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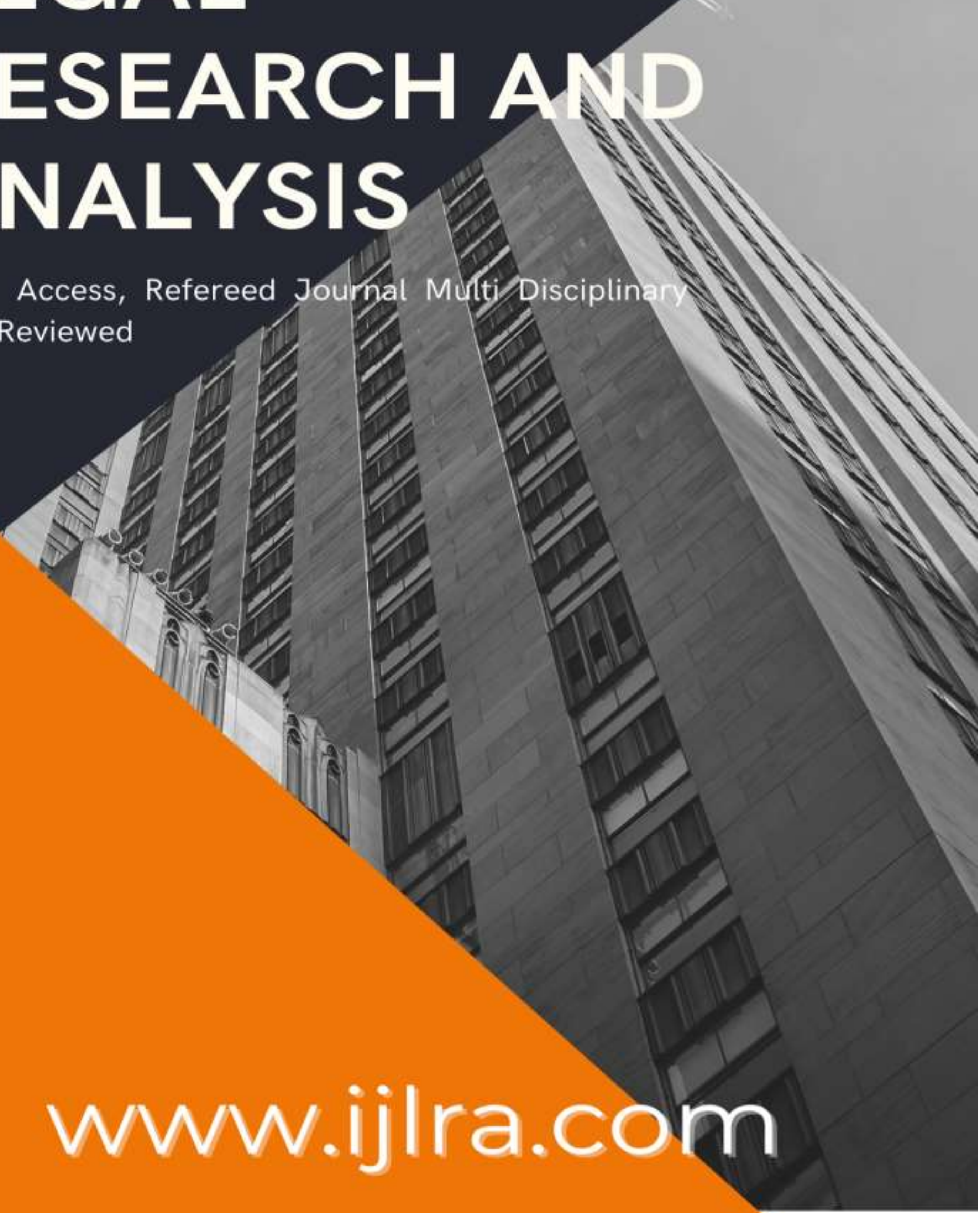

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# Avinash Kumar

*Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship.He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi.Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi.He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.*

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# CEO ACCOUNTABILITY AND CORPORATE GOVERNANCE

AUTHORED BY – MANISHA

## INTRODUCTION

Corporate Governance refers to the system of rules and practices by which a company is controlled and directed. It serves as the cornerstone of modern business operations. At the heart of effective corporate governance lies the accountability of key corporate actors such as Chief Executive Officer (hereinafter referred to as CEO), whose leadership and decision making significantly impact stakeholders. After major scandals such as Enron, Wirecard, Lehman Brothers, Satyam etc which have brought the world economy to its knees, it becomes further imperative to highlight the accountability of CEOs and other such key corporate actors which are at the helm of the affairs. It is the duty of the CEO to understand the difference between company's assets and personal assets, because when such a boundary is crossed, a scam is said to have occurred.

CEOs around the world are paid handsome sums of money, they are at the helm of major corporate decisions. And therefore, they need to make sure that the company and its directors live up to a certain standard of care and they act in a manner which is in the best interest of the stakeholders and not reap any personal benefits. Being a leader means accepting full responsibility of the organization. therefore, we try to incorporate a fact that when CEOs are held less accountable for their actions, corporate scandals are said to have taken place. Accountability is the cornerstone of effective corporate governance: when it is compromised, the company's downfall becomes difficult to avert, regardless of other mitigating factors at play.

