

Souvenir

# Golden Jubilee Year National Convention of Company Secretaries (45<sup>th</sup> National Convention)

**Company Secretary : Shaping New India 2022  
Through Good Governance**

22-24 November, 2017

Al Saj Convention Centre, Thiruvananthapuram, Kerala



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(45<sup>th</sup> National Convention)**

Al Saj Convention Centre, Thiruvananthapuram (Trivandrum), Kerala  
22-24 November, 2017 | Wednesday-Thursday-Friday



**Theme**

**Company Secretary : Shaping New India 2022  
Through Good Governance**

**Dates**

**22-23-24 November, 2017**

**Venue**

**Al Saj Convention Centre, Thiruvananthapuram (Trivandrum) Kerala**

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भारत के उपराष्ट्रपति  
VICE-PRESIDENT OF INDIA



**Message**

I congratulate the Institute of Company Secretaries of India for organizing its 45th National Convention on the theme, 'Company Secretary : Shaping New India 2022 Through Good Governance' at Thiruvananthapuram from November 22 to 24, 2017.

Indeed it is the most apt theme as ensuring good corporate governance is one of the most important features of building a New India, which shall be free from corruption and various social evils. Company Secretaries have a vital role to play in realizing the vision of New India.

I convey my best wishes for the success of the convention.

  
(M. Venkaiah Naidu)

New Delhi  
08<sup>th</sup> November, 2017.



**JUSTICE (Retd.) P. SATHASIVAM**  
**GOVERNOR OF KERALA**



RAJ BHAWAN  
KERALA

13 November 2017



## **Message**

I am happy to note that 45<sup>th</sup> National Convention of the Institute of Company Secretaries of India is being held from 22<sup>nd</sup> to 24<sup>th</sup> November 2017 at Thiruvananthapuram on the theme Company Secretary : Shaping New India 2022 Through Good Governance.

It is commendable that the Institute has been playing a pivotal role in sharpening the skills of governance professionals and in setting high standards for good governance and practices.

I convey my best wishes to all the participants and hope that the deliberations would contribute to better governance in the years to come.

**[Justice (Retd.) P. Sathasivam]**



GOVERNMENT OF KERALA

**Pinarayi Vijayan**  
CHIEF MINISTER

November 14, 2017



## Message

I am very happy to note that 45<sup>th</sup> National Convention of the Institute of Company Secretaries of India (ICSI) is being held in Kerala after a gap of 32 years.

I am sure, Company Secretaries will be able to ensure better corporate governance in companies.

I wish you all the very best in this Golden Jubilee year of Institute of Company Secretaries of India.

**Pinarayi Vijayan**

अरुण जेटली  
**ARUN JAITLEY**



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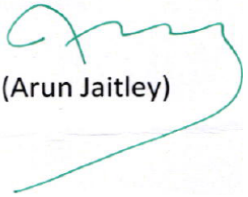


## Message

It gives me immense pleasure to know that 45th National Convention of The Institute of Company Secretaries of India is being organised during November 22-24, 2017 in Thiruvananthapuram, Kerala on the theme of "Company Secretary: Shaping New India 2022 Through Good Governance".

The Institute is playing pivotal role in sharpening the skills of professionals. In the context of the focal role played by the Company Secretaries in following the best practices of governance, the theme itself is remarkably significant for deliberating the role of professionals in nation building under the Vision New India, 2022. I am confident that this convention would subsume the discussions to further opportunities for Company Secretaries and their role in corporate governance and professional practice.

I wish the National Convention a great success.



(Arun Jaitley)



प्रकाश जावडेकर  
*Prakash Javadekar*



मंत्री  
मानव संसाधन विकास  
भारत सरकार  
MINISTER  
HUMAN RESOURCE DEVELOPMENT  
GOVERNMENT OF INDIA



### **MESSAGE**

It gives me immense pleasure to note that 45th National Convention of The Institute of Company Secretaries of India is taking place on November 22<sup>nd</sup> – 24<sup>th</sup>, 2017 at Thiruvananthapuram, Kerala on the theme "Company Secretary: Shaping New India 2022 Through Good Governance".

Since its inception, the Institute is playing pivotal role in sharpening the skills of governance professionals. The efforts taken by the Institute in India and across various parts of the world in setting high standards for Good Governance and Professional Standards & Practices are highly commendable. India is being seen as a harbinger towards High Standards, Processes and Practises set for functioning of Corporates and various governing bodies in their journey towards attaining the New India in 2022.

I am confident that this convention would subsume the discussions towards bringing forward abundant opportunities for Company Secretaries and highlight their contributory role under the perspective of contemporary changes in governance and professional practice.

I wish great success to this National Convention.

**(PRAKASH JAVADEKAR)**

पी.पी. चौधरी  
राज्य मंत्री  
विधि और न्याय  
और  
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भारत सरकार



**P.P. CHAUDHARY**  
Minister of State  
Law & Justice  
and  
Corporate Affairs  
Government of India

**Date: 16.11.2017**


### Message

It gives me immense pleasure to note that the 45<sup>th</sup> National Convention of The Institute of Company Secretaries of India (ICSI) is taking place on November 22-24, 2017 at Thiruvananthapuram, Kerala on the theme of “*Company Secretary: Shaping New India 2022 Through Good Governance*”.

Since its inception, ICSI has played a pivotal role in sharpening the skills of professionals working in the domain of corporate governance. The efforts undertaken by ICSI for developing high professional standards & practices for good governance in the country are highly commendable.

I am confident that this Convention would undertake extensive deliberations as to how can the Company Secretary Professionals play a contributory role in accentuating good governance for building a New India.

I extend my best wishes for the National Convention.

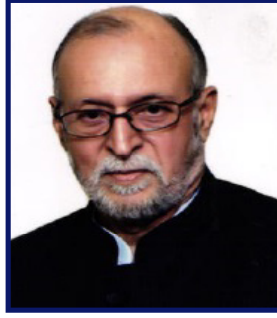
  
(P.P. Chaudhary)



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राज निवास  
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RAJ NIWAS  
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## Message

I am pleased to know that the Institute of Company Secretaries of India is organizing its 45th National Convention on the theme of "Company Secretary: Shaping New India 2022 Through Good Governance", taking place at Thiruvananthapuram, Kerala during November 22-24, 2017

Good Governance is a key determinant for realizing the vision of New India 2022. The role of Company Secretaries as governance professionals is essential for good governance in the corporate arena. Their professional excellence is vital for optimum implementation of various reforms including Ease of Doing Business in India, GST, RERA, IBC, NCLT and other initiatives in labour and social sector.

I convey my best wishes to the Institute, organizers, members of the professional fraternity and each and every stakeholder for the success of this event.



(Anil Baijal)

**Injeti Srinivas, IAS**  
**Secretary**



भारत सरकार  
कारपोरेट कार्य मंत्रालय  
नई दिल्ली  
**Government of India**  
**Ministry of Corporate Affairs**  
**New Delhi**

27<sup>th</sup> October, 2017



## **Message**

I am happy to learn that the Institute of Company Secretaries of India is organizing its 45th National Convention from November 22-24, 2017 at Thiruvananthapuram. The theme selected for the Convention, "Company Secretary: Shaping New India 2022 Through Good Governance", is very relevant today, as the Indian economy is fast emerging as one of the key players in the global economy. Keeping pace with the changing needs, the Government has initiated large scale reforms in the legal as well as institutional framework governing corporate policy and management in the country.

2. The Company Secretaries have an important role to play in guiding the corporates to adopt best practices of corporate governance and be compliant with the corporate laws. I am informed that ICSI is bringing out a special souvenir containing articles touching upon the different areas of corporate governance and management, including compliance with corporate laws. I am confident that this would serve as an useful document for practitioners, academia and public in general, especially investors.

3. I am confident that the Convention will throw up useful ideas and suggestions for further improving ease of doing business, corporate governance and corporate compliance. I take this opportunity to wish the convention a grand success.

(Injeti Srinivas)

**CS (Dr.) Shyam Agrawal**  
President, ICSI



## Message

It is indeed a delightful moment to note that our alma mater, the Institute of Company Secretaries of India is organising its Golden Jubilee Year - 45th National Convention from November 22-24, 2017 at Thiruvananthapuram, Kerala on the theme of **“Company Secretary: Shaping New India 2022 Through Good Governance”**.

India is reforming, India is transforming and a New India is forming to lead the country on the track of inclusive growth and development under the prospects of New India, 2022.

Vision New India, 2022, where Good Governance is one major factor to facilitate a transparent, just, equitable and fair system along with hassle-free administration, the Company Secretaries as Governance Professionals are real trumps in shaping the brighter prospects of Good Governance in paving the way for successful implementation of vision New India, 2022.

Capturing the co-relation between New India, Good Governance and the role of Company Secretaries, the Institute has brought out this souvenir, containing well researched articles conversing methodically on various aspects of theme and sub-theme of this convention.

I am sure that the manuscript of the souvenir would be tremendously rewarding for the readers in exploring opportunities and serving with highest standards of professional commitment in shaping New India, 2022.

**CS (Dr.) Shyam Agrawal**





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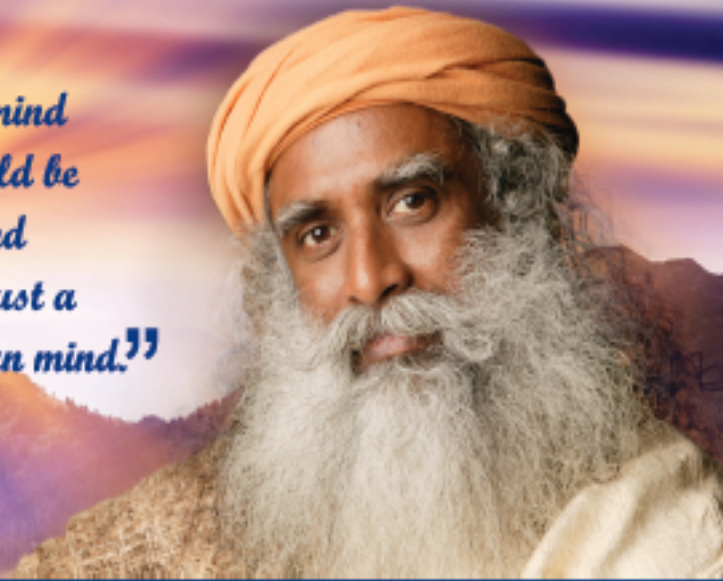
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## **Golden Jubilee Year National Convention of Company Secretaries (45<sup>th</sup> National Convention)**

**Company Secretary : Shaping New  
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"To develop high calibre  
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# Information Utility – Ease of Doing Insolvency Resolution Process of Corporate Debtors

**S. Diraviam\* Dr. M. Govindarajan\*\***

## Introduction

In the earlier periods, to resolve the financial crisis of a company, there were many law in the country. Sick Industrial Companies Act, 1985 dealt with the rescue and rehabilitation of industrial companies only. The Companies Act, 1956 provided a process for liquidation and winding up all types of companies. The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 takes care of debt recovery. The Recovery of Debt Due to Banks and Financial Institutions Act, 1993 provided avenues for security enforcement and debt recovery banks and financial institutions.

As per the data available with the World Bank in 2016, insolvency resolution in India took 4.3 years on an average, which was much higher when compared with the United Kingdom (1 year), USA (1.5 years) and South Africa (2 years). The World Bank's Ease of Doing Business Index, 2015, ranked India as country number 135 out of 190 countries on the ease of resolving insolvency based on various indicia. For this purpose the Ministry of Finance constituted a committee called 'The Bankruptcy Law Reform Committee' under the chairmanship of Shri T.K. Viswanathan. The Government tried to bring insolvency reforms in the financial year 2015-16. On the basis of the report of the Committee on 04.11.2015, a draft of the Insolvency and Bankruptcy Bill, 2015 was introduced in Lok Sabha in December 2015. The Insolvency Bankruptcy Code, 2016 was implemented with effect from 28.05.2016.

## Object of the Code

The objects of the Insolvency and Bankruptcy Code, 2016 ('Code' for short) is to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance in the interests of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto. Part II of the Code deals with the procedure of insolvency resolution and liquidation for corporate persons. Part III of the Code deals with the procedure of insolvency resolution and bankruptcy for individuals and partnership firms. The provisions relating to Part II have come into effect from 01.12.2016. The provisions in respect of Part III have not yet been notified by the Government.

\* FCS.

\*\* FCS. The views expressed are personal views of the author(s) and do not necessarily reflect those of the Institute.



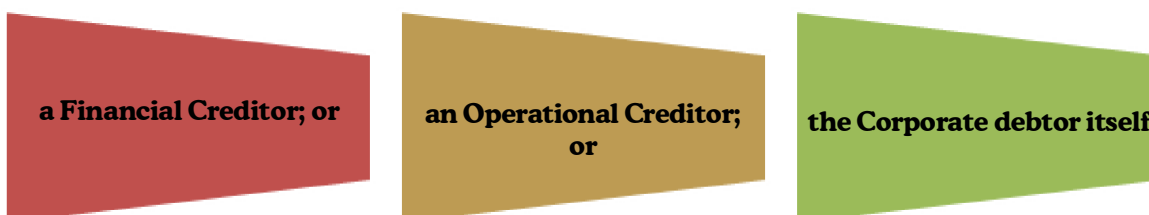
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### Initiation of Insolvency Resolution Process

Section 6 of the Code provides that where any corporate debtor commits a default,-



may initiate corporate insolvency resolution process in respect of such corporate debtor in the manner as provided in Chapter II of Part II of the Code.

The Adjudicating Authority for the purposes of this Code is the National Company Law Tribunal constituted under section 408 of the Companies Act, 2013. The Adjudicating Authority is to satisfy itself in all aspects and allow the insolvency resolution process.

#### Initiation by financial creditor

A financial creditor either by itself or jointly with other financial creditors may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred. For this purpose, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.

The financial creditor shall make an application to the Adjudicating Authority furnishing-

- a record of the default recorded with the information utility; or
- such other record of evidence of default as may be specified.

The application shall be in Form 1 as prescribed in the Insolvency & Bankruptcy (Adjudicating Authority) Rules, 2016. The financial creditor is to furnish the particulars of financial debts. Sl. No. 3 of the said form relates to the information to be furnished the record of default with the information utility, if any. A copy of such record is to be attached along with the application. Where the Adjudicating Authority is satisfied that a default has occurred and the application is complete it may allow the application of insolvency resolution process. The Adjudicating Authority shall reject the application if it considers that no default has occurred after giving reasonable opportunities to the persons concerned.

#### Initiation of insolvency resolution process by an operational creditor

For initiating insolvency resolution process by an operational creditor, on the occurrence of a default, he has to first issue a demand notice of unpaid operator debtor copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in Form 2. The corporate debtor shall, within a period of ten days of the receipt of demand invoice or copy of the invoice, bring to the notice of the operational creditor-

- existence of a dispute, if any, and record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;
- the repayment of unpaid operational debt-



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- by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or
- by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.

After the expiry of ten days from the date of delivery of notice or invoice demanding payment, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute, the operational creditor may file an application in Form 5 before the Adjudicating Authority for initiating a corporate insolvency resolution process. One among the documents that can be produced before the Adjudicating Authority is the record of default with the information utility, if any. If the Adjudicating Authority, is satisfied that there is a default and the application is complete, it shall allow the application for initiation of corporate insolvency resolution process otherwise it may reject the application after giving due opportunities to the persons concerned.

### **Initiation of insolvency resolution process by corporate applicant**

Section 10 provides that where a corporate debtor has committed a default, a corporate applicant may file application for initiating corporate insolvency resolution process to the Adjudicating Authority in Form 6. The corporate applicant in Part III of Form 6 is to furnish the particulars of financial/operational debt creditor wise. One among the documents that can be produced before the Adjudicating Authority is record of default with the information utility. If the application is complete, the Adjudicating Authority may allow the application for initiation of corporate insolvency otherwise it may reject the application after giving the due opportunities to the persons concerned.

### **Information utility**

The initiation of corporate insolvency resolution process will be easier and able to complete with the short span of time fixed by the Code if the record of the default with the information utility is furnished along with the application. This document is prima facie record of default by corporate debtor.

Section 3(21) of the Code defines the expression 'information utility' as a person who is registered with the Board as an information utility under Section 210 of the Code. The Board made the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017 ('Regulations' for short) which came into force on 01.04.2017.

Regulation 3 provides that no person shall be eligible to be registered as information utility unless it is a public company and-

- it's sole object is to provide core services and other services under these regulations and to discharge such functions as may be necessary for providing these services;
- its shareholding and governance is in accordance with Chapter III;
- its byelaws are in accordance with Chapter IV;
- it has a minimum net worth of Rs.50 crores;
- it should be under the control of persons resident of India;
- not more than 49% of its total voting power of the paid up capital is held directly or indirectly by persons resident outside India;
- the person itself, its promoters, its director, its key managerial personnel and persons holding more than 5%, directly or indirectly, of its paid up equity share capital or its total voting power, are fit and proper persons.



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### Objects of the information utility

Section 214 provides the objects of the information utility-

- to create and store financial information in a universally accessible format;
- to accept electronic submissions of financial information from persons who are under obligations to submit financial information;
- to accept, in specified form and manner, electronic submissions of financial information from persons who intend to submit such information;
- to meet such minimum service quality standards as may be specified by the regulations;
- to get the information received from various persons authenticated by all concerned parties before storing such information;
- to provide access to the financial information stored by it to any person who intends to access such information in such manner as may be specified by regulations;
- to publish such statistical information as may be specified by the regulations;
- to have inter-operatability with other information utilities.

### Procedure for submission of financial information

Section 215 of the Code provides the procedure for submission of financial information. Any person who intends to submit financial information to the information utility or access the information from the information utility shall pay such fees and submit information in such form and manner as may be specified by regulations.

A financial creditor shall submit financial information and information relating to assets in relation to which any security interest has been created in such form and manner as may be specified by the regulations.

An operational creditor may submit financial information to the information utility in such form and manner as may be specified.

### Rights and Obligations of persons submitting financial information

Section 216 of the Code provides that a person who intends to update or modify or rectify errors in the financial information submitted, he may make an application to the information utility for such purpose stating reasons there for, in such manner and within such time as may be specified. A person who submits financial



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information to an information utility shall not provide such information to any other person, except to such extent, under such circumstances, and in such manner, as may be specified.

### Services by information utility

Regulation 17 provides that an information utility shall provide-

- core services;
- other services under these regulations, in accordance with the Code;

The information utility may provide services incidental to the services with the permission of the Board. The information utility shall comply with the applicable technical standards while providing services.

### What are core services?

Section 3(9) of the Code defines the expression 'core services' as services rendered by information utility for :

- accepting electronic submission of financial information in such form and manner as may be specified;
- safe and accurate recording of financial information;
- authenticating and verifying the financial information submitted by a person; and
- providing access to information stored with the information utility as may be specified.

### Registered user

Regulation 18 provides that a person shall register itself with an information utility for submitting information to or accessing information stored with any of the information utilities. The information utility shall verify the identity of the person and grant registration. Upon registration, the information utility shall intimate it of its unique identifier. A person registered once with an information utility shall not register itself with any information utility again. The information utility shall provide a registered user a functionality to enable its authorized representatives to carry on the activities. An information utility shall maintain a list of the registered users, the unique identifiers of the registered users and the unique identifiers assigned to the debts and make the list available to all information utilities and the Board.

### Acceptance and receipt of information

Regulation 20 provides that an information utility shall accept information submitted by a user in Form C. Form C contains three parts. In Part A of form, the registered user is to give-

- the details relating to creation of debt;
- details of other parties to the debt (Apart from the person submitting the debt);
- details of the Debt.

In Part B of the form, the registered under is to give the details relating to creation of security. In Part C of the form the registered user is to give the details relating to default of debt.

On receipt of the information, the information utility shall assign a unique identifier to the information including records of debt. The information utility shall acknowledge its receipt and notify the user of the unique identifier



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of the information, the terms and conditions of authentication and verification of the information and the manner in which the information may be accessed by other parties.

### Who can access to information with information utility?

Regulation 23 provides that an information utility shall allow the following persons to access information stored with it-

- the user which has submitted the information;
- all the parties to the debt and the host bank, if any, if the information is of the categories-
  - records of the debt of the person;
  - records of assets of person over which security interest has been created;
  - records, if any, of instances of default by the person against any debt;
- the corporate person and its auditor, if the information is of the following categories-
  - records of liabilities when the person is solvent;
  - record of the balance sheet and the cash flow statements of the person
- the insolvency profession, to the extent provided in the code;
- the Adjudicating Authority;
- the Board;
- any person authorized to access the information under any other law;
- any person who have consented to share the information with by the user, host bank or corporate person and its auditor.

An information utility shall in cases enable the user to view-

- the date of the information was last updated;
- the status of authentication; and
- the status of verification while providing access to the information.

An information utility shall provide information to the Adjudicating Authority and Board free of charge.

### Duties of user

A user shall expeditiously update the information submitted by it to an information utility. A user shall expeditiously correct information as soon as it finds it erroneous, stating the reasons, if any.

### Duties of information utility

- An information utility shall provide services with due and reasonable care, skill and diligence;
- An information utility shall hold the information as custodian;
- An information utility shall provide services without discrimination to any person on the basis of-
  - place of residence of business; or
  - type of personality, whether natural or artificial;



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- An information utility shall-
  - provide services to a user based on its explicit consent;
  - guarantee protection of the rights of users;
  - establish adequate procedures and facilities to ensure that its records are protected against loss or destruction;
  - adopt secure systems for information flows;
  - protect its data processing systems against unauthorized access, alteration, destruction, disclosure or dissemination of information; and
  - transfer all the information submitted by a user, and stored with it to another information utility on the request of the user.
- An information utility shall not-
  - outsource the provision of core services to a third party service provider;
  - use the information stored with it for any purpose other than providing services without the prior approval of the Board;
  - seek data or details of users except as required for the provision of the services under these regulations.

### Services to insolvency professionals

Insolvency professionals play the key role in the corporate insolvency resolution process. At the time of filing application for initiating insolvency resolution process, the applicant shall inform the name of the proposed insolvency resolution professional. The Adjudicating Authority, if there is no disciplinary case against the said person, shall appoint him as the interim insolvency resolution professional. The tenure of the interim resolution process is thirty days from the date of commencement of the corporate insolvency resolution process.

After this the committee of creditor is to appoint resolution professional. The interim resolution professional may be appointed as resolution professional or another professional may be appointed as resolution professional who will continue the corporate insolvency resolution process.

Regulation 38 provides that an insolvency resolution professional may submit reports, registers and minutes in respect of any insolvency resolution, liquidation to an information utility for storage. The information utility shall not provide access to the reports, registers and minutes submitted to any person other than the concerned insolvency professional, the Board of the Adjudicating Authority.

### Compliance officer

Regulation 11 provides for the appointment of compliance officer by the information utility. The compliance officer shall be responsible for ensuring compliance with the provisions of the Code applicable to the Information Utility, in letter and spirit. He shall report to the Board any non compliance of any provision of the Code observed by him immediately and independently. He shall submit a compliance certificate to the Board annually, verifying that the information utility has complied with the requirements of the Code and has redressed customer grievances. The Governing Board shall appoint or remove a compliance officer only by means of a resolution passed at its meeting. The Company Secretary is the best for the appointment as Compliance Officer in the Information Utility.



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### Grievance Redressal Policy

Regulation 12 provides that an information utility shall have a grievance redressal policy with any grievance from any user or any other person or class of persons as may be provided by the Governing Board in respect of its services.

### First Information Utility

The Insolvency and Bankruptcy Board of India registered National E-Governance Services Limited (NeSL) on 25.09.2017 as an Information Utility under the Regulations. This registration is valid for five years from the date of registration.

The Information Utility stores information that helps to establish defaults as well as verify claims expeditiously and thereby facilitates completion of transactions under the Code in a time bound manner. It constitutes a key pillar of the insolvency ecosystem, the other three being the Adjudicating Authority, the IBBI and Insolvency Professionals, the press release of Board says.

The Board of Directors of the first information utility, as per the press release of the Board, is as follows-

1. Shri N. Rangachari : Independent Director and Chairman;
2. Dr. (Ms) Nivedita P. Haran, IAS (Retired) : Independent Director;
3. Prof. S. Sadagopan : Independent Director;
4. Dr. Ajya N. Shah : Independent Director;
5. Shri T. S. Vishwanath : Independent Director;
6. Shri Karnman Sekhar : Director;
7. Shri Gurpeet Singh Chawla : Director;
8. Shri Parameswaran Sanker : Director;
9. Shri S. Ramanan, IA & AS : Managing Director & Chief Executive Officer.

The shareholding pattern of the NeSL as on the date of registration, as per the press release of the Board is-

1. State Bank of India : 10%
2. Canara Bank : 10%
3. Bank of Baroda : 10%
4. ICICI Bank : 9.9%
5. Axis Bank : 9.5%
6. Life Insurance Corporation of India : 6.0%
7. Karnataka Bank : 6.0%
8. HDFC : 5.0%
9. Indian Bank : 5.0%
10. Punjab National Bank : 5.0%
11. New India Assurance Company Ltd. : 5.0%
12. Union Bank of India : 5.0%
13. Central Depository Services (India) Limited : 4.0%





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14. Dena Bank	:	4.0%
15. NABARD	:	2.0%
16. United India Insurance	:	2.0%
17. SIDBI	:	1.6%

### Time limit for insolvency resolution process

Section 12 of the Code provides that the corporate insolvency resolution process shall be completed within a period of 180 days from the date of admission of the application to initiate such process. The Adjudicating Authority, if it is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within 180 days it may by order extend the duration of such process beyond 180 days by such further period as it thinks fit, but not exceeding ninety days.

### Conclusion

As discussed the insolvency resolution process is to be completed within 180 days of the extended period. The default occurred by the corporate debtor is to be confirmed at the time of initiation of insolvency resolution process. The records available information utility shall be much useful to confirm the default of the corporate debtor at the earliest period and so that the entire process will be concluded within the time space specified in the Code. This process will helpful in getting to improve the index of World Bank of Ease of Doing Business for this year.

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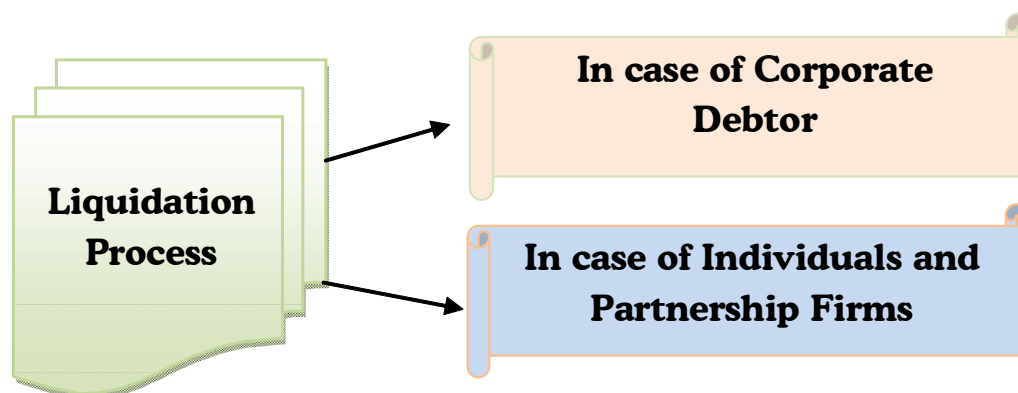
### Priority, Time and Manner of Distribution of Proceeds in Liquidation and Bankruptcy

**G. M. Ramamurthy\***

The essence of liquidation or bankruptcy under the Insolvency and Bankruptcy Code, 2016 (the “Code”) lies in expeditious liquidation of the assets of the debtor, be it a company, a limited liability partnership or any person incorporated with limited liability under any law for the time being in force (not being a financial service provider) or an individual or a partnership firm. This is a challenging task and the success lies in the capability and efficiency of insolvency professionals appointed as liquidator of corporate debtor or as a bankruptcy trustee (BT) in the case of an individual or a partnership firm. Equally important function of the liquidator or BT is about the distribution of realised proceeds in the manner contemplated in the Code.

Unlike the Companies Act, 1956 (1956 Act) or the Companies Act, 2013 (2013 Act), the Code stipulates time limits for liquidation of assets as well as distribution of the proceeds. The Code is comprehensive and covers insolvency of a corporate debtor and bankruptcy of an individual or a firm.

The Code ordains that the proceeds from the sale of the liquidation assets shall be distributed in the specified order of priority within such period and in such manner as may be specified. The Insolvency and Bankruptcy Board of India (Board) has framed “the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (the “Regulations”) covering the procedural aspects relating to the functioning of the liquidator in the case of liquidation of corporate debtor in the distribution of assets.



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### Part-1 Corporate debtor

#### Priority of distribution

Section 53 of the Code provides the order of priority of distribution of the proceeds from the sale of liquidation assets. Priority payments as per this section are given in seriatim below (matters mentioned in earlier alphabets will have priority over the latter mentioned matters and between the same alphabet they rank equally): -

- (a) The insolvency resolution process costs and the liquidation costs;
- (b) (i) workmen's dues for the period of twenty-four months preceding the liquidation commencement date (LCD); and (ii) debts due to secured creditor in the event such secured creditor has relinquished security interest in the manner set out in section 52;
- (c) wages and any unpaid dues owed to the employees other than workmen for the period of twelve months preceding the LCD;
- (d) financial debts owed to unsecured creditors;
- (e) (i) any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Funds of a State, if any, in respect of the whole or any part of the period of two years preceding the LCD; and (ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;
- (f) Any remaining debts and dues;
- (g) Preference shareholders, if any; and
- (h) Equity shareholders or partners, as the case may be.

With a view to ensuring that each of the creditors might get a share of the liquidation proceeds, time ceiling for reckoning the claims has been introduced. In the case of the workmen's dues, it is 24 months preceding LCD and for employees other than workmen, it is 12 months preceding the LCD. The dues to the Central Government or a State Government has been consciously relegated to a lower order of priority; but there is increase in the time limit for computing these dues from 12 months to 24 months. This will benefit the stakeholders like the workmen, secured creditors, employees and unsecured financial creditors, who were previously getting dividend of the surplus amount remaining after meeting the Central Government or State Government dues.

*Application of Limitation Act, 1963* : In the case of secured creditors, unsecured creditors it is not possible to specify any time limit for reckoning their dues. These debts should be taken based on proof adduced before the liquidator and admitted by him. On the question whether Limitation Act, 1963 will apply to the dues of a financial creditor, National Company Law Appellate Tribunal in Neelkanth Township and Construction Private Limited V Urban Infrastructure Trustees Limited held that "there is nothing on the record that Limitation Act, 2013 (1963) is applicable to I & B Code. Learned Counsel for the appellant also failed to lay hand on any provision of I & B Code, to suggest that the Law of Limitation Act (Limitation Act, 1963) is applicable. The I & B Code 2016 is not an Act for recovery of money claim, it relates to initiation of Corporate Insolvency Process". NCLAT concluded that the Limitation Act will not apply in the case of the claims under the Code.

A Special Leave Petition filed against the order in the Supreme Court was dismissed in the admission stage



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leaving open the issue of applicability of Limitation Act to the claims under the Code. Hence, at present there is no authoritative pronouncement regarding the applicability of Limitation Act to the claims.

One of the questions for consideration before the Supreme Court in *ICICI Bank Limited vs. SIDCO Leathers and others* [(2006) 10 SCC 452] was “whether significance is lost in respect of inter se right of priority between two sets of secured creditors in view of Section 529-A of the Companies Act?” The Hon’ble Supreme Court held that “While enacting a statute, the Parliament cannot be presumed to have taken away a right in property. Right to property is a constitutional right. Right to recover the money lent by enforcing a mortgage would also be a right to enforce an interest in the property. The provisions of the Transfer of Property Act provide for different types of charges. In terms of Section 48 of the Transfer of Property Act, claim of the first charge holder shall prevail over the claim of the second charge holder and in a given case where the debts due to both, the first charge holder and the second charge holder, are to be realized from the property belonging to the mortgagor, the first charge holder will have to be repaid first. There is no dispute as regards the said legal position”.

The Supreme Court further held that “the non-obstante nature of a provision although may be of wide amplitude, the interpretative process thereof must be kept confined to the legislative policy. Only because the dues of the workmen and the debt due to the secured creditors are treated *pari passu* with each other, the same by itself, in our considered view, would not lead to the conclusion that the concept of inter se priorities amongst the secured creditors had thereby been intended to be given a total go-by”.

The Supreme Court stated that “If the Parliament while amending the provisions of the Companies Act intended to take away such a valuable right of the first charge holder, we see no reason why it could not have stated so explicitly. Deprivation of legal right existing in favour of a person cannot be presumed in construing the statute. It is in fact the other way round and thus, a contrary presumption shall have to be raised”. Hence absence of any specific provision in the Code equating the secured creditors vis-à-vis their inter se priority in the security interest does not and cannot have the effect of equating the secured creditors having diverse ranking of charge over the same secured asset. The non-obstante clause will come into play in the case of inconsistency between the Code and the Transfer of Property Act, 1882. It is felt that inter-se priority provided in Section 48 of the Transfer of Property Act, will apply with respect to the claims of the secured creditors.

There were numerous litigations regarding priority of crown debts over the debts due to the secured creditors. Some of the State Governments made provisions in the laws conferring priority to sales tax and other dues. In Rajasthan Sales Tax Act, 1954 Section 11-AAAA was inserted by way of an amendment in 1989 which reads as follows: “11-AAAA. Liability under this Act to be the first charge: Notwithstanding anything to the contrary contained in any law for the time being in force, any amount of tax, penalty, interest and any other sum, if any, payable by a dealer or any other person under this Act, shall be the first charge on the property of the dealer, or such person.” The issue of priority of sales tax dues and that of the secured creditor (bank) was decided by the Supreme Court of India in *State Bank of Bikaner and Jaipur vs. National Iron and Steel Rolling Corporation and others* [1995 SCC (2) 19]. The Hon’ble Supreme Court upheld the priority of the sales tax dues and held “where a first charge is created by operation of law over any property, that charge will have precedence over an existing mortgage.” Subsequent decisions of the Supreme Court affirmed this view although in some cases it was decided otherwise taking in consideration the peculiar facts of those cases.

Section 53 opens with a non-obstante clause. It states that “Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force ...” thus conferring overriding effect on the existing Central or State legislations to the extent they are contrary to the provisions of the Code. Section 238 of the Code also provides overriding effect to the provisions of the Code over other



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laws to the extent of inconsistency. Thus, the previous pronouncements relating to priority of crown debts have been rendered otiose. Even otherwise, such claim cannot be preferred in view of the specific provision regarding the priority of crown debts in the Code.

*Right given to a secured creditor* : A secured creditor is given a choice either to relinquish its security interest to the liquidation estate and receive proceeds from the sale of assets by the liquidator or realise its security interest. If it chooses to realise its security interest, subject to payment of amounts towards insolvency resolution process costs, it is permitted to apply the proceeds to recover the debts due to it. In that situation, if there be any balance amount due to such secured creditor, it will rank lower in the order of priority and be paid equally with the amounts due to Central Government and the State Government. If the secured creditor opts to relinquish its security interest to the liquidator, it can get paid out of the proceeds pari passu with the workmen's dues.

### Time for distribution of the proceeds

Regulation 42 (2) mandates the liquidator to distribute the proceeds from realisation within six months from the receipt of the amount to the stakeholders. The Code and the Regulations are silent as to whether the liquidator should make periodical payments or interim distribution. In contrast, section 174 of the Code specifically empowers the BT to declare and distribute interim dividend among the creditors in respect of bankruptcy debts which they have proved. As the liquidator is expected to distribute the proceeds from realisation within six months from the receipt of the amount and the liquidator shall liquidate the corporate debtor within a period of two years, the liquidator can declare interim dividend even in the absence of specific provision in the Code.

### Manner of distribution

*Conditions precedent to distribution* : The Code has contemplated certain actions to be performed or discharged by the liquidator before he commences distribution of the realised proceeds. (1) The liquidator cannot make any distribution before he has filed with Adjudicating Authority (AA) a list of stakeholders in terms of Regulation 31 and asset memorandum prepared as per Regulation 34; (2) The insolvency resolution process costs and the liquidation costs shall be deducted in full before the liquidator commences distribution of the proceeds; and (3) Fees payable to the liquidator shall be deducted proportionately from the proceeds payable to each class of recipients.

*Opening bank account* : The liquidator shall open in a scheduled bank an account in the name of the corporate debtor for depositing all monies due to the corporate debtor. The amounts including cheques and demand drafts received by the liquidator and the realisation of each day shall be deposited into the bank account without any deduction not later than the next working day. The liquidator can maintain cash balance of Rs one lakh or such higher amount as may be permitted by the AA. Payments exceeding five thousand rupees shall be made by cheque or online banking transactions against the bank account.

*Distribution among the class of recipients* : At each stage of the distribution of the proceeds in respect of a class of recipients that rank equally, each of the debts will be paid in full. If the proceeds are insufficient, the distribution will be made in equal proportion within the same class of recipients.

*Amount paid to a stakeholder not entitled to receive the payment* : A stakeholder receiving payment pursuant to distribution to which he is not entitled to at the time of distribution or subsequently became not entitled thereto shall return the money received by him to the liquidator. Similar principle is found in Section 72 of the Indian Contract Act, 1872 in the case of mistaken payment.



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*Unclaimed proceeds* : The liquidator shall apply to the AA for an order to pay into the Companies Liquidation Account in the Public Account of India any unclaimed proceeds or undistributed assets or any other balance payable to the stakeholders remaining with him on the date of order of dissolution. If the liquidator retains such money, he shall pay on the amount so retained interest at 12% per annum. Apart from payment of interest the liquidator may have to pay such penalty as determined by the Board. The liquidator shall be entitled to a receipt from the Reserve Bank of India for the money deposited by him. The liquidator is required to furnish to the authority with which the corporate debtor is registered and the Board a statement containing the particulars specified in Regulation 46(3). A person entitled to the amount may apply to the Board for the payment of money.

*Payment of subsequent interest* : The provisions relating to corporate insolvency contained in the Code or in the Regulations do not specifically state about the payment of subsequent interest. In juxtaposition, it is observed that sub-sections (4) and (5) of section 178 of the Code specifically permit payment of interest to all stakeholders since the Bankruptcy Commencement Date (BCD). Rule 179 of the Companies (Court) Rules, 1959 contained a provision for payment of interest at a rate not exceeding 4 per cent on the admitted amount of the claim to the creditors whose proofs have been admitted by the liquidator in the event of there being a surplus after payment in full of all the claims admitted to proof from the date of the winding-up order or of the resolution, as the case may be, up to the date of declaration of the final dividend after adjusting against the said amount the dividends declared as on the date of the declaration of each dividend. The omission as to payment of subsequent interest in the case of corporate insolvency may be rectified. A uniform rate of interest to all will iron out the disparity in the rate of interest payable to the creditors or stakeholders contractually.

*Implication of section 53(2)* : In terms of section 53 (2) of the Code, any contractual arrangements between recipients under sub-section (1) with equal ranking if disrupting the order of priority under that sub-section shall be disregarded by the liquidator. The arrangements contemplated in this sub-section may arise either inter or intra stakeholders of equal ranking. Not all arrangements are frowned on by the Code. Only if the arrangement affects the order of priority in the distribution of the proceeds of sale of assets of the corporate debtor, it can be disregarded by the liquidator. In that scenario the liquidator must apply the proceeds strictly in accordance with the claims proved and admitted. BT, in terms of Section 178(4), is permitted to take cognisance of contractual arrangement amongst unsecured creditors.

### **Part- 2 Individuals and Partnership Firms**

Part III of the Code contains provisions relating to insolvency resolution and bankruptcy for individuals and partnership firms. These provisions have not yet been brought into force. The Board is yet to frame regulations in respect of the matters contained in Part III of the Code. Though there is some overlap in the matters of priority of payments, there are subtle differences because of the nature of stakeholders involved. In the case of bankruptcy of individuals and partnership firms the insolvency professional is appointed as BT.

There are certain commonalities between individuals and partnership firms. A partnership firm is not a legal entity by fiction of law. Partnership is defined as “the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all”. A partner is the agent of the firm for the purposes of the business of the firm. Every partner is liable jointly with all the other partners and also severally, for all acts of the firm done while he is a partner. In view of commonalities, the two are grouped together in Part III of the Code.

*Two types of dividend* : The distribution of proceeds realised on the sale of assets of the bankrupt person or firm is dealt with in two stages, namely, (i) distribution of interim dividend; and (ii) distribution of final dividend. While there can be any number of distribution of interim dividend, there is only one or no distribution of final



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dividend. The Code does not provide any priority payment when interim dividend is distributed. Priority of payment of debts contained in section 178 of the Code is attracted when final dividend is distributed.

*Distribution of interim dividend* : BT is permitted to distribute interim dividend whenever he has sufficient funds in his hands. Interim dividend is paid to creditors who have proved their debts in terms of section 171 of the Code. BT is required to give notice of the payment of interim dividend and the manner in which he proposes to distribute it. Before declaring interim dividend, the BT shall make provision for (a) any bankruptcy debt which appear to him to be due to persons who, by reason of distance of their place of residence, may not have had sufficient time to tender and establish their debts; (b) any bankruptcy debts which are subject of claims which have not yet been determined; (c) disputed proofs and claims; and (d) expenses necessary for administration of the estate of the bankrupt.

*Final dividend* : Final dividend is declared after BT has realised the entire estate of the bankrupt or so much of it in his opinion that could be realised. BT is required to give notice of his intention to declare a final dividend or that no dividend or further dividend shall be declared. The notice shall require all claims against the estate of the bankrupt to be established by a specified date. AA may, on application of any person interested in the administration of estate extend the date for establishing the debts.

BT shall defray any outstanding expenses of the bankruptcy out of the estate of the bankrupt and declare and distribute the final dividend among the creditors who have proved their debts, without regard to the claims of any other persons. Any surplus amount remaining after the payment in full along with interest to all the creditors and payment of expenses of the bankruptcy, shall be paid to the bankrupt.

*Rights of secured creditor* : Like the rights of secured creditor in corporate insolvency, in bankruptcy also the secured creditor can realise his security or surrender it to the BT for the general benefit of the creditors and produce proof of his whole claim. However, the secured creditor on whom the BT has served notice calling him to submit proof of debt, does not file a proof of security within thirty days after service of the notice, BT may, with the leave of the AA, sell or dispose of any property that was subject to the security, free of that security. The secured creditor will become an unsecured creditor and entitled to dividend as such provided he proves his claim.

*Claims of creditors* : A creditor who has not proved his debt before the declaration of any dividend is not entitled to disturb the distribution of that dividend or any other dividend declared before his debt was proved; but shall be entitled to be paid any dividend or dividends which he has failed to receive out of any money that may be available for payment of any further dividend and it shall be paid before out of the monies available for payment of further dividend. In other words, the creditor does not forego his right to the dividend declared; but its payment is postponed. If the BT refuses to pay a dividend, AA may order him to pay the dividend and interest and costs out of the personal funds of the BT.

### Priority of payment of debts

Order of priority: The payments of final dividend shall be made in the order of priority set out below in seriatim: -

- (a) Costs and expenses incurred by the BT for the bankruptcy process (to be paid in full);
- (b) Equally between (i) workmen's dues for the period of 24 months preceding the bankruptcy commencement date (BCD); and (ii) debts owed to secured creditors;
- (c) Wages and any unpaid dues owed to the employees (other than workmen) of the bankrupt for the period of 12 months preceding BCD;



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- (d) Any amount due to the Central Government and the State Government including the amount to be received on account of consolidated Fund of India or the Consolidated Fund of a State, if any, in respect of whole or any part of the period of two years preceding BCD; and
- (e) All other debts and dues owed to unsecured creditor.

*Indemnity of fresh credit provided by a creditor* : Where any creditor has given indemnity or has made payment of monies by virtue of which the asset of the bankrupt has been recovered, protected or preserved, AA may make an order with respect to the distribution of such asset, an advantage over other creditors. The order is confined to the relevant asset and not the proceeds of other assets.

*Unsecured creditors* : The unsecured creditors shall rank equally amongst themselves, unless they have agreed contractually otherwise. BT is to recognise the contractual arrangements between unsecured creditors. This provision is at variance with that in Section 53(2) of the Code, which prohibits the liquidator from recognising to the arrangement between creditors of equal ranking if such arrangement is likely to disrupt the order of priority in the distribution of liquidation proceeds. In the case of bankruptcy, the unsecured creditors are paid last in the order of priority. Hence any arrangement between them is unlikely to disrupt the order of priority of other stakeholders. Therefore, the situation envisaged in Section 53(2) will not arise in bankruptcy regarding the inter se arrangement between unsecured creditors.

*Payment of interest* : Surplus funds, if any, remaining after payments of the debts to the creditors and defraying the expenses relating to bankruptcy, BT shall apply them in payment of interest on those debts in respect of the periods during which they have been outstanding since BCD. Interest payment shall rank equally irrespective of the nature of debt. The Code has not specified the rate at which BT shall pay the interest. This could be provided in the regulations to be framed by the Board when Part III of the Code is operationalised.

*Specific provisions relating to partnership firms* : There are three specific provisions found in the Code relating to partnership firms and its partners. (1) Where a bankruptcy order has been passed in respect of one partner in a firm, a creditor, in case the bankrupt is indebted jointly with other partners of the firm or any of them, can receive dividend out of the separate property of the bankrupt only after all the separate creditors have received in full their respective debts; (2) In the case of partners, the partnership property shall be applicable in the first instance in payment of partnership debts and the separate property of each partner shall be applicable in the first instance in payment of his separate debts; and (3) Surplus proceeds of the separate property of the partners shall be treated as part of the partnership property; and surplus of the partnership property shall be treated as part of the respective separate property of each partner in proportion to the rights and interest of the partners. These principles are in line with the provisions of Section 49 of the Indian Partnership Act, 1932.

### Conclusion

The Code and the Regulations framed thereunder have made elaborate provisions relating to distribution of realised assets and specified the manner of its distribution among the persons entitled to it. The efficiency of performance of functions of the liquidator or BT lies making quick and fair decisions in all their actions. The accidental mistakes or aberrations, which are inevitable, can be corrected by the AA on the application of the aggrieved stakeholder.

The omission to make a provision for payment of subsequent interest in the corporate insolvency, though could arise in stray cases, may be inserted in the ensuing amendment to the Code.





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The priority provisions in the case of bankruptcy of individuals and partnership firms is now applicable in the case of distribution of final dividend. Section 176 (1) (b) of the Code envisages a situation where the notice of final dividend may state that the BT does not propose to pay any final dividend or no further dividend than what had been already declared. In such a situation, adjustment of dividends already distributed without regard to the provisions of Section 178 of the Code is not possible, resulting in rendering the whole of Section 178 of the Code nugatory. Though as a matter of prudence BT can be expected to have regard to the order of priority prescribed in section 178 of the Code even when he intends to declare interim dividend yet, an amendment in this regard may be necessary since no action shall lie against the BT for a dividend except when he refuses to pay it.

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# GST - Good and Simple Tax - A Progressive Reform towards Economic Growth

**Ravneet Singh Khurana\***

## Introduction

The dawn of 1st July, 2017 has brought within its fold the rays of economic freedom in the country with the roll-out of Goods and Services Tax (GST). This event will go down as one of the biggest milestones in the history of our country when the political class arose in one voice in favour of the economic integration of the country as a whole, leaving aside their political differences. It will not be a hyperbole to say that it is no less than the achieving freedom again. The launch of GST marks our economic independence, an independence which liberates us from the strangles of black economy and corruption.

The introduction of GST is the most ambitious indirect tax reforms in India post its independence in 1947. This reform does away with a large number of taxes levied on different economic activities by the Central and State Governments. Earlier the Central Government levied tax on manufacture (Central Excise duty), provision of services (Service Tax), interstate sale of goods (levied by the Centre but collected and appropriated by the States) and states levy tax on retail sales (VAT), entry of goods in the State (Entry Tax), Luxury Tax, Purchase Tax, etc. All these taxes are subsumed in a single tax called the Goods and Services Tax which is levied on supply of goods or services or both at each stage of supply chain starting from manufacture or import and till the last retail level. GST is a dual levy where the Central Government levies and collects Central GST (CGST) and the States levy and collect State GST (SGST). The Centre also levies and collects Integrated GST (IGST) for interstate supply of goods and services.

## Genesis

The idea of moving towards the GST was first mooted by the then Union Finance Minister in his Budget for 2006-07. Initially, it was proposed that GST would be introduced from 1st April, 2010. The Empowered Committee of State Finance Ministers (EC) which had formulated the design of State VAT was requested to come up with a roadmap and structure for the GST. Joint Working Groups of officials having representatives of the States as well as the Centre were set up to examine various aspects of the GST and draw up reports specifically on exemptions and thresholds, taxation of services and taxation of inter-State supplies. Based on discussions within and between it and the Central Government, the EC released its First Discussion Paper (FDP) on GST in November, 2009. This spells out the features of the proposed GST and has formed the basis for discussion between the Centre and the States.

## Rationale

India is a Union of states and politically we are one nation, but are we an economic union? Can a trader sitting in Tamil Nadu sell goods in Himachal Pradesh without having to worry about the rates of taxes in each state? Can a Truck starting from Jammu and Kashmir and going up to Kanya Kumari travel without being stopped at

\* Joint Commissioner (GST), CBEC, Ministry of Finance. The views expressed are personal views of the author and do not necessarily reflect those of the Institute.



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the check posts on the borders of each state? GST has the potential to remove all these obstacles and forge Indian into one economic state or a common national market where the trade is really done without fear or favour in any state of the country.

The waves of awareness have swept through the country and it would not be fallacy to say that even a child would know that GST stands for Goods and Services Tax. But what he might not know is that what has created the need for ushering this mammoth reform in the country? Why it has taken more than ten years for the country to see the dawn of new era? Well, the answer to this would lie in the backdrop of history with which our taxation system was much in favour with. Historically, the Central Government levied tax on manufacture (Central Excise duty), provision of services (Service Tax), inter-State sale of goods (CST - levied by the Centre but collected and appropriated by the States) and States levy tax on retail sales (VAT), entry of goods in the State (Entry Tax), Luxury Tax, Purchase Tax, etc. Not only the sheer number of these taxes was mindboggling but the compliance mechanisms for all these taxes were nightmarish for any taxpayer. Adding complexity to the problem was the fact that these taxes were existing in silos i.e. there was no credit chain between the taxes paid to the Central government or the State government. Resultantly, there was cascading of taxes, tax arbitrage between the inter-State and intra-State sales spawning a vortex of unscrupulous elements who took advantage of these artificial barriers. Alongside the matrix of forms and cumbersome regulations combined with tardy and inefficient compliance mechanism made conduct of business in India a tribulation for most of the trade and industry.

In GST these vexatious experiences are forgotten as a bad dream and what we are going to see is arrival of SMART governance with key attributes being simple, moral, accountable, responsive and transparent. The various taxes have been subsumed in a single tax called the Goods and Services Tax (GST) which is levied on supply of goods or services or both at each stage of supply chain starting from manufacture or import and till the last retail level.

### Key Features of GST Model

In order to understand GST it would be better if the key features of GST model in India are detailed out.

- (i) The territorial spread of GST is whole of the country including the state of Jammu and Kashmir
- (ii) GST is applicable on “supply” of goods or services as against the previous concept of tax on the manufacture of goods or on sale of goods or on provision of services.
- (iii) It is based on the principle of destination based consumption taxation as against the erstwhile principle of origin based taxation.
- (iv) Import of goods is treated as inter-State supplies and is subject to IGST in addition to the applicable customs duties. Import of services is treated as inter-State supplies and would be subject to IGST.
- (v) CGST, SGST/UTGST & IGST is levied at rates mutually agreed upon by the Centre and the States under the aegis of the GST Council.
- (vi) GST covers the entire gamut of goods and services except Alcohol for human consumption which is constitutionally out of GST. Besides, five petroleum products (Crude, Petrol, Diesel, ATF & Natural gas) are out of GST at present.
- (vii) A common threshold exemption of Rs. 20 lakhs (Rs. 10 lakhs for special category States as specified in article 279A of the Constitution except State of Jammu & Kashmir) for both CGST and SGST/UTGST



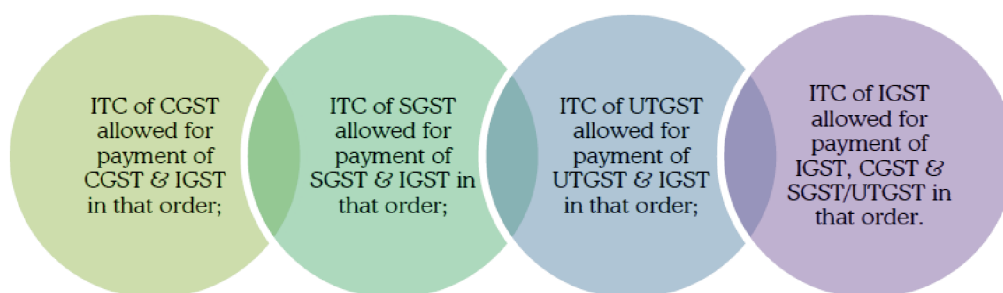
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has been provided for. Besides, an option to pay tax under composition scheme (i.e. to pay tax at a flat rate without credits) is available to small taxpayers (other than specified category of manufacturers and service providers) having an annual turnover of up to Rs. 1 Crore.

- (viii) Exports and supplies to SEZ are zero-rated.
- (ix) Credit of CGST paid on inputs may be used only for paying CGST on the output and the credit of SGST/UTGST paid on inputs may be used only for paying SGST/UTGST. In other words, the two streams of input tax credit (ITC) cannot be cross utilized, except in specified circumstances of inter-State supplies for payment of IGST. The credit would be permitted to be utilized in the following manner:



ITC of CGST cannot be used for payment of SGST/UTGST and vice versa.

- (x) Electronic filing of returns by different class of persons at different cut-off dates.
- (xi) Various modes of payment of tax available to the taxpayer including internet banking, debit/ credit card and National Electronic Funds Transfer (NEFT) / Real Time Gross Settlement (RTGS).
- (xii) Refund of tax to be sought by taxpayer or by any other person who has borne the incidence of tax within two years from the relevant date.
- (xiii) System of self-assessment of the taxes payable by the registered person.
- (xiv) Audit of registered persons to be conducted in order to verify compliance with the provisions of Act.
- (xv) Advance Ruling Authority in States in order to enable the taxpayer to seek a binding clarity on taxation matters from the department. Centre would adopt such authority under CGST Act.
- (xvi) An anti-profiteering clause has been provided in order to ensure that business passes on the benefit of reduced tax incidence on goods or services or both to the consumers.
- (xvii) Elaborate transitional provisions have been provided for smooth transition of existing taxpayers to GST regime.

