

Corporate Law, Corporate Governance, and Corporate Justice

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Introduction:

Corporate Law is an important element of the economic development of any country in ensuring a level playing field among various stakeholders and also in ensuring enforcement of contracts so that capital invested by foreigners is assured of intactness. The interaction of the government with the corporates through policies of taxation, regulation of securities trade, disposal of property, starting of new industries, insolvency, and bankruptcy aspects, loans from the banks and working capital management are some of the main elements of the corporate law, so common in the entire world that, any violation of any one of the above aspects is viewed with suspicion and results in the decapitalization of the economy.

‘Corpora’¹ emerged in the ancient Roman Empire to assist the Empire in defence and Tax collection. In ancient India, *shreni*² was the counterpart. In medieval England, corporations like the East India Company helped establish the mercantile economy. The word, corporation, is derived from the Latin word ‘*corpus*’ meaning, body. “A Corporation, then, is a group of individuals incorporated by law into a single body.”³ The Romans used the Italian word namely, ‘*societa*’ which means, the company with shares. In the 18th century England, corporations assumed disproportionate importance. Sir Edward Coke admirably commented about the corporations that they are “*invisible and immortal.*”⁴ as corporations of 18th century England were disproportionately important.

Adam Smith used the word “invisible hand”⁵ for corporations. Milton Friedman wrote that “the purpose of the corporation was only to protect the interest of the shareholders.”⁶ Financial capitalism and investment banking emerged gradually.

The focus on profit damaged the environment and the interests of consumers, customers, and workers were affected. Sir Edmund Burke, commenting on the infamous ‘East India Company’ wrote that, “this custody company would at last like a viper, be the destruction of the country which fostered it at its bottom.”⁷ Teddy Roosevelt announced that “Corporate expenditures for political purposes have supplied one of the principal sources of corruption in our political affairs. The citizens of the United States must effectively control the mighty commercial forces which they have called into being.”⁸

Corporations are powerful economic actors. 85% of the GDP of the USA is from the corporations. Most of them are Transnational Corporations. The annual turnover of some US companies are more than the GDP of a few countries put together, for instance, the General Electric Corporation (GEC). The Corporation was initially a tool in the hands of the State to enrich itself and to expand its Empire but the tool now became so powerful that it has come to command and impoverish the State itself.

When some corporations became too big for their size, such erring corporations were punished. For instance, Roman Emperor, Augustus clipped the wings of the tax-collecting corporations at that point in time. The East India Company, established on 1st January, 1601 through a chartered company, ultimately became so powerful that it caused big trouble to the British Empire and the British Empire took over India from the control of the East India Company after the incidents of 1857. Known for notorious corruption and bankruptcy, the East

India Company was wound up in 1874. The failure of many corporations to handle the market forces, according to the law, gave rise to the 1929 stock market crash and depression in the global economy. The Security Exchanges Commission (SEC) was the resultant legal intervention in the United States of America.

In the Indian case, the ABG Shipyard scam, a big financial scam came to the light of public scrutiny in 2017. However, due to certain unexplored reasons, the investigation was taken up by India's premier investigative agency, the Central Bureau of Investigation(CBI) in 2022. Enron, WorldCom, Lehman Brothers, AIG, etc both in the USA and India defrauded the shareholders, Governments, investors, and institutions (Stakeholders). The COVID-19 pandemic, like many past major crises, added a new challenge to corporates functioning within the framework of the 'Rule of Law.'

