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Chapter 10 – Corporate governance in India: A confluence of ethos and change

by
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Introduction

Attempting to understand the nature and evolution of corporate governance in India is nothing short of a challenge. India is lauded for having one of the best sets of corporate governance laws, founded on its socialistic values and community oriented traditions, with firms such as the Tata Group having had a long tradition of very high quality corporate governance (India Knowledge @ Wharton, 2007). However, the poor implementation of these laws makes their effectiveness a questionable reality (Chakrabarti 2005). Additionally, the Indian corporate governance model does not neatly fit into either of the two traditionally accepted models, the Anglo-Saxon shareholder model and the corporate wealth maximisation model. Instead, literature has alluded to the existence of a hybrid system of governance in India, which uses a mix of ‘the outsider-dominated market-based systems of the UK and the USA, and the insider-dominated bank-based systems of Germany and Japan’ (Sarkar & Sarkar 2000, p. 303). If this is correct, what are the distinguishing features of this hybrid Indian model? Further, the types of governance issues that are prominent in the literature seem to be at odds with the issues that are prominent in India. For instance, recent research by Rajagopalan and Zhang (2008) observed that a formal separation of ownership and control does not exist in the Indian corporate sector, which implies that agency theory is not as much an issue there as it is in the West. What then are the issues in Indian corporate governance?

This chapter begins by presenting the evolution of corporate governance in India from its pre-independence status to its current position. In doing so, it reveals the nature of the Indian corporate governance model, delineates its core aspects and its main issues, and explores the hybrid characteristic alluded to by researchers. The discussion also highlights the fact that Corporate Social Responsibility (CSR) is an important and inseparable component of the Indian governance model and not an isolated organisational practice. Finally, the chapter presents a discussion of the governance model using empirical data from interviews with nine corporate executives in India, across three types of organisations – a public sector government owned company, a professionally managed family organisation and a trust.
With India expected to join the United States as one of the world’s three largest economies along with China in 2030 or earlier, this research is as timely as it is vital to understand the global conduct and the aggregate ‘corporate footprint’ of firms in terms of governance and CSR (Mehra 2006). A major gap in the literature is also addressed by this research as much of the governance literature focuses on North American, European and UK experiences, with a paucity on India (Gollakota & Gupta 2006; Dwivedi & Jain 2005). Without doubt, India offers unparalleled opportunity to study in real-time, the co-evolution of institutional, legal and corporate mechanisms related to the emergence of corporate governance (Rajagopalan & Zhang 2008).

**Evolution of Indian corporate governance**

The evolution of corporate governance in India incorporates the industrial evolution, particularly in relation to ownership structure and regulations.

**The influence of ownership structure on governance**

Gollakota and Gupta (2006) provide a concise summary of the governance in India from pre-independence in 1947, through the liberalisation in 1991, to the globalised scenario in 2006 through four phases.

Phase 1 dates prior to 1947 and is termed ‘pre-independence pre-1947’. The major theme of this period was ‘eco-centrism’. It was dominated by family firms and community-based firms that acted with thrift and conservatism, provided for multi-generational continuity, emphasised corporate responsibility as well as family and community interests, and overall, sought long-term survival and stability whilst ensuring that they acted in the best interests of the wider community (Gollakota & Gupta 2006).

Phase 2 saw the birth of the License Raj where businesses, through government control, were required to have licenses to operate, expand and change location. This phase extends from post-independence 1947 to 1981. Public enterprises became prominent and in combination with the prevalent tradition of corporate responsibility, were able to extend the concept to one of social altruism. The nationalised industries were still operated by families. The government retained only equity and appointed directors, leaving control to family members (Goswami 2000). However, the regulation or licensing system forced a change in the corporate mentality and paradoxically reduced the very social welfare that it sought to achieve. The licences created entry barriers which weakened competition and created monopolies and oligopolies (Gollakota & Gupta 2006). At the same time, interlocking directorates and inter-corporate investments grew. These conditions, along with high taxation rates – corporate sector at 55 per cent and personal rates at 98.75 per cent – led to large tax avoidance activity, two sets of accounts, cash transactions and the siphoning off of profits to owners (Gollakota & Gupta 2006).

Phase 3 was the next decade (1981-91) and the social justice concept was relentlessly pursued. Professionalism of ownership and knowledge took centre stage with the emergence of professional entrepreneurs and technologies, especially in the financial services sector. These professional firms also pursued corporate responsibility as an objective. They engaged investors and key employees in decision making, and were
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rewarded with equity options and capital appreciation. Companies also saw government as a partner in setting corporate governance reform and innovation. At this juncture, the selfish motives that appeared in Phase 2 were still being held in abeyance.