### IGST Model : The heart of GST

Before discussing the IGST Model and its features it is pertinent to understand how inter-state trade or commerce was being regulated in the erstwhile indirect tax system. It is important to note that, earlier, the Central Sales Tax Act, 1956 regulates the inter-state trade or commerce (hereinafter referred to as “CST”) the authority for which is constitutionally derived from Article 269 of the Constitution. Article 269 reads as follows:

#### Article 269

- (1) Taxes on the sale or purchase of goods and taxes on the consignment of goods shall be levied and



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collected by the Government of India but shall be assigned and shall be deemed to have been assigned to the States on or after the 1st day of April, 1996 in the manner provided in clause (2).

*Explanation.*—For the purposes of this clause,—

- (a) the expression “taxes on the sale or purchase of goods” shall mean taxes on sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce;
  - (b) the expression “taxes on the consignment of goods” shall mean taxes on the consignment of goods (whether the consignment is to the person making it or to any other person), where such consignment takes place in the course of inter-State trade or commerce.
- (2) The net proceeds in any financial year of any such tax, except in so far as those proceeds represent proceeds attributable to Union territories, shall not form part of the Consolidated Fund of India, but shall be assigned to the States within which that tax is leviable in that year, and shall be distributed among those States in accordance with such principles of distribution as may be formulated by Parliament by law.
- (3) Parliament may by law formulate principles for determining when a sale or purchase of, or consignment of, goods takes place in the course of inter-State trade or commerce.

CST has been in vogue for number of decades in our country and has been disclaimed as the single most obstacle to the growth of inter-State trade in our country. In fact the reason for India still being a political union rather than an economic union can be attributed to this regressive tax amongst other factors. Not only it is non-vatable [i.e. Credit of CST is not available as Input Tax Credit (hereinafter referred to as “ITC”) for payment of other taxes], but the fact that it was administered through forms and archaic procedures and regulated through check posts and nakas, has made it a big deadwood for the capacity and capability of Indian’s competitiveness in international market. Another negative feature of CST is the opportunity it provides for “arbitrage” because of the huge difference between tax rates under VAT and CST being levied on intra-State sales and inter-State sales respectively. In this scenario IGST Model has emerged as a beacon of light in the field of darkness encompassing the sub-national VAT and has the capacity to positively influence the dynamics of inter-State trade in a manner unfathomable earlier.

If GST can be viewed as a body, its heart would definitely be the taxation of inter-State supplies. Worldwide, wherever the GST commonly known as “VAT” has been introduced, countries with federal set-up having sub-national entities have been using different models to deal with the intricacies of trade taking place across sub-national entities. A large number of models are already in vogue for handling supplies, which take place in the course of inter-sub-national trade or commerce. The question that arises is that why India chose to develop a new model when so many models are already in the market. Before discussing this question, it is important to know various parameters on the basis of which sub-national VAT system needs to be evaluated. Following are the major touchstones of judging a good sub national VAT system:





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- (i) *State autonomy in tax setting* : The system should help preserve tax-setting power to sub-national governments. This is more important in India as State governments are permitted to have the power of actual tax collection in their respective jurisdictions.
- (ii) *Destination principle* : The revenue on the final consumption should belong to the Destination State. Moreover the revenue should be available to the Destination State as soon as the taxable event is completed and taxes are paid by the supplier.
- (iii) *Compliance symmetry* : The business transactions within the State and across different States should be treated identically.
- (iv) *Proper tax incentive to the administration collecting the tax* : The implementation of the proposed model should not require additional manpower. It should also not make an administration responsible for collection of tax when the benefit thereof would actually accrue to some other State.
- (v) *Avoid predatory competition amongst States* : While maintaining State's autonomy, the system should not permit the States to do mutual harm by exporting taxes to the destination State or start tax wars to stake claim on tax base of other States.
- (vi) *Preserve the ITC chain* : The ITC chain should not break at any cost as the breakage will compromise the objective of establishing a single common market and removing cascading.
- (vii) *Minimize cost of compliance for taxpayers* : The very purpose of GST and its consequent impact on GDP growth will be compromised if the system adds significantly to the cost of compliance.

It is important to note that the models under use globally suffer from the following drawbacks:

- (i) Lacks compliance symmetry i.e. different treatment to B2B and B2C sales – models are basically designed to handle B2B sales;
- (ii) B2C sales are taxed in originating State thereby violating destination principle;
- (iii) Leads to increase in compliance costs –
  - (a) result in blockage of funds;
  - (b) refund of State VAT portion in exporting State and that of federal taxes in importing State;
  - (c) delay in availability of ITC to buyers;
- (iv) lacks incentives to States for tax collection;
- (v) fails to check tax evasion as taxes are mostly paid on reverse charge basis and not by the supplier at the time of sales.

Thus it may not be incorrect to say that all the models being globally deployed have certain imperfections that make them unworkable in a federal set-up like India particularly as India has Dual GST model. So the quest for a new model that fits into the Indian economic and political matrix brought our policy makers to examine various other options before zeroing on the IGST model. It is said that India is a land of imitators rather than innovators. But IGST model is an ode to Indian ingenuity and innovativeness as it tries to overcome the pitfalls associated with the various models discussed above and tries to achieve the objectives of harmonized sub-national VAT. For understanding IGST Model, it is important to look at the constitutional framework for taxation of inter-State supplies which is provided in the Article 269A of the Constitution (122nd) Amendment Bill. The relevant provision is as follows:



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### Article 269A

- (1) Goods and services tax on supplies in the course of inter-State trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council.

*Explanation.*— For the purposes of this clause, supply of goods, or of services, or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services, or both in the course of inter-State trade or commerce.

- (2) Parliament may, by law, formulate the principles for determining the place of supply, and when a supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.”

It is discernible from a plain reading of the Article that:

- (i) IGST would be levied on the supply of goods and/or services that take place in the course of inter-State trade or commerce;
- (ii) It would be levied and collected by the Central Government;
- (iii) The collected IGST would be apportioned between the Union and the States in the manner as may be provided by the Parliament by law on the recommendations of the Goods and Services Tax Council;
- (iv) Imports would also be subjected to IGST;
- (v) Parliament would lay down the principles for determining the Place of Supply Rules (hereinafter referred to as “POSR”) that would determine the character of supply i.e. whether inter-State or intra-State.

Some of the features of this Model that are considered to be angelic in nature and have the potential to revolutionize the inter-State trade or commerce are as follows:

- (i) IGST is leviable on any supply of goods and/or services that would take place in the course of inter-State trade or commerce;
- (ii) There is no difference in the treatment of Business to Business (B2B) supplies or Business to Consumer (B2C) supplies;
- (iii) It is a stand-alone tax that is paid by the supplier in the exporting State. The supplier can utilize the ITC of CGST as well as that of SGST paid by him at the time of intra-State procurement and that of IGST paid by him at the time of inter-State procurement for discharging the liability of IGST;
- (iv) The purchaser in the importing State is eligible to take full ITC of IGST paid by the supplier in the exporting State;
- (v) The purchaser can utilize the said ITC for discharging his tax liabilities on account of IGST, CGST and SGST associated with his supplies whether inter-State or intra-State;
- (vi) The IGST is permitted to be utilized for payment of IGST, CGST and SGST in that order;
- (vii) The exporting State transfers the amount of SGST utilized by the supplier for payment of IGST to the Central Government;
- (viii) The Central Government transfers the amount of IGST utilized for payment of SGST to the concerned importing State;



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- (ix) The Central Government transfers the SGST portion of IGST paid by the taxpayer in the exporting State on B2C inter-State supplies to the importing State.
- (x) The transfer of funds is carried out by the Central Government on the basis of information contained in the periodical returns submitted by the taxpayers;
- (xi) Central Government acts as a clearing house for transfer of funds between the exporting State and Centre on the one hand and between the Centre and importing State on the other hand.

The essential requirements for successful working of the IGST Model cannot be over-emphasized particularly when the ITC of taxes paid in one State are allowed to be utilized by the taxpayer located in other State(s). The model works with inbuilt system based validations and checks on all aspects of availment and utilization of ITC as well as that of tax payments. There are certain other requirements for successful working of the model that are as follows:

- (i) Uniform e-registration of taxpayers;
- (ii) Common e-return for all types of taxes namely CGST, SGST & IGST;
- (iii) Common periodicity of returns for a class of taxpayers if not for all;
- (iv) Uniform cut-off dates for filing of e-returns;
- (v) Mandatory reporting of supply and purchase invoice details prior to or along with filing of e-returns;
- (vi) System based verification of returns;
- (vii) Well laid down Place of Supply Rules for determining the nature of supply.

The IGST Model scores over the presently used models elsewhere in the world in many ways. This model appears to be a win-win situation both for the taxpayers as well as for the tax authorities. Some of the advantages of this model are as follows:

- (i) For Taxpayers:
  - (a) Maintenance of uninterrupted ITC chain on inter-State supplies for taxpayers located across States;
  - (b) No refund claim for suppliers in exporting State, as entire ITC is allowed to be used while paying the tax;
  - (c) No substantial blockage of funds for the inter- State supplier or recipient;
  - (d) No cascading as full ITC of IGST paid by supplier is allowed to the recipient in the destination State;
  - (e) Suppliers are required to pay taxes in the State where they are located and they are not required to obtain registration in destination State only for payment of taxes;
  - (f) Tax reach the destination State through clearing house mechanism based on the information contained in the periodical returns submitted by the taxpayers;
  - (g) Model handles 'Business to Business' as well as 'Business to Consumer' supplies.





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### (ii) For Tax Administrations:

- (a) Upfront tax payments by suppliers in the exporting State;
- (b) No refund claims on account of inter-State supplies;
- (c) Proper tax incentive to the administration for collecting the tax;
- (d) Avoids predatory competition amongst States;
- (e) Tax gets transferred to Importing State in accordance with the Destination principle;
- (f) Self monitoring model as taxes are paid upfront and full ITC is allowed to taxpayers located across the States;
- (g) Result in improved compliance levels;
- (h) Effective fund settlement mechanism between the Centre & States.

### **GST & Economic Growth**

GST should not be seen as merely an indirect tax reform but a reform that would re-engineer the business process right from procurement of raw materials to delivery of final product to the consumer. GST has the potential to transform the Indian economy and revolutionize the manner in which business is conducted in India. This tax reform seeks creation of a single national market, common tax base and common tax laws for the Centre and States. Another very significant feature of GST is that input tax credit is available at every stage of supply for the tax paid at the earlier stage of supply. This feature mitigates cascading or double taxation in a major way. This tax reform is supported by extensive use of Information Technology which leads to a greater transparency and accountability of the tax administrations of the Centre and the States and also improved compliance levels.

With the creation of a common national market under GST, the flow of goods and services throughout the country is now uninterrupted and hassle-free. This will not only boost the growth of the economy but also provide a thrust to the growth of entrepreneurship in the country. The seamless flow of input tax credit in GST coupled with increased competitiveness on account of nation – wide uniformity and harmonization, has induced a large number of taxpayers to get registered voluntarily. The reduced cost of compliance and increased ease of doing business on account of electronic interface between the taxpayer and tax authorities has convinced many business entities to become a part of this historic reform. Numerous advertisements in print as well as electronic media highlighting the benefits of GST have furthered the cause of increased number of registrations under GST. It is believed that the self-policing mechanism built in GST will enable the government to have a prismatic view of the universe of taxpayers. Further, in order to encourage voluntary registration, simplified compliance schemes such as quarterly payment of tax and filing of returns along with simplified forms for the filing of returns can be adopted to boost the ingress of taxpayer into the GST regime.

GST also achieves the unification of our country. Before GST, the country was politically united but lacked economic unification. Tariff and non-tariff barriers between the States created artificial walls for the trade and industry. Not anymore, as there will be removal of all these obstacles. GST has indeed transformed India into – “One Nation One Tax One Market”.

GST marks the maturity of our democracy. The true color of co-operative federalism was seen in the working of the GST Council. Thirty one State/UT Governments came together to decide the fate of the country. And to much of the surprise of critics and pessimists, without any dispute or problem, they finalized the GST laws and rules and also decided the rates of goods or services which are to be levied uniformly throughout the country and that too, unanimously. The working of the GST Council reflects truly the spirit of “Unity in Diversity”.



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This revolutionary taxation system is deeply rooted in modern day Information Technology architected to ensure faceless tax administration. Right from the very first step of taking registration to filing returns, to making payment to claiming refund, the whole process is online. This results in cutting the length of red tape that has marred the growth and held back the success of our country. The processes are made time bound. Discretion of the officers has been reduced to minimal. Online ledger system takes care of maintaining the accounting by the business for the purpose of taxation. In the GST regime, one needs to maintain very few details such as of purchases and supplies. Keeping in mind the concerns of small traders, a composition scheme has been introduced. Under the scheme, person with annual turnover up to Rs. 1 Crore needs to pay tax equal to 1% to 5% on his turnover. He also needs to file his returns every quarter. Beside that the GST Council in its recent meeting has recommended the quarterly filing of returns along with quarterly payment of taxes for taxpayers having annual turnover less than Rs. 1.5 Crore. This is not only expected to reduce the compliance burden for small taxpayers but also a boost to the entrepreneurship of our young country.

Tax rates have been decided based on the philosophy that tax should be collected as per the capacity of each individual. Therefore, GST on essential items has been kept as nil. Food grains such as rice and wheat are exempted from GST. Similarly, farmers & agriculturists are not required to take registration under GST for their farm produce. Items of mass consumption are being taxed at a meager rate of 5%. Most of the manufactured items have been kept under 12% and 18% bracket. Very few items such as luxurious goods have been charged at 28%. Anti-profiteering clause has been specially designed to help the consumers get the benefit of the reduction in price due to reduced rate of tax. Hence, it is visible that special precautions have been taken to safeguard the interest of the society as a whole.

Goods will now move from one State to another without any barrier. Many States have already announced the removal of check points at the border. This will lead to decrease in the cost of transportation. This cost competitiveness will help our products compete in the international market successfully with the global champions. The foreign investors would be able to deal with anyone in the country with ease. They will not be embroiled in the tangles of various taxation laws and varied procedures. Uniform laws, procedures, practices and tax rates throughout the country will lead to increased “ease of doing business”. This will also give a huge boost to the “Make in India” drive. It will help in creating jobs for the country as a whole and youth in particular. Increased wages and subsequently enhanced demand will reinvigorate the cycle of growth and investment in the country. Various projections about the growth rate of our economy have unanimously anticipated an increase in the GDP of our country.

With GST, supply chain emerges as the biggest benefactor besides the manufacturing sector as business decisions are no longer guided by taxation considerations. Introduction of IGST instead of CST leads to consolidation of warehouses and shrinkage of the supply chain thereby making it more efficient and cost effective. Removal of check posts or at least streamlining of its working will go a long way in reducing the on road time for the vehicles and make their movement faster than earlier. Also the supply chain witnessed consolidation as the dynamics of economy of scale came into picture and resulted in emergence of investment opportunities in this sector. The introduction of GST seeks to have a positive impact on our supply chain and make it more efficient, dynamic and lucid and bring it more closer to international benchmarks.

Alongside there are some challenges that our economic landscape is facing. The biggest challenge for the manufacturers is to stream line their entire supply chain from the cradle to the grave as they say. They need to look at their vendors from whom they are sourcing their inputs and try to consolidate their input procurements because the Input tax credit is available only on matching of the invoices. Further the logistics part and the selling and distribution network have been aligned with the consumer demands and key areas of growth. Also the fact that GST is IT driven the shoring up of the technological capacities to handle the electronic processes



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is one of the key concerns of the manufacturing sector. Besides decisions about pricing of the products are important as it is based on equalization of all India cost taking into account uniform tax rates in various States as well as the decision to pass on the benefits of the GST to the final consumer. As for the exporters, the biggest challenge is to handle the working capital requirements that arise on account of the weaning away of the option of duty free procurement of goods and services as inputs for exports, both domestically and imported. Although the same has been addressed to a certain extent via recommendations of the GST Council in its 22nd meeting, but still there would be a crucial requirement for them to re-align the working capital cycle with the flow of the funds.

### Conclusion

Overall, it can be said that introduction of GST in the country has opened up new vistas in the field of indirect taxation in the country. It is the first time when both the Governments i.e. Central and State have taxation powers over the entire supply chain thereby ending the fractured mandate of taxation that has been the bane of indirect taxation for so long. Alongside, GST created a common national market by freeing the inter-State trade from the chains of forms and anachronistic procedures and more importantly from cascading of taxes that were contributing towards increasing the cost of carrying out business without any resultant benefits. The choice of IGST Model for dealing with inter-State supplies points towards one objective, i.e. creation of a common national market and unleashing the chained energy of Indian Manufacturing Capacity. It is said that India has a potential to be the leading economy of the world and the advent of GST can play a crucial role in this regard.

Looking at GST from a myopic view point only shades of indirect tax reform will be visible. But if we have a comprehensive view of this transformational reform it can be seen as a business change, a social regeneration, a revolution that will reenergize the sagging weeks of our economic growths, a booster dose for the immunity of our economy from the vagaries of world developments and last but not the least a platform for meteoric growth of the country. Besides being a **“One nation, One Tax, One market”** reform, it also provides a framework for realizing the dream of, **“Swachh business, Samrudh Bharat”**.

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# GST – A Good And Simple Tax – A Progressive Reform Towards Economic Growth

**M. S. Vaidyanathan\***

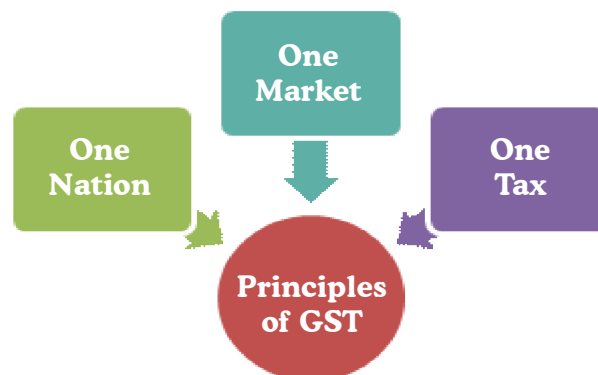
## THE MANDATED MOVEMENT TO GOODS AND SERVICES TAX REGIME

### Professional Perception

A lot of hype had been created regarding the new Goods and Services Tax Act which came into effect from the midnight of 30th June 2017. The hype created reminds one of the 'Year 2000' problem - popularly referred to as Y2K - days when an unknown fear gripped one and all, of the impending disaster on the 1st of January 2000, when all economic activity the world over would come to a grinding halt, if the debugging of the program codes running the various applications were not correctly done. Nothing like that happened in India. We did not face any hardship and the rollover was smooth for two reasons, one, unlike many of the countries we were not over dependent on systems and two, we had carefully done our part of the homework for continuance of smooth functioning or seamless migration, if we may call it.

GST is a landmark reform brought in the area of indirect taxation. Midnight of June 30, 2017 reminded every Indian of the historical moment when our country gained freedom nearly seventy years ago and which was also celebrated at midnight to mark our independence from the British with effect from the 15th August 1947. While the independence movement gave us freedom from the British rule, this tax 'revolution' – popularly referred to as Good and Simple Tax - gives us relief from the multiplicity of taxes which with its cognate expressions has been a perennial burden on the common man.

Introduction of GST is nothing revolutionary or a hastily drafted enactment. More than one hundred and sixty countries in the world have already introduced this single tax concept much before us. So it is high time we geared up and fell in line to benefit from the uniform tax concept. GST works on the principle of one nation, one market and one tax.



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Whatever may be the final outcome, whatever may be the ongoing experience of the common man, or more importantly of the business community of manufacturers, traders and service providers, it must be to the full credit of Modi Government to have taken up Goods and Services Tax Act, 2017 (GST) in right earnest from where it was left some years ago and gone ahead full blast, like the demonetization scheme, to implement it in letter and spirit. As expected there was resistance from some quarters and serious apprehensions put forward by many on the feasibility of implementing such a massive tax reform in a country like ours with 29 states and 7 union territories and even seriously mooted the idea of deferring the plan for some time. NDA government rightly did not budge from its proclaimed stand but offered to view with lenience any failures in the compliance part if on genuine grounds. The Government reiterated its commitment to have GST in place as planned by assuring one and all that it had an open mind on all issues concerning its implementation and welcomed criticisms and complaints to be taken up in all seriousness for redressal promptly and in the interest of all stake holders. The government also chose to react to every report circulating in the media of a probable deferment of the GST by a promptly denial and reiterating its planned roll out from July 01, 2017.

### Professional Understanding

The primary rationale for advocating GST appears to be in bringing about uniformity in pricing of products throughout the length and breadth of this country. Over the years, we as consumers have often experienced disparity in prices of commodities in various parts of the country and remained clueless on addressing it effectively, often preferring to procure it from the State where it was competitively priced. We say we are one country but a commodity procured in Mumbai, at times is cheaper than the same commodity available in Chennai. Why is it so? Should not the price of goods be the same from Kashmir to Kanyakumari? Obviously a big 'yes'. But in reality it does not happen because hitherto goods were subjected to different rates of VAT prevailing in various States. Now that is sought to be addressed with the advent of GST.

Again on comparison of the existing tax structure and the GST tax rates, people are normally led to believe that the tax structure is just old wine in new bottle, which is just not the case. Like the oft quoted 'Bata' rate on footwear, people psychologically jump to conclusions. Under the earlier system goods when manufactured attracted Excise Duty and when sold attracted Sales Tax. So while the sales tax is reflected in the invoice, excise duty component forming part of the manufacturing cost like raw materials and labour, remained hidden in the cost. Therefore a careful introspection would reveal that the excise duty component if also taken into account for comparison of total taxes levied under both the regimes will clearly show that the GST rates proposed are definitely beneficial to the consumer vis-à-vis the earlier system. For excise duty the taxable event was production or manufacture of goods, for services the taxable event was provision of service, under Central Sales Tax and Value Added Tax (VAT) the taxable event was sale of goods. Replacing all this under GST the taxable event is SUPPLY which has been subjectively and inclusively defined in the present Act and which essentially talks of 'consideration' by a person in the 'course or furtherance of business' and it is a destination based consumption tax.

What we all ignore or do not realize is that earlier on the excise duty was loaded at the time of manufacture in the cost of the goods and therefore what was arrived at as the cost of the product included besides material cost, labour etc. the excise duty component. To this final cost of the product we added various taxes like service tax, VAT, Krishi Kalyan tax, swachch bharat cess etc. So while comparing the tax under GST regime, we should take into the excise duty component already loaded into the cost of the product to arrive at a meaningful comparison.

Under GST regime, tax is levied as dual GST, separately but concurrently by the Union and the concerned States under Central GST (CGST) and State GST (SGST) that will cover intra State transactions and the Centre under the Integrated GST (IGST) that will cover inter State transactions, transactions between Union

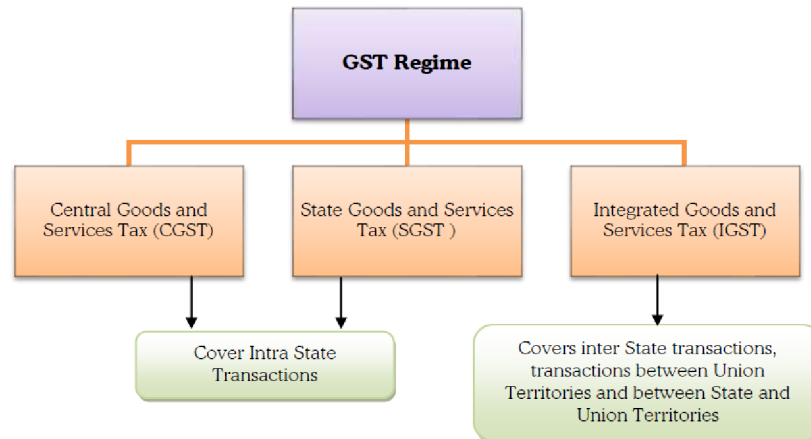


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Territories and between State and Union Territories. With the broad five slab tax rate structure of 0%, 5%, 12%, 18% and 28% to start with.



Around seventeen different indirect taxes covering among others Excise Duty, Service Tax under Central Taxes and VAT, Purchase Tax, Entry Tax, Luxury Tax under State Taxes besides various Cesses and surcharges, have been subsumed under GST.

Above all, everything is technology driven and the registration is PAN based. The threshold limit for mandatory registration under GST is fixed at Rs. 20 lakhs turnover in a financial year although for special category states it is Rs.10 lakhs. Right from filing various returns to payment everything is online. What is more, most of the fields in the returns are auto-populated saving precious time for the tax-payers. Software giant Infosys provides the technology backup for GST through the Goods and Services Tax Network (GSTN) and to handle such voluminous online data and clients we have intermediaries like GST Suvidha Provider (GSP) for support service.

The notable feature of GST is that for the first time we have moved from production based concept of taxing to consumption based destination taxing. So in the prevailing situation, if Tamil Nadu is a producer state producing goods and services and supplying them to Kerala, then Kerala being the consumption state gets the benefit of GST and to compensate the resultant loss of revenue by the producing States, we have the GST (Compensation to States) Act, 2017.

GST is expected to overhaul the Indian economy with simplified tax laws, greater compliance, accelerated growth and a boost to investor sentiment. What has not been said is that it will also address the rampant corruption prevalent in our country as every transaction is online and all details of the parties are captured in the system, being PAN driven. There is no provision for making adjustments in the accounting system manually or even back-dating transactions. Thus all corrections or rectifications in any transaction have to be carried out through credit invoices or debit invoices only.

The system envisages bringing into its fold unregistered suppliers sooner or later, through the Reverse Charge Mechanism, where under certain circumstances, instead of the supplier the recipient of goods or services is liable to pay tax. This will in turn ensure greater compliance and augment Government revenues.



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One advantage we probably have as a late entrant in the GST regime is that we can draw lessons from the countries which have implemented this tax reform before us. To address a major threat of inflation consequent to introduction of GST, Government has strategically exempted essential items especially edible items like unpacked foodgrains, fresh vegetables, milk, curd, educational services, health services from tax bringing them under 0% tax slab to ensure that the common man does not suffer. Sin products always sell well. So Government has levied cess on tobacco, luxury goods and others.

But comparison of the tax structure or process of implementation with those countries may not be proper. Singapore for instance has a single rate of tax at 7%. But the size of the country when considered in relation to ours does not warrant meaningful comparison. Similarly if we take Malaysia where GST was implemented with effect from 01.04.2015 with a tax rate of 5% and then it became 6%. There was panic buying prior to its introduction. People were buying whatever was available like bread, butter etc. Their concern was understandable as they never had a tax till then. So it did make sense to stock as much as possible of the tax free goods. But in India we have always been subjected to tax and under various heads. When during the UPA government service tax was introduced it covered telephone, insurance and stock broking. The massive revenue collections far exceeded the expectations of the government, which led them to expand the service tax network to cover more and more services. They had found a convenient way of augmenting revenue for the government by introduction tax under various heads like Swachch Bharat cess, Krishi Kalyan cess and so on.

From the Compliance angle the task is humongous, you have three returns per month per registration and an annual return that gives you thirty seven returns to be filed per year and if you have registrations in 'n' number of states, the number of returns multiplies proportionally and becomes n times 37. How simple or easy it is to file the returns that are self-populated as claimed by the department, only time will tell. Mention must also be made that there is a provision for filing lesser number of returns for those coming under the Composite Scheme.

### In Conclusion

Introduction of GST is a significant step in the reform of indirect taxation in India. Amalgamating several Central and State taxes into a single tax mitigates the cascading effect of double taxation, facilitating a common national market. The simplicity of the tax is expected to facilitate effective administration and enforcement. From the consumer's point of view, the biggest advantage is expected to be in terms of a reduction in the overall tax burden on goods, which on average, is currently estimated at around 30%, free movement of goods from one state to another without stopping at state borders for hours, for payment of state tax or entry tax and overall reduction in paperwork. In the short term, there are apprehensions with regard to the preparedness of businesses, especially in the small and medium segments, to make the transition. As with any change of this magnitude, there are bound to be some initial teething problems, especially with respect to technology, as also with the administrative changes that businesses will have to adapt to. However, in the long run, the overall benefits to consumers, business and the economy as a whole are expected to be substantial.

Patience and preparation are often rewarded as history has come to prove. Initial hiccups will be there like handling works contracts but can be managed and addressed. The concerted efforts of the States and the Centre coupled with the support of the industry will ensure that implementation of this major tax reform in India will overhaul the entire economic framework for the better.

Let us fervently hope that in the coming years, the present declared tax rates are pruned down to just one or at best to two.

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### Life Skills / Management Skills

Raveena Agrawal\*

#### Introduction

In India the existence of Governance Professionals is as old as our Civilization where even the pre-vedic philosophy remarked the role of Bhisma Pitamaha as the master of Governance skills of Raj Dharma, i.e., righteous duty of the king. However, the enlightened concept of Governance emerged in the mid-1980s as governability with the emphasis on adherence to the rule of law. The famous quote by Sir Bruce Fairchild Barton explains about skills of Governance Professionals:

*“It is said that great leaders are born, not made. The saying is true to this degree, that no man can persuade people to do what he wants them to do, unless he genuinely likes people, and believes that what he wants them to do is to their own advantage.”*

Arthashastra while highlighting the principle of good governance declares, “In the happiness of his people lies king’s happiness, in their welfare his welfare, whatever pleases himself he shall not consider as good, but whatever pleases his people he shall consider as good.”

The Rig Veda states “*Atmano mokshartham jagat hitayacha*” i.e., the dual purposes of our life are emancipation of the soul and welfare of the world.

The United Nations Development Programme, defines governance as “the exercise of political, economic and administrative authority in the management of a country’s affairs at all levels.

As stated historically, there is need of skilled Governance Professionals for the efficient management of whether the kingdom or the corporate world.

#### Emergence of Governance in India

In 1989 World Bank study titled “Sub-Saharan Africa-from Crisis to Sustainable Growth”, the term ‘Governance’ was first used to describe the need for institutional reform. When during 1990s World Bank raised the issue of governance, this immediately, became an issue of concern in India. The document of the Ninth Five Year Plan (1997-2002) released in April 1999 included a Chapter on “Implementation, Delivery Mechanism and Institutional Development.” In India the concept was followed by adding specific chapter titled, “Governance and Implementation” in the Tenth Five Year Plan (2002-2007). A special Speech was delivered by the then Shri President of India Pranab Mukherjee, on the Occasion of Fourth UPSC Foundation Day, “Governance and Public Service” in New Delhi on November 29, 2013.

The twelfth five year plan (2012-2017) defines good governance as an essential element of any well-functioning society. It ensures effective use of resources and deliverance of services to citizens and also provides social legitimacy to the system.

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Hon'ble Prime Minister Shri Narendra Modi while addressing Company Secretaries on the occasion of Golden Jubilee Celebrations of the ICSI asked company secretaries to ensure firms obey the law and give priority to transparency. He said that the motto of the Institute makes us learn to speak the truth and follow the rules.

It is you who determines corporate culture and it is the duty of your organisation to show people the right path.

Become the kind of leader that people would follow voluntarily; even if you had no title or position. —Brian Tracy

### Why Company Secretaries as Governance Professionals

Today Company Secretaries have an important role to play as governance professionals in all types of organizations whether private, public, government and not-for-profit sectors. Governance is more than just complying with laws, regulations, standards, and codes; it is also about creating cultures of good practice. This means that corporate secretaries need more than the technical skills and experience to know what corporate governance practices are needed in an organization and why. They also need the emotional intelligence, skills, and experience to ensure that they know how the practices typically would be implemented to work effectively. Do what you feel in your heart to be right—for you'll be criticized anyway. —Eleanor Roosevelt

The modern Company Secretary is no longer a “mere servant,” as often implied in earlier job descriptions and early legal text, but is now expected to provide professional guidance to shareholders, boards, individual directors, management, and other stakeholders on the governance aspects of strategic decisions. The corporate secretary typically would act as a bridge for information, communication, advice, and arbitration between the board and management and between the organization and its shareholders and to carry out this role effectively, a corporate secretary needs to act with the highest integrity and independence in protecting the interests of the organization, its shareholders, and others with a legitimate interest in the organization's affairs. This level of responsibility calls for a thorough knowledge of the business environment in which the organization operates as well as of the laws, rules, and regulations that govern its activities.

### What Skills are needed

Professionals should be equipped with technical abilities, the other skills that allow them to succeed in and contribute to the society they live in. We will broadly call such traits – such as management skills-communication, critical thinking, creativity, self-management, decision-making, perseverance, life skills, etc.

The leading association for governance professionals has been encouraging its members to consider taking on further education governance roles, by promoting the life skills , management skills among professionals.

“In today's world, the role of the Corporate Secretary has no one meaning and covers a multitude of tasks and responsibilities. That said, the role lies at the heart of the governance systems of companies and is receiving ever great focus” in the words of David Jackson, Corporate Secretary, BP plc

Life skills (LS) are abilities for adaptive and positive behavior that enable individuals to deal effectively with the demands, challenges, and stress of everyday life. Childhood and adolescence are the developmental periods during which one acquires these skills through various methods and people. As per World Health Organisation (WHO) the generic LS, which need to be taught at the school level especially to adolescents, are as follows:

- Critical thinking and creative thinking
- Communication skills and relationship skills



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- Coping with emotions and stress
- Self-awareness and empathy
- Cognitive Competencies: Cognitive Processes, Knowledge, Creativity and Innovation
- Intra-personal Competencies: Work Ethic, Positive Self- Evaluation, Intellectual Openness
- Inter-personal Competencies: Teamwork and Collaboration, Leadership, Decision making, Problem-solving, Creative thinking, Critical thinking
- Self-awareness: accurately assessing one's feelings, interests, values and strengths
- Self-management: regulating one's emotions to handle stress, and controlling impulses
- Social awareness: being able to take the perspective of and empathise with others, Curiosity, Gratitude, Zest, Optimism, Social Intelligence, Self- Control, Grit
- Learning Skills: Critical Thinking, Creative Thinking, Collaborating, Communicating
- Literacy Skills: Information Literacy, Media Literacy, Technology Literacy
- Self Skills: Flexibility, Initiative, Social Skills, Productivity, Leadership

Life skills thus encompass a wide-ranging and often unstructured set of skills and attitudes that is difficult to rigidly define and that has not been officially codified or categorized.

### **UNICEF Quality Standards for Life Skills Education: Quality Standards for Life Skills**

Standard 1: Outcomes- Life skills education is needs-based (that is, child-centred)

Standard 2: Assessment- Life skills learning is results-based

Standard 3: Activities- Life skills learning is knowledge, attitudes and skills-based

Standard 4: Teaching- Teachers are trained on methods and psychosocial support

Standard 5: Learning Environment- Life skills education is provided in protective and enabling environment with access to community services.

### **Management Skills—one of the twelve recommended leadership development competencies include**

- Life Skills/ Management Skills – Governance Professional – Driving your Business to Success Respectful, diplomatic, and effective communication
- Active listening
- Bringing issues to the surface, especially those relating to reputational risk
- Describing common concerns and interests
- Generating alternative solutions
- Respecting confidences
- Appreciation for all parties
- Disagreeing constructively



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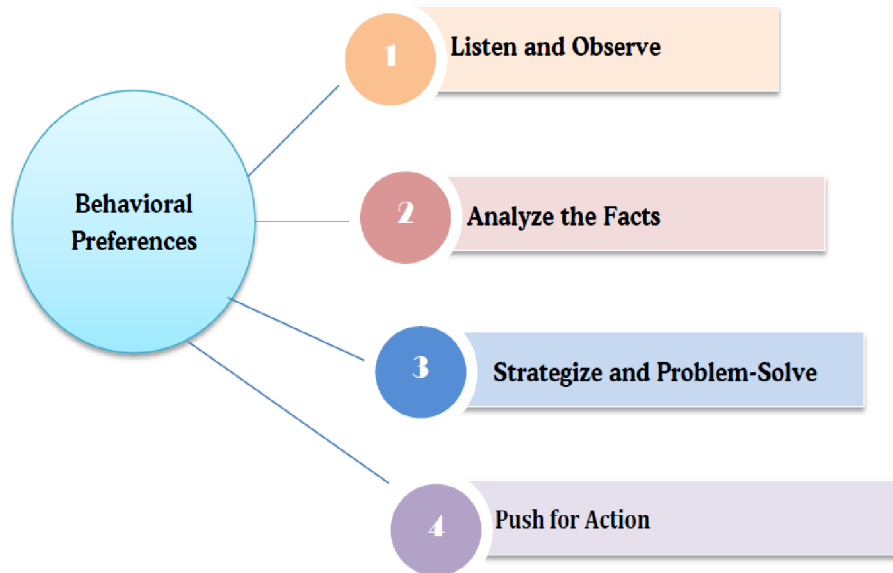


- Emphasizing commercially minded approaches.

### Corporate Secretary's Management Skills for a Productive Meeting : Secretary's Role

- Aim for a specific result, helps the chairman keep people focused on the decision to be made
- Be positive Suggest using "and" instead of "but"
- See/hear/feel sensory data-Read the temperature and body language of board members and advise the Chairman accordingly
- Dovetail desires - Help the Chairman look for common ground and build consensus
- Entertain short- and long term objectives - Help the chairman identify the quick wins and long-term gains.

### Behavioral Preferences at Meetings



David Kolb has identified four different behavioral preferences. Bernice McCarthy has applied these to the workplace, specifically meetings, they include:

- Listen and Observe* : People who like to linger in sensing/feeling and watching. Because they sense and feel and reflect on their experiences, they are outstanding observers of people, highly imaginative, at home with their feelings, believers in their experience, listeners par excellence, caring nurturers, and committed to making the world a better place.
- Analyze the Facts* : People who like to linger in watching and thinking. Because they reflect on their



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experiences, analyze them, classify them, they are outstanding conceptualizers of content, highly organized, at home with details, planners par excellence, concerned about structure, and committed to making the world more lucid.

- c. *Strategize and Problem-Solve* : People who like to linger in thinking and doing. Because they think about theory and act to apply it, they are outstanding problem solvers, highly productive, at home with tasks and deadlines, believers in their ability to get the job done, operationalizers par excellence, and committed to making the world work better.
- d. *Push for Action* : People who like to linger in doing and sensing/feeling. Because they embrace their experiences and act to enrich them, they are outstanding entrepreneurs, highly energetic, at home with ambiguity and change, risk-takers par excellence, concerned about growth and renewal, and committed to challenging boundaries.

### Role of the Corporate Secretary After a Board Meeting

“As the great ones depart, and are eating their dinner, the secretary sits, getting thinner and thinner, racking his brains as he tries to report what he thinks that they think that they ought to have thought.” —Anonymous

- Notify management and relevant personnel of decisions made at the meeting that affect them
- Comply with any filings required by regulators resulting from decisions made at the meeting
- Update the annual board calendar with any items (deferred or new)
- Prepare draft minutes of the meeting
- File a copy of the agenda and supporting papers in the company archives
- Enter any minutes approved and signed in the minute book
- Prepare action log of decisions and action points from the Meeting
- Skills for Delegation
- Listen actively Show genuine interest
  - Use open questions Encourage speakers to share
  - Clarify reasons Confirm goals and objectives
  - Be aware of body language Be friendly and open
  - Speak on behalf of yourself Use “I” statements
  - Focus on constructive ideas Ask for practical suggestions
  - Stay calm Respect different views; reschedule discussions
  - Avoid misunderstanding Paraphrase ideas or statements
  - Allow others to save face
  - Help reformulate statements

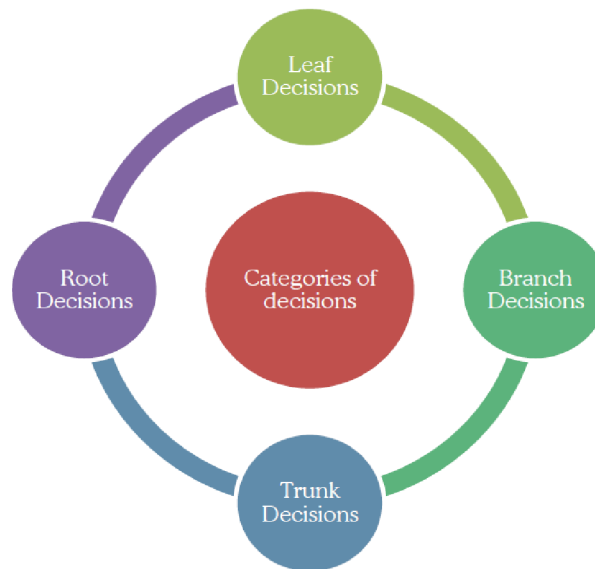


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**Decision Tree** : The decision tree is a useful method of delegation. Think of your company and your board as a green and growing tree that bears fruit. To ensure its ongoing health, countless decisions are made daily, weekly, monthly. The goal of the decision tree is to identify clearly which categories decisions and actions fall into, so board members and management know exactly where they have the authority to make decisions and take action.



There are four categories of decisions:

1. *Leaf Decisions* : Make the decision. Act on it. Do not report the action you took. Example: Management makes a decision on daily operations that does not require reporting.
2. *Branch Decisions* : Make the decision. Act on it. Report the action you took.  
*Example* : Management makes a decision and reports it to the board or a board committee.
3. *Trunk Decisions* : Make the decision. Report your decision before taking any action.  
*Example* : A committee's recommendation to the board.
4. *Root Decisions* : Make the decision jointly, with input from other people. These are the major decisions that only the board has the authority to make.  
*Example* : A board reaches consensus and approves a committee's recommendation.

**Succession Planning** : The corporate secretary's role in succession planning:

- Develop a succession plan for submission to the Board
- Stagger succession to ensure that institutional memory and knowledge are maintained
- Review and keep up to date the board composition matrix and director succession timetable



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Interaction with Shareholders: "Being the manager rather of other people's money than of their own, it cannot be well expected that they would watch over it with the same anxious vigilance with which (shareholders) watch over their own." —Adam Smith, Wealth of Nations Book V (1827)

### Why Skills are needed

In India, education has become institutionalized. Institutes need to be recognized as the single most important and recognized forum to reach out to the young population. Any program to reach the adolescents/youth has to be incorporated into the educational system to be feasible, effective, and cost effective. A common belief is that life skills are optional and secondary to achieving basic literacy and numeracy only if resources are available. Research, however, unequivocally shows that persons who develop social-emotional skills and academic mindsets are better equipped to succeed in school and are able to transfer theoretical concepts to real-life situations early on.

In a country like ours, where resources and trained professionals are sparse and few, it is more practical to involve and work with the teachers. The teachers are the personnel who interact with the adolescents closely. They could be trained to transfer these skills to the adolescents. Most of the programs done earlier have evaluation of implementation-money planned spent, measurement of capacity building, extent of training, and conduct of program.

### Current Obstacles in development of skills

The issues which hinder the development of our skills through our education system include:

*Academic Achievement* : Cognitive achievement and life skills are strongly interdependent, with academic achievement relying heavily on abilities like self-discipline and motivation. Whether self-esteem and sense of agency self-control or diligence, academic tenacity - there are several behaviours, skills, attitudes, and strategies-beyond content knowledge and academic skill - necessary for sustained and significant improvements in learning outcomes.

*Employment Outcomes* : Research has consistently found that cognitive abilities explain only a fraction of variance in wages, finding that other, non-academic skills play a complimentary role in shaping longer-term outcomes.

*Workforce Readiness* : We face a growing abilities gap – the youth segment of our population (15-34 years) is projected to peak at 484.86 million in 2030; this has important implications for the labour market. Functional literacy does not translate into being work ready, with nearly 75% of youth entering the workforce every year considered unemployable or not job-ready. (as per India Skills Report, 2015) Job skill demands have undergone major changes over the last few decades - tasks demanding routine manual input and routine cognitive input have declined steadily between 1960 and 2000, while those requiring non-routine analytic and non-routine interactive skills have grown significantly

*Personal satisfaction* : Social and emotional competencies do not just raise academic achievement and educational attainment, but have also demonstrated strong correlations with personal satisfaction and growth, citizenship, and reduced risky behaviours like violence and drug use. Literature on character skills makes it clear that such skills are a vital determinant of future outcomes, not only in terms of employment. Such mindsets and abilities have direct effects on crime, smoking, teenage pregnancy, and an individual's capacity to lead a responsible and productive life in society.

*Return on Investment* : Predictive power of life skill development has been found to be equivalent to or exceeding



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that of cognitive skills. A recent evaluation of such interventions found a positive return on investments for all with a return of eleven dollars on average, for every dollar invested equally across six SEL interventions, a substantial economic gain.

In their book, *Emotional Intelligence 2.0* (published in 1999), Travis Bradberry and Jean Greaves claim that 90 percent of top performers score highly in EQ, and that it is twice as important as IQ in getting to where you want to be. They suggest that EQ is the foundation for many critical skills, including decision making, change tolerance, communication, anger management, stress tolerance, presentation skills, trust, assertiveness, and empathy. To carry out their roles effectively corporate secretaries therefore need to have skills that enable them to understand their own and other people's emotions and behaviors, and that assist them with self-management and relationship management. They should use these skills to guide their behaviors and the advice they give to the owners, boards, and management of the organizations within which they work.

**Combined Role :** Because of the compliance element of the corporate secretaries' role, organizations in many countries combine the role with that of head of legal. Both the board and the corporate secretary should ensure that there is no conflict between the functions performed in both positions. For example, a general counsel who is also given the role of the corporate secretary will often have to take sides in his or her legal role to represent the particular interests of the company. Although he or she may be complying with the letter of the law and in the interests of management, he or she may not be acting in the best long-term interests of the company. This would be inconsistent with the corporate secretary's governance role, which requires impartiality when advising on governance issues. It may also prevent a corporate secretary from speaking out against bad governance or unethical practices.

### Efforts for Improvement of Skills

The National Curriculum Framework (NCF) 2005 has emphasised on constructive learning experiences, and on the development of an inquiry-based approach, work-related knowledge and broader life skills. Central Board of Secondary Education (CBSE), in 2005, introduced life skills education as an integral part of the curricula through Continuous and Comprehensive Evaluation (CCE) for classes 6 to 10 and has developed life skills manuals for teachers teaching classes 6, 7 and 8. These manuals provide teachers broad guidelines for each of the ten core life skills identified by WHO. Sarva Shiksha Abhiyan (SSA) also has, under its agenda, life skills training focusing on upper primary girls. While there have been dispersed efforts around life skills, focus on curriculum integration and teacher development remains poor. Most of these efforts take a general approach to 'life skills information delivery' (sometimes more as moral/values education) without a particular context.

Department of Public Instruction (DPI), Karnataka, in collaboration with NIMHANS planned to implement the NIMHANS model of the health promotion using LSE in four diverse districts (Bangalore rural, Bangalore urban, Udipi, Haveri) covering selected 261 secondary schools and 55,000 adolescents.

Life skills education in schools clearly needs to take place in the context of broader education system reforms. To be effective, life skills ultimately need to be age-aligned, and inculcated in schools that are inclusive, with trained and motivated teachers who can employ participatory and experiential teaching practices.

For example, in 2013, as part of the National Institute of Open Schooling (NIOS), UNFPA partnered with the MHRD to launch teacher training videos for the integration of life skills education into the curriculum.

The Institute of Company Secretaries of India recently introduced a "Corporate Leadership Development Programme" for 45 days for effective development and initiation of smart corporate skills among its professionals.



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### Governance Professionals as Catalysts for Change

The era of information governance in corporate world brings expanded new roles for Professionals throughout their organizations. With a clear understanding of skilled principles, Governance professionals particularly Company Secretaries can be the catalysts for change. They are well aware of laws and regulations that govern the system and they understand the value of accurate, complete and timely information to overall organizational performance. Emerging roles fall within key areas that advance information governance:

- Enterprise information governance leadership
- General informatics
- Release of information
- Compliance and risk management
- Revenue cycle management
- Privacy and security
- Information exchange
- Data quality and integrity
- Proper Disclosure
- Knowledge management

Governance professionals have an ideal opportunity to envision and redefine their roles, affirming their value as the stewards of trusted information in today's world of information governance. They must demonstrate the vital importance of knowledge and leadership for achieving business effectiveness and competitiveness. For example, Professionals will play a key role in the centralization and standardization of policies and practices required for successful information governance.

"Today's company consists of more highly skilled knowledge workers performing higher value work supported by technology," states Kloss. "For effective governance, the focus on improving competencies and skills through formal and continuing education is a priority for the discipline."

Meeting the current and future demands of new roles will also require multidisciplinary collaboration and executive support for implementing the principles of information governance. The best way to engage executives is to identify their concerns and priorities.

There is a significant moment in many people's careers that goes unremarked even though it is worth celebrating. It is the moment when you feel confident in the job you are doing, not because there are no challenges, but because you know that you have the experience and the skills required to face those challenges. That moment often coincides with a feeling of wanting to give something back, or perhaps an urge to use and develop the skills that you have acquired in a different context. It may not be immediately obvious what you can do to address that feeling, but there is an effective way: volunteer your time and transfer your skills.

*Finding a way* : Having decided that you want to volunteer, the next challenge is finding an opportunity that allows you to use your skill set

*Improving education about skills* : They work closely with employers to develop a workforce with the skills needed in their region. By closing the skills gap, they boost employment and strengthen the economy. There





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is an acknowledgement of the importance of good governance which is redirected in a central drive to increase the spread and level of skills found on governing boards. There is also a growing recognition of the importance of increasing the diversity of the membership of governing bodies.

*Two Way Transfer* : Many Professionals would love the opportunity to work with governance professionals in order to benefit from the wisdom that such highly-qualified people have acquired over the years. Transferable skills are called that for a reason, and it is great to be able to put them to the test. The beauty is that the transfer works in both directions, so skills that you develop and hone while volunteering can be brought back into the workplace. The organisation for which you are volunteering gets the benefit of your skills and experience, and you get the chance to undertake valuable personal development. If you work for an enlightened organisation, your employer will even encourage you to undertake voluntary work because of the benefits volunteering brings to the business. Employers also reap the benefit of having a workforce that can bring their new-found and highly developed skills and put them to use in the working environment

*Return on social investment* : By serving in a governance role on board you can make a difference to the life chances of young people and adults in your community. In addition, you will be playing your part in ensuring that your region has a skilled, well-trained workforce, which in turn has a positive impact on the economy.

Doing something different to the 'day job' will almost certainly provide you with a fresh perspective on your current role and tackling a new challenge may even give you a renewed sense of purpose.

### Case Study

#### Importance of Governance

1. Starbucks "chooses" to pay tax for first time in five years

STARBUCKS has made its first payment to HM Revenue and Customs since 2008. The company said it had "listened to customers" and had paid GBP5m, with another GBP5m to be paid later this year and a further GBP10m in 2014,

The Guardian reports, Starbucks paid just GBP8.5m in tax between 1998 and 2008, and nothing since then, despite total sales of GBP3bn over the past three years. That's because the company has made use of perfectly legal tax avoidance techniques and remains, on paper, unprofitable in the UK.

In January, David Cameron told the World Economic Forum in Davos that tax-avoiding companies should "wake up and smell the coffee."

2. A good example of this close association, for some actors, between western democratic governance and the concept of good governance is the following statement made by U.S. Secretary of State Hillary Clinton in Nigeria on August 12, 2009:

Again, to refer to President Obama's speech, what Africa needs is not more strong men, it needs more strong democratic institutions that will stand the test of time. (Applause.) Without good governance, no amount of oil or no amount of aid, no amount of effort can guarantee Nigeria's success. But with good governance, nothing can stop Nigeria. It's the same message that I have carried in all of my meetings, including my meeting this afternoon with your president. The United States supports the seven-point agenda for reform that was outlined by President Yar'Adua. We believe that delivering on roads and on electricity and on education and all the other points of that agenda will demonstrate the kind of concrete progress that the people of Nigeria are waiting for.



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### Still a Long way

There is no doubt that our personal attributes play a major role in our ability to utilize certain skills, making the difference between the “academic knowledge of the how” and the “practical ability to implement the how.” This, however, is very subjective to both the skill and the individual in question and as such, no rule that applies to all can be set. It is, nevertheless, very beneficial to be aware of what skills are easier to learn than others. Then, each individual needs to be honest with themselves in deciding whether to undertake such a learning effort or not.

For example, one may argue that communication skills can be learned and with practice, a motivated, yet not so good a communicator can become a good communicator. On the other hand, leadership skills are unlikely to be acquired through reading and training at a mature age and as such if one is lacking in leadership skills, then he or she will do well to acknowledge so and concentrate on their stronger attributes and acquirable skills.

Full-time governance leaders can devote themselves to serving and advancing board work and a governance program. There is no one-size-fits-all approach to the numbers, responsibilities and titles of governance support staff and leaders. A governance leader's qualifications should include interpersonal skills, the appropriate education and a desire to stay on top of the field.

The European Union of Medical Specialists (UEMS) defines Continuing Professional Development (CPD) as the educative means of updating, developing and enhancing the way doctors apply the knowledge, skills and attitudes required in their working lives. CPD is part of a personal programme of lifelong learning, from school to retirement. The most powerful motivating factors for CPD include: each professional's awareness of his or her responsibility for safe medical performance, the recognition of peers, and a collective emphasis on the quality of medical practice. CPD is part of the ethical responsibility of every doctor.

Organisation for Economic Co-operation and Development (OECD) Principles of Corporate Governance stating that 'the corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders'. This, in turn, links to the fundamental concepts of corporate governance – namely, judgment, responsibility and accountability

*Management Skills*—one of the twelve recommended leadership development competencies

Improvement ways include:

- Basic skills to keep the congregation running smoothly and effectively
- Understanding the fiscal responsibilities of leadership
- Strong understanding of governance
- Core Values: A sense of responsibility and commitment to the stewardship of the institutional aspects of the church, but with an understanding that the institution exists to serve the mission
- Practices
- Attend webinars
- Attend district and regional trainings and conferences
- Subscribe to leadership and church management blogs



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- Resources
- Videos
- Web Articles
- Podcasts
- On-Demand Webinars
- Websites
- Connect on Social Networks
- Books
- Set and maintain the vision, mission and values of the organisation
- Develop direction, strategy and planning
- Ensure the organisation has the structure and resources for its work
- Establish policies and procedures to govern organisational activity, including guidance for the board.
- Establish systems for reporting and monitoring
- Manage risk and ensure compliance and accountability with the governing document, external regulators and the law
- Make certain that the financial affairs of the organisation are conducted properly and are accurately reported.

The Governance Professionals need to be aware of this and act in the best interests of the organisation and its beneficiaries, following all requirements of law and regulation. This is sometimes referred to as the need for 'due diligence'.

The lines between governance and management are easily blurred, particularly for organisations without paid staff. But the broad difference is that governance is about strategy, and management is about operations.