CORPORATE GOVERNANCE and corporate law:

The capability of the structures of legality, as established institutions of disbursement of the importance of the law, by the organs of the state constitutes the core concept of governance of corporations. Corporate governance is not entirely left to the corporates as to how to govern themselves but is subjected to the regulation and correction by the institutions meant for the best enforcement of the rules and regulations that are linked to Governance in general and corporate governance in particular. The management of the corporation, the role of the board of directors, the relationship between the shareholders and the stakeholders become part of an important framework for the maintenance of relationships among corporations. The corporation is known by its mission and vision statement and the principles of corporate governance also lay emphasis on the process and the procedure in which the objectives, the values of the vision, and the mission statement are realized. The principles of corporate governance should not be vague and instead should be concise and precise, both in terms of the financial and non-financial aspects. The purpose of these principles is to ensure proper performance of the role of the government, government institutions, the Private- nonprofit sectors of the economy, and the legal framework within the country and the international community. Economic Efficiency, coupled with sustainability and concern for ecological and sustainable growth in the long run is the main purpose of the enforcement of the principles of corporate governance within and outside corporations.

The role of employees is essential in maintaining the principles of corporate governance not merely on the premises of the corporate functioning but also in all those areas in which the corporate reach is felt. Internationally, there needs to be coordination among various institutions which include the Organisation for Economic Cooperation and Development, the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the United Nations Guiding Principles on Business and Human Rights, the International Labour Organization Declaration on fundamental principles of Rights at work. Achieving the confidence of the investors, because most of the capital and proper allocation is essential for the development of corporations across the world. Reassuring the rights of stakeholders as well as shareholders is an essential function of corporate governance in the system within all corporations. Accessing capital as well as talent with patent-protected technology on an equal platform is the correct antidote for promoting the values of competition in preventing the formation of cartelization and monopoly. Principles of corporate governance, hence, are essential for ensuring the above condition of promotion of good competition and preventing bad monopoly. Innovation and preparation for facing the challenges of new technology are important factors to be taken into consideration while putting the systems of good corporate governance into practice.

Reports on the Observance of Standards and Codes of the World Bank and Key standards of Sound Financial Systems of the Financial Stability Board happen to be the important guiding principles for good corporate

governance systems. The following are the important points for establishing the best-benchmarked practices of corporate governance among all corporations.

1. **Competitive and open markets with principles of transparency and fairness:** Contractual enforcement through fairness and equality is the basic starting point of any institution. Corporations are not exceptions to the above principle. The no-nonsense legal/strict regulatory enforcement of the principles of the rule of law, therefore, becomes the bedrock of such a structure called corporate governance. The key seven factors in this concern are (1)tradition,(2) history,(3) voluntary compliance to the culturally specific business practices of each region, (4) specific rules and regulations, and (5) specific configuration of autonomous compliance systems. However, the above are not exhaustive conditions. In certain countries, strict rules and regulations are replaced by voluntary codes of conduct and compliance.

2. **The togetherness of constitutional governance and corporate governance:**

The government cannot absolve the responsibility of supervising and regulating the affairs of the corporation through implementing the rules and regulations regarding corporate governance as well as compliance with all elements of corporate law. The basic responsibility of the government is to maintain the integrity of the markets and maintain of efficiency of the economic performance of the overall economy. Incentivising in better compliance methods is one of the time-tested processes of maintaining market integrity coupled with economic efficiency. The rules and regulations that govern corporate law should align with the rules and regulations that constitute constitutional governance. Without seamless coordination among various regulatory agencies, neither constitutional nor corporate governance is possible. Due diligence and reality check should always be part of the overall policy framework to see that implementation of the rules are not impeded by unrealistic ambitions or projections by maverick methods. Wanton dishonest behaviour should be punished at the earliest. Division of labour and efficient allocation of duties among all regulators without interference or overlap is needed for the purposes of better coordination. Visible dichotomies between principles of corporate governance and other vital links with environmental/ human rights considerations need timely resolution.

3. **Coordination among stock market regulation and effective corporate governance institutions:**

Stock markets should not be allowed to go in a contrary direction to the basic principles of corporate governance. In the name of better functioning of the stock markets, the principles of corporate governance should not be neglected in implementation. It must be realized that in the long run, the stock market and corporate governance are two sides of the same coin. History is replete with examples where questionable practices of manipulation were resorted to for better stock prices and the cost of corporate governance, the corporations invariably become victims of fraud and penal action. Empowerment of the regulatory functioning and implementation of the rules for enforcement are the two essential requirements for corporate governance to function effectively in any corporation. Trade union politics should not be allowed to interfere in the vital aspect of corporate governance.

