

LAW OF CORPORATE GOVERNANCE (2020) by Dr. S.N. Ghosh and Professor Amitava Banarjee, Thomson Reuters First Edition Pp. 551, Price: Rs. 1020/- ISBN 978-93-90218-36-3

CORPORATE FAILURES and frauds such as the Enron Scam, the WorldCom Scam, the Satyam Scam, etc. have brought corporate governance issues to limelight and debates as well as discussions around them have increased multifold in the past few decades. Corporate governance is concerned with the relationship between the company's management, its shareholders and various other stakeholders. As per the OECD, corporate governance provides "the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined"¹ Sound governance practices in a company have a positive impact not only on a company's performance but also on the shareholder's wealth and the economy as a whole. Indian economy since the time of liberalization, privatization and globalization has made numerous policies, guidelines and laws in order to regulate the working of companies and to ensure good corporate governance policies which match international standards are adopted in India. Despite the efforts and constant amendments in laws, corporate governance failures are witnessed quite often. In this context, it is extremely important that students of law, especially of business laws, have an in-depth knowledge of the basic concepts of corporate governance and the laws which regulate the same.

Presently, the book which is under review is "*Law of Corporate Governance*" published by Thomson Reuters. The first edition of this book was published in 2020. The book contains a detailed study of the different aspects of corporate governance and is divided into ten chapters covering aspects such as the basic terms used in corporate governance, history of corporate governance, discussion on directors, promoters, chairpersons, comparative corporate governance, and case studies of a few scams which have taken place due to corporate governance lapses in India.

Chapter 1 titled "*Introduction*" deals with the basic concepts and jargons from both the legal and commercial background which a reader should be acquainted with in order to understand the core concepts of corporate governance. The chapter explains the concepts of public and

¹ OECD Corporate Governance Principles, 2004, available at: www.oecd.org/corporate/ca/corporategovernanceprinciples/3155772 (Last visited on May 25, 2021).

private company by tracing its genesis from the period of British advent and colonialization in India. Concepts such as corporation as a person, its citizenship, power and performance of corporate, conflict of interest, agency, corporate veil and its lifting have been explained in the chapter. These concepts are explained by referring to incorporating instances from various companies, their code of conducts and reports of various committees set up for purposes of reforming corporate governance regime in India.

Chapter 2 titled as “*Business Ethics and Corporate Governance Objectives*” deals in detail about the interplay between business ethics and corporate governance. The authors have highlighted the shift from the “*Shareholder Theory*” of corporate governance as opined by Nobel awardee Economist Milton Friedman who stated that the only responsibility of a corporate is towards its shareholders and a corporate has no social responsibility, to the “*Stakeholder Theory*” of corporate governance as coined by Edward Freeman and David Reed who state that a manager while taking corporate decisions should take into account all stakeholders who would have an effect or be affected by the working of the organization. The authors identify that the Companies Act, 2013 acknowledges both the “*Shareholder Theory*” and the “*Stakeholder Theory*” in different provisions. The authors discuss the ethical principles in business from various aspects such as the Utilitarianism (consequentialism) or the Cost Benefit Theory, the Rights and Duty perspective, the Justice and Fairness perspective and the perspective of Gender Ethics. The chapter then moves on to explain the factors influencing business ethics and the challenges of business ethics such as bribery and corruption, conflict of interest, insider trading, discrimination, tone at the top and organizational structure. Each of these factors are explained by citing real life examples to help the readers understand the concepts better.

Chapter 3 titled “*Emergence of Corporate Governance*” starts by addressing the agency problem in corporate governance. Adam Smith in his book “*The Wealth of Nations*” identified that business managers “*being the managers of other people’s money rather than their own and that they would never watch over this money with the same anxious vigilance with which the partners in a private copartnery frequently watch over their own*”.² This difference between the management and the ownership of a corporate results in the agency cost problem. The purpose of corporate governance is to minimize this agency cost by

² Anderson, Gary M., and Robert D. Tollison. "Adam Smith's Analysis of Joint-Stock Companies." 90(6) *Journal of Political Economy* 1237 (1982).

balancing what the directors as agents do and what the shareholders as owners desire about what should be done. The author also highlights that this agency cost is manifested differently depending upon the ownership pattern of a corporate. The authors then undertake a detailed analysis of the reports and codes on corporate governance in United States and United Kingdom tracing the evolution of corporate governance in both the jurisdictions. While tracing this evolution in both the jurisdictions the authors have outlined as to how the present law on corporate governance in both the jurisdictions has been influenced and amended depending on the various reports and codes on corporate governance which were introduced from time to time. While tracing the evolution of corporate governance in India, the authors have analyzed the various committee recommendations and how legislations pertaining to regulation of companies were amended to incorporate the recommendations. The authors have analyzed in detail the recommendations of the Kotak Mahindra Committee and have highlighted the amendments made in the SEBI (Listing Obligations and Disclosure Requirement) (Amendment) Regulations, 2018 to incorporate the recommendations of the committee. The chapter then moves to explain the international benchmark of corporate governance which has been set by the International Organization of Securities Commission (IOSCO) and how have those principles been incorporated into our legal framework by the Securities and Exchange Board of India (SEBI). The chapter ends by giving a detailed account of the consequences of non-compliance of SEBI (Listing Obligations and Disclosure Requirement) Regulations, 2018.

