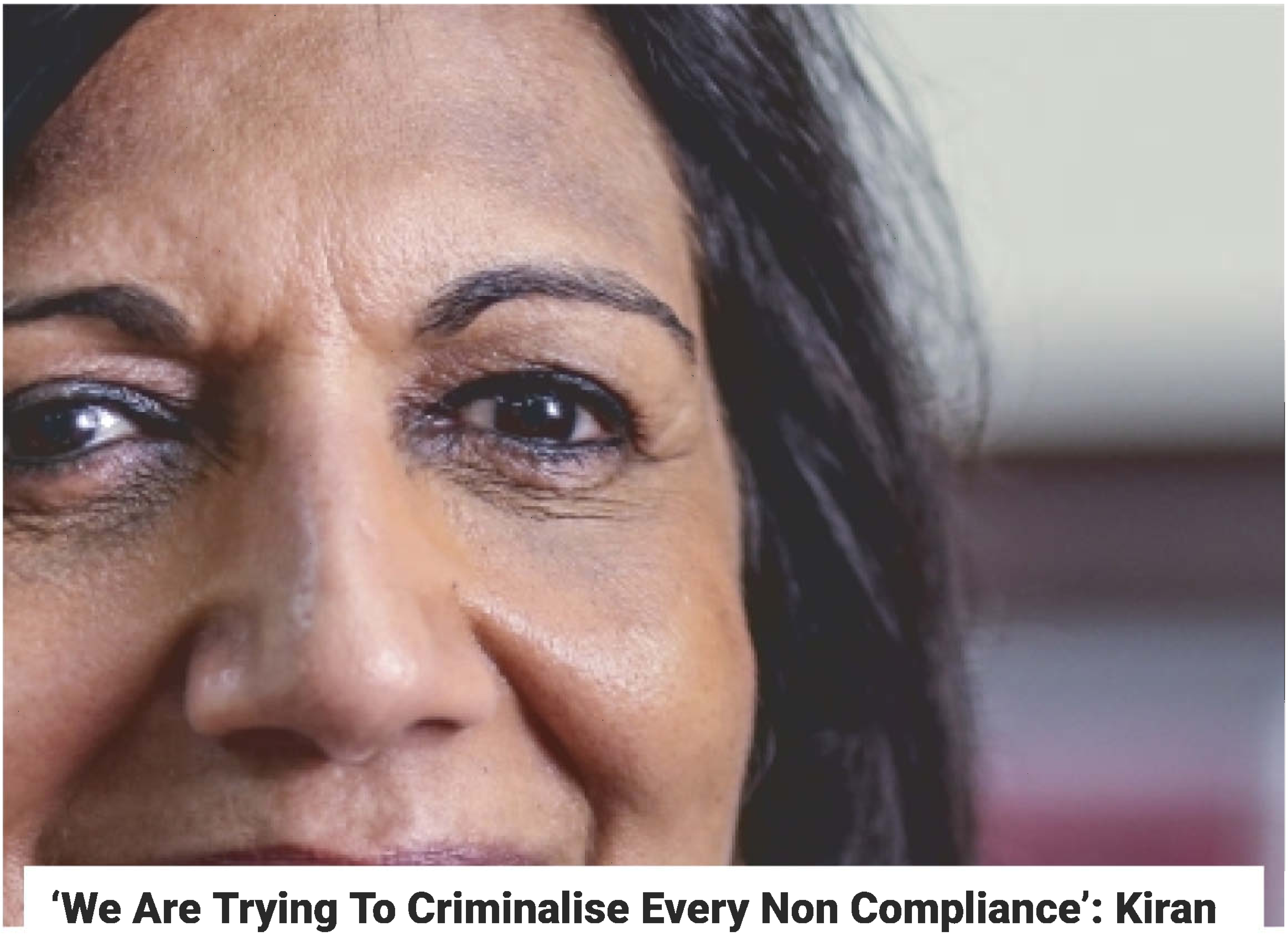

‘We Are Trying To Criminalise Every Non Compliance’: Kiran Mazumdar Shaw

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In an effort to plug every loophole possible, India has ventured into the realm of over regulation, says Kiran Mazumdar Shaw, chairperson and managing director of Biocon Ltd.

Regulators need to tread the fine line between regulation and over-regulation, Shaw said. “Trust but verify,” should be the approach, she pointed out in a conversation with former Tata Sons Director R Gopalakrishnan, at a session on *Corporate Governance – Missing the Wood for the Trees*, at the Gatekeepers of Governance conference in Mumbai.

> We basically want to borrow the most extreme regulations as best practices from every part of the world, and then put it all into one big regulation. That’s the mistake we make.

Trust And Verify

“I do believe that today in our country, we are coming up with regulations that are actually in the realm of over-regulation,” Shaw said.

“We are not being objective about the kind of regulations we are coming out with. We take extreme views on checks and balances. We try to plug every loophole possible because of a lot of discrepancies and malpractices we have seen over time. That’s not the way we should be regulating our businesses. We need to spend more time on our businesses, rather than on just attending to compliance issues,” she said.

“Can’t we lay out guidelines first and form regulation after determining that?”

