

# Conversations on Corporate Governance

## Dialogue 5: Strengthening Institutions for the Coming Decade



*This page is intentionally left blank*

## Dialogue 5: Strengthening Institutions for the Coming Decade

Institutions are mechanisms that define how humans or group of humans interact with one another politically, socially and economically. These rules or codes of conduct, in turn, are established by the culture and the norms of society. It is, therefore, crucial that institutions represent the collective will of the population. Institutions, in governance parlance, refer to formal institutions such as the government and its departments, judiciary, law enforcement agencies, regulatory bodies and markets. Stable and robust institutions are fundamentally important to improve governance standards and achieve sustainable economic development.

Institutions govern human behaviour and regulate businesses in a society. Their primary responsibility is to ensure trust by encouraging adherence to laws of the land and ethics, resolving conflicts and delivering justice to the aggrieved. Institutions must also ensure equitable access to basic resources and judicious use of these resources. It has been well documented in literature that the strength and robustness of institutions determine the level of economic development of a country. It can also be said that economic development, in general, leads to the development of institutions that help sustain it.

Stock exchanges are important market infrastructure institutions (MII), given their role in ensuring fair trading practices, efficient dissemination of information and a level-playing field for all market participants. It is the institutional strength of an MII that, amongst other things, allows it to deal with a crisis. Global markets have seen a few major incidents in the last two decades, and our markets have been able to measure up to the requirements each time.

In this context, NSE, jointly with Excellence Enablers - a corporate governance advisory firm, had organized a **webinar on “Strengthening Institutions for the Coming Decade”** – the fifth dialogue in the series of Corporate Governance Webinars on January 19<sup>th</sup>, 2021.<sup>1</sup> The panel discussion focused on the importance of robust institutions, the current state of institutions in our country, and what can be done to make them better so that the citizens of our country can benefit from adequate institutional performance. Institutional strengthening is a constant work in progress, which involves having the right rules and making sure that they work to achieve the larger goal i.e. creating a society where people respect and look after each other. The panel comprised very eminent and highly regarded speakers from the legal fraternity – Mr. Arvind Datar, Senior Advocate, Supreme Court of India and Dr. G. Mohan Gopal, Former Member, Law Commission of India; Former Director, National Judicial Academy and Former Vice Chancellor, NLSIU, Bangalore. The discussion was moderated by Mr. M. Damodaran, Former SEBI Chairman and Founder, Excellence Enablers. This report provides a summary of the deliberations.

- Institutions and organisations are different: Institutions work within a framework of rules, and organisations are expected to follow rules that exist. It is not easy to create a framework of rules. The mother problem seems to be that bureaucracy wants to control the political system. Common ground needs to be established with political, managerial and technocratic consensus in place.
- Why do institutions require strengthening? Institutions constitute a very essential part of the structure that sustains our ecosystems. While there is no shortage of institutions in India, the important question is how many of them have lost their relevance and/or legitimacy, and have proved to be inadequate in terms of the objectives that they were set up with. The principle “if it ain’t broken, don’t fix it” seems to be part of the problem, since institutions that aren’t broken, but

---

Please click [here](#) to listen to the recording of the webinar.

---

<sup>1</sup> The first series comprised: First dialogue on August 19<sup>th</sup>, 2020 on the topic “Crisis Management: The Lessons Learnt. Second dialogue held on September 22<sup>nd</sup>, 2020 on the topic “Corporate Governance and Financial Sector Regulations”. Third dialogue on October 21<sup>st</sup>, 2020 on the topic “Instruments of Corporate Governance”. Fourth dialogue on December 16<sup>th</sup>, 2020 on the topic “Conflict of Interest”. Please click [here](#) to read our summary reports and watch the YouTube recordings.

are breaking down need to be fixed before they reach the stage of being beyond fixing.

