
Digital Transformation and Corporate Governance in India: A Conceptual Analysis

Veeramani, S.^a, Rong, R.P.N.^b, and Singh, S.^c

^{a,b} Centre for Management Studies, Jamia Millia Islamia Central University, Government of
India, New Delhi, India

^a veeramani@jmi.ac.in, ^b ngulai.rong@gmail.com

^c BBAU Central University, India

sona3oap@gmail.com

Abstract

Corporate governance has become the major focus and matter of concern for the corporations in the 21st century. The paper analyses the impact of digital transformation on the practice of corporate governance in India. To perform the analysis, laws, listing regulations and guidelines are used. It is found that the level of digitalization of regulatory framework and listing regulations on corporate governance aspect is closely aligned and well balanced. Researchers suggest that the regulators, as well as companies, must review the benefits, constraints and challenges associated with digitalization of company law, listing requirements and corporate governance. Furthermore, there should be more diversity and flexibility on implementations and a proper balance between the legislation and market development. The digital drive has slowly emerged and integrated into corporate governance system. The stringent cyber security regulation is required to be established for a better corporate governance system of companies.

Keywords: Corporate governance, Cyber security, Digitalization, Regulatory framework

1. Introduction

Corporate governance has become the major focus and matter of concern for the corporation in the 21st century. The financial crisis of 1997 in East Asia and the corporate scandals and collapses, especially Enron debacle in 2002 in the US, witnessed the drastic change of corporate governance systems across the world especially in emerging economies (Dbe, 2003; Hopt, 2003; Tricker, 2009). Subsequently, major reforms had taken place in the financial market in terms of regulations and stringent guidelines. New corporate governance codes,

principles and guidelines, as well as new company's laws were introduced to many countries. Furthermore, the regulatory authorities have pursued better corporate regulations and a better framework to avoid corporate fallout and crisis (Black et al., 2001; Afsharipour, 2009; Tricker, 2009; Claessens & Yurtoglu, 2013). Well-governed companies have opportunities to attract greater investments that help economic development (Shleifer & Vishny, 1997; Khanna & Palepu, 2000; Claessens, 2006; Tricker, 2009), improved shareholders' protection, and right, especially minority, investors and others stakeholders (Shleifer & Vishny, 1997; La Porta et al., 2000; Aguilera & Jackson, 2003; Daily et al., 2003; Klapper & Love, 2004). Many researchers have studied that there is a strong relationship between good corporate governance practices and long-term wealth creation, sustainability, and well-being of the company (Lazonick & O'sullivan, 2000; Kirkpatrick, 2009; Kocmanová et al., 2011; Lipton et al., 2016).

The rapid development of new technologies and new models of business are having a significant impact on the companies' operations, and create value for organizations. Moreover, the digital transformation may not only push to innovation of products, but also promote the organisational setting and processes (OECD, 2017). Digitalization creates higher opportunities for the company for investment and cross-border business initiatives, by channelizing faster information with shareholders and stakeholders, and encouraging higher participation (Armour et al., 2016). Corporate governance creates better relations between the board and the shareholders (Monks & Minow, 1995; OECD, 2004; Tricker, 2009). Digitalisation also provides a platform between the companies and shareholders to communicate, and take decisions electronically (Armour et al., 2016).

Evidence shows that the enforcement of regulations and laws determined better protection of shareholders' rights and interest (Shleifer & Vishny, 1997; La Porta et al., 2000). Klapper & Love (2004) suggested that firms can partly compensate for weak legal environments and implementation, by establishing good corporate governance, and by providing sound investor protection. Several authors suggest that new technological innovations provide effective corporate governance practices (O'Sullivan, 2000; Tylecote, 2007), and the higher resource allocation for economic performance and development (Belloc, 2011; Lazonick, 2017). When the company introduces new technology into the boardroom, there is a positive impact on the top management's strategic decision-making and business setting. The board needs to develop the process to manage challenges and opportunities, and to evaluate risks associated with technological innovation (Tschirky, 2004; Durand et al., 2004). The board members need to integrate and assimilate it. The right integration of digital innovation into boardroom will take the lead (Charan, 2017).

