

ISSUES IN CORPORATE GOVERNANCE IN INDIA
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N. Vittal, Central Vigilance Commissioner

The word 'corporate governance' has become a buzzword these days because of two factors. The first is that after the collapse of the Soviet Union and the end of the cold war in 1990, it has become the conventional wisdom all over the world that market dynamics must prevail in economic matters. The concept of government controlling the commanding heights of the economy has been given up. This, in turn, has made the market the most decisive factor in settling economic issues.

This has also coincided with the thrust given to globalisation because of the setting up of the WTO and every member of the WTO trying to bring down the tariff barriers. Globalisation involves the movement of four economic parameters namely, physical capital in terms of plant and machinery, financial capital in terms of money invested in capital markets or in FDI, technology, and labour moving across national borders. The pace of movement of financial capital has become greater because of the pervasive impact of information technology and the world having become a global village.

When investments take place in emerging markets, the investors want to be sure that not only are the capital markets or enterprises with which they are investing, run competently but they also have good corporate governance. Corporate governance represents the value framework, the ethical framework and the moral framework under which business decisions are taken. In other words, when investments take place across national borders, the investors want to be sure that not only is their capital handled effectively and adds to the creation of wealth, but the business decisions are also taken in a manner which is not illegal or involving moral hazard.

Corporate governance therefore calls for three factors:

- a) Transparency in decision-making
- b) Accountability which follows from transparency because responsibilities could be fixed easily for actions taken or not taken, and
- c) The accountability is for the safeguarding the interests of the stakeholders and the investors in the organisation

Implementation of corporate governance has depended upon laying down explicit codes, which enterprises and the organisations are supposed to observe. The Cadbury's code in United Kingdom was the starting point, which led to a number of other codes. In India itself we have the Kumaramangalam Birla code as a result of the committee headed by him at the behest of the SEBI. Earlier we had the CII coming up with the code for corporate governance recommended by the committee headed by Shri Rahul Bajaj. The codes, however, can only be a guideline. Ultimately effective corporate governance

depends upon the commitment of the people in the organisation. The very first issue of corporate governance in India is, do the India managements really believe in corporate governance?

Corporate governance depends upon two factors. The first is the commitment of the management for the principle of integrity and transparency in business operations. The second is the legal and the administrative framework created by the government. If public governance is weak, we cannot have good corporate governance. The dramatic Enron case has highlighted how companies, which were the darlings of the stock market and held up as models for vigorous and innovative growth can ultimately collapse like a house of cards as they were based on fraud and dishonesty. The association of the accounting firm Anderson has also raised a doubt about the credibility of even well regarded global players.

In the Indian context, the need for corporate governance has been highlighted because of the scams we have been having almost as an annual feature ever since we had liberalisation from 1991. We had the Harshad Mehta Scam, Ketan Parikh Scam, UTI Scam, Vanishing Company Scam, Bhansali Scam and so on. I have been suggesting that we should learn from especially the United States to see whether we can replicate similar conditions in our capital market. It is not that the United States is free of scams. Right now the Enron issue is examined by a number of committees at different levels in the United States. At the end of all these examinations, they are likely to come with a better model. In the Indian corporate scene we must be able to induct global standards so that at least while the scope for scams may still exist, we can reduce the scope to the minimum.

With my experience as the Central Vigilance Commissioner, I find that the legal and administrative environment in India provides excellent scope for corrupt practices in business. As a result unless a management is committed to be honest and observe the principles of propriety, the atmosphere is too tempting to observe good corporate governance in practice. We should approach the corporate governance issue in India not merely from the point of view of the Companies' Act or the guidelines which can be issued like the Kumaramangalam code or the Bajaj code but look at the entire network of various rules and regulations impinging on business so that there is an integrated wholistic system created for ensuring that transparency and good corporate governance prevail.

The ethical temperature of any business or capital market depends on three factors. The first is the individual's sense of values. The second is the social values accepted by the business and industry. Let us not forget that when Harshad Mehta Scam took place, it was claimed that the manner in which the bank receipts were being treated was the prevailing norm. Perhaps a similar argument would have been given in the Ketan Parikh Scam. In other words, practices, which are later on found to be highly objectionable, become acceptable because that was the prevailing market practice. Social values will depend upon the standards set up by professional bodies like the Association of Chartered Accountants or Cost Accounts of India and so on. The third and perhaps the most decisive factor is the system. It is here we face the main challenge. Our system

encourages lack of corporate governance. Some of the specific steps that should be taken to improve corporate governance are the following:

a) The Sick Industries Companies Act (SICA) has become so convenient for the unscrupulous managements that we find in our country industries become sick, the industrialist do not become sick. BIFR has also been called the Bureau of Industrial Funeral Rites! It is high time we scrap the entire system. This will mean the abolition of SICA and organisations like BIFR there under. Mere tinkering with the system by making amendments is not going to improve the situation.