In 1991, India introduced large scale liberalisation. This was Phase 4. As expected, foreign ownership entered the scene and with it came another unexpected imported item – egocentrism. Regulatory reforms were also unleashed. Banks were deregulated, the license regime was dismantled, tariffs were reduced, import licenses were disbanded, and state owned enterprises sold off. Economic changes also occurred due to the large deficits and low foreign exchange reserves and the borrowing from the International Monetary Fund. The performances of public enterprises were poor. Interestingly, the multinational firms engaged in socially responsible activities to strengthen Indian communities. This ensured continuity with the social welfare theme that existed from pre 1947.

However, the ownership structure had negative implications on governance, and it is crucial to know this in attempting to understand and analyse the Indian governance model. Family firms generally displayed a relatively high proportion of concentrated holdings by directors and relatives and inter-corporate holdings (Ali Khan 2006). The directors’ shareholdings had a negative effect on firm performance as the large equity holdings meant a low incentive to take account of general shareholders’ interests (Dwivedi & Jain 2005). Gollakota and Gupta (2006) observed that these firms were able to ignore minority shareholders and tunnel funds to controlling shareholders at the expense of the company and other shareholders. High performance was enacted through family support, moderate CEO pay, ego-centric values, thrift, conservatism, and stability, but with little regard to minority shareholders. In addition, they argue that succession planning was not objective because often a new CEO has family ties with questionable independence. And Leahy (2008) argues that few were actually willing to question the leaders, which reduced the power of the board.

Alongside the family firms the government owned firms, by then termed as Public Sector Undertakings (PSU) were, as mentioned earlier, reporting poor financial performance. These firms, although guided by altruism and broad stakeholder orientation, were constrained by bureaucracy and lack of incentives.

A third group, the professionally managed firms, pushed governance reforms through voluntary codes with similar provisions to SOX. Gollakota and Gupta (2006) argue that professionally managed firms have taken the lead in self governance because they realised that better governance allowed them access to cheaper financing. For instance, Infosys’ corporate governance has been described as ‘best practice’ (Khanna & Palepu 2004). The authors found that Infosys adopted a shareholder model in contrast to the often-used Indian stakeholder model: as a signal of its high quality; to benefit indirectly from positive externalities that its adoption decision has on other software firms in India; and as a consequence of its CEO’s ideological bent. They argue (p. 501) that ‘software firms, and especially Infosys’ exposure to global product markets first, and then global talent markets, seems to have driven some adoption of shareholder-style corporate governance’.
The banking sector too played a prominent role in India's governance reform (Balasubramaniam 2005; Dwivedi & Jain 2005). As Balasubramaniam (2005, p. 1399) noted:

The changeover from administered controls era to liberalization era following the implementation of financial sector reforms and prudential norms have brought about new issues and challenges for implementing corporate governance guidelines in the banking sector ... Historically, the banking sector has been used by the government for implementing economic policies and influencing industrial development.

Dwivedi and Jain (2005) observed that banks and Financial Intermediaries (FI) are both lenders to, and owners of, business houses - with FIs holding large blocks of shares in most companies. They claim that generally, block holdings increase firm performance as they are better able to monitor performance, are represented on the board and have the power to influence decision making. In India, shareholders are made up of foreign institutional shareholders, FIs, business houses and the public. Whereas public shareholders are fragmented, the other three categories have concentrated block holdings. Most business houses have representatives on boards, which they claim can assist in aligning interests with the owners at low shareholdings but at high shareholdings can lead them to change from concentrating on maximising wealth to maximising technological leadership or market share. Their study found that Indian institutional shareholdings were not linked to better firm performance - which they argue could be due to: firstly, FIs also being lenders to companies; or secondly, the distorted incentives of government ownership and management of FIs; or thirdly, incentives for nominee directors to vote with management (also see Goswami 2000).

The influence of regulation on governance

Leahy (2008, p. 1) describes the regulatory aspects of India's corporate governance framework.

India’s formal first corporate governance framework for listed companies was formulated in 2000 by the stock market regulator, the Securities and Exchange Board of India (SEBI). This was followed by efforts to tighten Clause 49 of the listing agreement between companies and India’s stock exchanges to increase the responsibilities of company boards and enhance the role of independent directors. Today, stringent rules govern the composition of boards, such as a requirement that in cases where the chairman is also an executive director at least half the board be independent.

