A CRITICAL STUDY OF COMPANY ACT 2013, AND ITS IMPLICATIONS IN INDIA

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CERTIFICATE

This is to certify that dissertation entitled "**A CRITICAL STUDY OF COMPANY ACT 2013, AND ITS IMPLICATIONS IN INDIA**" which is being submitted by **Tripti Singh**, for the award of the degree of Master of Laws is an independent and original research work carried out by her.

The dissertation is worthy of consideration for the award of One year LL.M. Degree of Law, BBDU, Lucknow

Tripti Singh worked under my guidance and supervision to fulfill all requirements for the submission of this dissertation.

The conduct of research scholar was excellent during the period of research.

Date- 10-07-2021 Trishla Singh

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LIST OF ABBRIVATION

ACLU	**-**	**AMERICAN CIVIL LIBERTIES UNION**
ACRA	**-**	**ANTISQUATTING CONSUMER REFORM AC**
ADB	**-**	**ASIAN DEVELOPMENT BANK**
AIC	**-**	**ANTI INDIA CREW**
AIDP	**-**	**ASSOCIATION INTERNATIONALE DE DROIT PONAL**
B2B	**-**	**BUSINESS-TO-BUSINESS**
B2C	**-**	**BUSINESS-TO-CONSUMERS**
BARC	**-**	**BHABA ATOMIC RESEARCH CENTRE**
BBS	**-**	**BULLETIN BOARD SYSTEMS**
CC	**-**	**CARBON COPY**
CCA	**-**	**CONTROLLER OF CERTIFYING AUTHORITIES**
CD	**-**	**COMPACT DISC**
CDA	**-**	**COMMUNICATIONS DECENCY ACT**
DDOS	**-**	**DENIAL-OF-SERVICE**
UDNDRP	**-**	**UNIFORM DOMAIN NAME DISPUTE RESOLUTION POLICY**
UDP	**-**	**USER DATAGRAM PROTOCOL**
ULSI		**ULTRA LARGE SCALE INTEGRATION**
UNCITRAL	**-**	**UNITED NATIONS COMMISSION ON INTERNATIONAL**

TRADE LAW

UNDCP	-	UNITED NATIONS DRUG CONTROL PROGRAMME
UNODCCP	-	UNITED NATIONS OFFICE FOR DRUG CONTROL AND CRIME PREVENTION
URL	-	UNIFORM RESOURCE LOCATOR
VA	-	VULNERABILITY ASSESSMENT
VLSI	-	LARGE SCALE INTEGRATION
WAN	-	WIDE AREA NETWORK
WCO	-	WORLD CUSTOMS ORGANISATION
WFD	-	WORLD FANTABULOUS DEFACERS
WIPO	-	WORLD INTELLECTUAL PROPERTY ORGANISATION
WWW	-	WORLD WIDE WEB
YIHAT	-	YOUNG INTELLIGENT HACKERS AGAINST TERROR

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CHAPTER -I

INTRODUCTION

The Companies Act, 2013 is landmark legislation with far reaching consequences on all companies incorporated in India. The Act, 2013 is more outward looking and attempts to align with international requirements. It is expected to set the tone for a more modern legislation which enables growth and greater regulation of the corporate sector in India. The 2013 Act has been developed with a view to enhance self–regulation, improve corporate governance norms, enhance accountability on the part of corporates and auditors, raise levels of transparency and protect interests of investors, particularly small investors. This paper is focused on the regulatory framework of companies in pre and postindependence era, rationale behind new Companies Act , its major objectives and a comparative analysis of companies act 2013with Companies Act 1956 regarding share Capital.

It has been a long time in waiting but India finally enacted its new Companies Act 2013 (the "Companies Act") at the end of August 2013. The Companies Bill was passed by the Lok Sabha (the Lower House of the Parliament of India) on 18 December 2012 and in the Rajya Sabha (the Upper House of the Parliament of India) on 8 August 2013. It received Presidential Assent on 29th August2013 thereby creating the Companies Act 2013.

The development of civilisation of human being is too old that progress of any country cannot be studied without the study of achievements made by human. At no stage of culture, man was completely free from the cares and problems of his daily life, and no stage of social life could overlook them beyond a certain point. He always faces a world of complex social problems. As a result he is perplexed beyond description. His thinking very often ends in confusion. As the time passed away, the process of development become popular and man spread his thought in every field, i.e., manufacturing, engineering, medicine, laws, accountancy, psychology, sociology, and education, etc. Afterwards, as everyone knows, the small scale industries were converted by large scale industries due to heavy industrialisation process in the country. According to this industrial revolution, the local markets converted into national and international markets. Significant changes in the

structure and operations of the business units took place in nineteenth and twentieth centuries. The size of these was enlarged. So there is a consequent rise in the requirements of capital and managerial manpower, which the proprietorship and partnerships firms could not prove equal to challenges posed by the changing environments. Thus, the evolution of a new form of business organisation like the Joint Stock Company was, therefore, historical necessity to remove all the drawbacks of the sole proprietorship and partnerships organisation. For a small business organisation, too at the choice of the company would be better, as this is the only form of business organisation which offers the privilege of limiting personal liability for business debts. Accordingly, the Company Law has become the most dominant form of business organisations.

OBJECTIVE OF THE STUDY:

1. .The first objective of this paper is to find out reasons /causes that led to a change in companies Act 2013.
2. The second objective is to find out the main changes in the New Indian Companies Act 2013.
3. The paper also tries to find out whether the changes in the Indian Companies Act 2013 is actually going to be beneficial or is going to be disastrous to the company .
4. the present study is an endeavour to discuss the corporate governance reforms brought in by the new Companies Act, 2013 and their implications.

Importance of the Study:

1. The paper helps in understanding the reasons that led to a change in the Indian Companies Act 2013.
2. The paper will be helpful in understanding the new Changes in the Indian Companies Act 2013.
3. The paper will be helpful to the future researcher who plan to carry a research in this field
4. It will prove to be a guiding factor to those who want to understand the good and bad effects of the Indian Companies Act 2013.

II. Limitations of The Study

1. The first Limitation Of the present research work is that The result is derived on the basis of responses of only 20 respondents.
2. The New Indian Companies Act 2013 has gone through various amendments after 2013. The Latest amendments have not be undertaken.
3. The New Companies Act 2013 has got 29 Chapters, 470 Sections and 7 Schedules and it is not possible to give authentic conclusion without going through all the chapters, sections and schedules.
4. The conclusion has been derived based on the study of only few major changes in the Companies ACT 2013.

RESEARCH METHODOLOGY

The research study will be explorative in nature and will be based on in-depth analysis of data and statistics, collected both from the primary and the secondary sources. Primary sources: - Primary sources will includes Questionnaire, Interviews, Observations Schedules etc.

Secondary sources: - Secondary sources will include information collected from Journal/Article published , Reference Books related to corporate law, Publications by the government and Various websites. It is proposed that in the analysis of data some statistical tools and techniques such as sampling method, surveys, chi-square test etc. will also be used for empirical results and analysis based on which further research prospects, recommendations and conclusions can be derived.

Nature of the Research: This research is exploratory in nature. It will give a direction to the future researcher for conducting the further research related to the same issue.

Population of the Research: Company Secretaries Chartered Accountants And Private Companies in the Lucknow district are the population of this study.

REVIEW OF LITERATURE:

Tina Edwin (2014) said in her article that in three years, India's biggest corporate houses - Reliance Industries, Tata Sons, Aditya Birla Group and Infosys - will have to bring in a new set of chartered accountants firms to audit their books.

Viswanath Ajikumar (2015) the new Companies Act has far more and detailed penalizing measures, and the penalties and fines have all been made tougher than before in most cases. The law also goes into greater detail in regard to areas that were previously left up to interpretation, and in many cases, the Act fixes the penal measures rather than leaving it up to any Tribunal or Board, as the case may be in the previous Act. And the new Act gives greater authority to SEBI, goes to greater lengths to protect investors, and gives wrong doers the scope of spending far more time enjoying the wonderful correctional facilities in our country than ever before. A far greater number of possible offenses have been identified, and fines and jail time have been described uniquely for most of these. The new Act also gives greater freedom of operation and encourages the company format of business undertakings in an obvious manner. I guess everyone has heard of the OPC (One Person Company).

The new Act is obviously aimed at bringing about a revolution of sorts in the way business is conducted in India, and is truly up-to-date, as far as it can be.
The New Companies Act 2013 is a blessing in disguise , says experts as per a report in The Hindu.(8th Jan 2015). “The Act addresses good governance seriously”“It is very important for students and professionals to understand and learn about the changes that have been made in the Companies Act, 2013,” said R. Sridharan, (president of the Institute of Company Secretaries of India (ICSI), New Delhi.) Speaking about the Act, Sutanu Sinha, CEO and Officiating Secretary of the ICSI, said the new Act was a blessing which would help companies finding it tough to operate within the old law which was not in sync with the global business practices. By Vishal Shah and Smit Sheth (2013) the government aims to simplify its provisions, keep pace with global trends and make it easier to do business in the country. But the proposed law’s implementation would depend on its integration with existing statutes and laws such as the Foreign Exchange Management Act (FEMA) and the Income Tax Act. More clarity is needed on certain issues.

Thatchinamurthy, M. (1993[1]) in his doctoral research thesis titled "A study on statutory reliefs' for oppression and mismanagement in Indian Companies Act 1956" with the objective of presenting a clear picture of avenues available to the affected minority members under common law, examined the powers of the Company Law Board (CLB) and the Central Government for preventing oppression and mismanagement in joint stock companies and with an objective to offer suitable suggestions in order to overcome the obstacles in granting relief to the unfairly oppressed minority.

Ravichandran, K.S. (2002) in his doctoral research thesis titled "A study on the effectiveness of the present system of trial of offences under the Companies Act, 1956 in protecting public interest" has made an attempt to study the existing procedure for prosecution of offences under the Act as well as to ascertain as to what extent the existing machinery has protected public interest. Further, the study aimed to suggest ways and means for improvement of the existing system for the prosecution of offences and punishment of offenders under the Act in such a way that the public interest is best served. A special feature of the study is that the law and practice prevailing in UK in respect of companies functioning there has been compared with the law and practice prevailing in India.

Gayatri.R. (2003) in her doctoral research thesis entitled "Revamping of the Companies Act 1956 – A Critical Analysis" has concluded that the Amendment Act has reduced the total number of Sections significantly from 658 to 594 Sections which provides greater safeguards and new procedures to offer support to shareholders, depositors and creditors and would strengthen the corporate governance alongside the regime of liberalisation and simplification.

Swati Mehta Mehta (2009) in the paper entitled "The Companies (Amendment) Act, 2000: Whether cure or curse to investors vis-à-vis corporate governance" states that the law exists to serve the needs of the society which is governed by it. As the society change the law cannot remain immutable. It is in these circumstances the Companies (Amendment) Act, 2000 was enacted to introduce more workable provisions for organising

[1] Thatchinamurthy, M. "A study on statutory reliefs' for oppression and mismanagement in Indian Companies Act 1956" Alagappa University, 1993.

and managing the companies smoothly and efficiently. In spite of the amendments it is felt that the provisions of the Companies Act are still lacking behind the march of time. Further in view of the importance of the corporate sector which is being realized now the amendment made vide in the Companies (Amendment) Act 2000 and now in the year 2009–10 have already become stab.

Prahlada Rao, D.K. (2004), in his article “A critical appraisal of attempt to re-codify Company Law” emphasized the need for a through vetting of the proposals before these are transformed into the law.

Israni, S.D. (2007) states that Company Law in India is predominantly procedure oriented and the procedures are indeed numerous and defaults in corporate compliances attract penal consequences. According to him a company should not be satisfied with bare minimum compliance under the Act. Instead, every company should endeavour to pay special attention to compliances under the Act and for that to have systemic approach so that no room is left for any delinquency on the part of any of the concerned employees. Such a pro-active approach will help the company to minimize the risk of failure and also earn the respect of various stakeholders.

Swarup, B. (2005) in his article expressed that in recent years several Committees have gone in to simplification and reform of Company Law and in such a scenario, when the Irani Committee was constituted the expectation level from the Government, corporate sector and others was indeed very high. The Irani Committee has sought to provide a valuable input for creating a simple and sustainable legal framework, which is essential to unleash creative energies of our people through the corporate structures. Now, the stage is set for the new Company Law to be legislated consistent with the best international practices. The new law, it is expected, would enable development of institutional structures to address new requirements driven by changing economic environment.

According to Venugopalan,S. (2004) the setting up of audit committee has enhanced the credibility of financial statements, promoted transparency in financial reporting, and has ensured the independence of statutory auditors, thereby playing a very useful role in the corporate governance frame work.

Tuteja, S.K. (2004'[2]), the existence of an audit committee would undoubtedly have a statutory effect on the working of a company in a variety of ways. They should advise, question management and approve or reject its policies.

He also opines that audit committee would prove extremely beneficial if company boards accept them voluntarily as a measure of self regulation.

Sanjiv Agarwal (2006'[3]) states that the Audit Committee of any Board is like the central fulcrum of the management, while it is imperative to have Audit Committee to ensure good corporate governance, it is also true that one cannot think of corporate governance without a functional audit committee.

Jawahar Al-Mudhaki & Joshi, P.L. (2004), examined the composition, focus and functions of audit committee, the effects of meetings and the criteria used in the selection of members by Indian listed companies from 73 questionnaire responses. The study revealed that so far only 56.2% of companies have established an audit committee despite the fact that it is now mandatory. Of those companies which have audit committees, 68.3% have between three and six members on audit committees. However, only 14.6% of companies have independent non-executive directors on the committee, while 90.2% have nonexecutive directors. This shows a lack of independent representatives on the committees. They concluded that the concept of an audit committee is not new in India but their formation is slow and their composition lacks independence.

Giridharan,P.T. (2004) focused on the revised clause 49 of the Listing Agreement which is the result of recommendations of various committees in the wake of the rapid strides in the 'philosophy and mantra' of corporate governance.

He states that the listing requirements have thrown many challenges and opportunities to the professionals, personnel in the company and the entity itself; and that one has to wait, watch and see how far the wisdom of corporates and professionals prevails and whether the shareholders are really benefited.

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[2] Tuteja, S.K. (2004) "Empowering Audit Committees In India" SEBI and Corporate Laws, Vol. 54 No. 8, pp 166–176.

[3] 5 Sanjiv Agarwal (2006), "Corporate Governance through Audit Committees" The Chartered Accountant, Vol. 55, No. 5, pp 733–742.

Narayanaswamy (2006) states that non-compliance with the requirement of revised Clause 49 of the Listing Agreement is visited with the punishment of monetary penalty and also imprisonment. Therefore, it is essential to ensure compliance with the legal requirements.

