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## TELL IT LIKE IT IS



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*In a disclosure-based regime, it is incumbent on company managements to share information that can lead to informed decisions by investors. Communication is key.*

Transparency and disclosure are the twin pillars on which the edifice of Corporate Governance is built. While transparency is the objective which is sought to be achieved, disclosure is the instrumentality. Underpinning transparency and disclosure is the element of communication. Stakeholder democracy, which is the ultimate objective that Corporate Governance seeks to achieve, necessitates that information asymmetry does not vitiate the atmosphere of governance. It stands to reason that communication that is correct, clear and complete, is a non-negotiable requirement in ensuring a level playing field.

For communication to be effective, it is necessary that the person(s) for whom the communication is intended understands it in the same manner as the person originating the communication. In the Law of Contract this is referred to as *Consensus ad idem*. If both parties to the communication do not understand the content of communication in the same manner, the effect would often be worse than non-communication.

Perpetrators, willing or otherwise, of the practice of miscommunication, are far too many and varied. Often it is the result of complexity in language, and lack of clarity in content. In the recent past, the Supreme Court of India has commented adversely on three judgements on by one of the High Courts, stating that the language in which the judgements was written could not be understood even by the Judges of the Supreme Court. Hopefully, the message has gone across to all the Courts in the land, whether High Courts, or Subordinate Courts, so that the common man, who cannot plead ignorance of law as an excuse, is enabled to understand what the law is.

Some years ago, there were also some observations, not necessarily complimentary, on the number of words that were used in a single sentence by a Judge of the highest Court. This is not a new phenomenon. There have been cases over the years in which the authors of judgements have proceeded on a literary journey, leaving a lay reader behind, struggling to keep pace with what was being said.

Lawmakers are not free from this exercise in verbosity. The simple fact that the longer the sentence, the more difficult it is to comprehend in the first instance, seems to have been lost sight of by persons who ought to know better. One example will suffice to illustrate the position. Section 447 of the Companies Act, 2013 provides for the punishment for fraud. Interestingly, the punishment has been provided for without initially explaining or defining the offence of fraud.

The first explanation to the section defines fraud in the following manner – “fraud” in relation to the affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other persons, whether or not there is any wrongful gain or wrongful loss”. Even a person contemplating the commission of fraud would be disincentivised if he/she read this explanation, with its various twists and turns. It is not clear whether this complex definition found its way to the statute to discourage potential perpetrators of fraud.

Regulators are not to be left behind in this endeavour of communicating in an unclear fashion, and also sacrificing syntax in the process. One of the items which needs to be disclosed by a corporate entity is “changes in accounting policy, if any”. The fact that, by implication, this would permit a situation where a company does not have an accounting policy, has clearly escaped notice. The words, “changes, if any, in accounting policy” were presumably what was intended.

Sometimes purity of language stands in the way of proper communication. In the olden days, referring to the Hindi news bulletins in All India Radio, some wags used to say “*samachar main Hindi suniye*”, instead of “*Hindi main samachar suniye*”. The textbook Hindi that was trotted out was clearly not the best way to get the information across.

An even more interesting example, which this writer witnessed first hand, was when the seniormost functionary of a state administration was addressing a group of villagers outside a block development office. Being a purist when it came to matters of language, he used the words “*samasti unnayan kendra*” quite a few times in his address. Two old, and presumably not very literate persons, were sitting at the back of the audience, and one of them asked the other, what the reference was to. The other disarmingly mentioned that the speaker was referring to the block office, whereupon the first of them said “Why does he not say so, because that is something all of us understand”.

A recent development should be heartwarming for those who have struggled with the disquieting awareness that language was given to man to conceal his thoughts, and not to communicate. A Bill has been introduced in the New Zealand Parliament, seeking to provide that all laws and administrative orders should be written in simple language. Jargon is sought to be shown the door. This is an exercise that should be embraced by all jurisdictions across the globe.

Securities law requires that matters that are required to be known to all stakeholders should be communicated to the Stock Exchanges on which the companies are listed. Some of those disclosures are written in a manner that clearly indicates that the intention of the company concerned was not to make the stakeholders any wiser with regard to that development. There are not many better examples of ticking the box, and moving on with life.

Communication is indicative of the true intent and purpose of the person seeking to communicate. It will be evident from the communication itself whether the intent of the communicator was to share information, or to string together a number of words, which did not render the reader any the wiser.

Alongside simplicity, brevity is an essential element of communication. There are several examples. One instance is of a note recorded by a distinguished Chief Minister of a State in the past. When he was particularly infuriated by the content of a note that was put up to him, he dismissed it with one word "Nonsense". When the officer who authored the note went up to him and protested, the venerable Chief Minister apologised and said that he would write it out in a full sentence, "the note does not make any sense". Nothing further needed to be said. Clarity is a timeless virtue. At the same time, obfuscation is a fine art. It should not be practiced on the unsuspecting stakeholders of any system.

*"Wise men speak because they have something to say; fools because they have to say something" - Plato*



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2  
days

25  
Speakers

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