> **On one hand you talk about minimum government, maximum governance, and on the other hand, you talk about trust, but verify. That’s the preferred model according to me. It should be trust and verify.**
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> **Kiran Mazumdar Shaw, Chairperson and Managing Director, Biocon**

Kiran Mazumdar Shaw (left) of Biocon with former Tata Sons Director R Gopalakrishnan and former SEBI Chairman M Damodaran (right). (Photo: Jyotiprakash Rout/BloombergQuint)

ESOPs To Independent Directors

When discussing the effectiveness of independent directors in ensuring companies adhere to corporate governance standards, Shaw called for an extension of employee share option programs to independent board members. They will be more vested in the company’s decision making process, she said.

The Companies Act, 2013 and subsequent SEBI regulations disallowed the grant of ESOPs to independent directors.

The rationale put forth then was that ESOPs could wrongly incentivise independent directors towards short-termism. Shaw agreed that ESOPs can be a double-edged sword but also stated that without the right alignment of interests independent directors could be prone to statist behaviour.

“The role of a board is to drive shareholder value, but if there’s no skin in the game, why would I as an independent director, drive shareholder value? I’d rather be conservative and protect shareholder value, because that’s what we are made to believe in every board, saying don’t take risk.”

ESOPs can be given at the end of the term of the independent directors, Shaw added. She pointed out that in the U.S., all board members have stock options. They are not putting the company to risk, and they are actually driving shareholder value because where they see that the company is not doing well, they ask tough questions, she said. Boards are far more engaged in strategy when they have stock options available to them, according to her.

> “ I’m not saying that those who don’t have ESOPs are not doing their job, but I am asking if there is a deeper engagement of people who have a vested interest.

Kiran Mazumdar Shaw, Chairperson and Managing Director, Biocon

Independent Directors Not Watchdogs

“Why are you making the independent director a watchdog, rather than someone who is actually aligned with the interest of the company,” Shaw posed when discussing the role of independent directors.

> You’re saying that the ID has to be a watch dog, I don’t agree with that perspective.

Shaw said nowadays there is a very high burden of expectations on independent directors. Independent directors are only privy to that information that is shared by the management, or shared by the auditors, she pointed out.

> “ We today expect independent directors in the company to have X-ray vision. How does that work? Independent directors cannot be expected to know everything that goes on with the management.

Kiran Mazumdar Shaw, Chairperson and Managing Director, Biocon

Nudge, Don’t Threaten

Corporate governance standards will improve if regulators use a lighter touch and markets reward companies that adhere to higher standards, Shaw said.

“We have suffered from decades of bad corporate governance which we are trying to fix in a very short time. A majority of businesses want to practice good corporate governance.”

A continuous tightening of laws and regulations has put an onerous burden on companies and their boards, she noted.

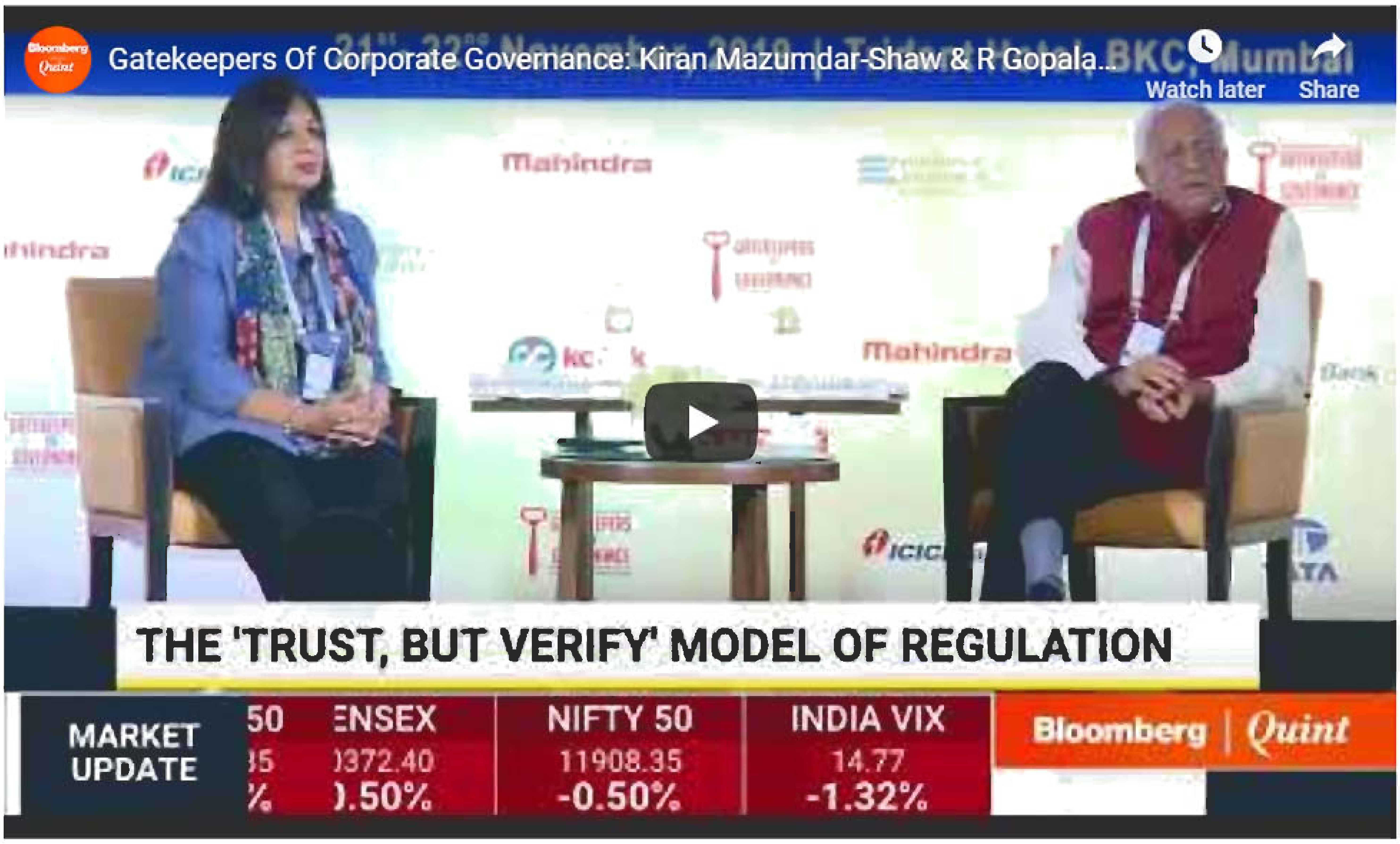
“Today, the clarity of roles, responsibilities and accountability aspects of every board member, I feel is extreme. We are becoming too extreme. It’s very easy to say if you don’t comply, it’s a criminal offence. But is it reasonable? is it fair?”

