

National Foundation For Corporate Governance
National Conclave on Corporate Governance in India:
Transforming Business Environment
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Plenary Session I: Emerging Trends in Regulatory Framework.

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Chairman Mr. Maira, My friend colleagues and a teacher as far as corporate affairs are concerned Mr. Jitesh Khosla with whom I had the pleasure of working during the J. J. Irani committee and later, and I must say it has been very beneficial personally to meet you, and friends.

I think it is a very happy occasion that we are celebrating, I should say, the birth of the National Foundation for Corporate Governance. It has been for a long time in my mind, I have been trying to persuade the finance Minister to set up a body of this kind for continuous interaction between the tax payers, the accountants the academicians but I do not know for what reason the finance ministry seems to be dragging its feet's and I must complement the Ministry of Corporate Affairs to have taken the initiative of forming a joint National Foundation for Corporate Governance. It would inform the Ministry of Corporate Affairs, Institute of Company Secretaries, Institute of Chartered Accountants of India and all of these are to be complimented on this happy birthday of this Institution, the National Foundation for Corporate Governance.

Now, it would be up to these institutions how far they are able to keep the initiative in their hands and not let this valuable tool in our hands degenerate into a department of the government. It can happen. It has happened. For example, the National Institute for Finance and Policy, I have no hesitation in saying, was formed by the then Finance Minister, Mr. C. Subramanian, with the co-operation of all such entities and has now ended up into being a department of the Government, as I feared. Dr. Raja Chelliah was the founder chairman of that institution along with the Minister. And it is nobody's fault that it is now not more than a department of the government. I think, therefore, you have to be careful on how these institutions progress.

Mr. Khosla, talking about the emerging trends in regulatory framework. Very rightly they have some idea why regulations are required there is no doubt about it that regulations are required but I suppose it was worthwhile he was reminding us that we have to be governed by regulations because we have not to be back in history, live through times when the words regulations and regulators were hated. They only caused pollutions in the business environment, interfered with production, productivity and revenue, efficiency was penalized, those dark days were described as Permit Inspector Raj. There is today regulation not to stress the business, not to add to cause and harassment of compliance, there is instead stress on

reducing interface with the regulator and we must compliment you Mr. Khosla and your colleagues for moving towards that regime, and that such regime of regulators and regulations are certainly welcome.

We are revisiting old regulations to make them savvy to the challenges and ethos of the present movement of growth. We are, however, going through a stage of transitions, mergers, and accusations amongst corporate, within and across border are the orders of the day. Indian companies are making transactions running into billions of dollars and emerging as global players. But at the same time when some one important talks about perceived curtailization in some of the industry segments and you will really be able to recall the author of curtailization and I am using it as perfect curtailization and these are the thing that cause concern. The clause like MRTP and MRTP commission are dragging their feet, competition law and regulations have yet to be in place. I recall in this context the famous mathematical economist of yester years Joseph Surbitor who created the radical theory of creative destruction. He gave us the theory of innovative regulatory framework, innovation today is the buzz word, young IT professionals and we must salute them with pride are re-writing the business paradigm everywhere, their creative talent and passion are combining to ignite a new dispensation for the society which can not be and will not be governed by the old regulatory approach. I compliment MCA and its leaders who are engaged in building new innovative regulatory framework. We are learning during the new MCA regime the reverse of patience. We are waiting for the new Companies Law to be enacted and to be replacing the 1956 Companies act. We are also awaiting the new Limited Liability Partnership Bill which will reflect the Century old partnership Act and which has hither to stifled the operation of professionals like our law firm which could grow several times but for regulation of 20 partners in a partnership firm, we have to create a few hundred partnerships to reach the size of the law firms that we have in the United States. I think it would happen.