Rajesh Chakrabarthi (2005) in his study established that financial development is largely dependent on investor protection in a country - de jure and de facto. While recent high-profile corporate governance failures in developed countries have brought the subject to media attention, the issue has always been central to finance and economics. The issue is particularly important for developing countries since it is central to financial and economic development. With the legacy of the English legal system, India has one of the best corporate governance laws but poor implementation together with socialistic policies of the pre-reform era has affected corporate governance. Concentrated ownership of shares, pyramiding and tunnelling of funds among group companies mark the Indian corporate landscape. Since liberalisation, however, serious efforts have been directed at overhauling the system with the SEBI instituting the Clause 49 of the Listing Agreements dealing with corporate governance.

Bhuwaneshwar Mishra (2005'[4]) in his article states that the Whistle Blower Policy (WBP) encourages employees to report questionable accounting matters, any reporting of fraudulent financial information to the shareholders, the government or the financial markets or any conduct that result in violation of the law. But this policy has both its merits and demerits. The early reporting of unethical or improper practices shall provide an opportunity to the company to take corrective measure before the damage or violations increases. On the other side there is always a fear of the whistle blower being subject to suspension loss of job or prevented from the privileges available to the other employees.

Studies on National Company Law Tribunal

[4] Bhuwaneshwar Mishra (2005) "Whistle Blower Policy" Chartered Secretary, Vol. II, No. 1, pp 39–42.

Chandratre, K.R. (2004'[5]) in the paper entitled "National Company Law Tribunal: An overview" examined the creation of the NCLT and transfer of power presently being exercised by High Courts would open the doors to practicing company secretaries in a by-way. Company secretaries should prepare themselves well to seize the opportunities.

Studies on New Company Law

Sharma,J.P. (2006) highlighted on the recommendations of the Irani Committee and points out that the Expert Committee has sought to make India globally competitive with a new Company Law that encourages growth. He also emphasized on self-regulation and shareholders democracy with lesser bureaucratic controls, stringent penalties commensurate with the size of company, nature and seriousness of the offence are being recommended for accountability.

Venugopalan,S. (2006) highlighted on how a board meeting can be organised and conducted through video conferencing system. He has given a list of matters which cannot be transacted at such meetings and also gives a list of technological requirements for video conferencing. In his opinion, once video conferencing meeting becomes a reality, there may not be any need for companies to appoint alternate directors and that it will promote transparency in corporate affairs and will become popular in due course after the new Company Law is enacted by the Government.

Venugopalan,S. (2006) states that after the new Company Law comes in to force, the details about training requirement for independent directors will be finalized by the Government.

Sridhar,J. (2008) points out that most of the proposals in the new Bill relating to directors are more or less the same as at present. But there are some new provisions on the role and responsibilities of directors.

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[5] Chandratre, K.R. (2004) "National Company Law Tribunal: An overview" Chartered Secretary, Vol. XXXIV, No. 6, pp 752–754

Israni,S.D. (2008) states that the new Bill has tried to achieve the objectives by keeping a blend of a large number of the old provisions and by adding some new innovative provisions as well and termed the Companies Bill, 2008 as blended wine in new bottle.

Studies on the role of Company Secretary

Kaushik Mukherji (2009[6]) defines the Company Secretary as a compliance officer having fiduciary relationship with both the shareholders and the management. In his opinion, Company Secretary is the longer surviving component of the Board of Directors though not member of Board. But the fact remains that he is an employee of the company like any other employee. The Company Secretary actually is dependent for his survival and recognition on the management. In such a situation it is quite understandable why the Company Secretary is not truly independent and whether he can be made truly independent.

Sudheendhra Putty (2006[7]) states that the statues relating to key corporate professions have been thoroughly amended by the Government to bring about uniformity and to keep pace with international developments. The Amendment brought forth have been long overview and should augur well for the betterment of the profession of the Company Secretaries. With greater integration coming across among professions and seamlessness being a reality, the amendments are truly the need of the hour. Indeed the amendments must make Companies Secretaries get in pursuit of professional excellence.

[6] Kaushik Mukherji (2009) “Need of the hour – Truly Independent Company Secretary” SEBI and Corporate Laws, Vol. 96, No. 12, pp 123–125

[7] Sudheendhra Putty (2006) “Companies Secretaries (Amendment) Act, 2006 – An analysis” Chartered Secretary Vol. III, No. 11, pp 1025–1026.

CHAPTER -II

OVER VIEW OF COMPANY ACT

History of Companies Act in India:-

In England some of the merchant guilds were called regulated companies. A Royal Charter established the East India Company in the year 1600. In England the Joint Stock Companies Act was passed for the first time in 1844. Under this act, a provision was made for the registration of companies.

In the year 1850, taking the English Joint Stock Companies Act 1844 as a base, a provision was made for registration of joint stock companies in India. After this the Joint Stock Companies Act was passed in India in the year 1857. Under this Act the concept of limited liability was introduced for the first time in India. Thereafter the Companies Act was passed in the year 1866. The Act consolidated and amended the law relating to incorporation, regulation and winding-up of trading companies and other associations.

The Act was later replaced by The Indian Companies Act 1913. However, after independence, the Government appointed a Committee under the chairmanship of Shri H.C. Bhaba in the year 1950 to revise the Indian Companies Act of 1913. The committee submitted its report in the year 1952. Based on the recommendation of the committee and the provisions of the English Companies Act 1948, The Companies Act 1956 came into force on 1st April, 1956.The Indian Companies Act 2013 replaced the Indian Companies Act, 1956. The Companies Act 2013 makes comprehensive provisions to govern all listed and unlisted companies in the country.

The Companies Act, 2013 passed by the Parliament has received the assent of the President of India on 29th August, 2013. The Act consolidates and amends the law relating

to companies. The Companies Act, 2013 has been notified in the Official Gazette on 30th August, 2013.

MEANING OF COMPANY

Section 3 (1) (i) of the Companies Act, 1956 defines a company as ‘a company formed and registered under this Act or an existing company’. Section 3(1) (ii) Of the act states that “an existing company means a company formed and registered under any of the previous companies laws”. This definition does not reveal the distinctive characteristics of a company . According to Chief Justice Marshall of USA, ‘A company is a person, artificial, invisible, intangible, and existing only in the contemplation of the law. Being a mere creature of law, it possesses only those properties which the character of its creation of its creation confers upon it either expressly or as incidental to its very existence.

Another comprehensive and clear definition of a company is given by Lord Justice Lindley, ‘A company is meant an association of many persons who contribute money or moneys worth to a common stock and employ it in some trade or business, and who share the profit and loss (as the case may be) arising there from. The common stock contributed is denoted in money and is the capital of the company. The persons who contribute it, or to whom it belongs, are members. The proportion of capital to which each member is entitled is his share. Shares are always transferable although the right to transfer them is often more or less restricted.

According to Haney, Joint Stock Company is a voluntary association of individuals for profit, having a capital divided into transferable shares. The ownership of which is the condition of membership.

From the above definitions, it can be concluded that a company is registered association which is an artificial legal person, having an independent legal, entity with a perpetual succession, a common seal for its signatures, a common capital comprised of transferable shares and carrying limited liability.

CHARACTERISTICS OF A COMPANY

The main characteristics of a company are :

Incorporated association.

A company is created when it is registered under the Companies Act. It comes into being from the date mentioned in the certificate of incorporation. It may be noted in this connection that Section 11 provides that an association of more than ten persons carrying on business in banking or an association or more than twenty persons carrying on any other type of business must be registered under the Companies Act and is deemed to be an illegal association, if it is not so registered.

For forming a public company at least seven persons and for a private company at least two persons are persons are required. These persons will subscribe their names to the Memorandum of association and also comply with other legal requirements of the Act in respect of registration to form and incorporate a company, with or without limited liability Sec 12 (1)

Artificial legal person.

A company is an artificial person. Negatively speaking, it is not a natural person. It exists in the eyes of the law and cannot act on its own. It has to act through a board of directors elected by shareholders. It was rightly pointed out in Bates V Standard Land Co. that - ‘The board of directors are the brains and the only brains of the company, which is the body and the company can and does act only through them.

But for many purposes, a company is a legal person like a natural person. It has the right to acquire and dispose of the property, to enter into contract with third parties in its own name, and can sue and be sued in its own name.

However, it is not a citizen as it cannot enjoy the rights under the Constitution of India or Citizenship Act. In State Trading Corporation of India v C.T.O (1963 SCJ 705), it was held that neither the provisions of the Constitution nor the Citizenship Act apply to it. It should be noted that though a company does not possess fundamental rights, yet it is person in the eyes of law. It can enter into contracts with its Directors, its members, and outsiders.

Justice Hidayatullah once remarked that if all the members are citizens of India, the company does not become a citizen of India.

Separate Legal Entity

A company has a legal distinct entity and is independent of its members. The creditors of the company can recover their money only from the company and the property of the company. They cannot sue individual members. Similarly, the company is not in any way liable for the individual debts of its members. The property of the company is to be used for the benefit of the company and nor for the personal benefit of the shareholders. On the same grounds, a member cannot claim any ownership rights in the assets of the company either individually or jointly during the existence of the company or in its winding up. At the same time the members of the company can enter into contracts with the company in the same manner as any other individual can. Separate legal entity of the company is also recognized by the Income Tax Act. Where a company is required to pay Income-tax on its profits and when these profits are distributed to shareholders in the form of dividend, the shareholders have to pay income-tax on their dividend of income. This proves that a company that a company and its shareholders are two separate entities.

The principal of separate of legal entity was explained and emphasized in the famous case of Salomon v Salomon & Co. Ltd.

The facts of the case are as follows :

Mr. Saloman, the owner of a very prosperous shoe business, sold his business for the sum of $ 39,000 to Saloman and Co. Ltd. which consisted of Saloman himself, his wife, his daughter and his four sons. The purchase consideration was paid by the company by allotment of & 20,000 shares and $ 10,000 debentures and the balance in cash to Mr. Saloman. The debentures carried a floating charge on the assets of the company. One share of $ 1 each was subscribed by the remaining six members of his family. Saloman and his two sons became the directors of this company. Saloman was the managing Director.

After a short duration, the company went into liquidation. At that time the statement of affairs' was like this: Assets :$ 6000, liabilities; Saloman as debenture holder $ 10,000 and unsecured creditors $ 7,000. Thus its assets were running short of its liabilities b $11,000

Perpetual Existence

A company is a stable form of business organization. Its life does not depend upon the death, insolvency or retirement of any or all shareholder (s) or director (s). Law creates it and law alone can dissolve it. Members may come and go but the company can go on for ever. “During the war all the member of one private company , while in general meeting, were killed by a bomb. But the company survived; not even a hydrogen bomb could have destroyed i”. The company may be compared with a flowing river where the water keeps on changing continuously, still the identity of the river remains the same. Thus, a company has a perpetual existence, irrespective of changes in its membership.

Common Seal

As was pointed out earlier, a company being an artificial person has no body similar to natural person and as such it cannot sign documents for itself. It acts through natural person who are called its directors. But having a legal personality, it can be bound by only those documents which bear its signature. Therefore, the law has provided for the use of common seal, with the name of the company engraved on it, as a substitute for its signature. Any document bearing the common seal of the company will be legally binding on the company. A company may have its own regulations in its Articles of Association for the manner of affixing the common seal to a document. If the Articles are silent, the provisions of Table-A (the model set of articles appended to the Companies Act) will apply. As per regulation 84 of Table-A the seal of the company shall not be affixed to any instrument except by the authority of a resolution of the Board or a Committee of the Board authorized by it in that behalf, and except in the presence of at least two directors and of the secretary or such other person as the Board may appoint for the purpose, and those two directors and the secretary or other person aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

Limited Liability

A company may be company limited by shares or a company limited by guarantee. In company limited by shares, the liability of members is limited to the unpaid value of the shares. For example, if the face value of a share in a company is Rs. 10 and a member has

already paid Rs. 7 per share, he can be called upon to pay not more than Rs. 3 per share during the lifetime of the company. In a company limited by guarantee the liability of members is limited to such amount as the member may undertake to contribute to the assets of the company in the event of its being wound up.

Transferable Shares.

. In a public company, the shares are freely transferable. The right to transfer shares is a statutory right and it cannot be taken away by a provision in the articles. However, the articles shall prescribe the manner in which such transfer of shares will be made and it may also contain bona fide and reasonable restrictions on the right of members to transfer their shares. But absolute restrictions on the rights of members to transfer their shares shall be ultra vires. However, in the case of a private company, the articles shall restrict the right of member to transfer their shares in companies with its statutory definition

In order to make the right to transfer shares more effective, the shareholder can apply to the Central Government in case of refusal by the company to register a transfer of shares.

Separate Property

As a company is a legal person distinct from its members, it is capable of owning, enjoying and disposing of property in its own name. Although its capital and assets are contributed by its shareholders, they are not the private and joint owners of its property. The company is the real person in which all its property is vested and by which it is controlled, managed and disposed of.

Delegated Management

A joint stock company is an autonomous, selfgoverning and self-controlling organization. Since it has a large number of members, all of them cannot take part in the management of the affairs of the company. Actual control and management is, therefore, delegated by the shareholders to their elected representatives, know as directors. They look after the day-to-day working of the company. Moreover, since shareholders, by majority of votes, decide the general policy of the company, the management of the company is carried on

democratic lines. Majority decision and centralized management compulsorily bring about unity of action.

TYPES OF COMPANY

Joint stock company can be of various types. The following are the important types of company:

Classification of Companies

Depending on the mode of incorporation, there are three classes of joint stock companies.

The corporate form can take many shapes in order to respond efficiently to the environment. Company Law should therefore recognize a multiple classification of companies. The criteria for classification on the basis of the forms is discernible but recognizes that such classification can never be exhaustive. It is necessary to recognize the potential for diversity in the forms of companies and rather than seeking to regulate specific aspects of each form, seek to provide for principles that enable economic inter-action for wealth creation on the basis of clear and widely accepted principles.

I. On the Basis of Mode of Incorporation, Companies can be classified into three categories.

Chartered Company: A Company is incorporated by a charter granted by Monarch and is regulated by that charter. The powers and nature of business of a chartered company are defined by the charter which incorporates it. A chartered company has wide powers. It can deal with its property and bind itself to any contracts that any ordinary person can. In case the company deviates from its business as prescribed by the charted, the Sovereign can annul the latter and close the company.

Ex.- East India Company came into being by the grant of a Royal Charter. Such Companies does not exist in India now.

Statutory Company: A Company which is created by a Special Act of the Legislature and is governed by the provisions of that Act. Such companies do not have any memorandum or articles of association. They derive their powers from the Acts constituting them and enjoy certain powers that companies incorporated under the Companies Act have. Alternations in the powers of such companies can be brought about by legislative amendments.

The provisions of the Companies Act shall apply to these companies also, except in so far as provisions of the Act are inconsistent with those of such Special Acts.[8]

These companies are generally formed to meet social needs and not for the purpose of earning profits.

Ex.- State Bank of India , Industrial Finance Corporation of India are Statutory Companies.

Registered Company: A Company brought into existence by registration of certain documents under the Companies Act,1956. Such companies come into existence only when they are registered under the Act and a certificate of incorporation has been issued by the Registrar of Companies. This is the most popular mode of incorporating a company.

