Chapter 1
Introduction

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Chapter 1
Introduction

1.1. ORGANIZATIONAL PERFORMANCE AND EVALUATION

1.1.1. Need for Performance Evaluation

Evaluation is carefully collecting information about something in order to make necessary decisions about it. Evaluation, in the context of organizational performance, involves identifying measures to indicate results and collecting information around these measures to conclude the extent of performance.

Performance evaluation is a well-recognised management tool in management theory and practice. But there is no universally accepted term to describe the measurement of an organization's performance. As a result, many terms such as productivity, work measurement, and effectiveness have been used synonymously with "performance evaluation." In the developed countries, this tool is used quite extensively to measure the performance of not only business organizations but also nonprofit and government organizations.

Performance measurement is the "heart and soul" of the performance-based management process. It serves as feedback for making constant improvements in the quality of management. Flowing from the organizational mission and the strategic planning process, performance measurement provides the data that will be collected, analyzed, reported, and, ultimately, used to make sound business decisions. It directs the business function by justifying budgetary expenditures, documenting progress towards established objectives, identifying areas of both strength and weakness, providing an on-going assessment of the
current "organizational climate," and driving business improvement. In a nutshell, performance measurement supports organizational existence.

In a publication\(^1\) of the US General Services Administration, the rationale of organizational performance measurement has been stated succinctly as follows:

"Measurement focuses attention on what is to be accomplished and compels organizations to concentrate time, resources, and energy on achievement of objectives. Measurement provides feedback on progress toward objectives. If results differ from objectives, organizations can analyze gaps in performance and make adjustments."

The performance measures give life to the mission, vision, and strategy of the organization by providing a focus that lets each employee know how they contribute to the success of the organization and its stakeholders' measurable expectations.\(^2\)

Regardless of size, sector, or specialization, organizations tend to be interested in the same general aspects of performance:

- financial considerations
- customer satisfaction

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• internal business operations

• employee satisfaction

• community and shareholder/stakeholder satisfaction.

Attention to, and establishment of, measurements in these areas is thus a significant part of a successful performance measurement system.

In the private sector, the principal measure of successful performance is profit. Public agencies, on the other hand, have no such universal and widely accepted performance measure of success. For public sector organizations, performance must be judged against the goals of their programmes and whether the desired results and outcomes have been achieved. Success is often viewed from the distinct perspectives of various stakeholders, such as legislatures, regulators, other governmental bodies, vendors and suppliers, customers, and the general public.

1.1.2. Performance Measurement in Different Sectors

There are a large number and wide variety of evaluations that can occur in for-profit, nonprofit and government sectors.

The use of performance measures in business is quite common. Managers and supervisors directing the efforts of an organization or a group have a responsibility to know how, when, and where to institute a wide range of changes. These changes cannot be sensibly implemented without knowledge of the appropriate information upon which they are based. Companies have been measuring costs, quality, quantity, cycle time, efficiency, productivity, etc., of products, services, and processes as long as ways to measure those things have existed. There have been numerous, major methods and movements to increase organizational performance like Benchmarking, Business Process Re-
Engineering, Cultural Change, Continuous Improvement, ISO9000, Knowledge Management, Management by Objectives, Organizational Learning, Strategic Planning and Total Quality Management. Performance measures are recognized as an important element of all Total Quality Management programmes.³

In recent years, the Balanced Scorecard approach to performance management introduced in 1992 by Kaplan and Norton⁴ of the Harvard Business School has gained wide use and acclaim in the private sector as a way to build customer and employee data into measuring and ensuring better performance outcomes. It thus transformed the way private sector companies could achieve and analyze high levels of performance and was critical in revitalizing such companies as Federal Express, Corning, and Sears.⁵

Many felt that government management was "different," that the rules of performance management and measurement that applied to the private sector could not apply to the public. After all, government agencies don't have a bottom line or profit margin.

Recent efforts have shown, however, that not only do the basic concepts apply to the public sector, they can also be used to create a successful government organization. For example, government agencies may not have a financial bottom line, but they do have goals and outcomes that can indicate success


(e.g., reduction in pollution, eradication of a dreaded disease, increase in literacy.). In the same way that the private sector experienced noticeable changes by measuring beyond business results, government agencies have also begun to balance a greater constellation of measures by incorporating customer needs and expectations into their strategic planning processes. This balanced approach to performance planning, measurement, and management is helping government agencies achieve results people—whether customers, stakeholders, employees, or others—actually care about.