## WHO IS A CEO?

The Companies Act[1] defines a CEO as *an officer of the company who has been appointed as such by the company.* However, the act does not specify the qualifications, experience, terms or conditions for the appointment, nor does it outline the roles, responsibilities or functions of

[1] Companies Act, 2013

the CEO. Therefore, it is entirely left up to the discretion of the company's management to determine the qualifications, experience, roles and responsibilities of the CEO. According to Section 203[2] of the companies act, a CEO is defined as the Key Managerial Personnel (KMP). Additionally, the act[3] mandates that every listed company and every other public company with a paid-up share capital of ten crore rupees or more are mandates to appoint a CEO. The Companies Act 2013 and the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 govern the appointment of CEO.[4]

The CEO holds the top executive position within a company. their key duties encompass significant decision-making, steering the company's personnel and assets towards strategic objectives and serving as the primary liaison between the board of directors and operational functions.[5] However, within organizations characterized by effective corporate governance, the CEO doesn't wield absolute power or unilateral decision-making authority. Appointment of the CEO involves election by both the board and the shareholders, with reporting responsibilities to the board chair and members, designated by the shareholders.[6]

The responsibilities of a CEO can differ significantly based on factors such as the company's size, culture and organizational framework. Within larger corporations, CEOs primarily focus on high-level strategic decisions that shape the company's overall trajectory and development. For instance, they may concentrate on formulating strategies, refining organizational structures, and nurturing corporate culture. Specifically, they might assess the allocation of capital throughout the organization or devise strategies for assembling successful teams.

## ROLES AND RESPONSIBILITIES OF CEO

The CEO of a company executes various roles and responsibilities. Some of them include, setting and executing organisational strategy, representation of the company, building senior leadership team, management of finances and operations of the company, setting vision, values and corporate culture, communicating effectively with all stakeholders and maintain

[2] Companies Act, 2013, s 203
[3] Companies Act, 2013
[4] Tripti Shakya, 'CEO & their Appointment under Companies Act 2013' (*Taxguru*, 27 September 2020) <https://taxguru.in/company-law/ceo-appointment-companies-act-2013.html> accessed 9 April 2024
[5] Kyle Peterdy, 'What is a CEO' (*Corporate Finance Institute)* <https://corporatefinanceinstitute.com/resources/career/what-is-a-ceo-chief-executive-officer/> accessed 9 April 2024
[6] Adam Hayes, 'Chief Executive Officer: What they do vs. Other Chief Roles' (*Investopedia,* 17 February 2024) <https://www.investopedia.com/terms/c/ceo.asp> accessed 9 April 2024

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accountability with the board. To elucidate further, the CEO is responsible for making decisions regarding various aspects such as launching new product lines, maintain competitive advantage, exploring potential markets etc. while the CEO relies on substantial data and input from senior leaders, as well as guidance from the board of directors, they ultimately have operational control over the strategy and execution within the organization.[7] The CEO is the public representative of the company, they serve as the main contact for investors, customers and other stakeholders.[8] They act as the face of the company and they articulate the company's vision and strategy and cultivate robust relationships with key stakeholders.

Competent CEOs possess the ability to attract and retain top-tier talent to their organizations. Although they do not handle hiring and firing of every employee, yet they are accountable for constructing and supervising the executive leadership team.[9] Additionally, the CEOs are tasked with crafting and overseeing budgets, tracking performance, and making financial judgements. They further are entrusted with ensuring company's adherence to all legal and regulatory standards. The CEOS furthermore, supervise the activities of other executives, such as the CFO and the COO, along with managing the company's workforce. They are held accountable for the overall administration of the company.

It is the responsibility of the CEO to craft and instil the mission, vision and values of the company. the CEO must maintain acute awareness of their demeanour, conduct and every action or inaction they undertake, since the entire organization observes them. The CEO serves as the face of the organization, often representing the firm in various settings such as with the general public, media, government officials, employees, customers and other stakeholders. The CEO is always essentially in the spotlight – there's someone always observing or listening. Last but not the least, it is crucial for the CEO to prioritize the growth and advancement of the company. it becomes imperative for the CEO, not only to ensure that short term goals of the company are met but that such decisions are taken that ensures the longevity of the company and that there is sustainable growth of the company. a CEO must adopt forward looking

[7] 'What is the Role of a CEO?' (*Northwest Education,* 9 January 2024) <https://northwest.education/insights/careers/chief-executive-officer-ceo-roles-responsibilities/> accessed 9 April 2024

[8] Kyle Peterdy, 'What is a CEO' (*Corporate Finance Institute)* <https://corporatefinanceinstitute.com/resources/career/what-is-a-ceo-chief-executive-officer/> accessed 9 April 2024

[9] 'What is the Role of a CEO?' (*Northwest Education,* 9 January 2024) <https://northwest.education/insights/careers/chief-executive-officer-ceo-roles-responsibilities/> accessed 9 April 2024

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perspective and strive to establish a sustainable and lucrative business model.[10]

## CEO NARCISSISM AND CORPORATE MISGOVERNANCE

The American Psychiatric Association's *Diagnostic and Statistical Manual for Mental Disorders*[11] defines narcissism as a "multifaceted personality trait that combines grandiosity, attention seeking, an unrealistically inflated self-view, a need for that self-view to be continuously reinforced through self-regulation, and a general lack of regard for others." As such narcissistic CEOs give precedence to their own needs and desires over the well-being of their firm and its stakeholders.[12] Such narcissistic tendencies of CEOs often translate into misgovernance in the company in various forms such as lack of accountability, risk taking behaviour, short term focus, overly aggressive strategies, ethical concerns etc. when one makes a cursory read of corporate scandals around the world, one cannot help but notice that narcissistic CEOs have been inclined to take excessive risks. Often in the corporate world, it is said, higher the risk, higher the reward and CEOs who chase personal glory tend to take such excessive risks to cater to their own personal narcissistic needs.