4. **Equality among all types of shareholders and non-discrimination towards minority/foreign shareholders:**

Without equality among shareholders, the very concept of the corporation will be questioned. While the quantity of shareholding is an important aspect, the basic rights of even a single shareholder is equal to the basic fundamental rights of any citizen of the country. While it is not possible to have the voice of each and everyone through the so-called democratic opinion formation system, the voice of any minority shareholders should be equally respected as that of a majority shareholder, especially in the issues that concern the vital aspects of corporate governance. The right and the duty of the shareholder become one

when matters of approval for the auditors, nomination for the board members, pledging of the shares, mergers and acquisitions, starting of the new plants, etc are concerned. The confidence of each shareholder is reflected in the idea of being protected from issues or misappropriation by the vested interests of the value of his share in the corporation. This confidence is reflected in the share price as well as the options of litigation insofar as the affairs of the shareholder's management are concerned. The following five rights are extremely important for each shareholder. They are as follows.

1. Registration of one ship methods in security.
2. Process of transfer of shares and conveyance.
3. Respect for the Right to information on the affairs of the corporation in a timely and regular manner.
4. Unequivocal exercise of participation in voting on all the issues related to general shareholder meetings. And
5. Right to exercise the opinion in either election or removal of any or all members of the board of directors.

The other rights of the shareholders include their right to approve the decisions regarding statute amendments of the corporation or changes in the articles of association, approval for authorization of shares in additional numbers, and any transactions in extraordinary circumstances. The right to question the decisions of the board and the duty to have the correct answers to such questions is the fundamental right and duty of any shareholder irrespective of the quantity of the shares that he holds. Each shareholder has the right to know about the remuneration being offered to the board members and key executives including the Chief Executive Officer/Chief Financial Officer. The principles of corporate governance call for the removal of roadblocks and other impediments to ensure the cross-border voting of all the shareholders in respect of the place they reside.

Conflict of interest in all transactions including the vendor supplier transactions should be carefully addressed so that doubt should not be there in questioning the integrity of any transaction. Institutional investors need to be protected, since the new process is that many institutional investors also participate in corporate governance through mutual funds. The shareholder direct engagement should not be confined to only shareholder meetings but also should have other channels like direct contact and dialogue with the board of directors and as well as the officials of the Management. A new concept of stewardship codes came into existence recently to ensure the voice of institutional investors being reflected in the decision-making of corporate governance aspects. The institutional investors have ever, need to disclose their fiduciary role in so far as the exercise of their ownership rights with due consideration to cost effectiveness is concerned. Disclosure of the institutional investors should also cover the process of the management of them insofar as the material conflicts of interest with the corporations in which they have invested are concerned.

Under no circumstances, insider trading and place of the market should be encouraged in the name of protection of rights of shareholders either of individual capacity or of institutional capacity. The reforms in the stock market are also part of the corporate governance mechanism and hence, stock markets must have the capacity to provide efficient and fair discovery of the price to prevent measures that curtail effective corporate governance systems.

5. Protection of the rights of stakeholders :

Stakeholders are different from shareholders as they take care of not only the stock-market price of return on the capital but also of the concern for sustainability, environmental protection, job creation in society, and

overall Wealth creation. A balance between human and physical capital always is a welcome measure. The optimum role of investors, workers, vendors, customers, clients, suppliers, and government authorities is the first essential requirement for the sustainability of any corporation and the establishment of principles of corporate governance in any corporation. A movement is on the anvil to recognize the rights of the earth as the fundamental right of the earth and human beings and others will reside therein. It is essential to redress the grievance of any stakeholder on a top priority and not to compare the interest of stakeholders versus the interest of shareholders. The happiness of the workers is the antidote to the attrition and hence workers involvement in the management is desirable. The most probable ways to ensure the participation of workers in the management are as follows.

