

The Process and Expansion of Corporate and Commercial Law: A Review

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Abstract – Current Indian corporate law not just speaks to a critical takeoff from its pilgrim causes, however the difference between Indian law and English law as they have created since freedom has been expanding. While the Indian lawmaking process enjoyed close cross-referencing of English legal arrangements amid the provincial time frame and quickly from that point, the more contemporary legislative reforms pay inadequate respect to corporate law in the starting point country that at first molded Indian corporate law. This paper offers an examination of the framework utilizing a corporate law and governance system, and finds the presence of a few institutional, economic, political and social factors that prompted its rise and vanishing.

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INTRODUCTION

Ordinary scholarship in corporate law attributes the starting points of governance level headed discussions to the original work of Berle and Means (1932). Through an investigation of US corporations amid the period in the vicinity of 1880 and 1930, they inferred that there is a "partition of ownership and control" in which the individual enthusiasm of shareholders is made subservient to that of managers who are in control of an organization. Because of the dissemination in shareholding, the shareholders can't screen the managers, as generally scattered shareholders need adequate financial incentives to intercede straightforwardly in the undertakings of the organization. Left unchecked, the managers may manhandle their situation by acting to their greatest advantage as opposed to the interests of the shareholders, which they have a duty to advance. A significant part of the exertion in corporate law throughout the years has been to address the office problem¹ amongst managers and shareholders as distinguished by Berle and Means, in any event in nations where diffused shareholding is the standard. While the field of corporate governance has seen generous advance, there is much to advance.

And no more essential level a corporate governance issue emerges at whatever point an outside financial specialist wishes to practice control uniquely in contrast to the administrator accountable for the firm. Scattered ownership amplifies the issue by offering ascend to irreconcilable circumstances between the different corporate claimholders and by making an aggregate action issue among investors (Armour and Whincop, 2007).

Most research on corporate governance has been worried about the determination of this aggregate action issue. Five elective components may relieve it: (i) halfway grouping of ownership and control in the hands of one or a couple of substantial investors, (ii) threatening takeovers and intermediary voting challenges, which focus ownership as well as voting power briefly when required, (iii) designation and convergence of control in the board of chiefs, (iv) arrangement of administrative premiums with investors through official pay contracts, and (v) unmistakably characterized guardian obligations for CEOs together with class-action suits that either piece corporate choices that conflict with investors' interests, or look for remuneration for past actions that have hurt their interests.

In this overview we survey the hypothetical and experimental research on these five primary systems and examine the fundamental legal and regulatory institutions of corporate governance in various nations. We examine how extraordinary classes of investors and different electorates can or should take part in corporate governance. We additionally audit the near corporate governance writing.

The commercial sector of a developing country is dynamic in nature and advances much of the time. Indeed, even the smallest change in government strategies triggers a dimensional move in the commercial business sector. The sector requires an adjustment of the activities and endeavors of different groups of people associated with that territory, i.e., a straightforward commercial policy change may require experts, for example, bankers, lawyers, investors, and so on to change their practices and adjust to the new standards of the market. This may additionally require new

contestants (specific people) in the commercial sector as the sector develops exponentially and broadens similarly well (Carney, 2008).

As it occurs in all social orders, officially settled and working regions of laws tend to assume a lower priority upon the development of more current territories of laws which law tends to center around all the more; contemplating, characterizing and immersing the subject inside its ambit. The primal contrast between effectively settled laws and the up and coming territories is that the officially settled and all around settled zones of law simply require minor upkeep as there exists a stone strong establishment which just should be adjusted now and again. While, in the more up to date regions, active statute is important to build up the subject ground up.

The NDA government carried with it a progression of policy changes, particularly in the financial and commercial sector like loose FDI standards, significant tax upgrade (both; immediate and aberrant), bankruptcy laws, demonetization of High Denomination Notes, amendments in bilateral investment treaties and so on which directly affected the commercial sector. For commercial lawyers, this gives a plenty of chances to investigate and extend their practices in the commercial sector. The course reading case in property and service matters offers approach to practice in rising and more specialized fields, for example, insolvency practitioners, taxation, investment, online business and commercial intervention.