Independence is defined (Leahy 2008) as having no monetary relationship with company or its shareholders other than the director's fee, not being related to key people in the company and not having been an executive with the company in the preceding three years.

Changes to the Indian Companies Act have made it mandatory that companies with paid up capital of 50 million rupees set up an audit committee. In addition the SEBI has made this mandatory for all listed companies. Commentators have seen this as an area of weakness in the past with instances of manipulation and irregularities in Indian accounting and auditing practices (Ganguli 2001, cited in Al-Mudhaki & Joshi 2004). More
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Technically, section 292A was introduced into the Companies Act in 2000 which requires all companies to provide a Certificate of Compliance with Corporate Governance procedures. In addition this was added to the Institute of Chartered Accountants' six mandatory standards and the listing rules as prescribed by the SEBI (Ali Khan 2006).

How was the regulation effective? Leahy (2008) argues directors can have long associations but still be classed as independent. A study by AT Kearney, AZB & Partners and Hunt Partners found that 90 per cent of companies in 2005-06 appointed independent directors using referrals from the CEO or chairman through their personal networks. Moody's found that 75 per cent did not have a nomination sub-committee, showing leadership succession was in the hands of controlling shareholders. Al-Mudhaki and Osihi's (2004) survey in 2002 of Indian listed companies found that only 56.2 per cent of companies had established audit committees; only 14 per cent had independent directors whilst 90.2 per cent had non-executive directors. Also, Leahy (2008) observed that the system lacks shareholder activism and has no statutory jail terms as in SOX - although firms can be delisted. And Kimber and Lipton (2005) observed that India's poor system of corporate insolvency implies that management may act in an inefficient manner and undertake excessively risky investments without fear of insolvency and ultimate liquidation, when creditors pursue rights. Moreover, public concerns have arisen in areas of investor protection, transparency and the need to attain international standards for disclosure, and more importantly in relation to the role of large block holders in view of their relative passivity (Ali Khan 2006).

Corporate social responsibility in India

As mentioned earlier, corporate social responsibility was integral to the governance of all firms in India even prior to 1947. Balusabramanian, Kimber and Siemensma's (2005) affirmation that CSR is not new to India, and Gupta's (2007) observation that Indian companies are doing a lot more in CSR than multi-nationals - both in scope and content - are both based on the historical review of Indian firms. Chappel and Moon (2005) reiterate the motivation for CSR to be India's long standing religiously derived philanthropic tradition, and point out the shift that occurred due to colonisation, exposure to international business and imperialism.

In terms of the current focus of the CSR in India, Balusabramanian et al. (2005) found that 'social upliftment' and development continues to be a key motivation for CSR in India, which is not as apparent in other countries. This includes health, education, poverty alleviation, social welfare and community developments, employee welfare and labour practices, pollution, water management and environment. They concluded that given the limitation of a lack of more detailed research on actual CSR practices, it appeared that many firms are following a reactive mode and that the conceptualisation of CSR is still strongly focused on the 'caring' model (p. 90).

In terms of reporting on the CSR practices, Chappel and Moon's (2005) study of the top 50 Indian companies (by operating revenue) in 2002 found that 72 per cent of companies examined had some measure of CSR reporting, with only 1 in 6 companies reporting at the minimum level and more than 1 in 3 reporting it extensively. Sixty-seven per cent of companies reported on community involvement (community development, education,
health and disability, education and training), 58 per cent on production processes (environmental responsibility and health and safety) and 31 per cent on employee relations (employee welfare).

However, there also seems to be a gradual shift in the motivation for engaging in CSR that leans more towards a business case imperative, although the focus continues to be on the disadvantaged community. As Gupta (2007, p. 641) observes: 'The last decade of the twentieth century witnessed a swing away from charity and traditional philanthropy towards more direct engagement of business in mainstream development and concern for disadvantaged groups in the society'.

Thus, the brief review of literature reveals three important points. Firstly, whilst one section of the industry such as the PSU and trusts adopted a wider stakeholder view, others such as the professionally managed firms and the foreign multinationals adopted a shareholder view. As Dwivedi and Jain (2005, p. 162) state, 'The Indian governance system is typically a hybrid of the Anglo-Saxon governance system prevalent in the USA and the UK and the bank dominated systems prevalent in Germany and Japan'. Hence, it seems that India is a country that can support two different governance approaches which makes the overall system all the more vibrant and proficient (Gollakota & Gupta 2006). Secondly, in terms of regulation, there is a huge gap that needs to be filled. Leahy (2008) cites Patel from Ernst & Young to support the proposed need in this area: 'By and large we have a fairly top-notch governance framework...It's in the enforcement of that framework and ethics...that we are not up to par'. Thirdly, regardless of the ownership structure – whether they were public or private or government owned – the firms engaged in social welfare and community-based activities right from the pre-1947 period. The social and corporate responsibility activities by the firms were focused on the disadvantaged community and whilst the firms' motivation in engaging in CSR was initially due to the intrinsic ethos of caring for the community; over the period it shifted slightly to incorporate a business case.