Performance Measurement as an advanced management tool is becoming more and more sophisticated in order to accommodate needs of different communities and levels of government over services ranging from public safety and public works to economic development. In an era when "do more with less" has become a common adage directed at all levels of government, performance measurement is becoming an essential tool for addressing questions of productivity improvement in terms of efficiency, effectiveness, and accountability.6

Outcome-based management has been in vogue in many organizations in the public sector for the past several years.7 Some government organizations in the US have begun to pursue balanced measurement as part of their ongoing efforts to improve efficiency, effectiveness, and customer service in their organizations. Cities, states, and counties have actively adapted the balanced

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measures approach. Some U.S. cities have developed it over the past two decades. For example, Sunnyvale, California, a city of 120,000 in the heart of the Silicon Valley, began the experiment 20 years ago. In each policy area, the city defines sets of "goals," "community condition indicators," "objectives," and "performance indicators." The British government formed the Performance and Innovation Unit to, among other things, "promote innovative solutions that improved the effectiveness of policy, the quality of services and the responsiveness to users' needs." Also, the Service First Unit in the UK has been focusing on customer service issues for several years. Many Canadian government agencies—including Natural Resources Canada, the St. Lawrence Seaway Management Corporation, Atomic Energy of Canada, Ltd., and the Trademarks Office—have been working to link their customer service, performance management, and budget processes together.\(^8\)

The United States took a pioneering step in this direction by enacting the Government Performance and Results Act, 1993 which has made performance evaluation of federal government agencies mandatory from 1997.

1.1.3. Evaluating the Performance of Regulatory Authorities in India

India is a democratic country subject to the rule of law. It has laws that touch every stage of its people's lives right from their birth to death. The advances in science and technology and the relentless march of civilization necessitated the enactment of more and more laws everyday. All these laws not only create new rights and obligations but also bring into existence various statutory tribunals, bodies and authorities. These statutory organizations have twin purposes—to

regulate the conduct of the citizens and corporations by enforcing the respective statutory provisions and/or to adjudicate upon the disputes arising out of the operation of the respective laws. These statutory organizations have been brought into being even though there is already a well-established justice delivery system comprising a hierarchy of courts. It was felt that the traditional justice-delivery system is over-burdened and lacks the necessary expertise to deal with the highly specialised nature of cases arising out of these enactments.

Thus in the realm of business and industry, there are several regulatory and adjudicatory authorities like the Company Law Board under the Companies Act, the Pollution Control Board under the Pollution Control Laws, the Securities and Exchange Board of India under the SEBI Act, the Board for Industrial and Financial Reconstruction under the Sick Industrial Companies (Special Provisions) Act, the Copyright Board under the Copyright Act, the Consumer Disputes Redressal Forums under the Consumer Protection Act, the Industrial Tribunals under the Industrial Disputes Act, the Customs, Excise and Gold Control Appellate Tribunal under the Central Excise laws, the Motor Accidents Claims Tribunals under the Motor Vehicles Act, the Railway Claims Tribunals under the Indian Railways Act, the Telecom Regulatory Authority of India under the TRAI Act, the MRTP Commission under the Monopolies and Restrictive Trade Practices Act, the Appellate Tribunal for Foreign Exchange under the Foreign Exchange Management Act and the Insurance Development and Regulatory Authority under the IRDA Act.

All these statutory authorities have significant impact on some aspect or the other of our business and industry. Since the well-being and growth of our economy is partly dependent on the efficient and effective functioning of these regulatory authorities, the periodical measurement and evaluation of their performance assumes importance.
Unfortunately, in India, performance evaluation has been used only rarely, if at all, to evaluate the performance of our government and its related organizations and programmes. No doubt, there are many difficulties involved in evaluating the government's performance—the diverse and contradictory objectives, the wide dispersal of the government's programmes, the unreliable measurement tools, the lack of resources needed for undertaking continuous performance measurement exercises, and the apathy and disinterest in people's welfare. But in spite of these difficulties, an attempt has been made in this study to evaluate the performance of the Board for Industrial and Financial Reconstruction, which is a quasi-judicial authority established under the Sick Industrial Companies (Special Provisions) Act, 1985, to act as the sole dispenser of statutory turnaround remedies for sick corporates.

1.2. Survey of Literature

There are a number of studies dealing with different dimensions of industrial sickness and turnaround management.

Some studies⁹ focus on the definition of sickness and turnaround. By defining these terms, they strive to identify the lead or predictive indicators of

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corporate sickness. These studies are mainly based on economic and financial ratios. A representative sample of this group is the study of Gupta (1983)\(^\text{10}\) which has identified the lead indicators of sickness, applying discriminant analysis to financial indicators. The author analysed the performance of 40 textile companies over a 13-year period and concluded that the following earnings ratios gave the best results: earnings before interest, taxes, and depreciation, to sales; and earnings after interest and taxes, but before depreciation, to gross assets. Although balance sheet ratios were not as good a set of predictors as profitability ratios, the two ratios that were found to be useable were net worth to short- and long-term debt, and all outside liabilities to tangible assets. However, the ratios related to net worth and liquidity were found to be not as reliable.