Insolvency Practitioners-According to the World Bank reports, it goes up against a normal, 4.3 years (in 2016) for an insolvency process to finish in India. The insolvency process is around two times the world normal of 2.55 years (in 2016). There are right now numerous statutes that arrangement with insolvency and bankruptcy laws which prompt pointless postponement and complexities. Along these lines, to encourage this process of insolvency and to unite all laws under one code, a standout amongst the most vital legislations of 2016, particularly for the commercial field, the Insolvency and Bankruptcy Code, was informed on 28th May 2016. This code is gone for the insolvency of corporate substances like organizations, association firms, and so on in a speedy way. It was especially gotten keeping mind the 'simplicity of working together's positioning in India (which is at present, 130 out of 189 nations) with a plan to build up the bankruptcy foundation in India, resolve bankruptcies in a period bound way and along these lines, enhancing the rankings. Besides, it will help take care of the issue of Non-Performing Assets (NPAs) that frequent general society banking sector. Institutionally, the code prompts the arrangement of the Insolvency and Bankruptcy Board of India (IBBI), Insolvency Professional Agencies, Information Utilities, and so on. The process of insolvency and liquidation would

require Insolvency Practitioners, and this road turns out to be presumably the most engaging rising region for commercial lawyers. According to the last regulations of the administration, experts like organization secretaries, contracted bookkeepers, lawyers, and so on practising for ten years can apply for getting to be Insolvency Practitioners by clearing a 'restricted insolvency examination'. Concerning experts with less than ten years of experience, a 'national insolvency examination' would be led and the qualified people would be named as Insolvency Practitioners. Note that the IBBI is required to be practical from first December 2016 and subsequently, this road isn't just engaging yet in addition practically around the bend (Avilov, et. al., 1999).

Taxation Lawyer-Taxes influence every single individual somehow or the other. Taxes are essentially isolated into two kinds: coordinate taxes and roundabout taxes. Coordinate taxes will be taxes that are straightforwardly paid to the administration. These incorporate taxes, for example, Income tax, Corporation tax, and so forth. Circuitous taxes are collected on the manufacture or offer of merchandise and ventures. These are at first paid to the legislature by a middle person, who at that point passes on to the purchaser. In this way, the buyer in a roundabout way pays these taxes. These incorporate taxes, for example, Service tax, Value Added Tax, Excise duty, and so forth. The taxation policy of India is experiencing a noteworthy upgrade, and hence, this field of commercial law gives another chance to the lawyers to investigate. The roundabout tax administration, as well as even the immediate tax administration is required to change totally in the circumstances to come. The hailed Goods and Services Tax is most likely the greatest accomplishment of this administration since accepting force in 2014. The Goods and Services Tax is relied upon to be exacted beginning first April one year from now. This tax would be a thorough roundabout tax exacted on the manufacture, deal and buy of products and ventures and will subsume all aberrant taxes and along these lines, would prompt a change in perspective in backhanded taxation. Further, the proposed Direct Tax Code, if tabled in and acknowledged by the Parliament, will reform the immediate tax administration in the country which is as of now administered by the Income Tax Act, 1961. This is another purpose behind investigating the taxation field. Combined with these two tax reforms, is 'the surgical strike on dark cash' – Demonetization of high category notes which will undoubtedly prompt umpteen clashes in regards to the burden of taxes and punishments on saved cash. Moreover, the legislature is excited about investigating and altering India's tax treaties with different nations to fill the lacunae. The administration has officially revised treaties with Mauritius, South Korea and Cyprus and plans to do

as such with different nations also. Accordingly, every one of these approaches (and significantly more to come) will affect taxation, either specifically or by implication and in this manner, would open huge open doors for the current taxation lawyers or new participants to extend their customer base and business.

