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OPINION

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Two icons of American capitalism are in the news for all the wrong reasons. In a devastating exposé, *The New York Times* reported how consulting firm McKinsey and Co. has been working with oligarchs and dictators in countries with poor human rights records. Detailing its work in places such as China, Russia and Ukraine, the *NYT* story said that "McKinsey's role has sometimes put it in the middle of deeply troubled deals".

In Malaysia, the government has filed criminal charges against US multinational investment bank Goldman Sachs for misleading investors in the infamous 1MDB case. The government claims the bank knew that the proceeds of the $6.5 billion bond sales it had arranged for would be misappropriated, but did not disclose the same to investors. Goldman is already facing investigations by prosecutors and regulators in the US over the nefarious affair.

This isn't the first time that the two companies, often touted as the best in the business, have come under a cloud. McKinsey's involvement with Eskom, the state-owned power company in South Africa, is playing out in a messy investigation amid a change of regimes. Goldman, meanwhile, covered itself with unwanted glory during and after the financial crisis, ending up paying over $5 billion to settle a lawsuit related to its handling of mortgage-backed securities.

It is, of course, unfair to single these two firms out for their acts of misconduct. Companies across the world regularly engage in activities that are seriously flawed. Despite the controversy surrounding the "Davos in the Desert" event, following the host Saudi government's complicity in the murder of journalist Jamal Khashoggi, several consulting firms continued their association with it.

In India, over the last one year, a veritable laundry list of companies—ICICI Bank, Infrastructure Leasing & Financial Services (IL&FS), Yes Bank and Fortis, among others—have been caught up in serious cases of misgovernance. And these may just be the tip of the iceberg.

India's largest companies continue to be opaque and hide ugly warts that might be a whistle-blow away from being exposed. That India continues to be among the world's most corrupt countries in Transparency International's Corruption Perception Index is as much because of what its companies do as it is owing to how its people behave.

Even as governments across the world have sought deregulation as a panacea for their economic woes, the role of private corporations has increased and, in its wake, rent seeking and corruption have followed. With commercial considerations now the over-riding motive for large corporations, it is safe to say that the era of companies setting standards of good conduct is well and truly over.

For one, global corporations exude enormous power that makes them impossible to control. With their batteries of lawyers and flacks, as well as analysts and raters who are equally complicit, they control access to information about their dealings. Corporate morality and ethics are now merely a question of exploiting loopholes in legal frameworks. Which is why even the best multinational corporations have different rules of behaviour for different countries.

That's also where the batteries of lawyers and legal consultants which companies boast of come in useful. Indeed, twisting the law to suit their interests, while subverting the spirit of justice and free information, is now a key competence for many companies.

And that's where the weakness of the regulatory mechanisms put in place for necessary oversight shows up. In recent times, a handful of strong, independent prosecutors and judges in Brazil and South Africa have championed the case against corruption. Since companies operate in a clique with governments, often it has meant taking on those elected by the people as well. In both countries, powerful politicians have had to give up their positions following disclosures by the media and fair investigations by the regulators.

In India, the regulators for various sectors have been toothless if not downright partisan. In general they have either been too willing to please chosen industry players, or then simply to lie low and let things pan out.

In rare cases when controversies have erupted, their stance has been weak-kneed and, rarely if ever, consumer-friendly.

Look at how the private airlines have been taking passengers for a ride both in terms of pricing and service. The regulator's response has been the occasional limited intervention before things go back to where they stood earlier. Pharma is another sector where the regulator has been virtually missing even as Indian and multinational companies have played havoc with people's lives, as in the instance of the faulty implants case chronicled by this paper.

Perhaps the fault lies in the very configuration of the regulators and the fact that perforce they owe allegiance either to the government or to the industry. The answer may lie in increased independence and empowerment and, of course, a few good women.

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Comments are welcome at theirview@livemint.com

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