b) The entire banking system and the Banking Secrecy Act call for a review. Our banking system is such that if you borrow one lakh of rupees, you are afraid of the bank but if you borrow ten crores of rupees, the bank is afraid of you. With the amount of NPA going beyond 58000 crores, it is high time that we amend the Banking Secrecy Act to reveal those who are wilful defaulters. The Narasimham Committee's recommendation about putting this condition at the time of issuing new loans can cover only to some extent the moral hazard. It is high time that practice of disclosing the name of wilful defaulters is made more practical and timely. Publishing the names in the case of suits, which have been filed is of no value at all because by that time the matter is all but over.

c) Laws like the Benami Transactions Prohibition Act and the Prevention of Money Laundering Act should be implemented effectively and vigorously. Agencies like the CVC can be used to ensure that corrupt practices are effectively punished because it is the atmosphere, which encourages proper corporate behaviour. In India today we have a system where the level of public governance is very poor. There is no fear of punishment at all. In such a situation it is only a saint who will be observing strictly the rules of corporate governance.

I do not deny that there are very honourable companies in India, which are following ethical practices but if the general environment is such that there is no fear of punishment, people are bound to be tempted to indulge in corrupt practices and moral hazards, which go totally against corporate governance.

So far as the public sector enterprises are concerned, thanks to the commitment, transparency and integrity of Shri Arun Shourie, the Minister concerned, a lot of transparency has brought into the system of disinvestment. Nevertheless, we can expect at least for the ten years or so, the public sector will remain. It is necessary to bring in a sort of hands off relationship between the administrative ministries and the public sector. As Chairman of the Committee on Guidelines in 1997, I had suggested to the Government a code of conduct to be observed by both administrative ministry and the public sector enterprises (Annexure).

Unfortunately, the government took the technical stand that the recommendation was beyond the scope of terms of reference of the Committee. If today we want really to

bring in better corporate governance in the public sector, introduction and strict observance of the code mentioned above is necessary.

In the ultimate analysis, it is the observance of corporate governance at the enterprise level or at the level of a body like the capital market will depend upon the top managements in-charge of the organisation or the body. It is necessary that they remember the three way tests for the ethics prescribed by Normal Vincent Peale and Kenneth Blanchard in their book, The Power of Ethical Management. The three-point test is as follows:

- a) Is the decision you are taking legal? If it is not legal, it is not ethical.
- b) Is the decision you are taking fair? In other words, it should be a win-win situation for both the parties entering into an agreement or if it is a general policy or a multi-level agreement, there should be equal risk and reward to all concerned. If it is not fair then the decision is not ethical.
- c) The third decision is what can be called the Eleventh Commandment test. It is said by cynics that there are Ten Commandments in the Bible but there is Eleventh Commandment, which is hidden. You can violate all the Ten Commandments but Thou shall not be found out. If the decision you are taking is such that if it is known in the public through the media, will you feel ashamed? If you are feeling ashamed, then it is not an ethical decision. The embarrassment caused by the Tehalka.com expose was because those figuring in the tapes were found guilty of violating the Eleventh Commandment.

Ultimately, corporate governance is the net result of the individual sense of values, the values held in society or part of a society like professional bodies or business associations and finally the system of public governance. If those who violate the norms are effectively punished then there is a fear and there will be adherence of the principles of corporate governance.

I was told that in a training programme attended by one of the bankers from India, a question was asked: If you are walking alone on a road and find a 10000 dollar bundle, will you pick it up? 90% said that they would. When the same question was modified slightly: You are walking alone on a road and there is a 10000 dollar bundle on the road but there is a 10% chance that there is a hidden camera somewhere and there is a 10% chance that the camera may be working, will you now pick up the bundle? 90% said that they would not. What we lack in India today, which comes in the way of corporate governance is, there is a feeling that violators first may not be detected and even if detected, they can get away literally with murder. We will therefore have to focus very effectively on creating proper public governance and making changes in the various regulations impinging on the working of an enterprise or a body like the capital market, if we want to usher in an era of better corporate governance in the country.

CODE OF CONDUCT & ETHICS FOR THE PSEs & THE ADMINISTRATIVE MINISTRIES

1. The objective of the code is to prescribe standards of integrity and conduct that are to apply to all the executives and employees in the PSEs and the officers and employees of the administrative ministries concerned with them. The principles stated below underlie and supplement the rules and laws regulating the public and private conduct of the executives / officers and employees in both the PSEs and the administrative ministries.