Registered companies may further be **divided** into **three categories on the basis of liability**.

i) Companies limited by Shares : The main attribute of limited companies which attracts the investors is limited liability of the share-holders. The Liability does not fluctuate but limited to the extent of the unpaid value of such shares'[9]. These types of companies have a share capital and the liability of each member or the company is limited by the Memorandum to the extent of face value of share subscribed by him. The amount remaining unpaid on the share can be called up at any time during the lifetime of the company or at the time of winding up'[10]. In other words, during the existence of the company or in the event of winding up, a member can be called upon to pay the amount remaining unpaid on the shares subscribed by him. Such a company is called company

[8] 616 (d) of Companies Act,1956

[9] Supra, note 5 at p.60

[10] S.S. Gulsan, "COMPANY LAW",(2nd Edn,2009),Excel Books, New Delhi at p.34

limited by shares. A company limited by shares may be a public company or a private company. These are the most popular types of companies.

The Supreme Court has emphasized that the right of a guarantee company to refuse to accept the transfer by a member of his interest in the company is on a different footing than that of a company limited by shares.

ii) Companies Limited by Guarantee: These types of companies may or may not have a share capital. But if it has share capital it is subject to the same restriction as to reductions as the capital of a company limited by shares.Each member promises to pay a fixed sum of money specified in the Memorandum in the event of liquidation of the company for payment of the debts and liabilities of the company.This amount promised by him is called 'Guarantee'. The Articles of Association of the company state the number of member with which the company is to be registered.Such a company is called a company limited by guarantee'[11]. Such companies depend for their existence on entrance and subscription fees. The liability of the member is limited to the extent of the guarantee and the face value of the shares subscribed by them, if the company has a share capital. If it has a share capital, it may be a public company or a private company.

The amount of guarantee of each member is in the nature of reserve capital. This amount cannot be called upon except in the event of winding up of a company. Non-trading or non-profit companies formed to promote culture, art, science, religion, commerce, charity, sports etc. are generally formed as companies limited by guarantee.

iii) Unlimited Companies : Section 12 gives choice to the promoters to form a company with or without limited liability. A company not having any limit on the liability of its members is called an unlimited company16.The right of limited liability is desirable, but not a necessary adjunct to incorporation. An unlimited company may or may not have a share capital. If it has a share capital it may be a public company or a private company. If the company has a share capital, the article shall state the amount of share capital with which the company is to be registered18.The articles of an unlimited company shall state

[11] Supra Note 5 at p.60

the number of member with which the company is to be registered. Section 77 does not apply to the case of an unlimited company.

The main disadvantage of an unlimited company is that its members are liable like the partners of a firm for all its trade debts without any limit .But still, the creditors cannot directly sue the members.

On the basis of number of members a company can be classified as

One person company: With increasing use of information technology and computers, emergence of the service sector, it is time that the entrepreneurial capabilities of the people are given an outlet for participation in economic activity. Such economic activity may take place through the creation of an economic person in the form of a company. Yet it would not be reasonable to expect that every entrepreneur who is capable of developing his ideas and participating in the market place should do it through an association of persons. We feel that it is possible for individuals to operate in the economic domain and contribute effectively. To facilitate this, the Committee recommends that the law should recognize the formation of a single person economic entity in the form of „One Person Company[12].

One Person Company means a company which has only one person as a member22. Though new in India, OPC's are in existence in quite a few countries across the world, notably China23. It is a one shareholder corporate entity, where legal and financial liability is limited to the company only. The One Person Company will be formed as a private limited company. The words 'One Person Company' shall be mentioned in brackets below the name of such company, wherever its name is printed, affixed or engraved24.

Where an OPC enters into a contract with the sole member of the company who is also a director, the company should, unless the contract is in writing, ensure that the terms of the contract or offer are contained in the memorandum or are recorded in the minutes of the first Board meeting held after entering into the contract and every such contract should be informed to the Registrar.[13]

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[12] "Report of the expert committee on company law" available at http://www.mca.gov.in/Ministry/chapter3.html Last updated on 16th Nov,2012

[13] Supra, note 23

It was an effort of JJ Irani Expert Committee who recommended for the formation of one-person company (OPC). It has suggested that such an entity may be provided with a simpler legal regime through exemptions so that the single entrepreneur is not compelled to fritter away time, energy and resources on procedural matters.

At present, an entrepreneur in India has to find another person to implement his skills through incorporation of a company while in the UK, Australia, Singapore, Pakistan, etc, a single person can form a company'[14].

2. Private company: A private company is that company which by its articles of association limits the number of its members to fifty, excluding employees who are members or ex-employees who were and continue to be members; restricts the right of transfer of shares, if any; prohibits any invitation to the public to subscribe for any shares or debentures of the company'[15]. Where two or more persons hold share jointly, they are treated as a single member. According to, the minimum number of members to form a private company is two. A private company must use the word "Pvt" after its name. Private companies represent a different set of relationships in terms of ownership, risk and reward as compared to public companies.

A Private Company has been described as an incorporated partnership, combining the advantages of the privacy of partnership and the permanence and origin of the corporate constitution. Private Companies can keep their affairs to themselves30.Private Companies exist with the sanction and encouragement of the Legislature31. They enjoy the benediction of the Legislature.

Characteristics or Features of a Private Company. The main features of a private of a private company are as follows :

i) A private company restricts the right of transfer of its shares. The shares of a private company are not as freely transferable as those of public companies. The articles generally state that whenever a shareholder of a Private Company wants to transfer his shares, he

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[14] Preeti Malhotra," *One-person company is a great prospect for lone entrepreneur*" available at http://articles. economictimes.indiatimes.com/2007-12-26/news/27683483_1_nominee-director-opc-entrepreneur accessed on 17th Nov, 2012

[15] 3(1) (iii) of Companies Act, 1956

must first offer them to the existing members of the existing members of the company. The price of the shares is determined by the directors. It is done so as to preserve the family nature of the company‟s shareholders.

ii) It limits the number of its members to fifty excluding members who are employees or ex-employees who were and continue to be the member. Where two or more persons hold share jointly they are treated as a single member. The minimum number of members to form a private company is two.

iii) A private company cannot invite the public to subscribe for its capital or shares of debentures. It has to make its own private arrangement.

Private Company can also be broadly classified as:

a) **Purely Private Company[16], and**
b) **Private Company which is a subsidiary of a company which is not a private Company.**

3. **Public companies:** A company which is not a private company and has minimum paid up capital of 5 lakh rupees or more, or a private company which is a subsidiary of a company which is not a private company[17].Public company may be said to be an association consisting of not less than seven members, which is registered under the Companies Act and which is not a private company within the meaning of the Act. The shares and debentures of a public company may be listed on a Stock Exchange and are offered to public for sale'[18].
There is no restriction on transfer of shares in case of public company. A Public Company having a share capital shall file with the Registrar a statement in lieu of prospectus signed by all the directors named therein, in case it has not issued a prospectus36. A Public

[16] 3(1) (iii) of Companies Act, 1956
[17] 3(1)(iv) of Companies Act,1956
[18] Supra, note 5 at p.65

company cannot commence its business unless certificate to commence business is issued by the Registrar of Companies in accordance with Section 149 of the Companies Act.

Deemed Public Company: Section 43-A of the Act deals with circumstances where a private company is deemed to be a public company. A Private Company may continue to retain the provisions as required under Section 3(1)(iii) of the Act and the number of its members may also be reduced below seven. It is for this reason the supreme Court stated that a deemed public company is neither a private company nor a public company but company in third category.

Even, The Company Law Board (CLB) **in Hillcrest Realty Sdn. Bhd v. Hotel Queenroad (P) Ltd'**[19]. held that the basic characteristics of a private company do not get altered by the mere fact that such a company is a subsidiary of a public company.

Though, Section 43-A has been omitted but Section 43-A Sub-section (2-A) still subsist after the Amendment made in the year 2000.This provision states that when a deemed public company becomes a private company after this amendment, the company has to inform the Registrar and latter would make necessary changes in his records. This process needs to be completed within 4 weeks from the date of the company's application.

Characteristics or Features of a Private Company.

The main features of a private of a private company are as follows :

i) A private company restricts the right of transfer of its shares. The shares of a private company are not as freely transferable as those of public companies. The articles generally state that whenever a shareholder of a Private Company wants to transfer his shares, he must first offer them to the existing members of the existing members of the company. The price of the shares is determined by the directors. It is done so as to preserve the family nature of the company's shareholders.

ii) It limits the number of its members to fifty excluding members who are employees or ex-employees who were and continue to be the member. Where two or more persons hold

[19] Hillcrest Realty Sdn.Bhd vs Hotel Queenroad (P) Ltd [(2006) 72 CLA 245 CLB]

share jointly they are treated as a single member. The minimum number of members to form a private company is two.

iii) A private company cannot invite the public to subscribe for its capital or shares of debentures. It has to make its own private arrangement.

Public company

According to Section 3 (1) (iv) of Indian Companies Act. 1956 "A public company which is not a Private Company.

If we explain the definition of Indian Companies Act. 1956 in regard to the public company, we note the following :

i) The articles do not restrict the transfer of shares of the company

ii) It imposes no restriction no restriction on the maximum number of the members on the company.

iii) It invites the general public to purchase the shares and debentures of the companies

(Differences between a Public Company and a Private company)

1. **Minimum number :** The minimum number of persons required to form a public company is 7. It is 2 in case of a private company.
2. **Maximum number :** There is no restriction on maximum number of members in a public company, whereas the maximum number cannot exceed 50 in a private company.
3. Number of directors. A public company must have at least 3 directors whereas a private company must have at least 2 directors (Sec. 252)
4. Restriction on appointment of directors. In the case of a public company, the directors must file with the Register a consent to act as directors or sign an undertaking for their qualification shares. The directors or a private company need not do so (Sec 266)

5. Restriction on invitation to subscribe for shares. A public company invites the general public to subscribe for shares. A public company invites the general public to subscribe for the shares or the debentures of the company. A private company by its Articles prohibits invitation to public to subscribe for its shares.
6. Name of the Company : In a private company, the words “Private Limited” shall be added at the end of its name.
7. Public subscription : A private company cannot invite the public to purchase its shares or debentures. A public company may do so.
8. Issue of prospectus : Unlike a public company a private company is not expected to issue a prospectus or file a statement in lieu of prospectus with the Registrar before allotting shares.
9. Transferability of Shares. In a public company, the shares are freely transferable (Sec. 82). In a private company the right to transfer shares is restricted by Articles.
10. Special Privileges. A private company enjoys some special privileges. A public company enjoys no such privileges.
11. Quorum. If the Articles of a company do not provide for a larger quorum. 5 members personally present in the case of a public company are quorum for a meeting of the company. It is 2 in the case of a private company (Sec. 174)
12. Managerial remuneration. Total managerial remuneration in a public company cannot exceed 11 per cent of the net profits (Sec. 198). No such restriction applies to a private company.
13. Commencement of business. A private company may commence its business immediately after obtaining a certificate of incorporation. A public company cannot commence its business until it is granted a “Certificate of Commencement of business”.

Special privileges of a Private Company

Unlike a private a public company is subject to a number of regulations and restrictions as per the requirements of Companies Act, 1956. It is done to safeguard the interests of investors/shareholders of the public company. These privileges can be studied as follows :

a) Special privileges of all companies. The following privileges are available to every private company, including a private company which is subsidiary of a public company or deemed to be a public company :

1. A private company may be formed with only two persons as member. [Sec.12(1)]
2. It may commence allotment of shares even before the minimum subscription is subscribed for or paid (Sec. 69).
3. It is not required to either issue a prospectus to the public of file statement in lieu of a prospectus. (Sec 70 (3)]
4. Restrictions imposed on public companies regarding further issue of capital do not apply on private companies. [Sec 81 (3)]
5. Provisions of Sections 114 and 115 relating to share warrants shall not apply to it. (Sec. 14)
6. It need not keep an index of members. (Sec. 115)
7. It can commence its business after obtaining a certificate of incorporation. A certificate of commencement of business is not required. [Sec. 149 (7)]
8. It need not hold statutory meeting or file a statutory report [Sec. 165 (10)]
9. Unless the articles provide for a larger number, only two persons personally present shall form the quorum in case of a private company, while at least five member personally present form the quorum in case of a public company (Sec. 174).
10. A director is not required to file consent to act as such with the Registrar.

1. Similarly, the provisions of the Act regarding undertaking to take up qualification shares and pay for them are not applicable to directors of a private companies [Sec. 266 (5) (b)]

11. Provisions in Section 284 regarding removal of directors by the company in general meeting shall not apply to a life director appointed by a private company on or before 1st April 1952 [Sec. 284 (1)]
12. In case of a private company, poll can be demanded by one member if not more than seven members are present, and by two member if not more than seven member are present. In case of a public company, poll can be demanded by persons having not less than one-tenth of the total voting power in respect of the resolution

or holding shares on which an aggregate sum of not less than fifty thousand rupees has been paid-up (Sec. 179).

13. It need not have more than two directors, while a public company must have at least three directors (Sec. 252)

b) Privileges available to an independent private company (i.e. one which is not a subsidiary of a public company)

An independent private company is one which is not a subsidiary of a public company. The following special privileges and exemptions are available to an independent private company.

1. It may give financial assistance for purchase of or subscription for shares in the company itself.
2. It need not, like a public company, offer rights shares to the equity shareholders of the company.
3. The provisions of Sec. 85 to 90 as to kinds of share capital, new issues of share capital, voting, issue of shares with disproportionate rights, and termination of disproportionately excessive rights, do not apply to an independent private company.
4. A transfer or transferee of shares in an independent private company has no right of appeal to the Central Government against refusal by the company to register a transfer of its shares.
5. Sections 171 to 186 relating to general meeting are not applicable to an independent private company if it makes its own provisions by the Articles. Some provisions of these Sections are, however made expressly applicable.
6. Many provisions relating to directors of a public company are not applicable to an independent private company, e.g.

a) it need not have more than 2 directors.

b) The provisions relating to the appointment, retirement, reappointment, etc. of directors who are to retire by rotation and the procedure relating, there to are not applicable to it.

c) The provisions requiring the giving of 14 days' notice by new candidates seeking election as directors, as also provisions requiring the Central Government's sanction for increasing the number of directors by amending the Articles or otherwise beyond the maximum fixed in the Articles, are not applicable to it.

d) The provisions relating to the manner of filing up casual vacancies among directors and the duration of the period of office of directors and the requirements that the appointment of directors should be voted on individually and that the consent of each candidate for directorship should be filed with the Registrar, do not apply to it.

e) The provisions requiring the holding of a share qualification by directors and fixing the time within which such qualification is to be acquired and filing with the Registrar of a declaration of share qualification by each director are also not applicable to it.

f) It may, by its Articles, Provide special disqualifications for appointment of directors.

g) It may provide special grounds for vacation of office of a director.

h) Sec. 295 prohibiting loans to directors does not apply to it

i) An interested director may participate or vote in Board's proceedings relating to his concern of interest in any contract of arrangement.