Investment Lawyer-The Department of Industrial Policy and Promotion (DIPP), on seventh July 2016, discharged another Consolidated Foreign Direct Investment (FDI) policy. The policy goes for making India more financial specialist cordial. This policy, bury alia, permitted up to 100 for each penny FDI (under government endorsement course) to trade, through web based business, in regard of nourishment items and manufactured or delivered in India, up to 74 for each penny FDI (under programmed course) and up to 100 percent FDI (under government endorsement course) in Brown Field pharmaceutical endeavors, up to 100 for each penny FDI in India-based aircrafts and existing airplane terminal activities, up to 100 for each penny FDI (under government endorsement course) in resistance, up to 100 for every penny FDI (under programmed course) in communicating carriage services and so forth. All these FDI changes and different relaxations specified under the Consolidated FDI policy go for making India an attractive FDI goal. This likewise gives an open door for lawyers to investigate the region of remote investment. Besides, the administration is excited about looking into Bilateral Investment Treaties (BITs) with nations. Its BIT with the Netherlands is to lapse this month while; the BITs with other EU individuals are to terminate inside two years. All things considered, these measures will guarantee a plenty of roads for an investment lawyer (Bartlett, 1994).

Internet business India is as of now experiencing computerization, with nearly everything being digitalized. Right from the development and extension of Knowledge Industries, Information Technology, and so forth to economic rebuilding, everything prompts a similar conclusion, i.e., Internet is what's to come. The NDA government is enthused about modernizing the country with better and far reaching web availability, investment in data technology with projects, for example, Startup India, Digital India, and so forth., reforming the Indian economy in accordance with internationalization with projects, for example, Jan Dhan Yojana and with strategies, for example, demonetization so as an endeavor to change the economy to a cashless economy. Since everything is being exchanged to the online world; it is likely the greatest road for the commercial lawyers. Moreover, the zone of E-contracts is regularly developing, with a large portion of the physical stores going on the web and in addition customers liking to transact on the web. A joint report by ASSOCHAM and Grant Thornton recommends that the online customers will increment

from 20 million (in 2013) to 40 million (in 2016). It additionally predicts a compound yearly development rate (CAGR) of 63 percent to reach \$8.5 billion of the E-commerce market in India (in 2016). What these measurements recommend, is that there is a positive pattern (and degree) with respect to the E-commerce market in India and resultantly, countless open doors for commercial lawyers.

Commercial Arbitration-This other debate determination (ADR) instrument is presumably the most utilized system in commercial question, be it household or international. For quite a while, ADR was not given due noteworthiness in our country. To deliver commercial concerns and to urge people to decide on intervention, the Arbitration and Conciliation Act, 1996 was acquired. It went for fast and effective question determination, yet it didn't live up to its desires as remote investors and organizations dependably had their questions with respect to the Indian legal framework. Resultantly, the favored seat in an international question was dependably a debating point and typically wound up being a built up global intervention focus like England or Singapore. To add to this, delays and certain dubious choices by the Indian legal has coordinated eyes of the global commercial group on the development of assertion laws in India. Remembering the greater part of that, amendments were presented in the act and thus, the Arbitration and Conciliation Amendment Act, 2015 was brought into compel. The progressions s brought pointed further at speeding up the method and in addition guaranteeing the autonomy and fair-mindedness. All things considered, it is an endeavor further to convey the Indian intervention up to the sign of International gauges. Besides, the Government of India is focused on making India a global mediation center. For this, NITI Aayog additionally composed a program called 'National Initiative on Strengthening Arbitration and Enforcement in India' from October 21 to October 23, 2016. Subsequently, International commercial discretion is a promising territory for the commercial lawyers to investigate.

The commercial sector gives the most extensive scope of chances to the lawyers, likely more than some other field of law. It requires a high level of specialization and along these lines, the decision with respect to the specific territory of commercial law is vital. Nonetheless, it is likewise a standout amongst the most unique fields and in this manner, gives new and up and coming territories to investigate on numerous occasions (Birla, 2009).

CORPORATE LAW FOLLOWING INDIA'S ECONOMIC LIBERALIZATION

In 1991, the Government presented a string of policy measures to address the predominant economic circumstance. By method for economic liberalization, they were proposed to support business activity and

outside investment in India. These measures incorporated the decrease of industrial authorizing just to a little scope of ventures, allowing organizations to uninhibitedly issue capital with no confinements, and continuously opening up different sectors for outside investment. This new economic viewpoint normally set off a huge number of changes to corporate law in India, which worked on various fronts, including (i) amendments to the Companies Act, 1956, (ii) acquaintance of securities legislation with advance the stock exchanges, and (iii) reception of particular measures to improve corporate governance. I analyze the impact of every one of these endeavors independently (Khanna, Tarun and Yishay Yafeh (2007).

