

CONFERENCE ON GOVERNANCE 2009

19 MARCH 2009 – 20 MARCH 2009

The two day National CONFERENCE ON GOVERNANCE 2009 was organised by the National Law University, Jodhpur. The Conference began with a Welcome Address by Hon'ble Mr. Justice N.N. Mathur (Retd.), Vice Chancellor National Law University, Jodhpur.

This was followed by the Inaugural Address by Mr. D.R. Mehta, Former Deputy Governor RBI and the Founder Chairman, SEBI. He expressed his dismay at the bonuses received by the executive of AIG even though the company was a beneficiary of the Bailout Plan. In his exhaustive address, he dealt with issues ranging from self regulation, statutory auditors and compliance requirements to various Committees which have dealt with revamping the existing regulation mechanism. He even dwelt upon recommended changes in the Companies Act, faulty regulation in reference to the subprime crisis, power sharing among RBI, SEBI and Department of Company Affairs. He also questioned the role of Auditors, Regulators and Independent Directors- who allowed a scam like Satyam to happen. In his address, Mr. Mehta talked about a wide range of issues which emphasised the importance of Corporate Governance in the present times. He recounted the incident, when as the Chairman of SEBI, he persuaded Kumaramanglam Birla to write the first report on Corporate Governance. Though the CII had prepared a report, the same suffered from the following lacunae: a) no mention of accounting standards or financial disclosure and b) it was against any form of legal introduction of Corporate Governance.

The issues that the Birla Committee sought to undertake were a) introduction of industrial democracy, b) overhauling of accounting norms, c) establishment of remuneration committee on mandatory basis and d) insider trading. When the report was prepared, Lord Cadbury, praised the Report, specifically Clause 49, as the most comprehensive report. He personally congratulated Mr. Mehta on his visit to Bombay.

He further spoke about the Narayan Murthy Committee and the Department of Company Affairs initiative Naresh Chandra Committee. Though he expressed his utmost

regard for Mr. Naresh Chandra, he expressed strong disagreement with the findings of the Committee that SEBI should not undertake sub-ordinate legislation over matters within the domain of the Ministry. Such, an understanding, he believed would in effect make SEBI a nullity.

He further went on to highlight how Corporate India has been stalling the passage of the new Companies statute for over ten years now. He also brought forward a series of regulatory failures:

- The American failure to regulate activities of the Banking Industry which had diversified into other areas- investment banking, brokerage, merchant banking etc. In this context, he recounted how when as the SEBI Chairman he had stressed upon self-regulation at a G20 meet and other delegates were disinclined to appreciate his concerns.
- The Harshad Mehta Scam
- Multiplicity of Regulators – *‘too many cooks spoil the broth’*. He praised the United Kingdom model with a single regulator the Financial Services Authority. Though the model has been rejected in India on grounds of large size, he opined that there is a serious need to revamp the regulatory system in India, where there almost eight to ten agencies dealing with similar issues.

He also addressed the issue of Corporate Social Responsibility and remarked that earning wealth is easy, giving away wealth is difficult. He described modern day Corporate as “economic cannibals”. There is lack on part of the Corporate World to conduct effective charity. He described “NGOs” as fifth estate of our democracy having a significant role to play in the society.

The Guest of Honour, Hon’ble Mr. Justice Vineet Kothari, laid emphasis on the problems of regulation and implementation of norms in our system. Placing significance of values, he observed that there are people performing their duties with full sincerity. He called the attention of the gathering to the lack of resources the nation is facing at the present, especially the Judiciary. He drove home his point by likening the Indian judiciary to Aamir

Khan of Ghajini fame. He was also worried about the size of bureaucracy in the country, the lack of accountability on their part, large funds available at their disposal and the widespread corruption. In such a scenario, good governance is not possible. He asserted that this Conference was an instrument of public debate and hoped that the talk about Governance will not be confined to times of recession alone.

After this Mr. D.D.Rathi, M.D. & C.F.O., Grasim Industries addressed the gathering and said that the object of the seminar is to educate leaders and business managers of tomorrow about good governance. He mentioned that good regulation is needed and yet self-regulation should not be done away with. The scope of governance needs to be extended to the corporate world, the society and the State. He hoped that Satyam does not emerge as the face of Corporate India.

Mr. Hitender Mehta [F.C.A., F.C.S.], Partner Vaish Associates, said that the Satyam fiasco as an aberration and an instance of obsessive greed. He was optimistic about the regulatory system in India and observed that despite recession, our regulations have held good. He suggested strong punitive action against those responsible for the misfeasance and corporate scams to act as a future deterrent.

