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Books

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Contributions to books

- Sharma T., Kwatra, G. (2008) Effectiveness of Social Advertising: A Study of Selected Campaigns, Corporate Social Responsibility, Edited by David Crowther & Nicholas Capaldi, Ashgate Research Companion to Corporate Social Responsibility, Chapter 15, pp 287-303.

Journal and other articles

- Schemenner, R.W., Huber, J.C. and Cook, R.L. (1987), "Geographic Differences and the Location of New Manufacturing Facilities," Journal of Urban Economics, Vol. 21, No. 1, pp. 83-104.

Conference papers

- Chandel K.S. (2009): "Ethics in Commerce Education." Paper presented at the Annual International Conference for the All India Management Association, New Delhi, India, 19–22 June.

Unpublished dissertations and theses

- Kumar S. (2006): "Customer Value: A Comparative Study of Rural and Urban Customers," Thesis, Kurukshetra University, Kurukshetra.

Online resources

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Website

- Kelkar V. (2009): Towards a New Natural Gas Policy, Economic and Political Weekly, Viewed on February 17, 2011 http://epw.in/epw/user/viewabstract.jsp

CORPORATE GOVERNANCE IN INDIA: TOWARDS INTROSPECTION AND SOLUTIONS

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ABSTRACT

In the era of fast moving economy, larger emphasis has been given to the mandatory disclosures to be provided to the stakeholders who don't have otherwise easy access to the information of the enterprises. The corporate governance has been adopted by many leading Indian companies and the information provided by them have been taken to be trustworthy and recognized at their face value. But, the recent Satyam scam and several others have put the process of corporate governance under scanner. One sobering conclusion from Satyam episode is that no matter how good the regulatory system may be, it can't always prevent frauds. The best antidote to frauds is good management. The paper is an attempt to examine the disclosure practices of the organizations of today. The authors advocate that it is not the mere figures which get reflected in annual statements but it is the ethics and values which the promoters and managers deeply succumb to. Hence, the authors suggest that the managers have to get rid of the mentality of "nothing succeeds like success", and "end justifies the means". Their guiding principles should find their roots in the Gandhian philosophy which advocates the sanctity of means.

KEYWORDS

corporate governance, corruption, accountability, corporate ethics.

BACKGROUND AND RATIONALE OF CORPORATE GOVERNANCE

Corporations pool capital from a large investor base both in the domestic and in the international capital markets. In this context, investment is ultimately an act of faith in the ability of a corporation's management. When an investor commits money in a corporation, he expects the board and the management to act as trustees and ensure the safety of the capital and also earn a rate of return that is higher than cost of the capital. In this regard, investors expect management to act in their best interests at all times and adopt good corporate governance practices. Corporate governance is a concept, rather than an individual instrument. It includes debate on the appropriate management and control structures of a company. It includes the rules pertaining to the power relations between owners, the board of directors, management and the stakeholders such as employees, suppliers, customers as well as the public at large.

The simplest and most commonly quoted definition of corporate governance is that provided by the Cadbury Report (U.K.): "Corporate governance is the system by which businesses are directed and controlled." Another all encompassing definition comes from the preamble of OECD Principles stating that "Corporate governance involves a set of relationships between a company's management, its board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined". Hence, corporate governance is the acceptance by management of the inalienable rights of shareholders as the true owners of the corporation and of their own role as trustees on behalf of the shareholders. It is about commitment to values, about ethical business conduct and about making a distinction between personal and corporate funds in the management of a company.

CORPORATE GOVERNANCE IN INDIA

India's version of corporate governance is basically an 'Anglo-American' adaptation. Some of it has been drawn out of the Sarbanes-Oxley Act, which came up in the US after a series of accounting scandals. Corporate governance reforms in the US and the UK have focused on making the board, independent of the CEO. In India, the focus is not much on the 'conflict between management and owners', but on the 'conflict between the dominant shareholders (invariably the promoters) and the minority shareholders.

The formal practice in corporate governance was initiated in 1998 with the publication of a voluntary code- the Desirable Code of corporate Governance by CII. The first formal effort in this direction was done by SEBI by evolving a regulatory framework for the listed companies following the recommendations of the Kumarmangalam Birla Committee report in February, 2000. The Ministry of Corporate Affairs had appointed Naresh Chandra Committee on Corporate Audit and Governance in 2002 in order to examine various corporate governance issues. It made recommendations in two key aspects of corporate governance: financial and non-financial disclosures: and independent auditing and board oversight of management. The Government of India is making all efforts to bring transparency in the structure of corporate governance through the enactment of Companies Act and its amendments. (Business Portal of India Corporate Governance.htm). The Report of SEBI committee on corporate governance under the chairmanship of Mr. N.R. Narayanmurthy (2003) had mainly focused on strengthening the responsibilities of audit committees; improving the quality of financial disclosures, including those related to party transactions and proceeds from initial public offerings; requiring corporate executive boards to assess and disclose business risks in the annual reports of companies; introducing responsibilities on boards to adopt formal codes of conduct; the position of nominee directors; and stock holder approval and improved disclosures related to compensation paid to non-executive directors.