1. Amendments to the Companies Act, 1956

Amid the liberalization time frame, the key changes were the adaptability acquainted with organizations to raise and in addition to rebuild capital. This was proposed to empower Indian organizations to attract investments, especially from remote investors. For instance, Indian organizations were permitted to issue imparts to differential rights as to profit and voting. Similarly, ideas, for example, worker investment opportunity and sweat value that were by then regular in the U.S. presently got statutory acknowledgment in India. A capital upkeep administration that had already been amazingly stringent was casual to allow organizations to purchase back their own securities. These measures had the impact of changing this territory of Indian corporate law more towards laws from different purviews (e.g. Delaware law), with less accentuation or cross-referencing to the English arrangements.

2. Reforms in Securities Regulation

Preceding 1992, India took after the merit-based regulation of securities offerings. Companies expecting to offer securities to people in general were required to get the endorsement of the Controller of Capital Issues, an administration body, which would particularly affirm every open offering and its terms, including the cost at which shares were to be offered. Due to the broad legislative oversight that escalated amid socialist period and the resultant unreasonable stringency in getting to the capital markets, open offering of offers by Indian organizations was not that common.

3. Corporate Governance Measures

In the 1990s, SEBI quickly started introducing corporate governance reforms and also a measure to attract remote investment. Inquisitively, the primary corporate governance activity was supported by industry. In 1998, a National Task compel constituted by the Confederation of Indian Industry ("CII") prescribed a code for "Alluring Corporate Governance," which was intentionally embraced by a

couple of companies. Here, we witness the re-emergence of the English developments as an impacting factor in light of the fact that the CII Code was to a great extent in view of the Cadbury Committee report issued in the U.K.

Amid the liberalization stage, impressive endeavors were likewise made to survey the arrangements of the Companies Act, 1956 given that it had experienced critical change throughout the years and had perhaps outlasted its pertinence and utility. There were requires another organizations' legislation. After almost too many years of open deliberation, the new Companies Act, 2013 was enacted that introduced an altogether new period in Indian corporate law (Petra Mahy, 2003).

CORPORATE FINANCE AND CAPITAL STRUCTURING

I start this sub-part by investigating the advancement of the law identifying with the value finance in India, and how that contrasts and the pioneer time and additionally resulting developments in England. Here, I find that India has made goliath walks in acquainting adaptability with organizations when contrasted with the frontier time frame, and has additionally generously kept with developments in England in this field (in spite of the fact that the law in India keeps on being to some degree more prohibitive than England). This mostly clarifies the dangerous development of India's value capital markets in the course of the most recent two decades since liberalization.

A mix of organization legislation and securities regulation built up a helpful system for securities offerings in the Indian markets, which allowed offerings of the sort perceived internationally. The acceptance of regulatory obligations by SEBI in 1992 brought about an entire move from fixed-price offerings to book-built offerings. Under this administration, organizations are allowed to welcome offers from investors inside certain characteristic points of confinement based on a draft plan that contains all the essential exposures. Estimating through regulatory mediation offered route to a market-based value revelation process. This empowered organizations since the mid-to-late 1990s to bring billions of dollars up in capital through open offering of offers and went with listings.¹⁹⁶ These factors set off an emotional move in the Indian capital markets, especially on the primary-markets front.

