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GATEKEEPERS OF GOVERNANCE

10th Edition

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10th Edition
GATEKEEPERS OF GOVERNANCE ®
A CORPORATE GOVERNANCE SUMMIT

SESSION SUMMARY

Inaugural session
Regulation – Shield or Sword?

L-R : Mr. Tuhin Kanta Pandey, Mr. M. Damodaran, Mr. Amitabh Kant
On screen: Mr. M. Nagaraju

Speakers

Mr. Tuhin Kanta Pandey
Chair,
Securities and Exchange Board of India (SEBI)

Mr. Amitabh Kant
Former CEO, NITI Aayog;
Former G20 Sherpa, GoI

Mr. M. Nagaraju, IAS
Secretary,
Department of Financial Services, Ministry of Finance, GoI

Mr. M. Damodaran
Chair, Excellence Enablers;
Former Chair, SEBI, UTI & IDBI

Address by Mr. Tuhin Kanta Pandey

- Regulation can both protect (shield) and punish (sword), depending on its application.
- Good corporate governance is not just about compliance but about embodying ethics, accountability, and purpose.
- Governance must transcend regulatory checklists to become an internal conviction.
- SEBI's recent governance reforms include:
  - Emphasis on Board independence, diversity, and accountability.
  - Enhanced disclosure norms ensuring meaningful transparency.
  - Regulation of Related Party Transactions with pragmatic thresholds.
  - Shareholder approvals for special rights to avoid perpetuity.
  - Strengthening the role of Compliance Officers as Key Managerial Personnel.
  - Voluntary provisions for women Independent Directors and expanded Risk Management Committees.
- The need for smart, cost-effective, and innovation-friendly regulation was highlighted.
- Governance evolution in the digital era was mentioned:
  - Boards must monitor culture and conduct as measurable assets.
  - Digital governance requires oversight on data ethics, cyber resilience, and algorithmic fairness.
- ESG (Environmental, Social, Governance) must be authentic and measurable.
- Urged the transformation of regulation from enforcement to empowerment:
  - Use governance scorecards to track cultural health.
  - Institutionalize ethics with possible ethics committees at Board level.
  - Leverage technology for compliance automation and real-time transparency.

- Foster open dialogue between regulators and regulated entities.
- Promote governance literacy in emerging domains like cyber risk and data ethics.

- Concluded with the vision that good governance builds trust inherently, reducing the need for punitive regulation.

Address by Mr. Amitabh Kant

- Stressed the importance of policy predictability, clarity, and transparency to foster economic growth.
- India's ambitious vision to become a $30+ trillion economy by 2047 requires sustained GDP growth around 8.5-9% annually.
- Cited lessons from other high-growth economies of the past (Japan, Korea, China) and stressed the need to avoid the middle-income trap that ensnares many countries.
- Advocated for free enterprise and innovation as key growth drivers.
- Criticised India's legacy of excessive regulation and compliance burden—likened post-independence regulation to a "license raj" that stifles entrepreneurship.
- Called for a shift in the role of Government and Regulators from control to facilitation and enablement.
- Proposed five key regulatory reforms:
    - Regular Regulatory Impact Assessment to evaluate effectiveness and unintended consequences.
    - Separation of Rule-making, Enforcement, and Adjudication functions to avoid conflicts of interest.
    - Adoption of Risk-Based and Proportionate Regulation, especially to reduce MSME compliance burdens.
    - Enhanced Stakeholder Engagement throughout policy cycles, not just at the end.
    - Reduction and Rationalization of existing Regulations, with sunset clauses for obsolete rules.
- Highlighted the UK's "one-in-two-out" regulatory approach as a best practice.

- Urged Regulators to be held accountable for the burden they impose on businesses.
- Supported the SEBI Chairman's progressive regulatory approach and vision to promote India's rapid growth.

Address by Mr. M. Nagaraju

- Recognised India's financial sector as a global exemplar post-2008 financial crisis for stability and prudence.
- Shared projections for banking sector growth aligned with India's economic goals:
  - Credit outstanding to reach 130% of GDP by 2030.
  - Capital requirements estimated at approx. $4,200 billion, possibly exceeding $5,000 billion for comfort.
  - Deposits and borrowings must increase substantially to meet growth.
- Presented banking sector performance data indicating significant improvement:
  - Credit growth tripled from 67 lakh crore (2015) to 181 lakh crore (2025).
  - Gross Non-Performing Assets (NPA) declined sharply from 11.1% (2018) to 2.22% (2025).
  - Public sector banks' gross NPA declined from 14.58% to 2.58%, net NPA down to 0.52%, the lowest in India's history.
  - Capital Adequacy Ratio (CAR) increased to 17.36%, well above regulatory requirements.
  - Highlighted proactive insolvency resolution, with 30,000 applications resolved pre-IBC filing involving significant amounts (~13.78 lakh crore).
  - Emphasized profitability with scheduled commercial banks and public sector banks declaring record net profits and dividends.
- Advocated for smart, risk-based regulation emphasizing enforcement against violators rather than excessive rules.
- Noted significant technological upgrades in public sector banks enabling digital transactions and risk management.

- Stressed the ethical dimension of governance as fundamental for protecting depositors' money and sustaining trust.
- Outlined governance improvements in public sector banks:
    - Independent, professional Board selections.
    - Enhanced fees for Independent Directors to recognize their contributions.
    - Profit-linked incentives to motivate senior management.
    - Highlighted customer grievance redressal as a core focus with regular case reviews and root cause analysis.
- Concluded that India's financial sector is dynamic and aspirational, powered by fintech innovation, and aligned with the vision of a prosperous, inclusive economy by 2047.

Plenary Session

Regulatory Gaps and Overlaps - Do they Exist?

L-R : Mr. S. Ramann, Mr. Ajay Seth, Mr. M. Damodaran, Mr. J. Swaminathan, Mr. Kamlesh C. Varshney

Speakers

Mr. Ajay Seth
Chair,
Insurance Regulatory and Development Authority of India (IRDAI)

Mr. J. Swaminathan
Deputy Governor,
Reserve Bank of India (RBI)

Mr. S. Ramann
Chair,
Pension Fund Regulatory and Development Authority (PFRDA)

Mr. Kamlesh C. Varshney
Whole Time Member,
Securities and Exchange Board of India (SEBI)

Address by Mr. Ajay Seth

- Emphasized the evolving role of Regulators as market and technology rapidly change.
- Highlighted the need for balance between innovation and risk management—allowing innovation but building resilience to accidents.
- Outlined six objectives of inter-regulatory coordination: managing overlaps, filling gaps, ensuring financial stability, promoting development, enhancing financial literacy/inclusion, and macro-prudential supervision.
- Described the four-tier regulatory coordination system: FSDC chaired by Finance Minister, sub-committee chaired by RBI Governor, inter-regulatory forums, and individual regulators.
- Cited examples of effective coordination (COVID-19 response, AIFs regulation, mutual fund investment backstops).
- Identified ongoing inter-regulatory challenges: cybersecurity, KYC harmonization, pension products, shared distribution channels, function-based regulation, and cost transparency.
- Discussed communication challenges due to differing metrics across banks, insurers, and funds.
- Stressed the importance of coordinated strategies on cyber security and climate risk resilience, citing FSDC initiatives and international recommendations.
- Pointed out gaps in insurance regulation—specifically, the lack of public voice in regulation and unregulated health service providers.
- Mentioned the National Financial Information Registry as a work-in-progress to improve credit efficiency.

