

# Corporate India's tryst with governance and stakeholder engagement: The need to look beyond legal frameworks

## Columns



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Updated Oct 29, 2019 | 10:30 IST

Fresh allegations against Infosys CEO and CFO have raised new debates regarding the corporate governance of Indian companies



Corporate India was recently rocked by an allegation made against Infosys's top management by a whistle-blower group titled *Ethical Employees* who had complained

to the company's Director Board and US Securities and Exchange Commission about the conduct of its CEO and CFO. The whistleblowers alleged that the CEO was indulging in *unethical practices* to boost short-term revenues as well as profits and the CEO and CFO were not providing critical financial information to the auditors and the Director Board. Since the matter is under investigation it will not be prudent to make any further comments on this.

However, this allegation has raised fresh debates regarding the corporate governance of Indian companies in general and the role that will be played by various stake-holders including independent directors, investors and regulators. This will be of particular interest in the case of Infosys which has a public shareholding of about 86% as on 30th September 2019.

A company/corporation is a conglomeration of different stakeholders like employees, customers, shareholders, vendors, dealers/resellers, governmental authorities and society. This also implies that the company should act in a fair and transparent manner in all its dealings and should have a governance framework wherein the various stakeholder interests are balanced. Only those companies which have a good governance framework will be able to succeed and create long-term value for all its stakeholders. Thus, corporate governance covers a set of relationships between the management, director board, majority shareholders, minority shareholders and other stakeholders like employees, customers, vendors etc. Corporate governance should not be confused with just the regulations passed by SEBI like Listing Obligations and Disclosure Requirement (LODR) Regulations or Insider Trading Regulations.

Corporate Governance is much beyond the ambit of law and has a lot to do with the culture and mindset of the people who are managing the company's affairs. The role played by law is very minimal here. It has more to do with conducting the affairs of a company in such a manner that there is fairness to all stakeholders and that its actions bring value to the greatest number of stakeholders.

India's tryst with corporate governance in the form which we understand now, started in 1998, through a voluntary initiative of CII called the Desirable Code of Corporate Governance. Subsequently, this led to the formal initiative in the year 2000 by SEBI which appointed a committee of experts under industrialist Kumar Mangalam Birla of the Aditya Birla Group. As per the recommendations of the Birla Committee, a new clause 49 was inserted into the stock exchange listing agreement. Thereafter in 2003, another committee of experts was appointed under NR Narayana Murthy to make certain amendments to the existing corporate governance framework. In 2015, SEBI codified the corporate governance provisions into the LODR Regulations and in 2017 there was another expert committee appointed under Uday Kotak to review some of the corporate governance provisions. Kotak committee recommendations were considered by SEBI and many of them are being implemented in a phased manner from April 2018.

Interestingly, provisions relating to whistle-blowers were introduced based on the recommendations of the Narayana Murthy committee report of 2003. It recommended that personnel who observe an unethical or an improper practice should be able to approach the audit committee of the Director Board without necessarily informing their supervisors. Employees can complain to the audit committee even if the improper

practice does not violate any law. Companies shall take measures to ensure that this right of access is communicated to all employees through means of internal circulars, e-mails etc.

Furthermore, the employment and other personnel policies of the company shall contain provisions protecting whistleblowers from unfair termination and other unfair prejudicial employment practices. Companies shall annually affirm that they have not denied any personnel the access to the audit committee of the company regarding matters involving alleged misconduct and that they have provided protection to whistleblowers from unfair termination and other unfair or prejudicial employment practices.

Infosys has a board-approved policy on whistleblowers from the year 2003 onwards and the latest amendment was made in April 2019 to incorporate details on leak of unpublished price sensitive information. According to the policy, employees need not fear any negative consequences for reporting reasonably suspected violations because retaliation for reporting suspected violations is strictly prohibited by its policy. The policy further states that failure to report any reasonable belief that a violation has occurred or is occurring is itself a violation of the policy and such failure will be addressed with appropriate disciplinary action, which may also include termination of employment.

On earlier occasions also whistle-blowers have raised allegations against the company, the previous prominent allegation being wrongdoings pertaining to Infosys's acquisition of Israeli software company Panaya. However, a subsequent enquiry done by external investigators could not find any wrongdoing and the Infosys board gave a clean chit to the deal in October 2017.

Every company shall comply with all applicable laws, ensure that the company's financial information is accurate and the business is conducted with integrity. Failure to do so shall expose the company to the governmental investigation, penalties etc. Thus, companies shall provide for a working environment that helps the reporting of a potential breach of company policies, as well as applicable laws and employees, should be able to raise these issues without any fear of retribution or harassment. Since the allegations raised by the whistleblowers' group are being investigated at multiple levels it would be very unfair to conclude at this stage that the management has done something wrong.

Hopefully, the investigations will be over soon and eventually the truth will be before all of us. Until that happens, we should strongly resist any temptation to conduct a media trial and declare someone guilty. It is my strong opinion that such complaints should not be made public until and unless the investigations are completed. Such an approach is fair to both the sides and should be used as a template in future complaints involving whistleblowers.

*VK Unni is a guest contributor. Views expressed are personal.*

Source: <https://www.timesnownews.com/columns/article/corporate-india-s-tryst-with-governance-and-stakeholder-engagement-the-need-to-look-beyond-legal-frameworks/508992>