Narcissistic CEOs tend to resist oversight and shirk accountability. When a CEO does that, that means there is a lack of checks and balances and transparency in the company. decisions taken without consultation with others may often mean unethical and illegal solutions which may in the long run harm the company and all its stakeholders. Such CEOs with a narcissistic outlook, furthermore tend to focus on short term goals such s raising the stock prices to enhance their own remuneration and recognition without taking into consideration the overall impact it will have on the company and its reputation. The Enron scandal was a lesson in corporate governance to all. Here also, the CEO and the CFO wanted to boost the stock prices because it would reflect in a higher pay for them.

However, narcissistic CEOs can be kept in check through a manner of checks and balances which can often include board oversight, diverse leadership team, regular performance reviews,

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10 'What is the Role of a CEO?' (*Northwest Education,* 9 January 2024) <https://northwest.education/insights/careers/chief-executive-officer-ceo-roles-responsibilities/> accessed 9 April 2024

11 American Psychiatric Association, 'Diagnostic and Statistical Manual of Mental Disorders' (2013) <https://psycnet.apa.org/record/2013-14907-000> accessed 14 October 2023

12 David H. Zhu and Guoli Chen, 'CEO Narcissism and the Impact of Prior Board Experience on Corporate Strategy' (2014) 60(1) Administrative Science Quarterly <CEO Narcissism and the Impact of Prior Board Experience on Corporate Strategy - David H. Zhu, Guoli Chen, 2015 (sagepub.com)> accessed 15 October 2023

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shareholder activism etc. A diverse leadership team can provide a comprehensive viewpoint and perhaps balance the CEOs proclivities. Furthermore, an active, independent and involved board of directors can restrain and put in check any narcissistic CEOs rash decisions. The board's compositions should be such that individuals are willing to challenge the CEO when necessary. Enabling an open 360-degree open feedback by employees, peers and subordinates on CEOs leadership style can help make the CEO become more aware and open to change. Shareholders should actively take part in the major decision-making process at the company. in extreme circumstances, shareholders may exercise their rights to influence CEO behaviour through voting or activism, though this should be judiciously used. An organization which promotes transparency and open communication helps ensure that unethical or self-serving behaviour does not go unnoticed.

Furthermore, regulatory and policy interventions such as enforcing strict corporate governance standards, CEO pay ratio disclosure, limiting executive compensation, whistleblower protection, enforcing a code of conduct for top executives etc can help mitigate CEO narcissism. When protections and incentives are enhanced within an organization, it becomes easier for whistleblowers to report unethical behaviour, thereby enabling them to safely voice their concerns about the CEO. A clear and precise code of conduct should be developed and enforced for top executives. The code of conduct should clearly outline expectations regarding ethical behaviour and leadership qualities. Last but not the least options should be explored where CEOs should face legal consequences when they engage in unethical or narcissistic behaviour. Personal liability both financial and criminal should be imposed on them for any damage done to the organization.

## CASE STUDIES

### 1. ENRON: THE FALL OF A WALLSTREET DARLING

In 1985, Kenneth Lay merged Houston Natural Gas and InterNorth to form an American energy, commodities and services company called Enron based in Houston, Texas. Lay hired Jefferey Skilling and they both assembled a group of executives who were able to conceal billions of dollars in debt from botched transactions, accounting loopholes, the misuse of mark-to-market accounting, special purpose entities and poor financial reporting.[13] Andrew Fastow,

[13] Ronald R. Sin and Johannes Brinkman, 'Enron Ethics (or: Culture Matters More than Codes)' (2003) 45(3) Journal of Business Ethics <Enron Ethics (Or: Culture Matters More than Codes) on JSTOR> accessed 6 March 2024

the CFO and other executives, misled Enron's board of directors and the audit committee and put pressure on the external audit firm Arthur Anderson to overlook the problems. Skilling attracted the best candidates from MBA programmes throughout the country and created a highly competitive work atmosphere, where the primary objective became executing numerous cash-generating trades in the shortest possible time-frame.[14] The bull market of 1990s provided significant momentum to Enron's aspirations and contributed substantially to its rapid expansion. There were abundant opportunities for deals and the company was positioned to create markets for almost anything that could find a buyer.[15] Like all things come to an end, Enron's profits fell sharply as the boom years came to an end and the energy trading sector became more competitive. The company officials tried to hide the financial difficulties by using dubious accounting techniques such as "mark to market accounting", in response from the mounting pressure faced from the shareholders. This accounting approach enabled Enron to record anticipated future gains from certain trading contracts as current income, thus creating the illusion of inflated current profits. Soon the web of lies woven at Enron came to the forefront when the accounting fraud surfaced. The company's stock price fell from a peak of $90 per share in mid-2000 to less than $12 by early November 2001.[16]

The fatal flaw at Enron was pride, arrogance, intolerance and greed. It just got hungrier and hungrier. It was a house of cards built over a pool of gasoline.[17] People think that it's a story about numbers, but in reality, it's a story about people, its about human tragedy. Kenneth Lay and Jefferey Skilling were called the smartest guys in the room, captains of a ship too powerful to go down. In Titanic, the captain went down with the ship, in Enron's case, the captain first gave himself and his executives a hefty bonus then lowered himself and the top folks down in the lifeboat and then hollered up and left and said "everything is going to be just fine".[18]
Kenneth Lay was a Baptist preacher's son, he spent most of his life in poverty working small jobs and wanted things to be better. Even as a child he aspired to make huge wealth for himself. He got a Ph.D. in economics and was a visionary. He liked people with big ideas and Skilling was the person with the biggest idea of all. Both Lay and Skilling would often push their