Address by Mr. J. Swaminathan

- Noted that regulatory gaps and overlaps arise due to rapid changes in business models, technology, and vendor chains.
- Stressed that governance intent is critical—strong intent leads to simplified overlaps and closed gaps; weak intent leads to excessive rules and lost focus on real risks.
- Proposed five governance practices for Boards:
  - Boards must own outcomes, not paperwork.
  - Independence must be substantive, enabling challenge.
  - Boards should view the group holistically, not just entities.
  - Empower and protect assurance functions (Chief Risk Officer, Chief Compliance Officer, internal audit) with independent access and resources.
  - Conduct periodic governance gap analysis for continuous improvement.
- Explained that regulatory overlaps are inevitable and can act as safety nets but problematic when rules conflict or enforcement is uncoordinated.
- Suggested three principles for optimizing overlaps/gaps:
  - Balance entity and activity-based regulation.
  - Apply proportionality based on risk and complexity.
  - Focus on outcome-based regulation calibrated to market maturity.
- Concluded that addressing gaps and overlaps is a continuous journey requiring courage and adaptation.

Address by Mr. S. Ramann

- Explained that gaps emerge when innovation outpaces regulation, and overlaps arise from Regulators prudently covering risks.
- Recounted how regulatory overlaps led to FSDC's creation, highlighting the need for coordination.
- Discussed challenges in regulating emerging fintech products and the evolution of regulatory frameworks, including sandboxes.

- Highlighted under-regulated areas like chit funds, which are regulated by state laws, but pose risks similar to formal financial products.
- Pointed out fintech lending's evolution, and the regulatory ambiguities initially faced.
- Emphasised the importance of bridging silos between regulatory bodies despite specialisation.
- Cited examples of innovation in capital markets (algo trading regulation) and pension products (Unified Pension Scheme - UPS).
- Stressed the regulatory gap in coverage—especially for the vast unserved population in pensions—and efforts to create inflation-indexed pension products for the private sector.
- Noted overlaps in regulation of currency derivatives by RBI and SEBI, and challenges in market vibrancy.
- Warned about regulatory gaps leading to consumer harm, such as mis-selling and procedural weaknesses in provident fund withdrawals.
- Highlighted RBI's AI framework as an example of cross-sectoral regulatory coordination.
- Mentioned IFSCA as a pioneering single Regulator cutting across multiple sectors to reduce gaps and overlaps.