1. The representation of the workers in the Board of Directors.
2. Establishment of councils of workers.
3. Implementation of the international conventions recognizing the right to information of the workers.
4. Constant effort for negotiation in consultation with the workers
5. Constant performance review and skill promotion mechanisms.
6. Workers' stock ownership plans.
7. Profit-sharing mechanisms.
8. Pension commitments.
9. Independent fund establishment.
10. Trusty board establishment.
11. Management of the funds for all the beneficiaries.
12. Access to relevant, sufficient, and reliable information.
13. Whistleblower protection.

The availability of an efficient and effective framework of insolvency proceedings as well as enforcement of the rights of the creditors is also part of the corporate governance framework. Transparency and disclosure of relevant material information on a timely basis is part of corporate governance.

6. Transparency in ethical dissemination of information:

Dissemination of information at the right time in the right quality and quantity is essential to understand and analyse the functioning of the corporation on a quarter-to-quarter basis. All stakeholders are entitled to access to this information to take part in corporate governance matters to see that the bundle of information that the corporation has, is the real strength of the corporation and not its weakness. Monitored by the markets including the economic journalists as well as the TV channels that report the financial matters, this quarter-to-quarter information is the pilot before the annual disclosure paraphernalia that happens as per law every year. A truthful and timely disclosure displays the health of the corporation and attracts interest in investment opportunities through Foreign Direct Investment (FDI). The reliability of the information on the compatibility with the peer groups is reflected in the price of the stock of the corporation. Insufficiency of information reflects weaknesses and is pregnant with possible corporate fraud in the future. Enron is the worst example and is a case in point. Proper and prominent disclosure enables correct understanding and comprehension of the structure and function of the corporation and also informs the implementation of the corporate policies

and self-assessment insofar as the performance of the corporation within the time limit is concerned. The following are the most important aspects on which transparency and ethicality should be reflected in reporting. They are as follows.

1. The operational and financial numbers of the company in the following quarter and comparison with the previous quarter.
2. The relevant information regarding the aims of the corporation and the non-financial aspect of the corporation's functioning.
3. The recent changes in the major shareholder ownership pattern, the inclusion or exclusion of the beneficial or non-beneficial owners, and the change in the pattern of voting rights.
4. The changes in the remuneration of any new or old members of the Board of Directors and also any joining of the important functionaries including Chief Information Officer or Chief Executive Officer or Chief Financial Officer or Chief Legal Officer or internal audit experts or any other expert hired.
5. Relevant information about the qualifications of any new members of the board who would recently join, their declared qualifications, the process of their selection, their relationship with other company directorships, and whether there is any conflict of interest and a note about the independence of the so-called Board of Directors.
6. All relevant data regarding third-party transactions including the so-called consultants hired by the management or any member of the Board of Directors.
7. The possible protection of the risk factors and the ways and means of facing the same.
8. Effect of the legal hearings and the decisions pending in the courts of law including the National Company Law Tribunal.
9. Detailed analysis of extraordinary achievements or faults that the corporation underwent from the previous quarter to the current time of assessment.

The dissemination of information must be structured and should not be left to the discretion of the presenters. Performance of the internal audit by expert outsiders is essential to prevent the connivance of the Chief Financial Officer with favourite auditors in hiding the relevant facts from the scrutiny of both the shareholders and the stakeholders and also the government and military agencies. The infamous Lehman Brothers case in the US is a case in point.⁹As far as possible, “Core Principles of International Forum of Independent Audit Regulators (IFIAR)” should be followed. The internal auditor performance should be followed up by an external auditor performance to be recommended by an independent committee or any committee directly appointed by the body of the shareholders meant for that purpose. “Standards of auditor independence should establish a framework of principles, supported by a combination of prohibitions, restrictions, other policies and procedures, and disclosures, that addresses at least the following threats to independence: self-interest, self-review, advocacy, familiarity, and intimidation”.¹⁰The accountability of the auditors is towards shareholders and hence the professional bodies of the auditors should be careful in preventing any possible fraudulence conniving activity. In India, the SATYAM fraud case is a case in point.

