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## The Role of Globalisation on the Evolution of Corporate Law

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*Corporations have emerged as the backbone of the modern world & in the global community, globalisation & the corresponding burgeoning trade gave rise to the modern corporation as we know it. The current paper studies the emergence of the 'globalization of new advancements,' and the 'evolution of Corporate Governance. The paper further traces the aspects of 'World System' & 'Modernization' theories & applies them in the corporate law context. As a result of globalization, the globe is becoming more linked through the fast interchange of Policies, technology, ideas, products, and services. There isn't a single area in the twenty-first century that hasn't been swept by the globalization storm. Factors such as international law, technology, and other factors have encouraged corporate globalization & helped evolve the corporate landscape. As a result of this economic globalization boom, the scale of global marketplaces, foreign investment, and liberalized country economies have increased & grown rapidly.*

**Keywords:** *corporate law, globalisation, corporate governance.*

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### INTRODUCTION

“Globalisation is a historical process, the result of human innovation and technological progress. It refers to the increasing integration of economies around the world, particularly through trade and financial flows. The term sometimes also refers to the movement of people

(labor) and knowledge (technology) across international borders.”<sup>1</sup> Globalisation has wide connotations, in the most general sense of the concept, it is used to describe economic, social, cultural & political changes that have shaped the world over the past decades.<sup>2</sup> Technology has acted as an immense catalyst for the spread of globalization around the world, Eric Sheppard (2002) in his paper gives an illustration of a remote Guyanan village of Lethem, where weaving women of the village, thanks to the Internet, we're connected to global markets & powerful consumers, which triggered a power struggle for control over the new wealth between the women and village elder, shifting the balance of power in the village.<sup>3</sup> Bevan & Fosu in their paper expounds on this fundamental principle of globalisation stating, first there is the spread or internationalization of technology; which, in itself is an irreversible & irresistible process. This spread has a momentum of its own & slowly but surely causes a policy framework around the new technology to evolve, enabling greater acceptance of the tech.<sup>4</sup> Globalisation thus causes rapid exchange of technologies, ideas, goods, services causing the world to grow more connected. There isn't a single field in the 21<sup>st</sup> Century which hasn't been swept by the storm that is 'Globalization'. This paper studies the effect Globalization has had, on the field of Corporate Law.

## WHAT IS GLOBALISATION? AND ITS ORIGINS

Harvard Business School's Rosabeth Moss Kanter writes, *"The world is becoming a global shopping mall in which ideas and products are available everywhere at the same time."*<sup>5</sup> New York Times columnist & author, Thomas Friedman, the foremost proponent of globalisation states, *"The driving idea behind globalization is free-market capitalism - the more you let market forces rule and the more you open your economy to free trade and competition & the more efficient and flourishing your economy will be."* Globalization refers to the innate human quality of interconnectedness,

<sup>1</sup> 'Globalization: Threat or Opportunity' (*International Monetary Fund*, 12 April 2000) <<https://www.imf.org/external/np/exr/ib/2000/041200to.htm#II>> accessed 26 October 2021

<sup>2</sup> Shalmali Guttal, 'Globalisation' (2007) 17 (4/5) *Development in Practice*, 523-531 <<https://www.jstor.org/stable/25548249>> accessed 26 October 2021

<sup>3</sup> Eric Sheppard, 'The Spaces and Times of Globalization: Place, Scale, Networks, and Positionality' (2002) 78 (3) *Economic Geography*, 307-330 <<https://www.jstor.org/stable/4140812>> accessed 26 October 2021

<sup>4</sup> David L. Bevan & Augustin K. Fosu, 'Globalisation: An Overview' (2003) 12 (1) *Journal of African Economies*, 1-13

