FOREWORD

I have been a practicing advocate for nearly three decades, during which I have spent almost two decades managing a large corporate law firm. This fairly unique experience has afforded me the privilege of closely observing the evolution of law and legal practice across various sectors and businesses and not just in my limited area of practice which has mostly been M&A and private investments but in various other practice areas that multiple partners at IndusLaw engage in. While witnessing the development of these diverse legal practices over the years has been fascinating, one area that has particularly captured my interest recently is the growth of corporate governance as both a concept and a practice.

In essence, corporate governance generally and in the environment and social sector serves as a metric for evaluating a company beyond its financial performance, revenue and profits. It assesses the overall impact of the company, its business, and its operations on the environment and society, as well as its governance practices concerning various internal stakeholders, such as employees, and external stakeholders, including vendors, suppliers, and customers. As ESG (Environment, Social and Governance) metrics gain prominence, companies and investors are increasingly recognizing their direct influence on the overall financial performance and valuation of the company.

Lawyers and law firms see a spurt in legal work and a growth in their practice because there is some significant shift in the rules or regulations applicable to a certain industry or in the behaviour of individuals, societies or corporates. The rise of ESG has been a happy combination of both changing rules and changing behaviour and attitude.

Although corporate governance has traditionally been presumed to be a responsibility that all companies diligently manage, it has long been approached as a mere formality, focused on ticking boxes and complying with regulation. Only in recent years, has it become an important flag bearer for how a company, or an industry itself is judged. Have poor corporate governance and you are unlikely to have a great reputation or brand value affecting directly the worth of the company. Forget brand value and recognition, such businesses may not even have the status of industry making it difficult for them to access both debt and equity financing from banks, other financial institutions and funds, a critical component for any business to scale and succeed.

On the contrary great corporate governance demonstrated by the company enhances its overall brand and that of its products increasing its value and returns for its shareholders. Enhanced corporate governance have enabled entire businesses to get recognised as an industry and scale. A great example in our country is the real estate business which for long lacked adequate corporate governance and the lack of such governance prevented it from being even treated as an industry which then prevented access to formal and cheap credit through established financial institutions. Once the real estate business got better corporate governance, they have transformed into a high growth industry with several established names and brands today. This positive transformation journey is continuing into smaller cities and smaller players even today.

As already mentioned, importance of ESG has been a factor of both legal changes as also behavioural and attitudinal changes in society. Many legal and policy changes such as those towards electric vehicles, creation of Corporate Social Responsibility mandating a certain percentage of profits to be spent on social causes, SEBI mandates to top 1000 companies by market capitalisation on ESG norms they must comply with have definitely pushed for greater ESG awareness and compliance. Similarly, society generally has been far more judgemental of companies that do not act as a good corporate citizen. Companies that are seen as polluting, that do not take care of the needs of their local communities and space, do not have safe and inclusive work environments have all suffered in many ways including their brand recall, their reputation and their valuations. Investors have shunned such companies and even if they have invested, have valued those companies far lesser than other similarly placed companies but which have greater ESG compliance. Today Investors make it a condition precedent to their investments that companies follow high levels of corporate governance and treat any noncompliance as a breach of their investment terms allowing them to disinvest.

Companies must also take note that their customers are also demanding greater ESG compliance. Consumer choices are moving towards more sustainable and environmentally friendly products. They not only look at the end-product but look at the entire production and distribution chain and the post usage chain in terms of disposal in environmentally friendly ways, recycling etc.

One must not overlook the role of non-governmental organizations in fostering corporate governance, particularly the 'social' aspect of Environmental, Social, and Governance (ESG) criteria within corporate entities. Even today, while companies endeavour to be responsible corporate citizens and contribute to their local communities or society at large, they often face challenges in doing so effectively, as this is not inherently part of their core business or organizational culture. This is where non-governmental organizations (NGOs) play a crucial role, leveraging their extensive experience in assisting communities at large. The funds allocated by companies, whether for Corporate Social Responsibility (CSR) initiatives or to enhance their standing as responsible corporate citizens, become significantly more effective in generating positive outcomes. As corporations increasingly invest in their social responsibility mandates, NGOs will achieve greater scale and competitiveness. The creation of the social stock exchange can further enhance the professional and the corporate governance of the NGOs too which is again crucial for companies to be able to trust and rely on them to put their CSR funds to better use.

I would be completely amiss if I were to fail to briefly talk about the environmental aspect of corporate governance. The environmental damage we are inflicting upon our planet is no longer a concern for the distant future; it is an immediate reality. Global warming is here now, and we have already begun to experience its adverse effects over the past few years, with the severity unfortunately increasing each year. Yet our companies and society in general does not do enough maybe under the mistaken impression that each of us are too small to make a difference. This is an area where I feel the law must do more to push companies to achieve better greening goals. We talk of law being a catalyst for social engineering. Similarly, it needs to be a catalyst for achieving and improving our climate goals. Law and policies are increasingly pushing companies to do more but a lot more can still be done. Until people in India are willing to pay extra for environmentally safer products, companies may not do enough unless the law or incentives or both push them. It is therefore good to see this publication cover some of these aspects as well.

While Indian economy continues to grow at a fast pace, it is particularly important that companies do not lose sight of the governance while they grow apace to keep up with the demands of this fast-growing economy. I have personally witnessed many companies started by young, highly intelligent and motivated founders fuelled by investor money grow so fast that they are unable to put in place any systems of checks needed to ensure good corporate governance. This is of course not due to a lack of will but simply by the speed of growth and lack of experience managing large operations. We need to ensure that the entire eco system consisting of the venture capital and private equity funds, the founders, the lawyers and the accountants all work together along with the law to ensure better governance standards for these trail blazing companies which are doing wonders for our economy. I was happy to see some of these aspects also covered in this publication. Of course, growing fast is not the only reason for lack of corporate governance. Size brings with it, its own challenges especially when you grow so big as to start dominating your market. Such dominance often means that the usual checks and balances that come with competition tend to get reduced. It is therefore important for the law to step in here. I am happy to see an entire chapter dedicated to competition law.

For many of the reasons outlined above, this publication is exceptionally timely. In my view, it should serve two primary purposes. The first is the evident one: illuminating several key topics in corporate governance. The other objective is to assist law students, who will become future members of the bar, the bench, and academia, in contributing their insights to this relatively new concept. This will not only enhance jurisprudence in this area but also foster the development of pragmatic tools to ensure greater adherence to governance requirements, as well as improved mechanisms for measuring such adherence and compliance.

On a personal note, I am optimistic that this edition of RGNUL Student Research Review focussing on governance perspectives in corporate law will also encourage lawyers within IndusLaw to devote more attention to this field. But more importantly I hope that this publication will inspire law students to pursue this topic as a field of practice. Furthermore, I hope this publication will guide and inspire current members of the bar and the bench to dedicate more time and energy to this crucial area, leveraging their extensive experience to advance the law surrounding corporate governance.

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