Ladies and Gentlemen,

I feel privileged to be invited to deliver the 19th JRD Tata memorial lecture and I want to express my sincere thanks to ASSOCHAM and its President, Mr. Sunil Kanoria for providing this opportunity to me. Mr. JRD Tata was a visionary who devoted his entire life to inculcate the culture of sensitivity and responsiveness to social and environmental considerations in corporate thinking, of caring and empathy and of imbibing higher values and ethical standard in our society. I must mention that I started my professional career in the city of Jamshedpur as a young Sub-divisional Magistrate. I had first-hand experience of how well he was respected by his workers, executives and the general population of the city. Both inside and outside the plants, which Tatas had there, his imprint and inspiration was visible. He always regarded himself as accountable to the smallest employees and stakeholders and was at pains to ensure that this accountability was never compromised.
2. The organizers have left the topic of today’s talk entirely open for me to decide but looking into the life and work of Mr. JRD Tata I thought the best contribution to his memory would be to talk about accountability of those who have been placed in positions of trust by the people, the parliament or by a set of stakeholders. While I would like to dwell upon the developments regarding accountability for those holding public offices, going by contemporary developments and debates all over the world, I would like to concentrate on accountability of two specific classes of institutions – namely - regulators and corporations.

3. **History:**

3.1 Right from the days of Kautilya and his Arthshastra emphasis was laid on how rulers were expected to be responsible, accountable, removable and recallable. All administrators - including the king, were considered servants of the people and there were prescriptions given about the percentage of
revenue that could be spent for the compensation of the king and his staff. Plato the classical Greek philosopher had opined “any one in power without accountability is liable to use it unjustly”. He also said “anonymity will cause even good people to act badly”. Today, when the human society has become multi-cultural, more and more complex and inter-connected accountability as an attribute has only gained further emphasis.

3.2 After centuries of innovations, democracy was found to be the most acceptable form of governance serving the larger good of the largest sections of population and where the voices of the individuals were heard and where those in authority were always subject to answerability. Democracy also had in it the mechanism of reviewing performance and ensuring change if promises had been broken and public expectations were belied. For the last 100 years or more countries after countries have adopted democracy as the preferred form of governance. However, over the last
decade we are witnessing a remarkable undercurrent of a movement away from fixed-term reviews towards more continuous and comprehensive accountability.

3.3 Post global financial crisis, we have seen incidents of spontaneous mass movement leading to regime change. Looking at events during this year we have seen upheavals in Thailand, Brazil, Turkey and the UK which show how the expected beliefs and traditions are being challenged in unanticipated and spontaneous ways and how accountability is being demanded. The frustration, the unease and the dissatisfaction against public authorities for perceived lack of accountability is manifesting itself even if the smallest grievances are not satisfied. From USA to Germany, from Italy to Spain, political forces representing this frustration and anger are gaining ground.
3.4 **Response:**

3.4.1 One response to this development has been creating more and more institutions to assuage the feeling of the citizens. Some developments in the last decade in our own country are worth recounting. Because our children are not getting quality primary education we have created a Right to Education Act. Because people are malnourished, we have created a Right to Food Safety mechanism. Because people have a strong resentment against insensitive government officials we have a Right to Information mechanism. Many States have also enacted legislations for right to services delivered by the state authorities. There are, of course, outside mechanisms we created for checking malfeasance and corruption. So we have the organizations like CBI, the CVC, the State Vigilance Authorities, the Lok Pal and the CAG. It appears to me that the time has come for us to pause and think whether we are creating too many
institutions to ensure accountability or should we aim towards more accountability in more institutions.

3.4.2 Added to this is the issue of Media. There are multiple and persistent examples of media reporting transgressing into the area of media trial. Questions are raised on the strength of “the nation demands” and instant conclusions are drawn. In the initial phase this was leading to media trial of politicians and public servants but has now extended to even the private individuals and corporates. The ambit of several laws and actions are now also extending towards private individuals and civil society organizations. The funds received by them, the manner it was spent, the source of those funds and the criminal liability being associated with these activities are leading us to entirely new era of public discourse and accountability.
4. **Accountability of Regulators and Corporations:**

4.1 However, while I wanted to raise these issues in the larger public arena let me take up a class of institutions slightly removed from the Government but which have been created by the Parliament – that is, the regulatory authorities. Regulators are not elected by the people but have quasi legislative and quasi-judicial functions which impinge upon the life of an ordinary citizen as well as a large corporation. Since I am working in one of these regulatory bodies, i.e. SEBI I would like to analyze the debate around accountability of such institutions and what are the challenges and danger signals around their working. As the business and industry activities became more and more complex and government had to either withdraw from being the provider of services or cede the stage for private sector to compete with them the need for independent regulators arose all over the world. These were created through empowered legislations and globally these institutions have
become mini states; performing legislative, executive and judicial functions.