It has also led to over-regulation and micro-management by regulators.

> **“** I think SEBI has to focus on the most important aspects of corporate governance, which is financial wrongdoing, illegal transactions, risks and minority shareholders interests. Today, there are many frivolous issues to deal with, which I don’t think is correct.

Kiran Mazumdar Shaw, Chairperson and Managing Director, Biocon

Watch the entire discussion between Shaw and Gopalakrishnan here.



Read the text of the full conversation here.

Kiran Mazumdar Shaw : Well, I think first and foremost it's a great pleasure to be here. I know I’ve been promising Mr. Damodaran to be here for many years and I'm glad it’s finally happened. I think today, I'm very keen to share my views on the whole regulatory framework that we have in the country. I think corporate governance is certainly something that needs to be objectively looked at. I think corporate governance in my view is really about an ethical and moral code of business conduct and I think for that to happen, we must be very objective about what are the must-haves when we want to regulate the business world.

I do believe that today in our country, we are coming up with regulations that are actually in the realm of over-regulation. I think we are not really being objective about the kind of regulations we are coming out with, I think we take extreme views on checks and balances and try to kind of plug every loophole possible because of lot of discrepancies and malpractices that we have seen over time but I don't think that's the way we should be regulating our businesses. We need to spend more time on our businesses rather than on just attending to compliance issues. At the last count when I was doing a compliance check for my company, you’ll be surprised to know that I had actually at the last count had 1,567 compliance tick boxes that I had to comply with.

I think this is over-burdening any company with so many compliances and then we try to criminalise every non-compliance. I mean, this is now the trend that every non-compliance is almost being criminalised.

I think we have to be more objective. I think if you want companies to focus on business growth and shareholder value growth, then I think you do need to make sure that we are very objective about the kind of regulations that we are formulating. That's my view. I also want to touch upon another aspect which is really about the role of independent directors and of course, the role of the board in general. Is a board supposed to be a watchdog? Or is the board supposed to be a mentor to the management? Is a board supposed to prevent management from taking risk? -which is what it seems to be today, or is a board supposed to really focus on what drives shareholder value? Is there enough alignment of interest with the board and the management? or are they always going to focus on conflict of interest?

Everything that we are looking at is about conflict of interest. I really don't think that's a very healthy way of looking at board and management. So, I think I have a few views, but I don't want to talk about everything.

R Gopalakrishnan: I'm coming from a slightly different position from Kiran and I think that makes the morning interesting. It's only slightly different because words make a huge amount. Kiran says we should be objective and philosophically speaking, I don't know of anything which is objective. I am coming from the school of thought that there is no reality, it's all perception. I'm not being mystically Hindu in this, please don't mistake me. I mean, how come you send five people to the same conference and they come back with seven different opinions- as to what happened in the conference.

There is no reality. So, while I cannot disagree with Kiran on the fact that you should have more objective standards, I don't know how to define objectivity. That is a thing I'm struggling with so I don't agree with you but I don't disagree with you either. I'm coming from a slightly different position that if there is nothing called reality in this world, and I emphasise I am not being mystical. I am just being practical; I have even written a book on that subject. If there is nothing called reality in this world and the whole world is full of perceptions, then how do I view how do view corporate governance?

I have had the privilege of having participated in this journey for the last 25 years- since the Murthy committee in 1995-98 or whenever it was. I have seen many chairmen come and walk into SEBI and go away from SEBI including our distinguished host today.

