Communication

Is There A Case for Fiduciary Duties Towards Employees and Other Stakeholders?

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What Is A Fiduciary Duty?

From eons, individuals have faced the need to entrust others with valuable information, property, or other assets. This may be in a situation where a house owner entrusts his/her property to a tenant for its upkeep with care and diligence. It may also happen in a situation where a patient reveals highly personal and sensitive information to a doctor for seeking effective medical interventions. While these interactions and transactions serve useful purposes, it is seen that individuals on the dominant side of a relationship (the tenant or the doctor in the above examples), will sometime use the entrusted asset or knowledge to advance their own interests at the expense of the dependent party or will be less diligent and dedicated than the trusting party would have wished for. In Anglo-American law such relationships of trust and dependency are termed 'fiduciary'. In general a fiduciary relationship may arise when a party/individual is entrusted with property, information or power to make decisions which involve discretionary judgment for the benefit of someone other than herself/ himself. In an organizational context, owners entrust managers with the power and resources to make important strategic and operational decisions on behalf of the owners. These could include not just decisions pertaining to corporate or business strategy such as which markets to compete in, which business to merge, whom to acquire, how to out beat competition in a chosen product market etc. but also important decisions such as the price of products, whom to recruit, what kind of culture is to be sustained in a firm etc. In the organizational scenario, the Director of a company has a fiduciary duty towards the owners. Under the legal lens, fiduciary responsibilities cover two areas: Duty of care and Duty of loyalty. The duty of care essentially entails that decisions that one makes on behalf of someone entails a process orientation and are prudent and rational while the duty of loyalty requires avoiding conflicts of interest and working in the best interests of the client.

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Fiduciary Duties of Managers

Most of the economic literatures on organizations provide a rightful rationale on the need to look at shareholder value maximization and the need to view managers as having fiduciary duties towards the owners. These often pertain to two related factors. First, owners through their monetary investments in a firm, risk not getting good returns or in a worst case losing their financial investments, unless organizations are well managed and strive towards the shareholder value maximization. Second, owners often do not get involved in the running of the firm and entrust managers to make important strategic decisions that often bears risk to the financial investment of the owners. Managers make important decisions on behalf of the owners of the firm, but hardly bear the full consequences of their decisions and this relates to the principal-agent problem, widely deliberated in management literature under the ambit of agency theory.

A Case for Extending Fiduciary Duties towards Employees and Other Stakeholders

While these are strong justifications for requiring fiduciary duties of the managers towards owners or shareholders, it is argued that employees and other stakeholders have an important and perhaps a more embedded stake in the performance of the company because of the following reasons:

- Owners or shareholders have certain rights that help them protect their investments in a firm. Shareholders could appoint Independent Directors who is expected to serve as a voice of the shareholders.
- Shareholders also have voting rights that are put up in shareholder meetings on major decisions taken by the firm. They could confirm or veto these decisions as per their interests and perspectives.
- Shareholders are also free market agents, wherein they can with little efforts sell off disappointing stocks in a highly competitive and global capital market.
- Shareholders can distribute their financial risk by properly creating a portfolio of investments whereas employees hardly have such options for de-risking of employment portfolio as the vast majority work for a single firm and the fortunes of the firm directly impacts the employees' livelihood. Further, employees can change employers often with great difficulty as it is not just about the available market opportunities but also the family and other considerations that go into switch over from a firm.

Further, while wealth maximization of the shareholders is an important objective to be served by the managers, there could be other important concerns which indirectly influence this objective of wealth maximization. Primary amongst these concerns is enhancing the trust and confidence amongst different stakeholders. Trust and confidence in corporations could get affected by various things such as corporate scandals, high pay differentials in organizations, insensitivities of the corporate heads to benefit themselves especially in the times of crisis, being viewed as an 'unfair' employer etc. With increasing clout of businesses in the economic sphere, where in some of the largest organizations in the world are bigger than the economic activities of smaller nations, it is important that employee and other stakeholder concerns are recognized and appreciated.