The paper analyses the impact of digital transformation on the practice of corporate governance in India. To perform the analysis, laws, listing regulations and guidelines are used. It is found that the level of the digitalization of regulatory frameworks and listing requirements on corporate governance aspect is closely aligned and well balanced. Thus, it is suggested that the regulators, as well as companies, must review the benefits, constraints and challenges associated with digitalization of company law, listing requirements and corporate governance.

The paper is then organised as follows: section two discusses the emergence of corporate governance and digitalization outlook in India. Section three highlights the research method and data. The analysis and results are presented in section four, and section five concludes.

2. Digital Transformation and Corporate Governance in India

With the economic liberalization in 1991, the government has broadened the information technology sector to boost the economy. Digital India 2015, leads to a new dimension in the information technology sector. Digital India focuses on transforming India through digitalization. Digitalization is focused on empowering society, and promoting a knowledge-based economy. The initiative also targets to create world-class digital infrastructure and communication, digitalization of services (government and other services), and promotes universal digital literacy.

The liberalization reforms had brought a significant change for the governance of private sector companies and the financial sector, mainly the banking sector and the stock markets (Sarkar & Sarkar, 2012). The SEBI (Securities and Exchange Board of India) was set up in 1992, the main regulator of securities markets and of the corporate governance standards. In 2013 and afterwards paradigm shifts in the Indian corporate governance landscape were witnessed, a new Companies Act was introduced, and the Corporate Governance standards for all companies were strengthened. In 2015, SEBI introduced a new comprehensive listing regulation (Listing Obligations and Disclosure Requirements, 2015) on the compliance of disclosure obligation and reporting mechanisms. Furthermore, in 2017, SEBI formed the Kotak Committee to overhaul the system of corporate governance practices.

The corporate governance model of India is primarily based on the UK model or the Anglo-Saxon Model (Aguilera & Cuervo-Cazurra, 2009) or the insider model (Sarkar & Sarkar, 2000; Varottil, 2010), and the board structure is unitary board system, with a predominance of independent directors in the board (Tricker & Tricker, 2015). Similarly, to other countries with emerging economies, corporate governance problems arise due to concentrated, controlled ownership by a few dominant groups. The ownership mainly is concentrated

among dominant groups such as family, promoters and the state (Porta et al., 1999; Sarkar & Sarkar, 2000; Goswami, 2002; Khanna & Palepu, 2005; Varottil, 2010). Contrary to the agency problem (shareholder - manager) as in the US, in India, the agency problem is between majority and minority shareholders, due to the highly concentrated controlling structure of company ownership.

3. Research Method

This study explores the impact of digitalization of regulatory frameworks (law, listing regulations and guidelines) of corporate governance practices in India, and analyses the level of digitalization of corporate governance frameworks using Companies Act, SEBI (LIBOR) 2015 Regulations and Kotak Committee recommendation of corporate governance, 2017. It is qualitative in nature, since selective sections of such regulatory frameworks that specifically focus on digitalization were chosen, and was analyzed content wise.

4. Analysis and Discussion

The analysis considers the three regulatory frameworks of digitalization of corporate governance given in Table 1. The latest digital transformations of regulatory frameworks are mainly focused on shareholder engagement and information, and other listing regulations on compliance and disclosure. The frameworks need to be implemented digitalisation in company law to adopt eIDAS Regulation (e-identification and trust services for electronic transactions) and the Shareholder Rights Directive like the in UK and other EU countries.