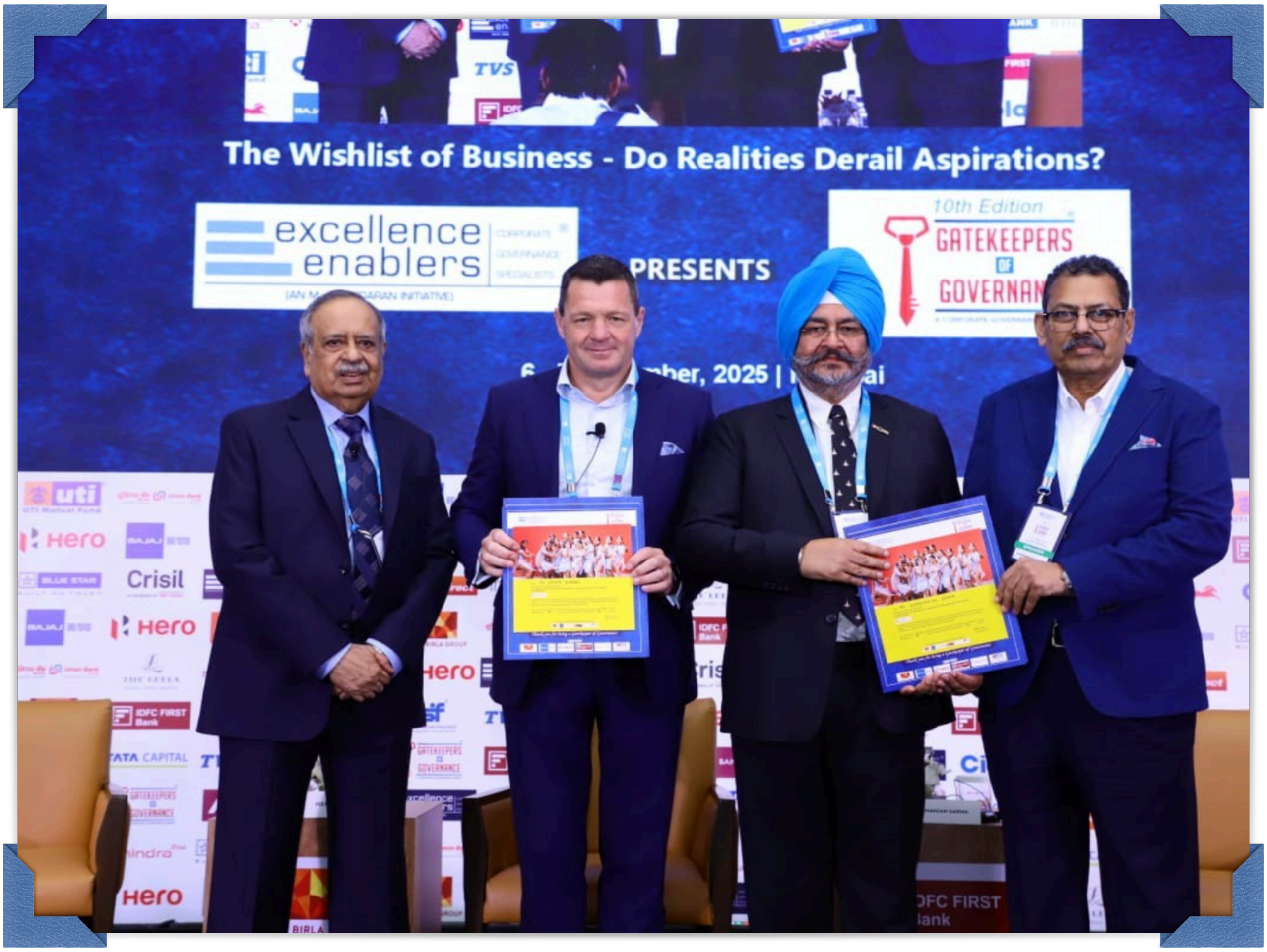
Address by Mr. Kamlesh C. Varshney

- Addressed regulatory overlaps with concrete examples, especially between SEBI regulations and Companies Act, 2013 provisions (e.g., Board composition, Independent Directors).
- Explained that overlaps exist because Companies Act, 2013 covers all companies, whereas SEBI's Listing Obligations and Disclosure Requirements (LODR) apply to listed companies, necessitating stricter norms.
- Discussed challenges faced by Independent Directors regarding clarity of roles and liabilities, which affect Board quality.
- Highlighted regulatory overlaps in Related Party Transactions and materiality definitions between Companies Act, 2013 and

SEBI rules, underscoring the need for transparency to protect minority shareholders.

- Suggested administrative measures to ease compliance, such as single-point filing for companies listed on multiple exchanges and the conceptual idea of an Annual Information Memorandum combining SEBI and Companies Act, 2013 disclosures.
- Discussed regulatory gaps driven by innovation outpacing regulation, mentioning cyber security, climate risk, and crypto as areas needing coordinated regulatory focus.
- Proposed mechanisms to review performance of Boards and Regulators to enhance accountability.
- Raised concerns about valuation issues in IPOs and corporate arrangements, emphasising the need for guidelines to protect minority shareholders and ensure fair valuations.
- Concluded with optimism about addressing overlaps and gaps through cooperation and regulatory evolution.

The Wishlist of Business -
Do Realities Derail Aspirations?



L-R : Mr. M. Damodaran, Mr. Pieter Elbers, ACM (retd) B.S. Dhanoa, Mr. Subramanian Sarma

Panellists

Mr. Pieter Elbers
CEO,
InterGlobe Aviation (IndiGo)

Mr. Subramanian Sarma
Deputy Managing Director & President,
L&T Group

Mr. M. Damodaran (Moderator)
Chair, Excellence Enablers;
Former Chair, SEBI, UTI & IDBI

This panel discussion focussed on the challenges and opportunities faced by Indian businesses in operations, in scaling up and in transforming within a rapidly evolving regulatory, infrastructural, and talent landscape. It explored the interplay between business aspirations and ground realities, the role of regulation and infrastructure, talent development, public-private collaboration, and the impact of technology and AI on future growth. It also discussed the pace of policy reforms, the need for stable and predictable regulatory environments, and the internationalization of Indian businesses.

Key Themes and Insights

- **Aspirations vs. Realities: Coexistence, Not Competition**
  - Aspirations and realities coexist, but in different timescales. Aspirations represent long-term vision and ambition, while realities are short-term challenges that help course-correction, and strengthen resilience.
  - Challenges such as regulatory hurdles, infrastructure gaps, and talent shortages can be seen as opportunities to build stronger organizations, and not as insurmountable obstacles.
  - A continuous dialogue between industry and policymakers is crucial to enable improvements that help businesses navigate realities, while pursuing aspirations.

- **Regulatory Environment: Need for Stability, Clarity, and Pragmatism**
  - Regulatory complexity and unpredictability remain significant concerns. Frequent changes, knee-jerk reactions, and changes in policy cause uncertainty and slow business progress.
  - There is a need to change regulations as there is economic growth, especially as India aims to grow from a $4 trillion to a $30 trillion economy.
  - The internationalisation of Indian companies requires a balanced regulatory approach that factors in both domestic

and global governance frameworks.
- New domains such as cybersecurity, ESG, and AI demand pragmatic, forward-looking regulations that evolve without unnecessary overlap or outdated rules.

- **Infrastructure and Long-Term Planning**
  - Each sector that is undergoing growth, needs massive investments in infrastructure and in talent. These have to be planned for in advance.
  - There is a need for predictability in infrastructure policies to justify long-term investments and support exponential growth.
  - The current approach to infrastructure development is often reactive ("last-minute construction"), which needs transformation into proactive, coordinated ecosystem building.
  - Infrastructure development should be aligned with policy to create a harmonized ecosystem of hardware (physical infrastructure), software (people, training), and governance.

- **Talent and Education: A Critical Constraint and Opportunity**
  - The supply of skilled, quality talent is a major bottleneck in sustaining growth, especially in emerging sectors.
  - There is consensus on the urgency to reform education policies to produce talent aligned with industry needs, especially in new technologies such as AI.
  - Public-private partnerships should support vocational training, apprenticeships, and continuous skill development, starting from schools to universities.
  - The gap between the quality of education and practical, applied skills hinders innovation and productivity.
  - There is a need for a culture of continuous improvement and challenge.

- **Internationalisation and Ecosystem Integration**
  - Indian companies are expanding aggressively into international markets.

- This expansion requires a holistic approach to ecosystem development: integrating education, production capability, maintenance, and regulatory frameworks in a coordinated manner.
- While India has abundant talent, lack of integration and orchestration limits the full realization of opportunities.
- The Government's vision towards 2047 is ambitious, but requires translating this into concrete, actionable policies and infrastructure plans.

- **Artificial Intelligence (AI) and Technology: Enablers, Not Derailers**
  - AI is viewed by industry as a powerful enabler, capable of improving productivity, efficiency, and decision-making.
  - AI can accelerate governance improvements by enabling better analysis and comparison of regulatory frameworks.
  - AI, alongside other technologies, is essential to fast-track India's growth and productivity leap required to meet aspirational goals.
  - There is a need for regulatory frameworks to evolve with technological advances.

- **Pace of Reform and Growth: Balancing Ambition and Reality**
  - The Government's ambition is clear and widely supported, but the pace of policy adjustment can lag behind rapid market growth.
  - There is a need for faster reforms and stronger collaboration between Government and industry.
  - Policy predictability and continuity are vital to maintain investor confidence and sustain large-scale projects.
  - Democracy and political changes should not disrupt foundational economic policies; a formal mechanism to ensure policy continuity regardless of Government changes was suggested.

Family Business -
Staying Together or Preying on Each Other?