GENESIS OF COMPANY LAW

"Company Legislation" in India owes its origin to the English Company Law. The Company Law in India is the cherished child of English parents born and brought up in England. The Companies Acts passed in India from time to time have been following the English Companies Acts with, minor changes here and there.

In London, the earliest business organisation during the eleventh and thirteenth Centuries were called the 'merchant guilds'. These guild obtained charters from Crown mainly to secure for their members, a monopoly in respect of particular trade or commodity. In the fourteenth century, the word 'Company' was adopted by certain merchants for trading overseas. By the end of sixteenth century, Royal Charters granted monopoly of trade to members of the company over a certain territory. These companies were called 'Regulated

Companies' for example, East India Company. In the seventeenth century the East India Company was established by the Royal Charter of Queen Elizabeth. The object was to share profits of each voyage from its monopoly trade in far east.[20] The characteristics of modern corporate bodies were clearly visible in the constitution and working of East India Company. In the charter of the company were named a Governor of the company, who was not different from modern day chairman of the Board of Directors and several committee members equivalent of present day directors. The Governor and the committee men were required to submit frequent reports on their important decisions for confirmation of General Courts of all subscribers of the company corresponding to the general meetings of the shareholders in the present day.[21]

By the end of seventeenth century, all these companies or merchant guilds and many regulated companies, which the Crown had incorporated, meanwhile established permanent fixed capitals represented by shares, which were freely transferable and saleable. Consequently, the Bubble Act, 1720 was passed. Although the Bubble Act held up the development of capital market for a century, it did not destroy the unincorporated company. In 1834, the Trading Companies Act, was passed on the place of Bubble Act. In 1844, the Joint Stock Company Act was passed for the first time. In 1855, however, an Act of Parliament was passed called (Limited Liability Act, 1855). The Act was repealed within a few months. In fact, the English Companies Act, 1856, replaced both the Acts of 1844 and 1855. The history of Indian Company Law began with the Joint Stock Companies Act of 1850. In 1857, another Act was passed on the lines of the English Companies Act of 1855. The India Companies Act of 1860 extended the privilege to banking and insurance companies as well.

The first comprehensive Act was passed in 1866 in India and this Act was recast in 1872. This was amended in 1877, 1891, 1895 and 1910, after which we got a consolidated Act in 1913. In 1950, the Government of India appointed a Company Law Committee (Bhabha Committee) in England to report upon its working of Companies Act, and to suggest improvement. Its report was presented to Government in 1952, and Government, after

[20] The Hutchison Encyclopaedia (1990), Rendom Century Group, p. 367.

[21] Srinivasachari, E.S. (European Settlements). "History and Culture of the Indian People" Vol. 7, the Mughal Empire (1994) end note 5 to chapter XVI (p. 518) Bhartiya Vidya Bhawan, Mumbai.

studying the suggestions, passed a new ‘Companies Act, 1956’ which replaced the entire earlier Acts. The Companies Act, 1956 has been amended several times since then. The major amendments were introduced in the years 1960, 1962, 1963, 1964, 1965, 1966, 1967, 1969, 1974, 1977, 1985, 1988, 1991, 2000, 2001, 2002 and in 2003. The Companies Act is also not exhaustive of the whole of Company Law. It only amends and consolidates certain portions of Company Law.

The expression ‘Company Law’ may be defined as a branch of law governing the companies. It deals with all aspects relating to companies, such as incorporation of companies, allotment of shares and share capital, membership in companies, borrowings by companies, management and administration of companies, winding up of companies. Thus, the Company Law is that branch of law which exclusively deals with all matters relating to companies.

THE COMPANIES ACT, 1956

The Company Law, in India, is codified, and contained in THE COMPANIES ACT, 1956. This Act extends to the whole of India, and came in to force on 1st April 1956. The Companies Act, 1956 is 150 years old and the largest Act in India comprising of 658 Sections and 15 Schedule. In addition thereto, there are various rules and regulations notified by the Government under the Act. The Act has been amended from time to time in order to address the issues raised by the corporate sector and to protect the interests of the investors.

The Companies Act, 1956 is the principal landmark legislation that governs companies in India. The Act prescribes provisions for protection of the interests of the investors, creditors and public at large but at the same time permits the management to utilize its resources for optimum results and prosperity. The corporate status of a business venture has led to the evolution of innovative culture in the field of economic development the world over. The various types of business talents and the bulk finance required for the marked growth of commerce and industry would not have been possible without the process of innovation conceived and practised through the corporate sector. Companies in our country have by and large played and are playing an important role in our industrial

and economic development. Company is a juristic entity and a corporate citizen bearing a social responsibility towards the society in general.

Companies play a vital role in any economy. In our country, the Companies Act, 1956 primarily regulates the range of activities from formation to liquidation and winding up of companies. The Act prescribes regulatory framework for various aspects including organisational, financial and managerial aspects of companies. The winding up matters, presently are largely within jurisdiction of High Courts. Regulation of the corporate governance, structure and obligations of companies towards their stakeholders, statutory disclosure obligations, powers of inspection, investigation and enforcement and company processes such as mergers/amalgamations/arrangements/reconstructions, etc., constitute the main focus of the Act. In the functioning of corporate sector, along with freedom of operation of companies, protection of investors and shareholders are considered equally important. The Companies Act enables a statutory platform for essential corporate governance requirements essential for functioning of the companies with transparency and accountability, recognizing and protecting the interests of various stakeholders. The basic objectives underlying the Act are:

- A minimum standard of good behaviour and business honesty in company promotion and management.
- To help in the development of companies on healthy lines.
- To protect the interests of the shareholders.
- To safeguard the interests of the creditors.
- To equip the Government with adequate powers to intervene in the affairs of a company in public interest and as per the procedure prescribed by law.

• A fair and true disclosure of the affairs of companies in their annual published balance sheet and profit and loss accounts.

• Proper standard of accounting and auditing.

• A ceiling on the share of profits payable to managements as remuneration for services rendered.

• A check on their transactions where there was a possibility of conflict of duty and interest.

• A provision for investigation into the affairs of any company managed in a manner oppressive to minority shareholders or prejudicial to the interest of the company as a whole.

• Enforcement of the performance of their duties by those engaged in the management of public companies or of private companies which are subsidiaries of public companies by providing sanctions in the case of breach and subjecting the latter also to the more restrictive provisions of law applicable to public companies.

• To help in the attainment of the ultimate ends of the social and economic policy of the Government.

COMPANY LAW REFORMS - A PERSPECTIVE

In response to the changing business environment, the Companies Act, 1956 has been amended from time to time so as to provide more transparency in corporate governance and protect the interests of small investors, depositors and debenture holders, etc. Company Law, has undergone major transformation in the last decade. The impetus for such transformation germinated partially from the world wide move for market oriented polices and partially by disquieting features of globalisation, resulting into focused attention on need for good corporate governance. The advancements in information technology and influence of faster means of communications over corporate operations have also provided impetus for such transformation. In other words, the paradigm shift witnessed in the global economy and corporate sector the world over, have cumulatively presented various issues that have triggered debate and become important factors for initiating changes in Company Law in our country and abroad.

The Companies Act, 1956 provides the legal framework for the administration of companies/corporate entities in India. The need for reviewing this Act was felt from time to time as the corporate sector grew in pace with the Indian economy, with as many as 24 amendments took place since 1956. In the midst of grave balance of payment, the

Government of India in 1991 redrafted its economic policy to lead new era of deregulation, decontrol, liberalisation and global integration. Since then significant policies initiatives have been taken to provide stimulus to accelerated growth, industrial efficiency and global competitiveness. As a part of reform process, Government of India has initiated a number of legislative reforms and radical changes in Company Law.

Major amendments to the Act were made through Companies (Amendment) Act, 1988 after considering the recommendations of the Sachar Committee, and then again in 1998, 2000 and finally in 2002 through the Companies (Second Amendment) Act 2002, consequent to the report of the Eradi Committee. It is widely accepted that reform and updation of the basic legal framework for corporate entities is essential to enable sustainable economic reform. India took up its economic reforms programme in the 1990s. A need was felt for a comprehensive review of the Companies Act, 1956. Unsuccessful attempts were made in 1993 and 1997 to replace the present Act with a new law. Companies (Amendment) Bill, 2003 containing important provisions relating to corporate governance was also introduced, the consideration of which has been held back in anticipation of a comprehensive revision of the Company Law.

n the year 1996, a Working Group was constituted to re-write the Companies Act, to facilitate healthy growth of Indian corporate sector under a liberalized, fast changing and highly competitive and contestable business environment. Based on the Report prepared by the Working Group and taking into account the developments that had taken place in corporate structure, administration and the regulatory framework the world over, the Companies Bill, 1997 was introduced in Rajya Sabha on August 14, 1997 to replace the Companies Act, 1956. Since the Bill of 1997 was under consideration and an urgent need was felt to amend the Companies Act, the President of India promulgated the Companies (Amendment) Ordinance, 1998 which was later replaced by the Companies (Amendment) Act, 1999 to surge the capital market by boosting morale of national business houses besides encouraging Foreign Institutional Investors (FIIs) as well as Foreign Direct Investment (FDI) in the country. The amendment of 1999 brought about number of important changes to tailor the Companies Act in consonance with the then prevailing

economic environment and to further Government policy of deregulation and globalisation of economy.

The post reforms in Indian corporate sector have witnessed tremendous growth and expansion as a result of deregulation and procedural simplification of Company Law. The corporate India experienced multifaceted growth in terms of number, size, volume and extraterritorial reach. This growth can be gauged from the fact that with about 30,000 companies in 1956 when the Companies Act was enacted, India now (March, 2009) has the largest corporate base with over 9 lakh companies at work, which are spread throughout the country, and larger numbers of new companies are being incorporated every year. Today, the Indian corporate sector has spread its wings in other parts of the world also and even resorted to acquisitions abroad. The catalyst behind this growth has been Government's commitment to provide growth oriented policy and regulatory framework for corporates. However, this corporate growth has been punctuated by incidences of corporate failures, securities scams, vanishing companies, mismanagement, growing shareholders dissatisfaction and unethical business practices. The Enron debacle and meltdown of certain once mighty US corporations have further aggravated the situation and raised various issues of good corporate governance and attracted worldwide focus.

The corporate sector, with a view to ensure standardisation of accounting practices of financial reporting, the compliance of Indian Accounting Standards was made mandatory. Accordingly, National Committee on Accounting Standards was set up. Investor Education and Protection Fund was constituted to educate the investors to enable them to take well informed and considered investment decisions.

With a view to expedite the harmonisation process, the Companies Act was further amended in the year 2000 to provide certain measures of good corporate governance and for ensuring meaningful shareholders' democracy in the working of companies. The amendments effected in the year 2000, included inter alia setting up of audit committee, introduction of postal ballot, abolition of the office of the Public Trustee, abolition of the concept of Deemed Companies, appointment of auditors in the Government companies directly by the Comptroller and Auditor General of India, restricting a person to become

director in more than 15 companies, prohibiting an auditor to hold securities carrying voting rights, introduction of secretarial compliance certificate to ensure better compliance of Companies Act by smaller companies, deletion of redundant provisions relating to managing agents, secretaries and treasurers and increase in penalties by way of fine to ten-fold.

The reforms in Company Law has given an impetus to corporate governance frame work and related issues, which are not only important for companies to gain credibility and trust but also as part of their strategic management for survival, consolidation and growth in the emerging knowledge economy. Directors/Company Secretaries are now encouraged to use the electronic media in a wider and cost effective way to provide information beyond the mandatory disclosure. There are also strong influences of institutional investors, pressing for more transparency, accuracy, authenticity in corporate reporting and governance structures of companies they invest. The regulators are also keeping pace with the expectation of the capital markets with the reforms in regulation in order to enhance investor confidence.

The heart of corporate governance is transparency, disclosure, accountability and integrity. Legal and regulatory framework of corporate governance in India is mainly covered in SEBI guidelines and Companies Act, 1956. It is to be borne in mind that mere legislation does not ensure good governance. Good governance flows from ethical business practices even when there is no legislation. Corporate governance is not just a legal concept, it is a governance concept, and it is something which has to come from within. However, one cannot have abstract concepts applicable to corporate at large and there lies the need for a legislative framework.

In the past decade, India has undergone rapid industrialisation, transmitting phenomenal growth in the number and size of private and public limited companies. This dynamic economic development has, in turn called for the key role of directors and entrepreneurs in expanding the country's economy. The reforms in Company Law, is aimed to facilitate and assist the process of economic growth in creating a robust enterprise system.

The Board of Directors play a pivotal role in ensuring good governance. The contribution of directors on the Board is critical to the way a corporate conducts itself. A board's responsibilities are derived from law, custom, tradition and current practice. In the present times where transparency, disclosure accountability, issues of sustainability, corporate citizenship, globalisation are just some of the concerns of the corporate India, the Boards today have to respond to the explosive demands of the society. The contribution of directors on the Board of companies is critical for ensuring appropriate directions with regard to leadership, vision, strategy, policies, monitoring, supervision, accountability to shareholders and other stakeholders, and to achieving greater levels of performance on a sustained basis as well as adherence to the best practices of corporate governance. This two dimensional role of the Board of Directors is cornerstone in evolving sound, efficient, vibrant and dynamic corporate sector alive to the persistent strive for attaining role models of high standards in integrity, transparency, code of conduct, accountability as well as the social responsibility.

COMPANY LAW ADMINISTRATION

The present set up dealing with Company Law Administration, directly or indirectly, at various stages provides for various administrative authorities and they are enumerated below:

The Central Government (Section 637)

The Central Government is the supreme authority responsible for the administration of Company Law. The Companies Act is administered by the Central Government through the Ministry of Corporate Affairs and the Offices of Registrar of Companies, Official Liquidators, Public Trustees, Company Law Board, Director of Inspection, etc. The Registrar of Companies (ROC) monitors the task of incorporation of new companies and the administration of running companies.

The Ministry of Corporate Affairs, earlier known as Department of Corporate Affairs under Ministry of Finance, is primarily concerned with administration of the Companies Act, 1956, other allied Acts and rules and regulations framed there under mainly for

regulating the functioning of the corporate sector in accordance with law. The Ministry has a three-tier organisational set-up:

The Headquarters at New Delhi, the Regional Directorates at Mumbai, Kolkata, Chennai and Noida, and the Registrars of Companies (ROCs) in States and Union Territories.

The Official Liquidators who are attached to the various High Courts functioning in the country are also under the overall administrative control of the Ministry. The set-up at the Headquarters includes the Company Law Board, a quasi-judicial body, having the principal Bench at New Delhi, an additional principal bench for Southern Region at Chennai and four Regional Benches located at New Delhi, Mumbai, Kolkata and Chennai. The organisation at the Headquarters also includes two Directors of Inspection and Investigation with a complement of staff, an Economic Adviser for Research and Statistics and other Officials providing expertise on legal, accounting, economic and statistical matters.

The four Regional Directors, who are in charge of the respective regions, comprising a number of States and Union Territories, inter alia, supervise the working of the Offices of Registrars of Companies and the Official Liquidators working in their regions. They also maintain liaison with the respective State Governments and the Central Government in matters relating to the administration of the Companies Act, 1956.

