Volume 15, April 2021 ISSN 2581-5504

"Good Governance and Ethics in Corporation"

Rishika Kharbanda
Symbiosis Law School, Pune

Expository Statements

Through the means of this paper the author would like to present a fairly analytical and concise representation of the chosen topic. While the data and the information that is referenced in this paper has been duly credited, the opinion and the analysis, among other original material is the sole contribution of the author and such contribution has been reached after a diligent reading of various articles and case studies coupled with the analytical thinking and rationalizing by the author.

The paper has been aimed towards answering the burning question of the business world. With the advent of advancements in the business field and the evolution of the mind, the dynamic nature and progress of businesses today has not only become a boon but also a bane for the corporates and the public. The world has developed and evolved from various stages of the business models and we have seen several radical changes to the mainstream ideas due to factors which are either present internally or exist within business environment. These changes pose a certain challenge when we bring the governance of the corporate entity into the scenario. Every corporate body has been given the leeway to structure its own module of governance and frame policies within which the business transactions and day-to-day operations will take place. The race to accumulate maximum profits combined with the authority to have complete control often leads the powerful astray of the "good path". One who has lost his ethics in the business world often sees a downward spiral in due course of time. In the modern times, a good governance structure flush with values, ethics and commendable practices thrives over the competition. These ingredients may not seem essential in the short run of the company but when survival and establishment of the brand is on the line, it becomes an absolute necessity. Human mind is advancing too, and with it, it has brought in the wave of awareness. Awareness about the conditions and the impacts of a business have led the revolution and resulted in the uprising or the downfall of many companies. Thus, the inclusion of Good Governance and Business Ethics in the memorandum of a business entity has gained its due share of appraise.

But it's not an easy task to accomplish. As we will be discussing the challenges and engaging in case studies through this paper, it will become clearer why involvement of ethical behaviour in business models is a path less trodden.

Keywords: Business Ethics; Corporate Governance; Corporate Ethical Challenges; Good Governance

Research Questions

Before we move on to the analysis of the material and case studies, it is imperative that we lay down the issues, questions, difficulties, etc. that will become the basis of the paper. These questions are not merely for the purpose of finding out answers to the queries and misplaced doubts, but these form the objective of the entire paper. Aimlessly trying to answer questions will lead to a chaotic amassing of information with no regards to the initially planned out direction of the paper. Therefore, keeping efficiency in mind, the following were the choices of the researcher to determine the direction of the paper:

1. *What are the challenges faced by the businesses today when it comes to inclusion of the ethical practices in their structures and operations?*
2. *What are some of the practices that fall under the ambit of the terms "Corporate Governance" and "Ethical Businesses"?*
3. *As conclusive arguments, state the possible solutions that can be implemented to do tackle the challenges above mentioned.*

Research Methodology

For the purpose of this research paper, the following sources have been utilised in depth and with strict emphasis to the topic of the paper:

1. Secondary Sources:

   A. Literature review: the researcher has chosen a path of reading, referencing and analysing the scattered information over the internet with the intent to form an opinion while presenting a holistic view of the matter at hand, thereby putting efforts into eliminating personal bias.

   B. Case Studies: the researcher has chosen to take into account the various case studies of real life examples which will help give the paper a sense of realism and validation as to the applicability of the analysis.

Analytical and Investigative Statements

Before we analyse the literature cited, we have to establish the meaning of Corporate Governance and what it means to have Good Ethics. Corporate Governance is the administrative term used to allude to the approaches and procedures by which a business (even a complex organization) is controlled and coordinated. It alludes particularly to the manner in which power and responsibility circulates amongst Investors, Board member, CEOs, and Senior directors.[1]

Corporate Governance can be split into two portions with regards to its perception to the outside environment: Economic Matter and Legal Matter. When we talk about the economic aspect of a business, to an outsider (mainly consumers, investors, creditors, etc.) the term Corporate Governance would perceive to him as an opportunity wherein a company poorly governed is running into losses and the efficiently managed company producing profits. This is the gist of the corporate governance perception when we talk about external affairs. But Corporate

[1] Chris Macdonald, *Corporate Governance and Ethics*, THE BUSINESS ETHICS BLOG (October 20, 2010), https://businessethicsblog.com/2010/10/20/corporate-governance-and-ethics/.

Governance, for the most part, alludes to the Legal matter rather than an Economic affair. This is because the legislations at play often have provisions regarding the governance, but these are merely boundary defining statutes, the activities within these boundaries are not determined. Therefore, corporate governance can also stand to mean, in the legal sense, a structure of governing wherein the stakeholders are protected from the callous acts of the ones in charge.[2]

Having established the parameters of the term Corporate Governance, we can move on to the aspect of association of *Good Ethics* with the former. There is no definitive meaning of ethics because it is a subjective term, where the situation's outcome gives us the meaning through the actions and behaviours.[3] But for the purpose of explanation, ethics can be defined as the morally and socially accepted norms and policies which take into account the values and beliefs of the people while also contemplating their well-being. As stated earlier, the dynamic nature of business makes defining ethics difficult, therefore ethics is treated as the threshold or the borderline between the good practices and unethical actions.