SOME BITTER TASTES - RECENT EXPERIENCES

A study called 'Early Warning Signals of Corporate Frauds', conducted by the Pune-based India Forensic Consultancy Services, a forensic accounting and education firm, from January 2008 to August 2008 has come out with shocking revelations about corporate frauds. The study investigated 11 sectors, viz. real estate, retail, banking, manufacturing, insurance, public sector undertakings, mutual funds, transport and warehousing, media and communications, oil and gas and information technology. The study has revealed that at least 1,200 companies out of 4,867 companies listed on the Bombay Stock Exchange and 1,288 companies listed on the National Stock Exchange as on March 31, 2007, including 25-30 companies in the benchmark Sensex and Nifty indices, have messaged their financial statements. Another revelation is that the manufacturing sector, which contributes about 28 per cent of India's gross domestic product, is the one most ridden with fraudulent behavior mainly due to the peculiar nature of the business and the procedural complexities inherent in this sector. Real estate and public sector undertakings came second.

CORPORATE GOVERNANCE - A REPRIEVE OR ILLUSION

With the introduction of corporate governance concepts based on the Kumar Mangalam Birla Committee's recommendations in 2000, investors developed a confidence of being protected from the mal-effects of the corporate frauds. However, the Satyam episode proved to be an aberration of the first order. One sobering conclusion from the Satyam episode is that no matter how good the regulatory system may become, it cannot always prevent frauds. The time has come for Indian companies to make their "corporate governance" reports more useful for investors, rather than a procedural formality. The best antidote to frauds is good management.

Noted legal expert and then Union Science and Technology Minister Kapil Sibal expressing government's disappointment over the Satyam Computers fraud remarked that careless role of independent auditors in frauds of corporate houses let the government feel down. "The system needs to be changed. You have the independent regulators, the independent directors, independent auditors in the context of the Companies Act. And what have these independent auditors done? I don't want to take examples. But they have let us down."

Mr. Sibal also suggested setting up a body on the lines of the Election Commission to oversee auditors' functioning. He added, "We need to change the system, on the basis of which we appoint these independent regulators. We need to make sure that they are not necessarily accountable directly to government or that they have a secure tenure through which they can attain independence like for example the Election Commission, where term of commissioners cannot be interfered with except through very stringent procedures of removals," (ANI)(/independent-auditors-let-us-down-in-corporate-frauds-kapil-sibal_100145008.htm)

CORPORATE GOVERNANCE - WHY WE FAIL?

Monks and Minow have noted, "Corporations determine far more than any other institution the air we breathe, the quality of the water we drink, even where we live. Yet they are not accountable to anyone" (Power and Accountability). In Nell Minnow's unforgettable words, "boards of directors are like subatomic particles--they behave differently when they are observed." More vigilant shareowners are also more likely to be "socially responsible," in the true meaning of that term, increasing triple bottom line returns (adding economic, environmental and social value).

The growing importance of the Corporate Sector calls for greater transparency and availability of data. Furthermore, the withdrawal of direct regulatory functions by the Government such as industrial licensing, import licensing, capital issues and exchange controls means that a number of avenues of collecting data have ceased to exist while the need for them has grown for the purposes of indicative planning, forecasting and research. There are more than five lakh companies registered in the ROCs but the actual number of companies, which are operating, is not known. This situation seriously affects the reliability of various estimates. An exercise conducted in March 1999 indicated that about 47 per cent of the registered companies filed their balance sheet for the year 1997-98 with the ROCs. RBI studies on company finances are based on the annual reports and balance sheets of certain sample companies. In the absence of a reliable population frame, the RBI is not in a position to apply suitable sampling techniques. Further, the RBI is also constrained by the poor response from companies and non-receipt of annual reports directly from the ROCs. The RBI's findings are thus based mainly on the data of responding companies and the Fact Sheets prepared by the DCA. The reliability of the estimates of gross savings and investment in the private Corporate Sector arrived at by blowing up the sample results available from the RBI's studies in proportion to the coverage of the paid-up capital (PuC) of the sample companies to the PuC of all companies has been questioned time and again.

The Working Group under Dr. Arun Ghosh on Modernization of Indian Statistical System strongly recommended a one-time census of all genuine and operating companies to identify all futile and nonperforming companies for de-registration. According to the group, the law may need an amendment and perhaps an Ordinance may be passed initially, followed by a Bill for presentation to Parliament, to enable this. Corporate winding up is a long-drawn procedure at present, but if the law provides for the disposal of assets and liabilities, a massive 'cleaning-up' operation could occur. The working group also recommended that after a grace period of 3 months, any company which does not submit its accounts for the previous year be 'de-registered', and the fact be properly notified (Corporate Sector statistics.htm).