By the way, for those of you who don't know Malayalam or Tamil- Meleveetil Damodaran means the Damodaran who is up there and so everybody be cautious. I felt that many Tamil-challenged and Malayalam-challenged people would not know the true meaning of M Damodaran. No other SEBI chairman has had this idolage- this idea of being called male M Damodaran.

Now, so here is my opening statement which is, there is a connection between public governance, corporate governance and the capability to regulate. Put this in the context of laws in general but public governance means how are public sector units and public sector banks for example, which are public institutions governed. People take lessons from that.

If you make LIC buy shell out some money to buy IDBI- to save IDBI, people take lessons from that because you don't expect your public governance standards. You want it to be iconic for corporate governance. I'm shocked to learn that on the Oct. 2017, this government passed a law which says that people who are taken to be cremated, you have to produce your Aadhar card. I don't know how many of you know this but I was absolutely shocked and then I was told that if you don't produce the Aadhar card of the deceased, then they will say we will do with Pan Card for Rs 500 and if you can't produce a pan card also, it costs a little more money.

These are the points of interface while Aadhar card in cremation is not quite, IBC comes close to cremation but not quite there. I think the point I want to make is, there is an influence public governance has on corporate governance. But look at corporate governance itself, I think we have made great progress. Great progress in the last 25 years because this is a complex resolution of tensions between people who are pitched differently. And Kiran has already alluded to it and I accept that particular dilemma. One is, the concept of promoter is an absolute nonsense. Nothing called a promoter in my view exists. There is something called a founder, there is something called a controlling shareholder. But nowhere in the world will you find the concept of a promoter it's a very unique Indian construct. I suspect it came because a banker or regulator or government or politician wanted to nail a particular passport photograph in the newspaper and throw darts at it. So, promoter becomes very convenient from that point of view.

Everywhere in the world you have a controlling shareholder if you have more than 50 percent, you're a controlling shareholder if you're less than 50 percent, you're a major shareholder. It's not the word promoter that I have a problem with but it's the connotation that promoter gives.

The promoter comes with the attitude; not always but sometimes “this is my company I have let you in, the other people”. Not all promoters do that by the way, very well responsible companies don't do that but some of the fault lines that we are seeing in our governance structure come out of that sort of feeling. It's my company I can do what I want I can take money from the public I can transfer it to my subsidiary. I can do that and let somebody catch me. Then, you have the management. The management and promoter maybe one or they may be different. Then you have the independent directors whether they are watchdogs, according to me, independent directors- they are catalysts in the chemical process. They are not reactants. It will be dangerous if an independent director becomes a reactant and if you remember your chemistry, a reactant also transmutes in the process of the reaction. An independent director is not supposed to react. That’s what conflict of interest means to me in common sense terms.

If the metaphor can be used of an automobile, the engine compartment where energy is generated heat and confusion chaos and entropy, that's management. The transmission system, the gearbox and so on and reaching the power to the wheels— is the board. What the independent director is, is a sort of a steering wheel. He just makes sure that the vehicle is not hurtling out of place and then you have a regulator who is like the shock absorber just making sure that the rides are smooth, and the public doesn't suffer.

So, you have very different roles for them. From an overview point of view, I have a difficulty with defining what’s over-regulation while I, in principle, think that there is a point to what you say. I don't know how to define over-regulation. The inability to implement laws that we create is a serious disadvantage.

Kiran: When I talk about over-regulation, I mean that whenever were coming up with regulations in our country irrespective of which part which department or which division comes up with regulations, we basically want to borrow the most extreme regulations as best practices from every part of the world and then put it all into one big regulation. That's the mistake we make. That is where I have a problem that every regulator is trying to pick up a regulation from here, a regulation from there and a regulation from somewhere else and thinks that this is best practice but that is not, because you have to take each regulation in perspective and context of that country or wherever you've adopted that regulation from. If you try and pick and choose regulations from different ecosystems and put it into one, there is a problem that itself creates a conflict. So, that’s where I think we need to be objective. When I say objective, that's what I’m talking about. Can't we first lay out the objectivity of these regulations? What are the guardrails we want? What all regulations are supposed to be guardrails and guidelines, right? So, what are the must-have guardrails that we want? What is the kind of guidelines that we want people to follow, and then you formulate your regulations. That is the way I'm coming to it. What I am saying is, we tend to do this extreme regulation because we think oh we've got the best of the world regulations and that is wrong, that is flawed because each regulation when you borrow it from some other part of the world, you're not putting it into context. Then you get the worst regulations. That's what’s happening. So, I personally believe we need to relook at this whole aspect of what do we want in corporate governance. Today, we have extreme regulations, but has it stopped fraud? Today, despite all the regulations we've put into place, you still have the worst of frauds being committed in this country. So, rather than making sure that everybody is being watched, can't you go after the wrongdoers in a much more significant way, to make an example of them? Which is what should be done. So, it's like on one hand you talk about minimum government, maximum governance. On the other hand, you talk about trust but verify. That’s the better preferred model according to me. It should be trust and verify. Let there be a lot of self-regulation, give the guidelines, let there be self-regulation but go after those who are non-compliant or who are actually abusing regulation— that to me is a very important part.