L-R : Mr. Mukesh Butani, Dr. Shardul S. Shroff, Mr. M. Damodaran, Mr. Homi R. Khusrokhan

Panellists

Mr. Homi R. Khusrokhan
Former MD,
Tata Tea & Tata Chemicals

Mr. Mukesh Butani (Moderator)
Founder & Managing Partner, BMR Legal Advocates;
Member, Global Supervisory Board, IFA

Dr. Shardul S. Shroff
Founder & Chair,
Shardul Amarchand Mangaldas & Co.

This panel discussion explored the intricate dynamics, governance challenges, and legal considerations facing family-owned businesses in India and globally. It delved into how family disputes can undermine business performance, the importance of governance, succession, legal frameworks, and lessons from some notable family business cases.

Key Themes and Insights

- **Significance of Family-Owned Businesses in India**
  - Family-owned businesses constitute a major part of the Indian economy.
  - Some studies have attempted to examine the performance and challenges of these firms, especially across generations.
  - The myth of the "three-generation curse" (first generation builds, second grows, third destroys) is often challenged, because this generalization is based on limited samples and contexts.
- **Family Disputes and their Impact**
  - Internal conflicts within family businesses can lead to major setbacks, even when external conditions are favourable.
  - Internal conflicts give rise to tension between family interests, corporate governance and shareholders' best interests.
- **Legal and Governance Frameworks**
  - The shareholder's property is distinct from corporate property—a fundamental legal principle.
    - Promoters converting personal assets into corporate assets change the nature of ownership and introduce complexities in family settlements.
  - Family settlements typically involve dividing undertakings (business operations) rather than mere assets.
  - Courts often favour family settlements to avoid prolonged litigation that destroy shareholder value, even if settlements slightly deviate from standard legal frameworks.

- Private family arrangements are not binding on the company unless embedded in corporate documents such as Articles of Association.
- Wills and succession plans must be carefully incorporated into governance structures to bind companies. However, wills are ambulatory and can be changed, thus creating challenges.
- Family constitution should be imbedded into the company's charter.
- Supreme Court, in the Ranganatha Reddy case, broadly defined family and family settlements, emphasizing protection of family interests, but raising questions about regulatory and judicial flexibility.
    - Supreme Court has opined that the term "family" should have a broad definition. However, legal provisions do not have a broad definition for "family".

- **Challenges in Succession Planning and Board Governance**

- Succession planning, both at the Board level and the CEO level, is often neglected until a crisis arises, with few Boards taking it seriously.
- The role of the Nomination and Remuneration Committee (NRC) Chairperson is critical in pushing succession planning onto the Board agenda.
- Boards need a balance between family members and independent directors to ensure open and frank discussions.
- Common governance issues include:
    - Patriarch's reluctance to relinquish power.
    - Boards dominated by family members or loyalists, stifling dissent and open debate.
- Suggested governance practices include:
    - Holding family council meetings outside the boardroom for sensitive discussions. The Chairperson of NRC can be invited to such meetings.
    - Employing professional consultants to facilitate succession and governance reforms.

    - Involving Promoter Chair when inducting new Board members.
    - Clear communication during succession to manage internal and external stakeholder expectations.
    - Considering professional CEOs in listed companies to separate family interests from operational management.

- **Family Constitutions and Incorporation into Corporate Governance**

  - Family constitutions, which outline wealth devolution, vision, ethos, and conflict resolution, are increasingly seen as valuable.
  - Incorporating family constitutions into Articles of Association is not common, but considered a good practice to prevent and mitigate disputes.
  - Even the most meticulously drafted family constitutions sometimes lead to litigation, but they provide a structured approach to governance.

- **Regulatory Challenges and the Need for Separate Regimes**

  - Current regulations (especially SEBI's Takeover Code) do not fully accommodate family business realities such as:
    - Shareholding realignment and transfers within families.
    - The distinction between assets and undertakings in family settlements.
    - Complexities arising from interested voters, minority protections, and valuation disputes.
  - There is a strong case for creating a separate legal and regulatory regime tailored to family settlements, delisting, and ownership restructuring in family businesses.
  - Approximately 80% of listed Indian companies are family-owned, underscoring the importance of such reforms.

- **Family Offices and Regulatory Oversight**
  - Many family offices managing wealth and estates have migrated offshore (Dubai, Singapore, Cyprus, etc.).
  - The minority of family offices remaining in India may require regulation due to their handling of diverse asset classes like art, real estate, and jewellery.
  - Family offices leverage Trusts to manage succession efficiently, without triggering estate duty events.
  - The abolition of Estate Duty in India was due to administrative costs outweighing revenue, but Estate Duty remains a tool for wealth equalization in many developed countries.
  - Future regulatory changes could impact the structure and operations of family offices.

Is the Plate Overfull? -
Audit Committees and Auditors

L-R : Mr. Jamil Khatri, Ms. Neelam Dhawan, Mr. T.N. Bhasin, Mr. Bobby Parikh, Mr. M. Damodaran

Panellists

Mr. Bobby Parikh
Managing Partner,
Bobby Parikh Associates

Mr. Jamil Khatri (Moderator)
Co-Founder & CEO,
Uniqus Consultech

Ms. Neelam Dhawan
Former Vice President,
Asia Pacific & Japan,
Hewlett Packard Enterprise

This panel discussion explored the rapidly expanding roles and responsibilities of Audit Committees and auditors, focusing on whether they can effectively cope with an overwhelming workload. The discussions looked at the legal, functional, and perceptual dimensions of Audit Committees and auditors, particularly in the Indian context.

Key Themes and Insights

- **Expanding Scope of Audit Committees (ACs)**
    - The AC's remit has expanded significantly beyond its original mandate:
        - Initially the committee focused on financial reporting integrity, internal controls, and auditor independence.
        - Now the role includes ESG (Environmental, Social, Governance), BRSR (Business Responsibility and Sustainability Reporting), Related Party Transactions, cyber resilience, whistleblower complaints, and more.
    - This expansion in the role often turns ACs into a "dumping ground" for responsibilities that do not clearly belong elsewhere.
    - ACs typically meet a minimum of four times a year, but these meetings have increasingly become longer and more complex, sometimes stretching to an entire day or more.

- **Legal and Regulatory Overload**
    - A "legal overload" or "illusion of assurance" exists where regulations and notifications impose increasingly stringent requirements:
        - More certifications, disclosures, and sub-committees are demanded.
        - There is an expectation of zero tolerance for failure, creating an unrealistic standard.
    - This environment fosters a culture of defensiveness, rather than genuine governance, with ACs sometimes focusing more on process compliance, than substantive oversight.

- The tone from Regulators, often perceived as one of "deterrence by fear", shapes a risk-averse mindset.