SEBI's accentuation on disclosure-based regulation has seen a multiplication of revelation standards for different kinds of capital raising activities by Indian organizations. In the course of the most recent two decades, SEBI has slowly extended the exposure standards and plan prerequisites, coming full circle in the by and by material SEBI (Issue of Capital and

Disclosure Requirements) Regulations, 2009 (the "ICDR Regulations"). The ICDR Regulations contain point by point divulgence necessities to be followed by organizations undertaking different kinds of securities offerings. For open offerings, the ICDR Regulations are prescriptive and envelop divulgences relating to the business, dangers, legal issues, capital structure and even the controlling shareholders and different substances inside the gathering in which they hold shares. The necessities in the ICDR Regulations are onerous to the point that the exposures required to offer impact to an open offering in the Indian markets are equivalent (or potentially even far surpass) those required in most created markets. The direction took after by SEBI over the most recent two decades shows the significant idea of exposure as an apparatus for securities regulation in the essential markets (Katharina Pistor, et. al., 2002).

Be that as it may, with regards to capital support, corporate law in India keeps on being genuinely prohibitive in nature. For example, organizations are as yet required to take after the idea of approved capital and standard value of offers. The ideas that were implanted into Indian corporate law amid the frontier time frame were expected to offer some type of creditor-protection. Be that as it may, these have since outlasted their utility, as they had no relationship with the genuine value of the organization that was of more noteworthy worry to its lenders. A few Western locales have either not been following these necessities, or have been tailing them somewhat. Indeed, even a portion of the previous provinces of the British Empire have since moved far from these to some degree bygone prerequisites. Despite the fact that Britain and some of its states have relocated far from the ideas of approved capital and standard value of offers that were viewed as a type of creditor-protection in the provincial period, India has stayed married to this idea, wherein no reform was proposed notwithstanding amid the latest process of enacting the Companies Act, 2013.

SOURCES OF CORPORATE LAW

All jurisdictions with very much created market economies have a minimum one center statute that sets up a fundamental corporate shape with the five characteristics portrayed above, and that is designed especially to allow the development of open corporations—that is, corporations with uninhibitedly tradable offers. Nevertheless, corporate law as we comprehend it here generally expands well past the limits of this center statute (Rungta, Radhe Shyam, 2000).

1. Exceptional and halfway corporate structures

To start with, significant purviews normally have no less than one unmistakable statutory frame particular

for the arrangement of shut corporations. These structures—the French SARL, the German GmbH, the Italian Srl, Japanese close corporation, the American close corporation and (later) restricted obligation organization, and the UK private company⁴³—ordinarily show the greater part of the canonical highlights of the corporate frame. They contrast from open organizations mostly in light of the fact that their offers, however transferable at any rate on a basic level, are assumed—and now and again required—not to trade uninhibitedly in an open market. In some cases these structures additionally allow takeoff from one of our five center characteristics—assigned management—by allowing disposal of the board for coordinate management by shareholders. The statutes making these structures likewise ordinarily allow, and here and there encourage, unique allotments of control, profit rights, and rights to work among shareholders that go past those allowed in the center open corporation statute.

Second, a few purviews have, notwithstanding these uncommon shut corporation shapes, semi corporate statutory structures that can be utilized to frame business corporations with the majority of our five center characteristics, however some of these characteristics must be added by contract. One illustration is the constrained obligation organization, which has been accommodated as of late in the law of the U.S. furthermore, some European purviews. This frame essentially joins restricted obligation onto the customary general association. U.S. law now enables the organization to have something near solid shape substance protecting (by restricting the rights of accomplices or their leasers to constrain liquidation).⁴⁵ Consequently, with fitting governance arrangements in the association agreement, it is successfully conceivable to make a shut corporation as a restricted risk organization.

2. Different bodies of law

There are bodies of law that, in any event in a few locales, are epitomized in statutes or decisional law that are separate from the center corporation statutes, and from the extraordinary and semi corporation statutes simply portrayed, yet that are nonetheless worried about specific center characteristics of the corporate frame as we characterize them here. Seeing that they are so concerned, we see them practically as a feature of corporate law.

To start, the German law of groups, or Konzernrecht, qualifies restricted obligation and limits the attentiveness of boards of executives in corporations that are firmly related through cross ownership, trying to secure the loan bosses and minority shareholders of corporations with controlling shareholders. In spite of the fact that the Konzernrecht—depicted in more detail in Chapters 5 and 6—is epitomized in statutory and decisional law that is formally unmistakable from

the corporation statutes, it is plainly an essential piece of German corporate law. So also, the statutory decides in numerous locales that require worker portrayal on a corporation's board of executives, for example, prominently, the German law of codetermination—qualify as components of corporate law, despite the fact that they periodically start outside the chief corporate law statutes, since they force a point by point structure of representative cooperation on the boards of chiefs of huge corporations (Khanna, 1970).