There shall be no conflict of interest among the directors/members of the Board of Directors with the aims and objectives of the corporation in which they are serving. The Board of Directors is supposed to provide leadership to the company/corporation and also to exercise supervision on the functioning of the key management officials at the top and see to it that the principles of corporate governance are followed both the letter and spirit. The board of directors is accountable to all stakeholders and not merely to the shareholders.

There shall be failed treatment of all shareholders and stakeholders on a minute basis and a case-to-case basis and no special attention should be paid to shareholders or any part thereof.

The superintendence, direction, and control by the Board of Directors:

There is no single structure or function expected of the so-called Board of Directors which fits all the corporations within the country or the same corporation within many countries. The competition, the structure, and the functioning of the Board of Directors vary according to the necessity of the situation. The non-executive members often are called the supervisory board while, the executive members are called the Management board. In some countries, there are boards that are called unitary or special non-executive boards. Being placed at the Pyramid of the corporation, the BOD (Board of Directors) is expected to monitor the performance of the managerial functioning, ensuring adequate return for the shareholders, and also managing the conflicts of interest of different branches of corporate functioning and intervening in seeing that there is optimal resource allocation in terms of budget allotment two different branches of the corporation. The Board of Directors is expected to always function for the sustenance and survival of the corporation and should ensure that the corporation complies with the law, pays the tax dues on time, lives up to the challenges of competition, ensures the welfare of the labour, compels the compliance towards the environmental protection measures, ensures the healthy and safe practices of maintenance within the corporation and also strive for the fulfillment of the broad principles of CSR, namely Corporate Social Responsibility. The following are the essential duties of the Board of Directors. They are as follows.

1. Action on a fully informed basis and with good faith and due diligence.
2. Fair treatment to all shareholders on the principles of equality and equity.
3. Maintenance of the highest ethical standards
4. Protection of the interest of all stakeholders.
5. Timely review and intervention in case of necessity of corporate strategy.
6. Making major plans of intervention risk management and action
7. Helping in the preparations of policies and procedures and making of the annual budget and optimal allocation of resources.
8. Quantifiable performance objective making.
9. Structure of the new tools in monitoring the implementation and indexing the corporate performance for proper guidance in a transparent and effective manner toward all stakeholders including the employees, suppliers and consumers.
10. Direct supervision of the major capital expenditure and also the process of cross-border or domestic mergers and acquisitions and the de-mergers, if any.
11. Intervening for the effectiveness of the governance functioning within the corporation and also suitably making the changes as and when required.
12. Recruitment, training, recommendation of the compensation, monitoring the performance, of the key functionaries and executives of the corporation.
13. Planning for the succession of the Chief Executive Officer/Chief Financial Officer/Chief Legal Officer.

14. Optimizing the remuneration of both the members of the Board of Directors as well is the key Chief Executive Officer and other important functionaries of the management.
15. Monitoring the performance of themselves in terms of ensuring a transparent working and clear dissemination of information of the decisions taken through proper record maintenance and proper disbursement of information walls stakeholders and ensuring transparent election process within the functioning of the Board of Directors.
16. Prevention of misuse of corporate wealth or corporate assets by vested interests and prevention of corruption
17. Maintenance of the highest ethical standards in accounting and auditing functioning of the corporate financial reporting systems
18. Development of optimal index system for risk management, financial and operational control management, compliance with the law and relevant standard management.
19. Ensuring a correct and truthful system of public relations officers and truthful information without suppression and manipulation.
20. Exercise truthful and independent judgment on all matters of corporate decision-making.