Young and Thyil (2008) observed: whether based on rules or principles, each country's governance system reflects its own history, culture, legislature, social systems and environment. In the case of India, as Gollakota and Gupta (2006) state 'The end result is neither a convergence to the North American model nor a convergence to any of the other regional models, but an amalgamation of the diverse models all co-existing and tailored to the realities in the Indian Sub-continent' (p. 186). To explore Indian governance, its influences and its diversity an empirical study was conducted.

**Methodology**

The sample for this study consists of nine interviews of senior key executives in three Indian corporations operating in the steel and oil industries.

The background of the sample is provided in Table 10.2. Data was analysed into two major themes, namely, corporate governance practices pre-liberalisation and corporate governance practices post-liberalisation, and three minor themes, namely, values and philosophy, community development and growth and leadership.
Table 10.3 Ownership structures of the sample organisation

<table>
<thead>
<tr>
<th>No. of directors</th>
<th>11</th>
<th>14</th>
<th>14</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. of independent directors</td>
<td>4</td>
<td>8</td>
<td>6</td>
</tr>
<tr>
<td>No. of committees</td>
<td>5</td>
<td>7</td>
<td>6</td>
</tr>
<tr>
<td>List of committees</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Audit</td>
<td>• Audit</td>
<td>• Audit</td>
<td></td>
</tr>
<tr>
<td>• HR policies</td>
<td>• Remuneration</td>
<td>• Remuneration</td>
<td></td>
</tr>
<tr>
<td>• Investment</td>
<td>• Shareholders</td>
<td>• Shareholders/ investors grievance</td>
<td></td>
</tr>
<tr>
<td>• Shareholders investors grievance</td>
<td>• Executive Committee of the Board</td>
<td>• Project review</td>
<td></td>
</tr>
<tr>
<td>• Remuneration</td>
<td>• Nomination</td>
<td>• Risk management</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Committee of Directors</td>
<td>• Nomination</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Ethics and compliance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>No. of shareholders</td>
<td>111,048</td>
<td>687,564</td>
<td>589,624</td>
</tr>
<tr>
<td>Controlling interests</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• PSU</td>
<td>• Trust</td>
<td>• Professionally managed family firm</td>
<td></td>
</tr>
<tr>
<td>• Controlling shareholder</td>
<td>• Controlling shareholder</td>
<td>• Controlling shareholder</td>
<td></td>
</tr>
<tr>
<td>• President of India 51.11%</td>
<td>• Group companies 33.94%</td>
<td>• Promoters 46.99%</td>
<td></td>
</tr>
</tbody>
</table>
Table 10.4 Interviewee sample size and characteristics

<table>
<thead>
<tr>
<th>Company</th>
<th>Total Sales</th>
<th>Number of Employees</th>
<th>Respondent Role</th>
<th>Role in Parent Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oilco</td>
<td>111,093</td>
<td>10,949</td>
<td>Chairman and Managing Director</td>
<td>CMD</td>
</tr>
<tr>
<td>Oilco</td>
<td></td>
<td></td>
<td>Executive Assistant to Chairman and MD</td>
<td>EA</td>
</tr>
<tr>
<td>Oilco</td>
<td></td>
<td></td>
<td>Manager Marketing Research, Planning and Analysis</td>
<td>MM</td>
</tr>
<tr>
<td>Steelco 1</td>
<td>131,535</td>
<td>82,700</td>
<td>Vice President, Corporate Affairs</td>
<td>VP</td>
</tr>
<tr>
<td>Steelco 1</td>
<td></td>
<td></td>
<td>Assistant Corporate Secretary</td>
<td>ACS</td>
</tr>
<tr>
<td>Steelco 1</td>
<td></td>
<td></td>
<td>Financial Controller of a Division</td>
<td>FC</td>
</tr>
<tr>
<td>Steelco 2</td>
<td>11,420</td>
<td>7,060</td>
<td>Joint Managing Director</td>
<td>JMD</td>
</tr>
<tr>
<td>Steelco 2</td>
<td></td>
<td></td>
<td>Assistant Vice President Finance</td>
<td>AVP</td>
</tr>
<tr>
<td>Steelco 2</td>
<td></td>
<td></td>
<td>General Manager Human Resources</td>
<td>GMHR</td>
</tr>
</tbody>
</table>