4.2 At the level of a firm or an individual a regulator can prescribe acceptable conduct and can impose its will with the force of law. It can prescribe manner and parameters in which business can be conducted, clients can be approached, the minimum level of service that has to be provided, how a communication has to be worded and how competition and market dominance issues have to be addressed and how quality standards are to be maintained. For the society a regulator has to be the on-site supervisor alert that rules are followed and interests of consumers, customers and investors are scrupulously protected. For the larger economy the regulator has to play the role of a facilitator of growth where proper environment is created for firms to function and innovate. Systemic stability has to be protected and trust of public in the institutions of business and market has to be maintained.
4.3 But when a large episode of misconduct is detected or where a group of people or firms are perceived to have behaved recklessly or where large sections of society have suffered questions of accountability of the regulators naturally arise. If the episode has continued over a period of time and when early indicators were available but were not acted upon the public outcry is even more serious. Questions of competence as well as intention arise. Often there is a perception of regulatory capture coming in the way of effective action. The 1992 episode in the financial markets in India raised serious questions about the working of the RBI and SEBI. The problems in the IPOs in mid 90s brought into sharp focus the handling by SEBI and again the handling of episodes of 2001 highlighted the lack of effective supervision and deterrence by the market regulator. Successive Joint Parliamentary Committees which were formed after these incidents highlighted the need to empower the regulatory institutions. While the persistent public mood was of anguish
against lack of action the wisdom which ultimately prevailed was to bring in more and more teeth to the regulator. In the episodes of ponzy schemes and unauthorized money collection schemes which grew in this decade in certain parts of the country the need was felt to further empower the regulator.

4.4 While regulators cannot escape the blame for sub-optimal application of their authority – even if these powers were limited, part of the reason for recurrence of mass misconduct episode is the lack of conviction towards delegating State powers to an arms-length independent agency. There is an element of hesitation in undertaking this delegation. The fact that many of the regulatory bodies function in highly technical and complex areas adds to the hesitation. To what extent protection of the interests of public can be delegated to a Foods and Safety Standards Authority, or to anti-competition or telecom regulatory authority are often matters of intense debate where requirements of interests of
individuals have to be matched with the interests of letting firms function, innovation incentivised and the country grow. This debate is not unique to our country. Countries after countries are full of similar examples. The United States did not have a Federal Reserve till 1920seven though serious liquidity crisis arose in 1907 and repeated thereafter. At that time a group of senior bankers became the liquidity providers. But questions arose about conflict of interest as the same bankers gained substantially on their investments. US SEC could not have been created if millions of people had not lost their lifelong savings in the decline of the securities market during the great depression. Similarly, while the foundation of SEBI were laid in 1988. The SEBI Act would not have been enacted if the Harshad Mehta scam had not happened. Almost every subsequent amendment of SEBI Act has been undertaken after a grave episode has highlighted lacuna and shortcoming in its legal provisions. Often these changes have been brought about through Ordinance first without waiting for a formal enactment.
4.5.1 However, inspite of regulatory institutions being relatively new and operating in specialized areas, the regulators cannot escape the scrutiny of their working and have to be held accountable. In initial stages the mechanism may have been weak but increasingly the demand for a structured assessment has been growing. What is a sound and workable mechanism is still evolving. On one end is the argument that financial independence and operational autonomy of regulators is a must. Without this the regulator would remain beholden to the Government of the day for its existence. The other argument is whether the regulator should be permitted to be so independent that there is no structural control over its working. The global financial crisis has further reinforced the need for scrutiny of the financial regulators about their perceived inactions and failures.

Normally, the Parliamentary laws deal with basic principles and leave the specific details to regulators for them to frame subordinate legislation. Most of the time these regulations do
not need approval from the government of the day or from the Parliament. These regulations have the force of law, can be enforced and violation can invite strict penal action.