- **Risk Management and Committee Overlaps**
  - Risk management is a growing area, but often lacks clear separation:
    - Many organisations do not have a separate Risk Management Committee (RMC), so risk-related responsibilities also fall on the AC.
    - Where RMCs exist, they often function independently, but with overlapping concerns.
  - The felt need is:
    - Separating RMCs from ACs to improve focus.
    - Involving all Directors in RMC meetings to ensure comprehensive exposure.
    - Risk management should include reviewing enterprise risks such as geopolitics, supply chain disruptions, and talent management.

- **Challenges of Talent and Expertise on ACs**
  - ACs require diverse skill sets, beyond financial expertise, including knowledge of ESG, cyber security, whistleblower processes, and regulatory frameworks.
  - Chairs of ACs bear the responsibility of bringing the right mix of expertise to the team.
  - The complexity and volume of responsibilities make it difficult to find qualified members willing to serve, especially given the relative non-remunerative nature of the role.
  - In banking and regulated industries, the workload is even more demanding, with up to 12 or more meetings annually.

- **Variability across Companies and Industries**
  - The scope and responsibilities of ACs vary widely depending on:
    - Company size and maturity: Larger companies face significant regulatory burdens, while startups may struggle with capacity and process maturity.

    - Industry dynamics: For example, tech companies have complex revenue recognition issues, while banks face multiple Regulators.
    - Regulatory environment: Different Regulators impose distinct requirements, complicating compliance.
  - Startups often resist investing in systems, controls, and processes, which creates challenges for audit committees preparing for IPOs or listings.

- **Expectations and Realities of Auditors' Role**

  - Auditors are often misunderstood and unfairly blamed for business failures:
    - Auditors represent the fourth line of defence after management, internal controls, and internal audit.
    - Regulators and investigators have access to more information retrospectively, causing a mismatch in expectations.
  - Timelines for audits are aggressive, but many companies are not adequately prepared in terms of process and documentation.
  - Good communication and relationship-building between audit committees and auditors are critical:
    - Open channels help auditors raise red flags or concerns.
    - One-on-one meetings between ACs and auditors help clarify issues.

- **Information Overload and Agenda Control**

  - ACs often receive excessive documentation, sometimes running into thousands of pages. This volume leads to inefficiency and difficulty in focusing on material issues.
  - Best practices include:
    - Separating information-only materials, from those requiring decisions.
    - Pre-committee briefing sessions to define and prioritize agenda items.

    - Use of executive summaries or one-page highlights for each agenda topic.
  - ACs should control their agendas and push back on unnecessary inclusions.

- **Management Accountability and Clear Roles**

  - There is a strong consensus that management must own business decisions and processes:
    - ACs oversee governance, but do not replace management.
    - Management should be held accountable for providing quality information and meeting deadlines.
  - Defining clear responsibilities upfront between management, auditors, and ACs is essential.
  - ACs should ensure that management invests adequately in finance teams, systems, internal controls, and technology.

- **Regulatory and Systemic Challenges**

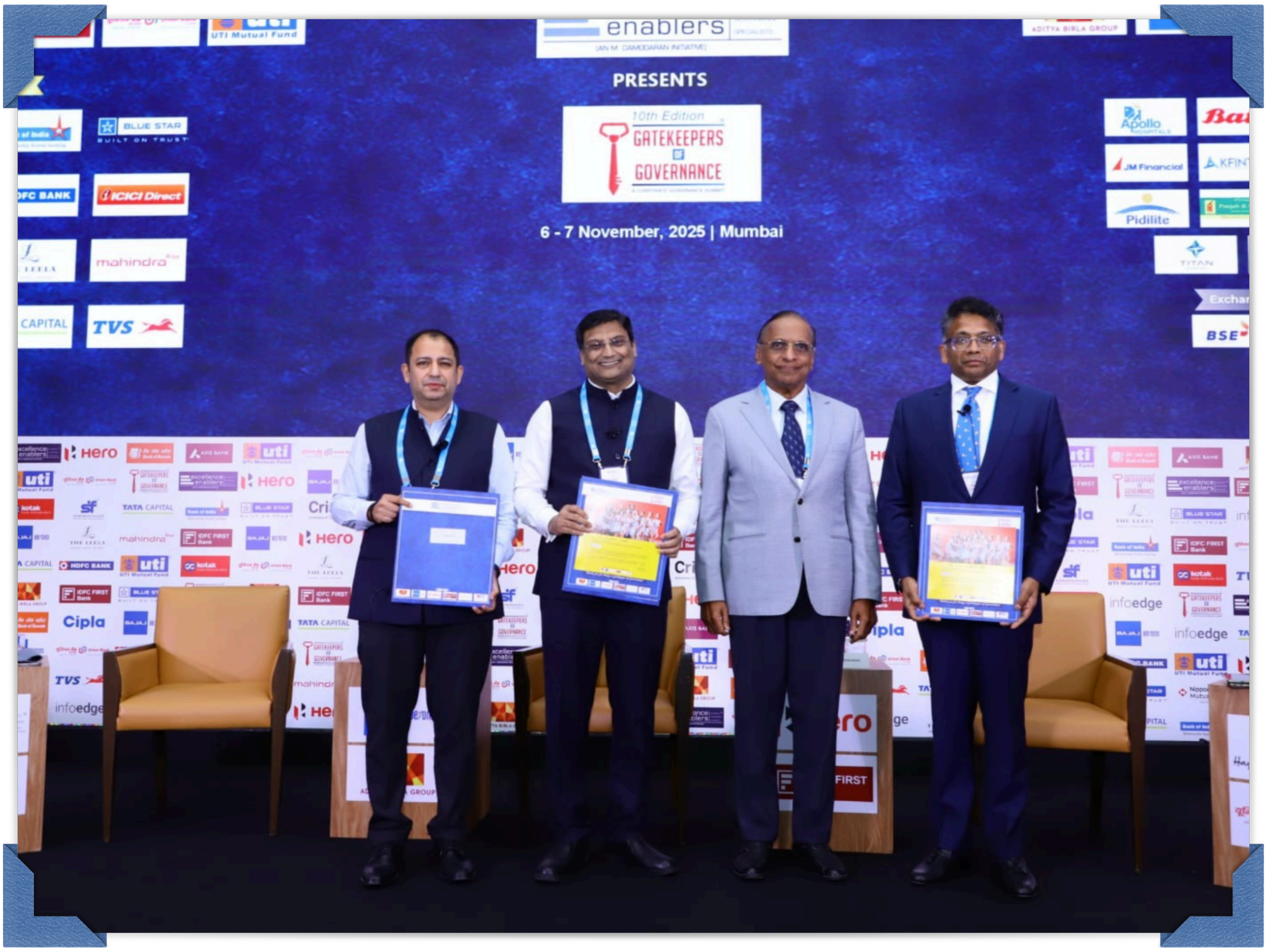
  - There are systemic issues in Indian governance structures:
    - Frequent regulatory amendments add complexity and uncertainty.
    - Regulators tend to introduce more rules post-failure, rather than promoting proportionate governance (kneejerk reactions to some developments).
    - There is a general reluctance in India to revise regulations based on feedback.
    - The RMC is not recognised by the Companies Act, 2013 leading to ambiguity about its role.
    - The AC often becomes the default repository for matters related to legal issues, supply chain, and more.