R Gopalakrishnan: I think you make a brilliant point because your definition of over-regulation is now still clear. What you're saying is, bring in regulations which are culturally compliant because what works in America may not work here. The second thing you are saying is, when there is an infraction of that infraction of that regulation, resolve it. Don’t let it be hanging around. Is that your definition?

Kiran: : Yes, exactly.

R Gopalakrishnan: And when you don’t take care of these two points, then you are all over the place. I don't think anybody can dispute that-exactly in line with what my own thinking is that one of our serious disabilities in India is, we have a legal system which cannot cope with the number of regulations that we make. So, cases go on forever.

Kiran: So, like you said, you know let's look at that conflict of interest. I want to bring two examples here. One is, that today we disallow ESOPs to be extended to independent board members, right? Why? Because, it's perceived as conflict of interest. Yet, in many parts of the world, this is an accepted norm that you want the board to be engaged and invested in the company so that they drive shareholder value. So, today if I am an unvested independent board member, who has no skin in the game and if management comes to me with any proposal, I am going to be not very bothered or objective about it- because if I really had a vested interest, I'd really want to know much more about what the management is bringing to the table saying. I will ask much more intriguing questions because I know that shareholder value is at stake. Now, the role of a board in general, is to drive shareholder value, right? But if there's no skin in the game, why would I drive shareholder value? I'd rather be very conservative, I'd rather just protect shareholder value because that’s what we are made to believe today in every board- saying, “don't take risk, don’t expose this company to anything beyond a certain risk”. This is not a good way of running a company. I personally believe I think the board has to be engaged in understanding the risk, and in basically managing that risk and if you're all the time going to be about not taking too much risk, I think that’s going to be also very dangerous. So, I just feel that's where the conflict of interest is and I think for a long time we used to allow ESOPs to be extended to board members, I think it stopped in 2006 or something.

Today, in the U.S., every board member expects ESOPs. I agree that it's a double-edged sword because on one hand you don't want the board to get involved in taking big risks but at the same time you go after those companies who are misusing that privilege. That's all I'm saying. In any case, when you give ESOP's to such boards, you can almost give it at the end of their terms. It's like a vesting—you don't have to give it up front. So, there are various ways of dealing with that. But today, I find it is very difficult when you don't extend that ESOP to board members, I somehow feel that you are not getting them aligned with the interests of the company. You're constantly focusing on the conflict of interest. You're not focusing on alignment of interest. To me, that's a big flaw in our corporate governance.

R Gopalakrishnan: But if there's a natural tension between independent directors and management. Is it good to align them? Because, I have served on at least 30 boards without any ESOPs by the way.

Kiran: That's okay but that's your personal thing Gopal. Don’t make it a general state.

R Gopalakrishnan: No, I am merely making a statement that I have served in 30 years. The question that's raised in my mind is for an independent director to play his or her role without ESOPs, will that person be maimed? I don't think so. That's the point I make.

Kiran: No, I'm just saying that you actually drive that person more into aligning their interests with the company’s interests. The perspective you need to have is that why are you making this person a watchdog, rather than someone who is actually aligned with the interests of the company? That's the difference.

R Gopalakrishnan: It's very a fundamental point.

Kiran: So, you're saying that the independent director has to be a watchdog. I don't agree with that perspective.

R Gopalakrishnan: What should he be?

Kiran: I think the independent director has to play a very independent role in driving shareholder value. I think the independent director has to be also making sure that they are aligned with the interests of the company. What are the kind of independent directors you're calling? You're calling independent directors who give you a different perspective. They're supposed to ask you important questions. No independent director will allow you to take a decision that puts the company at risk. So, even if management wants to do something very risky or something very bold and something which may not really fly with independent directors, they will put a check. They will because they know that if they have a stake in the company, and they don't want that to be at risk either. They don't want to put their vested interest also at a wild risk. So, there is a check and balance, and this works very well. I've seen in the U.S. In the U.S., all board members have stock options. They are not putting the company to risk and they are actually driving the shareholder value because where they see that the company is not doing well, they ask tough questions. They want to understand strategy better. I know that everywhere in the world we have strategy sessions with the board and the board is far more engaged in strategy when there is a stock option available to them.

R Gopalakrishnan: This is where I'm looking for the evidence. I'm waiting for evidence that those with ESOPs pay more attention and are more engaged than those without. This I find an acceptable statement.

Kiran: I serve on international boards and I serve on Indian boards. As you know on Indian boards, we have no stock options, on international boards there are stock options.

R Gopalakrishnan: We used to have stock options. Where they more engaged at that time?

Kiran: I mean, I can't comment on that because my company was not public at that time so I can't comment on that. But I'm saying on U.S. boards, where there are stock options, the degree of engagement, the level, the depth of engagement because they know much more about the business because they ask the questions much more at that level. I find that it helps. Now, here yes, we of course have boards that you really get into strategy and which of course do its job very well. But I'm not saying that one is not doing the job and one is doing the job. I'm saying that is there a deeper engagement of people who have a vested interest.

R Gopalakrishnan: I don't know. Maybe my experience is different but frankly even for employees to get ESOPs has not been a great experience- in my in my experience.