[14] Alex Gibny, Enron: The Smartest Guys in The Room (United States of America, 2929 Entertainment) 2005
[15] Alan D. Anderson, 'The Chaos That Was Enron: Enron And The Transformation Of The U.S. Natural Gas Industry, 1968-2001' John Hopkins Institute for Applied Economics, Global Health, and Study of Business Enterprise < https://sites.krieger.jhu.edu/iae/files/2017/04/Anderson-The-Chaos-That-Was-Enron-Penn.pdf> accessed 5 March 2024
[16] Troy Segal, 'Enron Scandal: The Fall of a Wall Street Darling' (*Investopedia*, 22 December 2023) < https://www.investopedia.com/updates/enron-scandal-summary/> accessed 6 March 2024
[17] Alex Gibny, Enron: The Smartest Guys in The Room (United States of America, 2929 Entertainment) 2005
[18] Alex Gibny, Enron: The Smartest Guys in The Room (United States of America, 2929 Entertainment) 2005

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employees to a standard that was continuously being raised and the only thing that mattered was adding value.[19] Employees were often found to be compelled to bend the rules until the boundaries of ethical behaviour became blurred in the pursuit of next major achievement. Initially the culture of cleverness at Enron began as a pursuit of excellence, but gradually the top brass at Enron concentrated on coming up with shrewd plans to uphold Enron's seemingly flawless image of success.[20]

The company's culture characterised by individualism, innovation and aggressive cleverness lacked compassionate and responsible leadership.[21] The Board of Directors at Enron hesitated to intervene and address the vacuum, leading for the first time, for individual employees to face the consequences of a culture where leaders disregard ethical boundaries.[22] The top management at Enron asked their employees to make profits anyhow, "there were no rules for people, even in our personal lives. Everything was about the company and everything was supposed to be on the edge, which led to ethical degeneration at the company".[23]

## 2. VIJAY MALLYA: THE KING OF GOOD TIMES

Vijay Mallya, better known to Indians as the "King of Good Times", was a man with a Midas touch. Born to business tycoon Vittal Mallya, the chairman of United Brewery, Vijay Mallya never experienced the struggles of middle class or the hunger pangs of the lower class. Spoiled at a very young age with expensive toys and an indulgent lifestyle, Mallya was always destined to view life with an arrogant nonchalance. In his early 20s, Mallya led an exuberant life, racing motor cars and winning his first Grand Prix. But at the age of 28, life changed for Mallya when he had to take over his father's empire following his death.

When Vijay Mallya took over the reins of his father's business empire, he wanted nothing more

[19] Ronald R. Sin and Johannes Brinkman, 'Enron Ethics (or: Culture Matters More than Codes)' (2003) 45(3) Journal of Business Ethics <Enron Ethics (Or: Culture Matters More than Codes) on JSTOR> accessed 6 March 2024

[20] Alan D. Anderson, 'The Chaos That Was Enron: Enron And The Transformation Of The U.S. Natural Gas Industry, 1968-2001' John Hopkins Institute for Applied Economics, Global Health, and Study of Business Enterprise < https://sites.krieger.jhu.edu/iae/files/2017/04/Anderson-The-Chaos-That-Was-Enron-Penn.pdf> accessed 5 March 2024

[21] Alex Gibny, Enron: The Smartest Guys in The Room (United States of America, 2929 Entertainment) 2005

[22] Peter Behr and David S. Hilzenrath, 'Top Executives Blamed in Enron's Fall' *The Washington Post* (United States of America, 2 February 2002)

[23] Alan D. Anderson, 'The Chaos That Was Enron: Enron And The Transformation Of The U.S. Natural Gas Industry, 1968-2001' John Hopkins Institute for Applied Economics, Global Health, and Study of Business Enterprise < https://sites.krieger.jhu.edu/iae/files/2017/04/Anderson-The-Chaos-That-Was-Enron-Penn.pdf> accessed 5 March 2024

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than to prove that he could make it bigger and better. It was a challenge he took upon himself, that he would do justice to his father's legacy.[24] Mallya was the first to recognise the potential of Bangalore as a social hub and therefore, launched his beer Kingfisher, in pubs around Bangalore. The beer was a smashing success for Mallya, so much so that beer itself became synonymous with Kingfisher and people started asking for Kingfisher and not just beer. Despite the success and the mountain of wealth that came with it, Mallya was not satisfied. His motto in life was "bigger and bigger", a motto that he brought into his business as well. He did not merely want wealth, he wanted to be known, he wanted to be recognised and he wanted to be acknowledged in life.[25]

It would come as no surprise that the man known as the King of Good Times, was flamboyance personified. He was known for his eccentric sense of fashion, the jewellery he always adorned and the lavish parties he threw. Mallya exuded an arrogance to things even as dire as a helicopter crash and even brushed off his survival as a proof that "god needs me". It was his belief that he could do no wrong.