- **Future Directions and Recommendations**

  - There is a call for:
    - Clearer definition and demarcation of AC's roles, possibly by Regulators or professional bodies.

  - Recognition of RMCs as separate, empowered governance bodies.
  - Regulators to adopt a more balanced approach that accepts some level of failure as inherent in business.
  - Companies to build capacity and invest in governance infrastructure proactively.
- Encouraging ACs to exercise judgment and focus on significant risks and issues, rather than exhaustive rule compliance.

Institutions and Individuals -
Are the Interests Identical?



L-R : Mr. Sundeep Sikka, Mr. Navneet Munot, Mr. V.A. George, Mr. Vetri Subramaniam

Panellists

Mr. Navneet Munot
MD & CEO,
HDFC AMC

Mr. Sundeep Sikka (Moderator)
CEO & ED,
Nippon Life India Asset Management

Mr. Vetri Subramaniam
MD & CEO Designate,
UTI AMC

The central theme revolved around the evolving role of institutional and individual shareholders in corporate governance within India's mutual fund ecosystem. The discussions highlighted how corporate governance, stewardship, and shareholder activism have matured over the years, driven by regulatory changes, industry collaboration, and a growing investor base.

Key Themes and Insights

- **Diverse shareholder profiles demand tailored engagement**
    - Both individual and institutional shareholders are not monolithic. Individual investors vary from long-term owners to high-frequency traders, while institutions range from long-term stewards to short-term speculative funds.
    - This diversity requires differentiated governance approaches, rather than a one-size-fits-all model.
    - Institutions like mutual funds position themselves as stewards, acting in the best interest of their investors, promoting sustainable governance rather than purely transactional involvement.
- **Balance between governance and business judgment is crucial**
    - Institutional investors face the challenge of balancing governance oversight with trust in company management on business decisions.
    - While governance frameworks and proxy advice guide voting on standard issues (such as executive compensation, Board appointments, Related Party Transactions), decisions involving strategic capital allocation require nuanced judgment from investment analysts and fund managers, underscoring the complexity of stewardship.
- **Evolution from passive voting to active stewardship**
    - Regulatory mandates, such as SEBI's requirement to disclose voting decisions and rationales, have propelled institutional investors from passive abstentions to transparent and active

participation in shareholder meetings.

- The implementation of stewardship codes, with clear pillars—monitoring, engagement, voting, conflict management, and public disclosure—has institutionalized responsible ownership and accountability within the mutual fund industry.

- **Voting data reflects growing shareholder empowerment**
  - The fact that over 50,000 resolutions were voted on last year, with 4.4% voted against, and some resolutions defeated, signifies a maturing shareholder democracy in India.
  - Notably, minority shareholders, including individual investors, have successfully influenced outcomes, signalling increased empowerment beyond dominant promoter control.

- **India's governance practices are culturally contextual and pragmatic**
  - Compared to western markets, where shareholder activism can be adversarial and inconsistent, India's approach is collaborative and constructive, respecting the socio-political context and promoting long-term relationships between investors and companies. This pragmatic stance is seen as a strength, fostering stable corporate leadership and governance that align with the country's civilizational values.

- **Investor education and communication are imperative**
  - With millions of small investors relying on mutual funds, there is a continuous need to educate unit holders about their rights, responsibilities, and the importance of governance.
  - Mutual funds engage with investors through webinars, meetings, and digital platforms to communicate their stewardship efforts and the long-term benefits of good governance, though reaching such a vast and diverse investor base remains a challenge.

- **Limited reliance on Proxy Advisor Firms**
  - Proxy advisory firms provide standardized frameworks and research that are intended to help institutional investors navigate thousands of resolutions.
  - However, mutual funds emphasize independent decision-making by their analysts and fund managers, especially on issues affecting business strategy, ensuring that governance decisions are contextually relevant and not blindly templated.
- **Long-term governance drives market and economic growth**
  - Promoting better governance is not only a fiduciary duty, but also a strategic lever to enhance overall market returns and economic development.
  - Well-governed companies tend to deliver superior long-term returns, raising both the "alpha" (skill-based excess returns) and the "beta" (market returns), benefiting investors and society alike.
- **Sustainability and ESG considerations are emerging, but investor demand varies**
  - While global markets are increasingly focused on environmental, social, and governance (ESG) factors, Indian investors currently show limited appetite for ESG-themed funds or accepting lower returns for ESG compliance.
  - However, institutional investors are progressively integrating ESG into engagement practices, especially around climate risk, signalling a gradual shift toward sustainable investment approaches.
- **Future trends may include direct voting by unitholders**
  - Some global asset managers are exploring models where individual mutual fund investors directly influence voting decisions on underlying shares. While this could democratize governance further, it raises questions about responsibility delegation and the capacity of retail investors to make informed decisions on complex corporate matters.

- **Growing Mutual Fund ownership amplifies responsibility**
    - As mutual funds' ownership stakes in companies grow—often exceeding 5-7.5% in many firms—they wield significant influence and must exercise stewardship with increasing responsibility.
    - This shift from minority to more substantial ownership stakes transforms mutual funds from passive investors to active participants shaping corporate governance.
- **Constructive engagement over confrontational activism**
    - Indian institutional investors prefer dialogue and constructive engagement with companies rather than confrontational activism common in some Western markets.
    - This approach facilitates better outcomes, encourages companies to improve governance proactively, and aligns with cultural and economic realities.
- **Governance activism has tangible corporate impact**
    - Examples cited include companies revising controversial ESOP plans after investor feedback, and technology firms tightening audit processes to remove inappropriate products. Such engagements showcase how active stewardship can prompt meaningful corporate changes, enhancing governance and protecting shareholder value.
- **Transparency and disclosure are key to trust**
    - Public disclosure of voting records, rationales, and stewardship policies builds trust among investors and stakeholders.
    - It also creates accountability for institutional investors, reinforcing the integrity of governance processes and empowering minority shareholders.