Governance refers to the processes and structures used to direct and manage an organization's operations and activities. It defines the division of power and establishes mechanisms to achieve accountability among stakeholders, the board of directors and management. Good governance systems are designed to help organizations focus on the activities that contribute most to their overall objectives, use their resources effectively, and ensure that they are managed in the best interests of their stakeholders.

In summary, the objective of good governance is to ensure that the organization achieves its objectives by being able to put forth its best efforts to implement its strategies and make the best use of its resources. Boards of every organization must clearly understand and agree upon their responsibilities and mandate.

To improve IT performance and productivity, the Government of India approved the National e-Governance Plan (NeGP) on May 18, 2006 which seeks to improve delivery of government services to citizens and business establishments with the vision to "make all government services accessible to the common man in his locality, through common service delivery outlets and ensure efficiency, transparency and reliability of such services at affordable costs to realise the basic needs of the common man" According to the 2012 United Nations



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Survey rankings based on e-Governance indices, the Republic of Korea is the world leader (0.9283) followed by the Netherlands (0.9125), the UK (0.8960) and Denmark (0.8889), with the US, Canada, France, Norway, Singapore and Sweden close behind. India lags at a lowly rank of 125 out of 190 countries surveyed with an index of 0.3829.

“With effect from April 1, 2020, all listed entities which have public shareholding of 40% or more at the beginning of a financial year shall ensure that the chairperson of the board of such listed entity shall be a nonexecutive director, on and from that financial year,” says the Kotak panel report, which was released recently. Further RoCs have taken a bold step to send out notices for default to such companies on a large scale. Overall, the number has crossed 2,53,752 as per the list available. The Securities and Exchange Board of India (SEBI) directed stock exchanges to initiate action against 331 listed entities suspected of being shell companies. Of them, 162 were actively traded; 169 had already been suspended.

Secretarial functions are critical to efficient board functioning. Therefore, it is recommended by Kotak Committee that:

- Secretarial audit may be made compulsory for all listed entities under the SEBI LODR Regulations in line with the provisions of Companies Act.
- Secretarial audit may also be extended to all material unlisted Indian subsidiaries. This is in line with the theme of strengthening group oversight and improving compliance at a group level.

### Conclusion

The Company Secretary is responsible for the efficient administration of a company, particularly with regard to ensuring compliance with statutory and regulatory requirements and for ensuring that decisions of the board of directors are implemented. Despite the name, the role is not clerical or secretarial. The Company Secretary ensures that an organization complies with relevant legislation and regulation, and keeps board members informed of their legal responsibilities. Company secretaries are the company's named representative on legal documents, and it is their responsibility to ensure that the company and its directors operate within the law. It is also their responsibility to register and communicate with shareholders, to ensure that dividends are paid and to maintain company records, such as lists of directors and shareholders, and annual accounts.

Company Secretaries are the primary source of advice on the conduct of business and this can span everything from legal advice on conflicts of interest, through accounting advice on financial reports, to the development of strategy and corporate planning.

Among public companies in North America, providing advice on corporate governance issues is an increasingly important role for corporate secretary. Many shareholders, particularly institutional investors, view sound corporate governance as essential to board and company performance. They are quite vocal in encouraging boards to perform frequent corporate governance reviews and to issue written statements of corporate governance principles. The corporate secretary is usually the executive to assist directors in these efforts, providing information on the practices of other companies, and helping the board to tailor corporate governance principles and practices to fit the board's needs and expectations of investors. In some companies, the role of the corporate secretary as corporate governance adviser has been formalised, with a title such as Chief Governance Officer added to their existing title.

In view of the important roles the Company Secretary plays in business, PLCs and large companies require the Company Secretary to be suitably trained, experienced and professionally qualified for these responsibilities. In South Africa, all public and state-owned company must appoint a Company Secretary. The roles and



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responsibilities of the company secretary are defined in the Companies Act, No 71 of 2008. For publicly listed companies, these roles were clarified and expanded by the King IV report. In addition, non-profit companies that have voluntarily adopted the "Enhanced Accountability and Transparency" provisions of the Companies Act must appoint a company secretary whose role is comparable to that of a public company

Definition of corporate governance by the Institute of Company Secretaries of India is as under :

“Corporate Governance is the application of best Management practices, Compliance of law in true letter and spirit and adherence to ethical standards for Effective Management and distribution of wealth and discharge of social Responsibility for sustainable development of all stakeholders”.

Law is made not to stop any act but to ensure that if you do that act, you will face such consequences i.e. good for good and bad for bad. Thus, in the same manner, role of law in corporate governance is to supplement and not to supplant. It can not be only way to govern corporate governance but instead it provides a minimum code of conduct for good corporate governance. Law provides certain ethics to govern one and all so as to have maximum satisfaction and minimum friction. It plays a complementary role.

Global competitions in the market need best planning, management, innovative ideas, compliance with laws, good relation between directors, shareholders, employees and customers of companies, value based corporate governance in order to grow, prosper and compete in international markets by strengthen their strength overcoming their weaknesses and running them effectively and efficiently in an efficient and transparent manner by adopting the best practices. Indian Corporate Bodies having adopted good corporate governance will reach themselves to a benchmark for rest of the world; it brings laurels as a way of appreciation. Corporate governance lays down ethics, values, and principles, management policies of a corporation which are inculcated and brought into practice. The importance of corporate governance lies in promoting and maintains integrity, transparency and accountability throughout the organization.

It soon acquired a mandatory status in early 2000s through the introduction of Clause 49 of the Listing Agreement, as all companies (of a certain size) listed on stock exchanges were required to comply with these norms. In late 2009, the Ministry of Corporate Affairs has released a set of voluntary guidelines for corporate governance, which address a myriad corporate governance issues.

The high profile corporate governance failure scams like the stock market scam, the UTI scam, Ketan Parikh scam, Satyam scam, which was severely criticized by the shareholders, called for a need to make corporate governance in India transparent as it greatly affects the development of the country. Corporate governance is a multidisciplinary field of study it covers a wide range of disciplines – accounting, consulting, economics, ethics, finance, law, and management Even though corporate governance practices can be backdated to as early as 1961 around the world, India was lagging behind. It was not until 1991 when liberalization took place and corporate governance established an international context. The most important initiative of 1992 was the reform of Securities and Exchange Board of India (SEBI). The main objective of SEBI was to supervise and standardize stock trading, but it gradually formed many corporate governance rules and regulations. The next major change was formation of Confederation of Indian Industry (CII) in 1996, which developed the set of laws for Indian companies as to initiate the act towards corporate governance. Then two committees Kumar Mangalam Birla and Narayan Murthy under Securities and Exchange Board of India started laying the groundwork for formalizing the best practices on corporate governance. Based on suggestions from these committees, Clause 49 was introduced as part of the listing contract for the companies listed on the Indian stock exchange Business ethics means applying the general ethical principles to business problems and finding the solution that will be “right” in all aspects . Business problems arise when the decision made by the board is going to affect either profitability or its shareholders in the end.



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Corporate governance acts as a bridge between shareholders, stakeholders, and board of directors. It should be able to restore the trust and confidence of management and the company to the shareholders in the company

A governance operating model has the potential to address this need and thus enhance management's ability to implement governance and the board's ability to exercise proper oversight. According to former UN Secretary-General Kofi Annan, "Good governance is ensuring respect for human rights and the rule of law; strengthening democracy; promoting transparency and capacity in public administration."

The words of Sir Sam Agere clearly mentions as "The discretionary space left by the lack of a clear well-defined scope for what governance encompasses allows users to choose and set their own parameters."

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# Professionals Shaping New India 2022 Through Good Governance

**Gopal Krishna Agarwal \* Esha Singh\*\***

### Introduction

These days the terms "governance" and "good governance" are being increasingly debated by corporate management and at country level across the globe. Bad governance is being increasingly regarded as one of the root causes of all evil in our societies. This paper discusses about good governance, corporate governance, its origin, the pillars of the good governance, the features of good governance and the elements and factors influencing the good governance. The paper emphasises, in particular, the role of professionals to contribute towards good governance at micro and macro level and in turn build a changed and better India by 2022.

The professionals are necessary and are dominating the scene of the corporate for a very long time. Chartered Accountants, Company Secretaries, MBAs, Lawyers etc. are occupying leading and most influencing positions at apex level in the corporate as well as in the government. One step by them towards good governance would change the quality of air blowing across the country and would lead countrymen towards a happy society. It would be appropriate to mention here that the growth in the country Bhutan is judged not by GDP numbers but by happiness index developed by the government of Bhutan for the purpose. The professionals can help in good governance by their contribution, to name a few, on the one hand in framing good laws by the government which can create welfare state and on the other hand by ensuring that the laws are complied with by the citizens of the country in true letter and spirit, persuading the tax payers to pay their taxes honestly, motivating business community to ensure writing correct books of accounts by following the accounting standards and disclosures of highest order are made in financial statements and other public documents keeping in mind the interest of various stakeholders, be a whistle blower for wrong doings in the management of affairs of the corporate as well as government. Besides this the professionals can also see that the management of affairs and the decision making are done without any bias and the work environment is kept positive and uplifting.

### Good Governance at National Level

Good is a term used with great flexibility? Depending on the context, good governance has been advocated on various occasions to encompass full respect of effective participation, human rights, the rule of law, multi-actor partnerships, and accountable processes, political pluralism, transparent institutions, an efficient and effective public sector, legitimacy, access to knowledge, information and education, political empowerment of people, equity, sustainability, and attitudes and values that foster responsibility, solidarity and tolerance.

The concept of "governance" is not new. It is as old as human civilization. Simply put "governance" means the process of decision-making and the process by which decisions are implemented (or not implemented).

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\*\* FCS. The views expressed are personal views of the author(s) and do not necessarily reflect those of the Institute.



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Governance can be used in several contexts such as corporate governance, international governance, national governance and local governance. Since governance is the process of decision making and the process by which decisions are implemented, an analysis of governance focuses on the formal and informal actors involved in decision-making and implementing the same and the formal and informal structures that have been set in place to arrive at and implement the decision.

Various UN Committees have also recognized the importance and definition of good governance in their work. For example, General Comment by the Committee on Economic, Social and Cultural Rights on the right to adequate food states that “good governance” is essential to the realization of all human rights, including the elimination of poverty.

Thus the term good governance, among other things, involves participation, transparency, accountability and rule of law. It also involves effectiveness and equity in governance activity. Good governance in the context of a country ensures that political, social and economic priorities are based on broad consensus of the people and that the voices of the poorest and the most vulnerable are heard in decision-making over the allocation of development resources. Similarly, in the context of the corporate it is primarily the transparency in decision making and systems and processes and effective participation of various stakeholders for the benefit of all.

### **Good Governance at Corporate Level**

Corporate governance refers to the set of systems, principles and processes by which a company is governed. According to Milton Friedman “Corporate Governance is to conduct the business in accordance with owner or shareholders’ desires, which generally will be to make as much money as possible, while conforming to the basic rules of the society embodied in law and local customs”

It is the responsibility of the board of directors to ensure good corporate governance. This involves a set of relationships between the management of a corporation, its board, its shareholders and other relevant stakeholders. Good corporate governance requires that the board must govern the corporation with integrity and enterprise. While the board is accountable to the owners of the corporation (shareholders) for achieving the corporate objectives, its conduct in regard to factors such as business ethics and the environment for example may have an impact on legitimate societal interests (stakeholders) and thereby influence the reputation and long-term interests of the business enterprise.

Corporate governance can be defined narrowly as the relationship of a company to its shareholders or, more broadly, as its relationship to society. It is palpable these days that a company’s relationship to society, is often blurred by the distinction between corporate governance and corporate social responsibility. In fact, Corporate Governance is not just a legal compliance but is a need to have a balance between economic and social goals and between individual and communal goals. Corporate governance is about promoting corporate fairness, transparency and accountability. Corporate governance is about working ethically and finding a balance between economic and social goals. It includes the ability to function profitably while obeying laws, rules and regulations.

The traditional analysis of corporate governance is focused on the allocation of power and duty among the board of directors, management, and shareholders. As the sole residual claimants on company assets, shareholders were presumed to have the most incentive to maximize company value. According to that perspective, the Board of Directors acted as the shareholders’ agent and management was responsible for daily operations. In today’s scenario, the board and the management play the role of trustees.





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### Origin and Emergence of the Concept of Good Governance

“Good governance” was initially expressed in a 1989 World Bank publication.

The governance theory was then proposed by Stoker (1998). He stated that, “Governance refers to the development of governing styles in which boundaries between and within public and private sectors have become blurred. The essence of governance is its focus on mechanisms that do not rest on recourse to the authority and sanctions of government..., Governance for (some) is about the potential for contracting, franchising and new forms of regulation. In short, it is about what (some) refer to as the new public management. However, governance... is more than a new set of managerial tools. It is also about more than achieving greater efficiency in the production of public services (1998, p. 17-18).”

In 1992, the Bank published a report titled “Governance and Development”, which explored the concept further and its application. In 1997, the Bank redefined the concept “good governance” as a necessary precondition for development.

Good governance is to promote and sustain holistic and integrated human development. The central focus is to see how the government enables, simplifies and authorises its people, regardless of differences of caste, creed, class, and political ideology and social origin to think, and take certain decisions which will be in their best interest, and which will enable them to lead a clean, decent, happy, and autonomous existence.



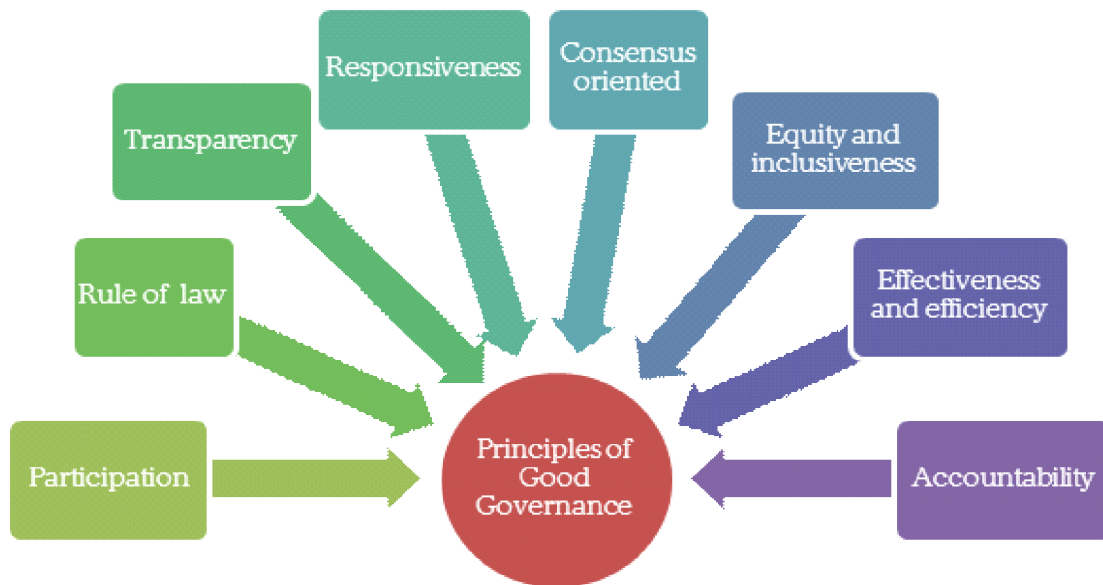
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### Main characteristics of Good Governance at Macro Level

According to United Nations Development Programme (UNDP) and World Bank, Good Governance has eight principles/characteristics as under:



#### (1) *Participation*

Good governance requires that civil society has the opportunity to participate by both men and women during the formulation of development strategies. This aspect of governance is an essential element in securing commitment and support for projects and enhancing the quality of their implementation. Participation needs to be informed and organized. This means freedom of association and expression and an organized civil society should go hand in hand.

#### (2) *Rule of law*

Good governance requires a fair, predictable and stable legal framework enforced impartially. Full protection of human rights, especially minorities should be covered. Impartial law enforcement requires a judiciary to be independent and police force should be impartial and incorruptible.

#### (3) *Transparency*

Transparency in government is an important precondition for good governance, and those decisions taken and their enforcement are done in a manner that follows rules and regulations. Transparency ensures that enough information is provided and that it is provided in easily understandable forms and media.

#### (4) *Responsiveness*

Good governance requires the institutions to serve all stakeholders in a given time-frame. There are several actors and viewpoints and the different interests in society needs mediation. The best interest



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of the community should be analysed and achieved which requires a broad and long-term perspective on what is needed and how to achieve the goals of sustainable development

### (5) *Consensus*

Good governance requires consultation to understand the different interests of stakeholders in order to reach a broad consensus of what is in the best interest of the entire stakeholder group and how this can be achieved in a sustainable and prudent manner.

### (6) *Equity and inclusiveness*

A society's wellbeing depends on ensuring that all men and women have opportunities to improve or maintain their well-being. This requires all groups, especially the most vulnerable, to have opportunities to improve and maintain their standards of life.

### (7) *Effectiveness and efficiency*

Good governance means that processes and institutions produce results that meet needs while making the best use of resources. The concept of efficiency covers the sustainable use of natural resources and the protection of the environment.

### (8) *Accountability*

It is a key requirement of good governance. Both public and private sector and civil society organizations must be accountable to the public and to their institutional stakeholders. An organization or an institution is accountable to those who will be affected by its decisions or actions. Accountability can be enforced only with transparency and the rule of law.

## **Elements of Good Corporate Governance**

Good corporate governance must embody the elements which may foster the cause of welfare of all stakeholders. Some of these elements may be:

### (1) *Role and powers of Board*

Good governance is decisively the manifestation of personal beliefs and values, which configure the organizational values, beliefs and actions of its board. The foremost requirement of good governance is the clear identification of powers, roles, responsibilities and accountability of the board, CEO, and the chairman of the board.

### (2) *Legislation*

Clear and unambiguous legislation and regulations are fundamental to effective corporate governance. Legislation that requires continuing legal interpretation or is difficult to interpret on a day-to-day basis can be subject to deliberate manipulation or inadvertent misinterpretation.

### (3) *Management environment*

Management environment includes setting-up of clear objectives and appropriate ethical framework, establishing due processes, providing for transparency and clear enunciation of responsibility and accountability, implementing sound business planning, encouraging business risk assessment, having right people and right skill for the jobs, establishing clear boundaries for acceptable behaviour, establishing performance evaluation measures and evaluating performance and sufficiently recognizing individual and group contribution.



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### (4) *Board independence*

Independent board is essential for sound corporate governance. This goal may be achieved by associating sufficient number of independent directors with the board. Independence of directors would ensure that there are no actual or perceived conflicts of interest.

### (5) *Code of conduct*

It is essential that the organization's explicitly prescribed norms of ethical practices and code of conduct are communicated to all stakeholders and are clearly understood and followed by each member of the organization. Systems should be in place to periodically measure adherence to code of conduct and the adherence should be periodically evaluated and if possible recognized.

### (6) *Strategy setting*

The objectives of the company must be clearly documented in a long-term corporate strategy and an annual business plan together with achievable and measurable performance targets and milestones.

### (7) *Business and community consultation*

Though basic activity of a business entity is inherently commercial yet it must also take care of community's obligations. Commercial objectives and community service obligations should be clearly documented after approval by the board. The stakeholders must be informed about the proposed and ongoing initiatives taken to meet social responsibility obligations.

### (8) *Financial and operational reporting*

The Board requires comprehensive, regular, reliable, timely, correct and relevant information in a form and of a quality that is appropriate to discharge its function of monitoring corporate performance.

### (9) *Audit committee*

The Audit Committee is, inter alia, responsible for liaison with the management; internal and statutory auditors, reviewing the adequacy of internal control and compliance with significant policies and procedures, reporting to the Board on the key issues. The quality of Audit Committee significantly contributes to the governance of the company.

### (10) *Risk management*

Risk is an important element of corporate functioning and governance. There should be a clearly established process of identifying, analyzing and treating risks, which could prevent the company from effectively achieving its objectives. For this purpose the company should subject itself to periodic external and internal risk reviews. All this improve public understanding of the structure, activities and policies of the organization. Consequently the organization is able to attract investors, and to enhance the trust and confidence of the stakeholders.

## **Factors Influencing Quality of Governance**

Good governance is based on certain factors for its quality implementation. Those factors are :

- (1) Participation of stakeholder in the management
- (2) Quality of corporate reporting
- (3) Integrity of management



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- (4) Ability of the board – knowledge and skills
- (5) Adequacy of the process – timely information
- (6) Quality / informed decisions
- (7) Commitment level of individual board members
- (8) Financial reporting – disclosure
- (9) Corporate governance and excellence

### Good Governance - Areas of Focus

1. Board composition, role and responsibilities
2. Accountability, risk management and internal control
3. Ethical leadership
4. Stakeholder relationship
5. Shareholder rights and obligations
6. Suitability and performance management
7. Compliance with law and regulations

### Who Constitute the Finance and Legal “Professionals”?

Professionals are basically considered people who are Chartered Accountants, Company Secretaries, Cost Accountants, MBAs, Lawyers, Doctors, Engineers and other professionals etc. The role of some important finance and legal professionals is described as under:

Chartered Accountant (CA) is a designation given to accounting professionals in many countries around the world, aside from the United States. In the United States, the equivalent to a CA designation is the Certified Public Accountant (CPA). Chartered accountants (CAs) are viewed as the external watchdogs of finances in a society. Their role in ensuring good governance can be significant. They are best qualified to evaluate whether good governance has saved taxpayers' money while securing the promised benefits in terms of improved delivery efficiencies and greater transparency in dealings with the government. As they progress, they are able to provide transactional services of improving effectiveness, efficiency and performance. Ultimately, the continuum leads to organisational transformation, improved transparency, increased citizen participation in government, and facilitation of democratic processes.

Company Secretary (CS) is a senior position in a private sector company or public sector organisation, normally in the form of a managerial position or above. He very closely works with the top management of the company specially board of directors. In large American and Canadian publicly listed corporations, a Company Secretary is typically named a Corporate Secretary or Secretary. The Company Secretary is responsible for the efficient administration of a company, particularly with regard to ensuring compliance with statutory and regulatory requirements and for ensuring that decisions of the board of directors are implemented. Company Secretaries in all sectors have high level responsibilities including governance structures and mechanisms, corporate conduct within an organisation's regulatory environment, board, shareholder and trustee meetings, compliance with legal, regulatory and listing requirements, the training and induction of non-executives and trustees, contact with regulatory and external bodies, reports and circulars to shareholders/trustees,



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management of employee benefits such as pensions and employee share schemes, insurance administration and organisation, the negotiation of contracts, risk management, property administration and organisation and the interpretation of financial accounts. Company Secretaries are the primary source of advice on the conduct of business and this can span everything from legal advice on conflicts of interest, through accounting advice on financial reports, to the development of strategy and corporate planning.

Master of Business Administration (MBA) is a post graduate degree achieved by a person who is provided theoretical and practical training to help gain a better understanding of general business management functions. The MBA degree can have a specific focus, such as accounting, finance, marketing, operations, human resource etc. A buffet of various jobs in industries such as retail, banking, hospitality, media, information technology (IT) and information technology enabled services (ITES), and free-moving consumer goods (FMCG) is lavishly spread before them. They have knowledge of all areas and consequently can manage the affairs of an organization efficiently and can add great value.

Lawyer is a person who practices law, as an advocate, barrister, attorney, counsellor, or solicitor or chartered legal executive. Working as a lawyer involves the practical application of abstract legal theories and knowledge to solve specific individualized problems, or to advance the interests of those who hire lawyers to perform legal services. Their services provide a platform to establish order in the society by seeking justice to the aggrieved.

It can be seen from the above description that these professionals hold powerful and influential positions in the organisation and the society. These are the people to whom the subordinates and the people working under them look up to. So these people can play a very crucial role in bringing and establishing a great era of good governance.

### **Role of These Professionals in Good Governance**

Companies are responsible to the society for their activities and owe to the environment in which they operate. Consequently, environmental protection, transparency among stake-holders, education, health, employee welfare activities and compliance with the legal requirements have gained importance for corporate world-wide.

Corporate governance includes the laws and customs affecting that direction, as well as the goals for which the corporation is governed. The principal participants are the share-holders, management and the board of directors. Other participants include regulators, employees, suppliers, partners, customers, constituents (for elected bodies) and the general community.

As a result of the separation of stake-holder influence from control in modern era, a system of corporate governance control is implemented on behalf of stakeholders to reduce agency cost and information asymmetry. Corporate governance is used to monitor whether outcomes are in accordance with plans; and to motivate the organization to remain fully informed in order to maintain or change organizational activity. Primarily, though, corporate governance is the mechanism via which individuals are motivated to align their actual behaviours with the overall corporate goal (i.e., maximum aggregate value generated by the organization and shared fairly amongst all participants). Key elements of good corporate governance principles include honesty, trust and integrity, openness, performance orientation, responsibility and accountability, mutual respect, and commitment to the organization.

Issues involving Corporate Governance Principles include:

- Oversight of the preparation of the entity's financial statements



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- Internal controls and the independence of the entity's auditors
- Independence of the directors and other professionals
- Review of the compensation arrangements for the chief executive officer and other senior executives (KMPs)
- The way in which individuals are nominated for positions on the board
- The resources made available to directors in carrying out their duties
- Oversight and management of risk
- Culture of good democratic governance in various ways which include regularly providing subordinates with the information they need to fulfil their roles
- Ensuring that advice from the administration considers the political context which doesn't mean playing politics but recognises that advice can have political implications
- Ensuring that the rules and regulations laid down for trade are followed
- Help ensure that all have equal access to information and resources
- Providing appropriate support for good decision making process
- Developing processes for major strategic planning exercises which ensure councillors have plenty of opportunities for input

With the review of management literature on this subject it can be summarised that the professionals can change the direction of the wind for a better tomorrow by adhering some of the following important principle of good governance:

- *Integrity*

The company believes that its promise is its most vital product - 'our word is our bond'. The relationships that are critical to the company's success depend entirely on maintaining the highest ethical and moral standards around the world. As a vital measure of integrity, the company will ensure the health and safety of its communities, protect the environment in all it does and will ensure correct presentation of financial statements and follow the correct legal processes including payment of legitimate taxes.

- *Respect for People*

The company believes in the inherent worth of people and will honor its relationships with those who let it be part of their world.

The company's stake-holders are the engines of value creation; their imagination, determination, and dedication are essential to growth. The company will work to celebrate and reward the unique backgrounds, view-points, skills, and talents of everyone. Respect for people is measured by how the company treats them, by the contributions that flow from the company diversity, by the productivity of the company's relationships, and by a job well done, no matter what the job is. The company communities are the neighbours; their acceptance of the company is vital to its ability to operate. The customers are the company's partners in creating value; their loyalty is its greatest reward. Hence, they be also treated with great respect and care.



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- *Compliance of Law*

The professionals can help the general public in understanding the importance of laws and also the reason as to why to comply with them. Compliance with law in today's digital world is even more necessary and easy as majority of the compliances are being made on-line.

- *Tax Planning Rather than Avoiding*

As part of good governance, companies will seek to minimise their tax liability through "tax planning", using most of the tools and mechanism which the government makes available to them for this purpose: allowances, deductions, rebates, exemptions, and so on. Tax planning is tax compliant behaviour but there is a grey area between this and "tax avoidance".

Tax avoidance, while legitimate, can be seen as aggressive when it involves using financial instruments and arrangements not intended as, or anticipated by, governments as a vehicle for tax advantage. For example, the use of overseas tax havens. Avoiding tax and bending the rules of the tax system is not illegal unlike tax evasion; it is operating within the letter, but perhaps not the spirit, of the law.

Paying a fair amount of tax strengthens the hands of the government with the funds for public services such as healthcare, education and infrastructure. These are public services which benefits each one of us directly or indirectly. Tax avoidance has been branded by some as an immoral and unethical practice that undermines the very integrity of the tax system.

- *Whistle Blowing*

A whistleblower (also written as whistle-blower or whistle blower) is a person who exposes any kind of information or activity that is deemed illegal, unethical, or not correct within an organization that is either private or public. The information of alleged wrongdoing can be classified in many ways: violation of company policy/rules, law, regulation, or threat to public interest/national security, as well as fraud, and corruption. Those who become whistleblowers can choose to bring information or allegations to surface either internally or externally. Internally, a whistleblower can bring his/her accusations to the attention of other people within the organization such as an immediate supervisor. Externally, a whistleblower can bring allegations to light by contacting a third party outside of the organization such as the media, government, law enforcement, or those who are concerned. Whistleblowers, however, take the risk of facing stiff reprisal and retaliation from those who are accused or alleged of wrongdoing.

Individual harm, public trust damage, and a threat of national security are three categories of harm that may come to whistleblowers. Revealing whistleblower identities automatically puts their life in harm's way. While the professionals can be expected to be a whistleblower, the government must make serious legal provisions of punishment to those harming such whistleblowers.

- *Protect Interest of Stakeholders*

A stakeholder is anyone with an interest in a business. Stakeholders are individuals, groups or organisations that are affected by the activity of the business. They include:

- Owners who are interested in how much profit the business makes.
- Managers who are concerned about their salary.





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- Workers who want to earn high wages and keep their jobs.
- Customers who want the business to produce quality products at reasonable prices and provide good after-sales service.
- Suppliers who want the business to continue to buy their products.
- Lenders who want to be repaid on time and in full.
- Community which has a stake in the business as employers of local people. Business activity also affects the local environment. For example, noisy night-time deliveries or a smelly factory would be unpopular with local residents.

Stakeholders' interests can be many and varied. A few of them are more common and described below and they should be taken care of for the overall wellbeing of all the stakeholders even at the cost to the company with the simple reason that if stakeholders are not happy the returns to the company may not be forthcoming as planned:

- *Economics* : An employment training program might improve economic prospects for low-income people.
- *Social Change* : An effort to improve racial harmony could alter the social climate for members of both the racial or ethnic minority and the majority.
- *Work* : Involving workers in decision-making can enhance work life and make people more satisfied with their jobs.
- *Time* : Flexible work hours, relief programs for caregivers, parental leave, and other efforts that provide people with time for leisure or taking care of the business of life can relieve stress and increase productivity.
- *Environment* : Protection of open space, conservation of resources, attention to climate change, and other environmental efforts can add to everyday life. These can also be seen as harmful to business and private ownership.
- *Physical Health* : Free or sliding-scale medical facilities and other similar programs provide a clear benefit for low-income people and can improve community health.
- *Safety and Security* : Neighbourhood watch or patrol programs, better policing in high-crime neighbourhoods, work safety initiatives – all of these and many other efforts can improve safety for specific populations or for the community as a whole.
- *Mental Health* : Community mental health centres and adult day care can be extremely important not only to people with mental health issues, but also to their families and to the community as a whole

### Conclusion

Year 2022 will be witnessed as a start of new era of Indian society when we shall be celebrating 75th year of our independence. Central Government is totally focussed on that and our prime minister Shri Narendra Modi is equally determined to bring all round change in policies, procedures, systems, facilities, welfare, infrastructure, and mind set of the countrymen. The wind of change has already started blowing which can be seen in the current policy framework and announcements of the central government. The time has come that we professionals understand the changed direction of wind and pursue the cause of welfare of all.



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## Company Secretary: Shaping New India 2022 through Good Governance

**Anil K. Sehgal\***

The Hon'ble Prime Minister shared his vision for a "New India" in his this year's Independence Day speech.

### Significance of 2022

2022 is a significant year in the country's history by virtue of being the 75th anniversary of India's independence.

### Resolution by the Lok Sabha to Create New India by 2022

On 9th August, 2017, the Lok Sabha passed a resolution pledging to create an inclusive and prosperous India of the dreams of freedom fighters by 2022, the 75th anniversary of India's Independence. On that day, after a special discussion to commemorate the 75th anniversary of the Quit India movement, the Hon. Lok Sabha Speaker Smt. Sumitra Mahajan read out the Resolution in this regard, which was passed unanimously:

### "New India" 2022 in Public Addresses of the Hon. President and Hon. Prime Minister on the Occasion of Independence Day

- New India, and the 2022 also found a mention in President Ram Nath Kovind's address to the nation on the eve of Independence Day. The Hon. President in his maiden speech to the nation on the eve of Independence day spoke of a house for every family, on-demand power, better telecommunication, modernisation of infrastructure, upgradation of road and railway networks, rapid and sustained growth, and a compassionate society.
- While addressing the nation on 71st Independence Day, The Hon'ble Prime Minister insisted that there would be a New India by 2022 - when India will mark 75 years of independence. He invoked cricket terminology and urged 'Team India' to run for 'New India' by 2022, by which time he promised, the poor shall have pucca houses, access to electricity, healthcare, sanitation and education, farmers' incomes shall double, there will be ample opportunities for the youth and women, and India would be free of scourges such as communalism, casteism and terrorism.

### Hon'ble Prime Minister's Initiatives



\* FCS. The views expressed are personal views of the author and do not necessarily reflect those of the Institute.



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### **New India – Sankalp Se Siddhi**

On the occasion of Quit India movement, the Hon. Prime Minister launched the Scheme on 21st August, 2017. He said, “2017 is our Year of the Pledge to sweep Garbage, Poverty, Corruption, Terrorism, Casteism and Communalism out of India”

### **Focus on Developing India’s 100 Most Backward Districts By 2022**

On 27th August, 2017, the Hon. Prime Minister asked the top government officials to work “with clear objectives” towards creating a New India by 2022 and a day before asked the Additional and Joint Secretary Level Officers to focus attention on the 100 most backward districts of India so that they can be brought up to the national average level on various development parameters.

### **“Resolve” on Dussehra Celebrations**

On the occasion of Dussehra, the Hon. Prime Minister exhorted all the "citizens to resolve on this day of Vijaydashmi or Dussehra to contribute in some constructive way towards nation-building by 2022, when India would celebrate 75 years of its independence. He also said, "After defeating Ravana, Lord Rama continued to serve society with humility. Today, let us resolve as citizens of India to make positive contributions towards the nation by 2022, to make India of the dreams of our great freedom fighters. Let us make a resolve like Lord Rama,"

### **Calling on Governors to become catalytic agents for change in society**

The Hon. Prime Minister on 12th October, 2017, while speaking at the opening session of the Conference of Governors at Rashtrapati Bhawan observed that all Governors can become catalytic agents for change in society, while upholding the sanctity of the Constitution. Mentioning the target of New India by 2022, the Hon. Prime Minister emphasized that this can be achieved only by making it a people's movement.

### **Goals for New India 2022**

The Goals for NEW INDIA 2022 include.

**Goals for NEW  
INDIA 2022  
include**

- inclusive and prosperous India of the dreams of freedom fighters;
- pucca houses, access to electricity, healthcare, sanitation and education for the poor and farmers' incomes to double;
- better telecommunication;
- modernisation of infrastructure;
- upgradation of roads and railway networks;
- pollution free environment;
- rapid and sustained growth;
- safety and security of citizens;
- ample opportunities for the youth and women;
- India to be free of scourges such as communalism, casteism and terrorism etc.



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### Initiative of The Institute of Company Secretaries of India (ICSI)

#### Vision New ICSI 2022

In line with Hon. Prime Minister's Vision 'New India 2022', ICSI has come up with Vision New ICSI 2022. This was released on the occasion of ICSI's Golden Jubilee Year Celebrations inaugural Function on 4<sup>th</sup> October 2017. This Vision of ICSI dedicatedly associates with New India, 2022 and will create a New ICSI in 2022, which will meet the growing and changing expectations of the stakeholder specially the trade and industry, Government, Regulators and the Society at large.

#### Objective

As per Vision New ICSI 2022, the objective of the ICSI is to regulate and develop the profession of Company Secretaries and its goal is to meet the expectations of its "stakeholders".

#### Motto

The Motto of the ICSI, "Satyam Vada, Dharam Chara" adopted from Taittiriya Upanishad means 'Speak the Truth, Abide by the Law', speaks the very spirit of the profession of Company Secretaries.

#### Core Values

The ICSI identifies for itself and its members the core values namely Integrity, Ethics, Reliability, Ownership, and Being Stakeholder.

#### Stakeholders and their Expectations

In the Vision New ICSI 2022 document of ICSI, the stakeholders have been categorised as (a) External stakeholders comprising of Trade and Industry; Government and Regulators and Society and (b) Internal Stakeholders comprising of Members; Students and Employees and their expectations are mentioned in the document.

#### One of the Top Goals of ICSI

One of the top 10 goals for the Vision New ICSI 2022 is 'Promoting Good Corporate Governance'.

### Role of Company Secretary in Shaping New India 2022 through Good Governance

#### Good Governance

Governance is concerned with power, strategies, policies, plans and projects that aim at improving the substance or quality of life. Thus, good governance is concerned with high quality in governance. In India, the concept of good governance is very old and its description is found in ancient Indian scriptures. In Shanti Parva, Chapter LXXXV, Verses 16-171, it is mentioned that the foundation of good governance is Dharma (righteousness).

In Arthshastra, people who govern have been advised that good governance is sustained by adhering to a dignity of moral duties ultimately resulting in 'Sarva Kalyankari Karma', maintaining 'Sarva Loka Sangraha' and aiming for the 'Sarva Hitey Ratah'. These three principles support the contention that governance is a moral endeavour that should aim at common good of the people in general

Good governance has 8 major characteristics. It is participatory, consensus oriented, accountable, transparent,



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responsive, effective and efficient, equitable and inclusive and follows the rule of law. From the point of view of Company Secretary, Good corporate governance requires that the well-being of all the stakeholders should be duly protected and maintained at all times with concern and passion

### **Shaping NEW INDIA 2022 through Good Governance**

A Company Secretary, who has been variously described as 'a Governance Professional' 'a Conscience-Keeper', 'a Kingpin', 'a Pivot', 'a Watch Dog', 'a Whistle Blower', "a Key Managerial Personnel (KMP)" and so on and now recommended by SEBI Committee to be included in 'Senior Management' occupies a critical place in the company's organizational hierarchy and maintains a very high standard of self discipline. He is a multidisciplinary professional and is a vital link between the company and its Board of Directors, shareholders, government and regulatory authorities and all other stakeholders..

### **Services to Trade and Industry**

With a view to overcome challenges of good governance and move towards achieving objectives of the Vision of the Hon'ble Prime Minister for New India 2022, while providing services, a Company Secretary, should follow the Motto of the ICSI, "Satyam Vada, Dharam Chara", which means 'Speak the Truth, Abide by the Law' and must keep in mind the core values identified by the ICSI, which are Integrity, Ethics, Reliability, Ownership, and Being Stakeholder.

For Good Governance, while providing services to Trade and Industry, a Company Secretary :

- needs to widen his horizon to the new and emerging areas and update his knowledge and skills in such areas
- should provide necessary support in conducting global business and managing global alliances and for the purpose should have exposure to international laws and corporate laws of the major economies;
- should re-orient himself towards the objective of value addition and wealth maximization through understanding the business model, assessing the business needs, getting involved in frontline activities and exhibiting a business attitude for the holistic growth of the company;
- needs to be a Critical Thinker and Problem Solver.
- should ensure updated knowledge of both current developments affecting governance and also best practice in corporate governance
- must possess discretion, diplomacy, tact, emotional intelligence and good negotiation skills, Integrity and independence
- as the 'keeper of the organisation's conscience', must possess outstanding integrity and be courageous, knowledgeable, strong-willed with a high emotional quotient to provide impartial, frank and fearless guidance and advice
- should enhance his skills in Communication – both written and verbal, Drafting, articulation and art of advocacy

### **Services to Government and Regulators**

The Government and Regulators have reposed trust and confidence on the profession of Company Secretaries



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by enhancing its role manifold in Companies Act, 2013, Securities Laws, Insolvency and Bankruptcy Code, GST, Competition Act etc.

Expectations of the Government and the Regulators through good governance can be fulfilled by a Company Secretary by

- ensuring compliance management in letter and spirit and educating the industry about the compliance requirements and changes therein from time to time;
- facilitating the Government in building legislative and regulatory framework;
- educating the trade and industry about the new laws, policies and initiatives of the Government and supporting the Government in implementation of the new policies and initiatives;
- exhibiting highest level of professional knowledge and skill in discharging their duties in certification and audit work;
- following the high standards of professional conduct, ethics and values;
- developing expertise in drafting and documentation, as well as in advocacy skills; and
- showing enthusiasm about capitalizing on new opportunities.

### Services to Society

The society provides the desired climate and necessary resources for successful operation of a company's business. India is facing various problems like poverty, healthcare, sanitation, education, scarcity of drinking water, lack of infrastructure; environment and pollution problems, safety and security of citizens; regional imbalances, communalism, casteism and terrorism which need to be addressed at all levels. The companies need to understand the expectation of society from them and should strive to give maximum for the society according to the needs. The fulfilment of expectations of the society is dependent largely on professionals like Company Secretaries due to the separation of ownership and management.

Thus, for good governance, a Company Secretary, as the 'keeper of the organisation's conscience, has to ensure that the Company in which he works :

- plays its role in promoting inclusive growth and discharges its Corporate Social Responsibility.
- respects human rights and democratic institutions, and promotes them, wherever practicable.
- recognizes government's legitimate obligation to society at large and supports public policies and practices that promote social capital.
- collaborates with community initiatives seeking to raise standards of health, education, workplace safety and economic well-being.
- promotes sustainable development in order to preserve and enhance the physical environment while conserving the earth's resources.
- supports peace, security and the rule of law.
- respects social diversity including local cultures and minority communities.
- be a good corporate citizen through ongoing community investment and supports for employee participation in community.



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- maintains transparency and provide correct and adequate information and disclosures about its business activities.
- Protects and promotes the interests of investors.

### Conclusion

A Company Secretary has come to be accepted by all as an independent and indispensable professional. The role of Company Secretary has not merely changed; it has transformed itself into new dimensions. He is a full-fledged Governance Professional. He balances the interests of the Management, Board, Shareholders and other stakeholders. The corporate sector has recognized the role of the Company Secretaries - be it an entrepreneur, be an industrialist, be a management guru, be an administrator or be a politician.,

There is no doubt that keeping in mind Motto, core values and expectations of all stakeholders mentioned in Vision New ICSI 2022, Company Secretary, under the guidance of his esteemed Institute i.e. ICSI, shall come up to the expectations of the Hon. Prime Minister in Shaping New India 2022 through Good Governance.

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## New India - New ICSI

**Garima Garg\***

### Preface

Flip around any newspaper or business magazine and you will notice news piece on Corporate Governance finding its room. The vital role of Company Secretaries in the current regime has augmented manifold and expected to increase dynamically in the future. Gone are the days when Company Secretaries were merely expected to act as a liaising agent between the Company and its stakeholders and remained accountable for conducting monotonous board meeting.

Company Secretaries in this new era will surely be nomenclatured as “Custodians of Corporate Governance”. Compliance with the new set of legislations is on the radar now for the Company Secretaries and are expected to act as “Chief Compliance and Governance Officer”.

They are expected to contribute as pioneers in implementing the new drives of the Government viz., Ease of Doing Business, Digital India and Anti Money Laundering Drive and initiatives like implementing the new tax regime – Goods and Services Tax (GST). The expectation from the profession has grown leaps and bounds and can truly be regarded as “Torchbearers for the New Day Economy”

Running in its 50th year and with member base crossing 53,000 the professional body developing and regulating the profession of Company Secretaries, The Institute of Company Secretaries (ICSI) marks a distinguished space in the professional world. Truly, standing by its vision of being global leader in promoting good Corporate Governance and working relentlessly towards its mission to develop high calibre professionals facilitating good corporate governance. The motto “Satyam Vada, Dharmam Chara” which translates to ‘Speak the Truth, Abide by Law clearly reflects the ideology of the Institute of its expectations and deliverables from its members.

The Golden Jubilee Celebration of ICSI which was graced by the Honourable Prime Minister who has spelled the increasing expectations from the professionals. He chalked out the involvement and partnership from the Company Secretaries in building the nation and contributing to the Ease of Doing Business. He highlighted the need to bear the corporate culture responsibility, ensuring compliance and transparency, updating with the new legislations and adapting to the turbulent business environment. He additionally focused the need of advisory from professionals like Company Secretaries to ensure a true and honest business ecosystem. He further stressed on the need to come out from the ambit of regular activities and contribute in the new initiatives of the Government like GST. The desire of Prime Minister from ICSI to equip around a lakh CS professional to act as GST practitioners and contribute in return filing and helping assesses is commendable and speaks for the success and accomplishment of ICSI in the span of 50 golden years. While earlier, taxation was considered as a domain for tax professionals only, the high standards set by ICSI has clearly resulted in the

\* ACS. The views expressed are personal views of the author and do not necessarily reflect those of the Institute.



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increasing demand for our professionals to contribute in taxation fields also. In short, it's time for Company Secretaries to unleash their professional acumen and seize the various opportunities offered by the Government.

Globally, the services provided under the expertise of professionals have been the greatest enabler in causing remarkable positive transformation in the economies. India's story is expected not to be much different, and the utilisation of professional resources in the form of Company Secretaries will prove to be a game-changer.

Company Secretaries are expected to act as partners in New India and Nation Building. In the light of the transformation India is going through, there is a need for Company Secretaries to provide Value Added Services.

### Company Secretary – The Current Status

The Companies Act, 2013, which is a paradigm shift in the governance framework of the country, has accorded exalted position and recognised the Company Secretaries as Key Managerial Personnel, eligible for conducting Secretarial Audit, act as Registered Valuers etc.

Company Secretary is a vital link between the company and its Board of Directors, shareholders, government and regulatory authorities. He is to ensure that Board procedures are both followed and regularly reviewed and provides guidance to Chairman and the Directors on their responsibilities under various laws. He commands high position in the value chain and acts as conscience seeker of the company.

Section 203 of Companies Act 2013 recognises Company Secretary as Key Managerial Personnel along with the Chief Executive Officer/Managing Director/Manager/Whole-Time Director and Chief Financial Officer.

Company Secretary is required to be mandatorily appointed in every company belonging to such class or classes of companies as may be prescribed. As per the Rule 8 of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, such prescribed class is every listed company and every other public company having a paid-up share capital of ten crore rupees or more shall have whole-time key managerial personnel. Additionally Rule 8A, of the same Rules provide that a company other than a company covered under rule 8 which has a paid up share capital of five crore rupees or more shall have a whole-time Company Secretary.

### New & Rising India

While growth of Indian economy was seen during 1990s with liberalisation, privatisation and globalisation, a much speedy growth is expected to be witnessed in the second round with adoption of new initiatives of the Government like Make in India, Digital India, GST- the tax transformation etc. The Government at present has a long-term vision that is moving full steam ahead. The results of implementing such a vision are already visible in many sectors and by the year 2020, India may finally transform itself and shed its old sluggish image.

*Prime Minister 8-point vision for India of 21st century are:*

- Garibi se mukt, Samridhi se yukt (free from poverty, full of prosperity)
- Bhedbhav se mukt, Samaanta se yukt (free from discrimination, filled with equality)
- Anyay se mukt, Nyay se yukt (free from injustices, ensconced in justice)
- Gandagi se mukt, Swachchhta se yukt (free from squalor, covered with cleanliness)
- Bhrashtachar se mukt, Pardarshita se yukt (free from corruption, complete with transparency)
- Berozgari se mukt, Rozgari se yukt (free from unemployment, enriched with employment)



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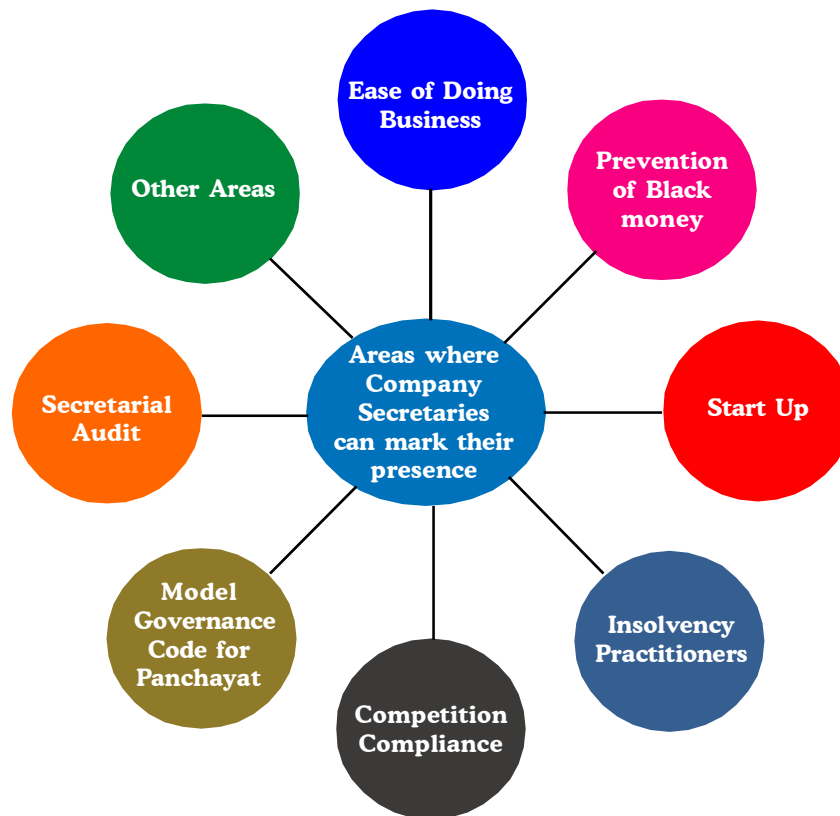


- Mahila utpidan se mukt, Stree samman se yukt (free from atrocities against women, full with respect for women)
- Nirasha se mukt, Asha se yukt (free from despondency, full of hope)

This bombards ample opportunities to the young professionals and in particular to our fraternity of Company Secretaries, Chartered Accountants and Cost Accountants etc

Seeing the potential of Indian economy, there is a great scope for Company Secretaries. A Company Secretary being multidisciplinary professional renders various services and plays dynamic role. Company Secretaries have a larger role to play in New India.

Following are some of the areas where Company Secretaries can mark their presence:



### Ease of Doing Business

Ease of Doing Business has been the buzzing word now a days. The Ease of Doing Business (EODB) index is a ranking system established by the World Bank Group. In the EODB index, 'higher rankings' (a lower numerical value) indicate better, usually simpler, regulations for businesses and stronger protections of property rights.



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The research presents data for 189 economies and aggregates information from 10 areas of business regulation:

- Starting a Business
- Dealing with Construction Permits
- Getting Electricity
- Registering Property
- Getting Credit
- Protecting Minority Investors
- Paying Taxes
- Trading across Borders
- Enforcing Contracts
- Resolving Insolvency

Rankings and weightages on each of the above mentioned parameters are used to develop an overall EODB ranking. A high EODB ranking means the regulatory environment is more conducive for starting and operating of businesses.

India currently occupies 130th position in the rating of Ease of Doing Business. The ranking has constantly improved over the last few years. Further, improved efficiency in granting construction permits, starting a business and resolving insolvency is expected to improve India's overall ranking in the World Bank's 'ease of doing business' survey 2018, which will be published in October this year.

Year	2015	2016	2017
India's EODB Ranking	134	131	130

Source: <http://www.makeinindia.com/eodb>

Professionals like Company Secretaries can play a remarkable role in the same. The very basic of starting a Company is wherein our contribution can be marked. With the enactment of Companies Act, 2013 and amendments thereof the process of incorporating a Company has been eased. The requirement of Common company seal is eliminated. Introduction of form -29 by MCA whereby three processes such as Name Availability, Director Identification Number and Incorporation of Company are clubbed into one resulting in the fact that a company can now be registered within 1-2 working days in India.

A Company Secretary can support the Government of India in realising 'ease of doing business' drive for entrepreneurs and enterprising businesses, thus contributing towards the New India.

ICSI can further come with recommendations and proposed changes to further facilitate and contribute towards improving ranking in Ease of Doing Business.

### **GST**

GST, short for Goods and Service Tax is the new indirect tax regime, which has been often abbreviated for "Good and Simple Tax" by the Prime Minister is the biggest tax reform in the history of India. GST is said to be the "New Sanjeevani for the Indian Economy". It is expected to bring a revolutionary change in the taxation system and bringing the unorganised sector in the ambit of taxation in the country.



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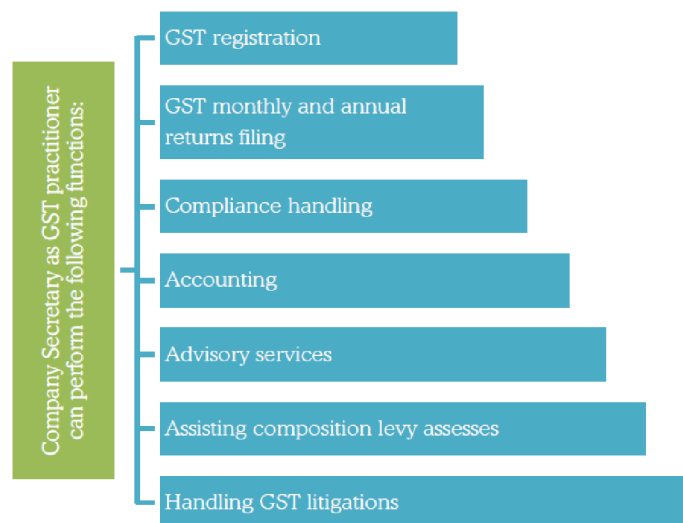
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However, to implement the same, there is requirement for ample professionals to cater to the changed laws and serve the unorganised sector. The country is running short of professionals

The desire of Prime Minister from ICSI to equip around a lakh CS professional to act as GST practitioners and contribute in return filing and helping assesses is commendable and speaks for the success and accomplishment of ICSI in the span of 50 golden years. While earlier, taxation was considered as a domain for tax professionals only, the high standards set by ICSI has clearly resulted in the increasing demand for our professionals to contribute in taxation fields also. In short, it's time for company secretaries to unleash their professional acumen and seize the various opportunities offered by the Government.

Since the curriculum of CS is so strong in its basics and tax being a mandatory part of it, CS are expected to contribute positively in GST and indirectly in shaping the New India. Additionally, CS are proficient in studying and vetting agreements and both in transitional and implementation stage can study, analyse the impact of GST clauses in the agreement and help management of the companies in better tax handling.



### Prevention of Black Money

There are various laws, rules and regulations which deal with money laundering activity. The Prevention of Money Laundering Act, 2002 ('PMLA') is an umbrella statutory framework which prohibits and criminalises money laundering activities. Any person involved in an act of money laundering can be prosecuted and punished under the PMLA.