Kiran: I beg to differ. I Think ESOPs have helped a lot with getting employees to be very aligned with the company.

R Gopalakrishnan: So, I was working in a company where; and I've been the recipient of ESOPs. I got my ESOP's off my back at a certain point of time. The company did badly after that and then the amount of bitching I heard from people that we thought we're going to have some income, but it is evanescent income.

Kiran: Well, ESOP is something where if things go well, everyone wants it when things go badly nobody wants it. It's that you know I want all the profits but not the losses.

R Gopalakrishnan: It is interesting to know, one of the very cardinal points you made and I think there's a very valid statement- is, we adopt laws which are culturally not attuned but more importantly, we have no way to implement them. So, you're saying go after them. The problem in this country is, nobody has gone after other than former finance minister.

Kiran: I think we are beginning to go after people, and I think it's good to do that. I think we are going after companies which are blatantly abusing corporate governance. The other point I also want to make is, the role of independent directors in our country. I think today we expect independent directors who have an x-ray vision. How does that work? Today, independent directors are only privy to that information that is shared by the management or shared by the auditors. I mean after all every you know Audit Committee is allowed to have a closed-door session with the auditor and whatever you hear from to have a closed-door session with the auditor and whatever you hear from the auditor is what you accept. Independent directors cannot be expected to really know everything that goes on within the management. Let's look at my own industry, the pharma industry. How can you blame independent directors for the 483s or warning letters that pharma company gets? Because they are only privy to what is told to them by the management. Yes, everything is under control, yes, we've done this, yes, we've done that. Ultimately, they get warning letters. Now, you'll say what were the independent directors doing? Why didn't they know directly? Form 483s are non-compliance of quality. So, you can't blame independent directors. Today you're holding independent directors for these kinds of non-compliances saying what were they doing? Were they sleeping? Now, I'm saying it's unfair. Today if there's a legal proceeding against the company, always the independent directors are a part of that. You know the independent directors are part of that. Show cause why you should not be arrested. 'Show cause why should you not be arrested?' I'm just giving an example. I know many of these kinds of things that come— legal notices. You know, courts will pass one judgment on something and I wonder as an independent director, what the hell do I have to do with this? The company has not complied with some permit, some license and today anything everything is jailable offense. So, I just feel we need to make sure we understand what is it that the independent directors ought to be responsible for. What is it that the independent directors can be held accountable for? I agree, audit committee is an independent function and they must be very prudent, must be very stringent about ensuring that the auditors do their jobs well, that the internal auditors do their jobs well, that the management shares everything that they ought to with them. And we need to have a system that shows that if some information was not shared for whatever devious reason, then how do you protect these independent directors? That's what I meant by x-ray vision.

R Gopalakrishnan: So, your comment raises two questions. I don't know if it's fair to take a specific example but take Jet Airways. I don't know any more facts than you and probably that's true for many people in this room. I am assuming nobody here is a former director of Jet Airways. What could the independent directors have done? I'm just taking that as a little case study. Here is a person who says 'oh I don't worry I'm over leveraged, I'll fix that, I have to do that, I'll do that. My margin is not ordered.' Now, if people say the independent directors should have seen intuitively.

Kiran: Here, I think you have made a point. Here the independent directors ought to look at over leveraging. I think independent directors and this example that you gave have every responsibility to ensure that the company is not over leveraged to put it at risk.

R Gopalakrishnan: But over leverage is also a matter of an opinion. You put three accountants you get five opinions on what is over leveraged. It has nothing to do with the accountant, sorry.

Kiran: But I think a board needs to assess the financial viability of any company to know what the cut-off point is. I mean you can't go on allowing a company to be over leveraged. There has to be some cut off point.

R Gopalakrishnan: And they may have different views on that, but they have to talk about it and come to a conclusion. You're saying you're a board at the end of the day.

Kiran: Absolutely. I think those kinds of examples are easily dealt with. Why did you allow it to go to this extent that it had to have this kind of fate? I mean, if you come to a point where you don't see any way of paying back a debt that you have accrued then, does the board discuss bankruptcy? Those are the kind of things that the board needs to do. You cannot just be in denial. So, I don't think I'm suggesting that the board should just be a sort of a perfunctory board and it has no rules and responsibilities. I think it has a huge responsibility, but let's be sensible about those roles and responsibilities and articulate them well enough so that they are clear; as to what do you expect the board to do.

R Gopalakrishnan: : You don't think they are clear enough now?

Kiran: : No, I mean either it is one extreme or you're not clear about what you want to do.

R Gopalakrishnan: It's one thing to say they are not clear now and it's a second thing to say, it is clear, but don't agree with the point of clarity.

Kiran: I am saying that the clarity of the roles, responsibilities and accountability aspects of every board member, I feel is extreme. So, you can always have clarity saying you will be responsible for hundred things. But, is it correct? Is it fair? Is it reasonable? You have to be very clear as to what are the critical things that you will be responsible for and what is it in that realm of subjectivity that you have to have? Today, you are criminalising everything. I can't believe that a CSR non-compliance could have been even contemplated as a criminalised kind of non-compliance. That's what I'm trying to say. We are becoming too extreme. It's very easy to say if you don't comply, then this is a criminal offense. It's very easy to say that, but is it reasonable, is it fair?