4.5.2 While the government appoints the regulators, making the regulator accountable to the government of the day would impinge upon their independence. The consensus emerging globally is to have parliamentary superintendence over the regulators. There is the mechanism of parliamentary committees who can summon the regulators, review their performance and question them on specific or general activities. The Annual Reports and regulations have to be presented before the Parliament. Under law Parliament is competent to review, modify or reject a regulation but it is rare that such an option is actually exercised. Talking in the Indian context a further strengthening of the mechanism of Parliamentary oversight is required. It is doubtful whether the hundreds of regulations framed are ever scrutinized by the parliamentary committees or whether the activities are
sufficiently under the radar of the Parliament. There is a need that Parliamentary Committees are empowered to have sufficient number of experts to aid and advise them for a structured review of the working of the regulators. In some countries, especially USA the mechanism of government or parliamentary control is through financial control. We had the famous example in the USA where after the Dodd Frank Act the Chairperson of the Senate Committee lambasted the SEC for not meeting the timelines about framing of certain number of rules but the defence of the SEC was that they did not have enough budgetary support to hire those staff and implement the task. The prevailing wisdom in our country has rightly been to provide financial independence to the regulators.

4.5.3 **Financial Sector Law Reforms Commission (FSLRC):**

The issue of accountability of regulators - particularly in the financial sector, was duly examined by the Financial Sector Law Reforms Commission. They have recommended, for
example, that the process of drafting regulations should be consultative. There should be sharing of information at every stage with public. Excessive delegation should be avoided and the mechanism of performance assessment should be developed; preferably, through the non-executive members of their boards. I am happy to inform that SEBI has recently set up this mechanism of review of its own working by non-executive members of SEBI Board. The need for clear mandate for regulators and avoidance of regulatory gaps or regulatory overlap has also been highlighted by the FSLRC. Media can also play an important role in holding the regulator accountable. My understanding is that after the Parliamentary oversight the most effective oversight can be through the media. A well informed and vibrant media can highlight issues, emerging concerns, perceived or real grievances and also provide a good comparison. However the manner in which the accountability of media itself can be ensured has still not been sufficiently addressed.
Judicial Accountability:

Judicial review is another major safeguard. Quasi-judicial orders passed by a regulator can be extremely potent for a firm and without an independent judicial review can lead to arbitrariness. SEBI already has a mechanism of its orders being challenged before the Securities Appellate Tribunal and the Supreme Court. Judicial review of orders passed by a regulator need to be reviewed by an expert body. Orders can be arbitrary or discriminatory or biased. There could be lack of proper evaluation of facts or laws. There may be instances of procedural violations or established principles of jurisprudence; such as principles of natural justice not being adhered to. A strong and expert appellate mechanism can hold the regulator accountable for its quasi-judicial orders. In fact, for SEBI the most important innovation was to have an independent expert appellate tribunal which was a departure from the then established practice of Government officials.
hearing appeals. The orders passed by SAT are widely reported and commented upon and work as a strong safeguard for individuals and firms in getting their grievances redressed. Such a mechanism is now regularly being provided for other regulators. SEBI is proud to have a track record of 94% of success at the appellate level.

4.5.5 **Public Consultation:**

SEBI does follow the policy of having a consultation paper before it undertakes any fresh regulation or changes any exiting legislation. It also has got advisory committees on various areas of activities like primary market, secondary market, mutual funds, commodities market etc. It also conducts regular interaction with various professional groups like brokers, stock exchanges, mutual funds accountants, lawyers, etc.

4.5.6 **Need for Checks and Balances:**
However, it is not uncommon for SEBI to be blamed for being an insensitive and arrogant organization. The country has to be on guard so that in the name of accountability the very functioning of the regulators are not throttled. Let me give you the example of unauthorized money collection schemes in the country and some serious action taken by SEBI against large violators – which is known to all of you. Still, public interest litigations and criminal complaints are filed against SEBI officials for alleged delay or inadequate penal action. Even in a quasi-judicial order where the adequacy and merit of the decision can be challenged before an appellate tribunal, PILs and criminal complaints are being lodged and taken up. At times these attempts are combined with drumming up the charges in the media even when the courts have not come to any finding. Courts, however, have shown remarkable maturity and restraint. But there is a need for all of us to appreciate that taking accountability for regulatory bodies in this direction can have adverse impact on their working in a fearless
manner and can have impact on the integrity and working of the market and the economy.

5. **Corporation:**

5.1 Let me now come to the question of accountability of corporations. It stands to reason that if in larger public life questions of governance and responsible behavior are being raised so critically then the same approach would also apply to corporations which have taken equity from the public or taken credit from the banks or from the bond holders or whose working affects consumers, customers, workers and the society. The accountability of the corporation goes beyond merely the financial stakeholders but also to the larger society and the impact they create on the larger environment and sustainability.