WHAT IS THE WAY-OUT?

Warren Buffet in his cautionary advice to share holders has urged "Both the ability and fidelity of managers have long needed monitoring. If able but greedy managers overreach and try to dip too deeply into the shareholders' pockets, directors must slap their hands. Overreaching has become common but few hands have been slapped." The corporate laws of any country emphasize on a corporate report which is supposed to provide a true picture of the states of affair in the company. The failure of the system in several instances have questioned the very purpose of the two institutions that are supposed to be watch dogs for good corporate governance : independent directors and external auditors. In such situations, the voice of inner conscience can offer the solution.

ETHICS IN BUSINESS- THE GANDHIAN INSPIRATION

The recent failure of Satyam and other business cases of fraud and unfair reporting has caused the faith in the general public and investors in particular dived to an all time low and people woke up to the fact that ethics and business can never be divorced, a fact Gandhiji pointed out ages ago. This is being recognized more and more in business. "Trusteeship in business, the way shown by Gandhiji, is the only way to succeed in the long run," said Anu Agha, ex-chairperson of Thermax in a recent conference on Humane Capitalism. Gandhi's principles of trusteeship, which affirms that the rich should hold themselves as trustees of the wealth they possess, and his discernment that the means are as important as the ends, are eternally relevant for responsible business. Any business enterprise that has its eye only on maximizing wealth and profit loses its moral and social legitimacy to exist and operate. Trusteeship principle advocated by Gandhiji provides a means of transforming the present capitalist order of society into an egalitarian one. It is in many ways different from the concept of socialism, as Gandhiji did not believe in using force either by the individual or by the state. Trusteeship, as a concept is not absolute but relative in time and space to the needs of the society. The essence of trusteeship as a moral principle however is not relative but absolute: what is relative or tentative is the framework of practical economic arrangements based on the moral philosophy. When the principle of trusteeship is accepted by any individual voluntarily and without any reservation, certain concomitants flow from such acceptance:-

1. Simplicity of life style, the rejection of all extravagance and the flaunting of wealth is the first and the immediate result.
2. It rules out any wrong means outside the legal and moral framework, in his pursuit of wealth. Even surplus wealth already in one's possession is regarded as wealth held in trust for society by an individual, to be utilized only for the benefit of society. Where then is the question of acquiring more wealth by adopting unfair or unjust or unfair means?
3. Any activity harmful to society (although it may result in wealth to particular institution or individual) has thus to strictly avoided.
4. One has to treat others as human beings and not as units of labour to be purchased at the lowest price for increasing production and maximizing profits.
5. One stands committed to giving full opportunities to workers in the enterprise, to learn to take greater responsibility, and to participate in decision making at all levels, according to the actual and potential capacities. This includes the decision, of the formula for apportioning profits and surpluses generated by the institute.
6. Since trusteeship presupposes voluntary acceptance, all violence is scrupulously avoided. Trusteeship is promoted only by love and persuasion.

In an excellent review of the Gandhian philosophy and its implications for today's business and policy related decisions Pani (200) suggests few things which the management needs to take into consideration for being more accountable. The major problem that the business managers of today face is a constant challenge to showcase their competence, dynamism through the scintillating statements of accounts as their perks and career advancements depend upon how indispensible you pretend yourself for the organization. Such a mentality seems to be proving disastrous to the business and also to the humankind. The way out is in Gita- the 'nishkam karma'. If one performs his duties for duties sake without being concerned about the results then what is undesirable in the action is eliminated. According to Gandhi, man is always in search of godliness (devatva) and this can be achieved only through the performance of one's duties for duties sake. This also means that the actions, which cannot be carried out without aiming at the fruits derived from them, should not be taken up; they should be discarded. Thus activities involving falsehood, violence, exploitation, etc. are automatically discarded as undesirable. It can be summed up in the statement of Norman Vincent Peale "integrity pays, you need not cheat to win." The power of ethical management provides much needed message-that acting ethically is the vital responsibility of any leader.

CONCLUSION

It is said "The mother earth has enough for everyone's need, but not enough for anyone's greed". If the business owners and managers follow the righteous path, it is a win-win situation for the all- a true corporate social responsibility. Although it seems difficult, but not impossible as we have the examples of success in the case of Infosys, Bajaj industries and Tatas. All it needs is an effort with pure heart. It took over three centuries for the modern industrial civilization to reach the present stage of development. In this civilization, morality and ethics do not have a place they deserve. And to replace this civilization with a real modern civilization based on morality, equality and human dignity would not be a quick fix affair. Modern civilization, based as it is on violence, competition and exploitation, has brought about a socio-economic and political infrastructure, which supports, sustains and promotes it. This infrastructure will have to be dismantled and a new one put in place for a new civilization to take roots. But we know that the building of the infrastructure cannot be independent of the building of the mind and soul of a new civilization. It means a paradigm shift, which does not come in a day; it takes time to fructify.

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