Findings and discussion

Corporate governance practices in India pre-liberalisation

After India’s independence in 1947, corporate governance practices in India were modelled on the values and philosophy of India’s political leaders, Mahatma Gandhi and Jawaharlal Nehru who instilled in the public mind the concepts of ‘trusteeship’ and social justice. In 1956, the Companies Act was passed with a long-term objective of creating a socialist society. Taken together this meant that the focus of the corporations, regardless of whether they were public or private, was the welfare of the society.

...right from the beginning when the public sector started, Nehru had a fundamental belief about being very, very transparent because he said it was public money that was getting invested for the public sector and the management of the public sector is actually the custodian of the public money and he is answerable to the Parliament of India which it represented. (CMD)

In the private sector, there were companies like the Tata’s, the Godrej, a number of those old Parsi companies. Actually they always had a very transparent way of doing business from the start... They gave equal opportunity to the people and that is one area where the locals did not revolt against putting up a huge unit [Steel works] like

12 Net sales and number of employees obtained from company Annual Reports 2007-08.
that...Tata’s have always had a reputation for honesty, straightforwardness...And even the current gentleman, Ratan Tata, he makes it very clear that they are not here to make a huge profit. But, at the same time they do make profits. (CMD)

Thus, even the philosophy of the private businesses was of a trustee. Many were in fact modelled as a trust.

Ours was mostly owned by trust (66%). So, it is essentially the people’s trust...the guiding philosophy, everything had to be above board, and everything had to be transparent. And the CSR activities were largely dependent on the vision of the founder because he said ‘Give it back to the public’. (VP)

The Assistant Corporate Secretary of the same firm confirms the VP’s view. She asserts:

They wanted the people to be not only working in the factory but also enjoying their personal life and then have a decent community. So, a lot of community welfare activities were done. That was part of the philosophy of the founders. (ACS)

The company vision was broad and holistic that several stakeholders were automatically encompassed in their governance practices.

We derive everything from our vision. Our vision says that we will take all steps for value creation, and safety and environment, people, and to protect the interest of all the stakeholders. (ACS)

The government owned firm or the Public Sector Undertaking (PSU) also held this holistic perspective. ‘The stakeholders are not just your employees or the vendors but also the public who are residing around the factory or premises’. (EA).

An important off-shoot of this model behaviour by the PSUs and the business houses was that some publicly limited firms that were established subsequently began emulating the behaviour of the business houses, even though the latter were not modelled as trusts. The following data from the promoter owned public limited company (Steelco 2) illustrates this important point:

So there are very live examples in this country like the House of Tata’s. They have built up this goodwill over the last 100 years. If a person comes saying he is from the House of Tata’s, it is looked at from another view. And we at [this firm] also want to follow a line that our name should have a respect. (JMD)

The message which we get from our management is that we should always follow all the rules, regulations, laws and we should always be on the right side of the law. I am fortunate to have worked in similar organisations, all through where people are established players in steel and they want...they have been second generation, third generation... They have made their reasonable profits and now what is more important to them is growth, more important than is their name in the steel map of the world, so from that point of view we have no mental pressure to do anything wrong, ever. (JMD)

However, there were other private and public limited corporations that did not exhibit this dominant theme. And interestingly here profit minded companies are viewed negatively.
And the other part of it is that there is a different type of private business who is out there to influence the government, to cheat the government and profit oriented, absolutely profit oriented. There is only one-track mind about profit orientation. And they would go to any extreme to ensure that the profitability is there. (CMD)

Corporate governance practices in India post-liberalisation

With liberalisation in 1991, dramatic changes occurred in the Indian governance system. The PSUs started engaging in international operations. Despite their expanding internationalisation, they maintained their focus on serving the Indian public. As the Chairman of the large PSU observes: 'But then our government's long range plan for us was that this company has been created to serve the public. They are not stopping us from going outside [international], but the focus is here [domestic].'