R Gopalakrishnan: I think this tendency to criminalise everything is I don't know whether it happens because in the bureaucracy the guys who frame the laws are different from the guys in the ministry which implements the law. Recently, it's now the first anniversary of this episode. Last year, at the same conference Mr. Damodaran knows I was here. I had got a non-bailable arrest warrant. For what? For being on more than ten boards after the first of April 2016 or 2017. I said, 'why is it a criminal offense?' and when I checked the facts, it turned out I was not on more than ten boards, I'm very careful.

Kiran: But what if you were? Why should it be a criminal offence?

R Gopalakrishnan: No, so let me finish my little story. Listen to my travails. I had to engage a lawyer out of my meagre pension I had to pay for that lawyer myself. I had to go to Bangalore, your city and formally my city. I had to stand in a criminal court, I've never thought I'll stand like in these Hindi movies you see those guys who say 'mulzim hazir hai and haan haazir hai'. I had to pay Rs 15,000 of surety, I still haven't got my money back and the papers went all the way to Delhi. I am told to the minister, but I don't know who it went to and I've now got a letter saying sorry to the wrong case, but I still haven't got my Rs 15,000 back. Now, it's not that I'm looking for my next lunch out of Rs 15,000, but not being able to complete your CSR budget and to contemplate more and more regulation, criminalisation catching a guy for not being on more than 10 boards even if he was on more than 10 boards to call it a criminal offense. These are the kind of inanities that come and if you call those over regulations, you are dead right. I don't know where they got the inspiration for this, for no other country has this. You say they pick the best from other countries; I think they don't do that.

Kiran: No, all the worst.

R Gopalakrishnan: We have the best of IAS officers or some law ministry which doesn't know got nothing better.

Kiran: Because, I think in this country we think everyone is a crook and we start from there. So, we want to fix all these crooks and we forget that most of us are pretty honest people. I just think that we need to trust more, I think we need to be more objective and we need to be more reasonable.

R Gopalakrishnan: So, how if you and I and the people in this room can we create more trust?

Kiran: So, I think we can do a lot with technology. I think online digital technologies are the way to go. I'll tell you, I attended a very interesting Forbes conference recently and I had the pleasure of meeting Jack Ma. He had a very interesting thing to say about Alipay which is he says you know we keep talking about AI, AI and AI and we call it Alibaba Intelligence which I thought was a very nice way of putting it. He says you know Alipay is the most secure system of rating credit worthiness. He says, what we do is we have an online application where we've actually figured out about hundred ways of which people cheat the system. Out of that, so they built an algorithm where you ask ten questions which picks up all these hundred ways of cheating any system. He says we ask you to fill in those questions and the moment you fill in those questions and you submit it, within ten minutes we tell you whether you can get that credit or not. It could be anything, you might be one dollar it might be one thousand dollars, it could be a million dollars. Alipay is a very interesting credit system that they have. You know he gave a very interesting example. He said anything that stands to logic, can be digitised and can be made into an algorithm. Anything which leaves it to innovation and creativity of the human brain you can't do that.

So, we have to find ways and means of looking at how do you catch people who are committing fraud? So, when you have any kind of compliance, I think they should do a lot of self-regulation. Like, asking them to fill in certain information. If we can come up with such algorithms, I think it's very easy to get to pick out and catch people who are actually trying to abuse corporate governance. So, I'm just saying I think we need to use technology much more effectively and efficiently to do this.

R Gopalakrishnan: This is a very interesting observation you make about Jack Ma because on the neuropsychological side, they've devised a machine called a transcranial magnetic resonator. Do you know what it is? TCMR? Well, it's basically device into which you shove the director concerned. They wire them up and they produce various signals and then the map it. Then, they determine the amount of damage to the brain due to power. I didn't know such a gadget exists and I don't want SEBI to know about it because there will be a regulation that the TCMR numbers of every director should be reported and the audit committee should certify it to be correct. On a more serious note, these kinds of tests Alipay can do it and it's a very good exercise to say that, at least I'm eliminating 50 percent and 60 percent 70 percent. I can apply my judgment to the other 30 percent. But they do have the potential to deal with the other 30 because there will be some aberrant character.

Kiran: That's what I mean. So, you have some amount of you know you know aspect of people who will still defraud the system. Just like here, we must assume that at least 90 percent of our people will be very compliant, they'll have good levels of corporate governance. Maybe those ten percent will still have to be dealt with.

R Gopalakrishnan: : So, technology is one way in which society can create more trust. What are the other ways in which we can create trust?