Registrar of Companies (ROCs) appointed under Section 609 of the Companies Act, covering various States and Union Territories, are vested with the primary duty of registering companies floated in the respective States and the Union Territories and ensuring that such companies comply with the statutory requirements under the Act. Their offices function as registry of records relating to the companies registered with them.

The Company Law Board

he Company Law Board exercises powers which have been conferred on it by the Companies Act and those powers which are delegated to it by the Central Government. Section 637 empowers the Central Government to delegate any of the powers and functions, by notification in the Official Gazette (except the power to appoint the Public

Trustee under Section 153A) to some other authority as may be specified in the notification. Now, for all practical purposes, the day-to-day administration of Company Law is carried out by the Company Law Board.

It acts through the Department of Company Affairs in the Ministry of Law, Justice and Company Affairs. It has, therefore, delegated its powers to the Company Law Board which acts as the executive arm of the Department of Company Affairs.

National Advisory Committee on Accounting Standards

Section 210A provides that the Central Government may, by notification in the Official Gazette, constitutes National Advisory committee on Accounting Standards, to advise the Central Government on the formation and laying down of accounting policies and accounting standards, for adoption by companies or clause of companies under the Companies Act 1956.

Securities and Exchange Board of India

Section 2 (45B) provides that the Central Government may, by notification in the Official Gazette, establish the Securities and Exchange Board (SEBI) for the protection of investors in securities.

RADICAL CHANGES IN THE INDIAN COMPANY LAW

• Corporate Governance has received focused attention in the recent years world over and many countries have amended their Company Laws to keep pace with the changed world.

• Serious efforts and series of endeavours in India was made in the years 1999, 2000, 2002 and 2006 when certain corporate governance reforms were announced by amending the Companies Act. It was a comprehensive amendment of the Companies Act of 1956. Most of the proposals of the Bill of 1993 and 1997 were incorporated in these amendments.

By amending the Companies Act in 2002, mismanaged manufacturing cooperative societies in the country were brought under the purview of the Act as Producers Companies by adding Part IXA contained in 12 chapters

The Companies (Second) Amendment Act, 2002 provided for the replacement of the Company Law Board (CLB) by the mechanism of Tribunal, though the Notification to dissolve the CLB under Section 10FA has not yet been issued by the Central Government.

Based on the recommendations of the J.J. Irani Committee, the Companies Act was amended in May, 2006 to provide for the filing of company returns online by a simple click on www.mca.gov.in and to make payment of fees by using credit card and electronically. The electronic filing has been made mandatory from September 16, 2006

• To have LLP form of entity in the country, LLP Act, 2008 was passed and notified in January, 2009.

• The Companies (Amendment) Bill, 2009 has been re-introduced in the Lok Sabha on 3rd August 2009.

The process of reforming the Company Law is still on and the Central Government has introduced in the Parliament New Company Bill, 2009 to totally revamp the Company Law. While piecemeal reform continued through amendments, it has not yet been possible to bring about a comprehensive, new legislation to replace the existing Act.

CHAPTER-III

RECENT LEGISLATIVE DEVELOPMENTS COMPANY ACT

Corporate scandals became the buzzword business circles after Enron, Health South and WorldCom debacles of the United States of America. However, it was soon discovered that such scandals were not isolated to the United States of America. The meltdown of corporate giants dampened investors' confidence and the very soul ofthe securities market globally. Therefore, need for urgent reforms were felt in security markets across the world and various countries set out to put in place a regulatory framework which would restore investors' faith.

Indisputably, a vital element for winning investors' confidence is having an effective Board of Directors. It is after all the Board, which is accountable and answerable for governance of companies. A strong, independent, responsible open board with high standards of integrity and accountability gives the investors a sense of confidence and protection.

The pivotal role in a company is that of its Board of Directors. Not only is the Board a trustee of the interests of investors and accountable for implementation ofgoals and plans chartered out for the company, but also, it is the board that formulates and reviews these very goals. It is in effect that the Board guides and also manages the business of a company and is singly responsible to investors. Therefore, the Board has a strategic as well as a monitoring function to perform.

An effective board is one, which is always in a position to exercise independent judgment and is not weighed down Or dominated by conflicting interests to the detriment ofthe investors. As per ope school of thought, the most significant factor which led to the sensational corporate collapses was the unregulated conflicts of interests that were allowed to penetrate within the Board. These conflicts undermined the basic role of the Board, which is to protect the interest of the investors. This chapter endeavours to highlight the principal steps taken towards investor protection inorder to win back investors' faith. The

study principally covers the legal and regulatory regime in India, England and United States of America.

The corporate world in India could not remain indifferent to the growing issues of corporate governance. Infact the developments in the United States of America and England had tremendous influence in India. They triggered the thinking process, which finally led India to lay down ground rules on Corporate Governance.

The important changes in the Companies Act, 1956 are brought about inorder to provide immediately certain measures for good corporate governance and for protection ofinvestors. These measures relating to the role and position of Company Directors are as follows;-

Changes made by the Companies (Amendment) Act, (2000) Act 53 of 2000[22]. Short Title and Commencement

This Act may be called the Companies (Amendment Act, 2000. The provisions of this Act, other than section 7 and 80 shall come into force on such date as the Central Government may, by notification in official Gazette, appoint.

Section 275 of the Indian Companies Act, 1956 provides that no person shall hold office of a company director at the same time in more than "twenty Companies[23]. The words twenty companies have been substituted for "fifteen companies." So according to the present law, a person can hold directorship in not more than fifteen companies.

Further, section 276 of the Act, provides that any person holding office as a director in more than 'fifteen companies' immediately before the commencement of the Companies (Amendment) Act, 2000 shall within two months from such commencement, (a) choose not more than 'fifteen' of those companies, as companies in which he wishes to continue to hold the office of a director and (b) resign his office as a director in other companies. The word "twenty" is substituted for "fifteen."

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[22] As passed by Lok Sabha on 27-11-2000 and Rajya Sabha on 30-11-2000 and received assent ofthe president on 13lh December, 2000, came into force w.e.f 13-12-2000.

[23] " Substituted by Act of2000. section 133, (w.e.f 13-12-2000).

Section 279 of the Indian Companies Act, 1956 provides that any person who holds or acts as a director of more than "fifteen companies"4 in contravention of foregoing provisions shall be punished with fine which may extend to "fifty thousand rupees." In respect of each ofthose companies after the first fifteen. The words "fifty thousand rupees" are substituted for "five thousand rupees." And the words fifteen companies are substituted for twenty companies.

Section 286 of the Act provides that every meeting of the Board of Directors of a company shall be given in writing to every director for the time being in India and at his usual address in India. Further, this section provides that every officer of the company whose duty is to give notice as aforesaid and who fails to do so shall be punishable with fine which may extend to one thousand rupees. The words "one thousand rupees have been substituted for "one hundred rupees.

According to section 295 of the Indian Companies Act, 1956 no company (hereinafter in this section referred to as "the leading company) without obtaining the previous approval of the Central Government in that behalf shall directly or indirectly, make any loan to or give any guarantee or provide any security in connection with a loan made by any other person to or to any other person. –

(a) Any director of the lending company or of a company which is its holding company or any partner or relative ofsuch director,

(b) Any firm in which any such director or relative is a partner,

(c) Any private company ofwhich such director is a director or member,

(d) Any corporate at a general meeting which not less than twenty- five percent ofthe total voting power may be exercised or controlled by any such directors or by two or more such directors together or

(e) Any body corporate, the board of directors, managing director or manager where of is accustomed to act in accordance with the directions or instructions of the Board or any director or directors of the lending company.

Further, the Act provides that every person who is knowingly a party to any contravention of this provision, including in particular any person to whom the loan is made or who has taken loan in respect of which the guarantee is given or security is provided shall be punishable either with fine which may extend to 'fifty thousand rupees[24]' or with imprisonment for a term which may extend to six months. The words "fifty thousand" have been substituted for "five thousand rupees.

Section 305 of the Indian Companies Act, 1956 provides that every director, managing director or manager or secretary of any company, who is appointed to or relinquishes, the office of directors, managing director or manager or secretary of any body corporate shall, within twenty days ofhis appointment to, or as the case may be. relinquishment of, such office, disclose to the company the aforesaid the particulars relating to the office in other body corporate which are required to be specified under sub-section (1) of section 303 and if he fails to do so, he shall be punishable with fine which may extend to "five thousand rupees.

The words five thousand rupees" have been substituted for "five hundred rupees.

Section 307 of the Act requires every company to keep a register showing as respects each director of the company, the number, description and amount of shares in or debentures of, the company or any other body corporate, being the company's subsidiary or holding company or a subsidiary of the holding company, which are held by him or in trust for him or for which he has any right to become the holder whether on payment or not.

In addition, the section provides that if a default is made in complying with this provision or refused or if any inspection required under this section is refused or if any copy required there under is not sent within a reasonable time, the company and every officer of the company who is in default, shall be punishable with fine which may extend to 'fifty thousand rupees' and also with a further fine which may extend to "two hundred rupees[25].

Section 310 of the Act provides that in the case of a public or private company which is a subsidiary of a public company, any provision relating to the remuneration of any director

[24] Substituted by Act 53 of 2000, section 142, (w.e.f. 13-12-2000)
[25] Substituted by Act 53,of section 151,(w.e.f. 13-12-2000).

including a managing director or any amendment * thereof which purports to increase or has the effect of increasing, whether directly or indirectly, the amount thereof, whether that provision be contained in the company's Memorandum or Articles or in an agreement entered into by it or i: any resolution passed by the company in general meeting or by its Board o Directors.

However, the approval of the Central Government shall not be require< where any such provision or amendment thereof purports to increase or has th< effect of increasing, the amount of such remuneration only by way of a fee fo; each meeting ofthe Board or committee thereof attended by any such director anc the amount ofsuch fee after such increase does not exceed such sums as may be prescribed[26].

Sub-section 2AA of section 217 provides that the Board's report shall also include a Directors' Responsibility Statement indicating therein;-

(i) That in the preparation of the annual accounts, the accounting standards had been followed along with proper explanation relating to material departures,

(ii) That the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view ofthe state of affairs ofthe company at the end of the financial year and of the profit or loss of the company for that period.

(iii)That the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets ofthe company and for preventing and detecting fraud and other irregularities and

Sub-section (5) of section 217 provides that if any director fails to take all reasonable steps to comply with the provisions of sub-sections (1) to (3) being the chairman, signs the Board's report otherwise than in conformity with the provisions of sub-section (4), he shall, in respect of each offence be punishable with imprisonment for a term which may

[26] Rule 10 B, Companies (Central Government's) General Rules and Forms, 1956 has prescribed a sum of Rs 5,000 w.e.f. 1-4-2000.

extend to six months or with fine which may extend to "twenty thousand rupees" or with both.

The words 'twenty thousand rupees' have been substituted for "two thousand rupees." Sub-section (6) of section 217 provides that if any person, not being a director, having been charged by the Board of Directors with the duty of seeing that the provisions of sub-section (1) to (3) are complied with makes default in doing so, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months or with fine which may extend to "twenty thousand rupees" or with both[27]. The words "twenty thousand have been substituted for "two thousand rupees.

Section 221 of the Indian Companies Act, 1956 provides that where any particulars or information is required to be given in the balance sheet or profit and loss account of a company or in any document required to be annexed or attached thereto, it shall be the duty of the concerned officer of the company to furnish without delay to the company and also to the company's auditor, whenever he so requires, those particulars or that information in a full manner as possible.

Further, section 221 provides that if any person knowingly makes default in performing the duty cast on him by the foregoing provisions of this section, he shall be punishable with imprisonment which may extend to six months or with fine which may extend to "'fifty thousand rupees"l6or with both. The words "fifty thousand rupees" have been substituted for "five thousand rupees'.

Section 223 of the Act requires certain companies to publish statement in the form F in schedule 1 further, sub-section (4) of section 223 provides that if default is made in complying with any of the requirements of this section, the company and every officer of the company who is in default, shall be punishable with fine which may extend to 'fifty thousand rupees, for every day during which the default continues. The words "fifty thousand rupees" have been substituted for five thousand rupees.

Companies (Amendment) Act, 2002

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[27] Substituted by Act 53 of2000, section 101, (w.e.f. 13-12-2000).

In the context of Clause 49 of the listing agreement require the Board of listed companies to have optimum number of Independent Directors. The clause Independent directors means directors who a part from receiving remuneration, do not have any other material pecuniary relationship or transactions with the company, its promoters, its management or its subsidiaries, which in the judgment ofthe Board may affect independence judgment of the director.

Explanation

The word 'pecuniary' means consisting of "money," similarly, the word relationship means kinship state of being related.

The word "transaction" means "management of business" or "commercial business." The word "Promoter" means any person who assists in promotion for example by obtaining a director or agreeing to place safes or negotiating an agreement or merely by putting a vendor in touch with persons who may form a company which is consequently formed.

As defined in section 4 of the Indian Companies Act, 1956 a company is subsidiary of another if;(i) (a) that other controls the composition of its Board of Directors or (b) that other where the existing company in respect of which the holders of preference shares issued before the commencement of this Act have the same voting rights in all respects as holders of equity shares, exercises or controls more than half of the total voting power of such company.

(ii)Where the first mentioned company holds more than half in nominal value of its equity share capital or

(c) The first mentioned company is a subsidiary of any company which is that other's subsidiary.

The word "management" though not defined in the Companies Act, 1956 would mean the persons in control of the affairs of the company. Keeping in view of the aforesaid expressions the director who do not have any material pecuniar)' relationship or transactions with the company, its promoters, its management or its subsidiaries and such

relationship or transactions which in the opinion of the Board would not affect independence of judgment of such directors would be independent directors.

However, the persons having substantial shareholding in the company, regular suppliers, regular buyers, employees who being in control of the affairs can influence the judgment, cannot be termed as Independent Directors.

Similarly, professionals like advocates, Solicitors, Chartered accountants, Company Secretaries and works Accountants Doctors, Chartered Engineers, Architects and so on who may be providing their professional services on work to work basis or non-relationship shall be independent since payments to them are made purely on their professional expertise and such relationship would not in any way affect the independence of their judgment. Sub-clause 1 (A) of clause 49 provides that 50% of the total number of Directors should be Non-Executive Directors. If the Chairman is an Executive Chairman atleast half of the total number of directors should be Independent Directors. If the Chairman is nonexecutive Chairman 1/3 of the total number of directors should comprise of Independent Directors.

Further, sub-clause 1 (B) of Clause 49 provides that all pecuniary relationship or transactions ofthe Non-Executive Directors vis-a-vis the company should be disclosed in annual report. Sub-clause 111 (A) of clause 49 provides that remuneration of Non-Executive Directors to be decided by the Board of Directors. Sub-clause IV (A) provides that Board meetings shall be held atleast four times a year, with a maximum time gap of four months between any two meetings.