A second group of studies\(^\text{11}\) look at successful turnarounds and try to draw lessons from their experiences. For example, Khandwalla (1991)\(^\text{12}\) describes in detail the turnaround experiences of Steel Authority of India Limited (SAIL)

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during the stewardship of Mr. Krishnamurthy starting in mid-1985 and that of Travancore Cochin Chemicals (TCC) under the leadership of Mr. T. N. Menon from 1978. He also gives brief details of the turnarounds in 9 public sector enterprises and 11 private sector enterprises both in India and abroad. After analysing these cases and also taking into consideration the various studies on this subject, the author deduces ten principal elements of turnaround management. He also gives a few examples of action-choices available in each element.

A third group of studies deals with the management issues related to industrial sickness while the fourth group of studies looks at industrial sickness from the standpoint of banks and FIs—how far banks and term lending institutions are responsible for the failure of companies, what effects industrial sickness has on the performance and existence of banks and FIs.


and the role that these institutions can play in the revival of sick industries. Amongst all these, it appears that there are no in-depth studies on the legal aspects relating to corporate recovery except for the Reports of three important Committees.

The Tiwari Committee, which was constituted by the Reserve Bank of India in 1981 to examine the legal and other problems faced by the banks and financial institutions in the rehabilitation of sick industrial units and to suggest remedial measures for effectively tackling the problem of corporate sickness, submitted its Report in 1984 wherein it made a detailed analysis of the malady of industrial sickness and concluded that "a comprehensive special legislation designed to deal with the problems of sick units is necessary." It is in pursuance of these recommendations that the Central Government has enacted the Sick Industrial Companies (Special Provisions) Act, 1985.

In 1993, the Committee on Industrial Sickness and Corporate Restructuring submitted its Report to the Union Finance Ministry of the Government of India. The Committee examined the provisions of the Sick Industrial Companies (Special Provisions) Act and the performance of the Board for Industrial and Financial Reconstruction; analysed how the earlier practices of banks and financial institutions led to bad appraisals, poor rehabilitation

17 Reserve Bank of India, Report of the Committee to Examine the Legal and other Difficulties faced by the Banks and Financial Institutions in Rehabilitation of Sick Industrial Undertakings and Suggest Remedial Measures including Changes in the Law (Chairman: T. Tiwari), Bombay: Reserve Bank of India, (1984).
packages, and created barriers to industrial restructuring; studied the detection norms and possible remedial measures for incipient sickness; and finally identified the various barriers to effective corporate reorganization.

In August 2000, the High Level Committee on Law Relating to Insolvency of Companies submitted its Report¹⁹ wherein one of the chapters focussed "on the linkages that exist between the Sick Industrial Companies (Special Provisions) Act, 1985 and the provisions of the Part-VII Companies Act, 1956 so far as they relate to the winding-up of companies." The Committee recommended the establishment of a National Company Law Tribunal which will have the jurisdiction and power presently exercised by Company Law Board under the Companies Act, 1956; the power to consider rehabilitation and revival of companies – a mandate presently entrusted to the Board for Industrial and Financial Reconstruction and the Appellate Authority for Industrial and Financial Reconstruction under the Sick Industrial Companies (Special Provisions) Act, 1985; and the jurisdiction and power relating to winding up of companies presently vested in the High Courts. The Committee also made the consequential recommendation that the Sick Industrial Companies (Special Provisions) Act, 1985 be repealed.

From this review of literature, it appears that the legal aspects of corporate turnaround—especially the functioning of the Board for Industrial and Financial Reconstruction—has not received sufficient attention of the researchers.

1.3. Research Design

1.3.1. Aim

The aim of the present study is to evaluate the performance of the Board for Industrial and Financial Reconstruction with a view to examine the feasibility of developing performance measurement systems for statutory regulatory authorities and to assess the effectiveness of statutory turnaround remedies for corporate sickness.

1.3.2. Objectives

The objectives of the present study are:

1. To develop a performance measurement system for the Board for Industrial and Financial Reconstruction;
2. To evaluate the performance of the Board for Industrial and Financial Reconstruction using the measurement system so developed;
3. To investigate the factors, if any, affecting the performance of the Board for Industrial and Financial Reconstruction; and

1.3.3. Hypotheses

1. It is feasible to develop a performance measurement system for the Board for Industrial and Financial Reconstruction.
2. The Board for Industrial and Financial Reconstruction has failed to perform in accordance with its objectives.
3 The existing provisions of the Sick Industrial Companies (Special Provisions) have adversely affected the performance of the Board for Industrial and Financial Reconstruction.

1.3.4. Methodology

This is an inter-disciplinary diagnostic study encompassing management and law where an analysis of empirical data has gone hand-in-hand with an analysis of statutory provisions.