The Stock Exchange Board of India (SEBI) was established in 1994 and mandated nine areas where companies were required to provide extensive information. The Associate VP Finance of the large private steel company explains the changes that occurred: 'We started publishing the management discussion and analysis section in the annual report [MD&A in the annual report]. From that time we are giving them statutory information as per the SEBI guidelines'. With the introduction of Clause 41 for listed companies, and some amendments of the Companies Act, companies were required to adhere to specific audit committee composition and board composition. This was followed by the Takeover regulations. As the interviewees mentioned:

Earlier there was no legislation. You could have some company in Calcutta cornering a particular company. That was the reason why legislations like the Takeover regulation came in 1997. So the need of the hour became ‘adequate disclosure, transparency and the need to follow the spirit of law. (ACS)

Then came the Enron debacle. As the Executive Assistant to the Chairman and Managing Director of India’s largest PSU states, 'that's when people started realising that there has to be some rules and regulations and laws governing each corporate body'. The Marketing Manager of the same firm affirms:

In the last four to five years, especially after the Enron, it triggered...and people were sensitised and the CSR as a concept ... the seriousness of it emerged. It was no longer voluntary and feel good, it was also that you had to do it and therefore.

Thus, the scams made regulations ‘more of a necessity’. As the ACS observes: 'you had these scams happening and the government had to wake up and take cognition of that'.

The firms also took stock of their internal governance system and checked for loopholes.

When all those things happened in the US, and the Sarbanes-Oxley came up, we had a seminar on that for our senior management and we checked vis-à-vis that stringent rules, what is that we have and we don’t have and we found out that by and large we were okay in most of the things. (CMD)

The Indian system had noticed the degree of its vulnerability to the US events. The CMD explains the link:
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What normally happens is that what happens in the US within about five years time, in some form or other comes into India, primarily because of the influx of people both ways - Indians settled there, lot of MNC investments coming. (CMD)

An increase in the foreign direct investment also pushed for more disclosures.

They [the foreign investors] want more and more information. Then regarding the accounting standards, we are having our own accounting standard. Now we are going for the international accounting standards. We have to follow them. (AVP)

It was at this time that the PSUs and family business houses realised an interesting aspect: that shareholders were now a part of their stakeholders. Until this time, these firms had only one concept of stakeholders that embraced the public and included their employees, suppliers, and communities. As the Market Research, Analysis and Planning Manager of the PSU (Oiko) exclaims:

In 1994, that was the time we suddenly realised that there is someone called a shareholder and we need to take care of his interests as well. Until then, predominantly we had been looking at the society, taking care of the people.

This perspective is a complete reverse of the Anglo-Saxon model where the corporate governance systems were geared only towards the shareholders and the stakeholders emerged subsequent to the corporate collapses.

These macro level changes and country-specific regulations in India not only changed the companies’ perspectives, it also changed the public way of thinking. The public started demanding more and more information, ‘regarding the internal workings of the firm as well as the external economic conditions. They want to know not only what the decision is, but also why management took that decision’ (AVP).

However, the Indian public were soon disappointed with SEBI which proved to be ineffective. The institution failed to arrest the capital market misbehaviours and lacked monitoring and feedback activities.

As you know the SEBI is the watchdog. But it lacks teeth. It cannot prosecute or take any action against the offending companies. There are so many cases where for insider trading they have issued show-cause notices. They have done their regulatory bit, but finally cannot prove that there was insider trading... And the companies get away with murder. They have data from the stock exchange but they cannot use it effectively in bringing them to book the offenders. (ACS)

The law will say you should have so many independent directors. But, if you have other intentions you can bring in an independent director who is really not independent. So here no one can do anything. (FC)

BSE Sensex comprises all the 30 top companies’ market capwise. And, by mistake or oversight if I [belonging to this top 30] have failed to file a report, immediately I will get a call or a letter. But there must be another company who is not at all anywhere featuring in this top [30 list] but they don’t get noticed. So they [SEBI] are monitoring the ones who are already conscious of their [governance practices]. (ACS)

The themes that emerged from the data are categorised in the following pages.
Values and philosophy

Corporate governance practices were based on the values and philosophy that "it is the right thing to do", and not because 'the law required you to do it'. So, the rules and regulations when they were introduced merely caused these firms to formalise their actions. Noticeable from the data below that openness, ethical leadership and culture proactive disclosures were in-built into the governance systems.