This exorbitant success in the beer market led to the birth of Mallya's dream project: The Kingfisher Airlines. Initially, it started as a low-cost airline: it was a short distance, short time, low-cost airline whose main selling point was that it brought luxury and sophistication to the middle class at prices they could afford. Mallya's dream of "bigger and bigger" transferred into the airlines business as well. The airline went from having no business class and flying short distances to having a first class and flying abroad. Mallya bought airbuses and airplanes but at the cost of taxpayer's money. Mallya's dreams for Kingfisher airlines led to a corresponding increase in the airlines' debt obligation. Even then he did not stop the expansion, he saw opportunities of business everywhere, he bought a Formula One racing team and a team in IPL, both personal hobbies which became huge businesses.[26]

Like all good things come to an end, so did Mallya's fall from greatness began with the recession in the United States of America. While Mallya's earlier philosophy of bigger and

[24] Sweety Gupta and Shiv Gupta, 'Case Study from Riches to Rags: The Story of Vijay Mallya' (2017) 9(7) Pacific Business Review International <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/http://www.pbr.co.in/2017/2017_month/Jan/22.pdf> accessed 12 October 2023
[25] Dylan Mohan Gray, Bad Boy Billionaires (India, Minnow Films) 2020
[26] Dylan Mohan Gray, Bad Boy Billionaires (India, Minnow Films) 2020

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bigger had worked quite well in other businesses, it did not work with Kingfisher airlines. A bigger fleet of aeroplanes meant more fuel, more staff and more overhead costs. Being a low-cost airline with luxury beyond pricing meant that the company lost more money than it made each month. The costs of running far exceeded the revenue received. However, for Mallya cutting cost was unthinkable. And therefore, to save the sinking ship he resorted to taking huge loans from nationalised banks. By 2011, there was no money left to run the airline anymore; the bills of fuel were pending and the catering to the airlines had stopped because of lack of funding.

Mallya's extravagant 60th birthday party was the final nail in the coffin for many. Mallya's denial to pay the loans from his personal wealth, his belief that he had done nothing wrong and that rules did not apply to him, and his diversion of money from Kingfisher's account to fund his obsession with F1 and IPL were aggravating instances that turned the public image against him.[27]

In the end, despite his efforts to disapprove the narrative that he had stolen the nation's money through these nationalised banks, he was charged under conspiracy, cheating and money laundering. Despite owing the country over $2 Billion[28], his ego and his preoccupation with himself and his image has blinded Mallya from taking accountability for his mistakes and taking the right decisions at the right time. In the end, the conclusion is clear, the only difference between Vijay Mallya and a petty thief is that Mallya wears expensive suits, throws lavish parties and escaped the country without a sliver of remorse or taking accountability.[29]

## 3. WIRECARD

Wirecard was a German payment processor and financial services provider headquartered in Munich, Germany. They made sure that when one bought something, the money got from the customer's credit card to the online retailer. According to its CEO Markus Braun, "we are a software group, an internet company, with a bank as a daughter and not the other way round".[30]

[27] Amie Tsang and Hari Kumar, 'Vijay Mallya, Once India's 'King of Good Times,' Is Arrested in London' (New York Times, 18 April 2017) <Vijay Mallya, Once India's 'King of Good Times,' Is Arrested in London - The New York Times (nytimes.com)> accessed 12 October 2023
[28] Amie Tsang and Hari Kumar, 'Vijay Mallya, Once India's 'King of Good Times,' Is Arrested in London' (New York Times, 18 April 2017) <Vijay Mallya, Once India's 'King of Good Times,' Is Arrested in London - The New York Times (nytimes.com)> accessed 12 October 2023
[29] Dylan Mohan Gray, Bad Boy Billionaires (India, Minnow Films) 2020
[30] James Erskine, Skandal! Bringing Down Wirecard (Germany, Passion Pictures) 2022

The company had a strong business model – it used to handle payments for online businesses in pornography and online gambling, but it was not illegal.

The US poker market was about 50% of the global poker market. But everything changed when in 2006, a new law made it illegal to handle payments for US citizens playing poker. So Wirecard lost a major source of income. Despite this, the company's profits continue to rise expeditiously. But the company did not grow by adding new customers like Spotify does, it grew by buying local businesses and most of them in Asia. From the outside it looked like a legitimate enterprise with 6000 employees worldwide, global, large and profitable. However, in reality, it was actually a robbery. Wirecard was laundering money for various businesses. It set up a UK based company called Bluetool which would act as a front for Wirecard's illicit transactions. What Wirecard would do was if say it was a contentious transaction say like gambling or porn, it would misquote the transaction to say for example – a florist. And it would get away by taking advantage of all the little weaknesses in the system.[31]

Zatarra, a US financial investigative firm issued a negative report on Wirecard in 2016 where it alleged negative financial activity at the firm. The report accused the top management at the firm in engaging in fraudulent behaviour and money laundering.[32] In 2019, Financial Times journalist, Dan McCrum discovered the scam and published a number of pieces in which he claimed accounting irregularities at Wirecard's Asian units. In June 2020, the company admitted to EY, its auditor that $2.1 billion in cash they were meant to hold in two Philippine accounts likely did not exist or was missing.[33] With the advent of this news Wirecard's share price plummeted by 99% and it became the first DAX company to file for bankruptcy, owing creditors to lose close to $5 billion.[34]

At the head of the scandal were two people involved – CEO Markus Braun and the COO Jan Marsalek, both Austrian nationals. The company CEO used to present himself as a visionary always dressing up in turtlenecks and formals – sort of portraying himself as "Steve Jobs of the Alps". Braun was the German heartthrob; he took advantage of the German desire to have their