Chapter 4 titled “*Relics of Corporate Governance in India*” traces the transition in the corporate regulations since the colonial rule till the present time where earlier there was complete government regulation and “*license-permit raj*” which was later diluted with time to include foreign investment in certain entities, and finally in 1991 the economy was opened in India. The authors have commented that during this period, though the legislators had enough room for introducing corporate governance measures, however, the fact that these companies were largely controlled by government resulted in the legislators being unable to implement effective regulations for corporate governance. The authors then move to explain in detail the concept of “control” incorporates and its impact on corporate governance. Concepts such as shadow directors and their control on a corporate entity and its implications have also been discussed. The authors have explained the difference between corporate failures and corporate governance failures by means of case studies from the *Union Carbide Case*, *Global Trust Bank Case* and *CRB Capital Markets Ltd. Case*.

Chapter 5 titled “*Shareholders Ownership*” discusses in detail the roles of Chairman and Chief Executive Officer in a company and how different jurisdictions such as United States and United Kingdom deal with the role and responsibility of these managerial posts. The concept of promoter and their position and liability under the Companies Act, 2013 and the SEBI Act, 1992 have also been discussed. Case studies such as the Pyramid Saimira Theater Ltd., NDTV case, the Sahara case, Satyam Fiasco and the Modipon Ltd. case are discussed in brief to highlight aspects of the liabilities of the promoter as enunciated by various judicial bodies. The chapter also discussed the concept of pledging of shares by promoters and its impact on corporate value. The authors then deliberate on the shareholders rights under the Companies Act, 2013 discussing in detail the kinds of voting rights attached with shares and the voting procedure which is adopted by companies. The chapter then moves on to explain another important category of shareholder which are Institutional Investors and their impact on corporate governance. The role and regulatory framework of mutual funds and proxy advisors is looked at in depth from the perspective of corporate governance. The chapter ends with a consideration on the Class Action Suit remedy which is available to the members of a company and the law regulating the same in India and United Kingdom. The chapter is annexed with the Corporate Governance Code of Domino’s UK³ highlighting the aspect of the separation of the role of Chairman and the Chief Executive Officer from the company. Forms for disclosure of encumbrances on shares, guidelines for issue of various category of shares, case law of the Satyam Computers case as decided by the United States District Court for the District of Columbia, the Class Action Fairness Act, 2005 of the United States and the Stewardship Code for all Mutual Funds and all categories of AIFs, in relation to their investment in listed equity are also annexed with the chapter to provide the readers with supplemental readings to better understand the concepts explained in the chapter.

Chapter 6 titled “*Directors Monitoring*” deals extensively with the duties of directors. The authors have taken instances from RBI Guidelines and OECD Guidelines to highlight the role which the directors should play in an organization. The chapter discusses the legal framework in India concerning the Board composition, Duties of the Board, their nomination process and the compensation structure. The authors have discussed at length the role of the audit committee and their regulation by the Companies Act, 2013 and the SEBI (Listing

³ Corporate governance and the UK Corporate Governance Code, *available at*: <https://investors.dominos.co.uk/investors/corporate-governance> (Last visited on July 19, 2021).

Obligations and Disclosure Requirement) Regulations, 2015 to highlight duties, obligations and liabilities of auditors to ensure effective corporate governance. Another important limb of the Board which is responsible for ensuring that the corporate is working in the correct direction are the Independent directors. The authors have discussed the evolution of the concept of Independent directors in India from being a voluntary compliance adopted by companies in India to being made a mandatory legal compliance in certain companies and discussed the elaborate legal framework regulating the appointment and functioning of Independent directors. The chapter ends by discussing the Board evaluation process and the legal provisions governing the same in India. The chapter gives a comprehensive view of the role of directors in ensuring that the company is governed ethically and has explained the concepts of board control, role and responsibilities of the committees of the board and also highlighted the role of auditors in a company.

Chapter 7 titled “*Comparative Analysis of Corporate Governance in Major Jurisdiction*” discusses the corporate governance regimes in countries such as United States, China, United Kingdom, Australia, France and Germany. The authors have categorized corporate governance regimes in these nations majorly on the parameters of whether they are rule based or compliance based or explanation based or on the basis of the board structure they follow *i.e.*, whether it is a unitary board or a dual board. The authors have undertaken an in-depth study of the law relating to the above stated jurisdictions to highlight how directors are appointed, their roles and liabilities and the role of shareholders and their rights. The chapter provides a perspective into the corporate governance regimes in various countries of the world to allow the readers to make a comparative analysis to evaluate the strengths and weaknesses of their regime based on practices adopted globally.

