corporate reporting depends on the transparency and timeliness of corporate communication with shareholders. This helps the shareholders in making economic decisions and in correctly evaluating the management in its stewardship function.

Best practices of corporate governance will broadly include – a definition of practices that define good governance; a code of best practices covering the constitution of the Board, its various committees, defining their goals and responsibilities, exploring preferred internal systems and disclosure requirements.

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OBJECTIVES OF GOOD GOVERNANCE

It is felt that objective of corporate governance i.e. the overall objective of wealth generation and competitiveness for the benefit of all can best be achieved through the twin components of:

- An “inclusive” approach to director’s duties which requires directors to have regard to all the relationship on which the company depends and to the long, as well as the short-term implications of their actions, with a view to achieving company success for the benefit of shareholders as a whole; and
- Wider public accountability : This is to be achieved principally through improved company reporting, which for public and very large private companies will require the publication of a board operating and financial review which explains the company’s performance, strategy and relationships (e.g., with employees, customers and suppliers as well as the wider community).

Good Corporate governance practices are important to encourage investment in countries and companies in a global economy where gaining access to capital

market is increasingly seen as very much in each nation's self interest.

While laws, rules and regulations are necessary in any society, to protect the interests of shareholders and other stakeholders, in the ultimate analysis, corporate governance is about commitment to values. It is making a distinction between personal and corporate funds in the management of a company; it is about acceptance by the management of the inalienable rights of shareholders as true owners and of their role as trustees on behalf of the shareholders.

ROLE OF PROFESSIONALS

Although the role of Professionals in corporate governance is generally understood in the capacity as an auditor, according to me, Professionals can play a significant role in practicing good corporate governance, as compared to an ordinary person in his different capacities like –

- (i) as shareholder or stakeholder of a company
- (ii) as an employee or part of management team of the company
- (iii) as a member of the board of directors or any of its sub-committees
- (iv) as a promoter
- (v) as an auditor – internal or external

He can play a crucial role of a crusader in achieving corporate governance in these different capacities. Every where in the world and especially in developing countries, people are looking at corporate governance more seriously and the Professionals have to play an important role in the whole process of governance by helping to balance business practices and objectives of the board whose primary concern should be to run a company in a profitable manner and at the same time as good law abiding entities. As a corporate guardian, it is the Professionals who will have to ensure achieving corporate governance.

Role of Professionals as Auditors :

Professional's role in the achievement of corporate governance should be such which facilitates efficient operations through –

- (i) audit of agency costs inherent in a division between the provision of capital and the stewardship of the undertaking such capital is invested in;

- (ii) seeking to ensure a proper standard of performance and accountability for the benefit of all stakeholders.

It would also be obligatory for the professionals to understand the importance of transparency and public accountability of the company as a means of ensuring that the stakeholders could hold him also account for the external impact of non-disclosures in the statements or non-transparent statements. This principle of disclosure is of fundamental nature, which arises out of freedom to choose and disclose.

Transparency can reinforce sound corporate governance. Transparency should lead to the efficient operation of market forces and the exercise of beneficial economic choices without the need for a legal or regulatory intervention with its distorting and costly effects.