You see there was no impetus for [this business house] to put up a crèche for children of educated ladies in 1900s. Was there any impetus? Nothing. But he [the founder] felt that way – that it is the right thing to do. (VP)

It [the code of conduct] was first handwritten. But we all followed it okay. There were no documents. In 1996 we formally documented it. Things didn't change. (VP)

Therefore, based on all this the government subsequently brought the statutes. Probably in India we were unique. Probably in the early part of the 19th century we were unique. Our 8 hour shift and bonuses and things like that actually came long before the European companies themselves instituted them. (VP)

The system has a way of promoting people who are ethical. But somebody who is really ethical, the epitome of ethical, walks the talk, credible about his actions, there is no divide between what he says and what he does. So I would say that the biggest single most thing in the company has been the leadership. We recruit people at entry level and they move up... So you have a tendency to absorb that style.....So over a period of time that has got reinforced with other systems. If somebody is unethical he gets punished... And it's a culture; deep-rooted culture. (MM)

In fact this [the governance regulations] made us proud of ourselves. We were doing this without thinking about it; the many facilities which we are offering to the shareholders. Every half year there is a report sent. And we are required to send an annual report. We were sending it to 600,000 shareholders. ... Then the Clause 49 said that you should be sending so we said we have already been sending it since the early 90s. If we had been concerned about costs and thought that we are publishing in the newspaper, people will read about it, how does it matter to send to each individual shareholder, its unnecessary printing and mailing cost which runs into crores of rupees etc...But we were thinking, people sitting somewhere in the country, he may not get to know if he doesn't have access to a newspaper. (ACS)

Community development and growth

The perspective of these corporations was that 'you grow along with your society'.

So I think this is all what corporate governance is. You integrate yourself and you see that you, along with the society grows. (GMHR)

So what is exemplary in our case. We see the way the situation is and we work in that situation. For example, whatever CSR activities we have ever, it has been always for education, health and sports. For every child; go to every house and take a positive message for them. Health, you attend to the old people. Steel plants always come up in
rural areas. In rural areas, old people are absolutely neglected. Children don’t look after them, so if they need a pair of glasses, they don’t get that. You give them that. Hold an eye camp. Polio Plus is there, but awareness is not there. People don’t participate. You do that. Sports, engage the youth. (JMD)

I know that our firm has started women empowerment. (GMHR)

**Leadership of pioneering firms**

The legislation, therefore, was based upon the practices of these larger firms.

There were many things, even right from the early 90s if you see, we had so many practices which were not sort of laid down on a legislative level. We had those practices in [this firm] like the 8 hour working day, the maternity leave provision, the provident fund, the bonus, which subsequently the government realized these are very important employee welfare activities and that’s how the legislations were founded. (ACS)

The pioneer firms continuously polished their best practices and benchmarked against themselves for want of other benchmarks in areas such as carbon credits. They ensured that their CSR activities were fine-tuned to the local needs as closely as possible. More importantly, they recognised the need to maintain level a balance between their CSR activities and financial needs.

So anyway, I am not saying that it is a static situation of the best corporate governance practices. It is always evolving and it is evolutionary. There is something new to contribute. And because of the people that we have, they bring with them the experience, they can share..., and they are very fascinated by some of the best practices that we have. And that’s only done by improvement - we are already here and we just need to scale up the perfectionist. (ACS)

The carbon content ...now we are interacting with the trade associations. They are developing carbon control and pollution control. It is not yet prescribed in the statutes. Even SEBI did not ask us to give that information. But still we are giving more and more information about this. It is all [published] in our annual report. (AVP)

When we came to Tamilnadu [a South Indian State, from North India], I found people here are very religious minded. If there are two days holidays and if you ask somebody where they are going, they will say ‘Such and such temple’. In the North who goes to temples? Two days holidays, and they will go to Mussouri (a holiday spot). Something like that. But these people [in South India] are very religious minded. (JMD)

These practices allow these firms to distinguish themselves from the others in the industry sector.

Yeah I think that [investors] is a very important factor...But to distinguish yourself from the others there has to be something that is required. So if you are more transparent, if you are more accountable, you are more open towards the investing public that this is what I am and not just making tall claims, but substantiating that
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with your results or your performance, or market capitalization, these are the indicators that make people prefer. (ACS)

And the other thing about my company is that it is known for its values and transparency. That's the reason that we get as partners some of the best companies in the world. (CMD)

Caution evident

Interviewees were unanimous in their view that the current regulations and heightened focus on corporate governance was 'very important' and 'very relevant for clarity'. As one interviewee explains:

Given the past history, the battles that companies have gone through, it's high time we focussed on it. Sometimes you get a feeling that these things are mandated from outside, as compliance. So I wish personally, you know, it would be more of introspection and self-imposing standards rather than you know, complying with something that comes from outside. (MMM)

The organisations appear to have an increasing accountability thrust upon them. For instance, as one interviewee stated:

In fact the public wants more and more information. Nowadays they want to compare. We are giving prima facie the information. But, they are not in a position to know on what basis you are taking your decision. It simply says that the board has taken a decision. The public would like to know and it is a good thing, 'on what basis you have taken the information' and we now have to give the reason. (AVP)

Finally, the companies need to look at governance practices which are sustainable and not just one-off measures. 'As a concept, I feel now we are not able to accommodate all these people (the society) for their development from within the company. So what we should be looking is sustainable development for them'. (GMHR)

I would say that, we should not go overboard also on this CSR. The first and foremost thing is to balance the economic aspects of the company along with the social responsibility also. Some people feel that the government is there to help us and bail us out so therefore let us go overboard on this. So I think the first priority is how to balance the two. (MM)

Conclusion

The data and the literature reveal that corporate governance in India is still very much focused on the stakeholder model. The historical, cultural and religious roots of Indian society are very visible in the statements of respondents. And in particular, the influence of the founders of these companies was still being felt through the culture and purpose of the companies. This also confirms the recent finding in the literature that agency issues are not as yet an area of concern, as ownership and control are not widely bifurcated.

However, with liberalisation, there is a movement towards incorporating the shareholders. This is evident from the fact that shareholders are beginning to play a much larger role in business responsibilities with statements around disclosure, the AGM and
ness sustainability. But these interviews are also from the larger companies in India which are those where the institutional and private shareholders would have the largest influence. Whether these same priorities are evident in smaller corporations is unknown.

In particular, the interview data revealed the firms' strong sense of responsibility to the community, and the focus on growth and change in areas of employee rights and standards of work. The 100 year old Steelco 1 could rightfully claim that changes to legislation in areas of work and employment came from them setting best practices and standards that others should follow. The pioneer status of Steelco 1 has also been attested by Steelco 2 which, despite being Steelco 1's competitor, lays pride in following Steelco 1 as its role model. The aspect of Indian firms emulating the best practice governance systems was an interesting facet that emerged from the data. Moreover, despite the pioneer status of Steelco 1, it continued to exchange information on best practice with the rest of the firms in the industry. The ACS of Steelco 1 provides an insight into this practice when referring to their new governance best practice of taking the AGM to several remote locations:

When other companies which are not quite well governed themselves come to know of it, they definitely make it a point to call up and ask us what we did. I am sure right now the pressures will be building up on many companies that they should also be doing the same thing. I can quote another example. Larson & Toubro, they share a lot of things with us.

This practice of emulating good governance, enhanced disclosure and transparency appears to stem from the fact that it is seen as a strategy for these companies to stand out from others in the eyes of investors. International effects in areas of changing legislation and accounting standards were also evident. These companies also had audit committees and professional directors in some form prior to the legislation being enacted with changes being made as legislation was enacted.

Cautionary statements were made in regard to sustainability of community activities at the expense of shareholder returns, especially to foreign investors. In addition, the real independence of directors was highlighted as an issue alongside the lack of monitoring and sanctions of governance irregularities. Strengthening the sanctioning role of the SEBI was seen to be important in further governance reform. In this vein insider trading was spoken of as also being an important area to be monitored. This would be especially important in India with the influence of banks and families in firm structures.

In conclusion it is evident that issues of behaviour, values, traditions and community are important factors in shaping corporate governance in India. Onto this has been transplanted legislation from Anglo governance models, which larger corporates are clearly incorporating into their governance systems. What is still lacking is clear division between the management and monitoring responsibilities of the SEBI in the Indian governance system. And notwithstanding that the rights of shareholders are enshrined in legislation and at the forefront of disclosure and board decision making, whether business managers actually put these responsibilities first in these organisations is still questionable. The stakeholder model is still very apparent in organisational purpose, and corporates see their responsibility in building society through adhering to community needs, albeit in a sustainable fashion, as is still very important.
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Suzanne Young
Editor
Contemporary Issues in
International Corporate Governance
Suzanne Young, Editor

About this text
There has never been a better time for an insightful look at international corporate governance. This rather timely, up-to-date and authoritative text is based on the latest regional and international research, with contributions coming from a hand-picked team of experts. This exciting edited text explores and analyses the issues, trends and challenges for corporate governance in the future as well as today.

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Dr Suzanne Young is an Associate Professor at the Graduate School of Management, LaTrobe University, Melbourne. She is also the Director of LaTrobe's Executive Education program. Suzanne lectures and researches in corporate governance, corporate responsibility and organisational behaviour, and has extensive international research and teaching experience.

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