5.2 Corporations have become very large, have acquired gigantic proportions running across multiple geographies in
the world and their actions affect not only the buyers of their goods and services in these countries, but almost the entire population of the world. Starting from ENRON and Lehman Brothers to firms setting international benchmarks in the financial markets the fact remains that millions of customers and consumers get affected by their conduct. It is often a completely unrelated consumer or worker in a completely unconnected jurisdiction who has to pay the price without immediately knowing what has actually hit him. Sophisticated Ponzi schemes are run successfully for years together before the customer realizes that there are no assets to fall back upon. This has happened outside India as well as in our own country where millions of investors were made to suffer because of these activities. Hundreds of examples are available where there is complete lack of corporate supervision and where billions of dollar worth of gamble has been played with clients’ money. A large global bank today is facing penalties which are more than the total net worth of the bank and there is a clamour for a
Government bailout. During the global financial crisis and thereafter multiple such examples across jurisdictions came to light where financial rescue had to be provided with taxpayers’ money or some of them were too sick to be revived. In the process shareholders, customers, depositors, creditors and workers suffered very badly. The intensity of anger was aggravated also because true state of affairs were never disclosed and an impression was continuously created by all concerned till the imminent collapse that everything was fine.

5.3 The tremors of global financial crisis are still being felt in every corner of the globe and the global economy is yet to revive from its shocks. Unconventional remedies in country after country, often with tax payers’ money or with monetary policies likely to adversely effect savers and pensioners and create asset bubbles for long are still in vogue. Most of these developments have taken place not because of failure of Government policies or active acquiescence by regulators or other public authorities. These have happened because
of wrong incentives, unsustainable and speculative work culture in the firms and complete lack of empathy for the consequences on the ultimate customer or consumer or worker.

5.4 **Government Response:**

5.4.1 Needless to say, this has led to a strong remedial measures from policy makers, parliamentarians and public authorities. In the Dodd Frank Act enacted in USA and a number of other enactments all over the world more stringent conditions are being put in place in the working of corporations. Corporate governance, risk mitigation and review of the systems and other audits are becoming more and more stringent. Some of the instances of corporate misdemeanor which have come out in the open at the global level have left deep suspicions in the minds of public as well as public authorities about the manner in which these affairs are getting conducted. Instances of ENRON and world.com are not isolated examples. Madoff case and several other examples highlight
the worries about how the management and boards of corporations are often not conscious of their responsibility as trustees of public faith in them. There is no doubt that the impact of global financial crisis could have been vastly reduced if the regulators had been alert and exercised more caution. But it also true that CEOs after CEOs and boards after boards failed to exercise due caution. In many cases they actively participated in the perpetration of those offending activities.

5.4.2 Shareholders’ and Public Reaction:

An area which is drawing serious attention globally is the manner and extent to which compensation of senior executives are being determined. Companies after companies are paying inexoritably to their CEOs even if the company has been making losses. In the FTSE 100 companies, the CEO’s pay is 180 times more than the average pay of employees. In USA, the pay of S&P 500 CEO was 204 times more than the Median pay of workers in 2015.
In case of a famous Fortune 500 petroleum company the salary of the CEO was proposed to be increased by 20% even though the company had made a loss of over £ 3 billion. No surprise that majority of shareholders rejected it. Theresa May, the Prime Minister of UK, made a statement in July 2016 that an irrational unhealthy and growing gap exists between the pay of executives and the workers. Pay inequality is likely to undermine trust in business leaders. Surprisingly, financial investors are found to be supporters of proposals for pay rise in overwhelming percentage of companies. In the UK in 98% of cases the financial investors have voted in favour of proposals of compensation review.

5.4.3 Responsible Conduct:

I am reminded that if salaries and perks of politicians and civil servants are enhanced there is a strong public reaction about the burden that it would create on the public and whether there was a moral hazard in people in control of public finance appropriating more and more for their own
salaries and perks. Even the foreign visit for gaining exposure or awareness about certain areas of progress or meeting their counterparts are taunted as foreign jaunts at the cost of public exchequer. Now, going by the manner in which the corporate leaders have behaved in the last 10 years or so similar questions are being raised. In the UK the Financial Services Authority, the counterpart of SEBI, has issued instructions warning the fund industry to stay off golf courses and hospitality events. For decades shareholders have reposed trust in corporate leaders about deciding their compensation. But in many cases it was found that the compensation structure was focused more towards short term revenue and profits motivated mainly by the consideration of bonuses and stock options for senior executives. This led to taking undue and unnecessary risk often at the cost of long term survival of corporations and definitely at the cost and interest of shareholders and other stakeholders. When a corporation fails it effects not only the shareholders but a whole range of people in the value chain
who buy its products or services or who are its workers, suppliers, distributors or lenders.