2. Objectives of the public sector enterprises

- a) The role of the executives / officers is to assist the PSE to achieve its objectives as spelt out in the charter constituting the setting up of the enterprise.
- b) It is the obligation of every executive / officer and employee of the PSE / administrative ministry to uphold the Rule of Law and respect for human rights solely in the public interest while making recommendations or exercising administrative authority. He or she must maintain the highest standards of probity and integrity.
- c) In relation to the general public, the executives / officers and employees in the PSE / administrative ministries should conduct themselves in such a manner that the public feels that the decisions taken on the recommendations made by them are objective and transparent, and are not calculated to promote improper gains for the political party in power or for themselves or for anyone else. This would be particularly significant so far as the customers of the public service are concerned. This will apply also mutatis mutandis to the officers and employees in the administrative ministry concerned with the PSE.
- d) Executives / officers and employees of the PSEs / administrative ministries should not seek to frustrate or undermine the policies, decisions and actions taken in the public interest by the management by declining or abstaining from action which flows from the management decision. Where following the instructions of the superior authority would appear to conflict with the exercise of impartial professional judgement or affect the efficient working of the enterprise, he she should set out points of disagreement clearly once in writing to the superior authority or seek explicit written instructions. This will apply also mutatis mutandis to the officers and employees in the administrative ministry concerned with the PSE.
- e) Where an executive / officer or employee of the PSE has reasonable grounds to believe that he or she is being required by the superior authority to act in a manner which is illegal or against the prescribed rules and regulations, or if any legal infringement comes to his or her notice, he or she should decline to implement the instruction, and would also have a right to bring the facts to the notice of the Chairman / Managing Director of the enterprise or the Secretary of the administrative ministry concerned. It shall be incumbent to examine the issue carefully and take action appropriately. This will apply also mutatis mutandis to the officers and employees in the administrative ministry concerned with the PSE.
- f) The religion, region, caste, language or the executive will have no influence on the working in his official capacity.

3. Conflict of interest and peer pressure

- a) Executives, officers and employees in the PSEs / administrative ministries should refrain from decisions in respect of which they have reason to believe that they are calculated to benefit any particular person or party at the expense of the public interest.
- b) Every executive, officer or employee in the PSE / administrative ministry shall disclose any clash of interest when there is conflict between public and private interest, or he / she is likely to benefit from any act of omission or commission while discharging his / her functions.

- c) Executives, officers and employees in the PSE / administrative ministries should be alert to any actual or potential conflict of interest, financial or otherwise, and should disclose this to their superiors, whether the conflict covers them or their family members.
- d) Executives, officers and employees in the PSE / administrative ministries should maintain their independence, dignity and impartiality by not approaching politicians and outsiders in respect of service matters or private benefit. They should exercise peer pressure to dissuade those who do so within the organisation and set in motion disciplinary proceedings against such persons.

4. Accountability and responsiveness to the public

- a) Consistent with accountability to the superior officers and ministers in accordance with provisions governing PSE / administrative ministry, the executives, officers and employees in the PSEs should also practise accountability to the people in terms of quality of service, timeliness, courtesy, people orientation and readiness to encourage participation of, and form partnership with citizen groups for responsive management.
- b) Executives, officers and employees in the PSEs / administrative ministries should be consistent, equitable and honest in their treatment of the members of the public, with particular care for the weaker sections of society and should not even be or appear to be unfair or discriminatory. Decision in pursuit of discretionary powers should be justifiable on the basis of non arbitrary and objective criteria.
- c) Executives, officers and employees in the PSEs / administrative ministries should accept the obligation to recognise and enforce customer's right for speedy redressal of grievances and commit themselves to provide services fo declared quality and standard to customers.
- d) Executives, officers and employees in the PSEs / administrative ministries should respect the right of public to information on all activities and transactions of the organisations except where they are debarred in the public interest from releasing information by provisions of law or by valid instructions.

5. Concern for value of public asset and funds

The employees in the PSE / administrative ministry should avoid wastage and extravagance and ensure effective and efficient use of the public money within their control. In cases of disputes or grievances efforts must be made to resolve them quickly. No unlawful stoppage or disruption of work or damage to the assets of the PSE should be resorted to.

6. Non abuse of official position

Employees of PSEs / administrative ministries have a responsibility to make decisions on merits. They are in a position of trust. They must not use their official position to influence any person to enter into financial or other arrangements with them or with any one else. They must not abuse their official position to obtain a benefit for themselves or for someone else, in financial or some other forms. This will apply also mutatis mutandis to the officers and employees in the administrative ministry concerned with the PSE.

7. Continuous improvement through professionalism and teamwork

It shall be the duty of every employee of the PSE / administrative ministry to continuously upgrade his /her skills and knowledge, strive for creativity and innovation and nurture the values of team working and harmony. He / she should promote and exhibit public and private conduct in keeping with the appropriate behaviour and standards of excellence and integrity. He / she should support the juniors in the latter's efforts to resist wrong or illegal directives and in abiding by the Code of Ethics. At the same time, they should reward good work and punish any dereliction of duty and obligations based on objective and transparent criteria.