- Lack of role clarity a deterrent to successful institutional building: With a plethora of institutions, there are turf issues that have arisen among some of them, arising from lack of role clarity, and leading to underperformance. In some cases, the doctrine of separation of powers is not being respected, with the Judiciary stepping into the space of the Executive, and in recent times, into the area of the Legislature. This is useful when the Executive is dragging its feet, or the Legislature is not doing what it is expected to do. However, if this becomes routine, there will be avoidable friction between the different organs of the Government.
- Capacity building is crucial for adequate performance: Capacity building is a crying need for many institutions. Given the vastly increased scope of responsibilities of some of them, the workforce could be inadequate in terms of numbers and/or in terms of skillsets. Having adequate human capital with right skills, attitude, commitment and conviction is crucial for institutional capacity building.
- Corruption as a challenge for institutional strengthening: Increasing centralisation and moving away from federalism has worked to the detriment of institutions. Simultaneously, the possibilities of corruption have been enhanced. There is disagreement on the impact of elected officials on governance. One view is that this is to be avoided as it *inter alia* promotes corruption. The contrary view is that it is through elected officials that the voice of the common man is getting factored into decision-making. The truth is somewhere in between.

Institutions are adversely affected by several factors. These include, besides corruption, arbitrariness by decision-makers, and the lawlessness of the powerful. Sycophancy is also seen as a major detractor. The absence of performance standards, which are objective, is a part of the problem of weak institutions. Recognising that all problems cannot be solved at the same time, work must commence on improving institutions that can be strengthened in a reasonable timeframe.

- An eye on the future: As far as the three organs of the Government are concerned, there is much work to be done, without further loss of time. In the case of Parliament, it has been noticed that there is inadequate debate before a legislation is passed. There are increasingly fewer references being made to Select Committees for detailed examination of legislative proposals. This is an area that needs to be strengthened.

In the case of the Judiciary, many reforms exist in theory. The next steps have been identified, but implementation is proceeding at a leisurely pace. A major part of the problem is the delay in appointment of an adequate number of judges, especially in the High Courts, and in the subordinate judiciary. In most cases, the date of the impending vacancy is known sufficiently in advance, and yet, between the Judiciary and the Executive, considerable time is taken in the process of selection and appointment of the new incumbents. Filling up of the vacancies as

per the sanctioned strengths is the most important requirement of strengthening the Judiciary as an institution. As for the subordinate judiciary, even if there is no all-India judicial services examination, a state-level examination can be conducted to recruit an adequate number of judicial officers of the right quality.

As we look at the next decade, it is useful to start with the clear understanding that most of the laws that we require are already in place. It is better and timely implementation of the laws that is called for.

- **Strengthening functioning of tribunals:** Tribunalisation of justice has for many years been considered one of the major responses to addressing the problem of overburdening of the judiciary. Tribunalisation comes with its own set of problems. Firstly, the bureaucracy/ Executive is reluctant to give Tribunals adequate autonomy. It is only recently that there has been a ruling that the Law Ministry should be the administrative ministry for Tribunals. This has given rise to an expectation of significant improvement. It is not enough for Tribunals to function independently. It is equally important for them to be perceived as functioning autonomously. This is an instance where perception is at least as important as reality. Even in India, there are examples of functionally autonomous institutions that have gained credibility because of perceived insulation from political influence.
- **Empowering NGOs:** One of the institutions in India which has suffered disempowerment is the NGO sector. With increasingly complex laws and regulations to comply with, and with limited administrative resources, since they are not-for-profit entities, NGOs are facing existential issues.
- **Accountability and decision-making:** One of the major drawbacks in our system is the way accountability has been defined or interpreted. Briefly stated, errors of commission are pounced upon, and give rise to punishment, whereas errors of omission are often ignored. This would seem to legitimise a culture of avoidance of decision-making. If this area is not addressed immediately, institutions will come to a standstill because of the safety associated with not taking decisions.
- **Building appropriate human capital for institutions:** The manning of institutions, especially of important institutions such as Tribunals, is critical. Persons with appropriate experience and qualifications, as also with a Judicial temperament, should be identified to man positions in such organisations. This will ensure insulation from political intervention. It is equally important to ensure that these institutions do not become sinecures for superannuated officials. Experience has shown that Tribunals with persons who opt to serve in them, while in active service, are often more productive, since they have members that come in for the right reasons.
- **Empowering local constitutional bodies:** Over time, State Governments and local bodies have been increasingly disempowered with more centralisation having crept in. Federalism which is one of the pillars of our Constitutional framework, must be respected, leading to institutions at the State and sub-State level being enabled to play their legitimate role. Adequate empowerment of local

constitutional bodies with adequate responsibility and capacity will help address the needs of our vast and diverse country.