In the drive to prevent circulation of black money, on November 8, 2016, Hon'ble Prime Minister Narendra Modi announced the demonetization of the currency notes of value Rs 500 and Rs 1000 and introducing new notes of Rs 2000. Demonetisation has brought a sense of justice among honest tax payers and this would be further strengthened if money recovered is used by the government in an efficient and leak-proof manner for infrastructure and social schemes,

It is observed that some companies follow scrupulous and fraudulent practices and engage themselves in transactions involving circulation of black money and money laundering. As Company Secretaries are equipped



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with laws on anti money laundering and in direct touch with the top management, can provide proper advisory and make them beware of the consequences of incorrect practices. They can act as whistle blower where they witness such practices are being carried on.

Company Secretaries in practice can play instrumental role in avoiding black money circulation.

Government has recently black listed Shell company's directors in corporate sector. Financial accounts of these shell companies are largely fictitious and rarely backed up by actual assets or cash flow and involve themselves in converted black money to white money.

Further, Company Secretaries have deep knowledge of costing and financial management and analysts, they can help Government to link data with existing information already with the tax and other departments or relevant ministries including customs and excise, property registration bodies, courts, police and phone records, district authorities, utilities, net banking transactions linked to digital wallets and credit cards etc., unearthing even more data of relevance to highlight unorthodox or revealing financial insights. This practice could ease out the chances of catching frauds — such as those trying to make easy money, tax evaders, analyzing the creditworthiness of a person and the intentions of the borrowers and identifying anti-national activities.

Further, the Institute may closely associate with the Government and other anti-money laundering regulators in India being Securities and Exchange Board of India, Reserve Bank of India, Insurance Regulatory & Development Authority of India (IRDA), Directorate of Enforcement, Central Bureau of Investigation and Income Tax Department and help devise new anti-money laundering regulations.

### Start-up

Start-up has been defined by Department of Industrial Policy & Promotion (DIPP) as an entity, incorporated or registered in India :

- Not prior to seven years, however for Biotechnology Startups not prior to ten years,
- With annual turnover not exceeding INR 25 crore in any preceding financial year, and
- Working towards innovation, development or improvement of products or processes or services, or if it is a scalable business model with a high potential of employment generation or wealth creation.

Ministry of Commerce & Industry have initiated StartUp India initiative and is key to the Make in India initiative of the Government.

Company Secretaries have a lot to contribute in this special drive which surely is one of the constituent of New India. CS can play a holistic role right from the start of the startup to the finish point. They can provide advisory service before incorporation to the client, incorporation of the Company, accounting and taxation of the startups as well consultancy regarding the normal functioning and compliances of the unit.

Further, Institute of Company secretaries should devise ways and means to provide assistance and guidance to small businesses and MSMEs who need professional support at competitive prices.

### Insolvency Practitioners

To practice as insolvency professional, an individual shall be eligible for registration, if he –

- a. has passed the National Insolvency Examination.



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- b. has passed the Limited Insolvency Examination, and has fifteen years of experience in management, after he received a Bachelor's degree from a university established or recognized by law.
- c. has passed the Limited Insolvency Examination and has ten years of experience as –
  - o A chartered accountant enrolled as a member of the Institute of Chartered Accountants of India.
  - o A company secretary enrolled as a member of the Institute of Company Secretaries of India.
  - o A cost accountant enrolled as a member of the Institute of Cost Accountants of India, or
  - o An advocate enrolled with a Bar Council.

In the current scenario where the top most priority for financial institutions and banks is to resolve the issue of bad loans that have long burdened them in form of NPAs and pose a significant macroeconomic risk, insolvency professionals stand to get a big career boost.

Insolvency practitioners play a dynamic role by negotiating deals, investigating and advising on the viability of a business and its restructuring. Restructuring may be in nature of corporate restructuring, debt restructuring and financial restructuring.

Insolvency practitioners is a demanding profession wherein the skills to deal with creditors, top management and directors, concerned employees and other stakeholders in the business is desired.

Even where a formal insolvency procedure is necessary, in many cases a positive approach to the rescue of businesses and jobs can be taken through the application of administrations, administrative receivership and voluntary arrangements. In the current environment, with personal debt at record levels, it is vitally important individuals get the correct advice about the options open to them to resolve their difficulties. As licensed insolvency practitioners are trained in all aspects of the law and procedure, they are best placed to provide that advice and only they can act as supervisors of individual voluntary arrangements or as trustees in bankruptcies.

Insolvency is possibly the most demanding and challenging career option as a professional avenue but Company Secretaries due to their inherent skill set can do justice to this demanding profile. CS can play a huge role in the insolvency resolution domain as it requires professional competence, responsibility towards stakeholders and demonstration of the highest ethical standards are required to make the exercise a success and meet the objectives of the legislation.

### Competition Compliance

India's anti-trust law is embodied in the Competition Act, 2002 and became fully operational from 1 June 2011. Compliance with competition law poses a lot of challenges as the law is a confluence of economics and legal knowledge.

The Competition Law requires multi-disciplinary inputs in its implementation and enforcement and an intensive economic analysis that goes beyond just interpreting the language of the law. The concepts of abuse, dominance and appreciable adverse effect on competition are not defined quantitatively but are established based on the competition in the market.

World-over, the antitrust authorities are resource constrained and Competition Commission of India is no exception, it is crucial that the focus is more on encouraging enterprises for adapting Competition Compliance Programme (CCP). Active CCP will require professionals that can implement compliance program and also have access to top management.



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Enterprises should ensure that the Compliance Programme represents current best practices, remains relevant, comprehensive and effective. Periodic evaluation of Compliance Programme is suggested to keep it relevant. Company Secretaries will their knowledge on competition laws, understanding of legality of agreements and market awareness can help organisations in designing CCP and implementing the same.

Company Secretaries can add real value to their role by becoming proactive compliance officers of the enterprise. Given their role as the compliance officers to the company secretary, promoting adoption of CCP is not only beneficial for the profession but will also help in improving the standard of corporate governance in the Company.

They can further act as Chief competition SPOC (Single Point of Contact) in the organisation by acting as contact point for dealing with Competition Authorities both in anti trust and combination cases.

Other areas where Company Secretaries can contribute significantly are as follows:

### Model Governance Code for Panchayat

ICSI has recently issued Model Governance Code for Meetings of Gram Panchayat. Believing the fact and being aware of the role played by good governance practices in holistic growth and development of the country, ICSI has approached the villages and came up with these model governance code. It is a social initiative to facilitate the implementation of standard practices in convening the meeting of Panchayats.

The model code seeks to facilitate compliance with the said principles by endeavouring to provide further clarity where there is ambiguity and establishing benchmark standards to harmonise prevalent diverse practices. This huge transformation calls for a journey that aims at connecting the dots between 'Local to Global (L2G)' aspects of governance. This initiative of ICSI was highly praised by Hon'ble Prime Minister on the Golden Jubilee Celebration Function.

Following standardised practices for convening meeting, determining quorum, norms for agenda of the meeting, maintaining minutes and records of the Panchayat meeting, a Company Secretary can play a crucial role in the same and positively contribute in the New and Rising India.

### Secretarial Audit

The concept of Secretarial Audit was introduced by the Companies Act, 2013.

As per section 204 of the Companies Act, 2013 read with Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, (i) Every listed company, (ii) Every public company having a paid-up share capital of Fifty Crore rupees or more and (iii) Every public company having a turnover of Two Hundred Fifty Crore rupees or more are required to obtain 'Secretarial Audit Report' from independent firm of Practicing Company Secretaries.

It is a process to check compliances made by the Company under Corporate Law & other laws, rules, regulations, procedures etc. It is a mechanism to monitor compliance with the requirements of all applicable laws and related compliance processes. Secretarial Audit gives comfort to the regulators, stakeholders and management that company observes a disciplined approach to evaluate and improve effectiveness of risk management, control, and governance processes.

Secretarial Standards on Meetings of the Board of Directors (SS-1) and General Meetings (SS-2) have been revised by the ICSI and approved by the Central Government under section 118(10) of the Companies Act, 2013. The revised SS-1 and SS-2 as issued by the ICSI are applicable to all the companies (except the exempted class of companies) w.e.f. 1st October, 2017. It is a proud development that even Malaysian Association of





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Company Secretaries (MACS) has requested for adoption of the Secretarial Standards issued by the Institute of Company Secretaries of India (ICSI) as the benchmark in the development of Secretarial Standards of MACS.

Other than Secretarial audit, Company Secretary can indulge themselves in Special Audits like fraud audit, forensic audit, risk audit and compliance audit.

### Other Areas

Company secretaries have immense knowledge of a wide variety of subjects. In this context, they can also take up position of a lecturer or a visiting faculty in various academic establishments and contribute to the society.

The scope of being Company Secretary is increasing year by year due to factors like expansion of corporate sector within and beyond the borders, emergence of new corporate entities like LLP's and OCP's and concepts like CSR (Corporate Social Responsibility).

The recent upheavals in the corporate world have shaken the confidence of shareholders. There is a greater demand for displaying corporate credibility and transparency by organisations in managing their internal affairs. There is also a need to retain the confidence of various stakeholders. The role of a company secretary is not only limited to providing support to the board of directors and managing administrative affairs of an organisation and as a result the horizon of the roles and responsibilities has expanded exponentially.

Company Secretaries have the added advantage of setting up their own consultancy business after obtaining a certificate of practice. Companies with a paid-up share capital of Rs 10 lakh and more and less than Rs 5 crores are required to employ the services of practicing company secretaries for issuing corporate compliance certificates.

The Company Secretaries are also academically involved in bringing out consultative papers in areas of Corporate Laws, Finance and Capital Markets etc. and to act as a Think tank for Government, regulatory bodies and trade and industry.

The Company Secretaries can also provide consultancy of high order employing contemporary methods and practices and undertake corporate diagnostic studies, field surveys and data base services.

Thus, Company Secretaries in today's world have enormous contributions to make in partnering with the Government and designing New India.

To sum up, ICSI is one of the largest secretarial institute globally. ICSI takes measures to constantly update the knowledge of its members and upgrade them to the latest technology. The Institutes 'Chartered Secretary' Journal and Info capsules and Geeta Saar are worth praising initiatives of ICSI. The Institute may further come up with compulsory training hours mandated for each year so that the members may become updated professionals.

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### NCLT - New Horizons of the Profession and Tasks Ahead

**Divya Saxena\***

#### Introduction

There is a visible trend around the world towards rationalization of business processes and simplification of Legislations governing them. This trend is being driven partly by the use of electronic communication and information technology that has speeded up business transactions as well as making them international. Time is, therefore, ripe to ensure that dispensation of justice and disposal of business matters by the Court and Regulatory Authorities should be in tune with the speed with which business is being transacted. The key initiatives like 'Make in India', 'Skill India', 'Digital India' and 'Start-up India' are the formidable drives to push forward the objective of sustainable and inclusive growth. Ministry of Corporate Affairs (MCA) provides the regulatory and administrative framework for Corporates in order to make them effective contributors to the national development agenda and envisions to be a facilitator of world class governance of corporate through administration of Companies Act, 2013 and other allied Statutes. The implementation of Government Process Re-engineering (GPR), MCA-21 e-governance Project, constitution of NCLT / NCLAT as specialized corporate adjudication mechanism are the examples of some key initiatives for good governance with the use of technology.

#### Constitutional Background of NCLT and NCLAT

- The Justice Eradi Committee on Law Relating to Insolvency and Winding up of Companies, in its Report noted that there were three different agencies namely, the High Courts, which had the powers to Order Winding up of Companies under the provisions of the Companies Act, 1956, Secondly, the Company Law Board set up under Section 10E of the Companies Act, 1956 to exercise powers conferred on it by the Act or the powers of the Central Government delegated to it and finally, Board for Industrial and Financial Reconstruction (BIFR) which deals with the references relating to rehabilitation and revival of Companies. It was realized that the High Courts were not able to devote exclusive attention to winding up cases which was essential to conclude the winding up of Companies expeditiously. Also the experiment with BIFR for speedy revival of Companies had also not been encouraging. The Committee consequently recommended for the formation of a Composite Legal Forum to address all aspects of Companies Act, 1956 rather than to have separate Acts viz.; SICA, 1985 and multiple forums (BIFR, High Court) for enforcement of various Sections of the Companies Act 1956.
- The Companies (Second Amendment) Act, 2002 for the first time provided for setting up of a National Company Law Tribunal and Appellate Tribunal to replace the Company Law Board (CLB) and Board for Industrial and Financial Reconstruction (BIFR). In this respect a Writ Petition was filed by the Madras Bar Association ('the Petitioner') with the Madras High Court challenging the constitutional validity of the NCLT and NCLAT. The Madras High Court in its judgment in the year 2004 upheld that

\* FCS, MBA, LL.B. The views expressed are personal views of the author and do not necessarily reflect those of the Institute.



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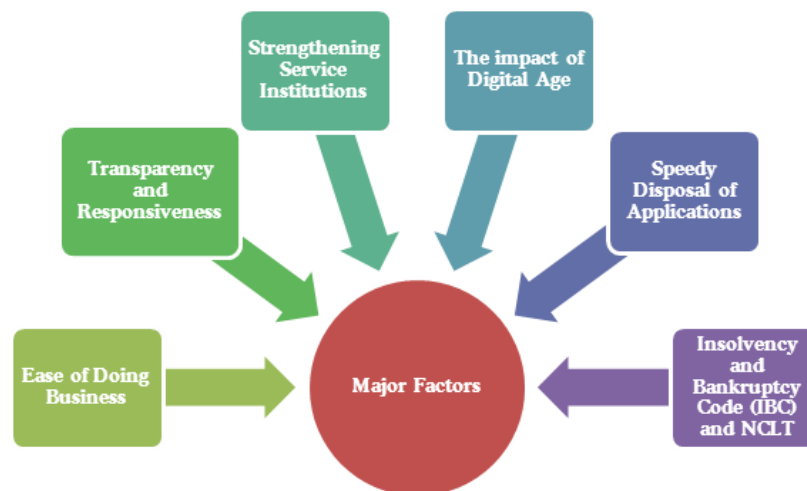


the creation of NCLT and vesting of the powers hitherto exercised by the High Court and the Company Law Board in the said Tribunal was not unconstitutional. Even after this, the road to the formation of NCLT was occluded by various petitions until the matter was presented against the Supreme Court (twice, in 2010 & 2015). In the year 2010, the Supreme Court has, even under the provisions of Companies Act, 1956 upheld the validity for constitution of NCLT & NCLAT in re. *Union of India vs. R. Gandhi*.

- The Companies Act, 2013 has made specific provisions with respect to formation of NCLT and NCLAT, but the same was again challenged by Madras Bar Association. However, the Constitutional Bench of Apex Court has reiterated the validity of constitution of NCLT and NCLAT with a few changes with respect to appointment of Members to the Tribunals relying upon its earlier ruling.
- Ministry of Corporate Affairs ('MCA') vide its Notification dated 1st June, 2016 and powers conferred by Section 408 and 410 of the Companies Act, 2013 constituted the National Company Law Tribunal ('NCLT') and National Company Law Appellate Tribunal ('NCLAT'). This notification had been in abeyance for almost 14 years since it was first introduced by the Companies (Second Amendment) Act 2002 based on the recommendations of Eradi committee.
- The move for Constitution of NCLT was aimed at helping reduce the pendency of winding-up cases, shortening the winding-up process and avoiding multiplicity and levels of litigation before High Courts, the Company Law Board and the Board for Industrial and Financial Reconstruction.

### Factors Determining the Need for Establishment of Special Corporate Adjudication Mechanism in India

As India is poised for accelerated economic growth, Corporates have a crucial role to play in the development of the Indian economy in its quest for inclusive and sustainable growth. MCA being a key Corporate Regulator has to play an important role for rationalizing corporate regulations in line with the global best practices. The setting up of the NCLT and NCLAT are part of the efforts to move to a regime of faster resolution of corporate disputes and would provide holistic solutions to issues being faced by the Companies, thus improving the ease of doing business in India. The major factors which necessitated for the establishment of NCLT and NCLAT as a special mechanism for adjudication of corporate matters may be enumerated as follows:-





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### 1. Ease of Doing Business

India needs to align with the globally accepted best practices for attaining 'ease of doing business' and 'ease of resolving insolvencies'. As per the World Bank's 2016 Index, India ranks 130 out of 189 countries in the ease of doing business and 136 out of 189 countries in the ease of resolving insolvencies. India aims to achieve substantial improvement in its global rankings in the immediate future. The latest MCA initiatives such as the setting up of the Central Registration Centre (CRC), launching of Simplified Proforma for Incorporating Company Electronically (SPICE) under the GPR initiatives and the effective implementation of Insolvency and Bankruptcy Code (IBC), 2016 are expected to bring about significant improvement in business ecosystem in India. In this respect, the Constitution of NCLT and NCLAT are expected to facilitate faster resolution of Corporate disputes, thus improving the ease of doing business in India. NCLT shall act as a single window concept of approving the scheme of mergers and acquisitions in an effective time bound manner.

### 2. Transparency and Responsiveness

The good governance of Corporates requires an adequate emphasis on transparency and responsiveness in the operations of Corporates and the MCA as well. With this objective, MCA provides for the adequate and responsible disclosures by the Corporates under the provisions of the Companies Act, 2013. In its Client and Citizen Charter (CCC), MCA defines specific service standards. MCA also ensures its accountability to all the Stakeholders in terms of achieving transparency and responsiveness across key areas of its administrative functioning. The key initiatives such as the GPR drive, MCA-21 e-governance project and its forward linkage in terms of Corporate Data Management (CDM) project are expected to increase transparency and responsiveness of MCA.

### 3. Strengthening Service Institutions

The central function of the MCA as the major corporate regulator, is to enforce compliance of the corporate functioning in accordance with the provisions of the Companies Act, 2013 and other allied statutes. For efficient functioning across the important functional verticals, MCA operates through the Registrars of Companies (ROCs), Regional Directors (RDs), Director General of Corporate Affairs (DGCoA) and other key institutions like the Competition Commission of India (CCI), Competition Appellate Tribunal (COMPAT), Investors Education and Protection Fund Authority (IEPFA), Insolvency and Bankruptcy Board of India (IBBI), Serious Fraud Investigation Office (SFIO), Indian Institute of Corporate Affairs (IICA), Institute of Chartered Accountants of India (ICAI), Institute of Cost Accountants of India (ICAI), Institute of Company Secretaries of India (ICSI), National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT). MCA continuously strives towards strengthening the institutions for facilitating regulation and enforcing better compliance for promoting healthy competition while balancing competing and often conflicting interests of various Stakeholders.

### 4. The impact of Digital Age

Law today has entered the Digital age. A new intellectual framework for law, one that incorporates not only the familiar word and text mode of legal thinking but also the pervasively visual, hyper mediated and digital mode that increasingly characterizes the practice of law meeting with the global benchmark.

### 5. Speedy Disposal of Applications

A deadline for disposition of Applications or Petitions should be set before the NCLT. As per the



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provisions of the Companies Act, 2013, further provisions are in place to enforce the expeditious disposition of the proceedings before NCLT.

### 6. Insolvency and Bankruptcy Code (IBC) and NCLT

The enactment of Insolvency and Bankruptcy Code (IBC), 2016 on 28th May 2016 is considered as one of the major initiatives for facilitating ease of doing business in terms of simplifying the exit process through faster resolution of insolvencies and liquidation under single platform. It is expected to strengthen the credit market by maximizing the asset value of insolvent firms. It is also expected to increase India's global ranking on the 'ease of resolving insolvencies'. The Code aims at consolidating all existing insolvency related laws as well as amending multiple legislations and it would have an overriding effect on all other laws relating to insolvency and bankruptcy. The IBC, 2016 will function through NCLT/NCLAT. The Code also has provisions to address cross border insolvency through bilateral agreements and reciprocal arrangements with other Countries. The proper implementation of the Bankruptcy and Insolvency Code will be facilitated by efficient functioning of NCLT and NCLAT. As such, the adjudicating authority under the Code would be the NCLT for Companies and Limited Liability Partnerships (LLP) and the Debt Recovery Tribunal (DRT) for Individuals and Partnership Firms.

The new regulatory system is a combination of self-regulation, co-regulation and public regulation as the Companies Act, 2013 has made the regulatory system simple and easy to comply, while protecting the interests of various Stakeholders. The Companies Act, 2013 is considered to be one of the major legal reforms in India that aims to bring Indian Company Law in line with global standards and focuses on governance and ease of doing business in India.

### Role of Ministry of Corporate Affairs (MCA) in Rationalising the Corporate Legislative Environment

MCA acts as a catalyst to build a relationship of trust among Stakeholders, including the Government, Companies, Professionals, Citizens and Society at large. It plans to strategically focus on continuously improving Corporate Governance while facilitating business growth, making it easier to do business and making regulations simpler in order to reduce cost of compliance, enforcement and monitoring costs. In real sense, it is relentlessly engaged in simplifying the procedures through changes and innovations, towards faster service delivery across its key functional objectives namely:

- Regulating corporate functions for enforcing compliance of the Companies Act, 2013 and other statutes;
- Providing ease of doing business;
- Achieving transparency in all facets of its operational procedures;
- Ensuring protection for the Investors;
- Providing administrative support to the assisting Professional Institutions vis; ICAI, ICSI and ICMA which continuously contribute to the growth of the industrial and economic climate of the country.
- Ensuring responsiveness; and
- Ensuring better value for Stakeholders.



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### MCA Policy Functions Transforming the System of Corporate Adjudication in Recent Times

1. Provide simplified laws governing corporate sector and facilitate effective compliance and regulatory regime for good governance.
2. Effective administration of Companies Act and other allied Acts through functioning of NCLT / NCLAT and other Regulatory bodies.
3. Undertake new policy initiatives for improving the legal framework for investment and corporate growth in the Country.
4. Government Process Re-engineering (GPR) with the specific objective of providing speedy registration of Companies within stipulated time frame which are in line with international best practices.
5. Time-bound processes for insolvency resolution of Companies and individuals.
6. To add value beyond expectation through continuous process of innovation and agility.
7. Speedy and efficient Corporate Dispute Resolution through NCLT and NCLAT.
8. Strengthening research for providing policy inputs and identifying innovative regulations.

### Striking Features of NCLT and NCLAT as a Quasi Judicial Authority

The NCLT or “Tribunal” is a quasi-judicial authority created under the Companies Act, 2013 to handle corporate civil disputes arising under the Act. It is an entity that has powers and procedures like those vested in a Court of law or judge and is a successor body of the Company Law Board (‘CLB’) and has a primary jurisdiction. NCLT is obliged to objectively determine facts, decide cases in accordance with the principles of natural justice and draw conclusions from them in the form of orders. Such orders can remedy a situation, correct a wrong or impose legal penalties/ costs and may affect the legal rights, duties or privileges of the specific parties. The Tribunal is not bound by the strict judicial rules of evidence and procedure. It can decide cases by following the principles of natural justice.

NCLAT or “Appellate Tribunal” is an authority provided for dealing with appeals arising out of the decisions of the Tribunal. It is formed for correcting the errors made by the Tribunal. It is an intermediate appellate forum where the appeals lie after Order of the Tribunal. The decisions of Appellate Tribunal can further be challenged in the Supreme Court. Any party dissatisfied by any Order of the Tribunal may bring an appeal to contest that decision. The Appellate Tribunal reviews the decisions of the Tribunal and has power to set aside, modify or confirm it.

Presently there are 11 (Eleven) NCLT Benches situated at New Delhi, Ahmedabad, Allahabad, Bengaluru, Chandigarh, Chennai, Guwahati, Hyderabad, Kolkata, and Mumbai including 1 Principal Bench at New Delhi.

Some of the striking features of NCLT are as follows:-

- Specialized Court for the Corporate Members.
- A Tribunal for the Corporate Members.
- It shall avoid multiplicity of litigation before various Forum.
- There shall be various branches of the NCLT all over India, thereby providing justice almost at one’s doorstep.



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- A mixture of Judicial and Technical Members for adjudication of cases.
- Small time scale for winding- up proceedings.
- Reduction in pendency of cases.
- Expeditious disposal of cases.
- NCLT can be conferred as 'Mega Tribunal'. Because NCLT will consolidate the Corporate jurisdiction of the following legal forums:-
  - Company Law Board
  - The Board for Industrial and Financial Reconstruction
  - The Appellate authority for Industrial and Financial Reconstruction
  - Jurisdiction and powers relating to winding up restructuring and other such provisions, vested in the High courts.

### NCLT Vs. NCLAT

The NCLT has primary jurisdiction whereas NCLAT has appellate jurisdiction. NCLAT is a higher forum than NCLT. Evidence and witnesses are generally presented before NCLT for taking the decisions and NCLAT generally reviews decisions of NCLT and checks it on a point of law or fact. Fact finding and evidence collection is primarily a task of Tribunal whereas the Appellate Tribunal decides cases based on already collected evidences and witnesses.

### Powers of NCLT

NCLT and NCLAT has been subsumed with all the powers in respect of corporate matters which are hitherto being exercised by the Company Law Board, High Courts of respective States, Board for Industrial and Financial Reconstruction (BIFR) and the Appellate Authority for Industrial and Financial Reconstruction (AAIFR) which can be summarized as under:

1. Most of the powers of the Company Law Board under the Companies Act, 1956.
2. Powers of High Court in the matters of mergers, demergers, amalgamations, winding up, etc.
3. Power to order repayment of deposits accepted by Non-Banking Financial Companies as provided in Section 45QA of the Reserve Bank of India Act, 1934.
4. All the powers of BIFR for revival and rehabilitation of Sick Industrial Companies;
5. Power to Wind-up Companies within the provisions of Insolvency & Bankruptcy Code 2016.
6. Power to Review its own orders.
7. Power to Punish for Contempt.
8. Power to seek assistance of Chief Metropolitan Magistrate in any proceedings relating to a sick Company or Winding up of any other company, in order to take into custody or under its control all property, books of account or other documents, request, in writing, the Chief Metropolitan Magistrate within whose jurisdiction any such property, books are situated or found; and
9. The Bar on the exercise of Jurisdiction of Civil Courts on any matter on which Tribunal or Appellate Tribunal has the powers.
10. Concept of 'Amicus Curiae' under the NCLT Rules. As per the Rules, NCLT shall have the power to



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appoint Amicus Curiae (meaning any person or persons, including the professionals and professional bodies permitted by NCLT to render or to communicate its views to the NCLT) for the purpose of:

- i. Rendering any point or points or legal issues; and
  - ii. Accessing the pleadings of the parties in a case for their opinion.
11. Expert legal opinion taken into consideration for the purpose of Judgment

The NCLT Rules enable the Tribunal to appoint Amicus Curiae for opinion on various specialized legal issues.

Thus, NCLT possess the powers and jurisdiction of the BIFR, AAIFR, Company Law Board, High Courts relating to compromises, arrangements, mergers, amalgamations and reconstruction of companies, winding up etc.

### Impact of the Constitution of NCLT and NCLAT on Company Law Litigation

The Constitution of NCLT and NCLAT has brought about a significant impact in the process of Company Law Litigation in India. Some of the more important consequences of this development are enumerated below:

- **Single Window Settlement Mechanism**

The most significant benefit from the constitution of the NCLT and the NCLAT is that the Tribunals will, effectively, act as a single window for settlement of all Company law related disputes as it has replaced Company Law Board ('CLB'), the Board of Industrial and Financial Reconstruction ('BIFR') and its appellate authority. Thus, the unnecessary fragmentation and multiplicity of the proceedings before various Courts and Tribunals has been dispensed with. NCLT is also the main adjudicating Authority for liquidation process of Companies and Corporate Debtors in accordance with the Insolvency and Bankruptcy Code, 2016, accordingly, the liquidation process of Companies and Corporate Debtors is considerably simplified.

- **Class Action Claims of Shareholders and Depositors**

The Companies Act, 2013 has provided a very good combination of remedies where the offender will be punished and the people who are involved (whether it is the Company or Directors or Auditor or Experts or Consultants) will be liable even for a civil action (namely class action) wherein they have to compensate to the Shareholders and Depositors for the losses caused to them on account of the fraudulent practices or improprieties. Pursuant to the provisions of the Companies Act, 2013, if 100 or more Shareholders or Depositors find that the affairs of the Company are not being managed in its best interests, they may approach the NCLT. In a class action suit, Shareholders can collectively sue Directors or Auditors of the Company for their misconduct or unwarranted acts. This remedy acts as a protection shield and a valuable remedy for the minority Shareholders who seek redressal against arbitrary/ oppressive decisions of their management.

- **Wider Territorial Jurisdiction and Impact**

Under the Companies Act, 1956, the CLB was operating only through 5 benches across the country. However, the NCLT presently has 11 Benches with the Principal Bench being in New Delhi. As such, the NCLT has wider reach for adjudicating Company law matters in India.

- **Speedy Adjudication of Cases by NCLT and NCLAT**

The NCLT has been given the powers to regulate its own procedure which will assist them in disposing matters in a simplified manner. Further, the NCLT and the NCLAT are under a mandate to dispose of





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cases within the prescribed time frame and as expeditiously as possible. Accordingly, a time limit of three months has been provided to dispose of cases, with an extension of 90 days for sufficient reasons to be recorded by the President or the Chairperson, as the case maybe. This time limit is expected to ensure the speedy disposal of cases by the NCLT and the NCLAT.

- **De-registration of Companies**

The procedural errors at the time of registration can now be questioned at any time. The Tribunal is empowered to take several steps, including cancellation of registration and dissolving the Company. The Tribunal can even declare the liability of members unlimited. Section 7(7) of the Companies Act, 2013 provides this new way for de-registration of Companies in certain circumstances when the registration of the Company was obtained in an illegal or wrongful manner. As such, De-registration is a remedy that is distinct from winding up and striking off.

- **Oppression and Mismanagement**

The remedy of oppression and mismanagement is also provided in the Companies Act, 2013. The nature of this remedy has however changed to certain extent and it needs to be seen in light of the changes made to the Companies Act, 2013. The Companies Act, 2013 has reset the bar for oppression to a little lower level but has set the bar of mismanagement a little higher by applying the test “winding up on just and equitable grounds” even to mismanagement matters. NCLT is the ultimate Adjudicating Authority to decide the cases of oppression and mismanagement. The Act also permits dilution of the eligibility criteria with the permission of Tribunal, where a member below the eligibility criteria can apply in deserving cases.

- **Refusal to Transfer Shares**

The power to hear grievance of refusal of Companies to transfer securities and rectification of Register of Members under Sections 58 and 59 of the Companies Act, 2013 is conferred to NCLT. The remedy for refusal to transfer or transmission were restricted only to shares and debentures under the previous Companies Act, 1956. The provisions for refusal to transfer and transmit under Companies Act, 2013 extends to all types of securities.

- **Deposits**

The powers to deal with the cases of deposits have been vested in NCLT. The Aggrieved depositors also have the remedy of class actions for seeking redressal for the acts/omissions of the Company which hurt their rights as depositors.

- **Reopening of Accounts & Revision of Financial Statements**

Several cases of falsification of Books of Accounts were evidenced under the Companies Act, 1956. In order to remove this menace, several measures have been provided in the Companies Act, 2013. One such measure is the insertion of Section 130 and 131 read with Section 447, 448 in the Act. Section 130 read with Section 131 of the Act prohibits the Company from suo motu opening its accounts or revising its Financial Statements. Further Sections 130 and 131 provides the instances where the Financial Statements can be revised / reopened. The Tribunal or Court may under Section 130 of the Companies Act, 2013 direct the Company to reopen its accounts when certain circumstances are shown. Section 131 allows Company to revise its Financial Statement but do not permit reopening of accounts. However, the Company can itself approach the Tribunal under section 131 of the Act, through its Director for revision of its financial statement.



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- **Tribunal Ordered Investigations**

The Companies Act, 2013 provides several powers to the Tribunal in connection with investigations. The most important powers that are conferred to the Tribunal are:

- (a) power to order investigation into the affairs of the Company
- (b) power to investigate into the ownership of the Company
- (c) power to impose restriction on securities
- (d) power to freeze assets of the Company.

- **Conversion of Public Company into Private Company**

The Companies Act, 2013 read with Rules framed thereunder, provides for the conversion of Public Limited Company into Private Limited Company which requires the approval of the NCLT. The Tribunal may at its discretion impose certain conditions subject to which approvals may be granted.

- **Tribunal Convened Annual General Meeting:**

If any default has been made by the Company in conducting Annual General Meeting as per Section 96 of the Act, the NCLT may call or direct the calling of AGM of the Company and may give such ancillary directions as it may deem fit, which may further include the direction that one member of the Company present in person or through proxy shall be deemed to constitute a Meeting (Section 97).

- **Compounding of Offence**

NCLT is vested with the powers for Compounding of offences in matters which are above the prescribed monetary limit under the provisions of the Companies Act, 2013.

- **Change in Financial Year**

The Companies Act, 2013 requires that every Company or Body Corporate, new or existing, must have a uniform financial year ending on 31st March every year. However, it provides an exception where certain Companies can apply to the Tribunal to have a different financial year on the basis of an application filed with the Tribunal.

- **Other Powers vested with NCLT**

- Where the Company is not in a position to redeem any preference share or pay dividend, if any, on such shares as per the terms of issue, it may with the consent of holders of  $\frac{3}{4}$  of the value of such shares and with the Consent of NCLT on a Petition made in this behalf, issue further redeemable preference share equal to the amount due including dividend thereon and on issue of such further redeemable shares the due shares shall be deemed to have been redeemed. [Sub-section (3) of Section 55].
- The consolidation or division of shares which result in changes in voting percentage of the Shareholders shall take effect only when the same is approved by the NCLT on an Application made by the limited Company on this behalf in the prescribed manner. [Proviso to Clause (b) of sub-section (1) of section 61].
- Where the debentures have been issued and loan has been obtained from any Government by



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- the Company, the Government may, on public interest, direct to convert such Debenture or Loan into shares of the Company on such terms and condition as if may find reasonable even if the terms of issue of such loan or debenture does not include such option of conversion. However, in case of non-acceptance of the terms and conditions of such conversion, the Company may, within 60 days of the communication of such order, appeal to the NCLT look into the matter and pass necessary order as it may deem fit after hearing the Company and the Government.
- Where at any time the debenture trustee concludes that the assets of the company are insufficient to discharge the principal amount as and when due, it may file a Petition before NCLT, which may post hearing, impose such restriction on the incurring of any further liabilities by the Company as it may consider necessary in the interest of debenture holders. Where the company fails to redeem debenture on the date of maturity or fails to pay interest thereon, the debenture holders or debenture trustees may, file an application before NCLT, which may, after hearing, direct by order to redeem the debenture forthwith on payment of principal and interest due thereon. [Sub-sections (9) to (11) of Section 71]
  - In case of the Company refused or make default in providing a copy of minutes within 7 days of the request made by the Member entitled to receive the same, the NCLT may direct an immediate inspection of the Minutes book or a copy of the Minutes book shall be forthwith sent to the Members requiring the same. [Sub-section (4) of Section 119]
  - NCLT may order voluntary revision of the financial statement or Board's report on an application made by the directors of the Company in such manner as may be prescribed after taking into consideration any representation made by the Central Government and the Income tax authority in this regard. The company shall have to file the order of NCLT with the registrar and shall also have to disclose the detailed reason of such revision in the Board's Report / financial statement of the relevant financial year in which such revision is being made. [Section 131]
  - In case of removal of an auditor of a company before expiry of his term, the auditor has the right to make representation before the members of the Company or to read such representation at the meeting. However, if the NCLT feel that the right conferred under this sub-section has been abused by the auditor, it may, on an application made by the Company or by the other aggrieved person, order that such representation need not be sent and read out at the meeting. Further, NCLT also has the power to direct the company to change the auditor, if it is satisfied that the auditor of the company has acted in fraudulent manner or colluded in any fraud in relation to the company. [Second proviso to sub-section (4) and sub-section (5) of Section 140]
  - In case of removal of a director of a company before expiry of the period of his office, the director has the right to make representation and request to send such representation to the members of the Company or to read such representation at the meeting. However, if the NCLT feel that the right conferred under this sub-section has been abused by the director, it may, on an application made by the Company or by the other aggrieved person, order that such representation need not be sent and read out at the meeting. [Sub-section (4) of Section 169]
  - Where on inquiry or pendency of investigation of the affairs of the Company, it appears to the Tribunal that the removal, transfer or disposal of fund, assets, properties of the Company, may take place in a manner prejudicial to the interest of the Company or its shareholders or creditors, it may, by order, as it may deem fit directs Freezing of the assets of the Company. [Section 221]



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- Where the inspectors report states that fraud has been taken place in the Company and due to such fraud any director, KMP or any employee of the company has taken undue advantage in any manner, the Central Government may make an application before the Tribunal for appropriate order with regard to disgorgement of such asset, property, cash, as the case may be and also for holding such director, KMP or employee personally liable. [Sub-sections (5) of section 224]
- No process of compelling the production of any document kept by the Registrar shall issue from any court or Tribunal except with the leave of that court or Tribunal and any such process, if issued shall bear thereon a statement that it is issued with the leave of the Court or the Tribunal. [Reference of word 'Tribunal' in sub-section (2) of Section 399]
- Shorter time period for filing Appeals before the NCLAT against NCLT Orders and against the Orders of NCLAT on any question of law i.e. within 45 days of receipt of a copy of the order. This can be extended by an additional 45 days if a valid reason prevented the appellant from filing the appeal on time. Thereafter, an appeal regarding any question of law can be filed before the Supreme Court within 60 days from receipt of the NCLAT order. This can be extended for an additional 60 days if a valid reason prevented the appellant from filing the appeal on time.

### **Bottlenecks in effective implementation of Corporate Adjudication through NCLT and NCLAT**

- Most of the NCLT Benches is not equipped with optimum combination of Judicial and Technical Members, as such, the strength of the NCLT Benches is insufficient to handle cases at any given point in time, it will take more than seven years to clear the current backlog. Henceforth, the functioning of the Tribunal is adversely affected.
- Lack of adequate judicial infrastructure in the efficient functioning of the Tribunal. success will also depend on whether other elements of the infrastructure proposed are workable in practice
- It is important to review whether the environment in which Judicial and Technical Members are placed is conducive to productivity.
- Setting up of information utilities and development of resolution professional industry.
- *Mammoth of pending corporate default cases*

IBC proclaims NCLT to be the single adjudicating authority for all corporate default cases. This leaves NCLT with the challenging task of resolving approximately 25,000 pending bankruptcy and insolvency cases apart from other corporate cases.

- *Lack of administrative staff*

The existing strength of NCLT is 62 including judicial and technical members, but there is limited clarity on the strength of administrative staff, which will play a crucial role in improving the productivity of the judiciary. Apart from this there is Shortage of competent and skilled man power resources.

Not all members of the Tribunal have industry-wise business judgements and generally rely more on a checklist and are too lenient in granting adjournments.

- *Manual filings*

There is no digitization at the Tribunals from scheduling to filing, everything is manual and takes up significant time and resources.



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### Measures for Improvement

- *Adequate and competent Legal and Administrative Staff*

Authorities should put in place adequate and competent legal and administrative staff to ensure that Tribunal's time is utilized only for judicial duties. Legal staff should ensure adherence to procedures and administrative staff should manage scheduling etc.

- *Ensure adequate Bench strength*

- Additional benches or judicial bench strength should be augmented based on the Corporate case load.
- There should specialized Benches hearing only IBC matters at NCLT.

- *Build expertise over time*

It is important to build separate Bench strength for bankruptcy cases to ensure that significant expertise develops over time leading to improved productivity.

- *Consistent procedures with maximum digitization*

A consistency in procedures across the NCLTs will not only reduce confusion but also save time and resources for the lenders ensuring reduced legal costs, opportunity to outsource or centralize certain functions such as drafting, etc.

- *Framework for Infrastructure Maintenance*

NCLT need to have an adequate infrastructure to function appropriately. The fees charged during the bankruptcy proceedings or a recurring fee can be further applied to fund for maintenance and upkeep of the premises and also to help the tribunals operate with the necessary infrastructure. This will not only enable smooth functioning of the NCLT but also improve the overall productivity of the judges and the officials.

- *Ensure continuous monitoring*

- Judicial and Technical Members of NCLT and NCLAT must be monitored on a regular basis for performance, independence and integrity, key performance metrics should be defined and measured on a regular basis.
- The NCLT president should conduct an internal audit of large cases to ensure procedural discipline and judicial integrity.

- *Proper Project Planning*

The capability of the NCLT needs to be developed with adequate project planning. This could mean a special bench designated only for the IBC cases, scaled to the expected IBC case load and trained in dealing with commercial matters.

### Opportunities for CS Professionals in NCLT/ NCLAT Regime

The Establishment of NCLT and NCLAT shall offer wider opportunities to Practicing Professionals viz. Chartered Accountants, Company Secretaries, Cost and Work Accountants as they have been authorized to appear before the NCLT and NCLAT forum under the Companies Act, 2013 Act. Under the Companies Act, 1956, eligibility of Practicing Professionals to appear on behalf of Clients was limited to matters with Company Law Board (CLB) only whereas Advocates had the exclusive authority to appear in the matters before the High Court and Supreme Court. Thus, in the new regime, the PCS Professionals would, be eligible for arguments



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and representation in the matters before the NCLT and NCLAT. The Practicing CS Professionals would now be considered at par with Advocates in Corporate Litigation going forward. The following are the new opportunities created for the CS Professionals:-

- Legal Representation before the NCLT and NCLAT on matters relating to Mergers, Amalgamations, restructuring, insolvency / winding up proceedings under the Companies Act, 2013.
- Advisory and Consultation to Corporate Sector on:-
  - Merger and Amalgamation, demerger, reverse merger, compromise and other arrangements right from the conceptual to implementation level. In this respect, Company Secretaries in practice will be able to render services in preparing Schemes, appearing before NCLT/NCLAT for approval of schemes and post merger formalities. To act as Scrutinizer for Tribunal directed Shareholders' and Creditors' Meetings etc.
  - Sick Companies (a) Timely detection of Sick Company (b) Making a reference of Sick Industrial Company to NCLT. The National Company Law Tribunal has also been empowered to pass an order for winding up of a Company. Therefore Practising Company Secretaries may represent the winding up case and also participating as an Insolvency Professional under Insolvency and bankruptcy Code (IBC) before the Tribunal.
  - Practicing Company Secretaries have been permitted to act as Liquidator in case of Winding up by the Tribunal.
  - In matter of filing Petition for Reduction of Share Capital of the Company.
  - Corporate Restructuring & Insolvency and acting as an Insolvency Professional.
  - Company Liquidators & Professional assistance to them.
  - Appointment as an Administrator Interim/Company Administrator (CA) from a databank to be maintained by the Central Government. In this respect, NCLT may direct the CA to take over the assets or management of the Company. Accordingly, CA shall prepare a Scheme for revival and rehabilitation of the Sick Company.
  - Technical Member of NCLT.
  - E- Filing
  - Voting through electronic means.
  - Adjudication of penalties.
  - Mediation & Conciliation Panel.
  - To represent before various Regulators and other Authorities under the Companies Act, 2013

Henceforth, the scope for Company Secretaries (CS) has increased manifold since the formation of National Company Law Tribunal (NCLT) in June last year. The greatest challenge is to provide them better skills as the role of CS is changing. In present times, the Companies follow diverse secretarial practices and, therefore, there is a need to integrate, harmonize and standardize such practices so as to promote uniformity and consistency.



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The strategy for the members in employment should be to enable them to become 'Corporate Managers' responsible for total compliance management and adoption of good corporate governance practices along with adding value and maximising wealth for the Company and its Stakeholders as a part of the management.

The objective of strategy for Members in practice shall be to enable them to serve as 'Corporate Advisors' providing sound and efficient compliance management advisory and representational services in all areas of corporate activities. To master the art of advocacy and court craft to meet the challenges of the NCLT adjudication process

In view of vast opportunities emerging with the establishment of National Company Law Tribunal, the Practising Company Secretaries should standardize their competencies with the global benchmarks to provide value added services in assisting the Tribunal in dispensation of justice and speedier disposal of matters like merger, amalgamation, restructuring, revival and rehabilitation of sick companies and winding up of companies etc.

### **Task ahead for CS Professionals to cope up with NCLT and NCLAT Regime**

For entering/ establishing oneself in the field of NCLT / NCLAT, it would be desirable of a practicing professional to take some efforts for enhancing their skill sets, some of which are listed below:

- Thorough knowledge of the provisions of Companies Act, 2013;
- Thorough study of the Secretarial Standards.
- In-depth analysis and study of the provisions of Companies Act, 2013 as well as 1956 relating to mergers and amalgamations, capital restructuring, revival of sick companies and shareholders-management dispute matters.
- Thorough knowledge of the case-laws on the topics relating to mergers and amalgamations, capital restructuring, revival of sick companies and shareholders-management dispute matters.
- Developing art of advocacy and soft skill.
- Having basic knowledge relating to Tax Laws, Accounting treatments in matters relating to mergers and amalgamations, capital restructuring, revival of sick companies and shareholders-management dispute matters.

### **Role of ICSI in Enhancing the Scope of CS Professionals**

Company Secretaries being completely engaged in company law matters would be in a better position to appreciate the facts of a company case than any other professional. ICSI has a major role to play in the credibility of NCLT and Corporate Sector by ensuring continuous evolution of standards and improving the skills of the Members of the Institute. It should be the Endeavour of ICSI to continuously improve the quality performance. In order to play a bigger role, Indian professionals, particularly those handling corporate matters must adapt to changing situations. A mindset change is needed for quality functioning of the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT). Thus, NCLT as a platform is a challenge for CS Professionals to prove their professional competence.

### **Conclusion**

In the overall analysis, it can be stated that the establishment of NCLT, a single forum dedicated exclusively to the corporate matters is a welcome move which ultimately removes the problem of multiple Regulators. In



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view of vast opportunities generated by the constitution of National Company Law Tribunal, the role of CS Professionals should be to standardize their competencies with the global benchmarks to provide value added services in assisting in the process of adjudication by the NCLT in dispensation of fair justice with speedier disposal of corporate matters through generation of high quality value added services to the Corporate Sector. In real sense, CS Professionals may be considered as the major functionaries along with the Regulators and the Ministry to achieve a more transparent, efficient, skilled and progressive Indian Economy in conformance with the global standards.

### References

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### NCLT - New Horizons of the Profession And The Tasks Ahead

Hema Gaitonde\*

Normally a topic like this for a National Convention of ICSI should have started on a serious note. However here, I am starting it in a slightly different manner as a narrative. Whenever I have visited NCLT, my eyes search for the Navy Blue Suit / Blazer which is our ICSI dress code for appearing before the Judicial/ Quasi-Judicial Bodies and Tribunals. At the NCLT where the judgments delivered are related to Corporate laws, the sea of black, is seen overflowing at the court (lawyers formally dressed in their formal dress code of Black with white neck band). This shows that we as Company Secretaries have to hone up our skills of advocacy, presentation, public speaking, responding quickly to the Hon'ble Judges' questions etc. Corporate Laws are our core competence area and the day is not far when the Navy Blue will surpass the Black at the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT) ; provided we are serious and work really hard on this path. Now I will proceed with the background and powers and functions of NCLT and NCLAT and the New Horizons of the profession.

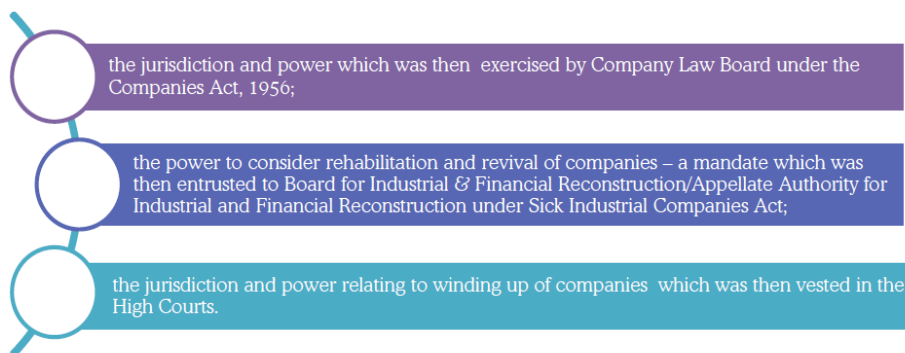
The NCLT and NCLAT were constituted by the Central Government under Sec 408 of the Companies Act 2013 w.e.f from 1st June 2016. The Constitution of NCLT was a long awaited event since the Companies Second Amendment Act 2002. This is an important step and has opened up new Horizons for us, the Company Secretaries.

#### Background regarding Constitution of NCLT and NCLAT

##### Justice Eradi Committee Recommendation

The Government had constituted on 22.10.99, a Committee consisting of experts to examine the existing law relating to winding up proceedings of companies in order to re-model it in line with the latest developments and innovations in the corporate law and governance and to suggest reforms in the procedure at various stages followed in the insolvency proceedings of companies to avoid unnecessary delays in tune with the international practice in this field.

This Committee was setup under the Chairmanship of *Shri Justice V. Balakrishna Eradi*, Retired Judge of Supreme Court. It was this Committee which first recommended the setting up of National Tribunal which will have,-



\* FCS. The views expressed are personal views of the author and do not necessarily reflect those of the Institute.



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The Committee recommended that the Tribunal should be headed by a sitting judge or a former judge of a High Court and each of its Benches should consist of a judicial member and a technical member.

Constitutional Validity upheld by Hon'ble Supreme Court

The Constitutional Validity of NCLT and NCLAT was first upheld in 2015 by the Hon'ble Supreme Court in its ruling in *Madras Bar Association vs Union of India & Anr.* There was a lot of debate on the issues prevalent in the constitution of NCLT & NCLAT. It was only on June 1, 2016 that the Government issued the notifications for constitution of NCLT and NCLAT.

Hon'ble Justice S.J. Mukhopadhaya (Retd.), Supreme Court of India was appointed as the Chairperson of NCLAT and the Chairman of the Company Law Board ("CLB") i.e. Hon'ble Justice M.M. Kumar (Retd.), Chief Justice of Jammu & Kashmir High Court, has been appointed as the President of NCLT.

With this, the entire judicial scenario with respect to Corporate Law underwent a change. Now many matters relating to Companies/ LLP, winding up, Insolvency resolution are being decided by NCLT as an Adjudicating Authority and NCLAT as an Appellate Authority. Hence the multiple forums that existed have been consolidated to a large extent and there is a single window.

### **About The National Company Law Tribunal**

The NCLT is a quasi judicial body. Its main objective is speed and accessibility in the Company Law related judicial matters.

In the first phase the Ministry of Corporate Affairs have set up eleven Benches, one Principal Bench at New Delhi and ten Benches at New Delhi, Ahmadabad, Allahabad, Bengaluru, Chandigarh, Chennai, Guahati, Hyderabad, Kolkata and Mumbai. These Benches are headed by the President and 16 Judicial Members and 09 Technical Members at different locations. Each Bench has its own territorial jurisdiction

### **Who can appear before NCLT**

Right of Legal Representation (Section 432 of Companies Act 2013):

- Any party to the proceeding or appeal may appear in person
- Or the party may authorise Practising Company Secretary or Chartered Accountant or Cost Accountant or Legal Practitioner or any other person to present his case before the NCLT or NCLAT, as the case may be.

### **Powers of NCLT**

The matters that now come under NCLT are

- a. Matter which were earlier decided by the Court
  - Reduction of Share Capital
  - Scheme of Compromise and Arrangements
  - Mergers and Amalgamations
  - Reconstruction and Winding up
  - Restoration of Defunct Companies



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- b. Matters which were earlier decided by Board for Industrial and Financial Reconstruction
  - Revival and Rehabilitation of Sick Companies
- c. Matters which were decided by Company Law Board (CLB)
  - Compounding matters
  - Oppression and Mismanagement
  - Holding of Annual General Meeting
  - Inspection of Minutes books of General Meeting
  - Investigation into affairs of the Company.
- d. Other matters
  - Class Action suits
  - Non payment of Deposits
  - Merger of holding and subsidiary companies
  - Merger of small companies
  - Re-opening and revision of books of accounts
  - Matters related to incorporation of a company.
  - Insolvency and Bankruptcy matters

From the above we can observe that in several cases, earlier the litigants had to approach various forums leading to multiple proceedings and delay in delivery of justice. With the formation of NCLT, justice is being delivered speedily through a single forum.

NCLT has power to enforce its orders as if it were a decree of the court, unlike CLB. It can seek assistance of Chief Metropolitan Magistrate if required.

NCLT has been given the power of the High Court to punish an offender for contempt. An aggrieved party need not approach High Court for contempt proceedings.