- **Collaborative industry approach strengthens governance ecosystem**
  - The mutual fund industry's collective efforts in co-creating regulations, adopting stewardship codes, and engaging with proxy advisory firms demonstrate a robust governance ecosystem.
  - This collaboration benefits not only investors but also corporate India and the broader economy.

Boards of the Future -
Change with Continuity?

L-R : Mr. Jay Kotak, Mr. M. Damodaran, Mr. Nawshir Mirza, Mr. Siddarth Pai

Panellists

Mr. Jay Kotak
Co-Head, Kotak811 & SVP Conglomerate Relationships,
Kotak Mahindra Bank

Mr. Nawshir Mirza (Moderator)
Former Senior Partner,
S. R. Batliboi & Co.

Mr. Siddarth Pai
Founding Partner,
CFO & ESG Officer, 3one4 Capital

The discussions centred around the evolving role, structure, and effectiveness of corporate Boards in India and globally, amid rapid socio-economic and governance shifts. The theme revolved around whether traditional Boards will remain relevant in the face of rapid change, what Boards of the future should look like, and what elements of governance need to evolve or be preserved.

Key Themes and Insights

- **Role and Relevance of Boards Today and Tomorrow**
    - Boards are fundamentally responsible for strategy formulation and governance, not mere compliance or oversight.
    - Current Boards often fall into the trap of compliance, replacing true governance, with attendance and paperwork, substituting active oversight.
    - The core function of Boards should be looking into the future, determining where the company wants to be in 5-10 years, and ensuring management aligns with that vision.
    - There is often a disconnect between governance theory and practice, especially in Indian companies.
- **Challenges with Board Independence and Incentive Alignment**
    - The regulatory emphasis on Independent Directors has limitations:
        - True independence is difficult due to reappointment dependencies on promoters.
        - Independent Directors may be incentivized, which makes them avoid confrontation, in order to retain their seats.
    - There is a need to better align incentives of directors, with long-term company interests, rather than short-term compliance.
    - Transparency overload has created information noise, making it harder for shareholders and Boards to discern real governance effectiveness.

- **Governance in Historical and Global Context**
  - Historically, governance evolved from authoritarian "great man" rule to institutional governance post-World War II, through global bodies such as the UN, IMF, and World Bank.
  - There is a global trend of institutional fraying and rising authoritarianism, which contrasts with India's growing economy requiring stronger governance frameworks.
  - Corporate governance still largely follows a transactional model, where governance rights are tied to capital contributions, not stakeholder inclusiveness.
  - Unlike political governance, corporate Boards have been slow to adopt broader stakeholder models that include employees, communities, and future generations.
- **Regulatory Environment and Market Forces**
  - India operates with the regulations of a smaller economy but aspires to be a $10 trillion economy, creating a regulatory drag.
  - Regulations tend to be prescriptive and overly burdensome, leading to complexity and inhibiting innovation, especially for startups and new-age companies.
  - Regulatory bodies are often seen as ringmasters, reacting to crisis, rather than proactive enablers of good governance.
  - Market forces and shareholder activism need to play a stronger role in governance. However, mechanisms to replace poorly performing management are cumbersome.
  - Overregulation can stifle entrepreneurial talent, causing founders to domicile companies overseas to access more flexible frameworks.
- **Future Composition and Functioning of Boards**
  - Boards need a balance of experience and youth. Older members bring wisdom and perspective, younger members bring fresh thinking and challenge the status quo.
  - The primary role of Boards is to provide wisdom and oversight, not to duplicate management's operational competencies.

- Boards should focus less on past performance reviews, and more on future strategic direction.
- There is potential for technology and AI to assist Boards in decision-making, forecasting, and managing complex information, though regulatory acceptance of AI in governance is uncertain.
- The future might see hybrid governance models combining traditional boards, with innovative structures like decentralized autonomous organizations (DAOs). But the adoption depends on stakeholders' willingness to participate actively.

- **Stakeholder Capitalism vs. Shareholder Capitalism**

    - The Companies Act, 2013 includes provisions for balancing the interests of all stakeholders, not just shareholders, but implementation is weak.
    - ESG (Environmental, Social, Governance) and DEI (Diversity, Equity, Inclusion) principles have gained prominence, but risk becoming marketing buzzwords, without substantive impact.
    - There is concern over a regression towards strong-man leadership and erosion of independent institutions globally, which could influence corporate governance norms.

Risk Management Committees - Have they Come of Age?

L-R : Mr. M. Damodaran, Mr. T.V. Mohandas Pai, Ms. Shobana Kamineni, Mr. Ashish Kumar Chauhan

Panellists

Mr. Ashish Kumar Chauhan
MD & CEO,
National Stock Exchange (NSE)

Ms. Shobana Kamineni
Chair,
Apollo Health & Apollo Pharmacies

Mr. T.V. Mohandas Pai
Chair,
3one4 Capital and Aarin Capital

The panel discussion focussed on the evolving role and effectiveness of Risk Management Committees (RMCs) in corporate governance, particularly in large Indian companies. Discussions revolved around how RMCs have matured, their current challenges, and the future outlook for risk management in an increasingly complex and technology-driven business environment.

Key Themes and Insights

- **Role and Evolution of Risk Management Committees (RMCs)**
  - RMCs are relatively new additions to corporate boards, mandated by SEBI for the top 1,000 listed companies, to formalize risk oversight.
  - These committees help structure and formalize the risk assessment process, moving beyond informal, ad-hoc discussions.
  - However, some criticism exists that RMCs sometimes become a “tick-box” exercise, lacking substantive engagement.
  - A good RMC distinguishes between known knowns, known unknowns, and unknown unknowns, striving to anticipate and mitigate even unforeseen risks.

- **Risk as a Concept**
  - Risk originates from an Italian word meaning “to dare,” emphasizing that business inherently involves taking calculated risks.
  - Risk is a function of time and probability, where the actual occurrence of an event turns risk into certainty.
  - Importantly, risk is not just financial, but encompasses operational, reputational, technological, geopolitical, and systemic risks. The example of a major UK company shutdown, due to information security failure, highlights non-financial risks that can paralyse operations.