- Need for assessing the impact of institutions: There is a reasonably clear understanding of what is required to fix our underperforming institutions. One of the important aspects that needs increasing attention is the assessment of impact of the work being done by the institutions. Absent this, institutions will underperform without anyone being the wiser.
- Institutions should reinvent themselves: Improving institutions will always be work-in-progress. As expectations increase, institutions that seek to serve the public good must continuously reinvent themselves. It is also useful to recognise that what seems easy and attractive in the short-run, might not be what society requires in the long-run.

## Key speakers

### Welcome address:

Mr. Vikram Limaye, *MD and CEO, NSE*

### Introductory remarks

Dr. Tirthankar Patnaik, *Chief Economist, NSE*

### Panel Discussion

Arvind Datar

*Senior Advocate, Supreme Court of India; General Editor; Ramaiya's Guide to the Companies Act and Chief Editor of the 11th edition of Kanga & Palkhivala's Law and Practice of Income Tax*



Mr. Arvind Datar is a leading and prominent Senior Advocate, with more than 30 years of practice. He practices at the Supreme Court, the Madras High Court, and other High Courts. He is an authority on taxation, Company law and Constitutional law. He has appeared before the Supreme Court in several landmark cases. He is also a prolific author with several best-selling books like Commentary on the Constitution of India, Guide to Central Excise and Guide to Excise Procedures, and Nani Palkhivala: The Courtroom Genius. In addition, he has authored over 150 articles for various journals. He is the General Editor of Ramaiya's Guide to the Companies Act and the Chief Editor of the 11th edition of Kanga & Palkhivala's Law and Practice of Income Tax. He is a trustee

of the Palkhivala Foundation, Chennai and a Director of the Nani Palkhivala Arbitration Centre, Chennai. He was the President of the Revenue Bar Association and Joint Secretary of Tamil Nadu Mediation and Conciliation Centre. He has delivered several guest lectures at premier institutions such as the NLSIU, Bangalore; ILS Law College, Pune and School of Excellence, Chennai. He has also been a guest speaker at Cambridge University and at the University of Cape Town, South Africa.

Dr. G. Mohan Gopal

*Former Member, Law Commission of India; Former Director, National Judicial Academy and Former Vice Chancellor, NLSIU, Bangalore*



Dr. G. Mohan Gopal has been the head of the National Judicial Academy of the Supreme Court of India (NJA) from 2006 to 2011. He oversaw the transformation of the Academy into a vibrant forum for dialogue on justice between civil society and judges, and made it a key catalyst for institutional innovation on judicial reforms. Since 2011, he heads the National Court Management Systems Committee of the Supreme Court, pioneered by him as a new national focal point for systemic improvement of the judicial system. A Former Director/Vice Chancellor of the National Law School of India University, Bangalore, Dr. Gopal is also a former

member of various national regulatory bodies. He also served as Director of the Rajiv Gandhi Institute for Contemporary Studies (RGICS). He worked at the World Bank for over two decades, where he became Chief Counsel in the Legal Department. He taught law at Georgetown University Law School, Washington DC and at the Faculty of Law, National University of Singapore. Dr. Gopal has also worked in the Office of the General Counsel of the Asian Development Bank, Manila.

M Damodaran

*Chairperson, Excellence Enablers and Former Chairman, SEBI, UTI and IDBI*



Mr. M. Damodaran is Chairperson, Excellence Enablers Private Limited and Former Chairman of SEBI, UTI and IDBI. He serves on Boards of Directors, including as Non-Executive Chairperson of InterGlobe Aviation, and on Advisory Boards of several companies. He successfully led the revival efforts of UTI and IDBI. He created the unique Stressed Assets Stabilisation Fund (SASF) which helped clean IDBI's books. He was also the Former elected Chairman of the International Organization of Securities Commissions (IOSCO)'s 80-member Emerging Markets Committee for two years. He has chaired several committees of the Government of India, RBI and some chambers of commerce. He was Former Chief Secretary of the Government of Tripura. He is a

recipient of several awards and recognitions.