### **Provisions of Various sections of Companies Act 2013 which fall under jurisdiction of NCLT and where professional may have to appear before the Tribunal**

Subject matter	Particulars	Section
Follow different Financial year	On an application made by a company or body corporate, which is a holding company or a subsidiary of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Tribunal may, if it is satisfied, allow any period as its financial year, whether or not that period is a year.	Sec 2(41)



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Legal action for false or incorrect information at the time of incorporation	<p>Where a company has got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company or by any fraudulent action, the Tribunal may, on an application made to it, on being satisfied that the situation so warrants,—</p> <p>(a) pass such orders, as it may think fit, for regulation of the management of the company including changes, if any, in its memorandum and articles, in public interest or in the interest of the company and its members and creditors; or</p> <p>(b) direct that liability of the members shall be unlimited; or</p> <p>(c) direct removal of the name of the company from the register of companies; or</p> <p>(d) pass an order for the winding up of the company; or</p> <p>(e) pass such other orders as it may deem fit.</p>	Sec 7(7)
Transfer of remaining assets on winding up of Sec 8 company	<p>If on the winding up or dissolution of a company registered under Section 8 there remains, after the satisfaction of its debts and liabilities, any asset, they may be transferred to another company registered under this section and having similar objects, subject to such conditions as the Tribunal may impose, or may be sold and proceeds thereof credited to the Rehabilitation and Insolvency Fund formed under Section 24 of the Insolvency and Bankruptcy Code of India.</p>	Sec 8 (9)
Conversion of Public Company into Private Limited Co	<p>Any alteration having the effect of conversion of a public company into a private company shall not take effect except with the approval of the Tribunal which shall make such order as it may deem fit.</p>	Sec 14(1)
Variation of share-holders rights	<p>Where the holders of not less than ten per cent of the issued shares of a class of share, did not consent to such variation of rights attached to a class of shares or vote in favour of the special resolution for the variation, they may apply to the Tribunal to have the variation cancelled, and where any such application is made, the variation shall not have effect unless and until it is confirmed by the Tribunal.</p>	Sec 48(2)
Rollover of existing redeemable preference shares	<p>Where a company is not in a position to redeem any preference shares or to pay dividend, if any, on such shares in accordance with the terms of issue, it may, with the consent of the holders</p>	Sec 55(3)



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	of three-fourths in value of such preference shares and with the approval of the Tribunal on a petition made by it in this behalf, issue further redeemable preference shares equal to the amount due, including the dividend thereon, in respect of the unredeemed preference shares, and on the issue of such further redeemable preference shares, the unredeemed preference shares shall be deemed to have been redeemed. The Tribunal shall, while giving approval under this sub-section, order the redemption forthwith of preference shares held by such persons who have not consented to the issue of further redeemable preference shares.	
Appeal against refusal to register transfer	<p>The transferee may appeal to the Tribunal against the refusal to register the transfer / transmission by the Company of securities or when Company does not respond within specified period of delivery of transfer/ transmission instrument to the Company .</p> <p>The Tribunal, while dealing with the above appeal , may, after hearing the parties, either dismiss the appeal, or by order— (a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of ten days of the receipt of the order; or (b) direct rectification of the register and also direct the company to pay damages ,if any, sustained by any party aggrieved</p>	Sec 58
Rectification of Register of Member	<p>If the name of any person is, without sufficient cause, entered in the register of members of a company, or after having been entered in the register, is without sufficient cause, omitted therefrom, or if a default is made, or unnecessary delay takes place in entering in the register, the fact of any person having become or ceased to be a member, the person aggrieved, or any member of the company, or the company may appeal in such form as may be prescribed, to the Tribunal, for rectification of the register.</p> <p>Where the transfer of securities is in contravention of any of the provisions of the Securities Contracts (Regulation) Act, 1956, the Securities and Exchange Board of India Act, 1992 or this Act or any other law for the time being in force, the Tribunal may, on an application made by the depository, company, depository participant, the holder of the securities or the Securities and Exchange Board, direct any company or a depository to set right the contravention and rectify its register or records concerned.</p>	Sec 59(1) & 59 (4)
Consolidation and division which results in change in	Consolidation and division which results in changes in the voting percentage of shareholders shall take effect only if approved by the Tribunal on an application made in the prescribed manner;	Sec 61



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Subject matter	Particulars	Section
voting percentage of shareholders		
Conversion of debentures of loans into shares by Government order	Where any Company has issued debentures or taken any loans from any Government and if the Government, in the public interest orders conversion of this debenture or loan into shares in the Company on such terms and conditions, even if terms of issue do not provide for such conversion, Company can appeal to Tribunal if it feels that the terms and conditions are not acceptable to the Company.	Sec 62 (4)
Reduction of Capital	<p>A company limited by shares or limited by guarantee and having a share capital may, subject to approval of Tribunal, by a special resolution, reduce the share capital in any manner and in particular, may—</p> <p>(a) extinguish or reduce the liability on any of its shares in respect of the share capital not paid-up; or</p> <p>(b) either with or without extinguishing or reducing liability on any of its shares,—</p> <p>(i) cancel any paid-up share capital which is lost or is unrepresented by available assets; or</p> <p>(ii) pay off any paid-up share capital which is in excess of the wants of the company,</p> <p>alter its memorandum by reducing the amount of its share capital and of its shares accordingly.</p>	Sec 66
Debentures	<p>Where at any time the debenture trustee comes to a conclusion that the assets of the company are insufficient or are likely to become insufficient to discharge the principal amount as and when it becomes due, the debenture trustee may file a petition before the Tribunal and the Tribunal may, after hearing the company and any other person interested in the matter, by order, impose such restrictions on the incurring of any further liabilities by the company as the Tribunal may consider necessary in the interests of the debenture-holders.</p> <p>Where a company fails to redeem the debentures on the date of their maturity or fails to pay interest on the debentures when it is due, the Tribunal may, on the application of any or all of the debenture-holders, or debenture trustee and, after hearing the parties concerned, direct, by order, the company to redeem the debentures forthwith on payment of principal and interest due thereon.</p>	Sec 71 (9) & (10)



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Subject matter	Particulars	Section
Failure to repay deposits or interest thereon by the Company	Where a company fails to repay the deposit or part thereof or any interest thereon under Section 73(3), the depositor concerned may apply to the Tribunal for an order directing the company to pay the sum due or for any loss or damage incurred by him as a result of such non-payment and for such other orders as the Tribunal may deem fit.	Sec 73 (4)
Extension of time for repayment of deposits	In respect of deposits accepted and outstanding prior to commencement of Companies Act 2013, the Tribunal may on an application made by the company for extension of time for repayment of deposits, after considering the financial condition of the company, the amount of deposit or part thereof and the interest payable thereon and such other matters, allow further time as considered reasonable to the company to repay the deposit.	Sec 74 (2)
Action against Company by defrauding depositors by non-payment	Where a company fails to repay the deposit or part thereof or any interest thereon referred to in Section 74 within the time specified in sub-section (1) of that section or such further time as may be allowed by the Tribunal under sub-section (2) of that section, and it is proved that the deposits had been accepted with intent to defraud the depositors or for any fraudulent purpose, every officer of the company who was responsible for the acceptance of such deposit shall, without prejudice to the provisions contained in subsection (3) of that section and liability under Section 447, be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by the depositors.	Sec 75
Power to call for AGM in case of failure by the Company	If any default is made in holding the annual general meeting of a company under Section 96, the Tribunal may, notwithstanding anything contained in this Act or the articles of the company, on the application of any member of the company, call, or direct the calling of, an annual general meeting of the company and give such ancillary or consequential directions as the Tribunal thinks expedient. Provided that such directions may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.	Sec 97
Power to call for meetings other than AGM	If for any reason it is impracticable to call a meeting of a company, other than an annual general meeting, in any manner in which meetings of the company may be called, or to hold or conduct the meeting of the company in the manner prescribed by this Act or the articles of the company, the Tribunal may, either suo motu or on the application of any director or member of the company who would be entitled to vote at the meeting,—(a) order a meeting of the	Sec 98



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	<p>company to be called, held and conducted in such manner as the Tribunal thinks fit; and (b) give such ancillary or consequential directions as the Tribunal thinks expedient, including directions modifying or supplementing in relation to the calling, holding and conducting of the meeting, the operation of the provisions of this Act or articles of the company:</p> <p>Provided that such directions may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.</p>	
Appeal against refusal to allow inspection of minutes of AGM	In the case of any refusal by the Company to provide inspection of minutes books of general meeting to any member, the Tribunal may, by order, direct an immediate inspection of the minute-books or direct that the copy required shall forthwith be sent to the person requiring it.	Sec 119(4)
Re-opening of Accounts	A company can re-open its books of account or recast its financial statements, only after an application in this regard is made by the Central Government, the Income-tax authorities, the Securities and Exchange Board, any other statutory regulatory body or authority or any person concerned and an order is made by a court of competent jurisdiction or the Tribunal to the effect that— (i) the relevant earlier accounts were prepared in a fraudulent manner; or (ii) the affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements.	Sec 130
Voluntary revision of Financial Statement or Director Report	If it appears to the directors of a company that— (a) the financial statement of the company; or (b) the report of the Board, do not comply with the provisions of Section 129 or section 134 they may prepare revised financial statement or a revised report in respect of any of the three preceding financial years after obtaining approval of the Tribunal on an application made by the company .	Sec 131 (1), Sec 134
Removal of Auditor	Without prejudice to any action under the provisions of this Act or any other law for the time being in force, the Tribunal either suo motu or on an application made to it by the Central Government or by any person concerned, if it is satisfied that the auditor of a company has, whether directly or indirectly, acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its directors or officers, it may, by order, direct the company to change its auditors:	Sec 140 (5)





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	<p>Provided that if the application is made by the Central Government and the Tribunal is satisfied that any change of the auditor is required, it shall within fifteen days of receipt of such application, make an order that he shall not function as an auditor and the Central Government may appoint another auditor in his place:</p> <p>Provided further that an auditor, whether individual or firm, against whom final order has been passed by the Tribunal under this section shall not be eligible to be appointed as an auditor of any company for a period of five years from the date of passing of the order and the auditor shall also be liable for action under Section 447.</p>	
Vacation of office of Director	The office of a director shall become vacant in case he becomes disqualified by an order of a court or the Tribunal;	Sec 167 (1)(e)
Removal of Director	The Tribunal may decide that the representation made by a Director on his removal need not be read out at a meeting or sent out, if it is satisfied on application by the Company or any other aggrieved person that the rights conferred on a director under this section are being abused to secure needless publicity for defamatory matter and the Tribunal may order the company's costs on the application to be paid in whole or in part by the director notwithstanding that he is not a party to it.	Sec 169 (4)
Investigate into affairs of Company	Where an order is passed by a court or the Tribunal in any proceedings before it that the affairs of a company ought to be investigated, the Central Government shall order an investigation into the affairs of that company.	Sec 210(2)
Investigate into affairs in other cases	The Tribunal may, on an application made by requisite number of members or any other person or otherwise and supported by such evidence as may be necessary for the purpose of showing that the applicants have good reasons for seeking an order for conducting an investigation into the affairs of the company; if it is satisfied that there are circumstances as listed under Sec 213, order, after giving a reasonable opportunity of being heard to the parties concerned, that the affairs of the company ought to be investigated by an inspector or inspectors appointed by the Central Government and where such an order is passed, the Central Government shall appoint one or more competent persons as inspectors to investigate into the affairs of the company in respect of such matters and to report thereupon to it in such manner as the Central Government may direct.	Sec 213



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Subject matter	Particulars	Section
Protection of employees during investigation	The Approval of the Tribunal is required in case any action is proposed to be taken against the employee of a Company which is under investigation or proceedings regarding management of affairs of the Company.	Sec 218
Freezing of assets of Company on inquiry and investigation	Where it appears to the Tribunal, on a reference made to it by the Central Government or in connection with any inquiry or investigation into the affairs of a company or on any complaint made by such number of members as specified under sub-section (1) of Section 244 or a creditor having one lakh amount outstanding against the company or any other person having a reasonable ground to believe that the removal, transfer or disposal of funds, assets, properties of the company is likely to take place in a manner that is prejudicial to the interests of the company or its shareholders or creditors or in public interest, it may by order direct that such transfer, removal or disposal shall not take place during such period not exceeding three years as may be specified in the order or may take place subject to such conditions and restrictions as the Tribunal may deem fit.	Sec 221
Imposition of restriction upon securities	Where it appears to the Tribunal, in connection with any investigation under Section 216 or on a complaint made by any person in this behalf, that there is good reason to find out the relevant facts about any securities issued or to be issued by a company and the Tribunal is of the opinion that such facts cannot be found out unless certain restrictions, as it may deem fit, are imposed, the Tribunal may, by order, direct that the securities shall be subject to such restrictions as it may deem fit for such period not exceeding three years as may be specified in the order.	Sec 222
Action against company or Directors on inspector's report	Where the report made by an inspector made under Section 223 states that fraud has taken place in a company and due to such fraud any director, key managerial personnel, other officer of the company or any other person or entity, has taken undue advantage or benefit, whether in the form of any asset, property or cash or in any other manner, the Central Government may file an application before the Tribunal for appropriate orders with regard to disgorgement of such asset, property, or cash, as the case may be, and also for holding such director, key managerial personnel, officer or other person liable personally without any limitation of liability.	Sec 224(5)
Compromise Arrangement and Amalgamation	Where a compromise or arrangement is proposed— (a) between a company and its creditors or any class of them; or (b) between a company and its members or any class of them, the Tribunal may, on the application of the company or of any creditor	Sec 230



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Subject matter	Particulars	Section
	<p>or member of the company, or in the case of a company which is being wound up, of the liquidator order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal directs.</p> <p>The Tribunal may dispense with calling of a meeting of creditor or class of creditors where such creditors or class of creditors, having at least ninety per cent. value, agree and confirm, by way of affidavit, to the scheme of compromise or arrangement. An aggrieved party may make an application to the Tribunal in the event of any grievances with respect to the takeover offer of companies other than listed companies in such manner as may be prescribed and the Tribunal may, on application, pass such order as it may deem fit.</p>	
Power of Tribunal to enforce compromise and arrangement	<p>Where the Tribunal makes an order under section 230 sanctioning a compromise or an arrangement in respect of a company, it—</p> <p>(a) shall have power to supervise the implementation of the compromise or arrangement; and (b) may, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper implementation of the compromise or arrangement.</p> <p>If the Tribunal is satisfied that the compromise or arrangement sanctioned under section 230 cannot be implemented satisfactorily with or without modifications, and the company is unable to pay its debts as per the scheme, it may make an order for winding up the company and such an order shall be deemed to be an order made under section 273.</p>	Sec 231
Merger and amalgamation of companies	<p>The approval of the Tribunal is required in cases of Mergers and amalgamations of Companies. The Tribunal may pass the necessary orders in the manner specified under of the Act.</p>	Sec 232 -235
Application to Tribunal for relief in case of Oppression and management	<p>If the Tribunal is, on an application made by any member of the Company, is of opinion that the affairs of the company are being conducted in a manner prejudicial or oppressive to any member or prejudicial to public interest or of the Company or that to wind up the company would be unfairly prejudicial to the member, but that otherwise the facts would justify the making of a winding up order on the ground that it was just and equitable, it may pass suitable orders.</p> <p>The Tribunal has now wide powers to provide reliefs like regulations of conduct of affairs of the Company etc. The Tribunal has powers to waive all or any requirements specified so as to enable the members to apply under Sec . 241.</p>	Sec 241-244



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Subject matter	Particulars	Section
Class Action suit	<p>The Class Action Suits is new Section that has been introduced by the Companies Act 2013 and was not present in the earlier Act.</p> <p>Now, certain number of member/s, depositor/s or any class of them may bring a Class Action Suit or apply to the Tribunal for relief in case they are of the opinion that the management of the affairs of the Company are being carried out in the manner prejudicial to the interest of the Company. The Tribunal shall pass necessary orders granting relief.</p> <p>Here the interest of members of a class who may be geographically dispersed is protected and duplication of litigation is also avoided.</p>	Sec 245
Restoration of name of Company after Registrar has passed order removing name of Company from register of Companies	<p>Any person aggrieved by an order of the Registrar, notifying a company as dissolved under section 248, may file an appeal to the Tribunal and if the Tribunal is of the opinion that the removal of the name of the company from the register of companies is not justified in view of the absence of any of the grounds on which the order was passed by the Registrar, it may order restoration of the name of the company in the register of companies.</p>	Sec 252
Winding up by the Tribunal	<p>A Company may on a petition be wound up by the Tribunal if</p> <p>(a) the Company has by special resolution, resolved that the company be wound up by the Tribunal. (b) If the Company has acted against the sovereignty of India, Security of the state, friendly relations with the foreign states, public order, decency or morality (c) on an application by Registrar or any person appointed by Corporate Governance, the Tribunal is convinced that Company needs to be wound up. (d) Company as failed to file financial statement and annual returns with Registrar for five consecutive financial years (e) Tribunal is of opinion that it is just and equitable to wind up the Company.</p>	Sec 270-272
Transfer of pending proceedings	<p>All proceedings pending before the CLB initiated under Companies Act 1956 stood transferred to the Tribunal.</p> <p>All proceedings under Companies Act 1956 including proceedings relating to arbitration, compromise, arrangements and reconstruction and winding up of companies pending before constitution of Tribunal before District or High Court stood transferred to Tribunal and Tribunal proceeded to deal with such proceedings from the stage before their transfer.</p>	Sec 434
Compounding of certain offences	<p>Any offence punishable with fine above Rs. 5 lacs is compoundable by the Tribunal.</p>	Sec 441

PCS can appear before NCLAT and present/argue appeals, which again is a new area. They can serve as



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Technical members of NCLT once they have required experience. They can act as Amicus Curiae in case of certain legal issues.

### **Insolvency and Bankruptcy Code (IBC)**

With the notification of the IBC, NCLT and NCLAT are playing an even more important adjudicatory role. The provisions related to revival and rehabilitation of Sick Companies, voluntary winding up of Companies etc have been omitted under Companies Act and are now covered under IBC. The code recognises NCLT as an adjudication Authority for the purpose of insolvency resolution and liquidation process of corporate persons. NCLAT has appellate jurisdiction over NCLT.

Earlier the Companies Act 2013 permitted only the following parties to file an application before NCLT for a declaration that company is sick- (a) the company, (b) any secured creditor, (c) the Central Government, (d) the Reserve Bank of India, (e) State Government, (f) public financial institution, (g) a State level institution, (h) a scheduled bank. Even under the SARFAESI Act, 2002, debt enforcement rights are available for secured creditors only. With the notification of the IBC, any creditor, whether financial or operational, can initiate the insolvency resolution process (IRP) under the code. Operational creditors include workmen and employees whose past payments are due. A resolution plan has to necessarily provide for certain protections for operational creditors. Therefore the workmen and employees can initiate insolvency proceedings, settle their dues fast and move on to some other job instead of waiting for their dues for years together as is the case under the existing regime.

NCLT has various benches all over India and jurisdiction of the Benches is clearly defined. Under the Companies Act, the location of the registered office of the debtor company determines which company court will have jurisdiction. In contrast, under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the Debt Recovery Tribunal within whose jurisdiction the cause of action arose, wholly or in part, also had jurisdiction. Since a part of the cause of action arose at the location of the bank branch where the loan transaction had taken place, the DRT which had jurisdiction over the bank branch was an eligible forum for an original application by the bank. This had led to much cross-litigation and conflicting orders between the company court and the DRT. To avoid this confusion it was necessary that in corporate bankruptcy matters the jurisdiction of the NCLT is determined according to the location of the registered office of the debtor firm. In individual insolvency matters, the jurisdiction of the DRT is determined according to the place where the debtor actually and voluntarily resides or carries on business or personally works for gain. No civil court or authority has jurisdiction to entertain any suit or proceedings in respect of any matter on which the NCLT/ NCLAT or Debt Recovery Tribunal / Debt Recovery Appellate Tribunal has jurisdiction.

No injunction can now be granted by any court or authority in respect of any action taken or to be taken by the NCLT/NCLAT or DRT/DRAT pursuant to the Code.

Once a liquidation order has been made, the NCLT will have jurisdiction to entertain or dispose of:

- (a) any suit or proceeding by or against the firm;
- (b) any claim made by or against the firm, including claims by or against any of its branches in India;
- (c) any question of priorities or any other question whatsoever, whether of law or facts, arising out of or in relation to the firm.



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### Role of Professionals under the IBC Code 2016

The PCS plays a very important role under the IBC as follows and may have to appear before NCLT as :

1. Interim Resolution Professional
2. Resolution Professional
3. Liquidator
4. Bankruptcy Trustee
5. Those who are thorough in IBC can act as consultants in this area. Being a new Code corporates look up to professionals when they receive notices under Sec 7 and 9 of the Code.
6. Representing the parties before NCLT under the IBC.
7. Professional with their knowledge of Corporates can be associated at various levels with the Information Utilities.

### Dress Code prescribed by NCLT:

NCLT vide order no. 25/2/2016 dated 02.08.2016 in exercise of powers in Rule 51 of NCLT Rules, 2016, has prescribed dress code as given below for President, Members, Authorised Representatives & for the Parties in Person to be followed during Tribunal Proceedings.

- *For President & Members* : white or striped or black trouser with black coat over white shirt and band or buttoned-up black coat and band. In case of Female, black coat over white saree.
- *For Authorised Representatives* : his/her professional dress, if any, or in a suit or buttoned-up coat over a trouser or national dress i.e. long buttoned-up coat. In case of Female, coat over white or any sober coloured sari or any decent dress.
- *For Parties in Person* : shall be properly dressed

Our Institute ICSI, has prescribe a specific dress code for professional appearing before tribunals/ judicial/ quasi-judicial bodies, which needs to be followed strictly. This will not only help in building respect for that particular professional , but will help in building and upholding the image of the professional Institute to which he/ she belongs. Following a particular dress code goes a long way in building the confidence of the professional

### The Challenges/ Task Ahead

Lawyers have been in this field since time immemorial. However for the professionals like Chartered Accountants, Company Secretaries and Cost Accounts this is a new challenge. They will have to first understand the legal procedures, the various documents, forms, affidavits, the manner in which one needs to appear before the NCLT. Though the professionals are experts in their own field, it is a different story when one appears before the Bench.

Some of the Challenges/ tasks ahead for the Professionals are as under:-

1. Professionals must be thorough in Corporate Laws, Insolvency procedures, IBC 2016 and all other related laws



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2. While appearing before the Bench, professional should keep in mind that their conduct in the court will affect the case. For e.g.
  - Be present in time.
  - Stand and bow when the Judges enter and leave the Court room.
  - Always address the judges as “Your Honour” or “My Lord”.
  - Stand while addressing the Bench
  - Never interrupt when the judge is speaking.
  - Behave politely. Never argue with the judge.
  - Wait until the judge or the opposite party finishes speaking
  - Anticipate the questions which the judge might ask and keep the necessary documents, information ready.
  - Many a times it happens that a document is filed with the Court Registry, however is not readily available at the time of hearing. In such case , the professional has to be ready with the required number of copies of the document depending upon the number of judges constituting the Bench, the opposite party counsel etc.
  - Be ready with the financials of the party involved in the case. The judge may want to know the financial position, turnover, the nature of business of the Company.
  - Keep all supporting documents ready
3. The Professionals must update themselves regarding the statutory provisions/ penalties / fines/ punishment under the particular section. They have to use the correct formats for the petitions and the applications.
4. Company Secretaries are no doubt masters in compliance of various laws, holding of meeting , legal documentation, IPOs etc. However when we enter the courts, we need to face the opposite lawyer. They may come up with some judgement and new legal points, which we should be able to argue satisfactorily on behalf of our client.
5. Updating oneself with latest and relevant judgements is very important .In depth knowledge of the relevant Acts, rules, circulars and notification is necessary.
6. With the implementation of IBC code , the NCLT Benches are overloaded with innumerable cases every day and each case has a fixed time under the code. Hence they have very limited time at their disposal. Within the limited time, professional needs to present their case effectively so that justice is delivered.
7. Prayer Clause in the petition needs to be drafted perfectly. There should be a clear distinction between interim and final reliefs.
8. Company Secretaries must be confident and should not feel they are in anyway inferior to the lawyers.

### **Use of Technology by Tribunals and Digitalisation- A Challenge and Task ahead**

Suggestions made by the Bankruptcy Law Reforms Committee regarding use of Technology by Tribunals are so important , that they have been reproduced verbatim for the benefit of the readers.

As per the Report of Bankruptcy Law Reforms Committee (BLRC).

Maximising efficiency of the Tribunals would require maximum use of technology and minimum human



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intervention. This should start with the filing process itself. Currently, most courts and tribunals have a physical paper-based filing system. Even those which have moved to “e-filing?” have merely computerised the present processes. Consequently, a lot of time is wasted at the registry at the filing stage because of formatting defects, errors in payment of fees etc. Instead of computerising the present filing process, the Tribunals should re-engineer the entire filing process with a view to making it a paperless system. Essentially, this would require an e-filing software which will provide a web-based format for the drafting and filing of petitions and applications before the tribunal along with features for online payment of the necessary fees. The web-based e-filing formats should be continuously updated to improve standardisation of the petitions and applications filed as well as impose strict page or word limits to ensure better drafting quality of the pleadings. Softcopies of the necessary annexures could also be uploaded through the e-filing system. On final submission of any petition or application through the e-filing system, a text-searchable portable document format of the petition or application should be generated along with a unique case number. The ultimate objective of the e-filing system should be to allow parties to file their petitions, applications and supporting documents online 24x7 from any location without any physical interaction with the tribunal and its staff. After filing of a matter, the status, relevant documentation, schedules of hearings etc. should be automatically managed by a case management software. No matter should be placed before the judge unless the predefined prerequisites are satisfied. For example, judicial time should not be used unless pleadings necessary for the judicial hearing are complete. The Tribunal administration must ensure this with the aid of the case management system. pleadings. Each judge should have a dedicated research team to adequately brief the judge for each hearing. The Tribunal should enable hearing through video conferencing mechanism.<sup>8</sup> This will allow parties to present their cases from a hearing centre at a city before a bench sitting in another city.

Oral arguments should be time bound and confined to the pleadings only. The procedural rules of the Tribunal may also provide for only paper based hearing in appropriate circumstances. A matter taken up for final hearing must be finished off and not left part heard. Every judicial hearing must be audio-visually recorded and published. Every order of the tribunal must be immediately made available online. After the final disposal of a matter, all petitions, applications and orders pertaining to that matter must be made available online on a single web-page publicly accessible free of charge. All such web-pages must be arranged in a systematic manner to allow anyone to search for a specific matter by its unique number, parties’ name etc.

The rules of the Tribunal should also provide for pre-hearing conferences to help ascertain if all the prerequisites for a judicial hearing have been met. A judicial hearing should focus on the exact disagreement on facts and the legal arguments mentioned in the pleadings. Each judge should have a dedicated research team to adequately brief the judge for each hearing. The Tribunal should enable hearing through video conferencing mechanism. This will allow parties to present their cases from a hearing centre at a city before a bench sitting in another city.

Oral arguments should be time bound and confined to the pleadings only. The procedural rules of the Tribunal may also provide for only paper based hearing in appropriate circumstances. A matter taken up for final hearing must be finished off and not left part heard. Every judicial hearing must be audio-visually recorded and published. Every order of the tribunal must be immediately made available online. After the final disposal of a matter, all petitions, applications and orders pertaining to that matter must be made available online on a single web-page publicly accessible free of charge. All such web-pages must be arranged in a systematic manner to allow anyone to search for a specific matter by its unique number, parties name etc. The Tribunal must develop a case-load forecasting model. The financial budgeting of the Tribunal must be based on the forecasted case-load. Based on the estimates, resources need to be allocated in advance to ensure that the disposal rate of the tribunal is not hampered due to resource constraint. However, potential tendencies of mismanagement of judicial budget should also be curbed by making the tribunal administration accountable





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for the expenditure. To enhance accountability, the law must require the tribunal to publish an annual report at the end of every financial year. The rules of annual reporting must require an audited financial statement of the tribunal along with a performance report. The performance report must clearly show the level of performance achieved by the tribunal against the targets under various parameters during the assessment year. against the budget spent. All performance statistics like pendency rate, disposal rate etc must be published and the entire data set must be made available in proper format. Every instance of matters not being disposed off within a reasonable time frame must also be reported.

If the above suggestions by the BLRC are implemented , the delivery of justice by the NCLT can be smooth. Presently the Tribunal Benches , are overburdened with IBC cases ( which are time bound) and other cases of oppression, mismanagement, merger, amalgamation etc. Cases get postponed to future dates due to lack of time. It is here that digitalisation will help in saving time and efforts. Digitalisation can be taken up as a challenge and a Task.

In the next decade, NCLT is a definitely new area for Company Secretaries and it is only a matter of few years by the end of which ,we will be known for our advocacy skills also.

### References

1. Companies Act 2013
2. Bankruptcy Law Reform Committee Report.

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## Ancient Hindu Scriptures – Harbingers of Contemporary Economics and Law

**Sudheendhra Putty\* Dr. V. Balachandran\*\***

### Introduction

“What one can invent, another can discover”. A truism that was told by Sir Arthur Conan Doyle in ‘The Adventure of the Dancing Men’ – a spell binding story of the master detective Sherlock Holmes. That one statement epitomizes with amazing brevity, a fact that every Indian would be accosted with in the real world. Pioneers and front runners in every aspect of life from anthropology to zoology; and yet, centuries of Islamic invasions led to losing out on almost anything that was innately Indian aka Hindu. Western colonization compounded matters so that we needed to learn afresh from them what was our own wisdom, packaged in a more contemporary and, perhaps jazzy format. No sphere of human activity, indeed of any activity, was left untouched by ancient Hindu civilization. It is an understatement to say that our ancient seers and sages have contributed more to the welfare of mankind than all mankind together. Such has been the contribution of ancient India in every sphere of activity.

The world of law, governance et al is no exception with our scriptures waxing eloquent on every aspect of them – micro and macro – over the millennia. From the apourusheya Upanishads to the times of Kautilya’s Arthashastra to M.S.Golwalkar’s Bunch of Thoughts, it is quite astounding to discern and see the major contribution made by the Hindu way of thought and life to all matters ranging from law and governance to corporate social responsibility and standard setting.

An attempt is made in the following pages to compile a cross section of the distilled wisdom contained in our scriptures and the thoughts, words and deeds of great sons of Bharat Maata – in the realms of law and economics. It is quite astounding that the contemporary world is discovering what our seers and scriptures invented, felt and visualized.

### Arthashastra

#### **Importance of Artha or Wealth**

‘A sound mind in a sound body’ is a sound saying. It can well be paraphrased to describe a welfare State as: ‘A sound State in a sound economy!’ And, what is economy but the art of spending less than what is earned? Does it not prove to be the philosopher’s stone ultimately?

The proverbial wealth of ancient and early India has been described by many a foreign traveler. It was not a little due to the wholesome economic policies of the State as well as the industriousness of its people. The basis of this was the philosophy of the four purusarthas – ends or goals of human life –which gave artha or wealth a decent place in life, through subservient to dharma or righteousness.

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\*\* FCS. The views expressed are personal views of the author(s) and do not necessarily reflect those of the Institute.



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Wealth, called 'artha', is material in form. It can be acquired and consumed. Since it can become scarce unlike air or water, is attractive!

In the Hindu religion, Goddess Lakshmi is the presiding deity of wealth. Allegorically speaking, material wealth, professions that bring wealth and persons practising those professions are three legs of the tripod upon which the goddess rests. Hindu works dealing with the arthashastra (the science of wealth) covering all these aspects. Thus, the study of wealth itself was holistic and did not afford even a modicum of myopia.

### **Characteristics of Hindu Economics**

The general characteristics of Hindu economics may be stated as follows:

The entire State or the society is more important than the individual. Hence, the individual's welfare may have to be, sometimes, sacrificed for the welfare of the society as a whole.

Economic policies should not generally go against the principles of dharma though it may not always be possible to follow all of them strictly. There are quite a few special characteristics too.

They are, according to Kautilya's Arthashastra (300 B.C.):-

Though the State as a whole should be given supreme importance vis-à-vis the subjects, it was obligatory on its part to:

- Treat the subjects as its children and devise welfare schemes for them;
- Safeguard them in periods of crises like war and natural calamities like famine, floods, earth-quake etc.;
- Moderate the prices of commodities so that people are not exploited;
- Control and maintain the quality of goods;
- Facilitate trade and commerce by providing means of transport, communication, security, tax-concessions in foreign trade and so on;
- Protect agriculture in all its aspects;
- Provide job-opportunities for the people.

We thus see that all the important economic aspects of a modern welfare State are covered by this scheme. The above can be a primer on how a modern ruler needs to govern and administer the economy.

Having briefly touched upon the broad contours of how the economy needed to be guided and administered, let us view some specifics.

### **Planning and Budgeting**

Planning a properly balanced budget was a very important aspect of administration. Revenue from various sources had to be estimated and allotment of funds for essential expenditure made by the State officials, personally supervised by the king himself. Daily checking of accounts by competent authorities was recommended.

Land revenue seems to have been the major source of income. Generally, one sixth of the produce was collected in kind. Excellent irrigation system is known to have existed even during Chandragupta Maurya's time (325 B.C.). Hence irrigation cess was also levied where it had been provided.



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Other sources of income for the state were trade, commerce, industry and mines. The rate of taxation used to be around 10%. Sometimes, a few mines and industries were also run directly by the governments to augment their income. Defence industries were directly under the State. Forest wealth also was subject to nationalization that was not entirely unknown.

Apart from fines levied for the transgressions of the laws of the land, special cesses collected during emergencies like war or victory expeditions were also a source of income.

Before levying a tax, the king was expected study the time, place and circumstances connected with it. The level of taxation had to be bearable and not hurt the people too much. Though enough income had to be generated for the State, means and methods employed were to be fair and just. The metaphorical example of a bee sucking the nectar from a flower has been so romantically and beautifully explained by Kautilya in his magnum opus, that till date it is the first canon of taxation.

Details regarding expenditure given in the Hindu works on political science and economics are, comparatively speaking, less than those concerning income. Major part of the income –sometimes as high as 50% - was apportioned for defence, including internal law and order. Unsettled conditions in the country due to frequent foreign invasions as also ambitions of the rulers for conquests might have been responsible for this. A lot of money was therefore spent on building up and the training of the five limbs of the forces, the stores, secret services, armoury and so on. The fact that the nation is first, its safety and sovereignty paramount is clearly spelt out from the foregoing discussion.

A reserve fund for emergencies had to be built up by saving one – fourth of the income. A part had also to be given as privy-purse to the king for his personal expenses. Proof that the concept of a separate legal entity existed thousands of years before the western world could conjure up such thoughts.

Other items of expenditure were almost the same as we have today: general administration, department of justice, roads and bridges as also navigation, grants to local self-governments, religious and cultural institutions, hospitals, maintenance of orphans and other helpless persons.

Banking system was well – organized. Loans usually carried an interest of 15% or even more.

### **Trade and Commerce**

Trade and commerce –both internal and external – were very flourishing even in the pre –Christian era. Contacts had been established with China, Mongolia, Japan, Korea, Egypt, Troy, Babylonia, Assyria, Greece, Crete, Rome, Mexico and other countries.

Trade by sea was thriving well. Several seaports have been mentioned in the ancient works including the Buddhist Jataka tales and travellers' accounts. The great and flourishing Vijayanagara empire itself had 300 ports! Great encouragement was given to foreign trade by providing tax – concessions and other facilities. The passport- visa system existed. Foreigners coming for trade were given sufficient protection. The transport and communication system kept pace with trade.

### **Merchant Organizations**

There were trade-guilds and merchant – organizations of several types known by different nomenclatures of such as: ren, mahanadu, manimangala, sangha, puga and gana. They had their special constitutions to control their professions in all aspects. They were quite powerful in national life. The rulers rarely interfered with their working. The precursors to our own institute, chambers of commerce and trade organisations; indeed, the foundation of collective bargaining concept that the communists so gleefully usurp and claim for themselves.



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### **Arts and Crafts**

A large number of arts and crafts have been mentioned in the ancient and medieval works thereby signifying a high degree of industrial development. Some of them, for instance, are: weaving, laundry, tailoring, carpentry, oil – extraction, gold smithy, black smithy, flower-garland making, mat-making, leather industry, pot making and so on. These crafts were generally assigned to or undertaken by the castes known for them. In bigger towns and cities there were separate streets for each craft and its products. Finished goods were examined by experts and seals were put on them for certifying the quality. If and when necessary, prices were also controlled. And today, we speak of industrial clusters, special economic zones and regulation of prices/prevention of monopolies, while ancient India cradled these very concepts!!

Partnerships in general, and also between the capitalists and workmen, existed. They were well regulated and developed by appropriate laws and rules.

### **Units of Money and Measurements**

Coins made of gold, silver and copper existed even by 600 B.C., and were used as money, though the barter systems too existed, perhaps, side by side. Known by such names as hiranyapinda, niska, suvarna, atamna, pda, purna, krsana and pana, they were of various shapes – square, rectangular and circular. Certain signs and symbols were embossed on these coins, some of which resemble the Harappan seals. Tables of values of these coins have been given in some books like the *Livat* of Bhskara (12th century).

Units of measurement whether of length (like angula, hasta or yojana), or of weight (like guja, pala and drone) or of time (like nimesa, ksana or ghatia) had also been well- developed. It is interesting to note that the unit of length (or scale) shown by the sculptor of the image of Gomatevara at ravana- belagola (Karnataka) is almost the same as the French meter!

At a time when the average Indian's admiration for the West is growing at an alarming pace, that too at the cost of one's national pride and self – respect, an earnest study of our ancient history can be of great help to boost it.

A sound economic philosophy, expansive trade and commerce, well – organized trade – guilds, a good coinage system, sensible and sensitive taxation laws, building up our political and social administration, should install righteous pride in the mind heart of every true Indian.

### **Hindu Legal System**

No society can survive for long, despite immense wealth and military might, if it does not have a proper system of jurisprudence that can give justice impartially to all its constituents. Impartiality is the life of justice, and justice, of good government. There can never be any justice without mature wisdom which alone can strike the right balance between individual liberty and social good. This is exactly what the sources of Hindu law have done, right from the Vedas up to the Smrtis and Dharmasastras as also the various nibandhas (digests).

However, the Arthasastra of Kautilya (300 B.C.) being the oldest among organized works on secular codes of law, can throw lot of light on Hindu jurisprudence. It refers to more than 12 authors of the earlier period. It may hence be safely relied upon while discussing or presenting this subject.

#### *Origin of the Hindu legal System*

'**Sabhas**' were known to have existed even from the Vedic times. They were judicial assemblies consisting of good people – called Vrddhas or the wise ones – who were experts in the observance of satya (truth) and dharma (righteous conduct).



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Four kinds of courts of justice are sometimes described in the ancient works:

**Pratisthit** (one established in a place), **apratisthit** (a mobile court), **mudrit** (the court of a judge appointed by the king who is authorized to use the royal seal) and **sit or strit** (the court in which the king himself presides).

### *Independence of the Judiciary*

The outstanding feature of the judiciary in any civilized society is its independence from the control of the executive. This has zealously been guarded by the Hindu works on political science. According to them even the prince is equal to a private citizen before law. This is because dharma is considered supreme and inviolable! What foresight and sense of fairness/equity that these concepts flourished eons before “Be you ever so high, the law is above you”.

As at present, the judges used to be appointed from among the lawyers. The qualifications generally insisted upon were: self – control, reputation of the family (from which he comes) for satya and dharma, impartiality, absence of excitement, integrity, steadfastness and energy in the performance of duties- qualitative and quantitative attributes that would ensure administration of justice.

### *The Court*

The court generally comprised a judge who presided and an odd number of juries (3 or 5 or 7). Persons well – versed in law were often invited to attend the Sabha (or meeting) and were expected to speak if called upon to do so. However, there was to be no public participation.

Though the king might be present, he would not decide the cases directly. His council would include the Chief Justice. He would of course see that the sentence, once pronounced, is carried out faithfully.

Full records of the proceedings were kept. Justice was administered openly. Earlier judgments were given due weightage before new ones were delivered. (Talk of speaking orders, ratio decidendi, doctrine of precedents and stare decisis).

### **System of Judiciary and Judicial Administration**

The Chief Justice (called Prdivka) and Minister of Justice (known as dharmadhikarana) formed the core of the judicial system and of the judicial administration. The Chief Justice presided over the Supreme Court at the capital. The minister of Justice prescribed the law and the procedure after consulting the jury.

Before finally deciding a case, all materials connected with pratyaksa (direct evidence), anumna (inference) and upamna (analogy) were to be gathered and thoroughly examined.

Justice was meted out at several levels with a provision for appeal to the next higher authority. They were:

**The Kula Courts : They consisted of kinsmen only and were confined to personal and family laws and custom.**

**The ren Courts : They comprised representatives of trades and artisans belonging to different tribes but practicing the same profession.**

**The Pga Courts : They were an assemblage of townsmen or meetings of persons belonging to various tribes and professions, but inhabiting the same place.**



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The decisions of the Kula courts could be revised by the ren courts and of the ren court by the Pga courts. The court of the prdivivaka was the next higher authority, the court of the monarch or the sovereign being the highest. There were also the Gana courts, courts administering the laws of the Hindu republics which have been praised highly by the Greek writers on India. The laws framed by these courts were called 'samaya' (decision taken together in an assembly).

How familiar and how similar they sound to what our systems today are!!

### **Judicial Procedure**

No civil action could be started without a complaint, which again, could be lodged only by the aggrieved person – concept of locus standii. A regular petition to the court was necessary. This was taken down by a 'lekhaka' or a writer, well-versed in the legal terms. He could put questions to the plaintiff for clarifications if necessary. Then summons were issued to the person concerned. Obedience to the summons was enforced, by sanctions or legal restraint, called 'sedha'.

This restraint could be of four kinds, as to: sthna or place; pravsa or journey; time or period; and, certain actions. In other words, till the dispute was settled, the defendant (or respondent) should not go out of his house or place of residence, should not undertake any journey, should not do certain actions connected with the dispute. So analogous to the contemporary injunction.

The plaintiff was required to repeat the charges in detail in the presence of the defendant. This was taken down again by the lekhaka. Any discrepancy between the earlier and later versions of the complaint could lead to the dismissal of the case.

Pleading had to be precise, comprehensive, unequivocal, consistent and susceptible of proof – ancient lessons in drafting and pleadings!

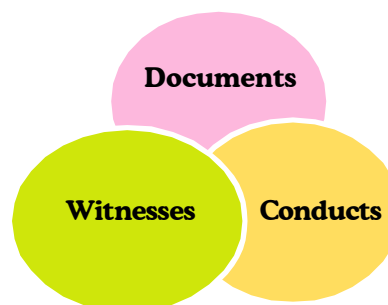
Defence had to be confined only to the points raised, answers being unhesitating, clear and consistent. The defence could take any one of these four forms: (1) Confession; (2) Denial; (3) special exception; (4) Plea of a former judgment – all concepts followed to a T till date

The judicial proceedings were generally in four stages: the plaint, the reply the trial and the deliberations followed by a decree.

There were rules guiding the trial. A surety had to be given by both the parties before the trial. The plaintiff had the right to begin the arguments but had to give enough evidence in support of his cause. Counter claims by the defendant were not entertained until the original case was disposed off.

Once a litigation was started, the parties involved could not evolve any compromise formula between themselves without the consent of the court.

There were rules concerning evidence. Generally three types of evidence were recognized:





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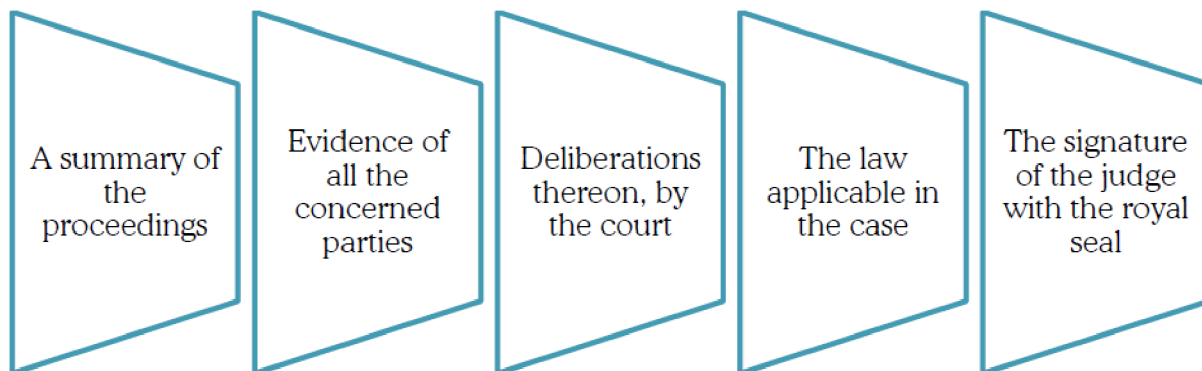
Persons coming from respectable families, deeply religious by temperament and hence devoted to truth, who were straight forward were considered as reliable witnesses.

Interesting descriptions of an untruthful witness are given. These included, shifting the position constantly; licking the corner of one's own lips; sweat on the forehead; change of colour of the countenance; faltering speech; contradictory statements.

### **Judgment**

The judgment—called vidhāna or jayapatra— was given at the end of the trial. Enough time was taken for considering all the aspects of the case. But unnecessary delays were also avoided.

A typical judgement was expected to contain:



Another example of speaking orders!

### **Punishment**

Equality of all, before the law of the land, was not only stressed, but also vigorously implemented. Even the king was not exempted. In fact, for the same offence, persons with higher social status were given more severe punishments. The principle was: greater the position and authority, greater were the responsibility and the standard of behaviour expected. Equality before law and equal protection of laws – both being given importance, and yes, centuries before magna carta.

Punishment meted out was of various kinds and types: public censure and rebuke; fines and confiscation of property; banishment; corporal punishment including branding or severing limbs or even death.

The primary object of punishment was always the protection of the law-abiding people. If the evil-doers were kept under check by the fear of punishment, the chances of social security and order would be much more.

While the above gives a bird's eye view of how the legal system functioned, let us now turn our attention to some specific aspects as enshrined in the Upanishads and Manusmriti.

### **Taittiriyopanishad (Shikshavalli)**

It belongs to Krishna Yajurveda and forms the 7th, 8th and 9th chapters of the Aranyaka. There can be little





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doubt that the Shikshavalli of the Taittiriyanopanishad represents a model code of conduct or a statute book prescribing the basic dos and don'ts in human life.

सत्यं वद । Speak the Truth  
धर्मं चर । Practise Virtue  
स्वाध्यायान्मा प्रमदः । Do not neglect your daily Study  
आचार्याय प्रियं धनमाहृत्य Offer to the Teacher whatever pleases him  
प्रजातन्तुं मा व्यवच्छेत्सीः । Do not cut off the line of progeny  
सत्यान्न प्रमदितव्यम् । Do not neglect Truth  
धर्मान्न प्रमदितव्यम् । Do not neglect Virtue  
कुशलान्न प्रमदितव्यम् । Do not neglect Welfare  
भूत्यै न प्रमदितव्यम् । Do not neglect Prosperity  
स्वाध्याय प्रवचनाभ्यां न प्रमदितव्यम् ॥ १॥ Do not neglect Study and Teaching

यान्यनवद्यानि कर्माणि तानि सेवितव्यानि । Whatever deeds are blameless, they are to be practised,  
नो इतराणि । not others  
यान्यस्माक सुचरितानि । Whatever good practices are among us  
तानि त्वयोपास्यानि । नो इतराणि ॥ २॥ are to be adopted by you, not others

श्रद्धया देयम् । Give with Faith,  
अश्रद्धयाऽदेयम् । Give not without Faith;  
श्रिया देयम् । Give in Plenty,  
हिया देयम् । Give with Modesty,  
भिया देयम् । Give with Awe,

Some of the loftiest and noblest thoughts ever contemplated and laid down in the annals of human history are adumbrated above. While most of the verses are self-explanatory, it is pertinent to note the following:

- The first and foremost thing in life is to be honest and this honesty has to be translated into good conduct.
- Speaking truth and practising virtue are reiterated constantly. It is pertinent to note that the Sanskrit word 'Dharma' has no equivalent in any other language for it is beyond the concepts of truth, good or right.
- From the basics of contract law (which deals with offer, acceptance and the bounden duty to fulfill obligations) to the concept of fiduciary relations of directors or the conscience keeping role of the company secretary, every aspect of good conduct can be traced to these noble thoughts. The corporate philosophy of the separate legal entity first espoused by the courts in the celebrated Solomon's case which is the basis of the trusteeship can also be traced to the same lofty thoughts enshrined in this Upanishad
- The scripture speaks of prosperity (as against mere growth or development) which is more holistic by



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adhering to truth and virtue. There is mention of giving or the responsibility of the citizen to 'give' – and give with modesty, sympathy and with awe. The ancient forerunner to today's corporate social responsibility. This charity must be commensurate with one's wealth and must be practised with conviction and a sense of social involvement.

- In case of any doubt, in respect of either a specific action or code of conduct, one has to seek guidance from the wise and learned
- It is a matter of great pride and satisfaction that the ICSI which, better late than never, adopted 'Satyam Vada, Dharmam Chara' as its credo earlier this year. This is a supreme acknowledgement of the noble thoughts enshrined in the Upanishad.

### Manusmriti

While the Manusmriti or the Laws of Manu deal with a vast majority of matters, the focus here will be on some aspects of substantive and procedural law. A few illustrations:

An agreement which has been entered into contrary to law or to the settled usage can have no legal force (VIII-164). This principle is analogous to sections 23 and 24 of the Indian Contract Act, 1872.

A fraudulent mortgage or sale, a fraudulent gift or acceptance, and any transaction where fraud is detected, shall be null and void. What is given by force, what is enjoyed by force, also what has been caused to be written by force, and all other transactions brought about by force, are invalid (VIII- 165 and 168). Further, a contract entered into by a person who is insane, intoxicated or suffering from disease, or by an infant or by a very old man or by one who is not duly, authorized, is not valid (VIII – 163). The various sections pertaining to free consent in the Indian Contract Act, 1872 are entirely predicated in these verses. VIII – 158 postulates that a person who stands surety for the appearance of a debtor before the court is bound to discharge the debt if he fails to make the debtor appear before the court – a matter accentuated in special contracts.

VIII – 199, 200 and 222 also deal with the principle of law of *nemodati quod non habet* – a gift or sale of any property made by any person other than its owner shall be null and void. The Manusmriti has copious passages on varied matters such as auction sales, sanctity of gifts, title to movable goods after adverse possession, deposits, formation of associations, employee working conditions and wages, evidence, review of judgments, right to self defence, negligence and even the rule of law.

### Conclusion

The Hindu legal system, many of whose features are found even in the modern days, offers a good field of research and plenty to feel proud of. Its findings can certainly enrich our field of jurisprudence helping us further towards the goal of ideal justice through human agencies. Taking inspiration from this and taking it forward that will help the country move to its rightful place of being a Vishwa Guru.

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# Governance From Ancient Indian Scriptures

**Prof. R. Balakrishnan\***

*(Tracing back governance practices from Tirukkural written by  
Tiruvalluvar – more than 2000 years old Indian scripture)*

## Introduction

The Corporate Governance today is being practiced by almost all the organization – let it be – bigger organizations – medium one or small scale industries – all are equally interested in excelling in achieving the great and greater levels of governance and everyone wants to bring their own standards or bench marks the standards by adopting the world best practices. Gone are those days, organizations were interested making profit in one way or other and taking care of the shareholders of the company – today things have changed - taking care of all stake holders in an organization – ethical and moral behaviour coupled with proper code of conducts with ethical behavior, doing the right things at the first instance, complying with the laws of the land, building a reputation – all have become much more important for sustainable survival of the organizations. Investors and other stakeholders also much interested in dealing with an organization which does the business in a moral and ethical way and unethical behaviour is totally unacceptable to all stakeholders. Organizations have also realized that practicing the better governance practices acts competitive differentiator by and large, apart from proving services and making available their products to the consumers.

## Something about Tirukkural

Tirukkural (originally written in Tamil language) one of the few literary works that have survived over the past two thousand years and is regarded as relevant even today and it is an acclaimed work which deals on management and governance practices. Tirukkural is now available in more than fifty languages, English and French inclusively. Tirukkural contents are much appreciated in various countries. The Tirukkural replete with appropriate guidance for good governance in various filed of life. If one goes through the Tirukkural, one could realize that this script not only takes us through the theory of leadership qualities but also provides various suggestions about borne leaders and as well leaders can also be made. This article is making an attempt to bring out the better governance practices which were prevalent in our country with a comparison to today's context.

## Tirukkural and today's context

Tirukkural puts forward various theories which are very much relevant in today's conduct on leadership, behavioral theory which is nothing but code of conduct and ethical behavior - social cognitive resource theory – again it is today's Corporate Social responsibility and much more.

\* FCS. The views expressed are personal views of the author and do not necessarily reflect those of the Institute.



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As we see some of the relevant things from Thirukkural, we could realize the governance practices which were prevalent and being practiced even 2000 years back in our country.

We shall examine some of the aspects from the script of Tirukkural with reference to today's context – essential for CS profession and also with reference to current regulatory requirements.

### Importance of good communication skills

Professional like us - as Company Secretaries - need to have effective, clear, unambiguous communication skills, since our interaction is regularly with the regulatory bodies, lawyers and solicitors, board of directors, management team, statutory auditors, internal auditors etc. etc. Further, CS professional need to have a very good drafting skills since drafting of notices for various meeting such as board meeting, committee meeting, annual general meeting, various report relating to annual Board's report, drafting of minutes and many more. The professional need to constantly keep improving their skills continuously and sharpen them to deliver the things expected out of them in the interest of compliance. With this background, if look into the Tirukkural, we will gather the following which are holding very much relevance in today's context.

### Listening to the wise people

The verse 419 reads as under

*Except those of deep and incisive knowledge absorbed by listening to the wise*

*Others will rarely develop humility of speech*

Shri Rajagopalachari (popularly known as Rajaj) comments that listening to the expositions of learned, may, on difficult and finer points, sharpens the listeners' powers and automatically develop humility of speech, mere study and an exaggerated consciousness of it is apt to leave one arrogant and conceited.

Similarly verse 420 of the same chapter states "people who have not experienced the delights of listening to the expositions to the learned, and relish only the tastes of the mouth, it matters little whether they live or die"

The interpretation is given by many and one such interpretation is "behold the men that taste with the tongue, but know not the taste of the ear, what doth it matter to the world whether they live or die"

All the verses put together from this chapter turns out to be of stressing upon the importance of learn to listen and come out of difficulties after listening and concluding that listening is wealth.

### Art of persuasion (relating to communication skills)

Importance of communication skills with reference to the ability to communicate is a greatest virtue – the Tirukkural says so. If we verse 641, which is produced below states that it is greater than all other good qualities one may have that communication ability will keep a man in good stead.

See the verse 641

*One may possess all other gifts, but the art of*

*Of persuasive speech is a thing apart*

Similarly if we look at the verse 642 which says " since prosperity and destruction could very well be the outcome of a speech, it is wise to take great care in preparing one's speech and not let words fall". This is simply means that words are a powerful medium and words which one uses have the capacity to take you either to property or to ruin. The lesson coming out of this is that one has to keep guarding himself/ herself against using



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wrong words in their communication and keep the words soft and gain fame and wealth and in case if one fouls it will ultimately end up in disaster.

The whole chapter on ‘the art of Persuasion’ – verse starting from 641 to 650 brings out the art of communication, touching upon equipping oneself with public speaking, communicating keeping the receiver in mind (basically who are the audience – youngsters, elders, common people, learned and other related things), not only communicating but persuading, having in mind that good communication creates goodwill, and above all using kind words with careful communication and not using the harsh words. So much to learn from the script of Tirukkural on communication which is very essence for our profession in discharging our responsibilities to meet the expected level of the organization.

### Good Governance

Chapter titled as “On just rule? – which is nothing but good governance in today’s context.

Verse 541 from Tirukkural states as what is good governance.

The verse 541 reads “A fair minded King takes cognizance of all offences and does not lean towards anyone in rendering justice; where necessary he consults men of law and awards the penalty”

In simple translation, it means that proper examination of issues coming up, impartial consideration and doing justice to everyone is good governance.

The verse 542 simply provides yet another aspect of governance with a comparison – which reads “All the world looks to the rain clouds for its subsistence, so too, the people look up to the King for just rule. In today’s context, we could interpret that the citizens of the country look up to all Institutions for good governance – Grace of God and grace in governance are the two things that keeps people happy.

As we are all aware that today, investors/ stakeholders would like to deal with those organization who practices better corporate governance and complied companies rather than dealing with anybody else. Shareholders activism is gaining momentum and they are now-a-days questioning the organization’s governance practices. SEBI’s LODR regulation mandates the companies to bring out a report on corporate governance in the annual report of the company. Both SEBI and Companies Act 2013 are aligned on the role and responsibilities of independent director in respect of bringing best governance practices and ensuring that the organization does the right thing.