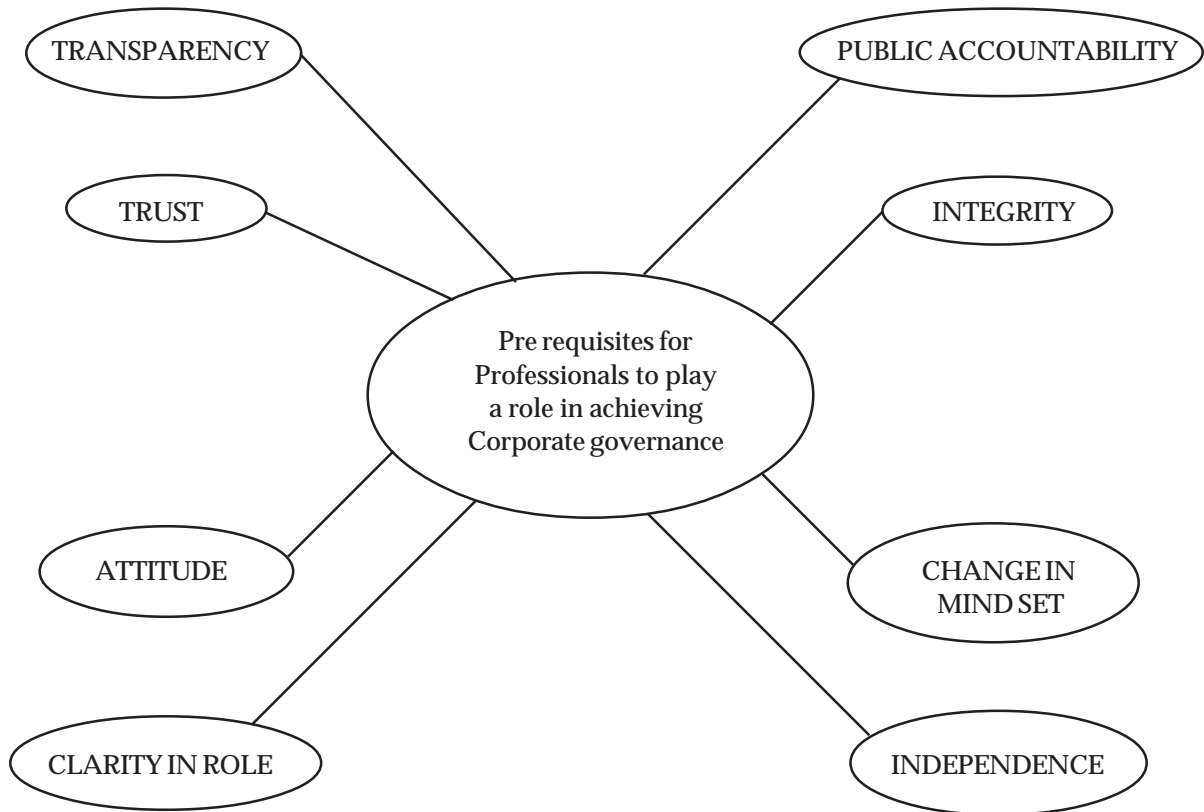
The system of accounting and reporting is an integrated one. It follows that company's accounting and reporting should satisfy a wide range of needs including those of -

1. shareholders in exercising governance functions (Voice)
2. Creditors who need to have a clear picture of the position and prospects of their debtors (Liquidity)
3. Investors, both actual and potential, who wish to know whether to acquire, retain or sell, a stake in business (Exit and entry)
4. Other stakeholders (including employees and the public) having variety of relationship with the business (Accountability).

The role of the professionals would be to –

- Audit the historic financial information in annual report
- Review for consistency the surroundings to the annual accounts
- Reach a view whether a statements have been 'properly prepared' and are forward looking statements (not necessarily forecasts) and policies.

The professionals have a duty of care to existing shareholders of the company and also to any other person and purpose to whom and for which they have or are deemed to have expressly or implicitly agreed to owe such duty. This is desirable when we talk of corporate governance.



CORPORATE GOVERNANCE & EXCELLENCE

Achieving corporate and professional excellence is what we all aim at in our life. This is what will make us different from others and this is what we can achieve as ultimate. Business must be lead by example. That example is set by good governance practices.

“Corporate Governance” is not just another fashionable word but it is a more important concept of lasting value. It is an important concept and a means to an end-that of achieving corporate excellence. Excellence and Good Governance are so intertwined that achieving one without the other or at the cost of there is simply unimaginable.

Corporate Governance is the most appropriate tool for achieving Corporate Excellence. Companies should identify, assess and establish core values, core capability and core purpose to achieve Corporate Excellence.

Since today’s technology is yesterday’s magic, it is imperative that all corporates be innovative, creative and responsible citizens to bring excellence in their vision, mission and action. Good Corporate Governance is a source of competitive advantage and a critical input for achieving excellence in all

productive, economic and social pursuits.