[31] James Erskine, Skandal! Bringing Down Wirecard (Germany, Passion Pictures) 2022
[32] Nik Martin, 'Wirecard: How Germany's Fraudulent Fintech Star Was Exposed' *Deutsche Welle* (Germany, 8 December 2022)
[33] Olaf Storbeck, 'Germany's regulators were 'deficient' in Wirecard scandal, says Esma' *Financial Times* (Germany, 3 November 2020)
[34] Ben Taub, 'How the Biggest Fraud in German History Unravelled' *The New Yorker* (United States of America, 27 February 2023)

own latest technology giants like the German Google or the German Facebook. He used to make statements that used to appeal to the general public's ears such as – "it's about making the cake much bigger".[35] While Braun always had this quite stressed look on his face, his prodigy Marsalek was quite the opposite. He was a great communicator, extremely charming, very approachable, very sharp, well-travelled and very careful in what he said. He would always assure his subordinates who sought a minute of his time with "For you, always!" but he would say that to almost everyone.[36]

Every time Wirecard was criticized, Braun would come up with statements such as – "we don't get distracted by the noise"[37] or "we firmly reject these serious allegations, we think these allegations are mainly market speculations".[38] Both Braun and Marsalek repeatedly denied allegations of any wrongdoing, it was only when the final nail in the coffin was placed that they accepted that around $2.1 billion were missing, yet none of them took responsibility for their actions. Braun has been in custody since 2020, while Marsalek ran away and still remains a fugitive.[39] While Braun claims to be innocent, it was his duty to know what Marsalek, his metaphorical prodigal son was up to. Lawmakers have criticised Germany's deficient handling of the scandal and lack of regulatory oversight over the company.[40]

The Wirecard scandal brought to light the importance of CEO accountability and corporate governance. It raised questions about the effectiveness of regulatory oversight and the responsibilities of corporate leaders to ensure transparency and integrity in financial reporting. The case also underlines how important it is for the investors to conduct thorough due diligence and scrutinize companies' financial statements, especially in high-growth industries like fintech.

## 4. <u>FACEBOOK – CAMBRIDGE ANALYTICA</u>

In 2018, Facebook CEO, Mark Zuckerberg, issued an apology acknowledging the company's failure to protect user data and promising to implement strict measures to prevent similar

[35] James Erskine, Skandal! Bringing Down Wirecard (Germany, Passion Pictures) 2022
[36] Ben Taub, 'How the Biggest Fraud in German History Unravelled' *The New Yorker* (United States of America, 27 February 2023)
[37] James Erskine, Skandal! Bringing Down Wirecard (Germany, Passion Pictures) 2022
[38] James Erskine, Skandal! Bringing Down Wirecard (Germany, Passion Pictures) 2022
[39] James Erskine, Skandal! Bringing Down Wirecard (Germany, Passion Pictures) 2022
[40] Nik Martin, 'Wirecard: How Germany's Fraudulent Fintech Star Was Exposed' *Deutsche Welle* (Germany, 8 December 2022)

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incidents in the future.[41] A political consulting and strategic communication firm known as Cambridge Analytica created a personality test application that improperly collected personal information not only from its users but also from their friends on Facebook, ultimately gathering data from close to around 87 million people. This was facilitated through a partnership with Facebook, leading to allegations of mishandling user data against the social media platform.[42]

Both the CEO and the COO, Sheryl Sandberg took responsibility of the data breach.

*"We have a responsibility to protect your data, and if we can't then we don't deserve to serve you,"*[43]

*"I've been working to understand exactly what happened and how to make sure this doesn't happen again, I started Facebook, and at the end of the day I'm responsible for what happens on our platform. I'm serious about doing what it takes to protect our community."*[44]

-Mark Zuckerberg, CEO Facebook

Zuckerberg acknowledged that there was a breach of trust between Facebook and its users who entrust their data to the platform with the expectation of protection. In a bid for redemption the tech-giant then outlined several measures that the company intends to take which the company intends to take in response to the unauthorized collection of extensive Facebook user data by Cambridge Analytica, which occurred without user consent.[45]

Facebook, furthermore, agreed to pay a fine of $643,000[46] fine to the U.K.'s Information Commissioner's Office for its role in the Cambridge Analytica scandal. After over a year of legal proceedings and negotiations between the regulatory body and the tech company, Facebook eventually agreed to pay the fine.

[41] Case Study on Facebook's Data Breach <https://fotislaw.com/lawtify/case-study-on-facebooks-data-breach/> accessed 30 March 2024

[42] Facebook-Cambridge Analytica data scandal (Wikipedia) <https://en.wikipedia.org/wiki/Facebook%E2%80%93Cambridge_Analytica_data_scandal> accessed 30 March 2024

[43] Sara Salinas 'Zuckerberg on Cambridge Analytica: We have a responsibility to protect your data, and if we can't then we don't deserve to serve you' (*CNBC,* 21 March 2018) <https://www.cnbc.com/2018/03/21/zuckerberg-statement-on-cambridge-analytica.html> accessed 29 March 2023

[44] Kurt Wagner, 'Marck Zuckerberg says Facebook has a 'responsibility to protect our data,' but he doesn't apologize for its data privacy scandal' (*Vox,* 21 March 2018) < https://www.vox.com/2018/3/21/17148684/facebook-ceo-mark-zuckerberg-data-breach-cambridge-analytica-privacy> accessed 29 March 2023

[45] Julia Carrie Wong, 'Mark Zuckerberg apologises for Facebook's 'mistakes' over Cambridge Analytica' *The Guardian* (San Francisco, 22 March 2023)

[46] Paolo Zialcita, 'Facebook Pays $643,000 Fine for Role In Cambridge Analytica Scandal' (*NPR,* 30 October 2019) <https://www.npr.org/2019/10/30/774749376/facebook-pays-643-000-fine-for-role-in-cambridge-analytica-scandal> accessed 29 March 2024