6. **Corporate Governance:**

6.1 More and more public attention is now, therefore, getting into the area of corporate governance. Who should be an independent director, what should be the role and functions of such directors, how many boards they can function, and how is their evaluation done are areas which no corporation bothered even a decade ago and there was no occasion for serious public discussion on the same. Today, need for an Audit Committee headed by independent director or periodic rotation of auditors are part of legal requirements. Nobody is satisfied today with a certificate issued by CFO and this certificate has to be approved by the audit committee as well. Related party transactions are another area where corporations have to substantially improve their working. In SEBI we had seen examples of small insignificant private companies being merged with the listed company at a huge
valuation primarily to provide gain to the promoters at the cost of other shareholders. We have also seen profitable divisions of a listed company being hived off at low valuations and merged with the business of the promoter without even taking the shareholders into confidence. Agreements about royalties or terms for buying intermediates and raw materials from a related party often leave a suspicion about the interest of shareholders being properly served or not.

6.2 Gender sensitivity and board diversity is another area where accountability of corporations are being tested vigorously. While in the last 5 years in India the ratio of women on board has improved it is still below the global average and so far as the ratio of senior executives are concerned there has, in fact, been a decline in recent years. But investors, analysts, advisory groups and media are likely to raise these issues again and again and it is desirable that such concerns are addressed and imbibed in the culture of the corporations.
6.3 Governments and Regulators are providing legal mechanism to deal with such issues and make the boards more accountable. Independent directors have more responsibility; audit committees have been given higher role and the eligibility for independent directors and their terms are being tightened. Compensation and remuneration committees are being insisted upon in which the independent directors should have primacy. In India, through a combination of Companies Act and SEBI regulations, specific provisions have been made to make the Boards and the management more accountable. Incidence of abusive related party transactions are being curbed through elaborate procedures and checks. Enforcement action has been tightened even for corporate governance violations.

6.4 Besides the government and regulators becoming proactive to ensure publicly acceptable behavior the growth of proxy
advisors and shareholder activism is now a global phenomenon. To begin with, pension funds, sovereign wealth funds, insurance companies, mutual funds and banks representing large percentage of minority shareholders have become very active. Electronic voting is encouraging augmented participation by the shareholders. In AGM after AGM, resolutions are getting short down. Between 2013 and 2014 almost one fourth of the CEOs of Fortune 500 companies who have been removed are on account of active interest taken by Institutional Investors. The concept of stewardship for Institutional Investors has been incorporated in countries after countries from South Africa to United Kingdom. In boards after boards proposals for raise of pay or grant of bonus is being rejected. Performance is now being actively monitored by shareholders – more so by the institutional shareholders. In countries after countries, provisions are being made regarding shareholders dialogue with the management and provisions are being made for smaller and smaller percentage of shareholders being
enabled to seek a general meeting. The accounting profession, which was itself under serious cloud in many instances, has also started demanding accountability in countries after countries and are prescribing higher and higher standards.

6.5 Some of the shareholders have also started demanding that the board should have a policy towards environment, social responsibility and governance and its performance should be evaluated as well as reported at regular intervals. The movement towards integrated reporting and inculcating the culture of integrated thinking is getting momentum. There is now a growing movement towards sustainable stock exchanges. SEBI, which started enforcing business sustainability reporting for top 100 companies, has now been extended to top 500 companies. Having a declared dividend distribution policy has been mandated for top 500 companies.
6.6 Companies are also being hauled up for not being responsive and sensitive to redressal of consumer complaints. Even in matters regarding resolution of shareholders complaints, companies and their officials can be held accountable. For example, SEBI has provided for computerized grievance redressal mechanism where all listed companies have to get registered. Non-compliance or insufficient resolution of complaints can lead to penal action from SEBI.

7. **Conclusion:**

Ladies and gentlemen, in all walks of human life and across jurisdictions rules of transparency and accountability are being re-written. From political leaders to business leaders, from public servants to academic big wigs, from bankers to traders all have to understand and internalize the rising wave of augmented scrutiny, analysis and commentary – often leading to protests and specific demands. Technology and inter-connectedness is accelerating the impact and covering
new areas. Even momentary actions of indiscretion or small episodes of conflict of interest are attracting undeniable reaction. Like all movements it started with a smaller set of individuals – the politicians and public servants. But today the same level of scrutiny is being carried out for regulators and corporations. The organizations which aspire to leave a sustainable imprint and make a difference have to imbibe the culture of answerability and accountability on a continuous basis. It is true that at times this ever rising movement can be misdirected and misused creating suffering for individuals or organizations. But the biggest tribute to the visionary – in whose honour we are meeting today, will be to internalize in our thoughts and actions commitment towards fair play, openness and transparency.