As a move towards board's effectiveness the requirements of having more and more independent directors, the setting up of the audit committee, submitting to the board the legal compliance certificates, limiting the number of compares in which a person may be appointed director to 15, and bringing their remuneration relatively at real levels, requirement to prepare annual accounts according to acceptable accounting standards are all steps in the right direction. Is not it great. that we are by government action coming out of hitherto government regulatory regime to board regulatory regime, which means, in turn, significant shift from government approval to share holders approval regime. This assumes and of course requires a more responding and responsible set of independent directors, promoter directors, responsible and responsive conduct on the part of senior management and chief executives of the company and accountability of the so called celebrity directors. I have had the privilege of sitting on the board of some of the very large and at one time blue chip companies. I have yet to understand, Mr. Chairman Mr. Khosla, what it really means being on independent director, independent in what sense, how one can claim to be an independent director, can we be really frank expressing ourselves in board discussions if there is perceived conflict with promoters' personal interest. Are we not dependant on the promoter directors controlled share holder majority to continue to be on the board, if we are not willing to be possible in accordance with the wishes of the promoters? If seems to me to be a lacunae in the law that provision is lacking to define an independent director and ensure their independence. It is for consideration whether it should be made obligatory for an independent director to make a statement to the shareholders at the time of exiting the board. The kind of steps that are required while changing the statutory auditors.

That may at least give some semblance of independence to independent director. I think such subjects, will in any case, required to be discussed when we meet for the National Foundation for Corporate Governance and therefore, I should not hesitate talking about them in the presence of Mr. Khosla, Mr. Malik & others. Only such director, I believe are able to express themselves and exercises independence if they are ever ready to quit the board. That may not necessarily mean that they are asked to leave the board.

There is no dearth of enlightened promoters who do see merit in the suggestion of independent director which may seemingly be not palatable. To site and example, I served on the Advisory Board of a foreign bank, perhaps one of the largest the foreign bank operators branches are not incorporated company in India and they have and Advisory Board and not a Board of Directors. You would be surprised and some managements were shocked when I shared with them that this particular banks advisory board meetings are automatically tape-recorded. My colleagues on the boards were shocked hearing this kind of suggestion. They said how can we live with this kind of board of directors meetings were meetings are tape-recorded. But that was one side of it, they other was when I looked at the revenues, the balance sheet, the accounts of that bank, the first time I had a look at it, I was little intrigues and uncomfortable looking that this bank having large profitability had not taken out any money at all by their corporate philanthropic – which was shocking to me that having earned all these money in India they had not part anything by way of their corporate social responsibility. I asked that question to the CEO, he said that he has no authority to do that can every thing. I said if you don't have that authority, obtain that authority, if you want me to be continuing on the advisory board of your bank, because I consider it shameful if you do not participate in our profits with community in which we exist. And I am happy took sometime because the CEO in that bank dragged his feet but ultimately they found their way and substantially contributed to the good of the community by way of corporate social responsibility.

This incident happened and these keeps happening, Therefore, it is an important roll the board of directors play. I am very happy to learn recently that a survey is being undertaken by an international organisation on board's effectiveness and that is were we can contribute through our deliberations. J.J. Irani Committee had recommended, and I am subject to correction by Mr. Khosla, the setting of a combined stakeholders' relationship committee to monitor redressal of their grievances. I do not know if it has taken shape or it is in the permission. I think it is important than when matters like related party transactions or issue of a compliance certificate in the board meeting are taken up there given the kind of attention they deserved. I think we are doing a lot in all these directions, my comments, my friends and Mr. Chairman, have gone beyond the helm of regulatory framework. I have nothing more to say except to sharp praise for the Minister, the Ministry of Corporate Affairs repeatedly for part you had rightly done since the morning session. Because all the time Mr. Chairman, the words of a gracious old lady haunt me. At the end of my speech that evening she came up to me and said Mr. Vaish, your speech was superfluous. Well, I said Madam, I bowed to her and said I proposed to published this posthumously. She looked joyous and she said Mr. Vaish, early you do the better.