### Code of conduct (On Right Conduct)

In respect of right conduct, let us look verse 133 of Tirukkural which reads as under:-

*Right conduct is true nobility*

*The absence of it is just ignoble*

When we can try to understand this, we realize that the implication is that a well ordered life ennoble the man irrespective of his status he holds in his life. One can even connect the French Dramatist Moliere who said that “virtue is the first tile of nobility” while Benson and Forster would rate “Sincerity” and “considerateness” as the determinants of true aristocracy.

Similarly if we read verse 132, it says

*Right conduct ultimately matters even to the learned and the wise*

*And has, therefore to be zealously guarded*



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According to this, even in respect of the cultured sages right conduct matters and so it is essential to ensure disciplined conduct is call for at all times. The well learned – the first Indian Governor General of our country Shri Rajagopalachari (popularly known as Rajaji) said that in the absence of a well regulated life nothing will avail, even if one is more learned in the philosophies.

In today's context, the organization are firmly committed to conducting its business and relationships with all stakeholders including employees, customers, suppliers, shareholders and business associates in a manner that is lawful and ethically responsible and at all times, in a way that reflects Company's values. Obviously, the code is a commitment to ethical professional conduct by the Board of Directors and all employees of the organization as well.

The Companies Act 2013 also prescribed code of conduct especially for independent directors.

### Ethical behavior

Let us look verse 99 and 100 of Tirukkural – the translation in English is as under:-

When a man knows what kind words bring joy and happiness, why should he resort to harsh words? (Verse 99)

Using harsh words instead of kind ones is like going in for raw fruits when ripe ones are available. (Verse 100)

The above simply means that knowing the enormous potential for good that kind speech has, and it certainly is foolish to go in for harsh words. In verse 100, the author makes the comparison that when sweet words are available, picking unpleasant words is like preferring raw fruits when ripe one are there to choose from,

No doubt, in today's world of changing environment, where men and women are employed in an organization, the communication with each other – especially when the men and women are around – one has be very careful in conducting himself/ herself, proper communication, using appropriate words, not using abusive language, not yelling and all things are attains much importance.

### Positive Attitude

Almost all the organizations across the world put forward their mission and vision statements and bringing a culture of adopting good values which are to be practiced by the employees across the organization. The organizations are much concerned about building a good value for its employees and promoting the team work and building a good reputation, adopting acceptable behavior, the way society expects them to behave. It is not only for professional life but also for personal life of an individual.

The regulators also bringing various regulations by its legal framework, conduct of conduct and ethics expected by directors and senior management, affirmation certificate by directors which are to be published in the annual report of the company, code of conduct for independent directors etc. Above all, there is also a regulation which came in the year 2013 on prevent ion of sensual harassment against female employees at the workplace through a regulation enacted "The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Sexual Harassment Act)

The Tirukkural talks about cultivating positive attitude and the chapter titled as "the importance of virtue" consisting of verse 31 to 40 speaks about cultivating the positive attitude which is very much relevant today.

Tirukkural is putting forward in verse 33 as

*"A man's adherence to virtue raises him to great heights; His failure brings him down"*

The simplest meaning of this Tirukkural is that the author is communicating is that there is no greater evil than



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not possessing positive attitude and there is nothing higher in life than positive attitude. Also he conveys that positive attitude bring glory and happiness to those who possess them and what else do we need in life?

Message stating that positive attitude is that course of conduct that keeps away desire, wrath and offensive speech is communicated through verse 35 which reads as “Thoughts and deeds free of envy greed, wrath and bitter words alone, constitute virtue.”

Let us look at the verse 37 and ask a question as to one wants to know the fruits of virtues – the Tirukkural provides an answer that one who practiced virtues will be riding a palanquin while those who have failed to practice the same would be carrying the palanquin. The verses read as “judge not the line qualities of life as the result of righteousness and its reverse, by comparison of the man in the palanquin with its bearers. Similarly verse 38 gives the meaning that happiness can only come from observing positive attitudes and if you don’t adopt positive attitudes you would be leading a life of suffering and misery.

### Managerial Skills

Chapter titled as “On ministers” which we can relate to Acquiring Managerial skills. Since the Tirukkural is dated 200 years back under the rule of Kings and Ministers, the script is making a reference to minister. We can relate the minister to today’s context to that of a manager – management team and even for CS professional who reports to the board.

Let us look verse 631 and 634 Tirukkural – the translation in English is as under:-

Verse 631

*The instruments, the time, the manner of performance and the act itself  
Should be analytically mastered by a good minister.*

In simple words, we can derive the meaning that a Manager must be one of wisdom who finds the resources, takes the right action at the right time and achieve the result.

Verse 634

*A competent minister knows all that happens and on action-oriented assessment  
Gives firm advice to the king on all matters of state.*

Her again, Managers should be capable of comprehending the issues before them. Then they should be able to choose the best means to execute the jobs on hand. They should also be able to convincingly explain the job, the purpose, and the means of achievement of the same to his staff.

If one goes through all the ten verses (i.e. 631 – 640) of this chapter, would realize, that Tirukkural touches upon about the various qualities of managers such as the manager should be able to focus on making continuous improvement in the performance of performers and also in turning the non-performer into performers, quality of managers possessing of virtue and of considerable speech with ability to spot talents, manager possessing all the skills need for overcoming difficulties, present themselves before those who have the combination of good learning and wisdom and many other qualities.

Here, there are lot of lessons for the CS professionals too since the professionals are require to ensure that the organization comply with all the applicable laws as per the Companies Act 2013 and the Company Secretary professionals have to assist, help the board for ensuing the compliance, providing right advice and this has been featuring as one of the function of Company Secretary in the act itself.



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### Leadership

Tirukkural provides many lessons for practicing and as well as aspiring future manager to draw various inference from the Tirukkural and some of them are given below:-

Verse 770 – a chapter titled as ‘the might of the Army’ speaks “even when the army has plenty of brave and good soldiers, without a good commander, it cannot prevail”

It simply means that the rank and file of an army unit may be composed of really good and courageous men, but if the unit commander is not a sound man, the regiment cannot really make a mark on the field of battle. It is quite pertinent to note that Napoleon Bonaparte is reported to have said once that ‘there are no bad soldiers, only bad generals’ How true this statement is – this Tirukkural is simply the essence of what Napoleon said. It clearly shows the importance of having a good leader.

Let us look at verse 388 in chapter “kingship” which reads “the king who protects the people rendering justice to the lands of the land, will be hailed as the divine Lord by the subjects” This reminds the words of Aristotle’s dictum “good governance is government by law” We can derive the meaning that a good leader is the one who shields his subordinates and as well as one avid listener and encourages dissent.

The meaning comes out from Tirukkural on Leadership is that the managers need to be resolute, decisive and action oriented, loyalty to the management and operating within the company policy paradigm are two of the several qualities they need to have – which is very much relevant in today’s context

One can keep citing many qualities of leadership which is scattered around Tirukkural in many chapters amongst the 133 chapters, the Tirukkural talks about.

### Environment

Organizations are formulating their safety health and environmental policy (some calls it SHE policy). All the organization are fully committed to the health, safety and well being of its employees and to minimizing the environmental impact of its business operations and the Directors and employees are expected to uphold the company’s commitment. We also notice many of the annual reports include the safety health and environmental policy in the published annual reports.

2000 years back, Tirukkural devotes one full chapter on rains – a chapter titled as “in praise of rain” which we can relate to today’s Environment regulations.

Verse 12 from this chapter reads “All food is produced because of rain which itself is food again”

If we go through all the 10 verses i.e. 11 to 20, we can get to know the following:-

- If the rains would not fall, the very word “benevolence” would go out of the dictionary and everybody would be out there grabbing what little is available and committing crimes
- If rain fall does not take place, all virtues in the world would come to an end and the world cannot exist without water and there would be no water without rains.
- Where there are good people, the environment is well taken care of and the nature in return takes care of people blessing them with copious rains and plentiful crops.

See the verse 17 which reads as: “if the clouds produced by the sea fall in their bounty, even the wealth of the sea will shrink”





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Now-a-days, everyone is concerned about the environmental protection, leaving the wealth to future generation, slogans on save, water, save energy, clear air, control pollution all are in place. Stricter environmental laws are being regulated. Chemical Plants – especially one which is using plenty of water in its production needs to set up Effluent Treatment Plant before getting the permission to start the unit and continue to maintain the effluent treatment plant and ensure the environmental norms etc. 2000 years back, Tirukkural spoke about respecting the environment and a whole chapter is devoted for rain only.

### Social Corporate Responsibility

Chapter titled as “Social co-operation” which is in today’s relevance Corporate Social Responsibility. Corporate social responsibility has been gaining momentum for over a decade now and the Companies Act 2013 brought out provisions relating to Corporate Social Responsibility. The provisions of the Company acts mandate the specified companies to contribute 2% of average profits of the last three years towards the social corporate responsibility related activities and also have a policy in place have a CSR committee to monitor the same and provide the detail in the annual reports of the company.

If we look back Tirukkural on social responsibility – perhaps, the author of Tirukkural addresses through a topic Social co-operation.

Let us look at the verse 213 from Tirukkural:-

*There is no pleasure in this or in the other world*

*Equal to the joy of being helpful to those around you*

The above gives us a meaning that even in the lap of the Gods, cannot produce such a rate please as this one of effective social co-operation. We can also recall the late Arignar C.N. Annadurai, who was the Chief Minister of Tamil Nadu in 1960s “in the smile of the poor I see God” and Shri Annadurai was echoing this sentiment. Similarly another late Chief Minister of Tamil Nadu Bharat Ratna Kamaraj made in his life’s mission to practice the same every day in his life.

### Brand image or reputation of the organization

In verse 738, Tirukkural bring out the concept of organizations brand image or reputation which is very much relevance to today’s context. Today each and every organization is concerned about their reputation, building their brand image, the organization wants to excel in corporate governance and each and organization would like to be proud that each of the stakeholders should get associated with them

Verse 738 reads as “the five ornaments of a prosperous nation are unfailing health, wealth, rich harvests, popular pleasures and security” This simply means absence of disease, fertility, happiness and security.

In today’s contest we could say or rather derive the meaning that a great company is one which has a strong brand image amongst all its stakeholders consisting of healthy and vibrant employees forming the backbone of the organization. By adding continuously on sustainable basis wealth for its stakeholders, it can achieve a greater growth. Similarly a culture which enables fertile imagination and innovation with research and development facilities ensures its long term survival and well being. A result oriented but relaxed culture results into greater happiness to its employees and leave them satisfied and the talents are retained in the longer run. Sage guarding the organization’s assets –i.e. not only tangible one but also intangible one – that is the intellectual properties belonging to the organization would make the sustainable survival and well being of an organization in highly competitive world of today.



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### Conclusion

There are much more to learn from Tirukkural, not only for professional life but also for our personal life – to cite a few topics of importance – the Tirukkural speaks on topics like – do not neglect your education, check your circle of friends, keep away from bad habits, and acquire family management skills and many other topics.

I would conclude this article with verse 484 which is very much inspiring for CS professional like us that we can achieve the greater heights in life.

Verse 486 reads “a man aspiring to conquer the whole world too, will succeed, if he choose the right time and place of action, even ambition of world conquest will be possible”

It simply means even ambition of World conquest is will be possible, if we choose the right time and place of action of achievement for us, by starting our campaign, after careful assessment of the right time and –place, and fits our plan of action to the topographical and seasonal requirements

In verse 711, Tirukkural says that men of eloquent speech and precision in words will choose their words and style on an assessment of the audience and its disposition. How true this verse is for CS professionals – it simply says when we are all in a meeting (board meetings, committee meetings, annual general meeting and even other meetings), we need to weigh out words in speaking when addressing the audience.

Stephen Covey has spoken of the habit of “sharpening the saw” and this poet also emphasizes in one of the verses the need to keep upgrading our subject knowledge, so as to well in our careers.

Finally let us all, well remember that if do a thing after carefully, deliberating on five things i.e. resources, means, the time, the nature of deed and the place we will achieve our greater heights which is highlighted in verse 675 of Tirukkural which reads as “Resources, means and action plan as well as tine and place are the five factors which need to be considered and cleared before embracing on action”.

With the above let us all determine that we shall excel and practice the world best practices, comply with the laws of the land by doing the things “ first time right” and uphold our professional values with continuous improvement and ensure that we serve to the organizations with our prompt responsiveness wherever we are associated, meeting beyond their expectations and ensuring that we make all the stakeholders feel proud, to be associated with the organization by creating the best governance practices coupled with the total timely compliance. Let us not forget, practicing good governance and doing the right things with prompt compliance of the laws of the land would act as a competitive differentiator in today’s competitive world.

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# Good Governance : A Study in Indian Context

**Karunakar Prabhu\***

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## Introduction

Governance is the act of governing. It relates to decisions that define expectations, grant power, or verify performance. It consists of either a separate process or part of decision-making or leadership processes. In modern nation-states, these processes and systems are typically administered by a government.

The concept of "good governance" often emerges as a model to compare ineffective economies or political bodies with viable economies and political bodies. The concept centers on the responsibility of governments and governing bodies to meet the needs of the masses as opposed to select groups in society. Because countries often described as "most successful" are Western liberal democratic states, concentrated in Europe and the Americas, good governance standards often measure other state institutions against these states. Aid organizations and the authorities of developed countries often will focus the meaning of "good governance" to a set of requirements that conform to the organization's agenda, making "good governance" imply many different things in many different contexts.

Good governance is about the processes for making and implementing decisions. It's not about making 'correct' decisions, but about the best possible process for making those decisions.

Good decision-making processes, and therefore good governance, share several characteristics. All have a positive effect on various aspects of local government including consultation policies and practices, meeting procedures, service quality protocols, councilor and officer conduct, role clarification and good working relationships.

Practical governance means ensuring compliance with regulations and the implementation of appropriate administrative procedures. E.g. Disclosure to shareholders/members of information about the organization and its activities; Decisions are properly made and implemented throughout the organization; and Risk management systems are applied, among others.

Sound governance is increasingly being recognized as the foundation for long-term success. It is provided by the Board members who have the overall duty for governance. However, on a day-to-day basis, they need somebody to update them on their obligations and responsibilities; advise them; ensure compliance with regulations and the best practices and allow them manage organizational systems and procedures. Company Secretaries are specially trained to fulfill this role and in their everyday work they practice good governance ensures that relevant regulations and code of ethics are followed.

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\* FCS. The views expressed are personal views of the author and do not necessarily reflect those of the Institute.

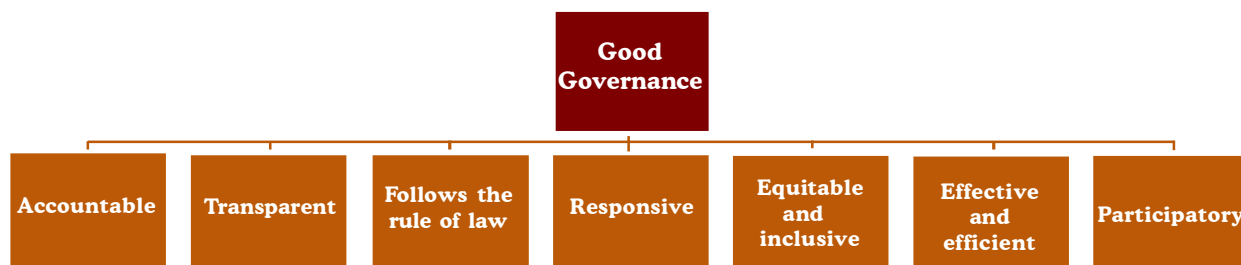


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### Characteristics of Good Governance



#### (a) Good governance is accountable

Accountability is a fundamental requirement of good governance. Local government has an obligation to report, explain and be answerable for the consequences of decisions it has made on behalf of the community it represents.

#### (b) Good governance is transparent

People should be able to follow and understand the decision-making process. This means that they will be able to clearly see how and why a decision was made – what information, advice and consultation council considered, and which legislative requirements (when relevant) council followed.

#### (c) Good governance follows the rule of law

This means that decisions are consistent with relevant legislation or common law and are within the powers of council. In the case of Victorian local government, relevant legislation includes the Local Government Act 1989 and other legislation such as the Public Health and Wellbeing Act 2008, and the Equal Opportunity Act 2010.

#### (d) Good governance is responsive

Local government should always try to serve the needs of the entire community while balancing competing interests in a timely, appropriate and responsive manner.

#### (e) Good governance is equitable and inclusive

A community's wellbeing results from all of its members feeling their interests have been considered by council in the decision-making process. This means that all groups, particularly the most vulnerable, should have opportunities to participate in the process.

#### (f) Good governance is effective and efficient

Local government should implement decisions and follow processes that make the best use of the available people, resources and time to ensure the best possible results for their community.

#### (g) Good governance is participatory

Anyone affected by or interested in a decision should have the opportunity to participate in the



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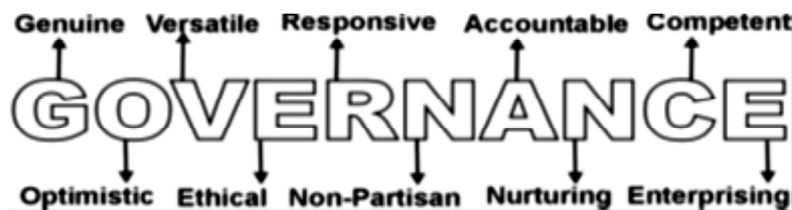


process for making that decision. This can happen in several ways – community members may be provided with information, asked for their opinion, given the opportunity to make recommendations or, in some cases, be part of the actual decision-making process.

It is important to remember that in Victoria, under the Local Government Act 1989 the council is required to either make decisions or delegate the decision-making power to officers or Special Committees.

### Good Governance in India

The idea of Good Governance is as old as Indian civilization. The rulers were bound by dharma, popularly called 'Raj Dharma', which precisely meant for ensuring good governance to the people. Even though monarchy prevailed, there was no place for any theory of the divine rights of the kings or of arbitrary rule. Raj Dharma was the code of conduct or the rule of law that was superior to the will of the ruler and governed all his actions. This description of Good Governance found in ancient Indian scriptures, can be the Jataka tales, Shanti Parva -Anushasanparva of Mahabharata, Shukracharyas's Nitisar, Panini's Ashtadhyayi, Aitreya Brahmana, Valmiki's Ramayana and especially in Kautilya's Arthashastra. Santi Parva of Mahabharata has devoted considerable space to Raj Dharma, which aims to establish Good Governance in the society. It stressed that, it is the duty of the king to seek and promote the welfare of its subject. The king must be compassionate to the people of all section of society and concentrate on the welfare of the people. Arthashastra while highlighting the principle of good governance declares, "In the happiness of his people lies king's happiness, in their welfare his welfare, whatever pleases himself he shall not consider as good, but whatever pleases his people he shall consider as good." So in Indian scriptures Good Governance is called Raj Dharma, i.e., righteous duty of the king. It means those who are involved in governance must adhere to righteousness and do justice to the public. It has inseparable link to social welfare and inclusive development. Absence of good governance has been identified as the root cause of many of the deficiencies in society. It robs the citizenry of their social and economic rights. Good governance signifies basic parameters such as rule of law, participatory decision-making structure, transparency, accountability, responsiveness, equity and inclusiveness. The country's administration has to run on these principles. This necessitates a reorientation in the outlook of the civil services.



### Nature of Good Governance in India

The following features of Good Governance in India are highlighted:-

- As a democratic country, a central feature of good governance is the constitutionally protected right to elect government at various levels in a fair manner, with effective participation by all sections of the population. This is a basic requirement for the legitimacy of the government and its responsibility to the electorate.
- The government at all levels must be accountable and transparent. Closely related to accountability is the need to eliminate corruption, which is widely seen as a major deficiency in governance.



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Transparency is also critical, both to ensure accountability, and also to enable genuine participation.

- The government must be effective and efficient in delivering social and economic public services, which are its primary responsibilities. This requires constant monitoring and attention to the design of our programmes. Where the responsibility for delivery of key services such as primary education and health is at the local level, this requires a special attention for ensuring the effectiveness and efficiency of local governments.
- Governments at lower levels can only function efficiently if they are empowered to do so. This is particularly relevant for the Panchayati Raj Institutions (PRIs), which currently suffer from inadequate devolution of funds as well as functionaries to carry out the functions constitutionally assigned to them.
- An overarching requirement of good governance is that the rule of law must be firmly established. This is relevant not only for relations between the government and individuals, enabling individuals to demand their rights, but also for relations between individuals or businesses. A modern economic society depends upon increasingly complex interactions among private entities and these interactions can be efficiently performed only if legal rights are clear and legal remedies for enforcing these rights are swift.
- Finally, the entire system must function in a manner which is seen to be fair and inclusive. This is a perceptual issue but it is real nonetheless. Disadvantaged groups, especially the SCs, STs, minorities and others, must feel they have an equal stake and should perceive an adequate flow of benefits to ensure the legitimacy of the State.

### Attributes of Poor Governance

While good governance can help to secure human well being and sustained development, the poor governance could adversely affect the development process. Some manifestations attributable to poor governance:

- Poor management of economies, persisting fiscal imbalances, disparities in the pace and level of development across regions and across districts;
- Denial of basic needs of food, water and shelter to a substantial proportion of the population;
- Threat to life and personal security in the face of inadequate State control on law and order;
- Marginalization, exclusion or even persecution of people on account of social, religious, caste or even gender affiliations;
- Lack of sensitivity, transparency and accountability in many facets of the working of State machinery, particularly those that have an interface with the public;
- Lack of credibility – the gap between the intent and the actions – of some institutions in society;
- Inadequate system of incentives/disincentives for people, subversion of rules, evasion of taxes and failure in getting timely justice;
- Existence of a significant number of voiceless poor with little opportunities for participating even in institutions of local self-governance, despite a visible movement towards decentralization through the Panchayati Raj institutions; and
- Deterioration of physical environment, particularly in urban areas.



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### Steps taken for Good Governance

A number of steps have been taken for improving the quality of governance in India:

- Good Governance can be ensured and strengthened by democratic decentralization and active participation of people in the process of governance. The introduction of democracy in free India made it imperative for the country to provide for a system of democracy at grass-root level. It was sought to be achieved by the introduction of local self-governments in rural and urban areas of the country. The local governments have been in operation since the early years of independence yet during 1990s an attempt was made by the 73rd and 74th Constitutional amendments to give a wider representative base and more powers to these institutions. These amendments provided constitutional status to grass root institutions in rural and urban areas have been landmark achievements that ensure the involvement of people in the process of governance.
- By the 73rd Amendment Act, 1992, a serious attempt was made to ensure regular, active and efficient working of the local bodies in the rural areas i.e. Panchayati Raj institutions. It contains Part-IX of the Constitution entitled as “The Panchayats” under Article 243 to 243-O. The Act also added the Eleventh Schedule to the Constitution of India. The new act recognized the three tier structure of the Panchayati Raj i.e. the Gram Sabha and Gram Panchayat at the village level, a Panchayat or Panchayat Samiti at the intermediate level and the Zila Parishad at the district level.

The other important provisions of the act are;

- (a) reservation of seats for SCs and STs in proportion of their population,
  - (b) reservation of the posts of chairpersons for the SCs and STs in a state,
  - (c) reservation of not less than 1/3rd of the elected seats in each panchayat for women,
  - (d) reservation of 1/3rd posts of chairpersons for rural women and rotation of reservations of chairpersons of village Panchayats at intermediate level, and at district level, representation of MPs, MLAs, MLCs,
  - (e) election of chairperson of panchayats and continuity in operation of Panchayati Raj institutions.
- On April 23, 1994 all the states of India completed the process of enacting fresh legislation for strengthening the Panchayati Raj institutions as envisaged in the 73rd amendment. The enforcement of the act marked the beginning of process of devolution of power and decentralization of administrative experience. This constituted an important step in the drive towards the strengthening of the democratic process at the grassroots.
  - Since the dawn of independence, the Urban Local Government has been working at the grassroots level. By the 74th Constitutional Amendment Act 1992, an attempt was made to revamp the Urban Local Government with a view to ensure for its stability, more representativeness and more powerful role. It contains Part-IX A of the Constitution of India entitled “The Municipalities” from Article 243-P to 243 ZG. By this act three tier urban local bodies have been set up i.e. Nagar Panchayats for fast urbanizing rural areas, Municipal Councils for smaller urban areas and Municipal Corporations for larger urban areas. The act has fixed the term of five years for urban bodies. It also makes the provision of appointment of an election commission in each state for conducting elections to the institutions of local government. The provision for reservation of seats for SCs, STs, OBCs and women has also been made.



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- All states of union, enacted or amended their respective municipal acts as per the spirit of 74th Amendment Act and the urban local government institutions in all states were organized in their new forms with effect from 1994.
- In this age of Information and Technology, information is the most potent tool of empowerment of an individual as well as that of a nation as it can prove to be an effective instrument in ensuring good governance. Without information, people cannot adequately express their right as citizens or make informed choices. Seeking information of all sorts and at every cost is, therefore, being viewed as an essential right by the people throughout the world. Nearly 90 countries have already adopted some law granting its people the right to seek information related to various government and public offices and their working. In India also the Right to Information Act was passed by the Parliament on June 15th 2005, which came into full force in the midnight of 12th and 13th October 2005. The original Constitution does not provide explicitly a right to information. However, the Supreme Court has held in several cases that Right to Information is implicit in the constitutionally enshrined rights to freedom of speech and expression Article 19 (1) (a) and Right to Life and Liberty Article 21. The main thrust of the act is to change the culture of secrecy and aloofness that has long plagued India's monolithic and opaque bureaucracy. The Act promises to reverse this culture of secrecy and unaccountability by recognizing that the government only holds information on behalf of its owners — the citizens. It requires public authorities to disclose all information about their activities proactively and maintain all information they keep in a manner that facilitates the people's right to information. Indeed, by breaking down this culture of secrecy, the law will also open channels of communication between the citizen and the government.
- In this way the RTI Act 2005 seeks to deepen Indian democracy by empowering the citizens to obtain the needed information from the public authorities at the national, state and local levels and aims at good governance by ensuring the much-needed transparency and accountability in them. It has the great potential to ensure good governance in the country. It can, in fact become the panacea for all the ills plaguing the bureaucratic, political spheres and can usher in a genuine era of transparency and accountability.
- E-governance is a powerful tool of good governance. The National e-Governance Plan has the vision to "Make all Government services accessible to the common man in his locality, through common service delivery outlets and ensure efficiency, transparency & reliability of such services at affordable costs to realize the basic needs of the common man". A network of more than 100,000 Common Service Centres for electronic delivery of public services to citizens in rural areas has been rolled out. The citizen-centric e-Governance services have been implemented in different states under the e-District Project. It has helped to change the outlook of the masses towards administration. Automation of government services has facilitated information dissemination. It has been successful in areas like land records management, law and order administration, pension disbursement and public information systems, especially relating to health and railways. The greater usage of internet has helped to integrate all areas of our country into the mainstream.

### Challenge to Good Governance - Indian View

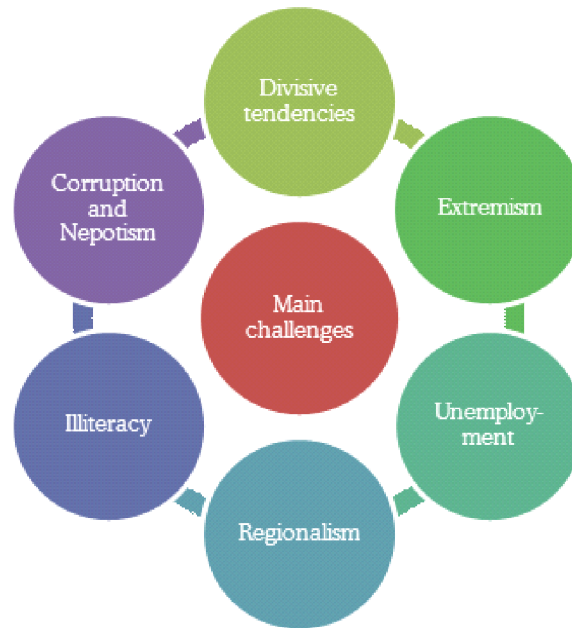
India is a world's largest democracy. The survival of Indian democracy for well over six decades despite the country's diversities is in many ways a remarkable achievement. However, no one can deny that the country's contemporary socio- economic and political problems are complex. There are a number of serious challenges that need to be met in the years ahead.





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These main challenges are: i) divisive tendencies, ii) extremism, iii) unemployment, iv) regionalism, v) illiteracy, vi) corruption and nepotism.

Out of these challenges, corruption and nepotism are the major problem of our country today. Many of us have simply accepted it as a sad reality. But unless we are able to fight corruption, the benefits of development can never be shared equitably and democratically. Government is a pillar of democracy. The terms government and governance are synonymous in dictionary. Governance signifies new process of governing or changed condition of ordered rule or new method by which society is governed. Most of the features linked with good governance enunciated by World Bank are found in the reform process initiated in India for good governance. These include decentralization of power among different layers of government, holding periodic elections, improving the conduct of election through electoral reforms, passing the Right to Information Act, launching the various programmes and schemes for development. But there are so many challenges. The cherished goals of good governance that draw support from decentralized, responsive and accountable administration have sometimes remained a mirage.

- **Anti-Corruption Measures In India**

Indian democracy carefully takes various measures for anti-corruption in public life. Government of India has set up Special Police Establishment (SPE) in 1941, to investigate cases of bribery and corruption. On April, 1963, the Central Bureau of Investigation (CBI) was set up. The CBI plays a supplementary role to the states police forces. The cases which essentially and substantially involve Central Government employees or their officers, or certain state government employees are referred to the CBI. CBI can also take up cases against employees of statutory bodies or public undertakings established and financed by the government in India.



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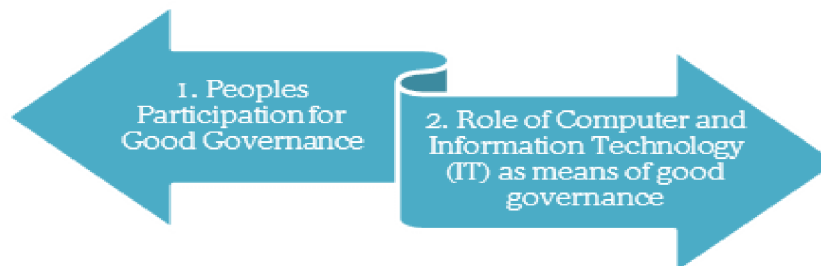


Two types of vigilance organizations at the department level exist: a.) the Administrative Vigilance Division of Home Affairs and b) the Vigilance Units in the respective ministers and department and their counterparts in the public sector undertakings. The Administrative Vigilance Division was established in 1955. It assumed the overall responsibility and provided the necessary drive, direction and coordination to ensure sustained and vigorous action by individual ministers and departments. The Central Vigilance Commission (CVC) is to consist of three directorates, viz, Directorate of general complaint and redress, the Central Police organization; and the Directorate of Vigilance. It undertake an enquiry into any transaction in which a public servant is suspected or alleged to have acted for an improper purpose or in a corrupt manner. It also investigates into any complaint against a public servant who has exercised or refrained from exercising his powers for improper or corrupt purposes. Apart from this Central Vigilance Commission (CVC) there is a State Vigilance Commission (SVC) in each state. The state vigilance commission deals with matters within executive powers of the state concerned. At the Divisional level, a Divisional Vigilance Board has been set up. At the District level, District vigilance Officer heads the vigilance organizations. Some notable actions include -

- a. Formation of SIT to fight black money & corruption
- b. Online auction of coal blocks
- c. No interview for grade-3 and grade-4 Central Government jobs.
- d. The bilateral treaty signed between India and Mauritius ended this evil practice of bringing huge sums of black money and converting it into white.
- e. Hon'ble Present Prime Minister of India personally raises the issue of ending safe tax havens in Europe and other countries in the most important G20 meeting. All the major countries of G20 agreed to wage a war on money laundering, black money and terror funding on the call of Prime Minister.
- f. BENAAMI (Transactions) Act amended and notified
- g. Switzerland signs the treaty to share all real time financial transaction details with India.
- h. Political funding to the parties by cash decreased from Rs 20,000 to Rs 2,000.

### • **Measures to Establish Good Governance**

One can draw a long list of the measures to realize the goals of good governance. Let us discuss in short two measures viz. ensure people's participation and the use of computers and information technology, for an efficient, effective, honest, transparent and law abiding system of governance.





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### 1. Peoples Participation for Good Governance

People's participation is given increasing priority in the scheme of governance. It is recognized that people's involvement in decision-making and decision implementation would act as:-

- A check on indifferent and inefficient bureaucracy. In other words people could act as pressure on administration to act and act in time.
- Instruments for a responsive and accountable administration.
- A medium of development administration and self-government.
- A mobiliser and user of local resources for local development.

The people can perform this role either by becoming a member of any social organization or interest and pressure groups or welfare organization or a political party or by becoming a part of bureaucracy and government at national, regional or local levels. The governments are seeking to involve people by the democratic decentralization-the panchayats and municipalities or by association in advisory or consultative committees and institutions. People also organize themselves to demand a policy to meet the expectations of the citizens. They organize as groups to support a people friendly decision of the government as they also oppose anti people measures taken by it.

### 2. Role of Computer and Information Technology (IT) as means of Good Governance

The use of computers and information technology is visualized as a very effective tool of good governance. It seeks to improve.

- Delivery of services to the people at low cost.
- Empowerment of people through dissemination of information.
- Openness and transparency in the working of government.
- Innovations and introduction of new ideas and concepts in the performance by the government and the people.
- Effective linkages between citizens and the administration
- Comprehensive monitoring and assessment of the performance of the government.

Computers, thus, can increase people's reach to the information relating to rules, regulations or procedures or about the welfare and development scheme of the government or about the welfare and development scheme of the government or information about weather and climate that can be used by farmers and citizens. It is said corruption is the product of face-to-face meeting between the giver and receiver of a decision. Computers can reduce their personal contacts to curb corruption. For example, a farmer can get his land record copy on the computer, a citizen can pay any bill or tax without actually going to the cash counter and suffering the agony of long queue or losing the earnings of the day.

The Gyandoot programme being implemented in Dhar district of Madhya Pradesh in India provides the number of services like online registration, copies of land record, agriculture produce auction center to the people at a nominal price. The list may further include facilities like eligibility rules and application for loans; prices of seeds, fertilizers and tools, the power cut schedule, availability of diesel



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etc. Such a system would cut the administrative delays, which is another source of corruption. It would reduce time and financial cost of the facility as the citizens would get them through computer at their doorsteps. The government of Karnataka is using computers for transparency in educational admission and recruitment, transfers and payment of salaries of teachers. Computers are also used to know the implementation of the instructions or orders of the chief minister. It is also being used for the management of the constituency and prepares summarized data on major projects in health, housing and other social welfare schemes.

In Kerala a computerized project known as FRIENDS (Fast, Reliable, Instant, Efficient Network for disbursement of services) is working to provide a range of public services through computers to the people. The central government in India has also introduced computerized system of administration in various departments and ministries like Railways, Human Resource Development, Rural Development, Planning Commission and UGC.

### Conclusion

Good governance has become a perfect sound bite for the present age. All governments swear by it. For the donor agencies and the civil society organizations, good governance has become a fashionable buzzword. The traditional view of good governance was that a government must preserve the rule of law, engage in physical and social infrastructure development, provide enabling environment for growth and ensure civil and political freedoms. Today, accountability, transparency, inclusiveness, equitability sustainable development etc. have become the key ingredients of good governance.

Good Governance is an ideal, which is difficult to achieve in its totality. However, to ensure sustainable human development, actions must be taken to work towards this ideal with the aim of making it a reality. The instruments of the State and the civil society need to be guided by the Talisman that the Father of the nation - MAHATMA GANDHI prescribed for social, political and religious leadership of independent India in August 1947. The saying is - "I will give you a talisman. Whenever you are in doubt, or when the self becomes too much with you, apply the following test. Recall the face of the poorest and the weakest man whom you may have seen, and ask yourself if the step you contemplate is going to be of any use to him. Will he gain anything by it? Will it restore him to a control over his own life and destiny? In other words, will it lead to swaraj for the hungry and spiritually starving millions? Then you will find your doubts and yourself melting away."

Over the subsequent years India has experienced significant political and economic progress. Democracy in India has indeed put down firmer roots and economic growth accelerated. However, despite achieving success on several counts, there are still many challenges for the governance system in our country. Corruption is one of the biggest factors that hinder efficient performance of the economy. There is need to eliminate interface in the delivery of services. It is also necessary to adopt non-discretionary approach towards decision-making and initiate two-way communication with the users. Governance is a holistic approach, involving all the pillars of the State, including provision of justice. The need for judicial reforms and initiation of measures like greater use of information technology to clear pending court cases is essential. Simplification of laws is also needed for better governance. The involvement of civil society in governance has become crucial to ensure transparent and efficient administration. There is a serious need to build SMART (simple, moral, accountable, responsive and transparent) administration to achieve the objective of good governance. To achieve Good Governance the Government shall be on a mission to follow clarity, conviction, compassion and consistency in governance which are prerequisites to achieve the principles and vision of good governance. Clarity promotes transparency, participatory and efficient governance. Conviction promotes accountable and effective governance. Compassion promotes consensus oriented, equitable and inclusive governance. Consistency promotes responsive governance, follows the rule of the law and modernizes itself according to the needs and changes of the society upholding the guiding principles of the Constitution.



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The challenge ahead is awesome and the task will not be easy.

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# Corporate Governance Practices from Ancient Ethos

Meenu Gupta\*

## Introduction

The roots of Corporate Governance has stranded in evolutionary form of governance across the globe. The governance aspects were predominantly been followed even in ancient days to govern their day to day life and also to govern relationships between two States, two individuals and also between the two individuals and the State (State means Kingdom here). The evolution of these governance aspects were not only evolved in India, but everywhere in the world based on their demographical requirement and necessities of the society prevailing respectively.

There is an absolute necessity to understand how governance was evolved over a period of time in various parts of world to streamline their way of dealing with various issues/matters of those countries. The concept of corporate governance in every country has ancient connections which has its base derived from governance principles. In India, there is a great deal of similarity in governance structure of ancient kingdom and modern corporations as is evident from ancient text and scriptures like Vedas, Manu Smriti, Somadeva, Neeti Stuti, Baharspatya, Kautilya's Arthashastra, etc. which focuses on governance. All Upanishads, Vedas and Epic Kavyas like Mahabharata, Ramayana, and Bhagvad Gita emphasize the essence of ethics being followed from within, be it individual or be it the king or be it the whole kingdom.

The dictionary meaning of governance is the action or manner of governing. It is the way the rules, norms and actions are structured, sustained, regulated and held accountable. Ancient India has a lot to teach to the present world in terms of governance. There are no such kingdoms where there were kings and their countries but each government and each corporate in itself is a kingdom. The Prime Minister and President and other Ministers are those who steer the nation and the board of directors and other Key Managerial Personnel are those who steer the company. The concept of good governance was followed in India since long back. And it can be concluded that each and every great king of this nation had one or more wise counselor or secretary who would guide the King in one or the other important matters. With the growing legal complexities and demand of compliances, the role of Company Secretary has too widened in recent times. The article aims to highlight how the Ancient governance practices are relevant to the present corporate world.

Kautilya's Arthashastra

Ramayana

Mahabharata

Bhagvad Gita

Ramcharitmanas

\* ACS, MBA. The views expressed are personal views of the author and do not necessarily reflect those of the Institute.



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### 1. Kautilya's Arthashastra

- i. Kautilya who wrote his Arthashastra in 4<sup>th</sup> Century BC which contains instructions about administration and management, law and justice, economy, foreign policy, etc. It is stated that there existed a Governance module in which the king was the head and all the property of State comes under the King. The rulers and kings had their own set of principles and systems in governing their kingdoms. These principles and their way of governing their kingdoms had direct influence of their religious leaders and their faith. He said that a king (leader) should have no self-interest, happiness and joy for himself or herself, his or her satisfaction lies in welfare (happiness) of his or her people, i.e. he or she has to submerge his or her personality into the larger personality of his people. Kautilya states that in the happiness of his subject lies the happiness of King; and in their welfare lies the welfare of the King. The king should not consider as good only that which pleases him, but should treat as beneficial to him, whatever pleases his subjects or 'Bahujana Sukhaya Bahujana Hitayacha' - the welfare of many and the happiness of many.

It is similar to what we practice in corporate governance today, where it is expected that Directors should act in such a way so as to benefit the stakeholders, investors, institutions and others who work in the organization. In fact, this concept of 'happiness of many' need integrated into the area of corporate management as the basic principle. Here comes the role of company secretary who guides and advises the Board on such corporate management and efficient administration being a Chief Governance Officer by guiding board on corporate governance policy of company; guiding board on corporate laws policy of company; ensuring corporate accountability by communicating with organisation's stakeholders and broader community; updating the board and functional heads on legislative and regulatory development.; taking the responsibility that directors operate within the boundaries of law and ensuring proper compliance with statutory and regulatory requirement.

- ii. Good governance should avoid extreme decisions and extreme actions. Chanakya suggested to take soft action (Sam, Dam) and also harsh action (Dand, Bhed) whenever there is a wrongful act. A Company Secretary helps to maintain the balance between these two extremes as and when required. In India, there are plethora of laws governing the corporate world, some of which require mandatory disclosure of required information, while others are voluntary attracting penalties and punishments. Depending on the class and nature of company/industry, a Company Secretary keeps his board abreast of these ever changing laws so that the companies can save themselves from the Dand, the harsh action (penalties attached) by complying with the same, thereby exhibiting good governance practices on the part of his company.
- iii. According to Chanakya, the King should appoint trusted people for administrative purpose, while selecting the people he should be very cautious and should see in them qualities of high birth, wisdom, heroism and loyalty. He propounded few tests for selection and tests which were conducted in areas of judiciary, wealth, pleasure and fear. A Minister would be selected if he successfully leads all the above mentioned four tests. Selecting the right person through such tests will help in fighting corruption, better management and also will help in delivering good governance. The modern day corporate governance borrows principle of board diversity from this. A Company Secretary makes effective contribution in corporate strategies thereby helping the management to find right kind of directors whereby optimal composition the board can ensured. He primarily advises the company on its ideal board composition with right mix of executive/non-executive and independent directors. He tries his level best to balance the board by ensuring board diversity. Not only this, he ensures adequate representation of women directors in boardroom. In India, it has been made mandatory by SEBI for



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all listed companies to appoint atleast one woman director on their board of directors aligning it with the requirement of Section 149 of Companies Act, 2013 under corporate governance norms. The Company Secretaries in India as governance professionals are ensuring that such appointment of women directors is made in boardrooms.

### 2. Ramayana

The 'Ayodhya kand' detailed that Lord Rama advises Bharat, his younger brother in appointing courageous, knowledgeable, strong willed men with a high emotional quotient as his ministers, for quality advise as the same is the secret behind a sound system of administration. It emphasized on moderate taxes to be levied on common people, treat soldiers as well and pay their legitimate wages on time, provide proper irrigation facilities, ensure the traders a fear free environment and grievances to be redeemed promptly. It stanchly followed the path of righteousness and set himself as an example of a king for whom duties comes before his personal comfort. Lord Rama sets himself an example to our managers or decision makers in the field of governance that everyone is answerable to the public, superiors, subordinates, shareholders, stakeholders, board of directors to ensure transparency for the day to day running of organization. In fact, if our managers motivate and mentor the staff they automatically help in increasing the growth of company as well as the nation.

### 3. Mahabharata

Mahabharata, the longest Indian epic teach us how we can transform over weakness into strength. The pandavas utilized their 13 years of exile by developing their skills. Yudhistira become a master craftsman in the game of dice. Arjuna went on a mission to acquire heavenly weapons and became technically sound in the field of archery. The pandavas were united so could share their responsibility and work as a team under the leadership of Lord Krishna. They understood the ground realities and so were able to reach out to common people without displaying their ego. Hence, they gained support from different undertaking risks but remain calm and composed, accept the challenges to speed up with their mission and realized the set goals successfully.

### 4. Bhagvad Gita

In gita, the best guide to self-development, it is written that Lord Krishna in order to boost up the morale of depressed Arjuna went on with his discourse, comprising of 18 chapters and this book offers a great counseling to all who enter the world of governance, professionally and personally. Our managers are the modern charioteers who had their organisations and of course the nation in different fields: educational. Agriculture, industrial, political or social. Bhagvad Gita guides one to work with commitment by practicing detachment which could be gained through self-control by conquering the passions or desires.

As says Lord Krishna to Arjuna in Chapter VI verse 36:

*"Asam yatatmana Yogi Dusrprapa iti me matih  
Vaayatmana tu yatata Saky Vaptum upayatah"*

"For one whose mind is unbridled, self-realization is difficult work. But he whose mind is controlled and who strives by appointment means is assured of success".

All of us who strive to manage ourselves and team need to do our duty without seeking any reward. This detachment would enable us to develop a sound mind to ensure a sound body. Work culture then is ensured in an organization where all perform without any conflict for the betterment of his or her own, as well as of the others, as did Arjuna with Lord Krishna's advice.





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### 5. Ramcharitmanas

Tulsidasji, in Shri Ramacharitmanas, uses word Sachiva more or less about 91 times starting from the very first kanda i.e. Bala-Kanda to the last kanda i.e. Uttara-Kanda. It shows the importance of the profession of Company Secretary. There are many kings and kingdoms mentioned in Ramacharitmanas. And with each king, Tulsidasji mentions the name of at least one sachiva i.e. secretary. And each of the king has counselled or taken advice of their sachiva in governing the kingdom.

The starting is made with Lord Rama who had three Sachivs particularly during his exile i.e. Jamavant, the bear, Sugriva, the monkey, and Vibhishan, the demon. This can be identified in Doha 28(a) of Bala-Kanda which says that it is greatness of Lord Ram who has made Sachiva (wise counsellors) out of bears and monkeys. Shri Rama has every time taken advise of these wise sachivas whether it be building a bridge from Rameshvaram to Lanka or starting of a war with Ravana. Great importance of sachiva has got from Shri Rama. When we talk of Rama Rajya, which is a symbol of good governance, that Rama Rajya was run by taking advice from sachivs.

The next king as per Ramacharitmanasa is Pratapbhanu who looked after his subjects with utmost care according to percepts of veda and there was not a speck of sin in his kingdom. He fought battles fearlessly and conquered the whole world by bringing even mighty kings under his control. Today's corporate has a great lesson to learn from this Chaupai which opens the secret of being super powerful. The secret that Tulsidasji mentions is that these all became possible because of his prudent counsellor and sachiva, Dharmaruchi and powerful brother.

Dharmaruchi had devotion in the feet of Shri Hari and in the interest of his King, Pratapbhanu, he advised on state policy every day. Again, this gives a bigger lesson to us (Members of ICSI) that in order to have good governance and when the Board is willing to take counsel, the Company Secretary must advise on policy matters on daily basis. This will make the organisation to get regularly updated and adhere to the laws. Again, a bigger responsibility but at the same time a great recognition to the profession.

### Ancient India and Professional Concepts

*Independent Directors* : Companies Act 2013 states that every listed public company shall have at least one-third of the total number of directors as independent directors and the Central Government may prescribe the minimum number of independent directors in case of any class or classes of public companies. Independent director means the director who does not have a material or pecuniary relationship with company or related persons, except sitting fees. The purpose of checks and balances by introducing the concept of Independent Director is to take unbiased decisions and to check various decisions taken by the management and majority stakeholders. An Independent Director brings the accountability and credibility to the board process. These Independent Directors are the trustees of good corporate governance. In ancient days though the purpose might vary in its exact current form as today, but still the ancient kingdoms had practice of appointing doyens of varied subjects and other intellectuals who used to be not a part of their on-roll personnel but still were made a part of the ministerial cabinet assigning definite tasks and positions accordingly. These intellectuals helped the kingdom in bringing the ideas and methods of administration from their country lands into the native land and thereby improving the efficiency and effectiveness of the administration. Such examples are Megasthenese, Greek Historian, diplomat and explorer who served in Mauryan Empire under the reign of Chandragupta Maurya and another such example was of Hiuen Tsang<sup>18</sup>, Chinese Buddhist monk & Traveller who served in Chalukyas of Badami under the reign of Pulakeshi II and also in the Vardhana Empire under the reign of Harshavardhana as a member of ministerial cabinet. They helped in converging the administrative ideas and improving the political and social conditions of the Empire they served in the interest of the subjects and kingdom.



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**Qualification of Directors :** The Companies Act 2013 provides that majority of members of Audit Committee including its Chairperson shall be persons with ability to read and understand the financial statements. This enables the company to have quality people on the board to make the board's functioning more effective. Similarly earlier there was academic qualification prescribed for the King's Education which could be broadly classified as given Arthashastra under 4 heads viz. firstly 'Anvikshki' means science of inquiry secondly 'Trayi' which includes four vedas and one itihaasa veda and six vedangas (purpose was to differentiate dharma and adharma), thirdly 'Vaartha' dealing with animal welfare, business knowledge, industries, commerce & agriculture from the perspective of economics, and income sources and lastly about the 'Dandaniti' politics i.e. Laws of Punishment. Further there was also qualification prescribed for the ministers to be appointed which were as follows; Resident of the state – Born in a Good family – Having Good relations – Acquired varied and diverse knowledge – be an economist – should have the characteristics of perseverance and dedication – should be kind hearted – should pursue brotherhood feeling – should owe good health and be physically strong – should have characteristics of truthfulness – should not possess enmity with anyone. These were considered as the wealth of ministers. Ministers possessing all of the above prescribed qualities were considered as Udhama, ministers possessing 3/4th of the qualities prescribed were considered to Madhyama and ministers possessing less than half of the qualities prescribed were considered to be Adhama. And after further such classification the ministries were assigned accordingly to the eligibilities they held. Apart from this, earlier there used to be classifications of ministers based on their eligibilities called as Buddhi Sachivaru, well versed in intellectual disciplines, monitoring and controlling who could be related to Key Managerial Personnels in today's context and Karma Sachivaru, who could be related to other Managerial level executives good in obliging the instruction honestly and fairly.

This ancient legacy of eligibility criteria for good administrators has resulted today in increasing number of Global CEO's being Indian-origin. According to a study in Harvard Business Review, as of mid-2013, India's export share of Fortune Global 500 Company CEOs— that is, CEOs who are heads of companies headquartered in a country not their own — is 30 percent.

**Key Managerial Personnel :** Companies Act 2013 prescribes that every company belonging to such class or classes of companies as may be prescribed shall have the following whole-time key managerial personnel,—

- i. Managing director, or Chief Executive Officer or manager and in their absence, a whole-time director;
- ii. Company Secretary; and
- iii. Chief Financial Officer

Similarly, in ancient time the four Key Managerial Positions besides a king was:

- i. Prime Minister (Prajapatinidhi) who used to be the close friend of king and also a chief administrator
- ii. Chaplain (Purohita) who used to be the controller and preacher of Dharma and was also called as 'Dharmaadhikara'
- iii. Commander in Chief (Senapati) who used to control all wings of armed forces
- iv. Prince (Yuvaraja) – He used to be the successor of the current king and other function was to visit other court empires representing his kingdom on official visits.

Despite the functionary aspects differ with current portfolios in the context of corporations, it brings us to the understanding that there was the practice of assigning key functionary to a crucial division and holding it high at the office hierarchy thereby governing accordingly.



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### Conclusion

To sustain the competitive advantage in an increasingly contestable corporate world, we need character and morals which are more important than money, materials, marketing and management. Indian Scriptures like Vedas, Shrimad Bhagwat, Ramayana and Upanishads are full of ideas and practical methods, techniques and wisdom related to leadership, administration and management. These scriptures emphasize spirituality and the importance of wisdom within oneself as the abode of God, prosperity, bliss and their subsequent impact on leadership and administration. On the other hand, Kautilya's Arthashastra teaches hard core materialism and down to earth practical approach in life, administration, economics and management. The roles of these scriptures lie in nurturing and enriching lives of common beings and describe the purpose of leadership. Based on the study of ancient practices, the leaders and the role they play in Corporate Governance are crucial in ensuring transparency, good conduct and good governance towards the ultimate aim of achieving a good and Socially Responsible Corporate Governance.

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## Governance from Ancient Indian Scriptures

### Bhat Lakshminarayana Akshara\*

#### Preamble

Indian scriptures are very rich and any attempt to extract the jewels from the various Indian scriptures will not be comprehensive considering the volume of those scriptures. A person can spend his whole life time to codify one subject on Governance and its interpretation from various sources like Vedas, Upanishads, Ramayana, Mahabharata, Kautilya's Arthashastra and yet it may not be a complete work.

#### Introduction

“Om Sarve Bhavantu Sukhinah  
Sarve Santu Nir-Aamayaah |  
Sarve Bhadraanni Pashyantu  
Maa Kashcid-Duhkha-Bhaag-Bhavet |  
Om Shaantih Shaantih Shaantih” ||

May All Be Happy  
May All Be Free From Disease |  
May All Realize What Is Good  
May None Be Subject To Misery |  
Om Peace, Peace, Peace | |  
(Brihadaranyaka Upanishad)

Above shloka (verse) from Brihadaranyaka Upanishad may be considered as the edifice on which the whole concept of good governance can be amplified. This verse is not the isolated one in the vast treasury of ancient Indian scriptures like four Vedas, Upanishads, two epics - Ramayana and Mahabharata apart from other sources like Kautilya's arthashastra, Jataka tales, etc., wherein we can pick such countless jewels. An attempt is made here to pick some of the important elements of governance available in the vast treasury of ancient Indian scriptures.

Correct period of various ancient Indian scriptures like Vedas, Upanishads, Ramayana, Mahabharat etc., are not available and various historians/ authors quoted varying period. However it is more or less certain that four Vedas were the oldest available authentic scriptures might have been written around 11,000 BC to 9000 BC followed by Ramayana, Mahabharata and other scriptures. The exact period of these scriptures is not the subject herein to discuss yet the approximate chronology of the period of writings enable us to throw light on the evolution of governance.

\* ACS. The views expressed are personal views of the author and do not necessarily reflect those of the Institute.



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### On Governance in Vedas

The Vedas believed as apaurusheya i.e., not written by any man but by the God, talk about the following key values. The Upanishads are extension of vedas and are like frequently asked questions (FAQs) of Vedas.