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However, lawmakers filed a case against Zuckerberg, for the CEO to be held personally liable for the company's use of customer data and data breach. Connecticut Democratic Senator Richard Blumenthal while blaming the CEO of the tech giant said that:

*"Zuckerberg and Facebook are one entity— like two sides of the same coin, they are joined at the hip, head and heart. He is the founder, CEO, controlling shareholder, and face of the company. Thanks to recent reports, it's never been clearer: He wasn't just aware of Facebook's invasion of consumer privacy, he signed off on it and publicly downplayed legitimate concerns."*[47]

The scandal highlighted the need for accountability from major tech companies and their CEOs in instances of significant data breaches. In the 21st century, data has become comparable to oil in terms of its value, and breaches of this magnitude underscore the importance of holding top management accountable. Mark Zuckerberg, being synonymous with Facebook as its founder and public face, faced calls from lawmakers to be personally accountable. With the rise of technology, there's an expectation that CEOs should bear responsibility, serving as a deterrent against future incidents.

Ultimately, the Cambridge Analytica scandal served as a wake-up call for both Facebook and the tech industry as a whole, prompting greater awareness of the need to protect user data and address broader ethical and societal implications of social media platforms. It also sparked discussions about corporate responsibility and the role of CEOs in ensuring the integrity and accountability of their companies.

## 5. BINANCE

Binance is a multinational corporation that runs the largest cryptocurrency exchange globally, based on a daily trading volume. Changpeng Zhao, known for creating high frequency trading software, established Binance in 2017 in China. However, it relocated to Japan owing to some regulatory issues, before finally setting up in China. In November 2023, the company admitted to being guilty of various charges including money laundering, operating without licenses, and violating sanctions in a U.S. federal court.

The cryptocurrency exchange has been the focus of investigations since at least 2018, with

[47] Lauren Feiner, 'Lawmakers call for Zuckerberg to be held accountable for Facebook's privacy fumbles' (*CNBC*, 19 April 2019) <https://www.cnbc.com/2019/04/19/lawmakers-call-for-facebooks-zuckerberg-to-be-held-accountable.html> accessed 29 March 2024

federal prosecutors seeking access to internal documents, data related to anti-money laundering efforts etc. In March 2023, the Commodities Future Trading Commission (CFTC) initiated civil proceedings against Binance, alleging that the company failed to implement adequate money laundering programmes, due to which illegal activities such as financial terrorism and drug sales were facilitated. Additionally, the CFTC claimed that the top executives and employees were aware of the platform's illegal activities and refused to do anything to remedy the same.[48]

The Department of Justice (DoJ) investigated Binance in 2023 accusing the company of having insufficient anti-money laundering measures in place, enabling its customers to use the platform for illicit activities, including laundering proceeds from darknet market transactions, hacks, ransomware and scams.[49] The charges asserted that Binance prioritized growth, market share and profits over compliance with U.S. laws, contributing to its status as the world's largest cryptocurrency exchange.[50] Prosecutors further claimed that Binance lacked "know-your customer requirements", violating U.S. money laundering laws. The company provided services to U.S. users that required compliance with U.S. regulations despite having no physical presence in the U.S.[51]

*"Using new technology to break the law does not make you a disruptor, it makes you a criminal,"*

said U.S. Attorney General Merrick Garland, who called the settlement one of the largest corporate penalties in the nation's history.[52]

*"Binance turned a blind eye to its legal obligations in the pursuit of profit. Its wilful failures allowed money to flow to terrorists, cybercriminals, and child abusers through its platform,"*

Janet Yellen, Secretary of the Treasury, U.S.

[48] United States Department of Justice, 'Binance and CEO Plead Guilty to Federal Charges in $4B Resolution' (US Department of Justice, Press Release, 2022) <https://www.justice.gov/opa/pr/binance-and-ceo-plead-guilty-federal-charges-4b-resolution> accessed 4 April 2024

[49] United States Department of Justice, 'Binance and CEO Plead Guilty to Federal Charges in $4B Resolution' (US Department of Justice, Press Release, 2022) <https://www.justice.gov/opa/pr/binance-and-ceo-plead-guilty-federal-charges-4b-resolution> accessed 4 April 2024

[50] Amanda Helter, 'Binance money laundering scandal: what to know' (TechTarget, 6 December 2023) <https://www.techtarget.com/whatis/feature/Binance-money-laundering-scandal-explained-What-to-know> accessed 3 April 2024

[51] Jonathan Greig, 'Binance agrees to pay $4.3 billion for money laundering violations, CEO steps down' (The Record, 22 November 2023) <https://therecord.media/binance-fined-for-money-laundering-ceo-zhao-steps-down> accessed 3 April 2024

[52] The Hindu, 'Largest Crypto Exchange Binance Fined $4Billion; CEO Changpeng Zhao Pleads Guilty to Not Stopping Money Laundering' *The Hindu* (Washington, 22 November 2023)

Binance, therefore, agreed to pay $4.3 billion in fine for money laundering violations to U.S. law enforcement agencies.[53] Furthermore, along with reaching a settlement, Changpeng Zhao, the CEO of Binance, admitted to multiple charges in federal court in Seattle. Zhao announced his resignation as CEO on social media, and U.S. Justice Department representatives revealed during a press conference that his departure was stipulated in their arrangement with the company.[54]

As per a digital information source, Binance experienced a decline in market share from 70% to 45% following the scandal.[55] The money laundering controversy surrounding Binance has brought CEO accountability of private companies into focus for regulatory authorities and the public alike. Despite the absence of direct financial losses to the general public, the illicit money laundering actions have adverse effects on society. Hence, the imposed penalty on both the company and its CEO is deemed appropriate and necessary to serve as a deterrent.