Challenges to the assimilation of Ethical practices for Good Corporate Governance

Corporate Agency depends on the premise that workers, chiefs, and executives (i.e., specialists) ought to carry on to the greatest advantage of proprietors or investors (i.e., principals). Two things impede this function:

To start with, interests of the administration, while covering with those of investors, are separate. Now and then operators can help themselves in manners that hurt the firm and its investors. Some scenarios of the same can be wasteful activities, squandering duties and, in extraordinary cases, extortion or other self-serving activities that can cut down the organization, as have occurred in various business cases.[4]

Second, investors have neither the particular information nor abilities controlled by the board. That can cause a situation where even benevolent supervisors may feel constrained to short-term benefits, i.e., acting in manners that look great to investors now, however it is really undermining the esteem of the business in the due course of time.[5]

Social welfare depends on the ideology that organizations ought to take part in justifiable transactions concerning the majority of their partners—including clients, representatives, providers, and networks, just as investors—as per the desires of the bigger society in which they work. The discussion about what is "justifiable transactions" mirrors the continuous discussion about the motivation behind organizations in the public arena.

An investor driven model perceives that organization profit should be the ultimate goal and

[2] *Ibid.*
[3] Haslinda Abdullah and Benedict Valentine, *Fundamental and ethics theories of corporate governance*, MIDDLE EASTERN FINANCE AND ECONOMICS (2009).
[4] Mark Hodak & Bruce Buchanan, *Corporate Governance*, LEADERSHIP - ETHICAL SYSTEMS, https://www.ethicalsystems.org/content/corporate-governance (2016).
[5] André Petersén, *The Importance of Governance and Business Ethics*, CIPS - AFRICA, https://www.cips.org/Documents/CIPS 2013-02-05.pdf (2013).

while they realise that minimizing certain factors (such as pollution and environment preservation) will improve their reputation, they are unable to do so due to stakeholder concerns.[6]

Possible Solutions

There is a lot of research on probably the most widely recognized methodologies regarding how to reduce the cost of corporate agency functions:

1. Enhancing oversight: through indicated board structures seems to have blended outcomes. Analysis and research demonstrate no connection between board autonomy and firm execution, implying that one's increments by means of better operational scrutiny might be lost in explicit knowledge expected to give quality information. One special case is not having your CEO on the review or remuneration board which is currently required by law. Annually, keeping a check on the directors' terms and contracts while avoiding merely filling the seats is also an effective solution.[7]
2. The governance indicator most convincingly associated with better performance is the degree to which insiders own stock—up to a point. There is a strong relationship between insider ownership and firm performance, with stronger results at higher inside ownership up to about 30 percent. High inside ownership works to not just reduce the impact of asymmetrical information, but also to enhance alignment. Increased exposure to stock value via option grants also appears to enhance alignment and value creation. Furthermore, it does not appear that equity incentives are associated with accounting fraud, as was assumed during the accounting scandals following the tech bust i.e. Erickson Scam. Nor does it appear that stock options or high cash bonuses contributed to poor performance during the credit crisis. [8] However, selective incentive compensation mechanisms that improve alignment of management and shareholders do appear to enhance value creation.[9]
3. Disclosure can increase transparency, but while voluntary disclosure enhances firm value, mandatory disclosure may not. Alternative business forms are being evolved for a greater focus on particular non-shareholder stakeholders. While many people believe such initiatives should originate in government agencies or NGOs, some believe that these initiatives properly belong within for-profit corporations, while some believe that they require a corporate vehicle that looks beyond just profit.

[6] Douglas R. Mckay, Romy Nitsch & Daniel A. Peters, *Corporate Governance and Business Ethics*, PMC - U.S. NATIONAL LIBRARY OF MEDICINE, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4664146/ (2015).
[7] Silke Machold, Pervaiz K. Ahmed and Stuart S. Farquhar, *Corporate governance and ethics: A feminist perspective*, J. OF BUS. ETH. (2008).
[8] E. Norman Veasey, *Corporate governance and ethics in the post-Enron WorldCom environment*, WAKE FOREST L. REV. *(*2003).
[9] G. J. Rossouw, *Business ethics and corporate governance: A global survey*, BUSINESS & SOCIETY (2005).

Concluding Remarks

The law and ethics are not one and the same. Although the law can guide ethical behaviour through Sarbanes-Oxely by laying out a framework, ethicists are quick to point out that the law should be thought of as the bare minimum of an ethical framework. Behaving ethically and complying with the law are not necessarily synonymous. While Sarbanes-Oxely and C-198 specifically state that destroying evidence is illegal as is fraudulent behaviour. However, they do not state that the series of questionable decisions that led to the fraud is illegal as well.[10]

To guide the behaviour of the corporation, management must turn to the field of business ethics. In the case of Volkswagen, the execution of the deceptive computer program at the EPA emissions test laboratory is where the law was broken, the act of which carries punitive fines and penalties based on the retributions of crime and punishment. The work that preceded that breach and the culture of deception that brought it to fruition constitutes a slew of ethical violations according to social standards.

The areas of an organization potentially subject to ethical analysis are practically unlimited. Human resources, contract negotiations, new business development, accounting and finance, can all be subject to ethical analysis and constraint. What arises over time is a corporate culture that falls under the umbrella of the values of the corporation. The corporation begins to adhere to organization ethics but also can self-define an operating culture in alignment with society.

The field of business ethics is an expanding field. There are many corporations who have worked diligently to integrate ethical analysis into defining their corporate culture with an aim to social responsibility and return. There is a legal framework to guide these decisions, but the law and ethics are not one and the same. The law represents the bare minimum as an ethical framework. As a consumer, it is important to distinguish between mandates and choices that for-profit organizations value.[11]

[10] Stephen D. Potts and Ingrid L. Matuszewski, *Ethics and corporate governance*, CORP. GOV.: AN INT. REV. (2004).
[11] David Kimber and Phillip Lipton, *Corporate governance and business ethics in the Asia-Pacific region*, BUSINESS & SOCIETY (2005).