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Globalization and Corporate Governance in Indian Context

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ABSTRACT

Globalisation is a concept that has been at the forefront as the main factor in business life during the last few years. This element has widely affected the business life, economy, community and the environment it exists in, in many different manners, and these changes have also left a huge impact on almost all the corporations. Globalisation has penetrated in the entire world, making economies adapt and change accordingly in order to meet the demands of both the domestic and international markets and entrusting the government of the nations with the responsibility to protect their economy and domestic market from collapsing.

Corporate governance refers to a system of rules, regulations, principles, processes and practices by which a firm is effectively directed and controlled. In India, the Government found it extremely crucial and significant to respond to the rapid development of opening up of Indian economy that was taking place in 1991 after adopting the LPG policy and so to pace the Indian companies with the global platform, initiatives recommended by certain committees got prominence. The Confederation of Indian Industry (CII), the Associated Chambers of Commerce and Industry (ASSOCHAM) and the Securities and Exchange Board of India (SEBI) established certain committees to recommend initiatives in Corporate Governance which have been discussed in the paper along with the corporate governance Indian legal framework and the landmark case of Satyam Scandal.

This research paper studies the relationship between corporate governance and globalisation in Indian context. The laws and regulations in India need to be framed keeping in mind the Indian scenario, that will be best suited for the country. After the enactment of the Companies Act, 2013, the new norms have facilitated the growth of Indian firms and brought them in line with international standards.

I. INTRODUCTION

Globalisation is a concept that has been at the forefront as the main factor in business life during the last few years. This element has widely affected the business life, economy, community

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and the environment it exists in, in many different manners, and these changes have also left a huge impact on almost all the corporations. These diverse changes can be reflected in the rapid increase in competition and the swift technological changes and transfer of information. With this issue at play, corporations generally tend to become profit-oriented in the short term and ignore long-term sustainability. However, corporations are pertinent to the growth and well-being of society and needs to be properly managed. Therefore, as require certain rules, regulations, social norms, and principles in business and society life to effectively and efficiently steer the corporate wheel with minimum friction between the inside and outside components of the corporation i.e., the different stakeholders in the corporation; this is summed up to be the role of corporate governance.

II. GLOBALISATION

Globalisation in simple language is defined as the free movement of goods, capital and services but this definition is incomplete as it is a much wider term, covering other aspects of global changing. It includes the process which binds together the economies of the world, the diverse range of culture, technology and governance. The reason for this integration lies in the fact that globalisation mobilises skilled workforce, also results in information conveyance from one nation to another or multiple, technological changes occurs, financial funds flow and geographic arbitrage takes place amongst developed countries and developing countries. Globalisation has different dimensions such as environmental, social, religious and to cover the extensive impact area all aspects of the world economy, society and environment are included in globalisation. Globalisation has penetrated in the entire world, making economies adapt and change accordingly in order to meet the demands of both the domestic and international markets and entrusting the government of the nations with the responsibility to protect their economy and domestic market from collapsing. The main question that is faced by the companies worldwide is how to survive and thrive while adapting to these changes as they are manifold. Companies will have to identify the threats early on as they arise to tackle them as well as get the first movers' advantage by taking benefit of the opportunities that globalisation brings with itself.[3]

The impact of globalisation can be witnessed in different ways on the economy, society, environment and business life.

- Rapid increase in competition

[3] Arijit, Bhowmick, *Globalisation and Corporate Governance*, (Sept. 4, 2020, 05:00 PM), blog.ipleaders.in/globalization-and-corporate-governance/.

- Development in technology (fast changing tech advancement)
- Information/knowledge transfer
- Integration of markets
- Mobility of intellectual capital
- Regulation/deregulation
- Financial contagion- spread of financial crisis in one country to another creating a global crisis
- Fund transfer amongst developed countries and emerging markets globally

III. Corporate Governance

Corporate governance refers to a system of rules, regulations, principles, processes and practices by which a firm is effectively directed and controlled. It creates a balance between the various stakeholders of the company, like shareholders, senior management, suppliers, customers, the government, finance providers, and the community. Corporate Governance also provides the skeleton for achieving a company's objectives; therefore, it encompasses every aspect of management practicable and possible, from basic action plans and internal controls to measurement of performance and corporate disclosure. The prime force influencing corporate governance is a company's board of directors. The policies framework should give due regard to the four key principles of corporate governance-