<sup>5</sup> Karl Moore & David Lewis, *The Origins of Globalization* (1<sup>st</sup> Edition, Routledge 2009) 13

the spread of ideas & is the ultimate denial of solipsism. Studying the origins & history of Globalization is de regueur, as it sheds light on important factors such as ‘The Logic of Territory’, ‘The Logic of Capital’. Keeping with contemporary views of various scholars, globalisation in a sense began with the movement of the first people out of the African Continent to various parts of the globe, starting from the 3<sup>rd</sup> millennium BC or the so-called Axial Age.<sup>6</sup> However, persistent globalization in the economic sense, the rapid increase in mercantile trade, sharing of culture & ideas kickstarted in the 19<sup>th</sup> Century. The nineteenth-century world experienced a trade boom, with the rise of steamships & the construction of the Suez Canal leading to a reduction in international freight rates.<sup>7</sup> O’Rourke & Williamson (2002) provide further evidence stating, sustained globalisation began starting from the nineteenth century with the emergence of essential factors such as the breakdown of long-standing trade monopolies, a technological revolution that made transcontinental transport of bulk commodities cheap and more accessible. This century is considered the age of *laissez-faire*. The movement of goods, capital, and labour across nations was unhindered. This openness of economies had a direct causality in increasing trade, investment & finance internationally. The period between 1870 & 1913 saw a rapid growth in trade, where the growth in world trade was at 3.9% per annum which was much faster than the growth in world output at 2.5% per annum.<sup>8</sup>

Thus, the progressive international economic integration, increasing international investments, the openness of economies & liberalisation, resulted in a globalisation boom in the latter half of the 19<sup>th</sup> Century. Since the sustained boom of globalization in the 19<sup>th</sup> century, it has gotten stronger & stronger, making the world more connected than it has ever been.

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<sup>6</sup> Andrey Korotayev & Leonid Grinin, ‘Origins of Globalization’ (2013) Academia <[https://www.academia.edu/download/52407571/Origins\\_of\\_Globalization.pdf](https://www.academia.edu/download/52407571/Origins_of_Globalization.pdf)> accessed 26 October 2021

<sup>7</sup> Kevin H. O’Rourke & Jeffrey G. Williamson, ‘When did Globalisation begin?’ (2002) 6 (1) European Review of Economic History, 23-50 <<https://www.jstor.org/stable/41377909>> accessed 26 October 2021

<sup>8</sup> Deepak Nayyar, ‘Globalisation, history & development : A tale of two centuries’ (2006) 30 (1) Cambridge Journal of Economics, 137-159 <<https://www.jstor.org/stable/23601917>> accessed 26 October 2021

## THE EVOLUTION OF THE MODERN CORPORATION & CORPORATE GOVERNANCE

Corporations have emerged as the backbone of modern society & how could they not? The Corporate charter with its enabling characteristics such as alternative legal personality, limited liability, transferable shares, delegated management & investor ownership revolutionised the business world, by cutting down the cost of doing business.<sup>9</sup> With the advent of globalization & burgeoning trade, there was a flurry of businesses popping up all over the globe. In the period from the 1790s to 1860s, an estimated number of 22,419 business corporations emerged in the United States alone.<sup>10</sup> Up until the 1930s, most of these corporations remained relatively small in size, but with the massive globalisation boom, large multi-national corporations were looming large on the horizon.<sup>11</sup> Corporations are so huge, they'd require a team of managers for handling their day-to-day businesses. Here, the modern form of the Corporation was born, effectively separating the ownership from the management of the company.<sup>12</sup> Shortly after, around the 1970s, Corporate Governance first came into vogue in the United States.<sup>13</sup> Cheffins (2012) in his paper explains after the second world war, the U.S. experienced a prolonged economic boom & the American Corporations grew rapidly as a result. Although the size of the American Corporation was increasing, the internal governance of these companies was not a high issue on the corporate agenda. The US Federal Securities & Exchange Commission (S.E.C.) brought the term 'Corporate Governance' on their official reform agenda in the mid - the 1970s, however, it was only adopted in the early 1990s after severe lobbying by the Institutional Investors such as CALPERS (California Public Employees' Retirement System).

