

Trend of criminalizing business laws worrisome: Ms Kalpana Morparia

Juris Prudence should not work on presumption that all are guilty unless proved otherwise

Due diligence; Board Induction; Diversity; Continuous Learning key for Directors

Ms Kalpana Morparia, Chairman, South and Southeast Asia, JP Morgan highlighted the evolving role of independent directors against the backdrop of the myriad of laws which now intently regulate the conduct of independent directors. Describing how this has been a fallout of recent mis-happenings in the corporate system, she cautioned how the trend of criminalizing business laws has become a worrisome factor for independent directors. She explained that while economies and businesses evolve, there may be transgressions, but it is vital to fix responsibility. The presumption that all are guilty unless proved otherwise is not how juris prudence should work. Criminalization of business laws needs to be done away with, especially for provisions like CSR which were never mandatory. She was addressing an exclusive session with captains of Indian industry as part of the CII Governance Series 2019-20 organized by Confederation of Indian Industry.

Asserting the importance of Board induction, she explained diversity should go beyond gender diversity to ensure the Board has the right mix of skills. For the independent director, it is vital they conduct detailed due diligence before joining a Board. On their role, Ms Morparia said there is a constant need for independent directors to challenge the Board for information that Directors need rather than the information that is shared by the management by way of the colloquial 'show and tell'.

Ms Morparia insisted the need for Board evaluation beyond the tick-box exercise by way of external agencies conducting the same at regular intervals, of say three years. Deliberating on the subject, she opined against regulations like tenure and age limit, especially intra-term age limit of independent directors, comparing the same to US laws where Directors are elected by shareholders every year. She insisted on creating an online repertoire of information and knowledge for Directors as opposed to mandatory examinations recently mandated by law.

Setting the tone, **Mr Sai Venkateshwaran**, Partner & Head – CFO Advisory, KPMG in India articulated that companies today, are faced with cross sectoral disruption at an unprecedented pace, sometimes threatening their very existence. They also face enhanced regulatory scrutiny in addition to growing trust deficit amongst the players in the corporate governance ecosystem. Seldom before have boards in general and independent directors in particular needed to play as important a role as they do today, in steering the organisation and its strategy to ensure its long-term sustainable growth. Therefore, the need of the hour is to provide an environment with necessary checks and balances to drive the right behaviours and enable boards and independent directors to function effectively and play their important role in the corporate governance ecosystem rather than bring in more regulations.

Delivering the Concluding remarks, **Mr Krishnava Dutt**, Managing Partner, Argus Partners asserted that the role of an independent director is getting more and more challenging. The legislative expectation is a 'hands-on director' where the legal obligation of all directors are equal. Thus the line between obligations of a whole time director and a non – executive or an independent director is becoming thinner by the day. Ignorance is not a compelling defence anymore. Although the paradigm has changed after the new Companies Act 2013 and constantly evolving through rules and regulations, the basic fundamental obligation remain immutable – an independent director is a fiduciary to the Company and must therefore deal with all matters, however insignificant, with utmost prudence and care.

Earlier, welcoming the guests, **Mr Ninad Karpe**, Former Chairman, CII Western Region & Director, Aptech Ltd spoke about the need to re-conceptualize the role, responsibility, accountability and liability of independent directors. He highlighted that the process of selecting independent directors with relevant experience and expertise is critical. It is important that Independent directors allocate sufficient time to the affairs of the company. Independent directors while being clear about the role they play, also need to be suitably armed with timely and sufficient information from management to be able to effectively perform. Interaction with global corporate trainers and coaches and industry experts in relation to the company's operations ought to be conducted. He also spoke about the importance of appropriate insurance arrangements to protect independent directors including former directors from liabilities.

The Session was attended by board members and senior industry leaders.

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