Tomorrow does not belong to mere machinery, computers, software or internet. At best they are mere tools. If there is one single element that has the power to harness these, it is the prudent principles of good governance. We must focus on end result, own it and be accountable for our actions and their results. A company’s most valuable asset is goodwill it enjoys with its stakeholders, which can only be earned by actions, not demanded.

Good governance is a necessary condition for achieving excellence, not a sufficient one. Good governance is a source of competitive advantage and critical to economic progress. The essence of Corporate Governance is transparency, accountability, investor protections, better compliance with statutory laws and regulations, value creation for shareholders (as also for other stakeholders) and societal value.

Milton Fredman’s famous formulation “The business of business is business” has outlived its utility and relevance, and societal responsibilities of the corporates have become the buzzword in the international business arena. It is being increasingly recognized that being a responsible corporate citizen is important in ensuring long-term success of a

company. India's corporate sector has a new tryst with destiny. To face the formidable challenges of the future, the corporate sector has to be empowered with a new vision, dynamic mission and a new mandate to follow best practices of governance.

Corporate governance is the one and only route to achieve corporate excellence. Every corporate has become alive to the reality of having to stay lean and fit in order to deliver its best strictly in consonance with the principles of corporate governance. Any attempt on the part of corporates to circumvent this reality and resort to shortcuts to achieve excellence will only result in short-circuiting their ill-conceived efforts.

Entrepreneurship is a key element incorporate culture and growth, and is an important tool for achieving corporate excellence. Entrepreneurs are an asset to any organization; they lead to geometric growth of an organization and help achieve Corporate Excellence.

What does corporate excellence or success really mean would depend on one's vision. Excellence has been defined in many different ways. Some commonly accepted measures of excellence in the modern economic model of the firm include

- Profitability
- Satisfied stakeholders, such as, customers, employees and shareholders.
- Revenue and profit growth
- Growth in market share
- Growth in market value (Stock Market Capitalisation)

If these are the measures of excellence, what are the pre-requisites of achieving the? Peter Drucker in one of his works "In Search of Excellence" has studied 10 large American corporations with demonstrated variables which that can explain corporate excellence. These are :

- (1) A bias for action
- (2) Closeness to the consumer
- (3) Autonomy & entrepreneurship
- (4) Productivity through people
- (5) Hands on, value driven
- (6) Sticking to the knitting
- (7) Simple form, lean staff
- (8) Simultaneous loose – tight properties.

One can see importance being given to "Corporate Governance" issues, as we understand them today.

Look at the importance being given to satisfied stakeholders, closeness to customers, productivity through people and value driven organizations.

As we move towards the knowledge society and witness center of power shifting away from owners/ shareholders and towards the consumers and the knowledge worker, we will see the process of democratization of enterprises. Thus, links between excellence and governance are likely to be much stronger in the future.

CONCLUSION

As rightly observed by *Martin Luther King Jr.*: "We shall have to repent in this generation, not so much for the evil deeds of the wicked people but for the appalling silence of the good people" – The message is loud and clear. The corporates can ill afford to be silent, overlooking and laid-back. Doing nothing is not an option. They have to proactively formulate a code and stick to it to survive as well as to excel.

The corporate sector, thus, has a *new tryst with destiny*. They can either make or mar India's future in an ear of globalization. I have every hope that resilient Indian corporate sector will, certainly, rise up to the occasion, set highest standards of efficiency, productivity, innovation and best business practices and do the country proud.

To conclude, it can be said that we, as professionals need to serve the entrepreneurs, captains of industry and corporates as change agents and help in wealth creation and achieving corporates excellence. The message is loud and clear. We can not ill afford to be silent, overlooking and laid back. Doing nothing is not an option. *Martin Luther King Jr.* observed, "We shall have to repent in this generation not so much for the evil deeds of the wicked people but for the appalling silence of good people". He expressed the hope that India's resilient corporate structure would rise up to the occasion and set highest standards of efficiency, productivity, innovation and best business practices.

Professionals have challenging period ahead keeping track of legislative reforms and technological developments, understanding their impact on his duties and responsibilities.

We will have to garner a new role and redefine business for ourselves. Laws and practices around us are fast changing, the competition is keeping us on our toes and ever demanding clients and job needs compel us to run for survival and excellence.