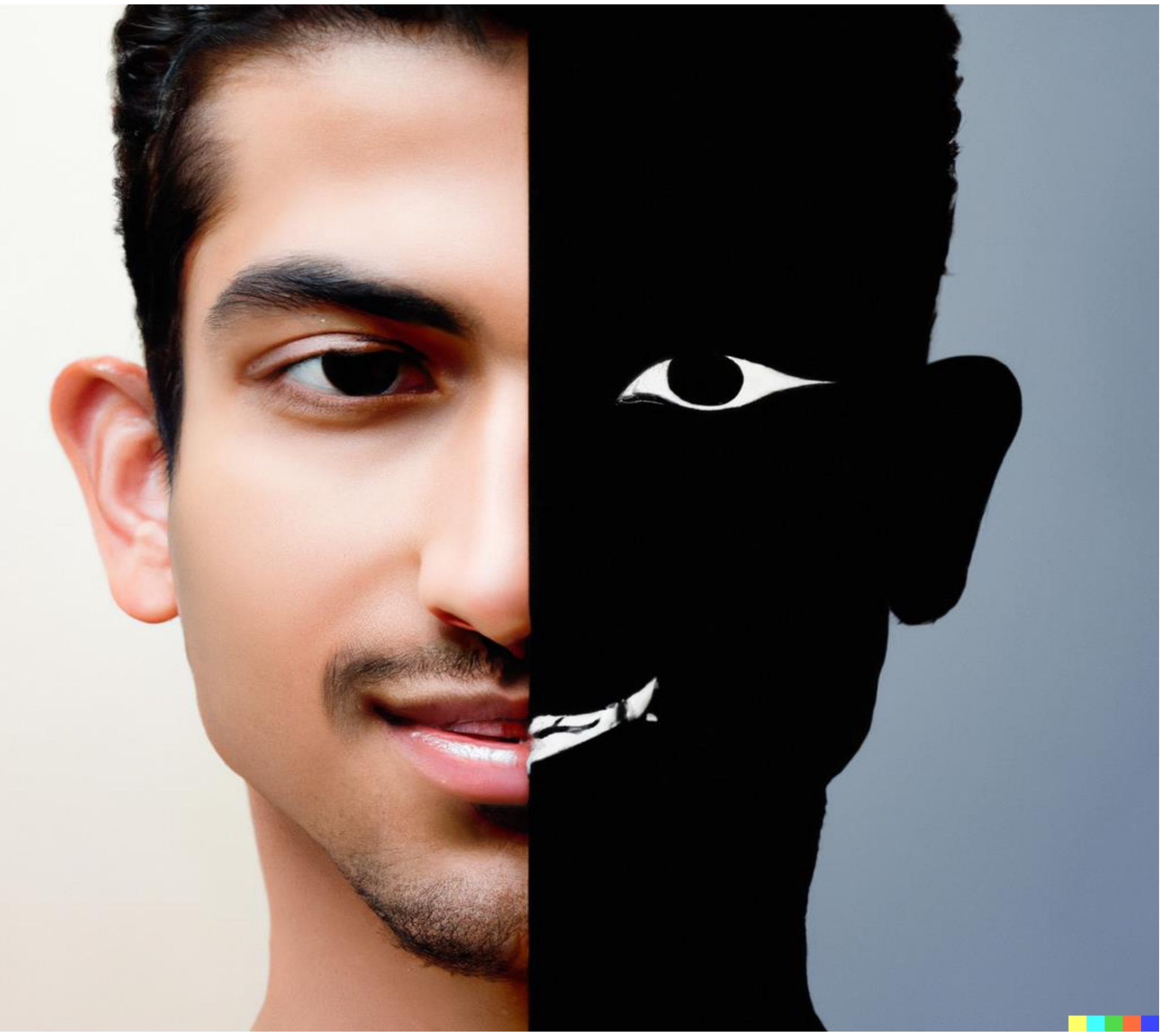
Boards must censure the CEO for personal misconduct

Even as employees and employers strive to separate the personal and professional lives, these lines are increasingly getting blurred. It is hard to decide when the issue is a personal one and when it requires the stakeholders to be informed. Boards need to think about whether instances and behaviours of the leadership have slighted the stakeholders' trust and the company's reputation. If so, boards should have a very low tolerance threshold.