- **Transparency**. It is the duty of the company to provide accurate disclosure of material information relating to its financial situation, performance, environmental and social indicators, governance of the company, structure of ownership on a timely basis and also enable the information to be accessible freely for all stakeholders for them o make informed decision and be routinely updated about the activities of the company.
- **Accountability**. The corporate governance code of each and every company provides for accountability of the Board of Director of that company to all the shareholders, keeping up with the with laws that are applicable and further provides guidance to the Board of Directors for decision-making and also to monitor the activities of the executive bodies.
- **Responsibility.** The accountability and responsibility principle goes hand and in hand. The Board of Directors are entrusted with the authority to act on behalf of the company. They should in turn assume full responsibility for the powers they are granted and the

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authority that they exercise to act in the best interest of the company and not work for personal gains. They have to oversee the various affairs of the company, the proper management of the business, appoint the chief executive and closely observe the company's performance.[4]

- **Fairness.** The company undertakes the task of safeguarding shareholders' rights and guarantee equal treatment of all the shareholders engaged with the company. The Board of Directors shall ensure that the shareholders are given adequate opportunity to attain effective redressal methods for any violation of their rights granted to them.[5]

Therefore, these principles ensure that a good corporate governance practice is followed by the company and proper disclosure and transparency is maintained so that the shareholders, regulators and also the general public are provided with accurate material information about the financial health, operational works and other crucial aspects of the company.[6]

IV. EVOLUTION OF CORPORATE GOVERNANCE IN INDIA

The concept of Corporate Governance is as old as the concept of corporations. However, it was not highlighted by the Indian companies and the government until the early 1990s. The financial crisis of 1991 cried for an improved governance and reforms after witnessing massive financial and bank scandals and frauds, when the Indian economy became weak owing to stock market malpractices, lack of transparency, inadequate disclosure practices, board of directors having power and authority without proper fiduciary responsibility and accountability. The 1991 fiscal crisis resulted in the Government approaching the International Monetary Fund (IMF) to adopt reformative measures for the stabilisation of the economy through Liberalization, Privatisation and Globalisation (LPG) policy.

Corporate governance is important because there exists a direct relationship between risk reduction, governance and compliance. If a company follows the guidelines and complies with statutory law, it will thrive. It will help navigate the company to safer shores in case of any uncertainty, thus mitigating the risk factor. India's political, technological and economic conditions are unstable, it is pertinent that the companies follow a sound corporate governance code to avoid or sail through only minimal friction. Since the country faces economic lows it is crucial that the public does not lose trust in the institutions so to uphold the goodwill and

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[4] *The Core Principles of Good Corporate Governance,* (Sept. 7, 2020, 09:30 AM), www.pearse-trust.ie/blog/bid/108866/the-core-principles-of-good-corporate-governance.

[5] *Corporate Governance Principles,* (Sept. 9, 2020, 11:10 AM), www.interrao.ru/en/investors/corporate-governance/basic-principles/.

[6] (Sept. 10, 2020, 10:30 AM), www.managementstudyguide.com.

reputation of the company, trustworthiness through good corporate governance can be ensured even during hard situations. No research has established any relation between market value of a company and its corporate governance policies; however, it has been known to enhance shareholder value. Corporate governance helps corporations to attract capital. The ultimate objective of good corporate governance is to ensure every stakeholder’s interest gets maximised and not just of the selected few. A company’s value and image that has been built over the years can be shot down by a sole unlawful incident, thus it is mandatory to have robust internal controls at the right place. Corporate governance has proved to be an influential deciding factor of industrial competitiveness. The corporate governance practices of companies are being highlighted at an increasing rate as better governance leads way to an improved corporate performance, resulting in enhanced economic results. Corporate governance is often defined as the foundation stone for a company’s actions, product or service innovation, its resource utilisation and its overall business strategies. Corporate governance also plays a defining role in the course of restructuring events like mergers and acquisitions. Corporate governance of a company does not merely draw the line between good and bad deals but the company’s M&A activity involving good corporate governance is well accepted and welcomed by different stakeholders in the market. It is important to note that mergers and acquisitions have the ability to enhance the corporate governance quality of the firm.