At the end of the Inaugural Session, Mr. Dinesh Kothari addressed the gathering. He is a prominent Management Consultant and Educationist running many educational institutions In India and abroad. He laid emphasis on the need for self-compliance and self-monitoring to prevent future frauds and to march towards good governance in all fields.

The first Technical Session was on the issue of “*Corporate Governance and Corporate Social Responsibility*”. The Chairperson of this session was Padma Bhushan Mr. D.R. Mehta. The Guest of Honour was Hon’ble Mr. Justice Vineet Kothari, Judge, Rajasthan High Court. The Principal Speaker, Mr. Hitender Mehta talked about the need for reforming the regulatory mechanism, shareholder activism and compliance in letter and spirit. The Keynote Speaker for the session was Mr. D.D. Rathi, who dealt with the practical aspects of regulations. He discussed at length about the balance between self-regulation and over-regulation. At this note, Prof. U.R. Daga [Dean, Faculty of Management Studies, National Law University, Jodhpur], intervened to end the dilemma and coined the term ‘effective’

regulation. The papers in this segment focussed on providing a detailed explanation of Corporate Social Responsibility and importance of ethics.

The second day began with the Second Technical Session on “*Corporate Frauds*”. It was chaired by Mr. B.M. Kothari, Honorary Director, Centre of Studies in Taxation, National Law University, Jodhpur and former Senior Member, ITAT. He addressed the gathering about the rules and regulations involved in corporate governance and emphasised on the need to imbibe SEBI regulations.

The Guest of Honour for this session was Mr. K.N. Bhandari, Director, Centre for Studies in Insurance. He focused on the need for renewing the investor confidence in light of the recent Satyam scam. He said that the loss of public money is a grave matter. For the future growth of the Indian economy, we need to be more pro-active in terms of investor protection.

The Keynote speaker for the session was Mr. Anant Barua, Legal Advisor, SEBI. In his address, he reiterated the importance of using money of the investors with care and making the management more accountable in dealing with the shareholder’s money.

The theme of the third session was “*Role of Civil Society in Governance*”. The Chairperson of this session was Mr. B.P. Jain, Commissioner of Income Tax. Governance in India, he remarked, was merely compliance. He narrated an incident involving an NGO which received Rs. 11 Lac in aid, but did nothing with the funds. The problem was how to identify and punish the culprits. He suggested making a proposal to the Ministry of Home Affairs for regulating the activities of NGOs.

Mr. Dinesh Kothari was the Guest of Honour of the session. He opined that economic meltdown is a meltdown of ethics and professional values. The idea of “*regulation*” is not alien to humanity - the Divine Regulator, the Almighty, regulates all of us. *The ultimate test of wisdom is in knowing what is not right, what is wrong?*

NGOs unfortunately have become vehicles of personal gain, rather they are self chartered institutions capitalising upon kindness of Government and flexibility of laws to their own advantage. There is also no Centralised Information System to obtain and monitor

activities of NGOs. We must educate our children so that they don't become future Ramlingam Raju. He strongly warned against disintegration of families.

He emphasized that the issue for further debate is what more can be done to make laws more effective and enhance transparency? The beginning point for this overhauling process can begin from how schools are organised in India. Currently, schools can be operated only by Not-For-Profit entities, while their actual reality is known to all. Mr. Bhandari suggested that corporate should also be allowed to operate schools to ensure that proper access to education is provided.

The keynote address by Mr. K. Sampath highlighted the changes that have marked the Indian polity since the time of independence – how political system then was driven by ideologies and neither money nor power. In the Nehruvian era, the government undertook the task of establishing heavy industries in a modest budget. However the onslaught of competition has resulted in many changes. He also traced the transition in the Indian business scenario from corporate inefficiency to arm twisting in bureaucratic circles which kept the FIIs away in the initial days of globalisation to Infosys, which he described as a “phenomena”.

Rishabh Sancheti, Alumnus, National Law University, began his address by narrating Gandhiji's experience in managing the Phoenix Settlement where funds sufficient only for daily needs were maintained. He opined that human beings are essentially rational self-interest beings and NGOs were no exception. Any law aiming to regulate NGOs should attempt at striking a balance between self-interest and public benefit. He proposed a three pronged approach: a) regulate the donation money, b) establish parameters to evaluate NGO performance, and c) peer review.

The paper presentations in this session discussed the issue of NGO participation in the task of policy formulation. This session marked the end of the two day Conference.