Table 1: Outline of the Latest Developments and Issues Relating to Digital Transformations in Company Law and Other Regulatory Frameworks in India

1. Shareholders Engagement	
Companies Act, 2013	Introduced electronic voting.
SEBI (LODR) Regulations, 2015	
Kotak Committee recommendation, 2017	Mandatory to provide remote e-voting facility for all shareholder resolutions
	Recommended e-voting facility with different features, as well as one-way live webcast of the recordings of all shareholder meetings
2. Shareholders Information	

<p>Companies Act, 2013</p>	<p>2.1. Disclosures on Website</p> <ul style="list-style-type: none"> a) A special resolution passed by the company on unutilised amounts of money raised from public through prospectus. b) The Unpaid Dividend Account, the names, and addresses of each person to be paid c) the Corporate Social Responsibility Policy of the company d) financial statements including consolidated financial statements e) Manner of selection of independent directors and maintenance of a databank of independent directors f) the Board's report
<p>SEBI(LODR) Regulations, 2015</p>	<p><u>SEBI (LODR) Regulation 46</u></p> <ul style="list-style-type: none"> a) details of its business b) terms and conditions of appointment of independent directors; c) composition of various board committees; d) code of conduct of board's senior management personnel; e) details of formation of Whistle Blower policy; f) criteria pertaining to making payments to non-executive directors, if the same has not been disclosed in the annual report; g) related party transactions policy; h) policy of determining 'material' subsidiaries; i) details of adaptation programmes instructed to independent directors; j) details of email address for grievance redressal and other relevant documents; k) contact information of the entitled officials of the listed entity, who are responsible of assisting and handling investor grievances; l) financial information including a full copy of the annual report including balance sheet, profit and loss account, directors report, corporate governance report; m) shareholding pattern; n) information, reports, notices, call letters, circulars, proceedings, regarding non-convertible redeemable preference shares or non-convertible debt securities; o) details of agreements pass in with the media companies and/or their associates; p) list of analyst or institutional investor meet and presentations prepared by the listed; q) company to analysts or institutional investors simultaneously with submission to stock exchange; r) new name and the old name of the listed entity for a continuous period of one year, from the date of the last name change;

Kotak Committee recommendation, 2017	<p>s) The listed company must make certain that the contents of the website are correct;</p> <p>t) The listed company must update any change in the content of its website within two working days from the date of such change in content;</p>
	<p>All the information mandated under Regulation 46 of SEBI LODR Regulations, the companies must maintain a separate section for investors, to ensure ease of availability and access to relevant information in one place to investors and regulators alike.</p>
Companies Act, 2013	<p>2.2. Submission of Annual Reports</p> <p>The financial statements for listed companies can now be sent altogether either by emailing, or by dispatching physical copies to such members (holding demat securities) with the depository for communication purposes.</p>
SEBI(LODR) Regulations, 2015	<p>In compliance with the report on Corporate Governance, all the detailed information on the material related party transaction of the companies must be provided and disclosed. The disclosure of related party transaction must be produced quarterly; and the policy regarding related party transactions must be disclosed in company's Annual Report with the web link, as well as be published on its website</p>
Kotak Committee recommendation, 2017	<p>The copy of the annual report which is sent to the shareholders, including the notice of the annual general meeting, is required to be submitted to the stock exchange.</p> <p>In the event any corrections to any section of the annual report, they must be approved by shareholders and then the revised copy (with full information of an explanation for the changes so approved) must be sent within 48 hours after the annual general meeting.</p>
Companies Act, 2013	<p>3. E-voting and Webcast of Proceedings of the Meeting</p> <p>Mandatory for a listed company to provide e-voting facility to shareholders, and such e-voting is permitted till 5 p.m. one day prior to the general meeting. However, it is not mandatory to webcast meeting proceedings.</p>
SEBI(LODR) Regulations, 2015	<p>Mandatory to provide remote e-voting facility for all shareholder resolutions, and also the voting results need to be submitted within 48 hours of the conclusion of the general meeting.</p>
Kotak Committee recommendation,	<p>On the day of the general meeting, the E-voting must be kept open till midnight (i.e. 11:59 p.m.). The modification of votes cast through e-</p>