- **Industry-Specific Perspectives on Risk**
    - Financial markets: Risk is continuous and fast-moving. Systems must ensure uninterrupted operations, as even brief outages can cause chaos and reputational damage.
    - Healthcare: Risk involves lives and reputations, making risk tolerance thresholds insufficient. The industry must consider global trends, probability of a pandemic, regulatory changes, and technological innovation.
    - The healthcare experience with COVID-19 illustrated how unknown risks can suddenly materialize, reshaping risk management priorities.
    - Venture and investment: Understanding risk involves both internal company risks and external geopolitical and technological risks that can disrupt markets.
- **Board and Management Roles in Risk**
    - Management handles day-to-day risk operations, while the RMC plays a crucial role in formal oversight, strategic questioning, and framework development.
    - Independent Board members bring a different lens to risk, often identifying gaps management may overlook.
    - The expertise of Board members in risk varies. Some Boards have difficulty attracting members with sufficient risk management knowledge, especially in specialised areas like cyber.
    - The Independent Director role carries significant personal and reputational risks, which affects willingness to join Boards.
- **Building a Risk-Aware Culture**
    - NSE's approach involves continuous testing and monitoring of systems, including 24/7 dummy transactions and bi-annual live disaster recovery drills from alternate sites.
    - Remote work was curtailed to reduce cyber risk, emphasising the need for physical control and access management.

- Risk culture requires constant communication, training, and dynamic prioritisation of risks based on likely impact and probability.
- Risk is not only about loss but about variance from expectations (volatility), which can be positive or negative.

- **External and Emerging Risks**
  - Geopolitical risks, climate change, pandemics, AI, cyber threats, and rapid technology changes are some of the critical areas demanding Board attention.
  - Cyberattacks on NSE can reach tens of billions per day, requiring constant vigilance and preparation for peak attack scenarios.
  - AI is seen as a double-edged sword. The hype around AI and technology valuations can cause market volatility and risk mispricing.
  - India is positioned as a major adopter and user of technology, leveraging its demographic advantage and IT ecosystem to adapt rapidly.

- **Capacity Building and Skill Gaps**
  - India has made progress in risk management models and technology adoption, often outperforming some developed countries in areas like market risk calculation.
  - However, there is a shortage of specialised cyber risk expertise compared to countries like Israel.
  - The development of risk management talent at both the enterprise and Board levels remains a work in progress.
  - Boards need a diverse set of skills and perspectives, including marketing, legal, infrastructure, and technology, to fully understand risk.

- **Integration of Risk with Strategy and Audit**
  - Risk is intertwined with organizational strategy and cannot be siloed or relegated solely to Audit Committees.
  - It is believed that RMCs should be separate from Audit Committees due to differing expertise and focus.
  - A holistic risk approach requires cross-functional integration and connection to corporate strategy.

The Growth-Governance Equation - Has a Balance been Struck?

L-R : Mr. M. Damodaran, Mr. Nasser Munjee, Mr. V. Vaidyanathan

Panellists

Mr. Nasser Munjee
Chair, Aga Khan Development Network (AKDN);
Former Chair, DCB Bank

Mr. V. Vaidyanathan
MD & CEO,
IDFC FIRST Bank

Mr. M. Damodaran
Chair, Excellence Enablers;
Former Chair, SEBI, UTI & IDBI

The panel discussions explored the relationship between growth and governance in the corporate sector. The discussion covered the evolution of governance, its causal relationship, if any, with growth, challenges in board composition, the notion of governance premium, cultural integration, regulatory dilemmas, and the future of governance amidrapid economic expansion.

Key Themes and Insights

- **Governance and Growth: Complementary, Not Opposites**
  - Early scepticism about corporate governance's contribution to growth has shifted to widespread recognition that governance is an enabler of sustainable growth.
  - Governance is not merely compliance but a core strategic imperative, impacting company's culture, stakeholders relations, and long-term value creation.
  - There is acceptance that corporate governance is a necessary condition, but not a sufficient condition for the growth of a company. There are other things required for growth.
  - Good governance creates trust and credibility, facilitating access to capital and investor confidence.

- **Evolution of Corporate Governance Paradigms**
  - There has been a transition from shareholder-centric model to a stakeholder-inclusive model. The focus has shifted towards greater societal accountability.
  - Corporate Governance considers efforts towards environmental, social, and governance (ESG) criteria. ESG is not merely a "feel-good" factor, as it being touted by some, but is an important part of a profitable business model.

- **Governance Premium**
  - Evidence suggests that a corporate governance premium exists in the market. Well-governed companies often enjoy better valuations despite temporary losses or low return on equity.

- Investors increasingly perform due diligence on companies, beyond financials, examining governance quality through independent studies and stakeholder feedback.
- The premium is linked to perception, reputation, transparency, and consistent governance practices being followed, which reduce risk, and enhance sustainability. Investors consider the quality of Board of Directors.

- **Challenges in Implementing good Corporate Governance practices**
  - There is a shortage of quality, independent, and committed board members, willing to serve on boards, especially in smaller or less prominent companies.
  - Many companies, especially smaller ones, lack proper governance practices, which *inter alia* prevent proper understanding of conflicts of interest.
  - The quality of corporate governance practices is often more about action, than formal codes or lengthy policies. There is an increasingly widespread belief that corporate governance is what companies do, not just what they say.

- **Corporate Culture and Corporate Governance**
  - Culture is identified as a fundamental element of governance. A strong, ethical culture originates from leadership, and permeates the entire organization. The tone is set at the top.
  - Transparency, open, simple and honest communication, and inclusion build loyalty among employees, and reduce attrition.
  - Communication with all stakeholders is important. At the same time, aggressive communication, in order to mislead, does not work. Reality has to match perception.

- **Governance Beyond Boards and Compliance**
  - Governance is relevant at all organisational levels and functions: sales, marketing, HR, technology, environmental management, etc.

- Ethical business practices, fair employee treatment, and environmental stewardship are integral governance components.
- Regulatory compliance is necessary, but not sufficient. True governance requires value systems and ethical discipline beyond mere ticking of boxes.

- **Regulatory and Market Ecosystem**
  - There exist regulatory and practical constraints that sometimes hinder good governance practices.
  - There is a need to develop and educate the broader corporate ecosystem on governance fundamentals, to improve maturity. India's capital markets face challenges from numerous thinly listed companies with weak governance practices.

- **Governance and Growth Dilemma**
  - While governance is critical, in early-stage or high-growth companies, governance often lags behind growth due to survival pressures.
  - Nonetheless, governance must not be sacrificed entirely, as poor governance ultimately threatens lack of proper processes, which adversely impact on sustainable growth and investor confidence.
  - Governance should be viewed as an enabler of disciplined growth, akin to brakes on a car that allow faster driving safely.
  - Governance is tested most during crisis, making early and honest disclosure and strong ethical practices non-negotiable.

- **Trust and Leadership**
  - Trust built by leaders and companies over years is a powerful governance asset.
  - The interplay of transparency, accountability, and consistent leadership behaviour determines governance effectiveness.

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Corporate calamities play havoc with the interests of stakeholders. Gatekeepers of Governance, the annual two day Corporate Governance Summit, is the clearing house of ideas and opinions of experts who have "been there, done that", and have solutions to suggest.

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