



Book Review

The Anatomy of Corporate Law: A Comparative and Functional Approach

Fincy Pallissery*

John Armour, Luca Enriques et al., *The Anatomy of Corporate Law: A Comparative and Functional Approach*, Oxford University Press, 2017; ISBN: 978-01-98724-315

The book, *Anatomy of Corporate Law*, is written by renowned scholars of corporate law. The book consists of ten chapters and the authors have adopted a comparative approach to facilitate the reader to get a global view of the well established principles surrounding corporate laws. The third edition of this book has arrived at a time when the fundamental rethinking on corporate law is underway in many countries, including India.

The first chapter is the contribution of Professors John Armour, Henry Hansman, Reinier Kraakman and Mariana Pargendler. They are of the opinion that the legal attributes of corporations are universal in character and state that the five core structural characteristics of business corporations are: (1) legal personality, (2) limited liability, (3) transferable shares, (4) centralized equity capital and (5) shared ownership by contributors of equity capital. One common factor which cannot be ignored while regulating the corporation is the influence of contractual relations, which a company establishes with various stakeholders. Thus the authors

* School of Law, Christ University, Bangalore, India; fincy.vinoj@christuniversity.in

adopt a liberal approach in stating that the liability of corporation is not only to its stakeholders, but also to employees, creditors and the society at large.

Agency problems and legal strategies are dealt with, in the second chapter. Professors John Armour, Henry Hansman and Reinier Kraakman examine the conflicts of interests between corporate insiders and its effect on the best interest of the company. A Corporation is an artificial legal fiction created by law. It cannot act on its own; therefore it performs its duties through directors, who are the agents of the company. Authors identify three generic agency problems that arise in business firms. This involves the conflict between a firm's owners and its hired managers, between majority and minority shareholders and between the firm and its employees, creditors and suppliers. They are of the opinion that the coordination costs, as between principals, thereby increases the agency problems. Enhanced disclosure of all matters relating to the company, regulators and the members of the company can reduce the agency costs, for which the law can play a greater role.

The basic governance structure of a company is the theme of the third chapter. The interest of the shareholders as a class and how their interest influences the appointment and decision rights in the company, are the key areas addressed in this chapter. Appropriate mechanism to ensure good governance among disaggregated board is through the appointment of independent directors and their control through a code of conduct as promulgated in many developed jurisdictions. The authors also suggest that equity based compensation should be adopted as the reward strategy for corporate executives and that law should regulate the ceiling on remuneration.

In the fourth chapter, the authors argue on the need for striking a balance between the interest of minority shareholders and non-shareholder constituencies. They come out with an interesting proposition that the participation of minority shareholders can be increased by granting them the right to appoint one or more directors. Further, they highlight that the method of one share-one vote, need to be revamped and cumulative voting must be given due regard, so that the minority shareholders can adequately make their voice heard in the decision making. Authors also suggest

that representation should be given in the board, for external stakeholders of the corporation.

Transaction with creditors is the focus of the fifth chapter. The authors are concerned about the conflicts between shareholders and creditors, over the assets of the company and the potential cost on the firms in the transaction costs with creditors. Authors are of the view that increased creditor heterogeneity and coordination costs, make the standard creditor term less useful, and thus shareholder concentration is more appropriate to reduce the creditor conflicts and potential costs on the firm.

Value diversion due to related party transaction, is the focus of the sixth chapter. Authors are of the view that in corporate opportunity cases, related parties take business opportunities that should have been offered to their companies. Second part of the chapter proposes five strategies to reduce related party transactions such as the affiliation strategy, agent incentive strategies, decision rights strategies, the rule strategies and standard strategies. One of the author's opines that the dispersed ownership and institutional investors control can regulate related party transactions, to a certain extent.

Chapter seven is titled 'Fundamental Changes'. In this chapter, focus is on corporate re-organizations and its effects on the minority shareholders. Authors identify that the potential conflicts exist at the time of mergers and acquisitions. They are of the view that the conflicts cannot be avoided, though can be minimized. Entrenchment provisions in the articles of association need to be strengthened, so that minority shareholders can have a fair exit from the company.

Paul Davies, Klaus Hopt, and Wolf George Ringe have authored chapter eight. It deals with corporate acquisitions. Control and coordination problems of the target company are the main concerns in this chapter. Authors propose that the agency problems create burden for the potential acquirers of the target company. Hence, shareholders should be allowed to freely transfer their shares to the target company, without any interference from the board of directors. However, in such case, there would be none to protect the interest of the principal. Therefore, the authors propose that

proper exercise of takeover defenses would enable in balancing the interest of the board and the shareholders of the target Company.

'Corporate law and Securities Market' is the title of chapter nine. Authors Luca Enriques, Gerard Hertig, et.al., debate on the need for securities regulations and propose that mandatory and timely disclosure is the sole remedy to ensure transparency in securities transaction and protection of investors. The concluding chapter, titled 'Beyond Anatomy' states that, the scope of the themes discussed in this book are beyond the ambit articulated by the authors. The authors admit that corporate law should seek to maximize shareholder value, so as to advance the goals of social welfare.

This book is an essential and valuable reading material for students, researchers and teachers of corporate law. Jurisprudential subtlety and the pragmatic reasoning discussed by the authors can help academic lawyers in enhancing their understanding about how a company becomes an entity.