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"The urinator" in a recent flight of an Indian airline was summarily sacked by his employer, a global bank. The employer claimed that it held employees to the highest standards of professional and personal behaviour and that it found these allegations deeply disturbing. These decisions are not easy, but are not as difficult when it comes to mid-level employees. Setting examples is necessary. But what happens when the individual is not merely an employee, but a member of the board or the controlling shareholders' family? The decision, it appears, becomes that much more difficult.

The Executive Chairperson and founder of an Indian listed start-up hit the car of the District Commissioner of Police in South Delhi and drove off without stopping. Another CEO of a listed diversified company (with the largest business being coffee and tea plantations) was caught at international customs carrying cannabis, which was purportedly for recreational use.

Another start-up CEO was recorded using profanity and aggression while speaking to his bank's relationship manager. While this caught the public eye, the CEO continued to star in a television show and continued to berate struggling entrepreneurs. Videos of his employees partying in office soon surfaced raising a few eyebrows. This gregarious behaviour is often linked to new-age tech start-ups in India – and is considered par for course, even now.

One other personal issue is the state of the CEO's health. While some markets protect a patient's privacy, others demand this as material disclosure. Warren Buffet made a public disclosure regarding his prostrate cancer, in a letter to shareholders. One of India's leading banks disclosed, a while ago, that its CEO had undergone a cardiac procedure. Still CEOs may not want to disclose the exact nature of the health issue. In a more dated instance, a cigarette manufacturer did not disclose the nature of the health issues of its long-standing CEO – even as it remained the market's best kept secret. That CEO has since passed. More recently, the board of a software company recently had to appoint an interim CEO to take over because the CEO was unable to fully function but chose not to disclose the nature of the health emergency possibly to protect his privacy.

Independent of all policy constructs, CEOs set the example of what is considered acceptable behaviour which sets the corporate tone. The CEO of a company must exemplify the company's code of conduct, but some boards seem to condone their behaviour as exceptions to the rule. When CEOs fail to contain themselves, that too publicly, it creates acceptability for other employees to show their most primal instincts. This puts other stakeholders in danger. Cowboy behaviour by the CEO could also result in concerns over risk management, as employees too feel empowered to override rules, processes and structure to achieve their end goal.

CEOs shoulder the responsibility of carrying the company's reputation. They are the face of the company and its brand ambassadors. Therefore, any misstep in their actions has an impact on the company's franchise, and their own brand equity. Mortifying emails exchanged between a CEO and a third party were published in an order passed by SEBI – this gave a lever to schadenfreude, and effectively demolished the CEO's otherwise stellar career. Since her departure, the company she led has had two CEOs in 6 years. CEOs are not infallible and can make mistakes and show poor judgment, but they must take responsibility for their actions and be effective in damage control.

Personal misconduct is a nebulous area and there is no structured framework, within law or elsewhere, to assess if such slights or abrasions with law require a formal censure. When the situation requires judgement, the test of materiality from a legal perspective may fail. This is when the US Supreme Court Justice Potter Stewart's famous quote, "I know it when I see it", might guide.

In India, CEOs have been asked to go if there have been legal breaches – financial leakages, sexual harassment, significant regulatory violations, and in rare instances, when the company's performance has deteriorated significantly. These are definitive instances that have measurable effects.

Disclosures, too, are usually made only if the law requires it – in most instances to meet the lowest possible thresholds of compliance. While some companies proactively made disclosures, several of these were mandated under applicable global regulations. In instances where there were only domestic stakeholders to deal with, boards responded only once stock exchanges raised questions, which too followed media uproar. Even then, boards merely shrugged off the issue as being a personal one. Yet, investors are unlikely to accept such a simplistic argument.

Separating personal lives and professional lives is like drawing a line in the sand. It is hard to decide when the issue is a personal one and when it requires the stakeholders to be informed. Nevertheless, CEOs are increasingly under scrutiny – by their employees, boards, suppliers, shareholders, stakeholders, regulators and the media. Their lives are inevitably becoming less private and more public, especially with social media.

At the final end, boards need to think about whether instances and behaviours of the leadership have slighted the stakeholders' trust and the company's reputation. If so, boards should have a very low tolerance threshold. If boards continue to remain passive and accepting, it will only be a matter of time before independent directors are called to question.

moneycontrol

A modified version of this column by Hetal Dalal was published on www.moneycontrol.com on 19 January 2023, and it can be accessed here: https://bit.ly/3Wh8P8M

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