2017	voting may continue, even though there is restriction in the existing requirement. Must provide one-way live webcast of the proceedings of all shareholder meetings.
Companies Act, 2013	<p>4. Information Technology Committee</p> <p>No specific provisions</p>
SEBI(LODR) Regulations, 2015	No specific provisions
Kotak Committee recommendation, 2017	The listed companies must form an information technology committee, which, in addition to the risk management committee, will focus on digital and other technological aspects.
Companies Act, 2013	<p>5. Stock Exchanges Annual Compliances</p> <p>Compliance with stock exchange(s), the SEBI (LODR) Regulations, 2015 has covered all the requirements.</p>
SEBI(LODR) Regulations, 2015	<p>Under Listing Regulations, the listed company has to file the reports, statements, documents, filings and any other information with the recognised stock exchange(s) on the electronic platform as specified by the Board or the recognised stock exchange(s). The mandatory documents to be filed with the exchange in electronic mode includes:</p> <p>a) Compliance Certificate certifying the maintenance of a physical & electronic transfer facility; b) Statement of Investor complaints; Corporate Governance; Shareholding Pattern; c) Financial Results; d) Annual Report; e) Certificate from the Practicing Company Secretary; f) Reconciliation of the Share Capital Audit; g) Appointment of a New Share Transfer Agent; h) Listing Fees & Other charges; i) Notice for Board Meeting to consider the prescribed matters; j) Disclosure of Price-Sensitive Information; k) Outcome of Board Meeting; l) Notice for Record Date/Corporate Action; m) Declaration of Dividend; n) Dividend Distribution Policy; o)Voting Result; p) Company Website; q)SEBI Takeover Regulations; and r)SEBI (Prohibition of Insider Trading) Regulations</p>
Kotak Committee recommendation, 2017	Compliance with stock exchange(s), the SEBI (LODR) Regulations, 2015 has widely covered all the requirements.

The overall analysis in table 1 shows that the companies act and Kotak Committee recommendation makes an adjustment to align and balance or harmonize with Listing Regulations (SEBI LIBOR), except on live webcast (one-way) and Information technology committee (see the Kotak committee recommendation on table 1 section 3 and section 4). Interestingly, the regulatory frameworks and guideline have provided the e-voting facility to the shareholder meeting proceeding. In the European Union, the initiative was taken to make the best use of digitalisation in business decision making, and more importantly in company law. Many members have facilitated digital webcast, and have become a medium between companies and shareholder's communication. In the US, e-facilities, e-voting and webcast have become prominent in shareholder meetings (Chauvin et al., 2016).

4.1. Challenges of Digital Transformation and Corporate Governance

Cyber security continues to be a major challenge to the physical and economic welfare of governments, individuals, and businesses worldwide (Trautman, 2016). Safety is the biggest hindrance to the digital transformation of company law, as well as corporate governance. The strength of the organisation or the company will constantly be measured against its weakest link, when it comes to the matter of cyber security (Chauvin et al., 2016). In India, the Information Technology Act, 2000, and other laws provide legal identification to electronic articles, a system to support e-filing, and e-commerce transactions and provide a legal groundwork to moderate cyber-crimes. Information Technology has rapidly advanced over time; organisations are taking more measures when it comes to safeguarding information. In the multifaceted and interdependent business world, the general practice of installing anti-virus software and firewalls to company-wide security solutions is the first step; second is collaboration with global partnership and proactive participation, and the last step is to integrate an intranet-based framework of cyber security knowledge repositories on cyber security management (Chen et al., 2004). Cyber security pertains to the protection of business data and operating systems, and the protection of corporate records and intellectual property (Chauvin et al., 2016).

Companies should make the protection of data security be the primary focus of board action and oversight. Proactive action is necessary from board members to handle the corporation storage of sensitive data, classify the vulnerabilities of that data, develop effective strategies to protect that data, and take various measures for data breaches (Davis et al., 2015). The digital transformation may lead to better execution of work, enhancement of the communication line and better relations among various participants of the company, such as boards, managers, employees, shareholders and stakeholders. The impact of digitalization increases the cost-benefit of the company, communication with investors and vice versa becomes easier, faster and less expensive. Finally, stringent cyber security regulations are required to establish

better corporate governance systems in companies. There is a need to monitor cyber risk, and develop an advanced cyber security mechanism to protect the company.