V. Reforming Corporate Governance Structure since 1990s

Various committees and formulation of laws throughout the world to improve the corporate environment of firms has familiarized us with the concept of corporate governance and made it all pervasive. Similarly, in India, the Government found it extremely crucial and significant to respond to the rapid development of opening up of Indian economy that was taking place in 1991 after adopting the LPG policy and so to pace the Indian companies with the global platform, initiatives recommended by certain committees got prominence. The Confederation of Indian Industry (CII), the Associated Chambers of Commerce and Industry (ASSOCHAM) and the Securities and Exchange Board of India (SEBI) established certain committees to recommend initiatives in Corporate Governance. The reports provided by these committees played a major role in streamlining the corporate practices throughout the world. They include:

- **Confederation of Indian Industry (CII)**

CII is an association of Indian business enterprises, industry-led, established in 1985. It works towards the creation of a better business environment for the Indian businesses. CII is a not-for-profit and non-governmental organization that is managed and run completely on industrybased practices and decisions. CII took the first initiative on corporate governance in India in 1996. Its main objective was to establish and promote good corporate governance code for Indian-based industries. It released "Desirable Corporate Governance" Code in April, 1998. However, the code cannot remain static and needs to evolve and looked into from time to time to keep up with the changing regulatory scenario.

- **Kumar Mangalam Birla Committee**

In 1999, SEBI set up a committee under Mr. Kumar Mangalam Birla to make recommendations on corporate governance. He was appointed as the Chairman of the committee by SEBI. The sole purpose of setting up the committee was to raise and promote good corporate governance. The report of Kumar Mangalam Committee included mandatory as well as non-mandatory recommendations. The key recommendations of the committee were incorporated into Clause 49- Listing Agreement of Stock Exchanges. This committee's recommendation applied to the already listed companies with a paid-up capital of Rs. 300 crore or more. Among other recommendations, it also stated that the composition of the Board of Directors should be an optimum combination of Executive and Non-Executive Directors.

- **Naresh Chandra Committee**

When SEBI was making efforts in the field of corporate governance standards, the Department of Company Affairs (DCA) was taking initiatives in the same direction as well. This was witnessed when the DCA appointed Naresh Chandra Committee to examine various issues related to corporate governance in India. Naresh Chandra Committee was established on August 21, 2002. The committee's recommendations were majorly regarding:

1. The relationship between a company and its auditor.
2. Role of Independent Directors
3. Audit assignments and its disqualifications to measure up to the international practices
4. Non-audit services which were prohibited
5. Independent standards for consulting
6. Mandatory audit partner rotation

- **Narayan Murthy Committee**

N. R. Narayan Murthy Committee was also an initiative by SEBI in respect of making recommendations and promoting corporate governance in India. The committee was set up in 2003 and was headed by Mr. Narayan Murthy. Following matters were discussed and focused upon by the Committee:

1. Performance review of corporate governance in the country,
2. Determining how companies respond to rumours and other price sensitive information that is circulated in the market. This was done to establish better transparency and integrity of the market,
3. Audit Committees and audit reports,
4. Risk Management Report,
5. Related Party Transactions, etc.

The Committee's report expressed its total concurrence with that of Naresh Chandra Committee's recommendations.

- **National Foundation of Corporate Governance (NFCG)**

Ministry of Corporate Affairs (MCA) established NFCG in the year 2003 in partnership with CII, ICSI, ICAI to promote good corporate governance at both the levels; individual corporate as well as industry as a whole. Their mission includes creating a good corporate governance culture, to further education and research in corporate governance, to build a framework of best practices, ethics, processes and structure.

- **J.J. Irani Committee Report**

Government of India constituted the Irani Committee in December, 2004 with the responsibility of providing recommendations to the government by evaluating the various suggestions and comments received on 'concept paper' by the stakeholders, discarding redundant provisions and make the Companies Act, 1956 compact, safeguarding investors (including small-investors) and stakeholders interests, and providing recommendations on other issues arising due to the revision of the Companies Act, 1956.