## About National Stock Exchange of India Limited

National Stock Exchange of India Ltd. (NSE) is the world's largest derivatives exchange by trading volume as per the statistics published by Futures Industry Association (FIA) for 2019 and ranked 3rd in the world in the cash equities segment by number of trades as per the statistics published by the World Federation of Exchanges (WFE). NSE was the first exchange in India to implement electronic or screen-based trading. It began operations in 1994 and is ranked as the largest stock exchange in India in terms of total and average daily turnover for equity shares every year since 1995, based on SEBI data. NSE has a fully-integrated business model comprising exchange listings, trading services, clearing and settlement services, indices, market data feeds, technology solutions and financial education offerings. NSE also oversees compliance by trading and clearing members with the rules and regulations of the exchange. NSE is a pioneer in technology and ensures the reliability and performance of its systems through a culture of innovation and investment in technology. NSE believes that the scale and breadth of its products and services, sustained leadership positions across multiple asset classes in India and globally enable it to be highly reactive to market demands and changes and deliver innovation in both trading and non-trading businesses to provide high-quality data and services to market participants and clients.

For more information, please visit: [www.nseindia.com](http://www.nseindia.com)

## About Excellence Enablers Private Limited (EEPL)

Excellence Enablers Private Limited (EEPL) is an initiative that focuses on implementation of better corporate governance practices, improvement of Board performance, including audit and evaluation, training of directors and engagement with stakeholders of governance. It is founded on the firm belief that the gap between performance and potential can, and must, be bridged. Consistent with that belief, all our offerings are tailor-made to the specific needs of the organisation or the individuals concerned.

Given that our founder, Mr. M. Damodaran, introduced Clause 49 of the Listing Agreement, dealing with corporate governance in India, and has been a part of both public sector and private sector Boards, as well as performing and underperforming Boards, we offer experience based consultancy and courses on the journey from compliance through governance to performance. Further, given his success in turning around organisations that had been written off, we are uniquely positioned to offer courses on leadership, organisational transformation, and building winning teams.

EEPL has a number of highly experienced and renowned consultants and faculty members who have helped, and continue to help, us deliver programmes that have been well received.

For more information, please visit: [www.excellenceenablers.com](http://www.excellenceenablers.com)

## NSE Economic Policy & Research

Tirthankar Patnaik, PhD	tpatnaik@nse.co.in	+91-22-26598149
Prerna Singhvi, CFA	psinghvi@nse.co.in	+91-22-26598316
Ashiana Salian	asalian@nse.co.in	+91-22-26598163
Runu Bhakta, PhD	rbhakta@nse.co.in	+91-22-26598163

## Excellence Enablers Private Limited

M. Damodaran	md@excellenceenablers.in	+91-11-43595444
Divyani Garg	d.garg@excellenceenablers.in	+91-11-43595445

### Disclaimer

*Any/all Intellectual Property rights in this report including without limitation any/all contents/information/data forming a part of this report shall at all times vest with NSE. No part of this report may be sold/distributed/licensed/produced/transmitted in any form or manner by any means (including without limitation—electronic, mechanical, photocopying, recording or otherwise) to any person/entity whatsoever without the prior written permission of NSE. Extracts from this report may be used or cited provided that NSE is duly notified and acknowledged as the source of such extract.*

*This report is intended solely for information purposes. This report is under no circumstances intended to be used or considered as financial or investment advice, a recommendation or an offer to sell, or a solicitation of any offer to buy any securities or other form of financial asset. The Report has been prepared on best effort basis, relying upon information obtained from various sources. NSE does not guarantee the completeness, accuracy and/or timeliness of this report neither does NSE guarantee the accuracy or projections of future conditions from the use of this report or any information therein. In no event, NSE, or any of its officers, directors, employees, affiliates or other agents are responsible for any loss or damage arising out of this report. All investments are subject to risks, which should be considered prior to making any investments.*