Sub clause (V) of clause 49 requires disclosures to be made by the management to the Board relating to all material financial and commercial transactions, where they have personal interest that may have a potential conflict with the interest of the company at large viz for dealing in company shares, commercial dealings with bodies which have shareholding of management and their relatives and so on.

Sub-clause VII of clause 49 provides that the company has to (a) obtain a certificate from auditors of company regarding compliance of conditions of corporate governance as stipulated in the clause (b) and annex certificate with directors' report which is sent

annually to all shareholders and (c) to send same certificate to Stock Exchanges along with annual returns filed by the company.

Clause 49 Amendments by SEBI,

SEBI, vide Circular SEBI / CFD /CG /1/2004 /12/12 dated 29 October, 2004[28], issued the revised Clause 49 of the Listing Agreement, which was to come into effect by 1 April 2005. Since it was brought to SEBI's notice that a large number of companies were still not in a state of preparedness to be fully compliant with the requirements as contained in the Revised Clause 49, SEBI extended the date for ensuring compliance with the Revised Clause 49 of the Listing Agreement upto December 2005[29]. The Revised Clause 49 has come into force from 1 January 2006.

SEBI has been in receipt of a number of requests or suggestions to bring about clarifications on certain provisions of the Revised Clause 49. After examining the same, it has been decided to make the following changes to certain provisions of the Revised Clause 49. Other amendments made recently to clause 49 include:

(i) Board to be responsible for compliance with laws and regulations (earlier it was the role).
(ii) Chief Executive Officers (CEOs) or Chief Financial Officer (CFO) certification on fraudulent, illegal or violation of company's code of conduct of transactions.
(iii) Sitting fees paid to Non- Executive directors as authorized by the Companies Act, 1956 would not require previous approval of shareholders.
(iv) The maximum time gap between two board meetings has been increased from three months to four months

Annexure 1 of Clause 49.

Clause 49 of the Listing Agreement shall be amended as follows:-

1. 1 After Clause (1) (B), the following proviso shall be inserted namely:-

[28] (2004) 4Comp LJ 88 (ST).
[29] (2005) 4 Comp LJ 76 (ST).

2. “Provided that the requirement of obtaining prior approval of shareholders in general meeting shall not apply to payment of sitting fees to nonexecutive directors, if made within the limits prescribed under the Companies Act, 1956 for payment of sitting fees without approval of Central Government.
3. In sub-clause (1) (C) for the words “ three months” occurring in the first sentence, the words “ four months” shall be substituted.
4. Sub-Clause v (C) shall be substituted with the following, namely: - (C) They accept responsibility for establishing and maintaining internal controls for financial reporting and that they have evaluated the effectiveness of internal control systems of the company pertaining to financial reporting and have disclosed to the Auditors and Audit Committee, deficiencies controls, if any, of which they are aware and steps they have taken or propose to take to rectify these deficiencies.

4. Sub- Clause V (d) shall be substituted with the following, namely: - (d) they have indicated to the Audit Committee:-

(i) Significant changes in internal control over financial reporting during the year,

(ii) Significant changes in accounting policies during the year and that the same have been disclosed in the notes to the financial statements and (iii) Instances of significant fraud of which they have been aware and the involvement or in the company’s internal control system over reporting[30].

The Companies (Amendment) Bill, 2003.

A bill further to amend the Companies Act, 1956.

Be it enacted by parliament in the fifty -fourth year Republic of India.

Short Title and Extent.

This may be called the Companies (Amendment) Act, 2003 .It shall come into force on such date as the Central Government, may by notification in the official gazette appoint.

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[30] Circular No. SEBI /CFD / D1L/CG /I / 2006 /13 /I, Issued by Securities and Exchange Board of India. 13 January 2006.

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as reference to the commencement of that provision.

In section 2 of the Companies Act, 1956 (herein after referred to as the principal Act) for clause (19AA), the following clauses shall be substituted, namely (19 AA) “Independent Director” means a director referred to in section 252.

In section 217 of the principal Act, the following sub- section shall be inserted, namely (“2C”) which states that the Board’s report shall include information with respect to the following particulars in relation of its divisions and business segments of which the share is ten percent or more of the total turnover of the company, namely;-

(a) Review of operations during the financial year of the company to which the balance sheet relates and on the date of the report,
(b) Market conditions during the financial year of the company to which the balance sheet relates and on the date of the report and
(c) Future prospects.

For section 252 of the principal Act, the following section shall be substituted, namely sub-section (1) of section 252 provides that every public company having paid up capital and free reserves of five crores or more or turnover of fifty crores or more shall have a minimum of seven directors out of which majority directors shall be independent.
Provided that such public company shall have such number of women directors, as may be prescribed. Sub-section (2) of section 252 provides that every public company, other than referred to in sub-section (1) shall have a minimum of three directors. Sub-section (3) provides that no public company shall have more than fifteen directors.

Sub-section (4) provides that incase a public company referred to in subsection (1) has more than seven directors, without prejudice to the provisions contained in sub-section (1) such public company shall have such number of women directors and independent directors as may be prescribed.

Provided that the companies having less than fifty shareholders and which do not have any debt of funding from public or banks or public financial institutions, shall not be required to have minimum seven difectors or independent directors. Provided further that a public company having (a) a paid up capital of five crore rupees or more (b) one thousand or more small shareholders may have a director elected but such small shareholders in the manner as may be prescribed.

Provided also that provisions contained in section 252, as it stood immediately before the commencement ofthe Companies (Amendment) Act, 2003 shall continue to apply to companies existing before such amendment until the period and the manner has been prescribed under the third proviso. Sub-section (5) provides that every private company shall have atleast two directors. Sub-section (6) provides that the directors of a company collectively are referred to in this Act as the "Board of Directors" or as "Board."

Explanation 1; For the purpose of this proviso, "small shareholders" means a shareholder holding shares of nominal value oftwenty thousand rupees or less in public company to which this section applies.

Explanation 2; For the purpose of counting the number of Independent Directors, the women directors, who are also Independent Directors, shall also be reckoned in the total number ofIndependent Directors.

After section 252 of the principal Act, the following section shall be inserted namely, - section 252 (1) provides that a person shall not be capable of being appointed as Independent Director of a company if;-

(d) He is a whole-time director or a managing director ofthe company or

(e) He has any transactions with the company (including its holding company or subsidiary company) or its chairman or managing director or whole – time director or secretary or manager or any officer who can be considered as an officer in default in connection with business or profession or in any other capacity or

(f) He is relative ofthe chairman or managing director or whole-time director or secretary or manager or any officer who can be considered as an officer in default ofthe company or (d) He has held any post in the company or

(g) (e) He has been an auditor or internal auditor or consultant (including advocate or legal advisor or

(h) (f) He is or has been a supplier or vendor or customer ofthe goods or services of the company or

(i) (g) He holds two percent or more ofthe securities ofthe company having voting rights or

(j) (h) He has been a director or an independent director for a consecutive period of nine years or more or

(k) He is holder of any equity shares of the company in which he is an independent director during his tenure as such a director he ceases to be an independent director or

(l) He is a nominee director or employee or executive director of any bank or financial institution or corporation which he has offered financial assistance to the company or

(m) He is nominated director in any other company which has nominated a director in the company in which he is an independent director.

Section 252 (2) provides that no person shall be appointed as an independent director unless he has taken a training from such date as the Central Government may notify, from an institute notified by Central Government within a period of two years prior to his appointment as such. Provided that an independent director may take training within eighteen months of his appointment from an institute notified by the Central Government in failing which he shall cease to be an independent director and be not eligible for appointment as an independent director in any company till such time he takes training but he may continue as a director in the company.

Provided further that those independent directors appointed before the commencement of the Companies (Amendment) Act, 2003 shall take training from such date as may be notified under the first proviso.

In section 257 of the principal Act, for sub-section (1) the following subsection shall be substituted, namely; A person who is not a retiring director shall subject to the provisions of this Act, be eligible for appointment to the office of director at any general meeting, if he or some member intending to propose him has the consent of one hundred shareholders or of the holders of one percent of the voting power and has, not less than fourteen days before the meeting left at the office of the company a notice under his hand signifying his candidature for the office of director or intention of such member to propose him as a candidate for that office as those may be, along with a deposit of ten thousand rupees which shall be forfeited if the votes cast on the resolution are less than one percent of the total number of votes cast infamous of the resolution.

In section 259 of the Principal Act, for the proviso, the following provisos shall be substituted, namely, " provided that where such permissible maximum is fifteen or less than, no approval ofthe Central Government shall be required if the increase in the number of its directors does not make the total number of its directors more than fifteen.

Provided further that the approval by the Central Government under this section for any increase in the number of directors beyond fifteen shall not have any effect after expiry of one hundred eighty days from the date of such approval.

In section 260 of the Principal Act, after the second proviso, the following shall be inserted, namely;- "provided also that no person who has, in an election, failed to get elected as a director, shall be appointed as an additional director till the next annual general meeting.

For section 266 of the Principal Act, the following shall be substituted, namely; Section 266 (1) provides that a person shall not be capable of being appointed as a director of a company by the articles and shall not be named as a f director or proposed director of a company in a prospectus issued by or on behalf of the company or as proposed director of an intended company in a prospectus issued in relation to that intended company, unless, before the registration of the articles or the publication of the prospectus, he has by himself or by his agent, authorized in writing, signed and filed with the registrar, a consent in writing to act as a director.

However, sub-section (2) provides that this section shall not apply to (a) a company not having share capital, (b) a private company and (c) a prospectus issued by or on behalf of a company after the expiry of one year from the date on which the company was incorporated.

For sections 275 and 276 of the Principal Act, the following sections shall be substituted, namely, section 275 (1) provides that no person shall hold office at the same time as a director in more than fifteen companies, provided that where any such person also holds office as a managing director or whole time director in any company, the limit specified in this section shall be reduced to ten.

Section 276 (1) provides that any person holding office as director in more than fifteen companies or holding office as a managing or whole-time director in one or more companies and holding office as a director in more than ten companies, immediately before the commencement of the Companies (Amendment) Act, 2003 shall within sixty days from such commencement –

(a) Choose not more than fifteen or as the case may be, ten of those companies, in which he wishes to. continue to hold office of director,
(b) Resign his office as director in other companies and
(c) Intimate the choice made by him under clause (a) to each of the companies in which he was holding the office of director before such commencement, to the Registrar of each such company.

Sub-section (2) of section 276 further provides that'any resignation made in pursuance of clause (b) of sub-section (1) shall become effective immediately on the dispatch thereof to the company concerned.

Further, sub-section (3) of section 276 provides that where a person already holding the office of director in fifteen companies is appointed, after the commencement of the Companies (Amendment) Act, 2003. as a director of any other company, the appointment;-

(a) Shall not take effect unless such person has within fifteen days thereof, effectively vacated his office as director in any ofthe companies in which he was already a director and

(b) Shall become void immediately on the expiry ofthe fifteen days ifhe has not, before such expiry, effectively vacated his office as director in any of the other companies aforesaid.

In section 279 of the Principal Act, for the word “fifteen companies” the words “fifteen or ten companies,” as the case may be, shall be substituted and for the words “first twenty,” the words “first ten or fifteen, as the case may be,” shall be substituted.

In section 284 of the Principal Act, in sub -section (2), the following subsection shall be substituted, namely;-sub-section (2) special notice shall be required of any resolution to remove a director under this section, or to appoint some other person in place of a director so removed at the meeting at which he is removed along with a deposit often thousand rupees.

Provided that such deposit shall not be refunded unless ten percent or more ofthe total votes has been cast infavour of such resolution.

Section 285 (1) states that in the case of every company, a meeting of its board shall be held in such manner that not more than three months shall lapse between two consecutive meetings of the Board. Provided that the Central Government may, by notification in the official gazette, direct that the provisions of this section shall not apply in relation to any class of companies or shall apply in relation thereto subject to such exceptions, modifications' or conditions as may be specified in that notification.

Sub-section (2) provides that any meeting ofthe board of directors may be held by participation of the directors of the board through teleconferencing or video conferencing and such meeting shall be valid if the minutes of such meeting has been approved and signed subsequently by all directors of the Board who participated in such meeting. Provided that the Central Government may, by a notification in the official gazette, specify the powers which shall not be exercised in a meeting held through teleconferencing or video conferencing.

In section 286 ofthe Principal Act, for sub-section (1) the following shall be substituted, namely;- Notice of every meeting ofthe Board of a public company along with the agenda shall be given in writing to every director for the time being in India and at his usual address in India to every other director not less than seven days before the date ofthe meeting.

Provided that nothing in this sub-section shall apply to an emergency meeting for which a majority of the directors have agreed to waive such requirement provided that in the case of companies having a paid -up capital and free reserves often crore rupees or more or having a turnover of fifty crore rupees, such emergency meeting shall be valid if the majority of independent directors were present in such meeting.

In section 293 of the principal Act, in sub-section (1) provides that the sale, lease or otherwise disposal of the undertaking of a company in a financial year shall not exceed twenty percent of the total assets of the company, whichever is higher, in that financial year.

Provided further that nothing in this sub -section shall apply to the creation of a charge or mortgage of the whole or substantially the whole of any undertaking infavour of a financial institution or a schedule bank for obtaining any financial assistance.

In section 305 of the Principal Act, in sub-section (1) for the word "directors, managing director, manager or officer manager or secretary" shall be substitituted

In section 309 of the Principal Act, (a) in sub-section (1), proviso shall be omitted, (b) in sub-section (2) shall be omitted, (c) in sub-section (4), for the words " the approval of the Central Government" shall be substituted, (d) after sub-section (5A), the following sub-section shall be inserted, namely (5AA) where remuneration or commission has been paid to any director, manager or employee on the basis of incorrect accounts (regardless of subsequent revision made). Or if any director, manager or employee has made illegal or unlawful gains on the basis of such accounts, than such payments or unlawful gains made shall be recovered from the directors, manager or employee or from his assets or from the assets of his spouse or independent children if such assets were acquired after the director, manager or employee assumed his position as suck.

In sub-section (7), for the words "five years," at both the places where they occur, the. words "three years" shall be substitituted and sub-section (8) shall be omitted.

In section 314 of the Principal Act, for sub-section (1) the following subsection shall be substituted, namely;- Except with the consent of the company accorded by a special resolution (a) no director of a company shall hold any office of profit and (b) be a partner or relative of a director or manager, no firm in which, a director, manager or a relative of a manager, director, is a partner, no private company of which a director or member and no director or manager of such private company, shall hold any office or place of profit carrying a total monthly remuneration of such sum as may be prescribed, except that of managing director or manager, banker or trustee for the holders of debentures of the company –

(i) Under the company or

(ii) Under any subsidiary of the company, unless the remuneration received from such subsidiary in respect of such office or filace of profit is paid over to the company. Provided that it shall be sufficient if the special resolution according to the consent of the company is passed at a meeting of the company held for the first time after holding such office or place of profit.

Provided further that the appointment of a relative of a person holding more than two percent of the equity of the company or the relative of any director of the company shall require the approval of the Central Government if remuneration exceeds such sums or such percentage of profits or turnover as may be prescribed.