Sathyam	• Truth
Tapah	• Austerity
Damah	• Sense Control
Samah	• Tranquility of mind
Dharma	• Righteousness
Danam	• Charity
Daya	• Mercy; and
Nyasa	• Renunciation

During the early vedic period, people used to form groups called tribes and settled in a particular area. The chief of the tribe was called Rajan and he was selected after ascertaining his qualities like bravery, decision making ability etc. Two important constituents of the assemblies of the Rajan were Sabha and Samiti. Sabha was like a Constitutional Body consisting of elders, noble persons who used to frame broad policies, decide on conflicts among the subjects (Judiciary) and usually it was headed by the King and Samiti was an assembly of Common people who used to look into the welfare of the tribe. Rajan was assisted by many officials like Senani, who was helping in the defense system of the Rajan's territory and the Purohita, who used to perform religious duties and advise the King on various religious issues. In Atharva Veda, Sabha and Samiti were referred as two daughters of vedic god - Lord Prajapati. Sabha and Samitis were continued in the later vedic period also.

In Rig Veda it is said "Atmano mokshartham jagat hitayacha", i.e., the dual aim of human life is salvation of our individual self and to address the issue of welfare of the world. A mantra in Shukla Yajurveda (6.31) reads as "let my subjects be satisfied, my herds be satisfied, my people be satisfied, let not my people be needy. This is indeed a noble thought of a ruler. Almost the same principle was later expressed in a slightly different manner by Chanakya which will be discussed later in this article. One more mantra in Yajurveda (Yajurveda, Ch XX Verse 51) states - The ruler, a good protector, accompanied by his excellent assistants, full of wealth, diffuser of happiness, should protect his subjects by administering justice, remove the opponents, render all free from fear, and himself be fearless, whereby we may be the lords of vigour. The motto of the Institute of Company Secretaries of India - 'Satyam Vada, Dharmam Chara', i.e., always speak truth and follow the path of righteousness is taken from Taittiriya Upanishad. Kings were sub servient to Dharma. Dharma was supreme during vedic period also.

In Manusmriti Ahimsa (non-violence), Satya (truthfulness), Asteya (not coveting the property of others), Shoucham (purity) and Indriyanigraha (control of senses) were described as the essence of Dharma. (MS:10-63). These values are important in all walks of life to lead a successful, contented life. On Raj Dharma Manu



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says -“Just as the mother earth gives equal support to all the living beings, a king should give support to all without any discrimination” (MS:9-31). What is the indication that a man is going in a wrong direction? Manu beautifully explained this – ‘If a man in his conscience feels ashamed/guilty to do an act or while doing an act or after doing an act, it is clearest indication of Tamasa (bad) quality. (MS: 12-35). Women were most respected. Following verses show the respect the vedic people were giving to women:

- Women must be honoured and adorned by their fathers, brothers, husbands, and brothers-in-law, who desire their own welfare. (MS: 3.55).
- Where women are honoured, there the gods are pleased; but where they are not honoured, no sacred rite yields rewards (MS: 3.56).

Mother was considered as the incarnation of God (Mata Pratyakasha Devatha). Hence women were given pride of places and we could find great scholars like Maitreyi, Gargi etc. in this period.

### On Governance in Ramayana

One of the great Indian epic Ramayana written by Maharishi Valmiki contains various shlokas which throw light on Raj Dharma. Ram was considered as the epitome of total personality and as per the epic he ruled the State of Ayodhya for about 10,000 years and the rule during his period was considered as the golden era and even now whenever Indian public speak about good ruled state refer as Ram Rajya. Following few examples taken from Ayodhya Kand which is famously known as Kacchit Sarga when Lord Ram's brother Bharat went to Chitrakoot to bring back Ram to rule the State shows the vision of Lord Ram on the administration of a state. These are in the form of questions asked by Ram to Bharat and also contains some statements in the form of advices:

- I hope the ministers you have appointed are valiant like you controlled their senses, who are born of high pedigrees.
- The sound advice given by the experienced ministers well versed in the laws of truth and virtues is the very foundation on which the prosperity of a king rests.
- The learned in times of difficulty bring endless glory by solving complex problems.
- I hope you distribute daily provisions and monthly salary to the salaried servants properly and in time.
- I hope your commander-in-chief is ever pleased, is gallant and talented, is of high character and devoted and clever.
- I hope you prefer learned men to thousands of fools.
- Are the foremost of your skilled warriors being recognized by bestowing suitable honours by you?
- Do you keep an eye on the functionaries of the enemies and your functionaries?
- Are the Vysyas (Trading community) loved by you? Are they doing well in agriculture and animal husbandry?
- Are the women well protected?
- Are the forests which are the homes of elephants preserved by you?
- Are the milk cows in abundance with you?
- Is your income sufficiently large to meet your expenses?



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- I hope the laws are administered justly and impartially. I hope the innocent do not suffer and the guilty are not let off without punishment due to greed.
- Do you avoid the fourteen vices of a king? (Fourteen vices are (1) Untruth (2) Carelessness (3) Anger (4) Non consideration of the auspicious time (5) Procrastination (6) Neglecting the learned (7) Laziness (8) Slavery to the senses (9) Obsession with wealth (10) Counselling with wrong persons (11) Delaying the implementation of the decisions (12) Failure to keep confidentiality (13) Atheism (14) Not showing respect to all.

Above are only few examples and from the perspective of a leader – Ram was always a balanced person and he did not allow his emotions to overcome the actions under any extreme vagaries. A leader stood by the values, lived for the welfare of his subjects and always walked on the path of Dharma.

### On Governance in Mahabharata

Rajdharma anushasana parva, one of the three sub Parvas of Shantiparva of Mahabharat speaks exhaustively about the duties of the ruler i.e., on Raj Dharma. Amongst other things, this Parva contains the advices given by Bhishma when Yudhistira approached Bhishma at the Kurukshetra battle ground along with Krishna, his brothers etc., wherein Bhishma was lying on the bed of arrows, waiting for the right time for salvation. Few examples of the advices of Bhishma are given below, which shows the advanced knowledge of management those learned people were acquired during such an early period of human civilization.

There is nothing which leads so much to the success of kings as Truth, the king who is devoted to Truth enjoys happiness both here and hereafter.

Even to the Rishis, O king, truth is the greatest wealth, Likewise for the kings, there is nothing that so much creates confidence in them as Truth.

That person is fit to be king who has his mind under control, has won over his anger, has clear knowledge of shastras, is always engaged in accomplishing dharma-artha-kaama, knows the secret of three Vedas, and can keep the confidential consultations a secret.

King should make friends with satpurushas. should be brave, efficient, truthful, dedicated welfare of his subjects.

King should understand himself with his intelligence; should not trust fools.

Yudhishtira questioned Bhishma: By what type of practices and behaviour does king obtain happiness both here and in the here-after?

Bhishma replied: Child! Yudhishtira! There are 36 good qualities by which a king can achieve prosperity and happiness. A king should possess all these 36 qualities. Same are reproduced below:

1. Should not speak harshly to anyone and should practice dharma.
2. Should be a believer in God. He should have cordial interactions with all. He should not hate anyone.
3. Should accumulate money by being kind. He should not accumulate money by adopting cruel ways.
4. Should enjoy pleasures without exceeding the loka-maryada and without going against dharma & artha.
5. Should speak pleasantly and not be a miser.



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6. Even if highly valorous should not indulge in self-praise.
7. Should donate generously; but not to the undeserving.
8. Should be adventurous; also kind. He should not speak roughly.
9. Should not have contacts with anaryas (wicked)
10. He should not quarrel with relatives.
11. Should not appoint a person lacking in loyalty as a spy.
12. Raja-karyas should be accomplished so that no one is agonized because of it.
13. Important raja-karyas (King's duties) should not be revealed to the wicked.
14. Should not praise one's own qualities.
15. Should not accept raja-kanike (gifts as a king) from sadhu-satpurushas (Saints & noble persons).
16. Should not seek refuge of lowly people.
17. Punishment should not be awarded to the accused unless all evidences and documents are carefully examined.
18. Confidential consultations should not be revealed.
19. Money should not be given to the greedy.
20. Should not trust a person who has harmed once.
21. Wives should be protected so that they do not develop mutual jealousy.
22. Should be efficient. Should not be overly kind.
23. Should not get too interested in women.
24. Should eat only pure and tasty food, but should not eat unsuitable food items.
25. Good & honourable persons should be shown hospitality politely and without displaying any kind of pomp.
26. Service of gurujana (Teachers) should be done without any deceit.
27. Devatas (Gods) should be worshipped without any ego or pompousness.
28. Should be interested in building only such wealth which has no defects.
29. Citizens should be governed without any biases or partiality.
30. Should be skilled in his job. But should act taking into consideration the time and place (context). Should not be one who does not know when to and when not to act.
31. Should not console someone with the intention of getting rid of him. Meaning if someone comes for help, should not send him back empty handed merely by saying consoling words.
32. When showing mercy/grace to someone, should not abuse him (like giving alms after abusing).





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33. Enemies should be struck. But without making sure that someone is an enemy, he should not be struck.
34. After killing the enemy, even if he was a relative, should not grieve for him.
35. Should not get angry with anyone without reasons.
36. Should be soft natured, but should not be soft towards those who harm you.

Bhishma further narrated the qualities which a Raja should avoid those are mainly 18 bad qualities arising out of Kama (Desire) and Krodha (Anger).

### On Governance in Kautilya's Arthashastra

Kautilya was also known as Chanakya, Vishnugupta, Vishnusharma. He was the prime minister during the great Maurya King Chandra Gupta Maurya. One of his famous work Arthashastra written around 325 BC contains a detailed narration on Rajneeti. Kautilya described well-organized state, Kingship, the qualities of an ideal ruler, the principles of politics (Raj Neeti), administration, ethical and moral order of the society, arthashastra (Economics) domestic and inter-state policies, Warfare, Criminology, Intelligence & Espionage etc.

As per Kautilya's arthshastra, the State is expected to protect the ones in distress, the widows, the women without children, the women with infants, the orphans, the sick and the indigent, create conditions for a good life not only by digging wells, canals, and constructing dams, planting trees, preservation of forest but also by providing the infrastructure for trade, commerce and industry through construction of roads, providing impetus to navigation, rural and urban colonization and settlement, monetary system, regulation of commerce and mines, protection of Guilds and Artisans, aspire for comprehensive social plan which aimed at realizing Dharma through Artha.

While answering the question from Chandra Gupta Maurya - what pleasure he will get by becoming a King? Chanakya replied with the following words which became immortal.

**प्रजासुखे सुखं राज्ञः प्रजानां तु हिते हितम् ।  
नात्मप्रियं हितं राज्ञः प्रजानां तु प्रियं हितम् ॥**

“In the happiness of his subjects lies the King's happiness;

In their welfare his welfare.

He shall not consider as good only that which pleases him but,

Treat as beneficial to him whatever pleases his subjects”

Few other quotes from Kautilya's Arthashastra are given below, which throws light on the extraordinary knowledge of Kautilya on varied aspects including the governance.

“Education is the best friend. An educated person is respected everywhere.

Education beats the beauty and the youth.”

“As long as your body is healthy and under control and death is distant, try to save your soul;  
when death is imminent what can you do?”



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“In the absence of a magistrate, the strong will swallow the weak;  
but under his protection, the weak resist the strong.”

“Every neighboring state is an enemy and the enemy’s enemy is a friend.”

“Dharma is law in its widest sense—spiritual, moral, ethical and temporal.

Every individual, whether the ruler or the ruled, is governed by his or her own dharma.

To the extent that society respected dharma, society protected itself;

to the extent society offended it, society undermined”

### Conclusion

Ancient Indian scriptures are like ocean of knowledge and many scholars have dedicated their whole life for the study of sacred texts like Vedas, Upanishads, Ramayana, Mahabharata etc. These scriptures show the deep knowledge of the ancient Rishis (Saints) on varied knowledge. The governance models propounded in those texts are relevant to the present day management also. Satya and Dharma are the eternal values. Following verse from Brihadaranyaka Upanishad provide strong motivation to the modern day managers to achieve greater success in their endeavours.

काममय एवायं पुरुष इति।  
स यथाकामो भवति तत्क्रतुर्भवति।  
यत्क्रतुर्भवति तत्कर्म कुरुते।  
यत्कर्म कुरुते तदभिसंपद्यते॥

“You are what your deep, driving desire is

As your desire is, so is your will

As your will is, so is your deed

As your deed is, so is your destiny”

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# Governance from Ancient Indian Scriptures

**Anu Amodia\***

## Introduction

British Rule in India resulted in two important changes. Firstly, it started changing the mindset of Indians by destroying various texts and scriptures on which our history stood. Secondly, it tried to impart western thinking on Indians through changes in education policy. Some Indian Politicians also danced to their tunes and they shifted the focus from our rich traditional values and ethos to western ideas and thinking. In this process, our ancient texts lost their sanctity and more and more people started propounding western ideas in every walk of life. But, there were small group of thinkers, especially those who practiced yoga, ayurveda and other forms of ancients system somehow got interested in revisiting our ancient texts for effective administration and decision making. This resulted in successfully revealing lot of secrets about the ancient practices which are even relevant today. Among these one of the areas is Corporate Governance. Corporate Governance refers to effective Governance mechanism of king towards his subjects. It is more of welfare objectives of not only the king but also the entire state and his subjects.

## What is 'Corporate Governance' ?

Corporate governance is the system of rules, practices and processes by which a company is directed and controlled. Corporate governance essentially involves balancing the interests of a company's many stakeholders, such as 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. It is all about balancing individual and societal goals, as well as, economic and social goals.

## Benefits of Corporate Governance

- Good corporate governance ensures corporate success and economic growth.
- Strong corporate governance maintains investors' confidence, as a result of which, company can raise capital efficiently and effectively.
- It lowers the capital cost.
- There is a positive impact on the share price.
- It provides proper inducement to the owners as well as managers to achieve objectives that are in the interests of the shareholders and the organization.
- Good corporate governance also minimizes wastages, corruption, risks and mismanagement.
- It helps in brand formation and development.
- It ensures organization in managed in a manner that fits the best interests of all.

\* ACS. The views expressed are personal views of the author and do not necessarily reflect those of the Institute.



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### Principles of Corporate Governance

The underlying principles of an ideal corporate governance system are:

- It should be effective in protecting shareholders interests, yet should leave managers free to run and develop business and to take risks and show entrepreneurship.
- It should provide transparency in terms of full disclosure of information to enable shareholders to evaluate managers in their stewardship functions and to be decisive if managers are not performing as per expectations.
- It should not adversely affect investors' liquidity and must allow shareholders to buy and sell shares freely.
- It should not encourage insiders trading.
- It should not impair the competitiveness of the organisation.

Thus, the essence of good corporate governance is to achieve the right balance between shareholders interest and management interest.

### Importance of Corporate Governance

The concept of Corporate Governance, has suddenly become International. A number of international agencies like OECD, the World Bank, and International Monetary Fund, besides more than a dozen of individual countries are busy in framing the Corporate Governance codes. A healthy corporate governance not only avoids accidental and temporary mishaps, but leads to excellent corporate management. In other words, discussion concerning corporate governance should deal with topic "For whom, for what, and how should a company be run?" in a broad context.

The imperatives of corporate governance, flow from the concept of accountability for the safety and performance of assets and resources entrusted to the operating team. In a proprietary concern or a small business, the employees will be accountable for their actions to the proprietor partners or in other words, owners of the business. Accountability, in such circumstances, is relatively easy and managed without any complication since the lines of communication and supervision are usually short and straightforward.

With a business growing in size and complexity, leading to organisational corporatisation, ownership and management are distanced from each other. Consequently, accountability and governance issues assume much greater significance. A board of directors is juxtaposed between the shareholders or owners and the executives, managers and other employees of the organisation. Therefore corporate governance basically has to do with power and accountability: who exercises power, on behalf of whom, and how the exercise of power is controlled. The corporation has become a more important political institution than the state. The business of government becomes even more dominated by corporate business.

Although the need for good corporate governance has been acknowledged since corporations were first created, an awareness of this need has grown rapidly around the world during the recent years.

The corporation has a vital role to play in promoting economic development, and social progress. It is the engine of growth internationally, and increasingly responsible for providing employment, public and private services, goods and infrastructure.



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The efficiency and accountability the corporation is no longer a matter of interest between the shareholders of a particular company and the Board. The entire society is interested. It becomes a matter of public interest. Governance has thus come to the head of the international agenda. Democratic reforms in the area of corporate governance offer hope for, predictably, enhancing wealth for corporations as well as for the broader society.

In the beginning, the Governors of Central Banks and Finance Ministers considered the stock, market as a nuisance and gave a scant respect to it only as a place of speculative business. However, Dow Jones, the founder author of Wall Street Journal, identified the link between the performance of the corporate sector and the economy. Thus he was able to declare, the arrival of the Great Depression in thirties well in advance of some six months. The share market, that is the business of the businesses, has the necessary mechanism to forecast the economical environment. Thus, there is a direct link between the economy and the performance of the corporate sector. The link between the corporate sector and the macro economy are two-way. First, macroeconomic developments can affect the health of the corporate sector, especially if corporations are highly leveraged (that is, if they carry large amounts of debt relative to equity) and do business in an environment that does not promote sound corporate governance.

- Changes in world interest rates and country risk premiums can sharply alter the cost of borrowing for corporations burdened by foreign debt.
- Rapid change in the rate of depreciation can increase the debt-servicing costs of firms with large foreign debts, destabilise the corporate sector, and even threaten the viability of many firms. A high level of short-term corporate debt dominated in foreign currency increases the vulnerability of the macro economy to exchange rate depreciation and sudden capital outflows.
- The adverse impact of tight monetary policy and high interest rates on domestic demand and bank lending, which have been used to stem rapid exchange rate depreciation, is amplified by high corporate debt and can therefore worsen the corporate sector's financial situation.

Second, the corporate sector can affect the macro economy through the following links:

- The restructuring of over leveraged corporations struggling to stay afloat financially can magnify an economic downturn by triggering the rapid disposal of assets at throwaway prices and prompting large investment contractions. In post-crisis Asia, the contribution of investment to real GDP in the highly leveraged countries is negative and indeed very large.
- A squeeze on credit to corporations arising from a short-fall of bank capital can force governments to divert their fiscal resources to bank re-capitalisation.
- If the corporate sector is tipped into insolvency, lower investment and the prolonged period needed for corporate restructuring can significantly impair growth.
- Before the Asian crisis, analysis of the links between corporate balance sheets and the macro economy received relatively little attention. The Asian crisis proved, beyond doubt, the link between the corporate sectors' financial position and the macro economical condition. In future, the policy makers should design and introduce policies that can reduce the risk of crisis and destabilisation. Such policies include better insolvency frame-works, improved corporate governance and the like at the micro and macro level.
- "Power corrupts and absolute power corrupts absolutely" is an old adage. The key to creating wealth and maintaining a free society lies primarily in the same direction. Both require that broad based systems of accountability be built into the governance structures of corporations themselves.



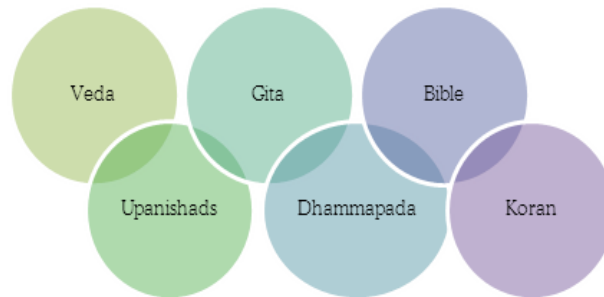
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### Indian Ethos Based on Ancient Scriptures

Indian ethos revealed and brought from following scriptures:



It found to have profound implications for self-management and good governance of a stormy society and business environment.

### Governance through Ancient Ethos

Ethos is a discipline that examines one's morality or the moral standard of the society. Ethics means expected standards in terms of your personal and social welfare. It includes honesty, responsibility, transparency, morality, etc. The main purpose of Indian Ethos is to develop proper governance, to ensure all round development, work sincerely and productivity of human being.

Leafing on to the pages of history we come to know some five thousand years back our Indian civilization dawned on the banks of the river Indus. The world describes India as the land of beauty, grandeur, where the gods descend down, time and again spreading the message of love, selflessness, peace, fulfillment, to establish unity in diversity, the path to truth, beauty, goodness and in our language "सत्यं शिवम् सुन्दरं" ("Satyam Shivam Sundaram") which states whatever is true is godly and whatever heavenly is beautiful. Beauty is more than skin deep, realized only through the daily practice or the implementation of the verdicts as stated in our wisdom literature to excel in our personal as well as professional front; the ability to manage ourselves, the organizations where we work as a family. We are the microcosms of the entire macrocosm with a firm belief in the term "वासुदेव कुतुंबकं" (Vasudeva Kutumbakam), the Sanskrit phrase meaning the whole world is a single unit, with its roots in the words. "Vasudha", means Earth, "Eva" is related with empathy and "Kutumbakam" means family. The original verse contained in the Mahopanishad VI 71-73 goes on to say that those who have no attachment go on to find the Brahman that is the one supreme universal spirit for performing the worldly duties without being attached to any material possessions. So love, harmony co-operation and mutual support happen to be the basic ingredients here, like in a family to usher efficiency in the organizations and strengthen the nation and of course our humanity at large. Now a nation cannot perform in a vacuum unless, the large, medium and small corporations vow to follow these divine teaching and consider themselves as world citizens. We need unity to build a new one world country.

### Ancient Indian Ethos - How relevant today?

As discussed earlier, we can see that the principle of good ethos what was talked of during the ancient period is what which is gaining more prominence today. In today's competitive world of business, the question of survival depends on effective governance. The concept is slowly shifting towards welfare objectives, it can be



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welfare of stakeholders, investors, environment, society, nation etc. which the business should try to achieve. This is exactly what it was told in ancient period. According to Chanakya "The Kingdom should be enjoyed by all". The delegation of authority and span of control discussed in Maurya and Gupta period is what it is propounded today in business. Today's Governance Principles focuses mainly on delegation of authority, responsibility and span of control as the main principles for better performance of duties. Discharge of duties according to professional and business ethics which is much talked about today can be traced back to Ancient period. According to Arthashastra, the king should discharge his duties in the best manner keeping in mind his responsibilities and ethics and he should not do anything for his own welfare. This shows that he is bound by his duties and ethics which is driving force today to run the business effectively and efficiently. There is much weightage given today for selecting right person for right job, he is evaluated based on certain criteria for appointing him as Director or CEOs of the Company, this is same as what is mentioned in Arthashastra. A person who assists King should be a right person and he should be selected based on series of test. One of the important areas in corporate governance is decision making. A collective decision making is what it is talked out today and such decision should be taken keeping in mind not only to help the promoters and owners but also to benefit those who rely and depend on the company. In Mauryan and Gupta period also the major decisions relating to welfare of the kingdom was taken on collective basis. Each of district and provincial heads were involved and consulted before taking any decision at central level. One important thing about good governance in Mauryan empire was the appointment of spy's to monitor and control illegal activities and corruption in the administration. This can be related to appointment of internal auditors today in business. Internal Auditors almost perform the same duties, they check the areas where there is chances of embezzlement and corrupt practices.

To sum up, governance module under the above periods can come as a big relief and can help in providing solutions to some of the problems faced today in business. The key areas where we can use the ancient period governance in present day situation are –





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### Implementing our Ancient Ethos in the World of Governance

The process of governance involves the three aspects; maximum utilization of resources, leading efficiency, materializing the organizational goals towards effectiveness and value addition to the world suggesting social responsibility. All these aspects could be possible only in a healthy environment. Ethics and ethical behavior happens to be the main ingredients of healthy governance. The question crop up from where one would avail the opportunity to understand the code of ethics as guidelines to be followed in the world of governance? Many of us aim to go back to our roots, which is in our ancient scriptures termed as our philosophy.

It cannot be denied that India had a glorious past with its wisdom literature: The Vedas, Upanishads, Vedanta, Our epics – Ramayana, Mahabharata and of course Arthashastra of Chanakya, the man who built the Mauryan Empire by motivating and guiding Chandra Gupta Maurya in 321B.C. Is this thought of applying our ancient Indian ethos in the field of governance some kind of a Hindu concept? It is only a way of life, a philosophy to motivate us on to the direction of enrichment.

### The Basic Concept of Indian Ethos

There are varied principles which could apply for the upliftment of the organization. Each soul is a potential god. Vedanta believes in the oneness of existence. All of us have a spark of divine within our hearts and this word 'divine', means an endeavor towards perfection, knowledge and power or energy for self development. If one bring about his or her self development it would automatically benefit his or her organization and the society because he or she is a part of the large unit, provided he or she is duty bound and impartial to one and all with the faith on the maxim that 'god helps them these who help themselves.'

Vedanta believes in non dual concept that is; the universe is an individual whole where each and every one of us is connected to the other. We the individual souls are together connected to the "Over Soul" or God. Such a person with a firm belief in oneness of humanity can achieve the status of integrated human personality who believes in building strong interpersonal relationship; manage his or her sector with excellence, if not with total perfection. This is the ideal of Indian Ethos: - "आत्मनो मोक्षार्तं जगत हित्य च" (Atmano Mokshartam Jagat Hitya cha), or gaining perfection in individual life as well as aiming for the welfare of the organization. The managers or the people involved in the decision making stands motivated to pour out their best selflessly for the betterment of their organization, inevitably contributing the development of the Nation and the wide world outside, serving the humanity with a holistic approach of lifting their spirits cheerfully, spreading cheers among others ensuring harmony to enhance productivity in their job sector. Now if such egalitarian concept is implemented for corporate governance there could sound the music of concord. The importance of the contemplation or meditation is important to remain calm and focused, balanced, detached with a vision. Then only it would be possible for the manager or the team leader do justice to one and all. And of course he or she need to develop a third eye, the eye of wisdom or foresight to bring efficiency in the organization and to be a person of such a temperament one need to inculcate the characteristics of a yogi or an ascetic as says Lord Krishna to Arjuna in Bhagavat Gita ,discourse V line 6

“योग युक्त मुनि ब्रह्म न ... चिरे न धि गच्छति  
योगयुक्त बिषुद्धात्मा बिजितात्मा जितेन्द्रिअ”

(“ Yoga yukta Muni Brahma Na ...chire na dhi gachhati  
Yogayukta bishuddhatma bijitatma jitendria”)

In English when translated, mean “the ascetic who has cleansed himself has gained mastery over his mind





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and all his senses and he has become one with all, in all creation, although he acts, remains unaffected.”—The Gita according to Gandhi – Mahadev Desai.

A manager with such a vision would have enough prudence to implement this knowledge of detachment. We all are aware of ‘Karma yoga’, that is selfless service to others. Again when turn to the pages of Bhagavat Gita, discourse II line 47 Lord Krishna speaks to Arjuna:

“कर्मण्य एवाधिकारस ते  
मा फलेषु कदाचन  
मा कर्म फल हेतुर् भूर मा .  
ते सङ्गो'स त्वकर्मणि”

(“Karmany evadhikaras.Te  
Ma phalesu kadachana  
Ma karma phal hetur bhur Ma.  
Te sango'stvakarmani”)

The English translation goes on to state “you have the right to work only and you have no right to the fruits of work”.

The sermon is thus a kind of advice to all who need to manage self as well as organization to put on his or her heart and soul only to the present as one has no control of future and it is useless to be clouded with the thoughts of the past. A question comes in our mind as to why we work? All of us know for our salvation, growth or whatever we term that in turn lead to all round global progress. But how many of us really perceive this concept whole heartedly? As there arises a query, could the six condemned vices of passion, hatred, arrogance, greed, anger, lust be wiped out in the consumerist world of 21st Century where companies enter into cut throat competition for maximum profit? If the leaders of the companies set themselves as examples for their team with selfless service, believe in cooperation, not only motivate themselves as well as the subordinates and work as a team to realize the set goals, establish, peace, prosperity for the society and minimize inequality, injustice, nepotism that exist at every level may at times lead to the downfall or the closure of the companies

### **The Basic Principles of Indian Ethos**

Our sacred ancient literature such as Vedas, Upanishads, Ramayana, Mahabharata, Bhagwadgita, etc., depicted treasure of wisdom and principles which modern management can apply for success of the corporate. The following principles of Indian Ethos may be useful for management practitioners to govern:

- Organisational interest is superior to self interest. A business leader is a trustee and servant of organization and stakeholders and not the owner of assets.
- A person has Immense potential energy and talents for perfection.
- Karma Yoga offers principle of working for God and detachment from its fruits.
- Holistic approach indicating unity between the divine individual self and the universe “वासुदेव कुतुंबकं” (Vasudeva Kutumbakam).
- One must develop one’s third eye, i.e., “ज्ञान चक्षु” (Gyan Chakshu) or the Eye of Wisdom.
- Excellence at work through self motivation and self development.
- Cooperation and interdependence.
- Above board honesty and integrity.



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### **Our Vedas: A Guide to Implement Corporate Social Responsibility**

Much has been said by the world of our Vedas known as the store house of our ancient value systems that emphasize: a) Satyam or Truth, b) Tapah or Austery, c) Damah or Sense Control) Samah or Tranquility of mind e) Dharma or Righteousness f) Danam or Charity, g) Daya or Mercy and i) Nyasah or Renunciation.

Here Renunciation does not mean suffering of body, mind or soul. It does not aim for strong penance, but find oneself in the vast cosmos with abundant joy, feel the presence of God in all creation. We can be happy when the others in our surroundings be happy. As writer Mr Tarini Komal Pandit in the introduction of his book 'The Vedas, The Gospels of India' wrote - the Rishi calls upon each and every one of the Universe to feel His existence in everything, in light and darkness, wind and water, fire and ashes, in songs and smells, buds and flowers, sprouts and leaves, trees and creepers and each atom of creation". The Vedas therefore indicate the path of attaining knowledge, the realization of the abstract through the concrete. Then is it possible for our Corporate World to implement our Vedic knowledge into practice?

There is always a possibility to achieve everything positive with a right approach in implementing the social responsibilities concerned with a) Family Welfare Programme, where every employee work under the belief that he or she will be looked after during the times of need where he or she is just not a mere employee but a member of the large family. b) Community Development Programme, where the corporate houses perceive it is their moral duty to undertake the responsibilities of the community where belong. c) Corporate Philanthropy, a part of their responsibility, to feel for the distressed and downtrodden with no means to advertise themselves. d) Corporate Citizenship, where every company feel proud to be a part of the nation and enrich it. e) Concept of Trusteeship, where the business owners could empathize without bearing the attitude that the organization is wholly their private property. As quotes Professor A.N Tripathi in his book Human Values - New Age International, about a contemporary management thinker who said "... (corporations) are expected not only to create wealth and produce superior goods and services, but also to conduct themselves as moral actors as responsible agents that carry on their business within a moral framework. As such they are expected to adhere to the basic ethical principles, exercise moral judgments in carrying out their affairs, accept responsibility for their deeds and misdeeds, be responsive to the needs of others and manage their own values and commitments."

### **Ramayana: The helping guide to Governance**

Indeed, to boost the welfare of the nation as well as the world, we need moralizing corporations who follow the path set by Lord Rama in Treta yug or period. The 'Ayodhya Kand', second chapter of Ramayana composed by sage Valmiki gives a detailed account of good governance, where lord Rama advice Bharat, his younger brother in appointing courageous, knowledgeable, strong willed men with a high emotional quotient as his ministers, for quality advice is the secret behind a sound system of administration. Lord Rama emphasized on moderate taxes to be levied on common people, treat soldiers well and pay their legitimate wages on time, provide proper irrigation facilities, ensure the traders a fear free environment and grievances to be redeemed promptly. Lord Rama staunchly followed the path of righteousness and set himself as an example of a king for whom duties comes before his personal comfort. He had to send his queen Sita away from the palace to satisfy his subjects, especially a fisherman who doubted the chastity of Sita and of course he also performed his duty as a husband by sending Sita to the hermitage of sage Valmiki. Both Rama and Sita suffer their agony in separation very gracefully, to exemplify how strong they are in love amidst all the adversities, with a firm fidelity to each other. Perhaps for his firm stand on Dharma or righteousness, Rama gains the title of 'maryada purushattam' or the greatest of all men who maintains dignity. Lord Rama sets himself an example to our managers or decision makers in the field of governance that everyone is answerable to the public, superiors, subordinates, shareholders, stake holders, board of directors to ensure transparency for the day to day



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running of the organization. In fact, if our managers motivate and mentor the staff they automatically help in increasing the growth of the company as well as the nation.

### **Role of Mahabharata in the World of Governance**

The Mahabharata of Vyasa, the longest Indian epic too provides guidance to our corporate world on the varied lessons of governance. The epic teach us how we can transform our weakness into strength. The Pandavas utilized their thirteen years of exile by developing their skills. Yudhistira became a master craftsman in the game of dice. Arjuna went on a mission to acquire heavenly weapons and become technically sound in the field of archery. The Pandavas were united so could share their responsibilities and work as a team under the leadership of Lord Krishna. They understood the ground realities and so were able to reach out to the common people without displaying their ego. Hence they gained support from the different strata of the society. The Pandavas undertook calculated risks at the time of crisis. An able manager never shy away from undertaking risks, but remain cool and composed, accept the challenges to speed up with his or her mission and realize the set goals successfully. In order to defeat Dronacharya Lord Krishna prevails on Yudhistira to lie that Aswathama, his son is dead. From a moral perspective such deed seem unethical, but such a lie is acceptable when it does good to the larger humanity for long term gain.

### **The Relevance of Bhagavat Gita in the World of Modern Governance**

India has gifted the world with the Holy Gita, the best guide to self development. Lord Krishna in order to boost up the morale of the depressed Arjuna went on with his discourse, comprising of eighteen chapters and this book offers a great counseling to all who enter the world of governance, professionally and personally. Before the battle of Kurukshetra began, both Arjuna and Duryodhana seek help from Lord Krishna, who oblige both the parties. Duryodhana choose the huge army of Sri Krishna while Arjuna feel elated to win his lord as his charioteer on whose able leadership begin the great battle of Kurukshetra. Duryodhana failed to realize the role of a charioteer, but the world of governance believe that the charioteer is the captain who steers the ship amidst a tornado or a tempest to reach the harbor safely. Our managers are the modern charioteers who lead their organisations and of course the nation in different fields: educational, agricultural, industrial, political or social. Bhagavat Gita guides one to work commitment by practicing detachment which could be gained through self control by conquering the passions or desires. The mind is the repository of thoughts that shape our personality. A demotivated mind can damage both the person and the work place environment. As says Lord Krishna to Arjuna in chapter VI verse 36:

**“असंयतात्मना योगो दुष्प्राप इति मे मतिः  
वस्यत्मना तु यतता सक्यो वप्तुं उपायतः”**

( “Asamyatatmana yogo Dus?prapa iti me matih  
Vaayatmana tu yatata Sakyo vaptum upayatah” )

“For one whose mind is unbridled, self-realization is difficult work. But he whose mind is controlled and who strives by appropriate means is assured of success.”

All of us who strive to mangle ourselves and team need to do our duty without seeking any reward. This detachment would enable us to develop a sound mind to ensure a sound body. Work culture then is ensured in an organization where all perform without any conflict for the betterment of his or her own, as well as of the others, as did Arjuna with Lord Krishna’s advice. We are all like Arjuna torn and tossed in the battlefield of life, but can manage ourselves better if raise our spirits to overcome our weakness and open the door of opportunities awaiting us.



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### Importance of Arthashastra in the world of Governance

Two thousand and four hundred years ago, Vishnu Gupta, popularly known as Chanakya or Kautilya wrote a political treatise entitled 'Arthashastra' a book of politics and the art of good governance. The book stood the test of time and still it enjoys as a helping guide for our leaders. In chapter two of 'Arthashastra', Chanakya advises the king and those in the administration to avoid extreme decision and apply soft actions. Sovereignty can only prevail with mutual cooperation of others. The King and his administrators he affirmed are considered as the servants of the people and answerable to the public. They too be paid for their service to mankind and not for their ownership of anything. No doubt Chanakya emerged as a visionary who paved the way to democracy as said Abraham Lincoln in his famous statement: 'Government of the people, by the people, for the people. Chanakya had the foresight to believe the welfare of the king lie in the welfare of his people. As says Chanakya; 'सुखस्य मूल धर्म' (Sukhasya Mulam dharma), that is; the basis of happiness and prosperity is righteousness (ethics).

### Conclusion

Our ancient wisdom literature is the Vedas, Vedanta, Upanishads, Ramayana, Mahabharata, Bhagavad Gita or the Arthashastra are a storehouse of comprehensive and powerful philosophy to be applied in all ages for the benefit of mankind. Since Indian Philosophy extols unity amidst all diversities, believe in tolerance, quest for freedom we can perceive the kingdom of heaven if adhere to the belief of Vedanta 'Thou art that', as said Swami Vivekananda "religion is the manifestation of divinity already in man". The Vedanta teaches us to transform our life from mediocrity to excellence. If we understand the pristine glory of the supreme self and feel the presence of the hopeful, blissful consciousness everywhere and in every being, we all could realize our goals for a better world. The Supreme Soul residing within us then would destroy all that is evil to unleash all that is pure and create, again recreate to bring down a millennium of prosperity on our earth. We would then be better performers, as have learned the art of governance. The Divine Spirit in our heart would motivate us to chant these often quoted lines of Bhagavat Gita, where Lord Krishna speaks to Arjuna, his disciple, chapter IV line 7 and 8:

“यदा यदा हि धर्मस्य  
ग्लानिर्व भवति भरथ ,  
अभ्युथानं अधर्मस्य  
तदात्मानं सृजामि अहं '  
प्ररित्रणाय साधूनां  
विनाशाय च दुष्कृतं  
धरमसन्स्थापनाय  
संभवामि युगे-युगे”

(“YadaYada Hi Dharmasya  
Glanirva Bhavathi Bharatha,  
Abhyuthanam Adharmasya  
Tadatmanam Srijami Aham.  
Praritranaaya Sadhunam  
Vinashaya Cha Dushkritam  
Dharamasanthapnaya  
Sambhavami Yuge-Yuge.”)



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The English translation goes on to say “Whenever there is decay of righteousness O! Bharatha and a rise of unrighteousness then I manifest myself for the protection of the good, for the destruction of the wicked and for the establishment of righteousness, I am born in every age.”

The message of Lord Krishna we can accept is that of a leader who aims to lead his organization amidst despair or anarchy to the road of prosperity with a right approach, condemning the vices and upholding virtue to establish ‘Dharma’ or righteousness. In the modern world of governance we thus die and are reborn again hoping to give ourselves and our next generation a blissful world by implementing our ancient Indian ethos. A better corporate governance in this 21st Century modern world of management would lead the nation to prosperity when all of us; self actualized, transcend the barriers of gender discrimination, caste, creed, religion, region, community, country, reaching out to the world as global citizens glorifying our higher selves for the betterment of humanity. Our mother Earth would then turn into a Paradise we dream of.

Company Secretary as a compliance officer and as a facilitator of legal compliance in the corporate has developed as professional having core competence in compliances and corporate governance, compliance management and sustainable growth of capital market. They are now popularly known as governance professionals in capital markets and are more frequently called upon to guide the Corporate Board on various strategic, governance and compliance issues related to capital markets. This makes the role of a company secretary more crucial and decisive in ensuring the required compliances as per the market needs and to take the financial sector forward towards the inclusive growth of the nation at par.

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## Corporate Governance from Ancient Indian Scriptures

### S. Rajarathinam\*

Scottish economist and philosopher, Adam Smith introduced the concepts of the invisible hand and the division of labour driving the formation of modern day capitalism. His belief was that the invisible hand of competition and consumer choice will help direct businesses what to do while the division of labour helps businesses get the most efficiency to drive investment decisions. His assumption was that the business will act responsibly and rationally consulting their self-interest to avoid any catastrophe. Given the nature of business based on Adam Smith's philosophy, there is a constant friction between the profit motive and the moral compass. Imbalance leads to the destruction of the free markets and public confidence, the very thing that it is supposed to promote. There are several documented well-known instances of catastrophic market failures, the most recent one in 2008 led to the coining of the term global recession.

Since the dawn of the new millennia, corporate governance is pushed as a silver bullet to enable businesses act responsibly and to make them accountable. Thereby, Corporate Governance is about how companies are structured and directed. It should help businesses make decisions consistent with long-term sustainable value creation not only for its investors and its employees but also for the community. A good system of corporate governance promotes a healthy balance of business and society sustainability – profit as well as morals.

India has had its share of scandals due to ill-begotten self-interests and the tragedy of commons. Since the early 1990's there has been a drive to promote good governance for corporations. The creation of the entity, "National Foundation for Corporate Governance" (NFCG) under the Ministry of Corporate Affairs (MCA) partnering with like-minded organizations such as Confederation of Indian Industry (CII) and Institute of Company Secretaries of India (ICSI) exemplifies the efforts of Indian Government to promote good corporate citizenry. While this initiative may be new, the concept of good governance is anything but new. Epics, Ramayana and Mahabharata (including the Srimad Bhagavad Gita), Kautilya's Arthashastra and the Upanishads are some of the Vedic literatures offering glimpses of governance over time from an Indian perspective.

Governance from an Indian perspective is not just a legal regulatory framework. It is a framework that provides the basis for the implementation of integrity with people as its core. There is a ringing truth to this philosophy considering the Indian slogan "Satyameva Jayate". Probably because of such personal integrity framework inbuilt into the Indian belief system, much of the economic disasters that have occurred were only felt within and contained to local environment. There has not been a talk of great recession of global consequences even though the scandals from Bofors to Harshad Mehta to the more recent Satyam are progressively large. It begs the question, what is the current in-built belief system evolved from? Why are the people of sub-continent and businesses they formulate driven by character based competence?

Dhronacharya, the teacher taught Kauravas (descendants of King Kuru) and the Pandavas (Children of Pandu) the art of weaponry. The strategic use of brahmastra (equivalent to today's Inter Continental Ballistic Missile) was conferred to only Arjuna, the madhyama Pandava. Ashwattama, his son who was equally

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competent, queried this to Dhronacharya. Dhronacharya responds to the query with asserting Arjuna's competence and character. Only a person who not only knows how to use it, but knows when and why to employ the weapon can be taught the skill. Skills of such nature, where absolute power of destruction resides cannot be bestowed to all. Dhrona had a decision making process that quantified and qualified skills of his pupils to bestow the right knowledge to the deserving. This decision making process strives to ensure that the knowledge seeker is not using destruction or a threat of destruction for personal gain. Integrity of the body and the action is a necessary condition.

Dhronacharya in responding to Ashwattama created a conducive environment, one of openness and transparency that did not shun queries or stifle opposition. He was fully aware of the strategic importance of such knowledge and knew bestowing it to one or select few persons could lead of disgruntlement and possible poisoning. By clearly articulating the decision process for sharing the knowledge to a selective group (only Arjuna), the learning environment did not become toxic or ambivalent. There definitely was envy among his students. This is not something Dhrona can or could rectify. It is personality traits that only the individual can work on to reduce its impact on the overall. In other words, the teacher (or simply, the principal stakeholder) sought to ensure the character co-exists with competence. This is an example of sound corporate governance practice illustrated by Vyasa's Mahabharata.

The practice of sowing character while teaching the hard core technical skills is still practiced within the Indian education system. It is not uncommon to find both a degree certificate and a character certificate conferred to a student after completing their studies. The system built in the ancient times is still in vogue however with an important distinction. Today's education system does not discriminate the students based on their character. Information is given to all students. How it is used or put to use depends on the character of the student. This is an important distinction as in the modern corporation; technical competence has slight advantage to character. It is therefore not surprising to see person of excellent technical skills and of questionable character pursuing activities that diminish the corporate value and that of the society.

The Vedas discuss the structure for decision making processes. For example, RigVeda has explicit assemblies called, samhiti and sabha and a leadership bestowed to purohitha and parishads (advisory councils) for checks and balances. A ruler who abides by the wise counsel provided by the assemblies and learned purohitha is assured of success and obeisance of the people in his region. The counsel collective forms the source of information that describes the decision making process to follow. The development, postulation, explanation and dissemination of the principles applicable to their time and age may be construed as the dharmashastras. Dharmashastras thereby becomes the guiding principle to enabling the ruler to make decisions. The various constituents within the dharmashastras also enable the checks and balances to prevent any abuses by the ruler or the assemblies in the exercise of power. The Vedas also mention on how, why and when the various assemblies occur. It also provides rules to enable the process of decision making that is sustainable and just for the society as a whole. It is also interesting to note that the roles description excludes the involvement of crooks and the dis-repute, the convicts and the imprisoned, village Idiots, mentally disabled or challenged, the illiterate and the ignorant. There are specific guidelines on the selection of the people responsible for making the decisions in assemblies, as a purohitha and parishads. The guidelines also stresses on people capable of ensuring confidentiality in edicts of interest to the region.

The structure described above is very similar to the modern day corporations with the board of directors, the shareholders, the executive officers and the various committees advising the board. The rules enabling the process of decision making is also part of the corporate governance. Confidentiality plays an important piece amongst the decision making bodies. It is interesting to note though that the criteria for selecting members to the board, to the committees and bodies of power are not universal unlike ones stated in the dharmashastras.



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The criteria used by one corporation may be totally antagonistic to the ones used by another corporation. In keeping with Adam Smith coming to full circle per Jevon's paradox and the tragedy of commons, it is the shareholder value (or simply put, profitability) that drives the makeup.

An endeavour that has brought big returns for all corporations while the risk was taken by one corporation with a vision to create a community of professionals within the country was the establishment of the Indian Institute of Science (formerly Tata Institute) at Bangalore. Such corporate endeavors are indeed rare and needs to be cherished from all quarters. The Institute today is the "commons" used by all corporations. The vision was made possible because of learned council (Swami Vivekananda) meeting the executive council (JRD Tata). The establishment of the Institute showcases the elevation of the society above the individual, and allegiance to Dharma rather than any particular corporation or political principle by the Tata Group. Institute has contributed to the success of not only corporations operating within India but to corporations across the globe. This was made possible because of the value system so prevalent in the sub-continent and true to the Vedic system of governance described earlier.

In Ramayana, Valmiki describes the system of governance in the ayodha kanda to provide maximum happiness for the largest number of people for the longest period based on the principles of dharma (righteousness and moral values). The story opens with the administrative setup prevalent in Ayodhya and talks of governance from the start to the end. The epic details several situations where the art of effective administration and management is described in depth and advice is rendered. If one considers Rama and Ravana as two executives of competing corporations, the advice given by the vanquished Ravana to the victorious Rama stands out as exemplary. Ravana opens his address to Rama lamenting the lack of time to teach the lessons he learned as a teacher and not as his enemy. Ravana explains dharma and his failure to abide the one important lesson in life, "Things that are bad for you seduce you easily; you run towards them impatiently. But things that are actually good for you fail to attract you; you shun them creatively, finding powerful excuses to justify your procrastination". His last words implied the impatience in abducting Sita while avoiding to meet Rama.

An individual may display varying characteristics of courage and cowardice, tolerance, cordiality under various circumstances. The individual uses their intellect to justify and rationalize their actions by constructing substantive arguments in their favour. Rationalizing to construct excuses or proactively procrastinate in face of adversity is a classic case of mental bankruptcy. Ravana's action seduced by his desire to possess (self-interest) caused ruin, not only to himself but also to his country.

In modern times, such scenario can be observed many times over. Unfettered greed and individual self-interest have ruined many corporations. In many cases, it has harmed the region, the corporation was established in. Global confidence in corporations eroded causing the great recession due to few individuals acting in their self-interest. Satyam scandal in 2009 is a case of the corporation acting irresponsibly without due diligence to its decision making process. It had taken Mr. Ramalingam Raju over 20 years to build his company and probably one inappropriate decision on marginal gap between actual operating profit and what was stated in the books to bring Satyam to its knees.

Vedic literature provides several descriptions of value system (code of conduct) for administering and managing regions. The value system provides the required strength on which people can feel good about and rally around. That management is successful where the value system is so strong and rich that people love to identify themselves with it and give their cause a wholehearted cooperation.

A management to which people rally for personal gains or for a mistaken sense of loyalty is like a house of cards, apparently magnificent and successful, but scattering in an adverse wind. What Ramayan teaches us is that the key lies on the integrity and character built by the collective forming the corporation. The collective



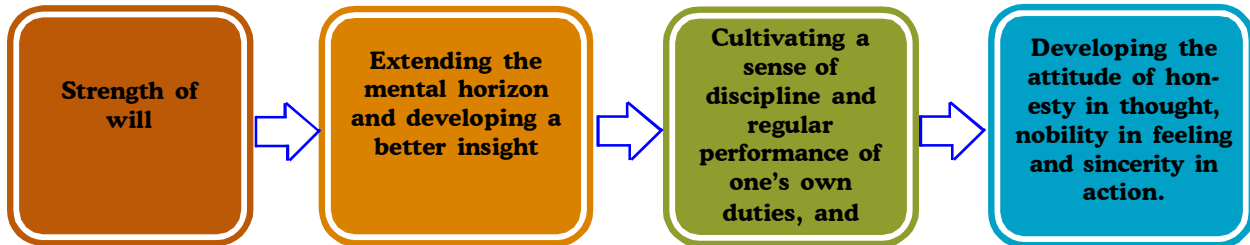


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is the board, the executive management, promoters and the shareholders. Valmiki discusses the character building within a person in four specific stages,



Rama exhibits this at every stage of his actions and therefore, he is called dharma personified.

Veda Vyasa describes the impact on Arjuna's morale observing his kin during the Kurukshetra war. Arjuna is sick to the heart. He feels his body trembling and breaking out in a cold sweat. He does not want to fight but in his role as an adult matured warrior he cannot run away from the battle field. He must have a reason for not fighting and he finds it. To live within a social structure, to function effectively as a part of a broader group, each individual member is programmed according to the dictates or norms of social behaviour. The Kshatriya (warrior) is programmed to fight the enemy. All their strategies and tactical skills are aimed at bringing down the enemy? All Arjuna can see around him are friends and relatives with whom he spent his childhood and grew up. Surely he was mistaken if he thought they were the enemy. His efforts at justification and rationalisation make him look further. He tries to foresee the effects of war and uses the future devastation as reason for not taking up arms. Krishna gently rebukes Arjuna and motivates Arjuna to do his job. The second chapter of Bhagavad Gita is a lucid exposition on how Krishna moves step by step towards motivating a dispirited Arjuna and pulling him into performance.

The board drives the corporation. It is like the sarathy, the charioteer. It does not bear weapons, or fight but the corporation success depends on the vision, skill and ability of the charioteer to maneuver the executive over the battlefield, to take advantage of various opportunities or create new opportunities. A successful corporation has a board having the characteristics of the charioteer and the executive with the characteristics of the victorious warrior.

Effective governance is essentially an exercise in clarity of thought process, the ability to piece together apparently dissonant elements into a harmonious whole and to implement plans flexibly, integrating continuously with the environment. For this the leadership needs knowledge, aptitude and skills. Knowledge of people, the work to be performed and results to be achieved, aptitude to perform at a given cost, and the skills needed to bring about such performance in one self and others.

The Ramayana and the Mahabharata, the two great epics are replete with sound political and economic theories. Today's most resonating term 'good governance' and its veracities had sufficient traces in these two texts in varied forms.

The Ramayana, which is the earlier of the two epics, contains references to principles of good governance, diplomacy, war and peace. It contains prescriptions regarding the manner in which the king should consult his ministers, learned men, and the chief officer of the army in formulating the policies of the state on various issues and matters. Valmiki's main theme is inner perfection, virtuous actions, overcoming evils and transforming the evildoers. In this epic, stress is laid everywhere on the importance of moral values.



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The Mahabharata has many flawed characters and their ethical dilemmas have no right or wrong answers. Building a code of conduct solely on one perspective can cause issues. Everyone has a contrary take on dharma based on their perspective. Thus, the doctrine of dharma, which we can apply to relationships, business decisions and life itself, is something we need to discover for ourselves in our journey, by holding a mirror and confronting the many ways we deceive ourselves and others.

### **Conclusion**

Both the texts, the Ramayana and the Mahabharata, (and Bhagavath Geeta which forms part of Mahabharatha), provide a theory of the state which is remarkable for this age. It deals with every fundamental question as the importance of dharma, importance of governance and the art of politics. Both the texts focused on welfare of the people and clearly define the obligations of the ruler (the executive and the board) towards their subjects (public at large including its stakeholders).

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## Governance from Ancient Indian Scriptures -- In Parlance to Today's Corproate Governance

### C. Sakunthala\*

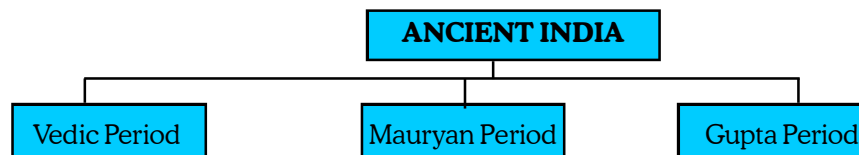
Corporate Governance is a very important concept and its relevance today in business can be seen as development of welfare concept. Welfare of business means not only growth and development of business in terms of profit and market share, but also to see that overall growth is attained in the society. In this process, it requires lot of accountability and commitment among the various authorities with in the organization.

Corporate Governance is not a new concept and this existed long back. The history of effective Corporate Governance can be traced back to Ancient period lot of archeological evidences, scriptures and religious text give reference to the existence of effective Corporate Governance practiced during our ancient times. Today the approach of Corporate Governance is talked more from the point of business but in Ancient India, it was about over all administration of state. It talked about how the king used to manage his subjects through effective Governance.

Corporate Governnce has become one of the most commonly used phrases in the current global business vocabulary. It's a hot topic across the globe, these days and in India. It is the most talked about subject after the collapse of Satyam in 2008. Till about two decades ago, it was relatively an unknown subject. The subject came into prominence in late 80's and early 90's when the corporate sector in a number of countries was surrounded with problems of questionable corporate policies or unethical practices.

### Corporate Governance in Ancient India

Corporate Governance, a term which is more commonly used in business today was a common term used for effective governance during ancient times. Since, all the property of the state came under the king there existed a Governance module in which King was the head. For the purpose of studying the Governance module in Ancient India, important periods are classified and shown.



### Governance during Vedic Period

Vedic Aryans who occupied the lands of five rivers were mainly tribal and they elected one person who was called as Leader. Usually, the person with strong personality who used to protect them from eventualities was elected as the leader. There existed a simple set up of administration namely, the King and the general assemblies of people called as Samithi and Sabha.

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Vedic King who was head of the state was charged with the maintenance of law and order. He used to employ the agency of spies in discharging his duties more effectively and efficiently. The administration was based largely on the household system. King used to collect necessary information for decision making from the Chief Priest and he used to involve all his reporting at time of taking vital decisions. So, there was collective decision making which was in place during Vedic period. Some of the Buddhist scriptures gives the clear idea of how the king used to manage his subject and the happiness and richness of the society during various king rule.