Chapter 8 titled “*Dealing with weak links of Corporate Governance*” is an attempt by the authors to highlight the weak linkages in the corporate governance regime based on the patterns which have emerged from corporate failures. The authors identify insider trading, measures such as whistle-blowing and related party transactions to be the most important factors in this respect. The concept of insider trading is explained by the authors by tracing its historical journey and the laws and regulations governing the same at present. The SEBI (Preventing of Insider Trading) Regulations, 2015 are analyzed in depth and their impact on corporate performance. The authors have then delved into the concept of whistle blowing by tracing certain instances of whistle blowing in India such as those which happened in the

Satyam case that led to Mr. Raju confessing his crime, the allegations made by a group of employees in Infosys and the whistle blowing incident at Deloitte, Haskins and Sells LLP in 2019. The authors discuss the laws relating to whistle blowing in India and highlight the insufficiency of laws in corporate field to ensure that corporates are also covered under the whistle blowing law and the whistle blowers are protected. The authors then comment on the aspects of related party transactions which is one of the biggest reasons for corporate governance lapses in India.

Chapter 9 titled “*Law on Corporate Social Responsibility*” explicates how the role of corporates are no longer limited to the goal of generating profits but are perceived as responsible citizens and are expected to provide for the societal needs. Corporate governance has now moved beyond the boardroom and globalization has brought in concepts such as Environmental, Social and Governance (ESG) to India. The Indian legislators are keeping up with the evolution of the concept of socially responsible corporation and laws have been framed to incorporate and mandate Corporate Social Responsibility (CSR) to be complied with by the corporates. The chapter touches the history of CSR in India and discusses in detail the law governing CSR activities in India. It also discusses how corporates are moving from the concept of CSR to a much wider concept of sustainability and complying with international standard in this respect.

Chapter 10 titled “*Cases on Corporate Governance*” is a compilation of case studies on various companies which takes the readers through instances of good governance structures of certain corporates and examples of corporate governance failures in some companies. The authors have discussed the corporate governance structures of ITC, Mind Tree Limited, Dabur India Limited and Rural Electrification Corporation Limited to explain corporate governance structures in companies which are working efficiently, transparently and ethically complying with all laws as well as devising their own models to ensure efficient functioning of the company. On the other hand, the authors have examined corporate governance failures in cases of the Tata-Mistry dispute where the issue was of oppression and mismanagement, the Dewan Housing Finance Corporation Limited case where a fraud played by the promoters was unveiled, CG Power and Industrial Solution Limited where the management tried to siphon off/divert the money which rightfully belonged to the shareholders, Jet Airways episode where the promoter-director was accused of mismanagement of the company, the ICICI case of related party transactions and concentration of power, NSE Ltd issue of NSE

collocation, the IL&FS audit scam, Punjab National Bank Scam concerning issuing fake letter of credits and bribery, Ricoh India Limited related to misstatements in the books of accounts, Bhushan Steel Power Limited concerning siphon off/divert the money of the company by the promoters, Unites Spirits Limited dealing with diversion of funds, Reebok India Limited concerned with fraudulent practices in selling products, Fortis Hospital case concerning inter corporate loans, Sahara India Commercial Corporation Limited dealing with fraudulent public issue OFCDs in the disguise of private placement, Ranbaxy Laboratories Limited concerning the selling of adulterated drugs and fraud on customers, Sun Pharma case whistle blowing incident, Yes Bank audit fraud, Amrapali Builder's diversion of funds and fraud on home buyers, the Educom-Raffles Higher Education Ltd concerning mismanagement in the affairs of the company and the NSEL-MCX case related to shell companies. Through these case studies, the authors have highlighted the loopholes present in the law and how are these manipulated by corporates for the advantage of a few persons at the cost of the shareholders and the stability of the economy as a whole.

In its entirety, the book comprehensively deals with the basic concepts, laws, regulations and issues concerning corporate governance. The book is written in the style of a text book and is lucid so as to help the readers understand the concepts. The authors have taken a multi-jurisdictional approach to explain the concepts with various examples and instances from around the globes to make the readers understand them better. The authors have annexed each chapter with regulations, case laws, forms or corporate governance code of companies to better explain the concepts and law which the chapter deals. Each chapter contains learning objectives as well as learning outcomes to give readers a glimpse into what the chapter holds for them and to summarize what has been discussed in the chapter. At the end of the book, authors have given a list of questions from each chapter. The book is systematically arranged to bring out each concept in a manner to ensure that the flow of the reader is maintained and he understands each issue accurately. The book would help students, academicians, researchers and practitioners in understanding the basic concepts and nuances related to the law of corporate governance.

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