## REGULATORY AND POLICY FRAMEWORK TO HOLD CEOs ACCOUNTABLE

It can therefore, be established that CEOs need to be held accountable for their actions. Hence, regulatory and policy interventions are needed to hold CEOs accountable and they can take various forms ranging from corporate governance reforms to specific regulations targeting executive behaviour.

1. **CORPORATE GOVERNANCE REFORMS:** When majority of board members consist independent directors, they are free from the internal politics of the company. they can thus ensure an effective and independent board oversight, thereby constraining the CEOs actions to the benefit of the company and its shareholders. Balance of power is maintained when the roles of CEO and Chairman are separated, thereby reducing the risk of CEO dominance over the board. Additionally, criteria for independent directors need to be set to prevent conflict of interest with the board.
2. **EXECUTIVE COMPENSATION REGULATIONS:** Clawback provisions including allowing the companies to reclaim bonuses or other incentives when any

[53] Scott Chipolina, Nikou Asgari & Philip Stafford, 'Binance's $4.3bn fine was set high as a warning, says US regulator' *Financial Times* (London, 6 December 2023)
[54] Ty Roush, 'Judge Approves Binance's $4.3 Billion Settlement for Anti-Money Laundering, Sanctions Violations' *Forbes* (United States, 23 February 2024)
[55] Amanda Helter, 'Binance money laundering scandal: what to know' (TechTarget, 6 December 2023) <https://www.techtarget.com/whatis/feature/Binance-money-laundering-scandal-explained-What-to-know> accessed 3 April 2024

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financial misconduct or scandal comes to limelight. Regulations that would require a significant portion of the compensation paid to CEO to be tied to company performance can help align CEO interests with shareholder value creation. Transparency and Accountability can also be enhanced when executive compensation packages require periodic shareholder review or voting. This can help put enormous pay cheques in check.

3. **DISCLOSURE AND TRANSPARENCY REQUIREMENTS:** When companies are required to disclose CEO pay ratio to average employee, it allows stakeholders to assess compensation fairness and thereby enhance transparency. Furthermore, CEO conflicts of interest should be mandatorily disclosed, such as financial interests in related entities which help prevent unethical behaviour and ensure transparency. Ethical guidelines for CEO behaviour and requiring adherence to these guidelines promotes responsible leadership.
4. **REGULATORY ENFORCEMENT AND LEGAL REMEDIES:** Regulatory agencies such as SEBI, IRDAI, RBI etc can investigate and prosecute CEOs for violation of security laws, such as insider trading or misleading financial disclosures. CEOs need to be held accountable for breach of fiduciary duties whenever they do not act in the best interests of the company and shareholders through legal remedies or regulatory actions. Shareholders should be allowed to file civil and criminal lawsuits against CEOs for damages resulting from negligence, misconduct or breach of duty.
5. **WHISTLEBLOWER PROTECTION:** Employees should be free to report misconduct or unethical behaviour on part of the CEO without fear of retaliation. Therefore, adequate whistleblower protection programme needs to be implemented to ensure early detection and intervention. Anonymous reporting mechanisms of CEO misconduct can be put in place which provide for protection of the whistleblower's identity as well.
6. **STAKEHOLDER ENGAGEMENT AND ACCOUNTABILITY:** Shareholders rights can be strengthened such as the ability to nominate directors or approve executive compensation packages, such measures can empower shareholders to hold CEO accountable. Mandatory Corporate Social Responsibility (CSR) reporting mechanisms can help ensure that the CEOs are held accountable for environmental, social and governance (ESG) performance.

## CONCLUSION

Therefore, it can be concluded that where CEOs face lower levels of accountability, there is a propensity for significant scandals to occur, impacting not only the shareholders but the society at large. There seems to be a shared understanding among policymakers, the judiciary, and various stakeholders that CEOs bear responsibility and must be held accountable for their actions or inactions concerning the ethical and legal conduct of the company. In the contemporary corporate environment, CEOs are expected to be answerable not solely to shareholders but to a wider array of stakeholders, including employees, customers, communities, and the environment. A conscientious CEO understands the profound implications of their decisions and conducts themselves accordingly. The role of a CEO has expanded beyond mere profit generation. Today, CEOs are pivotal in both corporate governance and societal influence. Embracing ethics and accountability isn't merely a moral obligation; it serves as a strategic asset that can drive enduring success. By leading with integrity and considering the broader societal ramifications of their actions, CEOs can navigate their companies toward a more promising and sustainable future.

India, characterized by its diverse and rapidly evolving economy, presents a unique case study in corporate governance. While regulatory frameworks such as the Companies Act and SEBI guidelines aim to enhance transparency and accountability, implementation challenges persist. Cultural factors such as the prevalence of family-owned businesses and complex social hierarchies pose challenges to effective governance practices. However, recent initiatives such as the Insolvency and Bankruptcy Code signal a commitment to strengthening corporate governance standards.

Moving forward, it is imperative to recognize the interconnectedness of cultural, legal, and institutional factors in shaping corporate governance practices and CEO accountability. Effective governance requires a multifaceted approach that integrates regulatory reforms, institutional mechanisms, and cultural sensitivities to promote transparency, integrity, and trust within the corporate sector. By fostering a culture of accountability and ethical leadership, policymakers, corporate leaders, and stakeholders can work together to ensure the integrity and sustainability of corporate governance systems across diverse cultural contexts.