COMPANY LAW AND APPELLATE TRIBUNALS

The Indian Ministry of Corporate Affairs has issued a notice for constituting the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT), viable 1 June 2016. The NCLT is a semi legal body that will mediate corporate law issues for organizations in India. Its choices can be spoke to the NCLAT.

The Companies (Second Amendment) Act 2002 as of now gave the legislative system to setting up the two institutions. Be that as it may, their foundation was deferred as a result of open deliberations and discourses about the protected legitimacy of the NCLT. These debates were settled by Madras Bar Association v. Association of India, in which the Supreme Court held that the NCLT was substantial. The court observed that arrangements on the capability of specialized individuals and the creation of the choice board of trustees for those individuals, as endorsed in the Companies Act 1956 and in the Companies Act 2013, were deficient. The Government has presented the Companies (Amendment) Bill 2016 to correct the issue. The bill is pending before the parliamentary standing board.

Under a notice dated 1 June 2016, the Government likewise enacted a few arrangements of the Companies Act 2013 that arrangement with the NCLT's forces. The NCLT will assume control over every single pending case under the watchful eye of the Company Law Board and will discard them as per the arrangements of the Companies Act 2013. Be that as it may, no warning has been issued for arrangements on exchanging the energy of the high courts to the NCLT as for windingup and trade off or game plan. For the present, the ward for these arrangements stays with the high courts.

The NCLT has begun with 11 seats — two at New Delhi and one each at Ahmedabad, Allahabad, Bengaluru, Chandigarh, Chennai, Guwahati, Hyderabad, Kolkata and Mumbai (Tomlinson, 2013).

CORPORATE LAW ENFORCEMENT MACHINERY

Corporate law might be authorized either through the general population enforcement mechanical assembly or through private action. In broad daylight enforcement, the state (or a free regulatory body) starts procedures against asserted violators of corporate law with a view to forcing common or criminal punishments. Private enforcement comprises of legal action by the casualties of bad behavior (who are private gatherings) to recuperate harms or get order by method for a common suit. The "legal causes" strain of writing sets that in customary law nations the legal assumes an essential part in enforcing financial specialist rights, in this way upgrading the value of capital markets. Then again, polite law nations have a tendency to depend vigorously on administrative mediation in managing the capital markets.

In India, amid the pilgrim time frame, there was more prominent accentuation on private enforcement and almost no on open enforcement. This is predictable with the approach in England (which to a great extent keeps on dating) wherein private enforcement assumes a noteworthy part in enforcing corporate law. Nonetheless, starting the socialist stage in Indian corporate law history, the concentration moved rather altogether towards open enforcement whereby the administration acquired broad forces of examination and different types of enforcing corporate law. This approach was strengthened after SEBI's foundation when it acquired critical forces of enforcement (Cheffins, 2003).

It is basic at first become flushed to ascribe the development to India's legal framework through common risk and its enforcement through the legal. This would be predictable with the "legal beginnings" idea of speculator assurance because of India's pioneer legal legacy.

India not just has an adequately hearty substantive law on financial specialist security, yet the free legal framework drawn from the customary law convention takes into account judges to shape the law to suit particular conditions and along these lines adjust to the dynamicity in the capital markets.

CONCLUSION

Indian corporate law started as a legal transplant from England, resulting amendments and reforms have moved it assist far from its source as they have been centered either around discovering answers for neighborhood issues or getting from different jurisdictions, for example, the U.S. To that degree, decolonization has had a critical impact of fundamentally modifying the course of Indian corporate law. In spite of the fact that the move was not clear in the period promptly following decolonization, it started to come to fruition about 10 years from there on. Current Indian corporate

law not just speaks to a huge takeoff from its provincial inceptions, yet the uniqueness between Indian law and English law as they have created since autonomy has been expanding.

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