This period was characterized by very good Centralized Administration under the leadership of the King. The king enjoyed supreme executive, judicial and military authority over the kingdom. Raja Dharma was to protect the people and kingdom from enemies. It was during the Vedic period that many invasions took place due to which there was destabilization of power to some extent in Northern India. After the departure of Alexander, the dismantled kings started establishing their individual powers and resulted in local quarrels. It became very difficult for the kings to have effective governance as they were often busy fighting among themselves and there was no structured form of governance module introduced in to the system.

### Governance during Mauryan Period

The Mauryan period is regarded as the period of good governance. It was one of the largest empires in Ancient India and its administration was considered as one of the best administration over the entire world.

The Mauryan King was the head of the state administration holding legislative, executive and judicial powers. Judicial system was well organized and there was continues supervision and inspection process which was installed in every walk of administration. Secret services played a major role in maintenance of law and order in the kingdom. Local authority was controlled by Parishad who in turn used to report to king. As the Mauryan empire extended almost to whole of India, it became very difficult for king to have proper control. So there were many provincial heads appointed by the king and the king used to take the updates from the provincials on regular basis.

Functions of the states were defined under two main categories namely, Constituent functions and Ministrant functions. Delegation of power and authority on basis of law and order, security of the people and property, defense, welfare services, economic activities and moral development of individuals were carried out effectively and efficiently. Administration was carried out on the basis of consultation and collective decisions and such decisions were implemented by centralized bureaucracy

### Chanakya – Arthashastra

Above all these it was Chanakya's Arthashastra, written during the period of Chandra Gupta Maurya which made Mauryan Empire stronger in terms of administration. Arthashastra contains 6000 sutras divided in to 15 chapters and 18 subchapters providing instructions about administration, management, law and justice, economy, foreign policy etc..

King is the central point in Kautilya's Arthashastra. It is mentioned in the Arthashastra that "In the happiness of the subject lies the benefit of the king and in what is beneficial to the subjects is his own benefit". This clearly indicates the governance module which Chanakya insisted, it is more or same what we practice in corporate governance today, where in we say that the directors should act in such a way so as to benefit the stakeholders, investors, institutions and other who work in the organization.

According to Chanakya, good governance should avoid extreme decisions and extreme actions. He suggests to take Soft actions (Sam, Dam) and also Harsh actions (Dhand, Bhed) whenever there is a wrongful act. He



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goes on to explain the selection process to be followed to select right person for right jobs. According to Chanakya, King should appoint trusted people for administration purpose, while selecting the people he should be very cautious and should see in them qualities of high birth, wisdom, heroism and loyalty.

Megasthenes who visited during rule of Chandragupta Maurya in his Indika had mentioned and praised the administration set up during Mauryan empire. Special reference was also made of Arthashastra and it is believed that even some western countries developed interest in the philosophy of Chanakya and they copied some of the styles of Mauryan administration.

### Governance during Gupta Period

The Gupta period is called as the Golden Period in the history of Ancient India. During Gupta period lot of reforms were carried out, the empire was divided in to several provinces each of which was headed by viceroy appointed amongst the member of Royal family.

Local administration were given full powers to frame their own decisions so there were no controls from center except in few cases where they used to report to center. Villages were governed by Village heads who in turn used to report to district heads. During Gupta period, Urban and Rural administration were more decentralized compared to Mauryan empire. So, each of them understood their responsibility and they worked towards achievement of welfare objectives.

There was lot of integration among different levels of administration and all were clear about their duties and thrived to work for the well being of the people and king. Salaries during Gupta period were given in the form of land, more effective and efficient people were benefited with extra land which they can use for cultivation and earn extra income.

Gupta period had good contact with outside world, they had good communication system and also well developed foreign policy. Fa-Hien, a Chinese traveller who visited the court of Chandragupta II has praised the administration system and governance of Gupta period. As Kings of Gupta period embraced Buddhism, they were kind enough to the subjects. They worked for the welfare of the society and were part and parcel of the development initiatives for poor and needy.

### Evidences from Ancient Indian Scriptures

- (1) Arthashastra
- (2) Yogkashema

### Arthashastra

Kautilya's Arthashastra is considered to be an ancient Indian discourse on statecraft, economic policy, and military strategy, written in Sanskrit. Kautilya also known as Chanakya was a scholar at Takshashila.

The Arthashastra literary means the discipline of politics, but the book has very wide scope. The scope of the books includes on the nature of government, law, civil and criminal court systems, ethics, economics, markets and trade, the methods for screening ministers, diplomacy, theories of war, nature of peace, and the duties and obligations of a king.

Corporate governance is an ethical code of business of companies. It is a system by which companies are directed and controlled. The board of directors is responsible for the governance of companies and to ensure that appropriate governance structure is in place.



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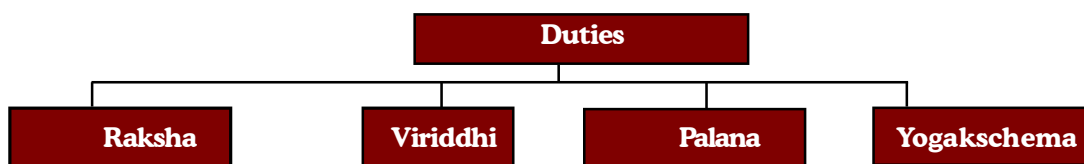
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Arthashastra obviously itemized the duty of a king in a clear cut way. The fourfold duty of a king as per Arthashastra is depicted in figure No.113. While we substitute certain old characters and situations with new one, we can identify the relevance and influence of Arthashastra during these days. The items which need substitution involve State, King and Subjects (people).

The State can be substituted with the Corporation, the King with the CEO or the Board of Directors and the subjects with the shareholders, bring out the essence of corporate governance.

### Duties of a king as per Kautilya's Arthashastra



#### Duties of a King:

##### *Raksha*

Literally means protection. As we all know protection means keep safe from harm or injury. So it is the obligation of the king to protect his subjects (people) from dangers. When we compare the same (Raksha) with corporate governance, it is the responsibility of the CEO or Board of Directors (King) to protect and safeguard the interest of the shareholders of the company.

Besides that the notion of Raksha is linked with the risk management feature in corporate governance guidelines. Thus, as per risk management aspect, it is the responsibility of the board, its Audit committee and its executive management should collectively identify the risks impacting the company's business and document their process of risk identification, risk minimization, risk optimization as a part of risk management strategy or policy.

##### *Viriddhi*

Literally means development and growth. Therefore, it is the responsibility of the king to make his nation splendid with resources and facilities, thereby ensure the growth of the country. In the contemporary situation the Viriddhi duty has been matched with stakeholder's value enhancement. The object of any business is maximization of wealth through maximization of profits.

Efficient corporate governance aims at this enhancement. Well managed and motivated companies would definitely ensure corporate success and finds ways for stupendous growth and development in the long run. If the company follows better corporate governance practices it will definitely pave for expansion, diversification, and takeovers of companies as it enjoys goodwill, corporate image and reputation in the competitive environment.

##### *Palana*

Literally means maintenance/compliance. In present day world we can associate it with, following the rules and regulation of the land. While considering the duty of Palana we can come to conclusion that the same is highly absorbed in our corporate governance practices.

When we consider the corporate governance practices of SEBI there is a separate clause entitled compliance.



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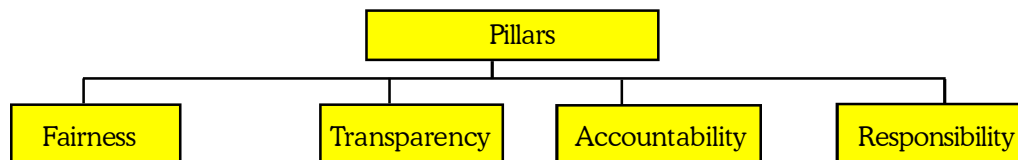
The clause specifically states that the company shall obtain a certificate from the auditors of the company regarding compliance of conditions of corporate governance as stipulated in the clause and annex the certificate with the director's report, which is sent annually to all the shareholders of the company, the same certificate shall also be sent to the stock exchanges along with the annual returns filed by the company.

### Yogakshema

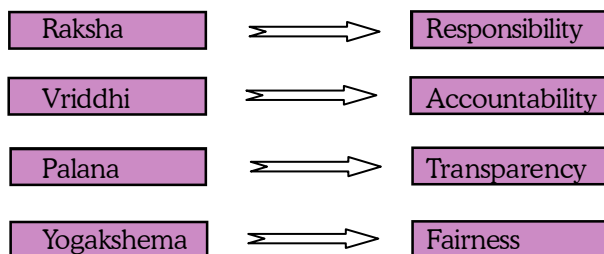
Literally means welfare and in Kautilya's Arthashastra it is used in context of a social security system. Currently we can associate it with corporate social responsibility. The duty of the yogakshema state that the king has to consider and protects the interest of the people. It is one of the prime responsibilities of the king to ensure the welfare among the peoples. Today, businessmen are aware that society is the biggest force which controls the entire business operations, right from acquisition of land to finally produce. Now they feel that they cannot operate in societal isolation.

The success of a business depends on the growth of the society because the goods and services are ultimately consumed by the society. So, an organization must take initiate steps which ultimately lead to economic upliftment of the people. This all necessitates the relevance of Corporate Social responsibility. Corporate Governance is based on certain principles. These principles are considered to be the main pillar of corporate governance. It has four main pillars.

### Yogakshema- Pillars of Good Governance - The goal of Good Governance



The four fold duties of a king as per Arthashastra can be interpreted with the four pillars of corporate governance. The pillar denotes the basic principles of corporate governance. The relationship between the duty of a king and principles of corporate governance



### Relation between Corporate Governance and Duties of King

#### Raksha

Literally means protection. This is extremely matched with the pillar of responsibility, i.e. it is the responsibility of the board or CEO to protect the interest of all stakeholders of the company.

#### Vridhhi

Exactly means growth. This is obviously matched with the pillar of accountability, i.e. the CEO and the Board



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will have to use the resources of the firm such a way that maximizes the value of the firm. That is maximum wealth creation is of urgency at this juncture.

### *Palana*

Factually means maintenance/compliance. The duty of Palana was absolutely matched with the pillar of transparency, i.e. corporate governance ensures timely and accurate disclosure of all material matters. Disclosure regarding the corporate performance, ownership and governance should be of high quality in accordance with the financial, accounting and auditing standards.

### *Yogakshema*

Literally means welfare and in Kautilya's Arthashastra it is used in context of a social security system. The duty of yogakshema is harmonized with the pillar of fairness. It refers to the manner in which the business is conducted without any detriment in the interest of the stakeholders, shareholders, employees and the public as a whole. Business ethics play a vital role in this context; hence they have to be on par with the ethical code of the society in which a business operates.

In the Indian context the origin of corporate governance can be traced from different ancient scriptures namely Vedas Mahabharata and Ramayana,

### **Corporate Governance in Vedas**

In India, the concept of the welfare state and good governance is very old and an exposition of them can be found even in their oldest scriptures of the Vedas. Thus, Shukla Yajurveda includes a prayer wherein a ruler prays thus: "let my subjects be satisfied, my herds be satisfied, my people be satisfied, let not my people be needy."

Similarly, Manu Smriti says that without a proper ruler (i.e. government), the anarchy will result in citizens living in fear and thus, Kingship (i.e. government) was instituted for the protection of the subjects.

### **Corporate Governance in Mahabharata**

In the Mahabharata (Shanti parva ch.58) declares the protection of subjects as the 'cheese of kingly duties' and then includes the various factors of good governance, ranging from punishing the criminals to supporting meritocracy, from ensuring security to enabling financial transactions, as the means for ensuring this 'protection of the subjects.'

'Yogakshema' or the welfare of the people was the ultimate goal of any ruler or government and good governance was the means to achieve it. But, this exposition of Yogakshema and thus of good governance was not limited to the material (social, political, and economic) welfare of the people, but included spiritual and moral well-being as well.

Indian conception of Yogakshema as expounded by Kautilya as "Kautilya over-reached the modern concept in that his Yogakshema aims at an all-round development, material as well as spiritual, of the society as well as of the individual. It involves the well-being of the poorest of the poor. The Kaultiyan state, we are told, ensured freedom, happiness, prosperity, and full-fledged development of human personality. Yogakshema demanded a higher moral consciousness both at the elites' and at the common people's levels".

### **Dharma – the basis of good governance**

Gita (16.24) says, one should learn to differentiate between the actions that ought to be performed and those





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actions that ought to be avoided. And this division of actions into obligated and prohibited is in turn rooted in the concept of 'Dharma.'

Dharma which literally means 'that which upholds' refers to all those actions which will cause material welfare, happiness, and spiritual upliftment of an individual in the human context. And these Dharmic actions have been enjoined as duties upon each person so that by their performance an entire society or a country achieves overall welfare and development.

Governance being the prerogative of the government, and the head of the government being the most important person who drives the whole governance mechanism, his performance of his duties, and his adherence to Dharma becomes the most vital element for achieving Yogakshema of all citizens.

Thus, the popular saying stated 'yatha raja, tatha praja' (As is the king, so are the subjects). An able administrator who strictly adheres to Dharma will implement proper measures to ensure the welfare and progress of the people, whereas an incompetent Adharmic ruler will push the nation into chaos and suffering.

The head of the government cannot and should not act according to his whims and fancies. His sole purpose and duty is to implement good governance by adhering to the principles of Dharma so that the overall development of his citizens is achieved. Atri Smriti (verse 28) says that punishing the wicked, honouring the good, enriching the exchequer by just methods, being impartial towards the litigants, and protecting the kingdom are the five yajnas i.e. selfless duties to be performed by the ruler.

Mahabharata (Shanti Parva Ch.90) says that a person becomes a King for protecting Dharma and not for acting capriciously. Similarly, Manu Smriti (7.27) says, a ruler who uses his power of ruling in a proper way, i.e. for the welfare of his citizens, will achieve all desires, wealth, and spiritual merit. On the other hand, a ruler who misuses his power for his selfish reasons will end up in destruction.

In other words, an incompetent and Adharmic person should never occupy the seat of the government. For this reason, the Hindu scriptures stress again and again regarding the required competencies of the kings. Kautilya's Arthashastra (1.19.39), for example, states that a ruler's happiness lies in the happiness of his subjects, in their welfare his welfare, whatever pleases him (personally) he shall not consider as good. Whatever makes his subjects happy, he shall consider as good. He also lists receptive mind, firmness of purpose, and training in all activities of the government as some of the qualities of a King.

Similarly, Mahabharata (Shanti Parva Ch.90) says that a king should never abandon righteousness and should always be rooted in it. On the other hand, Manu Smriti (7.30), declares a person who is weak, ignorant, greedy, without discrimination of right and wrong and attached to sensual desires as being unfit to govern.

Hence, Dharma in its twin roles of duties and righteousness is the very basis of ensuring good governance and welfare of everyone. The government and the people involved in the governance are mere enablers who implement principles of Yogakshema. Thus, Brihadaranyaka Upanishad (1.4.14) calls Dharma as the king of the kings and states there is nothing superior to Dharma.

Though, good governance is a qualitative term, it can be analyzed using certain parameters which can give definite information regarding the state of governance. The World Bank determinates of good governance include factors like political accountability, transparency, democracy, legal framework, an independent judiciary, importance to the rule of law, effective administration, and cooperation between the government and civil society.

Most of these factors could also be observed in the ancient Indian concept of good governance and Yogakshema. Arthashastra, for example, deals extensively with law and order, political and bureaucratic



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accountability, the establishment of the rule of law and elaborate legal framework, prevention of corruption, human resource management and meritocracy. Similar issues of law and order, the judicial system and the delivery of justice, punishments for the offenders, etc. have been elaborated in Manu and other Smritis as well..

Summarizing the elements of good administration based upon ancient Indian scriptures, Openness in the sense of having wide contact with the people administered. A sense of justice, fair play, and impartiality in dealing with men and matters. Sensitivity and responsiveness to the urges, feelings, and the aspirations of the common people.

Securing the honour and dignity of the human being, however humble he or she might be. Humility and simplicity in the persons manning the administrative machinery and their easy accessibility. Creating and sustaining an atmosphere conducive to development, growth, and social change. Honesty and integrity in thought and action.

The Hindu scriptures stipulate the rulers to carry out actions that cause spiritual upliftment of the society and create a social condition wherein people can freely practice their social and spiritual duties. The heads of the governments are obliged to serve its citizens, both materially and spiritually. Thus, the kings of the old supported various Brahmanas who dedicated their entire life to performing religious and spiritual duties and the rulers themselves indulged in charity, rituals, and other spiritual works. Manu Smriti (7.43) says that the ruler himself should be well learned in Vedas and other spiritual scriptures apart from learning about governance, etc. that are necessary to rule. Thus, the ancient concept of Good governance did not create a separation of secular and spiritual aspects of life. Dharma, which upholds life, was the guiding beacon of good governance and it catered to the welfare of all aspects of society – sacred and secular.

### Conclusion

India observes good governance day on 25th December. The concept of good governance is qualitative in nature, and is intimately connected with the concept of the welfare state..

Company secretaries all over the world have been assigned the responsibility for good corporate governance practices to be followed by the companies where they work or for their clients by the Institute of Company Secretaries of India.

Under the erstwhile SEBI listing regulations under clause 49 there were provisions for corporate governance. Under new SEBI listing obligations and disclosure requirements there are provisions under regulation 15 to 27 there are provisions for good corporate governance.

Good corporate governance may not be the engine of economic growth, but it is still quintessential for its proper functioning. Good corporate governance practices can help increased investments, decrease corruption and reducing the wasting scarce resources.

Today's business faces multitude of challenges, increasing business pressure on all the fronts, globalization, shorter product life cycles, cyber security, over capacity, complex rules and regulations by the government, currency volatility, and value migration etc.

To conclude the role of Company Secretaries have manifold responsibilities and ethical standards to be applied in establishing good Corporate Governance.

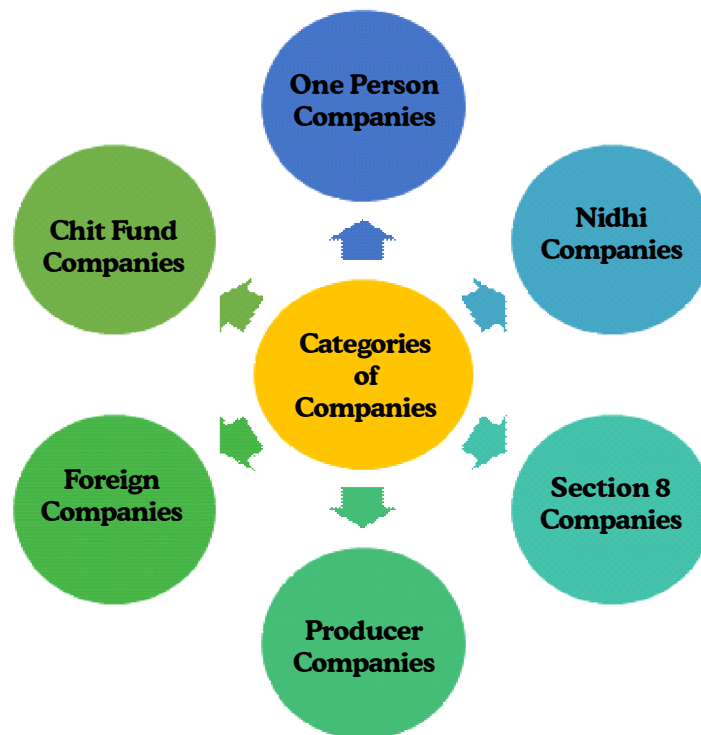
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## Common Resubmission Remarks during Processing of Incorporation Forms

**Bhasker Subramanian\***

An analysis of 'Resubmission' remarks made while processing eforms filed for incorporation by the Central Registration Centre (CRC) of the Ministry of Corporate Affairs has thrown interesting facts. It has been observed that while around 50 percent of INC-7 and SPICe (INC-32) forms are getting approved in first attempt, 36 percent gets approved after one 'Resubmission' and remaining 14 percent after two 'Resubmissions'. It has also been observed that 'Resubmission' is mainly due to incomplete details provided by applicants/professionals resulting in CRC users marking the forms ('Sent for Resubmission') for resubmission with brief remarks. Pertinent to mention that as per the extant rules, forms filed are given one or two chances (depending upon the form) of 'resubmission' if required. The common resubmission remarks applicable for different class of companies has been collated and detailed under different categories viz. (i) all companies (ii) One Person Companies (iii) Nidhi Companies (iv) Section 8 companies (v) Producer companies (vi) Foreign companies (vii) Chit Fund companies.



\* FCS. The views expressed are personal views of the author and do not necessarily reflect those of the Institute.



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### I. All companies

1. *Verification of Registered Office* : Registered Office proof (the proof of evidence of any utility service like telephone, gas, electricity, etc.) may be attached which shall not be older than 2 months as per rule 25(2)(d) of the Companies (Incorporation) Rules, 2014. {rule 25(2) (d) the proof of evidence of any utility service like telephone, gas, electricity, etc. depicting the address of the premises in the name of the owner or document, as the case may be, which is not older than two months.}
2. *NOC from owner of premises of Registered Office* : NOC shall be provided by the owner of registered office premises as per rule 25(2)(c) of the Companies (Incorporation) Rules, 2014. {rule 25(2)(c)- the authorization from the owner or authorized occupant of the premises along with proof of ownership or occupancy authorization, to use the premises by the company as its registered office;}
3. *Affidavit from subscribers and first Directors* : INC-9 shall be executed on the stamp paper and to be notarized with the place and date of execution, in the name of all the subscribers/directors and authorised person of body corporate be attached as per rule 15 of the Companies (Incorporation) Rules, 2014 and mentioning the name of proposed company in it. {rule 15-For the purposes of clause (c) of sub-section (1) of section 7, the affidavit shall be submitted by each of the subscribers to the memorandum and each of the first directors named in the articles in Form No.INC- 9}
4. *Particulars of first Directors of the company and their consent to act as such* : DIR-2 shall be provided as per rule 17 of the Companies (Incorporation) Rules, 2014 {The particulars of each person mentioned in the articles as first director of the company and his interest in other firms or bodies corporate along with his consent to act as director of the company shall be filed in Form No.DIR-12 along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014.} and its format should be as per rule 8 of Companies (Appointment and Qualification of Directors) Rules, 2014 {Every person who has been appointed to hold the office of a director shall on or before the appointment furnish to the company a consent in writing to act as such in Form DIR-2}.
5. *Particulars of every subscriber to be filed with the Registrar at the time of incorporation* : Copy of PAN, identity proof, residence proof (electricity bill, bank statement, water bill, telephone bill) of all subscribers (not having DIN) shall be attached as per rule 16(1) of the Companies (Incorporation) Rules, 2014. {Rule 16(1) The following particulars of every subscriber to the memorandum shall be filed with the Registrar-
  - (a) Name (including surname or family name) and recent Photograph affixed and scan with MOA and AOA:
  - (b) Father's/Mother's name:
  - (c) Nationality:
  - (d) Date of Birth:
  - (e) Place of Birth (District and State):
  - (f) Educational Qualification:
  - (g) Occupation :
  - (h) Income-tax Permanent Account Number (PAN) :
  - (i) Permanent residential address and also Present address (Time since residing at present address and address of previous residence address (es) if stay of present address is less than one year) similarly the office/business addresses:



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- (j) Email id of Subscriber;
- (k) Phone no. of Subscriber;
- (l) Fax no. of Subscriber (optional)

*Explanation-* information related to (i) to (l) shall be of the individual subscriber and not of the professional engaged in the incorporation of the company;

- (m) Proof of Identity:

For Indian Nationals:

PAN Card (mandatory) and any one of the following

- Voter's identity card copy
- Passport copy
- Driving License copy
- Unique Identification Number (UIN)/Aadhar copy

For Foreign Nationals and Non Resident Indians

- Passport

*[Explanation-* In case the subscriber is already holding a valid DIN, and the particulars provided therein have been updated as on the date of application, and the declaration to this effect is given in the application, the proof of identity and residence need not be attached.]

- (n) Residential proof such as Bank Statement, Electricity Bill, Telephone / Mobile Bill:

Provided that Bank statement, Electricity bill, Telephone or Mobile bill shall not be more than two months old;

- (o) Proof of nationality in case the subscriber is a foreign national.

- (p) If the subscriber is already a director or promoter of a company(s), the particulars relating to-

- (i) Name of the company;
- (ii) Corporate Identity Number;
- (iii) Whether interested as a director or promoter;}

6. *Business of Architecture* : As per General Circular No. 2/2012, dated 01.03.2012, company can carry on business of architecture, only if it obtains in-principle approval from appropriate regulatory authority. Either necessary approval be attached or the words 'ARCHITECTURAL/'ARCHITECTURE' shall be removed from the objects.
7. *Business of MLM/Network Marketing etc.* : Business of 'network marketing' 'channel marketing', 'multilink gift schemes', 'multilevel marketing', 'multi linking promotional activities', 'direct sales associates', 'pyramid structure schemes' and other similar activities cannot be carried on and such words and objects from MOA shall be removed. Please refer RBI Press Release 2014-2015/1383 dated 1.1.2015.
8. *Objects of proposed company* : Main objects of MOA shall be in consonance with the objects approved



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in INC-1 and objects in clause 3(b) should be ancillary to the main objects.

9. *Names of first Directors* : Names of first directors shall be mentioned in AOA as per Table F of Schedule I of the Companies Act, 2013.
10. *Definition of private company shall be indicated in AOA* : Definition of private company as per Sec. 2(68) of the Companies Act, 2013 be mentioned in AOA.
11. *Name of Company shall be correctly filled* : Name of the company as mentioned in the interpretation clause of AOA is incorrectly filled which needs rectification.
12. *Entrenchment Provisions* : Please refer to section 5(3) of the Companies Act, 2013. The entrenchment provisions quoted in Sl. No. 2 of SPICe 32 are not entrenchment provisions in terms of the said section and the same may be rectified.
13. *Removal of certain objects* : The business of bitcoin/virtual currency/block chain technology used for generation of bitcoins is not allowed in view of several risks posed to the user and it may be used for illicit and illegal activities. These objects be removed from MOA. Refer to RBI Press Release: 2013-2014/1261, dated 24.12.2013.
14. *Applicability of Tables of Schedule I* : Only the applicable Tables of Schedule I of the Companies Act, 2013 be given in e-MOA and e-AOA and remaining other Tables needs to be deleted.
15. *Mismatch between authorized and subscribed capital* : There is a mismatch between the authorised/subscribed capital given in the e-form INC-32/INC-7 and subscriber sheet of MOA. Please resubmit after rectification.
16. *Version of the e-form/adobe reader* : The Authorising Officer is unable to sign/approve the e-form filed as the user has not filed the new version of the e-form/adobe reader. Detailed instructions on the version of eform and adobe reader is available at [www.mca.gov.in](http://www.mca.gov.in)
17. *Industrial activity code* : The industrial activity code entered by the user in the e-form INC-32/INC-7 is incorrect. Please rectify by mentioning correct industrial activity code and resubmit.
18. *A virtual office cannot be Registered Office of the company* : Registered office of the company cannot be a virtual office as the conditions of section 12 of the Companies Act, 2013 will not get fulfilled.
19. *Multiple Roles not permitted* : As per rule 13(4) of the Companies (Incorporation) Rules, 2014 a person who is an authorized representative of body corporate cannot be a subscriber in individual capacity at the same time. {rule 13(4)- Where the subscriber to the memorandum is a body corporate, the memorandum and articles of association shall be signed by director, officer or employee of the body corporate duly authorized in this behalf by a resolution of the board of directors of the body corporate and where the subscriber is a Limited Liability Partnership, it shall be signed by a partner of the Limited Liability Partnership, duly authorized by a resolution approved by all the partners of the Limited Liability Partnership:

Provided that in either case, the person so authorized shall not, at the same time, be a subscriber to the memorandum and articles of association.}

20. *Declaration on registration or approval from sectoral regulator* : If the proposed company is doing the business of chit fund, money changers, insurance, forex, micro-finance, housing finance, venture



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capital, asset management, investment advisor etc. activities, then declaration as per the proviso to rule 12 of the Companies (Incorporation) Rules, 2014 is to be given and it should be signed by all the subscribers. { proviso to rule 12 -Provided that in case pursuing of any of the objects of a company requires registration or approval from sectoral regulators such as Reserve Bank of India, Securities and Exchange Board, registration or approval, as the case may be, from such regulator shall be obtained by the company before pursuing such objects and a declaration in this behalf shall be submitted at the stage of incorporation of the company. }

21. *In-principle approval from regulation/Institute in respect of business of Banking, Insurance or practice of CS/CA/CWA* : Where one of the objects of the company is to carry on the business of Banking, Insurance or to practice the profession of Company Secretaries, Chartered Accountancy or Cost Accountancy the 'in-principle' approval from the concerned regulator/professional Institutes should be furnished vide General Circular No. 2/2012.
22. *PAN Card mandatory* : PAN card of Indian nationals should be attached as per rule 16(1) of the Companies (Incorporation) Rules, 2014.
23. *Details of subscribers* : All details of subscribers viz. name, address, father's name and occupation (including all details of the authorized representative in case when subscriber is a company) are required to be mentioned in the subscriber sheet of e-MOA and e-AOA.
24. *Insolvency professional entity* : As per regulation 12(1) of Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulation, 2016 where the object of the proposed company is to carry on the activities of an insolvency professional entity, majority of the whole-time directors must be registered as insolvency professionals and the proof of the same is required to be attached. {regulation 12 (1)- A limited liability partnership, a registered partnership firm or a company may be recognised as an insolvency professional entity if-
  - (a) a majority of the partners of the limited liability partnership or registered partnership firm are registered as insolvency professionals; or
  - (b) a majority of the whole-time directors of the company are registered as insolvency professionals, as the case may be.(2) A person eligible under sub-regulation (1) may make an application for recognition as an insolvency professional entity to the Board in Form C of the Second Schedule to these Regulations. }
25. *Applicability of INC-7* : e-form INC-7 is applicable for Part I companies and the companies having more than 7 subscribers as per rule 12 of the Companies (Incorporation) Rules, 2014. {rule 12-An application shall be filed, with the Registrar within whose jurisdiction the registered office of the company is proposed to be situated, in Form No.INC-7 (Part I company and company with more than seven subscribers) and Form No,INC-32 (SPICe) along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014 for registration of a company. }
26. *Declaration by professionals* : INC-8 should be attached to INC-7 as per rule 14 of the Companies (Incorporation) Rules, 2014. {rule 14-For the purposes of clause (b) of sub-section (1) of section 7, the declaration by an advocate, a Chartered Accountant, Cost Accountant or Company Secretary in practice shall be in Form No. INC-8}.
27. *Resubmission of forms* : There are 1 or 2 chance(s) for resubmission available to the user. Hence the user may resubmit the forms after rectifying the defects.



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### II. One Person Companies (OPC)

1. *Nominee Consent Form* : INC-3(Nominee Consent Form), manually signed by nominee should be provided as per section 3(1) of the Companies Act, 2013.
2. *Particulars of every subscriber to be filed with the Registrar at the time of incorporation* : Copy of PAN, identity proof, residence proof (electricity bill, bank statement, water bill, telephone bill) of nominee (not having DIN) should be attached as per rule 16(1) of Incorporation, Rules, 2014.
3. *NBFC activities not permitted* : As per rule 3(6) of the Companies (Incorporation) Rules, 2014 OPC cannot carry on NBFC related activities and no OPC can acquire/invest in securities of any body corporate and further OPC cannot issue or allot shares to anyone except its member. Please remove such objects from MOA. {rule 3(6)- Such Company cannot carry out Non-Banking Financial Investment activities including investment in securities of any body corporates.}
4. *Definition of OPC and private company shall be indicated in AoA* : Definition of OPC as per sec 2 (62) along with the definition of private company as per Sec. 2(68) of the Companies Act, 2013 should be mentioned in INC-34 e-AOA.
5. *Applicability of Tables of Schedule I and authorized capital and subscribed capital shall be equal* : The subscriber sheet for OPC has a prescribed format under 'Sl. No. 7' of Schedule I-Table A to the Companies Act, 2013. The authorized capital shall be equal to the subscribed capital as the subscriber agrees to take all the shares in the capital as per 'Sl. No. 7' of Schedule I-Table A to the Companies Act, 2013.

### III. Nidhi Companies

1. *Declaration from all subscribers* : Declaration from all the subscribers should be attached stating that rule 4(Incorporation and incidental matters), 5(Requirement for minimum number of members, net owned fund etc.), 6(General restrictions or prohibitions) and 10(Branches) of Nidhi Rules, 2014 shall be duly complied with.
2. *Minimum paid up capital and nominal value of each share* : As per rule 4(1) of Nidhi Rules, 2014 minimum paid up capital of Nidhi company shall be five lakh rupees. {rule 4(1)- A Nidhi to be incorporated under the Act shall be a public company and shall have a minimum paid up equity share capital of five lakh rupees.} As per rule 7(1) of Nidhi Rules, 2014 nominal value of each share shall be not less than ten rupees. {(1) Every Nidhi shall issue equity shares of the nominal value of not less than ten rupees each: Provided that this requirement shall not apply to a company referred to in sub-rules (a) and (b) of rule 2.}
3. *General restrictions or prohibitions and opening of Branches* : As per rule 6 and rule 10 of Nidhi Rules, 2014, a Nidhi company cannot issue preference shares, debentures, open any current account or carry on the business of chit fund, hire purchase finance, leasing finance, insurance or acquisition of securities or take deposits from or lend money to any Body Corporate or enter into any partnership arrangement in its borrowing or lending activities or cause to be issued any advertisement for soliciting deposit or pay any brokerage for mobilising deposits or open any branch outside the State where the registered office is situated. Remove such activity(ies) from MOA.

### IV. Section 8 Companies Act, 2013

Matching of MOA and AOA : MOA and AOA should match with the MOA and AOA as approved in INC-12 by the jurisdictional ROC.





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### V. Producer Companies

Producer Certificate: Producer certificate of all subscribers certified by tehsildar/ agriculture officer/ patwari/ SDM/ district administrator and Khasra/ Khatauni should be attached.

### VI. Foreign Companies

1. *Documents of Foreign companies/subscribers/directors to be apostilled:* As per rule 13(5) of the Companies (Incorporation) Rules, 2014, all the documents of foreign company/foreign subscriber/director executed outside India should be duly apostilled, notarised or consularised/certified by diplomate/high commission. {rule 13(5) - Where subscriber to the memorandum is a foreign national residing outside India-
  - (a) in a country in any part of the Commonwealth, his signatures and address on the memorandum and articles of association and proof of identity shall be notarized by a Notary (Public) in that part of the Commonwealth.
  - (b) in a country which is a party to the Hague Apostille Convention, 1961, his signatures and address on the memorandum and articles of association and proof of identity shall be notarized before the Notary (Public) of the country of his origin and be duly apostilled in accordance with the said Hague Convention.
  - (c) in a country outside the Commonwealth and which is not a party to the Hague Apostille Convention, 1961, his signatures and address on the memorandum and articles of association and proof of identity, shall be notarized before the Notary (Public) of such country and the certificate of the Notary (Public) shall be authenticated by a Diplomatic or Consular Officer empowered in this behalf under section 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (40 of 1948) or, where there is no such officer by any of the officials mentioned in section 6 of the Commissioners of Oaths Act, 1889 (52 and 53 Vic.C.10), or in any Act amending the same;
  - (d) visited in India and intended to incorporate a company, in such case the incorporation shall be allowed if, he/she is having a valid Business Visa.

*Explanation - For the purposes of this clause, it is hereby clarified that, in case of Person is of Indian Origin or Overseas Citizen of India, requirement of business Visa shall not be applicable.}*

2. *Proof of Arrival in India :* As per rule 13(5) of the Companies (Incorporation) Rules, 2014, Business visa of foreign subscriber or foreign authorised representative should be attached or Overseas Citizen of India (OCI) or Person of Indian Origin (PIO) certificate should be attached with stamps of arrival in India.
3. *Details of foreign Body Corporate Subscriber :* Duly notarized and apostilled/consularised (wherever applicable) Board Resolution of foreign body corporate along with requisite details as per rule 16(2)(f) of the Companies (Incorporation) Rules, 2014 is required to be attached. {rule 16(2)(f)- if the body corporate is a company, certified true copy of the board resolution specifying inter alia the authorization to subscribe to the memorandum of association of the proposed company and to make investment in the proposed company, the number of shares proposed to be subscribed by the body corporate, and the name, address and designation of the person authorized to subscribe to the Memorandum;}



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4. *Address Proof and Certificate of Incorporation of foreign Body Corporate* : Duly notarized and apostilled/ consularised (wherever applicable) COI of foreign body corporate along with duly certified address proof is required to be attached.
5. *Applicability of PAN requirement for Foreign Nationals/Undertaking* : PAN undertaking of foreign subscriber or foreign authorised representative should be attached pursuant to General circular 12/2014 dated 22.05.2014:

2. It is hereby clarified that PAN details are mandatory only for those foreign nationals who are required to possess "PAN" in terms of provisions of the Income Tax Act, 1961 on the date of application for incorporation. Where the intending Director who is a Foreign National is not required to compulsorily possess PAN, it will be sufficient for such a person to furnish his/her passport number, alongwith undertaking stating that provisions of mandatory applicability of PAN are not applicable to the person concerned. The form of Declaration is required to be made in the proforma enclosed.

### VII. Chit Fund Companies

1. *Prohibition of transacting business other than chit business by a company* : As per section 12 of the Chit Funds Act, 1982 no company carrying on chit business shall carry any other business activities except with the general and special permission of the State Government. Some of the activities which are of a nature other than chit business indicated in MOA needs rectification. {S. 12 of the Chit Funds Act, 1982: Prohibition of transacting business other than chit business by a company.- (1) Except with the general or special permission of the State Government, no company carrying on chit business shall conduct any other business.}
2. *Prohibition of invitation for subscriptions except under certain conditions* : Chit Fund company cannot advertise its business as per section 5 of the Chit Funds Act, 1982. Please rectify the same in the MoA. {S.5 of Chit Funds Act, 1982: No person shall issue or cause to be issued any notice, circular, prospectus, proposal or other document inviting the public to subscribe for tickets in any chit unless such notice, circular, prospectus, proposal or document contains a statement that the previous sanction required under section 4 has been obtained and the particulars of such sanction.}

**Conclusion** : A further analysis of disposal trends at Central Registration Centre in respect of Incorporation forms has revealed that the rate at which disposals (D+1) are done has increased from 42% in April 2014 to 97% in September 2017(Table 1).

Average days for processing incorporation forms has reduced from 6-7 days in 2014 to less than half a day in September 2017(Table 2).

**Table 3** contains details of average days for CIN allotment/PAN-TAN allocation and company incorporation.

Thus it can be emphatically concluded that if more care and due diligence is exercised by professionals/ applicants while filing incorporation forms without leaving any scope for Resubmission Remarks by the ROC user, the timelines for processing these forms could be further crunched and 100% of



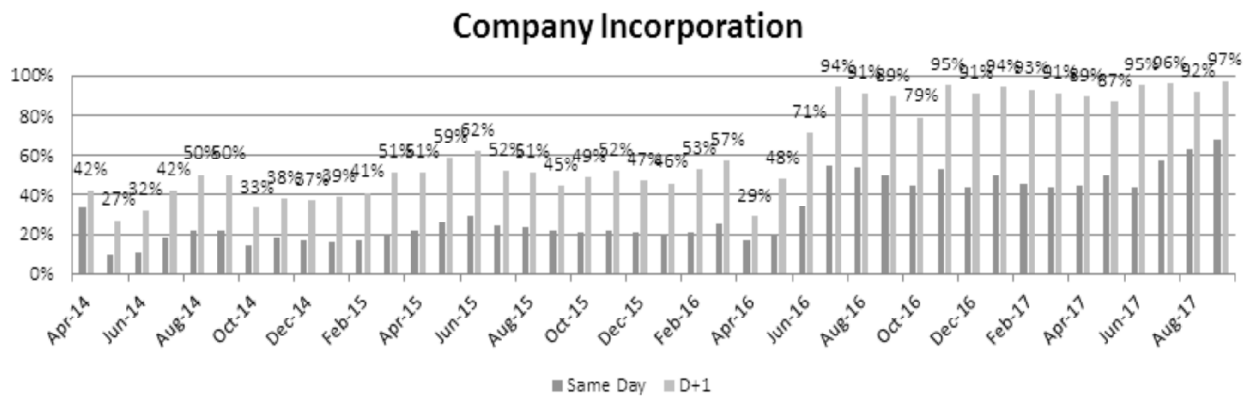
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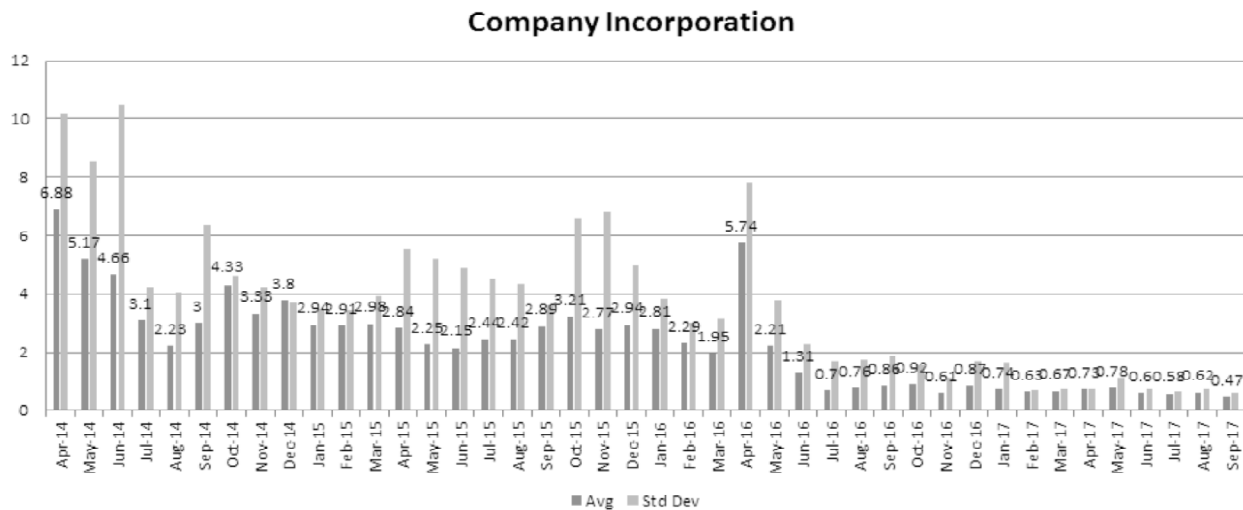


incorporation of forms can be achieved on the same day. Further, author requests professionals/applicants to take note of above Resubmission remarks while filling and filing incorporation related e-forms to avoid delay in processing by the ROC user. Thus, undoubtedly reduced processing time for incorporation of companies will greatly ease setting up of business in our country.

**Table 1**  
**CRC CIN Generation – Disposal Trends**



**Table 2**  
**Average Days for processing Incorporation forms**



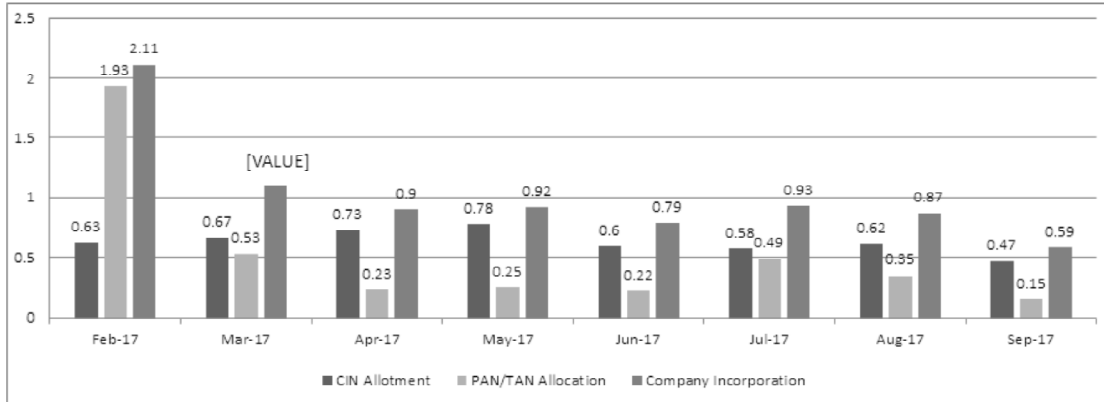


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**Table 3**  
**Average Days - Company Incorporation (CIN & PAN/TAN)**



CIN Allotment

Includes both Approved & Rejected incorporation SRNs (INC-7, INC-32)

PAN/TAN Allocation

Includes only Approved SPICe SRNs for which PAN/TAN is requested

Company Incorporation

Includes all above transactions

#Resubmission remarks, filing and disposal statistics courtesy-MCA.

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## The Art of Drafting Minutes

Dr. Joffy George\*

### Introduction

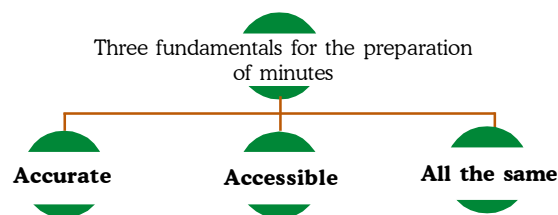
Taking minutes is more art than science. The major issue at stake here is not so much the taking of minutes but what is done after that to ensure accuracy and security. Prompt drafting and delivery is very important. The agendas written in advance and any presentations that are going to be seen by the board can be included. Only the actual discussion part of the meeting needs to be recorded later. This preparation of lot of materials ahead of time helps the job of getting the minutes drafted in a much easy manner.

The overall purpose of minutes is to preserve an accurate and official record of decisions made and actions taken. As such, minutes are direct *prima facie* evidence that a meeting was held, who attended and what happened. A number of legal requirements and concepts support this overall purpose.

Best practices will include having relevant members of management comment on the first draft. In most organizations, it becomes very apparent who makes clarity-enhancing comments to minutes and who is just editing for style. Clarity comments are more acceptable while style comments can be rejected in a major proportion. This is especially important in order to ensure that minutes remain consistent from meeting to meeting.

Minutes have to be accessible – clear, concise and easy-to-read. Plain language is the key to accessible minutes. Plain language is all about making information useful to the reader. Important information is easy to find, easy to understand and easy to use. Plain language shows clear thinking, respect reader's time and builds trust. Plain language shall have the key elements of logical organization of information, short sentences, active voice, common, everyday words and easy-to-read design features. These elements combine to make certain that those who look back at your minutes many years from now will be able to find and understand exactly the information that they need.

Consistency is another backbone of good minutes. Use the same fonts, styles, formats and design elements in all of your minutes to make it easier to find specific information. Include similar information when topics are reviewed regularly. Keep your processes consistent.



\* FCS, CMA, MBA, M.Com. The views expressed are personal views of the author and do not necessarily reflect those of the Institute.



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Use the three fundamentals of “Accurate”, “Accessible” and “All the same” when you prepare minutes. You will have a strong foundation of practice and good process if your minutes ever come into question. Your board and management will appreciate how easy the minutes are to read and understand. Most importantly, you will make your own life easier, because research is simpler when resolutions are short, clear and stand out on the page. Similarly, comments are fewer when language is clear and precise.

Because there’s a buzz about how important minutes are, people who draft minutes are paying more attention. This renewed interest is justified given that ‘contemporary writing is generally viewed as the best evidence of what transpired on a particular matter at a particular time.’ Directors are certainly asking Company Secretaries to draft the minutes more promptly and they’re asking Company Secretaries to review them, which they might not have done in the past. Companies with short-shrift minutes are changing their approach.

### “Bigger the Better” Vs. “Less is more”

There is definitely a trend for minutes to be longer and more detailed these days, especially among larger public companies. Minutes of Public Companies are quite lengthy and describe decisions and who voted for and against them. Few don’t fully appreciate the trend and have remained far too reticent. “Less is more” may be a great maxim for modern architecture but it doesn’t work for corporate minutes in the current litigious environment.

There has to be detailed minutes of all audit committee proceedings, given that the audit committee is responsible for questioning and interacting with a company’s Auditor. If the minutes reflect a discussion as to how the audit differences between management and the external Auditor are resolved, that’s the best protection for the audit committee. Some experts are concerned lengthier minutes might create a fresh crop of problems.

WorldCom case could have a chilling effect on board meeting discussions and minute-taking. Directors have started demanding for recording what they say in a meeting verbatim. That could make life for the Company Secretary very difficult. On the other side, a mania for recording everything that happens at board meetings could discourage directors from speaking candidly. If you get to the point where directors think everything they say is going to be recorded, you won’t get an open discussion. Besides, verbatim accounts can be misconstrued. Then we have others who say that Company Secretaries are trying to keep the minutes deliberately vague. ‘Bare-bones’ minutes might have been fine in the past, but many are convinced that today’s corporate climate calls for some real soul-searching about what should be included in the official record.

### Mediocre Approach

Minutes are not a literal transcript of who said what. Such a drafting is difficult and may dampen frank discussion of the issues. On the other hand, if minutes are without detail, they create an impression of inattention to the issues. Minutes need to suggest the nature of the discussion and capture a sense of the meeting. Some want minutes to be a record of what was decided and why. They are interested in them for business information and decision-making.

### Role of Directors to review

Directors have the duty to act honestly and in good faith with a view to the best interests of the company; and, exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. Minutes provide critical proof that directors have diligently carried out these duties. Worldwide, the statutes and wording will vary in each jurisdiction. However, every incorporating law will set out the duties of directors and most will have some version of acting in good faith and exercising reasonable care.



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Directors are free to augment the record with their own notes. Few Directors keep own noting of briefings and discussions at meetings as a safeguard. It is noteworthy that the Directors have the opportunity to review the minutes before it's confirmation. Directors can check that the minutes are the accurate summary of the meeting that took place and the actions and discussions that happened. This process is critical and has to be ensured before minutes are confirmed by the Board and put in the minutes book for all eternity.

A strong set of minutes demonstrates the due diligence of your directors, supports their business judgment and protects your organization. Minutes are direct evidence of appropriate practice on everything from procedural matters, like calling an annual meeting or appointing an officer, to satisfying your auditors that you have proper controls over reporting. Every size and type of organization will make sure its minutes are accurate, but how specific and formal the minutes are will depend on the organization and the potential consequences of poor minutes.

For minutes to provide the best protection for your directors and your organization, they must, above all else, be accurate. The minutes need to reflect what happened at the meeting – what decisions were made and who made them.

### **Third Party Review**

Company Secretaries have to keep the legal sense so that their minutes drafting will be appropriately reacting to the changes in the litigation environment. Overall, the minutes shall be a balanced account of all proceedings at the meeting. It is advisable to arrange for a review of the draft minutes by a legal expert since Company Secretary himself may not be always able to view their own drafting objectively. A third party review can be helpful at most instances. It is time that companies need to ask themselves to what extent they reflect a board acting on behalf of the shareholders, as well as using minutes to provide comfort for directors.

### **Use of Technology for managing Minutes**

The process of taking minutes varies a lot from company to company. Some Company Secretaries make extensive use of technology to manage the minutes and treat them similarly to other corporate records. Others simply keep the minutes in hardcopy under lock and key. Latter approach is still the most common, but it is starting to change as the problems inherent with hardcopy become more obvious and as demands for information increase.

While using technology for managing minutes, the following principles may be noted:

- All materials provided to the board / committee for information or consideration should be collected and retained by the Company Secretary. They should be stored and protected in a manner that deters tampering.
- Meeting briefing materials, meeting presentations, monthly operating updates and similar materials should be preserved with details.
- Objective of the management should be to ensure that the board has, on a timely basis, all material data relevant to issues that they will be acting on. If the board is not satisfied with the information being provided, it is their responsibility to instruct management on changes they desire.
- All board and committee minutes should be prepared promptly and presented for review and approval of all board members at the board's next regular meeting. Committee actions pursuant to authority delegated by the board should be presented for the information of all board members.
- Proposed resolutions should be incorporated in the Agenda itself, allowing directors the opportunity to consider their import as well as the proper substance and wording.



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- Once board and committee minutes have been approved, their integrity should be safeguarded, and they should not be altered in any manner without the express approval of the board.
- Final minutes should be made accessible to the board and management who are responsible for carrying out the board's directions, without being 'filtered'.

Advanced records management technology helps to ensure the accuracy and security of board minutes. Once the draft is done it enters the document management system. Any changes made to the draft after it enters the system will be automatically noted making it easy to track version control. As soon as the minutes are finalized an uneditable scan shall be made which can be added to the records management system.

Certain companies tape record their meetings which is transcribed so that there are very few errors or changes that need to be made once the minutes are written. After the minutes are approved a scan is taken and stored on the server and then the minutes themselves are stored in a locked, fireproof room.

Though different methods yield benefits, a major advantage to using technology is the ease with which searches can be done. It is not uncommon that you need to go back into the minutes and find where the board discussed certain issues. On the other side, going back through years of hard copy books would be much more tedious.

### **Being Reasonable**

Where there's smoke, there's fire. It's an old saying, but often this saying is accurate. It certainly appears to be the case in some recent scandals. Here, the minutes of board meetings take center stage. Minutes are close to the heart of most Company Secretaries and the idea that minutes could be altered or fabricated altogether is beyond the belief for most of them. The fact remains, however, that this is exactly what has been done at some companies over the last several years.

The altering or fabricating of minutes is a very serious issue. Not only it is a red flag about the integrity and honesty of senior management, but it is a sure sign that the policies and procedures governing the control of minutes and other legal records are seriously lacking. Not to mention the fact that it is also a criminal offense.

Though altering of minutes is not a widespread problem, some companies are letting the rest of the industry down by not establishing and enforcing robust records management processes when it comes to the board minutes. If these problems continue to occur and we as Company Secretaries are not able to establish best practice in the maintenance and integrity of minutes there is a real and serious risk that regulators might see.

### **Conclusions**

The issue of ensuring the integrity of board minutes is coming more into the public eye. For ensuring the trust of investing public something must be done to ensure integrity of minutes and other records. One of the challenges when it comes to establishing a standard for how minutes are dealt with is that almost every company has a different approach. There are almost as many theories on maintaining the minutes as there are ideas on taking them down in the first place.

By using technology, a chain of custody and complete record dates are established. It is very easy to see when the draft minutes were first submitted, what changes were made, by whom and when the final, approved version was filed. It would be impossible to go into the document and change it without a complete electronic record being established. With so many layers of integrity, one can be extremely confident that changing or falsifying minutes would be next to impossible. Even if you have the most honest board and management in the World it is not a reason to fall down in this area. No one ever thinks it will happen to them until it happens.





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In spite of their different approaches, the integrity of board minutes is of utmost importance and everyone in their profession has a responsibility to ensure it is maintained. Company Secretaries shall ensure that the problems with minutes are never the focus of a corporate scandal.

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