This study relies mainly on secondary data which have been obtained from the annual reports of the Board, the data published by the Board on its website (www.bifr.nic.in), the reports of the relevant Committees, the publications of the Reserve Bank of India, various Government Ministries and organizations.

In addition, the traditional doctrinal legal research methodology of statute-analysis and decision-analysis has also been extensively used. The provisions of the Sick Industrial Companies (Special Provisions) Act 1985, the Companies Act, 1956, the Insolvency Acts and the various Rules, Regulations and Notifications made thereunder, the decisions of the Board for Industrial and Financial Reconstruction and the Appellate Authority for Industrial and Financial Reconstruction, and the relevant judgments of the various High Courts and the Supreme Court have provided the basis for this analysis.

1.3.5. Limitations

The study is inter-disciplinary in the sense that it attempts to use management concepts and tools to evaluate the performance of a statutory quasi-judicial regulatory authority. It appears that such studies have not been undertaken in India till date. There is scant Indian literature on the measurement and evaluation of organizational performance in general, let alone of statutory
regulatory authorities in particular. In the absence of previous research on similar lines, there was considerable difficulty in preparing the research design for this study.

This study uses only secondary data. Primary data would have not only given more depth and comprehensiveness to the study but also enabled statistical verification of the hypotheses. What is more, even some of the secondary data was either inadequate or unavailable. So only a limited number of performance measures could be established on the basis of the available data.

1.3.6. Social relevance

There are a plethora of statutory regulatory authorities. Their functioning can be improved and they can be made more accountable if they are subjected to performance measurement. The feedback that can be obtained from such performance evaluation would be very beneficial to our corporate leaders, bureaucrats, planners and law-makers for effecting improvements in the management of these authorities.

There is a pressing need for the governmental institutions and agencies in this country to improve the quality of their operations and deliver their products and services more efficiently and effectively. The government needs evaluative information to help them make decisions about the programmes they oversee—information that tells them whether, and in what important ways, a programme is working well or poorly, and why. Thus a study which examines the feasibility of developing performance measurement systems for statutory regulatory authorities in particular and government organizations in general has great significance for the quality of public administration in our country.

Sickness in industry is a wide-spread phenomenon in the Indian economy. Over the years, there has been a steady and alarming increase in the incidence
of sickness in industrial companies. Industrial sickness results in loss of production, loss of employment, loss of revenue (by way of lesser fees, charges, duties and taxes) to the Central and State Governments and locking up of recyclable funds of banks and financial institutions. So, it becomes imperative to expeditiously rehabilitate potentially viable sick industries and to speedily liquidate the non-viable sick industries. The Board for Industrial and Financial Reconstruction has been set up with these specific objectives and it has been functioning for the past 15 years. The proper working or otherwise of the Board for Industrial and Financial Reconstruction has great bearing on our economy. Thus, a study which brings to light the effectiveness of statutory turnaround remedies for corporate sickness with the evaluation of the performance of the Board for Industrial and Financial Reconstruction has great significance not only to the various stakeholders—promoters, investors, workers, banks, financial institutions, other creditors, Central and State Governments—involved in the rehabilitation of sick industries but also to industrialists, economists, planners and law-makers.

1.3.7. Plan of the Study

This study is organized into seven chapters.

The introductory chapter gives the background information relating to organizational performance and evaluation. It also states the aims, objectives, hypotheses, methodology, limitations and significance of the study.

The second chapter details the various aspects relating to evaluation of organizational performance. It analyses the steps involved in the process of performance evaluation and concludes by giving brief details about the mandatory performance evaluation requirements in the United States.
The third chapter gives a brief overview of the turnaround strategies for corporate sickness.

The fourth chapter deals with the organizational structure of the Board for Industrial and Financial Reconstruction. The first section gives a brief genesis of the BIFR. The constitution, jurisdiction and functions of the BIFR are described in the second section. The third section highlights the powers of the BIFR. A detailed description of the decision-making process of BIFR is given in the fourth section. The fifth section lists the turnaround strategies employed by the BIFR. The provisions regarding writs and appeals against the orders of the BIFR are mentioned in the sixth section. The last section contains some statistical data regarding the overall performance of the BIFR.

In the fifth chapter, an attempt has been made to evaluate the performance of the Board by identifying its performance objectives and appropriate measures for each of those objectives. The quantitative data for each measure has then been presented in the form of tables and charts. The evaluation results have been summarised at the end.

In the sixth chapter, an endeavour has been made to identify the factors affecting the performance of the Board for Industrial and Financial Reconstruction by examining the various provisions of the Sick Industrial Companies (Special Provisions) Act, 1985.

The last chapter contains the summary, conclusions, suggestions and recommendations.