Corporate Governance had gone international by the early 1990s and there was a corresponding explosion of research on corporate governance around the world<sup>14</sup>(Denis and McConnell, 2003: 2). By the early 1990s, Corporate Governance codes had emerged in Japan,

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<sup>9</sup> Hansmann H., Kraakman R., Davies P., et.al., *The Anatomy of Corporate Law: A Comparative and Functional Approach* (Oxford University Press 2004) 2

<sup>10</sup> Ralph Gomory & Richard Sylla, 'The American Corporation' (2013) 142 (2) *Daedalus Spring*, 102-108  
<<https://direct.mit.edu/daed/article/142/2/102/26988/The-American-Corporation>> accessed 26 October 2021

<sup>11</sup> *Ibid*

<sup>12</sup> Adolf Berle, Gardiner Means, *The Modern Corporation and Private Property* (Transaction Publishers 1932)

<sup>13</sup> Brian Cheffins, *The History of Corporate Governance* (Oxford Handbook of Corporate Governance, Oup 2012)

<sup>14</sup> Diane K. Jenis & John J. McConnell, 'International Corporate Governance' (2003) 38 (1) *Journal of Financial and Quantitative Analysis*, 1-36

Germany, & the United Kingdom. In 1991, the London Stock Exchange & the Financial Reporting Council in the United Kingdom formed the Committee on the Financial Aspects of Corporate Governance.<sup>15</sup> The committee, chaired by Sir Adrian Cadbury produced the most notable definition of the term, “*the system by which companies are directed and controlled. Further, the committee recommended a list of best practices & obligations to be followed by all listed companies.*”<sup>16</sup> The Cadbury Committee Report & the definition provided by Sir Adrian Cadbury has become the cornerstone of corporate law jurisprudence of several nations. A Financial Times columnist observed in 1999 that “*The 1990s have been the decade of corporate governance*”<sup>17</sup> (*Financial Times*, 1999). The basic ‘enabling corporate charter’ & ‘Corporate Governance’ are the two fundamental roles of Corporate Law, every domestic doctrine on corporate law strives to provide these features to corporations in its country. Globalisation, with its rapid exchange of ideas & enabling legal scholarship from around the world, has transformed the subject of Corporate Governance, into a truly eclectic field. The ‘World-System’ & ‘Modernization’ theories of globalisation help explain the rapid exchange and further evolution of corporate governance & the enabling corporate charter. Countries such as the United States, United Kingdom, Germany, and Japan can be considered as core countries: constantly evolving new concepts, and are at the forefront of the development, thereby paving the way for the semi-periphery & periphery countries to follow. In the present scenario, the concept of the ‘Corporate Charter’ & ‘Corporate Governance’ was born in America, scholars in America & Europe embraced the concepts & enhanced them over time which transformed them into dominant concepts in the corporate world which are prevalent worldwide.

In the context of ‘World-System’ & ‘Modernization’ theories of globalisation, India may be viewed as a semi-periphery country, which has a relatively strong government & several avenues for trade, working its way towards modernization with the aid of the Core countries.

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<sup>15</sup> *Ibid*

<sup>16</sup> Sir Adrian Cadbury, *Report of the Committee on the Financial Aspects of Corporate Governance* (University of Cambridge Judge Business School 1992)

<sup>17</sup> Brian Cheffins (n 13)