5. Conclusion

The paper analyses the impact of digital transformation on the practice of corporate governance in India. It is found that the level of the digitalization of regulatory framework and listing regulations on corporate governance aspect is closely aligned and well balanced. It is suggested that the regulators, as well as companies, must review the benefits, constraints and challenges associated with digitalization of company law, listing regulations and corporate governance guidelines. Moreover, there should be more diversity and flexibility on implementations, and there must be a proper balance between the legislation and market development.

The digital drive has slowly emerged and integrated into corporate governance system. The latest development of corporate governance practices in India has undergone drastic changes to strengthen the corporate governance framework and broaden digital transformation. The top priority of corporate governance policies of the companies need to focus on the interests of the shareholders and protecting their rights. The regulatory frameworks are in place, the regulatory bodies and other responsible authorities are actively searching for the best way to strengthen its regulations to enhance corporate governance practices. The biggest challenges remain the implementation and the enforcement of the regulatory framework on the ground.

References

- Afsharipour, A. (2009). Corporate governance convergence: lessons from the Indian experience. *Nw. J. Int'l L. & Bus.*, 29, 335.
- Aguilera, R. V., & Cuervo-Cazurra, A. (2009). Codes of good governance. *Corporate Governance: An International Review*, 17(3), 376-387.
- Aguilera, R. V., & Jackson, G. (2003). The cross-national diversity of corporate governance: Dimensions and determinants. *Academy of management review*, 28(3), 447-465.
- Armour, John and Bartkus, Gintautas and Clarke, Blanaid J. and Conac, Pierre-Henri and de Kluiver, H. J. and Fleischer, Holger and Fuentes, Mónica and Hansen, Jesper Lau and Knapp, Vanessa and Lamandini, Marco and Radwan, Arkadiusz and Teichmann, Christoph and van het Kaar, R.H. and Winner, Martin, Report on Digitalisation in

Company Law (March 24, 2016). Available at SSRN: <https://ssrn.com/abstract=2893701> or <http://dx.doi.org/10.2139/ssrn.2893701>

- Belloc, F. (2012). Corporate governance and innovation: A survey. *Journal of Economic Surveys*, 26(5), 835-864.
- Black, B., Metzger, B., O'Brien, T. J., & Shin, Y. M. (2000). Corporate Governance in Korea at the Millenium: Enhancing International Competitiveness-Final Report and Legal Reform Recommendations to the Ministry of Justice of the Republic of Korea. *J. Corp. L.*, 26, 537.
- Brennen, J. S., & Kreiss, D. (2016). Digitalization. *The International Encyclopedia of Communication Theory and Philosophy*.
- Charan, R. (2017). Boards Can't Wait for CEOs to Prioritize Digital Change. *Harvard business review*.
- Chauvin, J. P., Kaum, M., Trnka, M., LaFrance, A., & Nelson, J. (2016). The relationship between digital transformation and corporate governance. Paper presented at the *The 19th European Corporate Governance Conference, Bratislava*.
- Chen, Y.-S., Chong, P. P., & Zhang, B. (2004). Cyber security management and e-government. *Electronic Government, an International Journal*, 1(3), 316-327.
- Claessens, S. (2006). Corporate governance and development. *The World Bank Research Observer*, 21(1), 91-122.
- Claessens, S., & Yurtoglu, B. B. (2013). Corporate governance in emerging markets: A survey. *Emerging markets review*, 15, 1-33.
- Daily, C. M., Dalton, D. R., & Cannella, A. A. (2003). Corporate governance: Decades of dialogue and data. *Academy of management review*, 28(3), 371-382.
- Davis, T. A., Wong, M. L.-M., & Paterson, N. M. (2015). The Data Security Governance Conundrum: Practical Solutions and Best Practices for the Boardroom and the C-Suite. *Colum. Bus. L. Rev.*, 613.
- Dbe, A. (2003). Foreword: The challenge of corporate governance. *Journal of Corporate Law Studies*, 3(1), 1-2.