Addressing stakeholder concerns from a social legitimacy and resource dependence perspective

Stakeholders such as employees, customers, suppliers and local community provide social legitimacy and are also important resource providers to the organization. While an organization could have a legal clearance for its operations, societal yardsticks of corporate responsibility could be different and could impact the long-term sustenance of a firm. Recent instances of the closing down of the Sterlite copper plant in India and agitations against big mining firms across the globe are evidences of this. A minimum behavioral standard with respect to the corporate's relationship to its stakeholders must entail two norms (Campbell, 2007):

- One, it must not knowingly do anything that could harm its stakeholders
- Second, if organizations do cause harm, they must rectify it expeditiously as it is brought to their attention

Social legitimacy is also getting increasingly defined by civil society and media. Civil society organizations like non-governmental organizations have prompted business organizations to take consequential actions on environmental issues and labor rights. Social media have provided alternative sources of information which otherwise may not get reported in mainstream media in constraining the behavior of organizations towards its stakeholders.

Many of the stakeholders such as suppliers, customers, employees and local community provide important resources to the firm in the form of materials, money and labor. A competitive product market and labor market could regulate the relationship of the corporate to the stakeholders. Hence being perceived as a 'fair' customer, supplier and employer could determine the attractiveness of the firm to current and potential stakeholders and their willingness to transact with the firm on a sustained basis.

Addressing stakeholder concerns from values perspective

Many organizations have also seen 'enlightened' founder-leaders and managers, wherein they valued the firms behaving in a socially responsible manner as it was the 'right' or 'fair' thing to do (Maignan & Ralston, 2002). An example of this is the Tata group's commitment towards the concept of trusteeship. Tata group is one of the leading business groups in India but is also unique among industrial groups, in that 63 per cent of the capital of the parent firm, Tata Sons Limited, is held by Tata philanthropic trusts. The idea of trusteeship propounded by Mahatma Gandhi is a socio-economic philosophy by which wealthy people by way of legacy or by means of industry and trade would be persuaded to view themselves as trustees of wealth to be used for the welfare of the people and community at large.

What can organizations do about it?

Given the above arguments from a legitimacy, resource dependence and values perspective on the need of organizations to take care of the concerns of its employees and other stakeholders, it is important to ponder what the organizations can do in order to enhance the trust and confidence of stakeholders. Legal compliance is just the base, for it to have a strategic impact, organizations should promote a culture and framework that provides incentives for employees to take care of stakeholder concerns in their decisions and behaviors. While fiduciary duties towards other stakeholders may not be practically feasible, the same principles of care and loyalty could be applied when dealing with decisions involving other stakeholders. We provide a few suggestions primarily dealing with addressing employee concerns that the human resource managers can implement in this regard:

- *Selection criteria of employees:* An important influence on the culture of a firm is driven by the people who come into a firm. Selecting employees not just on their education and performance credentials, but making sure that potential employees share the same value concerns of stakeholder welfare is critical.
- *Performance standards and rewards:* Another major motivator for establishing a culture is determined by what is assessed and what is rewarded in the firm. If performance standards target stakeholder concerns and these are rewarded by the firm, overtime employees would be motivated to share stakeholder concerns.
- *Avenues for engaging in two-way communications:* Formal policies that promote employee participation in decision making, opportunities to highlight their concerns through grievance procedures, suggestion boxes, open door policy etc. help capture the mood and concerns of employees. At the same time open, free-wheeling two way communication can be established if employees are treated with fairness and respect.
- *Policies that promote giving back to society:* Finally, organizations can think of creative policies that could serve as platforms for employee engagement with civil society. These could be in the form of payroll giving and providing leave for working in civil society organizations.

To conclude, organizations are primarily established to serve the needs of society. In the process, it is pertinent that the discourse moves towards addressing the needs and concerns of multiple stakeholders of the organization rather than just the shareholders. This article is an attempt to argue the need for looking at other stakeholder concerns and HR policies and practices that could help serve that need.

References

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