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The spirit of governance

Directors must exercise fiduciary duties

India Inc appears to be steadily improving its compliance with statutory governance standards. The fifth edition of the Excellence Enablers Survey (EES) on Corporate Governance in Nifty 100 companies shows on various parameters companies have steadily aligned with standards stipulated by the Companies Act and the Securities and Exchange Board of India (Sebi). Board sizes are one index. Given that listed companies need to have five mandatory committees — on remuneration, audit, human resources and so on — companies need to ensure that there are sufficient board members so that the same member does not serve on multiple committees. The EES study shows that the average board size has expanded — from 9.86 in FY21 to 10.52 in FY24 — and 61 per cent of the companies had between nine and 13 directors. Then again, according to Sebi regulations, non-executive directors (NEDs), including independent directors (ID), should comprise 50 per cent of the board. Compliance here has improved significantly.

The survey showed 44 per cent of the Nifty 100 companies had between 50 and 74 per cent of NEDs, up from 35 per cent in FY21. For 55 per cent of the 44 per cent, NEDs accounted for 75 per cent or more of the board. As far as IDs are concerned, 96 per cent of the companies either met or exceeded statutory requirements that such directors comprise one-third of the board. No less encouraging is the fact that the Nifty 100 companies reported 200 women directors in FY24, up from 158 in FY23. Almost 74 per cent of them are IDs, meaning they are unlikely to be token appointments of promoter families, which had been the popular practice earlier.

It is interesting, however, that while companies have complied with or exceeded statutory requirements, they appear to have fallen short on some best practices that are non-mandatory. For instance, just 61 per cent of the companies have separated the post of chairman and managing director as prescribed by the Uday Kotak Committee. In 2022, Sebi had made this requirement voluntary. On women directors, too, although almost all companies meet the minimum legal compliance, genuine gender diversity is still an elusive goal; women account for just 20 per cent of all board directors and 27 per cent of independent directors.

This trend suggests that for compliance to translate into a meaningful improvement in corporate governance, companies need to make the transition from conforming to the letter of the regulations to complying with the spirit as well. Key to this transition is enabling IDs to act with genuine freedom rather than function as ornaments and supporters of the management. This is a particular weakness in proprietary and family-managed companies with powerful promoters and founders. Boards comprising stalwarts from industry, banking, and academia have proved notably ineffective in preventing crises such as those in Satyam, IL&FS, ICICI Bank, Yes Bank, and Byju's, to name a few. Exercising this fiduciary duty is as much a responsibility of the director as the management. The fact that IDs also head functional committees underlines the reasons for not evading their responsibilities. As the study shows, sitting fees for directors are more than generous, which demands that IDs leverage the expertise for which they have been chosen and speak truth to power when necessary. India Inc can only be a net gainer from such managerial reform.