- **Uday Kotak Committee**

SEBI in regard to corporate governance formed another committee to give recommendations, chiefly on upgrading corporate governance standards in listed companies in India. This committee was headed by Mr. Uday Kotak. The committee was formed on 2nd June, 2017. The committee held 12 meetings within a timeframe of four months and gave major recommendations in the following issues:

1. Improvement in safeguarding and disclosures related to party transactions,
2. Listed companies and their accounting and auditing practices,

3. Transparency related issues,
4. Issues faced by investors in voting and other general meetings of the company.

VI. Satyam Scandal- The Landmark Case Of Failure Of Corporate Governance

Satyam Computer Services scam was a corporate fraud of 2009 which affected the Indian-based company Satyam Computer Services. The Chairman of the company, Ramalinga Raju admitted that the accounts of the company had been falsified and manipulated. The Satyam scandal was a fraud of Rs 7000 crore where the stock exchanges, investors, regulators, other stakeholders and the market was misled about the company's financial health by misrepresenting its accounts of operating profits, revenues, cash balances, interest liabilities were all inflated. The external auditors of the company Price Waterhouse Coopers (PWC) were also subjected to questioning as they had failed to conduct an accurate and reliable due diligence and had to face a hard time. The scandal revealed a total failure of the concept of 'Independent Directors', the role of audit committees shattered, the annual report on compliance of corporate governance also turned out to state false facts, the CEO of the company defrauded the stakeholders by stating incorrect financial position of the company. The scandal drove the Government to intervene and provide for a system of checks and balances as even the external auditors role raised doubts.[7]

VII. Corporate Governance Legal Framework in India

1. **The Companies Act, 2013-** contains various provisions covering a wide spectrum of topics such as constitution of the board of directors, board meeting and processes, independent directors, general meeting, audit committees, the disclosure required in financial statements, party transactions etc.
2. **SEBI Guidelines**- SEBI is one of the prime governing bodies to exercise jurisdiction and power over listed companies. To ensure that the investors are protected and their rights are safeguarded, SEBI from time to time also issues guidelines, rules and regulations to the companies to mandatorily adhere to.
3. **Secretarial Standards issued by the Institute of Company Secretaries of India (ICSI)-** ICSI which is an independent body constituted under Sec 3 of the Company Secretaries Act, 1980, and it issues secretarial standards in regards of the provisions of

[7] Arpit Khurana, *Corporate Governance:- A Case Study of Satyam Computers Services Ltd.*(Sept. 11, 2020, 07:00 PM), www.srjis.com/pages/pdfFiles/147367354829.%20ARPIT%20KHURANA.pdf.

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the Companies Act, 2013. ICSI has issued SS-1 dealing with "Meeting of the Board of Directors" (so that effective, efficient, robust and reliable decisions are formed) and SS-2 "General Meetings" (serves to strengthen and aid shareholder democracy) which are secretarial standards which have come into force from August, 2015. Section 118(10) of the Companies Act, 2013 lays down that every company except one-person company, observe mandatorily secretarial standards as specified by the ICSI with respect to board meetings and general meetings.[8]

4. **Accounting Standards Issued by the Institute of Chartered Accountants of India (ICAI)-** ICAI is an independent body set up as a statutory body under Chartered Accountants Act, 1949. ICAI issues accounting standards through which it lays down the guidelines and procedure for disclosure of financial information of the company. Section 129 of the Companies Act, 2013 provides that the financial statements of the company would give an accurate view of the company's state of affairs, as per the accounting standards provided by Section 133 of the Companies Act, 2013. Further, it states that the information mentioned in such financial statements should comply with the issued accounting standards.
5. **Standard Listing Agreement of Stock Exchanges-** It pertains to the companies which have their shares listed on the stock exchanges.[9]

VIII. Relationship between Corporate Governance and Globalisation (Indian Context)

Former Chairman of SEBI, Mr. U K Sinha while addressing the 13th Corporate Governance Summit held in February, 2020 stated that Indian laws and regulations in respect of corporate governance can be placed and compared at a global level and they stand at par with developments worldwide, however, it's the execution of the same that needs to be chalked out in a better manner to maintain global harmony of Indian framework and remain relevant internationally. He elucidated how the connection between the management and institutional investors does not hold relevance any longer and how the management and boards are being challenged by competitive domestic and international institutional investors around the world. Further, there has been a significant change in trends with regard to boardroom atmosphere, making room for the different opinions and ideas put forward by auditors and other independent

[8] (Sept. 11, 2020, 10:00 PM), www.icsi.edu/media/webmodules/SS_Brochure.pdf.
[9] Bhumesh Varma ,,& Himani Singh, *Evolution of Corporate Governance in India,* (Sept. 15, 2020, 09:00 PM), www.scconline.com/blog/post/2019/11/13/evolution-of-corporate-governance-in-india/.

directors.