For section 316 of the Principal Act, the following section shall be substituted, namely; 316 (1) no public company shall appoint or employ any person as managing director, whole-time director or the manager of the company except as provided in sub-section (2) a public company may appoint or employ a person as its managing director, whole time director or manager of one and of not more than other company.

Provided further that such appointment or re-appointment is made or approved by a resolution passed at a meeting of the Board with the consent of all the directors present at

the meeting and of which meeting and of the resolution to be moved there, specific notice has been given to all the directors then in India.

Provided further that the Central Government may allow appointment of a managing director in more than two companies.

The Companies (Amendment) Act, 2006[31].

(Act No. 23 of 2006, dated 29-5 2006).

3. The filing and registration of documents is a statutory requirement under the Act.

1. In the context of the rapid developments witnessed in technology, the Ministry of Company Affairs decided to enable the operations carried out by the Ministry and its field offices to be performed more efficiently and effectively through the use of contemporary information technology and computers. It was felt that the earlier efforts at computerization had not yet yielded the desired efficiency in operation of the system and an operating system that took into account contemporary technology was necessary. Therefore, it was decided to implement a comprehensive e-Govemance system and programme to achieve the above objective.

2. The Ministry of Company Affairs on the recommendations of the Department of Information Technology is implementing an e-Governance initiative through a project named as MCA-21. This project will provide the public, corporate entities and others an easy and secure online access to the corporate information, including filing documents and public access to the information required .to be in public domain under the statute at any time and from anywhere. This would also result in efficiency in statutory supervision of corporate processes and efficient professional services under the Companies Act, 1956.

At present the Act lays down the procedures for filing of various documents in physical form and the processes associated therewith. While, the broad enabling framework for such an initiative is available under the Information Technology Act, 2000 read with Companies Act, 1956, enabling provisions would still be required to support certain online electronic

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[31] Bill No 24 of 2006. As introduced in the Rajya Sabha on 6 March 2006 and approved by Lok Sabha on 29.5.2006.

processes which have since become available due to technological advancement for various detailed procedural requirements under the Companies Act, 1956.

4. It is, therefore, proposed to insert new sections 61 OB, 610C, 610D and 610 E in the Companies Act, 1956 so as to make provision for electronic filing system and for payment of fees through electronic form duly authenticated with digital signatures shall be accepted under the provisions of the Act. The proposed electronic system also provides for multiple modes of payment of statutory fees.

5. The provisions of the Companies Act, 1956 allow an individual to be director of upto fifteen companies and such companies can be located in the jurisdiction in any of the Registrars of Companies. There is need for individual identity of person (s) intending to be directors of companies to be established. This would also facilitate effective legal action against the directors ofsuch companies under the law keeping in view the possibility of fraud by companies and the phenomenon of companies that raise funds from the public and vanish thereafter .It is therefore proposed to insert new sections 266A, 266B, 266C, 266D, 266E 266F and 266G in the Companies Act, 1956 so as to inter alia, provide for allotment of a unique Director Identification Number to any individual, intending to be appointed as a director in a company or to any existing director of a company for the purpose of his identification as such, through electronic or other form and to provide for penalty for any violation in this regard.

Short Title and Commencement

An Act further to amend the Companies Act, 1956.Be it enacted by parliament in the fifty - seventy year of the republic of India as follows.

This Act may be called the Companies Act, 2006. It shall come into force as the Central Government may, by notification, appoint and different dates may be appointed for different provisions of this Act.

Amendment of Section 253- In section 253 of the Companies, Act 1956 (hereinafter referred to as the principal Act) the following proviso shall be inserted, namely: “Provided

that no company shall appoint any individual as director of the company unless he has been allotted a Director Identification Number under section 266."

Insertion of new sections 266A, 266B, 266C, 266D, 266E, 266F and 266G. After section 266 of the principal Act, the following sections shall be inserted, namely:

Companies (Amendment) Regulations 2006

In exercise of the powers conferred by sub-sections (5) and (8) of section 25 and sub-section (2) of section 609, read with sub -section 610A of the Companies Act, 1956 (1 of 1956), the Central Government hereby makes the following regulations further to amend the Companies Regulations (Amendment) Regulation, 1956, namely:

1. These regulations may be called the Companies (Amendment) Regulations, 2006.

2. They shall come into force on the date oftheir publication in the official gazette

3. In the Companies Regulations, 1956 after part E the following shall be added, namely:

Part F

Application, Documents, Licence etc in the Electronic Manner

1. Any application or document or notice or declaration or statement required to be made or tiled or furnished or sent or given, as the case may be, by any person under these regulations may also be made or filed or furnished or sent or given, as the case may be, in the electronic manner:

Provided that the provisions of this regulation shall not be applicable to the provisions of regulations 10 and 11 of Part C of these regulations

2. Any certificate, license, receipt or endorsement required to be given or grantet or made or signed or acknowledged, as the case may be, by regional Director or; Registrar of Companies, may also be given or granted or made or signed 01 acknowledged, as the case may be, in the electronic manner.

3. Any document required or authorized to be registered, recorded or filed by or with the Registrar of Companies under these regulations may be registered, recorded or tiled by him in the electronic manner, subject to the compliance of the requirement of regulation 18 of Part E of these regulations.

4. The register or index required to be maintained by the Registrar of Companies pursuant to these regulations may also be maintained in electronic manner.

5. The inspection of documents registered, recorded or filed with Registrar of Companies may also be made in electronic manner through payment of fee in manner as may be prescribed[32].

Companies Amendments in England.

Companies (Amendments) Act, 2003.

In England, unexpected failure of high profile companies and criticism of lack of effective boards led to the enactment of a Combined Code of Corporate Governance. Recommendations of the Higgs Committee were welcomed and incorporated in the Revised Combined Code of Corporate Governance published in July 2003 by the financial Services Authority (FSA).

The Financial Services Authority (F S A) is an independent nongovernmental body which regulates England’s Listed Companies. The (F S .A) acting as competent authority for listing is referred to as the UK Listing Authority' (1JKLA) and is responsible for interlia, imposing and enforcing ongoing obligations on issuers and considering applications for listing.

The Combined Code on Corporate Governance published in July, 2003 by the (FSA) sets out corporate governance requirements for companies listed in Kngland and for which the reporting periods commence on or after November 1, 2003.The Code replaced the 1998 Code issued pursuant to recommendations of the Cadbury, Greenbury and Hampel Committees.

[32] Notification No GSR 157 (E), issued by Ministry of Company Affairs dated 16.3.2006. SEBI, 30 April 2006.

1. The following provisions of the 2003 have a bearing on independent on Boards of England's' listed companies. Section A.3.2 provides that atleast half of the Board, excluding the Chairman should be Non-Executive Independent Directors and should be so determined by the Board. Small size companies which have a FTSE of below 350 throughout the year immediately prior to the reporting period should have atleast two Non-Executive Independent Directors.

(a) (ii) Section A. 3.3 states that the Board should appoint a senior from amongst the Non-Executive Independent Directors who should be available to the shareholders to address their concerns.

(iv) Section A.21 provides that the role of Chairman and Chief Executives should not be exercised by the same individual as there should be a clear division of responsibility between the head of the company and the running of the Board.

(v) Section A.3.1 provides that the Board should identify in its annual report, each Non- Executive Director which it considers independent.

(v) Section A. 31 provides that the definition and appointment criterion for independent directors is as follows: "The Board should determine whether the director is independent in character and judgment and whether there are relationships or circumstances which are likely to affect or could appear to affect the directors' judgment. The Board should state its reasons if it determines that a director is independent notwithstanding the existence of relationships or circumstances which may appear relevant to its determination including if the director;

Companies Amendments in the United States of America.

Companies (Amendments) Act, (2002).

Company and Security l.aws regarding the Role and Position of Company Directors are having the state of dynamism and undergoing changes in pace with p the changing circumstances in the United States of America.

In the United States of America, the global movement for corporate governance has progressed subsequently to the Enron debacle of 2001, followed by other scandals involving some other large United States Multinational Companies such as Tyco, Quest, Global Crossings and WorldCom that obliterated the wealth of the common man, reduced their life's savings and pensions to nothing.

In June 2002, less than a year from the date Enron filed for bankruptcy, the United States of America introduced the Sarbanes Oxley Bill (SOX) which was assented by the United States president on July 2002. The Sarbanes Oxley Act, 2002 brought with it fundamental changes in various areas of company management. The main object ofthe Act is to restore the confidence of investors by providing for effective management of companies, preventing frauds and misfeasance of companies.

The Act provides for improvement in quality and transparency in financial reporting, independent audit and accounting service for the listed companies and increased corporate responsibility. The Act is also designed to make United States companies transparent and proactive in haring material financial information with auditors, audit committees, analysts and investors.

The impact of this Act was felt across the world from Dublin to New Delhi. This Act has more than three hundred sections and eleven titles. The most relevant provisions of the Act concerning directors are as follows;

(A) The Corporate and Criminal Fraud Accountability

(B) White Collar Crime Penalty Enhancement.

(C) Enhanced Financial Disclosures

(D) Corporate Tax Returns

(E) Corporate Fraud and Accountability

Although the Sarbanes Oxley Act 2002, changed the way business should be conducted in United States of America for the better still, the law is complex and can be confusing. It is believed that compliance is just the first step. Corporate leaders who embrace the "spirit of

law," strong ethics, good governance, reliable reporting will reap the benefits of a re-energized company and reassured investors.

From the above discussion, it can be observed that many amendments have taken place in the Companies Acts ofthe three States under study, (India, England and United States of America), however, it may be stated that law alone cannot bring changes and transformation. Judicious mix of important regulations and voluntary compliance by the Board of Directors will play an important role in developing a system of good corporate management.

RECENT DEVELOPMENTS IN COMPANY LAW

Modern economy is witnessing the dominant role being played by companies as an important vehicle to accelerate the process of development. Companies are not only the principal buyers and sellers of goods but the major borrowers and consumers of services and important conveyors of new technologies across the world. Multi national companies through their subsidiaries and joint ventures are spread the world over, are playing a major role in the excess of globalisation process and contributing to the national economy and economic well being of the society.

In the midst of grave balance of payment, the Government of India in 1991 redrafted its economic policy to lead new era of deregulation, decontrol, liberalisation and global integration. Since then significant policy initiatives have been taken to provide stimulus to accelerated growth, industrial efficiency, and global competitiveness. As a part of reform process, Government of India has initiated number of legislative reforms and radical changes in the area of Company Laws. New issues, concepts and practices keep on emerging in respect of the working and administration of corporate sector. Many new and unheard concepts have been introduced in the Companies Act and many are in the pipeline.

- Postal Ballot
- Audit Committee
- Corporate Identity Number
- Director Identity Number (DIN)
- Electronic Filing of Documents and Online Registration of Companies – MCA21

- Independent Director
- National Company Law Tribunal
- Corporate Governance
- National Company Law Tribunal
- Small Shareholder's Director on Board
- Compliance Certificate
- Corporate Social Responsibility
- Business Ethics
- Limited Liability Partnership

POSTAL BALLOT

The Companies Act, 2000 introduced the concept of 'Postal Ballot' by inserting Section 192A. As per the provisions, a listed company may, and in the case of notified matters, shall get resolution passed by means of a postal ballot, instead of transacting the business in general meeting. The Companies (passing of the Resolution by Postal Ballot) Rules, 2001 in this connection have been notified.

Notice is given to all shareholders along with draft of resolution explaining reasons and a request to send back assent or dissent on a postal ballot in prepaid envelop by registered post within 30 days. In this way participation of almost each shareholder in the decision-making on vital issues that concerns the whole organisation, is ensured. The non-compliance of the requirements means fine up to Rs. 50,000. Following matters have been notified by the Central Government to be passed by postal ballot –

- Matters relating to alteration in Memorandum.
- Sale of whole or substantially whole of the undertaking.
- Corporate restructuring.
- Entering a new business area.
- Sale of investments in the company where shareholders or voting rights of company exceeds 25%.
- Making a further issue of shares through preferential allotment or private placement.

- Variation in rights attached to class of securities.
- Matters relating to change in management.

AUDIT COMMITTEE

The concept of 'Audit Committee' was introduced by inserting Section 292A in the Companies Act in the year 2000 and by inserting in the same year clause 49 in the listing agreement. As per the provision of Companies Act, every public company, (listed and unlisted – Private Companies exempted) having paid up capital (equity and preference) of Rs. 5 crore or more should constitute a Audit Committee. The Audit Committee of Board shall consist of not less than 3 Directors, two-third of which should be directors other than Managing Director or Whole time Director. The Committee would ensure transparency and that the financial disclosures/financial statements are correct and creditable. It will also ensure that, frauds, irregularities, failure of internal control system within the organisation, are minimized. The non-compliance of the requirements of the Companies Act means fine up to Rs. 50,000 or 1 year imprisonment or both. In the provision of clause 49, all members shall be financially literate and at least one member shall have accounting or related financial management expertise.

The penalty for non-compliance of the requirements of clause 49 on 'Audit Committee' would attract the penal provisions contained in Sections 23(2), and 23E of the Securities Contracts (Regulation) Act, 1956. The penalty that was a meagre amount of Rs. 1,000 until the provisions of Sections 23(2) and 23E were amended with effect from 12th October 2004, was raised to an unimaginable fine extendable to 25 crore rupees by also including imprisonment for a term, which may extent to 10 years (earlier imprisonment was up to 1 year).

The Audit Committee shall mandatorily review the following information:

- Management discussion and analysis of financial condition and results of operations
- Statement of significant related party transactions, submitted by management
- Management letters/letters of internal control weaknesses issued by the statutory auditors

- Internal audit reports relating to internal control weaknesses and
- The appointment, removal and terms of remuneration of the Chief internal auditor shall be subject to review by the Audit Committee.

INDEPENDENT DIRECTOR

The clause 49 of the listing agreement lays down certain requirements for independent director. As per the requirements, at least half of the Board must be non-executive directors. If chairman is from the executive director's category, then at least half of the Board must be independent directors and if chairman is from the non-executive director's category, then at least one-third must be independent directors. (1/2 if the non-executive chairman is promoter or relative of promoter or of some senior management.) The Companies Act is currently silent on independent director. The new Company Law that has been introduced in the Lok Sabha on 3rd August 2009 has defined independent director differently from the way it has been defined in the clause 49. As per the requirements of the Bill, every listed public company having such amount of paid-up share capital as may be prescribed shall have at least one-third of the total number of directors as independent directors. The Central Government may prescribe the minimum number of independent directors in case of other public companies and subsidiaries of any public company.

CORPORATE IDENTITY NUMBER (CIN)

Beginning with about 30,000 companies in 1956 when the Companies Act was enacted, India now (March, 2009) has the largest corporate base with over 9 lakh companies at work, which are spread through out the country, and larger numbers of new companies are being incorporated every year. But, the administrative mechanism to administer company law has not been developed at such a fast speed. Resultantly, limited numbers of 20 Registrars of Companies (ROC) in the country with little infrastructure feel handicapped administering such number of companies.