Indian Corporate Law can be viewed as assimilation of *Anglo-American* practices & literature.<sup>18</sup> The Indian corporate governance codes are derived from the UK's Cadbury Committee Report, and as expected, India was a little late in adopting a corporate governance framework.<sup>19</sup> India's first phase of Corporate Governance started in 1996, in line with the global trends by the Confederation of Indian Industry (CII), however much solid norms on Corporate Governance evolved in 1999 when SEBI appointed the Kumar Mangalam Birla Committee on Corporate Governance and later SEBI adopted Clause 49 (Listing Regulations) whose goal was "to promote and raise the standard of Corporate Governance" for listed companies.<sup>20</sup> India being a commonwealth country has a number of common law influences at the same time the Indian Corporate landscape has evolved with the aid of American jurisprudence numerous times. In the wake of the Satyam Scandal<sup>21</sup>, India adopted a similar approach to that suggested by the 'Sarbanes-Oxley Act' of the United States<sup>22</sup> for improving the accounting practices, making them on par with the international standards & adoption of a robust financial reporting structure (IFRS: International Financial Reporting Standards). The Indian Companies Law borrowed the concept of 'Independent Directors' from the United States, which now forms part of an integral mechanism for Board Control. The concept of 'Corporate Social Responsibility' too has been transplanted into the Companies Act, 2013. Globalisation has helped shape the Indian corporate landscape into truly remarkable & eclectic assimilation of world-best practices, making the Indian Companies Act a resilient & dynamic code, boosting India's corporate prowess.

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<sup>18</sup> Lalita S. Som, 'Corporate Governance Codes in India' (2006) 41 (39) *Economic and Political Weekly* 4153-4160 <<https://www.epw.in/journal/2006/39/review-industry-and-management-review-issues-specials/corporate-governance-codes>> accessed 26 October 2021

<sup>19</sup> *Ibid*

<sup>20</sup> Afra Afsharipour, 'A Brief Overview of Corporate Governance Reforms in India' (2011) 258 *UC Davis Legal Studies Research Paper Series*, 4 <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1729422](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1729422)> accessed 26 October 2021

<sup>21</sup> *Ibid*

<sup>22</sup> 'Understanding and Complying with The Sarbanes-Oxley Act' (*Sox Law*) <<https://www.soxlaw.com>> accessed 26 October 2021

## CONCLUSION

*“Globalisation intensifies with the development of economics, knowledge, and technology and in this sense is an objective historic process. When an economy reaches its limits in local markets it expands in regional, continental and global dimensions.”*<sup>23</sup>The economic globalisation boom of the nineteenth century opened new avenues for the trade of commodities, increased the size of the global markets, invited international investment & liberalized economies. This rapidly increased the pace at which goods were traded, & more importantly increased the pace of information exchange. The technological advancements of the 20<sup>th</sup> century made the spread of globalization inevitable, & the sheer pace of the process evolved it to something beyond mere globalization. Thus we entered the realm of hyper-globalization. The human society evolved from a nomadic to agrarian, then from agrarian to an industrial one, but the shift from the industrial to a hyper global information-centric society has had unparalleled growth in progress, development so much so that it has shrunk the world. Proponents of globalisation call it the ‘Global Village’, a village sustained through the constant sharing of ideas, culture. The *laissez-faire* trade regime of the 19<sup>th</sup>& 20<sup>th</sup> centuries saw growth in not just domestic but international business, new ventures popping up, there was a need for a streamlined, legitimate law to help the burgeoning business sector.

The present paper, follows the evolution of the Corporate Charter worldwide & in India, through the lens of globalisation. The modern corporate charter with its enabling characteristics such as alternative legal personality, limited liability, transferable shares, delegated management & investor ownership revolutionised the business world. The development of technology has played a major role in the establishment and expansion of the global market. It is possible to think of multinational corporations (MNCs) as the protagonists in the process of globalisation. Markets are becoming more global at an ever-increasing rate, as seen by the expansion of many types of trade into foreign countries. Because of technological advancement, multinational corporations (MNCs) have expanded their portfolios by moving operations to foreign countries through various forms of foreign direct investment (FDI), this

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<sup>23</sup> Wieslaw Sztumski, ‘Globalisation Its Hopes And Risks’ (2014) 18 (1) The Journal Of International Issues, 10-23 <<https://www.jstor.org/stable/10.2307/48504949>> accessed 26 October 2021

process has put the manufacturing, research & development (R&D) faculties of these MNCs in countries with cheap labour, alleviating poverty from such regions. Globalisation has been a major contributor, which has helped disseminate the corporate charter worldwide.