Kiran: So, as I mentioned earlier, just having a huge number of compliance expectations has not solved the problem. So just merely having a tick box approach to all the compliances doesn't make you a better company in terms of corporate governance. I think looking at regulations in terms of what are the must-have regulations rather than you know the nice-to-have regulations and the extra regulations that we want all the time, I think we must only focus on those must-have regulations. Again, I go back to the fact that regulators must remember that they need to provide guidelines. They need to provide guardrails, but they should not be micro-managing companies which is happening today. Everything that is non-compliant with a company, the person in SEBI will be expected to go and look at look into every small aspect of that non-compliance which is not required. I think SEBI has to focus on the most important aspects of corporate governance which is financial wrongdoing, illegal transactions, what is the risk that the company has taken which has really put the company and the shareholders at risk, minority shareholder interests and whether they have been protected. These are some of the must-haves and those are the kind of regulations, but not every miniscule aspect of that. Today, you get so many frivolous kinds of issues to deal with in terms of non-compliances which I don't think are correct. I was just having a discussion earlier on, on insider trading and I said shouldn't there be some level of insider trading that really SEBI has to get involved with and the rest should be a little rap on your knuckles? I mean, the quantum of insider trading it should give you some clue as to where SEBI needs to really get seriously get involved. If it is tiny amounts of inadvertent insider trading, I just said this because this morning I read one Google alert that said that Kiran has settled with SEBI for an insider trading issue. It was such a tiny insider trading amount which was inadvertently done because some broker sold shares without taking clearance and then finally, I had to pay some few lakhs and settle it. I said, do you really need to spend so much resources and having these newspaper articles about such small issues? When really the bigger issues are the large insider trading that goes on that's where SEBI should be really focused and get its resources focused to make sure that these stocks, all this large illegal insider trading. But these tiny inadvertent things don't you think it can be fixed by just an online thing saying okay you have done this. So, you give a cap saying anything that is below certain amount you do it all online and correct it. Why does SEBI has to pull? And this took nine months to resolve. Such a tiny little amount.

R Gopalakrishnan: They're putting that into the newspaper because they want to show the world that they're doing their job.

Kiran: Yes, that Kiran Majumdar has paid 3 lakhs of rupees to settle her insider trading.

R Gopalakrishnan: I want to explore with you another thought about this business of trust because it's a much larger social issue than just corporate governance. Your suggestion about technology being deployed is a very valid one. I want to propose a second bow to the string. Before 2003, there was economics. There was mathematical economics, there was no behavioural economics. Basically, what behavioural economics says is, people don't behave rationally. They behave with psychology and overlays of that. Is there a case for behavioural corporate governance?

Kiran: Absolutely, I think you can nudge people into good corporate governance, and I think that's another subject altogether which you know you need to spend doing on it.
R Gopalakrishnan: Who is looking at it? Maybe the man upstairs will look at it. It is a subject worth looking at.

Kiran: : It is a subject worth looking at. I think nudging people into good corporate governance is a very important exercise that we must do. But again, I go back to the point that I personally believe that yes, we have suffered from decades of bad corporate governance and bad behaviour which we are now trying to correct in a very short period of time. But equally, I would say that in today's day and age, I think majority of business people and entrepreneurs do show good corporate behaviour. I think everyone does want to basically you know display good corporate governance because I think one of the things that we must understand is, that the markets also recognise that companies with good corporate governance have higher valuations. I think that is a very important driver of good behaviour and good corporate governance. So, I agree with you that you must look at a way of nudging people into good corporate governance.

R Gopalakrishnan: So, if I sort of collect the little thoughts that we have put into the basket, would what the following statement be approximately representing what the essence of what you're saying? Indians are no worse or no better than people anyway in terms of being crooks and so on. You'll always find a few crooks in every society, we have our share. Point number two, we have always been an apparently over-regulated government system but with no adequate means to implement them and so we end up with cockeyed outcomes; some of which we have mentioned. Indians have been so long for seventy years a whole generation of people have been subjected to impractical laws and over-regulation- that we find jugaad ways to get around it. This has reached the point of diminishing returns and the only way now, is to find other methods to restore trust in a society and we will keep it to the corporate world because that's our subject. Then, we are saying there are two ways that at least has come out in this discussion. One is technology and that requires application of mind in the way you describe the Jack Ma formula. The second way is to say behavioural corporate governance does make some sense. Somebody has to do some work on this, and we must understand how human psychology works.

Kiran: SEBI should have a behavioural economist who can actually help them with some of these regulations which actually can help them to rely less on these copious, onerous regulations and restricted down to a few that actually nudge good behaviour.

R Gopalakrishnan: I was a bit of a sceptic on all this behavioural stuff. Then, I read a little article somewhere. You know, you've got all these level crossings in Bombay and unfortunately more people died in these crossings and crossing tracks and they tried various methods putting more and more over bridges than the over bridges would collapse and then they had a problem. So, they got hold of a guy who I'm told is a behavioural guy, and he found something. He says where there's a lot of crowd, crossing the tracks you don't need over bridges because there's a self-correcting mechanism where people say, "oh abhi matt cross karo, train aane wali hai (Don't cross, a train is about to pass)". But where the transgressions are few, where the density of crossings are low, that's where the accidents continued. So, they started putting over bridges in Bombay first in 900 meters then they did it to 9 kilometres now I am told much of Bombay's covered by putting these overbridges and these precautionary things in places of low density. According to this article, accidents have come down by 50-60-70 percent. So, if you go after high-density you know, like today if you see a real estate is in a problem. It's a lack of trust environment which is widely prevalent, and you can class different industries. We keep going and harping on those and I'm just wondering whether there's an alternate way to do this.