Corporate justice and corporate governance:

Corporate justice is an unusual term and it needs to be understood in the context of corporate governance and corporate law. In the context of the global trends of the economy, corporate justice becomes transformative corporate justice.

Transformative Corporate Justice:

Environmental, Social, and Governance (ESG) goals coupled with Sustainable Development Goals are equally important to the present day Corporation, compared to profit making of the shareholders. Transparency and accountability are expected to be built within the daily operation of any corporation to secure positive social change concerning the employees as well as the environment. There is, hence a shift in the focus of the corporations from the traditional approach of making a profit to the modern approach of corporate responsibility and justice through better systems of corporate governance and the following principles namely,

- A). Comprehensive, multidimensional, integral, and total responsibility that goes beyond mere filing of legal compliance reports to the enforcement authorities. This responsibility includes the responsibility to cover environmental protection while avoiding environmental pollution, Justice to employees, and contributing to the betterment of the local community.
- B). Positive Impact on the environmental and social milieu, by promoting measures to reduce the emissions of carbon pollutants, investing in the health of employees through favourite labour measures, and promoting skill development among the local needy communities.
- C). Working for the welfare of customers, consumers, communities, employees, and investors and promoting stakeholder interests broadly.
- D). Taking measures for sustainability in the long term and avoiding the measures for profitability in the short term and being constantly aware of the need for restitution and correction.

E). Encouraging efforts for Transparency and Accountability throughout the corporation and always ready to accept the responsibility and also the onus for calibration and restitution.

F). Refusing to be status-quo in the comfort zone, corporations encourage efforts for Innovation and Adaptation to creatively undertake of all response mechanisms to meet the challenges of society such as global warming and the digital divide.

G). Working for the rights of the earth, truly implementing in letter and spirit of tasks related to the broader concept of corporate social responsibility and corporate governance.

H). Internal motivation towards self-actualisation and making every employee proud of its mission and vision statements towards working for the benefit of all, connected with the corporation, within and without.

Transformative Corporate Justice is not confined to the legal limitations of corporate social responsibility as imposed by the law. It is a drive from within that can be seen as a signature of what the company/ Corporation does on a routine basis. It is a genuine concern towards the employees, consumers, customers, suppliers, regulators, local community, and society in general. Transformative Corporate Justice, hence, has the inbuilt capacity to enable the corporation to remain sustainable in the long run and to contribute to the global community as an asset. Employees are the first internal customers of the Corporation and are respectful of the virtue of transformative corporate justice. Corporations that adopt transformative corporate justice will remain creative and traverse toward creative corporate justice ultimately. Transformative Corporate Justice personifies the concept of justice as fairness for all.

Conclusion:

In the light of the above discussion, it becomes clear that to achieve the real implementation of the principles of corporate governance in the corporate arena, the principles of transformative corporate justice have to be implemented from top to bottom so that corporate governance in its true spirit and letter remains is a reality to function for the sustenance of the corporation, not only for the interest of all stakeholders but also for the interest of the entire society. The real coordination between constitutional governance and corporate governance thus can be possible through the principles of transformative CORPORATE JUSTICE.

Abstract:

Lex est dictamen rationis.¹¹Corporate Law is an extension of the Law in the Corporate World and is expected to be reasonable, justice, and fair Law Lomond of the justice sovereign and needs to be positive in establishing principles of governance. Corporate Governance, hence, is an extension of the Core Concept of Governance, as mentioned in the Constitution of the Country, the highest and supreme Law. Justice as fairness is the vital principle of the Rule of Law. Transformative Corporate Justice connects the Corporate Law to all Stakeholders of Corporations through strict enforcement of the principle of Corporate Governance without commitment to the principle of Transformative Corporate Justice, Corporate Governance remains as a mere slogan, giving scope for manipulation, fraud ultimate disappearance of the Corporation itself.

Keywords: Transformative Corporate Justice, Corporate Governance, Rule of Law, Stakeholders, Principles.

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