The Chairman of Deloitte India, Mr. Shyamak Tata threw light on some of the global trends in respect of corporate governance, explaining its constituents and the role to be played by each of them. The trends include board effectiveness, alignment of culture, technology governance, etc. There is a growing need to adopt and adapt to the changing trends of corporate governance by the Board and management; the Regulators should evolve with the changing society, then the third-party fiduciary role holders need to gauge the undercurrents in the corporate body and the corporate lenders should remain agile.

The Insolvency and Bankruptcy Code (IBC), 2016 in this regard has been praised for laying down norms that strive to prevent collapsing of companies and rescuing them to recognizing creditors as crucial stakeholders, the Code has been a step-up and taken corporate governance to new heights to match international standards. India needs to encourage and promote the development of start-ups and MSME sector for risk capital. Also, reducing the widened trust gap towards the corporates would reduce the chances of risk aversion which is fundamental to India's growth in the future.

Today, one of the most critical power-play of internal control in a corporate organization is the whistle blower policy, however, adequate checks and balances in the system is equally significant to ensure that mala fide intentions are discouraged and dishonest grievances are penalized.

Sound corporate governance principles take the company a long way and without it, the corporations can come to a halt. With globalisation, competition increases manyfold, international companies competing with national companies. For a national company or a local company to stand-out, it is crucial that they have a good corporate governance code intact to stay superior and unharmed by their competitors, along with having complete faith of the investors and an enhanced reputation. This is the reason a large number of Indian Companies with strong governance standards have stood the test of time even after globalisation, such as TATA and Infosys.

The number of global investors has been on a tremendous rise owing to globalisation and they are extremely careful in choosing the companies where they invest their finances. Good governance is one of their key focus areas. These investors are ready to pay a premium to a company who have governance standards as their strong suit.

Good corporate governance practices by companies will result in a higher employee job satisfaction levels and positively impact the work force. Globalisation can often result in exploitation of human resource and other resource, therefore, having a robust corporate governance code will ensure employees and resources are not exploited.

Globally, cyber security is taking the front-seat and therefore, corporate governance should focus on and provide for cyber security. The world has witnessed the case of data misuse by Facebook and Yahoo. We have stepped into an overly data-driven world where companies need to tread with caution to remain significant as cyber-attacks can be fatal to good corporate governance and makes companies susceptible to various repercussions. The cyber security policy in India has certain drawbacks and hence, the creation and promotion of cyber security measures, adopting good policies from around the world is the need of the hour as it represents a key business issue.[10]

IX. Conclusion

If companies want to thrive and maintain goodwill, it is pertinent that they maintain fairness and transparency in their dealings with all the stakeholders involved, because in today's era where businesses are globalised and have crossed national borders, they seek global pool of capital which necessitates them to have a good corporate governance practice. It is also important if corporations want to attract and retain the cream human capital from different nooks and corners of the world. Each country has a unique environment, so the laws and regulations in India need to be framed keeping in mind the Indian scenario, that will be best suited for the country. Robust assessment practices are being undertaken by Indian Boards to make certain that evolving standards of governance are attained and best international practices are incorporated so businesses and companies can continue creating wealth and diversifying their businesses without compromising their core values and preserving a culture of accountability.

After the enactment of the Companies Act, 2013, the new norms have facilitated the growth of Indian firms and brought them in line with international standards. India does not require more regulation at this front, rather better enforcement is called for which will result in transparency, greater participation and better alignment of interests of all stakeholders. Therefore, a corporation needs to embrace all principles of corporate governance and demonstrate them in its practices to reach the zenith of global corporate world.

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[10] Bhdippyaman, *Cyber Security in Corporate Governance,* LEGAL SERVICE INDIA, (Sept. 18, 2020, 10:00 PM), http://www.legalserviceindia.com/legal/article-559-cyber-security-in-corporate-governance.html.