- Durand, T., Herstatt, C., Nagel, A., Probert, D., & Tschirky, H. (2004). Bringing technology and innovation into the boardroom: strategy, innovation, and competences for business value: *Springer*.
- Fernando, A. (2012). Corporate Governance: Principles, Policies and Practices, 2/E: *Pearson Education India*.
- Goswami, O. (2002). Corporate governance in India. *Taking action against corruption in Asia and the Pacific*, Manila: ADB, 85-106.
- Hopt, K. J. (2003). Modern company and capital market problems: Improving European corporate governance after Enron. *Journal of Corporate Law Studies*, 3(2), 221-268.
- Khanna, T., & Palepu, K. (2000). Emerging market business groups, foreign intermediaries, and corporate governance *Concentrated corporate ownership* (pp. 265-294): University of Chicago Press.
- Khanna, T., & Palepu, K. (2005). The evolution of concentrated ownership in India: broad patterns and a history of the Indian software industry *A history of corporate governance around the world: Family business groups to professional managers* (pp. 283-324): *University of Chicago press*.
- Kirkpatrick, G. (2009). Corporate governance and the financial crisis. *OECD, Financial Market Trends*, 96(1), 1-30.
- Klapper, L. F., & Love, I. (2004). Corporate governance, investor protection, and performance in emerging markets. *Journal of corporate finance*, 10(5), 703-728.
- Kocmanová, A., Hřebíček, J., & Dočekalová, M. (2011). Corporate governance and sustainability. *Economics & Management*, 16.
- La Porta, R., Lopez-de-Silanes, F., Shleifer, A., & Vishny, R. (2000). Investor protection and corporate governance. *Journal of financial economics*, 58(1), 3-27.
- Lazonick, W. (2006). *Corporate governance, innovative enterprise, and economic development*: Research Paper, UNU-WIDER, United Nations University (UNU).
- Lazonick, W. (2017). Innovative Enterprise Solves the Agency Problem: The Theory of the Firm, Financial Flows, and Economic Performance. *Institute for New Economic Thinking Working Paper Series No. 62*.

- Lazonick, W., & O'sullivan, M. (2000). Maximizing shareholder value: a new ideology for corporate governance. *Economy and society*, 29(1), 13-35.
- Monks, R., & Minow, N. (1995). *Corporate Governance*. Oxford: Blackwell Business.
- Monks, R. A. G., & Minow, N. (2008). *Corporate Governance*: John Wiley & Sons.
- O'Sullivan, M. (2000). The innovative enterprise and corporate governance. *Cambridge Journal of Economics*, 24(4), 393-416.
- OECD. (2017). Key Issues for Digital Transformation in the G20. BERLIN, GERMANY: Organisation for Economic Co-operation and Development
- Porta, R., Lopez-de-Silanes, F., & Shleifer, A. (1999). Corporate ownership around the world. *The Journal of finance*, 54(2), 471-517.
- Sarkar, J., & Sarkar, S. (2000). Large shareholder activism in corporate governance in developing countries: Evidence from India. *International Review of finance*, 1(3), 161-194.
- Sarkar, J., & Sarkar, S. (2012). *Corporate Governance in India*: SAGE Publishing India.
- Shleifer, A., & Vishny, R. W. (1997). A survey of corporate governance. *The Journal of finance*, 52(2), 737-783.
- Tricker, B. (2009). *Corporate Governance: Principles, Policies, and Practices*. Oxford University Press, USA.
- Tschirky, H. (2004). Bringing Technology to the Boardroom: What Does It Mean? *Bringing Technology and Innovation into the Boardroom* (pp. 19-46): Springer.
- Tylecote, A. (2007). The role of finance and corporate governance in national systems of innovation. *Organization Studies*, 28(10), 1461-1481.
- Varottil, U. (2010). Evolution and effectiveness of independent directors in Indian corporate governance. *Hastings Bus. LJ*, 6, 281.