

SEBI HAS ANOTHER GO

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The views are the author's own.

Undaunted, SEBI renews its hitherto futile efforts at creating that rarest of corporate creatures – an effective independent director. The specific changes proposed and their critical analyses are available in many other articles. Like the proverbial curate's egg, the proposals are good in parts. But even after they are implemented, they are certain to leave SEBI disappointed. There is little anybody can do to achieve SEBI's impossible wish. Why? Why are there many highly effective directors but very few effective independent directors? What is the difference?

Effective directors are those who can provide management with inputs that help make the company, that they are directors of, successful. But for an effective director to become an effective independent director, he has to integrate his thoughts, words and conduct. What does that mean? Over the years SEBI has done two things to strengthen independent directors:

- First, it has prescribed a lengthening list of observable attributes of independence. These include absence of familial, pecuniary or other relationships with company promoters, etc. This is done in the expectation that the directors will be able to assess proposals objectively (independent thinking), keeping in view the interests of even minority shareholders.
- Secondly, it has prescribed rituals in the governance processes designed to exclude or mitigate the influence of the promoter in a decision. (independent conduct): predominance of independent directors for decisions having the potential to conflict with minority interest, disclosures, topics that must be brought to the board, etc.

Most companies comply with the first – attributes of independence in their directors. They also comply with the rituals. Complying with the first ensures that independent directors are objective in their thinking. They can spot cases of abuse of either minority or other stakeholders' interests. The challenge is to get them to speak their views and to act so that the abuse is prevented.

While rituals are designed to stimulate independent behaviour, they do not necessarily do so. It requires courage to disagree with the most powerful man in the room, to insist that the proposal also be in the interests of minority shareholders. It takes courage to object to a proposal on the grounds that the interests of other stakeholders must be balanced with those of Lalaji or Babuji. Churchill, who knew more about courage than almost anyone else said, "Courage is rightly esteemed the first of human qualities... because it is the quality which guarantees all others." Were it common, it would not be esteemed *the* premier quality. That is what sets apart effective directors from effective independent directors – the possession of courage.

The challenge for the director who can evaluate a proposal objectively is to resist the human urges to be likeable, avoiding disagreeable situations, to resist feudal deference to the powerful and, finally, to not shelter behind groupthink to justify his acquiescence. The powerful influence of capitalism in any boardroom makes the obligation to balance the

interests of all stakeholders exceedingly difficult. Indeed, even to suggest it is considered a joke to most corporate executives and directors. They are unable to get out of their heads the capitalist idea that corporations exist for the providers of capital: The wrong belief that companies are collectively owned by their shareholders.

SEBI can legislate on observable characteristics of independence. They can prescribe detailed governance ritual, but there are no prescriptions or tests for identifying the possession of courage, no Neuro-linguistic Program, no Myers-Brigg test. The best it can do is to make the environment as conducive as it can through regulations.

As a former prime minister of Iran said, "Independence is never given. It has to be taken." And it can be taken only if the taker has the guts to snatch it.

Independent institutions are effective when they are expected to and permitted to be that. Independent conduct by one major institution or one independent director in a board strengthens the spines of all of the others. The environment must respect contrarian thinking, recognise the value of out-of-the-box ideas, treat all without discrimination, provide for transparent decision making, require accountability for actions, be welcoming of constructive and valid criticism or dissent, respecting of conventions and the spirit of laws. Sadly, the environment in our great nation has sunk to a level in which none of these now prevail. The future for independent institutions is bleak and directors of that stripe are no exception. Even while hope dies hard, it is struggling to breathe.