In order to provide prompt and efficient service to companies, the Ministry has networked electronically all the offices of Registrar of Companies under its MCA21 Programme. Keeping in view the administrative aspect of Company Law, the MCA21 has made it

mandatory for all companies including private companies to obtain a Corporate Identity Number (CIN). This CIN can be located from the MCA21 portal through search based on registration number issued by the Registrar of Companies, present or the old name of the company, or through inactive CIN. Based on the recommendations of E-Corporate Business Working Group to synergic the provisions of Companies Act with the Information Technology Act of 2000, Corporate Identity Number were introduced in the country with effect from November 1st, 2000. The purpose of introducing CIN is to make corporate governance investors friendly, corporate friendly and compatible with the provisions of Information Technology Act, 2000.

MCA21

The concept of physical filing has become past in the wake of electronic governance. MCA21 stands for e-governance initiative of Ministry of Company Affairs (MCA) of the 21st Century. The project is named MCA21 as it aims at repositioning MCA as an organisation capable of fulfilling the aspirations of its stakeholders in the 21st Century. It is based on the Government's vision of National e-governance in the country. E-governance or Electronic Governance is the application of Information Technology to the Government functioning in order to bring about Simple, Moral, Accountable, Responsive and Transparent (SMART) Governance. This project of MCA aims at moving from paper based to nearly paperless environment.

The then Ministry of Company Affairs* on the recommendations of Department of Information Technology has implemented a comprehensive Egovernance system and program through a project named as "MCA21". On the 18th February 2006, the country entered into a new era of E-governance when the Ministry of Corporate Affairs launched its new website at Coimbatore in Tamil Nadu.

The MCA21 is aimed at total digital, paperless functioning of the offices of the four Regional Directors, 20 Registrars and 53 facilitation Centres named Physical Front Offices in the country. The project will provide the public, corporate entities and others an easy and secure online access to the corporate information, including filing of documents and public access to the information required to be in the public domain under the Statue, at

any time and from anywhere. This would also result in efficiency in statutory supervision of corporate processes and efficient services under the Companies Act, 1956.

Online Filing of Documents

The newly inserted Sections 610 B to E in the Companies Act have made the filing of applications and documents through electronic form, mandatory. The amended provisions of 2006 have made possible the filing of company returns by a simple click on www.mca.gov.in and to make payments of fees by using credit card and internet banking. The electronic filing of corporate documents in the country has been made mandatory with effect from September 16, 2006. The Ministry of Corporate Affairs vide GSR NO 557(E) dated 14th September 2006, has notified the company (Electronic Filing and Authentication of Documents) Rules, 2006. Over 3 lakh filings were made (Balance Sheet and Annual Returns) electronically by December 2006 (within a span of 3 months) after the launch of egovernance project (MCA21) in September 2006. The number of filings to electronic mode has been 1.83 crore by May 2007 and by March, 2009, the figure crossed 5.45 crore.

Online Registration of Companies

The MCA has made the online registration of companies in the country, which was once considered as a dream, possible. The first such company registered online was in South India (Coimbatore) in the summer of 2006, when the Minister of Corporate Affairs launched its new website. Around 18,000 companies were incorporated online up to November 2006. By the May, 2007, 44,000 companies were registered online.

The number of such online registered companies increased to 67,744 by August, 2007 and by March, 2009, the figure crossed 2.5 lakh (out of total companies in India numbering over 9 lakh).

CORPORATE GOVERNANCE

The root of the word Governance is from ‘gubernate’, which means to steer. Corporate governance would mean to steer an organisation in the desired direction.

The responsibility to steer lies with the board of directors / governing board. Governance is concerned with the intrinsic nature, purpose, integrity and identity of an organisation with primary focus on the entity's relevance, continuity and fiduciary aspects. Good governance has been an eternal source of inspired thinking and dedicated action.

NATIONAL COMPANY LAW TRIBUNAL (NCLT)

Justice V. Bala Krishna Eradi (Retired Supreme Court Judge) Committee constituted by the Central Government recommended setting up of the National Company Law Tribunal (NCLT). Companies (Second Amendment) Act, 2002 was enacted to dissolve the Company Law Board (CLB) and with effect from 13 January, 2003, powers under various provisions of the Companies Act, 1956 were proposed to be transferred from the Company Law Board, the Board for Industrial and Financial Reconstruction (BIFR) and the High Courts to the proposed National Company Law Tribunal (NCLT). As the NCLT not yet been constituted by the Central Government, the CLB, BIFR and High Courts would continue to discharge their functions as before. The need for setting up of the NCLT was felt for the following reasons –

The powers and the jurisdiction presently being exercised by various judicial bodies like CLB, BIFR or High Courts needs to be consolidated and entrusted to a single body, which shall serves as single window settlement of cases, related to the corporate affairs.

• Since powers of Courts are delegated to the NCLT and no appeals are preferred in High Court, the setting up of the NCLT will save time of the High Courts as well.

- The appearance of the chartered accountants, companies secretaries, cost accountants and lawyers before the Company Law Tribunal and Appellate Tribunal declines the time and cost to the clients.
- The Tribunal is also entrusted with the powers of Contempt of Court. This provides a built- in-seriousness in the entire proceedings before the NCLT.
- The NCLT and the Appellate Tribunal have the power to regulate their own proceedings within the framework of the Companies Act and the Code of Civil Procedure does not bind them.

COMPLIANCE CERTIFICATE UNDER SECTION 383A

The successive Annual Reports on the working and administration of the Companies Act, 1956 reveal that a large number of documents are returned for rectification of defects and also remain pending for being taken on record. While this state of affairs has perhaps resulted from the constraints under which the offices of the ROCs operate, it cannot be denied that in case of documents retuned for rectification, a large number of errors or omissions arise on account of misinterpretation or ignorance of the provisions of law. Compliance Certificate is, therefore, salutary as it creates an awareness among companies to comply with provisions of the Companies Act and also provides a mechanism for self regulation by companies.

The Companies (Amendment) Act, 2000 has inserted a new proviso in subSection (1) of Section 383A of the Companies Act, 1956. As per this proviso every company not required to employ a whole-time secretary under sub-Section (1) and having a paid-up share capital of 10 lakh rupees or more shall file with the Registrar a certificate from a secretary in whole-time practice in such form and within such time and subject to such conditions as may be prescribed, as to whether the company has complied with all provisions of the Act and a copy of such certificate shall be attached with Board’s report referred to in Section 217.

Accordingly, every company having a paid-up share capital of rupees 10 lakh or more but less than rupees 2 crore is required to file with the Registrar of Companies a Compliance Certificate from a Secretary in Whole-time Practice and also attach a copy of that certificate with Board’s report which are not required to employ a whole-time secretary but has nevertheless employed. However, the Department of Company Affairs has vide its circular dated 11th December, 2003 clarified that company which is not required to employ a whole-time secretary but has nevertheless employed a whole-time company secretary, such a company is not required to obtain compliance certificate from a practicing company secretary.

CHAPTER–IV

AMENDMENTS IN THE COMPANIES ACT, 1956

Company Law a very important corporate law, has undergone major transformation in the last decade. The impetus for such transformation germinated partially from the worldwide move for market oriented polices and partially by disquieting features of globalization, resulting into focused attention on need for Good Corporate Governance. The advancements in information technology and influence of faster means of communications over corporate operations have also provided impetus for such transformation. In other words, the paradigm shift witnessed in the global economy and corporate sector the world over, have cumulatively presented various issues that have triggered debate and become important factors for initiating changes in Company Law in our country and abroad.

This Act may be called the Companies Act, 1956 .

It shall come into force on such date 2 as the Central Government may, by notification in the Official Gazette, appoint.

3 It extends to the whole of India: 4] 5 Provided 6 that it shall apply to the State of Nagaland subject to such modifications, if any, as the Central Government may, by notification in the Official Gazette, specify.]

Definitions. In this Act, unless the context otherwise requires,-

" alter" and" alteration" shall include the making of additions and omissions; (2) " articles" means the articles of association of a company as originally framed or as altered from time to time in pursuance of any previous companies law or of this Act, including, so far as they apply to the company, the regulations contained, as the case may be, in Table B in the Schedule annexed to Act No. 19 of 1857 or in Table A in the First Schedule annexed to the Indian Companies Act, 1882 , (6 of 1882 .) or in Table A in the First Schedule annexed to the Indian Companies Act, 1913 , or in Table A in Schedule I annexed to this Act;

(3) " associate", in relation to a managing agent, means any of the following, and no others:-

(a) where the managing agent is an individual. any partner or relative of such individual; any firm in which such individual, partner or relative is a partner; any private company of which such individual or any such partner, relative or firm is the managing agent or secretaries and treasurers or a director or the manager; and any body corporate at any general meeting of which not less than one- third of the total voting power in regard to any matter may be exercised or controlled by any one or more of the following, namely, such individual, partner or par- tners, relative or relatives, firm or firms; and private company or companies;

(b) where the managing agent is a firm: any member of such firm; any partner or relative of any such member; and any other firm in which any such member, par- tner or relative is a partner; any private company of which the firm first mentioned, or any such member, partner, relat- ive or other firm is the manag- ing agent, or secretaries and treasurers, or a director, or the manager; and any body corporate at any general meeting of which not less than one- third of the total voting power in regard to any matter may be exercised or controlled by any one or more of the following, namely, the firm firstmentioned, any such member or members, partner or part- ners, relative or relatives, other firm or firms and priv- ate company or companies; (c) where the managing agent is a body corpo- rate: (i) any subsidiary or holding company of such body corporate; the managing agent or secretaries and treasurers, or a director, the manager or an officer of. the body corporate or of any subsidiary or holding company thereof; any partner or relative of any such director or manager; any firm in which such director, manager, partner or relative, is a partner[33];

(ii) any other body corporate at any general meeting of which not less than one- third of the total voting power in regard to any matter may be exercised or controlled by any one or more of the following, namely, the body corporate and the companies and other persons specified in paragraph (i) above; and

(iii)any subsidiary of the other body corporate referred to in paragraph (ii) above: Provided that where the body corporate is the manag- ing agent of the other body corporate referred

[33] The" and" omitted by Act 65 of 1960, s. 2.

to in paragraph (ii) above, a subsidiary of such other body corporate shall not be an associate in relation to the managing agent aforesaid; and]

(d) where the managing agent is a private company or a body corporate having not more than fifty members: in addition to the persons men- tioned in sub clause (c), any member of the private company or body corporate; Explanation.- If one person is an associate in relation to another within the meaning of this clause, the latter shall also be deemed to be an associate in relation to the former within its meaning;

(4) " associate", in relation to any secretaries and treasurers, means any of the following, and no others:-

(a) where the secretaries and treasurers are a firm: any member of such firm; any partner or relative of any such member; and any other firm in which any such member, part- ner or relative is a partner; any private company of which the firm first- mentioned, or any such member, partner, relat- ive or other firm is the manag- ing agent, or secretaries and treasurers, or a director, or the manager; and any body corporate at any gene- ral meeting of which not less than one- third of the total vot- ing power in regard to any matter may be exercised or controlled by any one or more of the following, namely, the firm first- mentioned, any such member or members, partner or partners, relative or relatives, other firm or firms, and private company or companies;

(b) where the secretaries and treasurers are a body corporate: (i) any subsidiary or hold- ing company of such body corpo- rate; the managing agent or secretaries and treasurers, or a director, the manager or an officer of the body corporate or of any subsidiary or hold- ing company thereof; any part- ner or relative of any such director or manager; any firm in which such director or manager, partner or relative, is a partner[34];

(ii) any other body corporate at any general meeting of which not less than one- third of the total voting power in regard to any matter may be exercised or controlled by any one or more of the following, namely, the body corporate and the com- panies and other persons speci- fied in paragraph (i) above; and

[34] The word" and" omitted by Act 65 of 1960, s. 2.

(iii) any subsidiary of the other body corporate refe- rred to in paragraph (ii) above: Provided that where the body corporate is the secretar- ies and treasurers of the other body corporate referred to in paragraph (ii) above, a subsidiary of such other body corporate shall not be an associate in relation to the secretaries and treasurers aforesaid; and (c) where the secretaries and treasurers are a private company or a body corporate having not more than fifty members: in addition to the persons mentioned in sub- clause (b), any member of the private com- pany or body corporate; Explanation.- If one person is an associate in relation to another within the meaning of this clause, the latter shall also be deemed to be an associate in relation to the former within its meaning;

1. (5) "banking company" has the same meaning as in the Banking Companies Act, 1949 (10 of 1949);
2. (6) "Board of directors" or" Board", in relation to a company, means the Board of directors of the company;
3. (7) "body corporate" or" corporation' includes a company incorporated outside India but does not include-

(a) a corporation sole;

(b) a co- operative society registered under any law relating to co- operative societies; and

(c) any other body corporate (not being a company as defined in this Act) which the Central Government may, by notification in the Official Gazette, specify in this behalf;]

PROVISIONS OF COMPANIES ACT 2013 RELATING TO DORMANT COMPANIES

Section 455(1) of the Act defines that when a company is formed and registered under this act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed in form no. MSC.

Inactive company - Explanation of the section 455 provides that the "inactive company" means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years

(ii) Significant Accounting

Transaction -means any transaction other than (a) payment of fees by a company to the Registrar; (b) payment made by it to fulfill the requirements of this Act or any other law; (c) allotment of shares to fulfil the requirements of this Act; and (d) payments for maintenance of its office and records

Case study

IN JONES V. LIPMAN,[35]

A agreed to sell certain land to B. Pending completion of formalities of the said deal, A sold and transferred the land to a company which he had incorporated with a nominal capital of £100 and of which he and a clerk were the only shareholders and directors. This was done in order to escape a decree for specific performance in a suit brought by B. The Court held that the company was the creature of A and a mask to avoid recognition and that in the eyes of equity A must complete the contract, since he had the full control of the limited company in which the property was vested, and was in a position to cause the contract in question to be fulfilled.

IN RE. R.G. FILMS LTD. (1953)[36]

An American company produced a film in India technically in the name of a British Company, 90% of whose capital was held by the President of the American company which financed the production of the film. Board of Trade refused to register the film as a British film which stated that English company acted merely as the nominee of the American corporation.

IN CONNORS BROS. V. CONNORS (1940)[37]

The principle was applied against the managing director who made use of his position contrary to public policy. In this case the House of Lords determined the character of the company as "enemy” company, since the persons who were de facto in control of its affairs, were residents of Germany, which was at war with England at that time. The alien company was not allowed to proceed with the action, as that would have meant giving money to the enemy, which was considered as monstrous and against “public policy”.

RE. SIR DINSHAW MANAKJEE PETIT,[38]

[35] (1962) I. W.L.R. 832
[36] All E.R. 615
[37] All E.R. 179

The facts of the case are that the assessee was a wealthy man enjoying large dividend and interest income. He formed four private companies and agreed with each to hold a block of investment as an agent for it. Income received was credited in the accounts of the company but the company handed back the amount to him as a pretended loan. This way he divided his income in four parts in a bid to reduce his tax liability.

But it was held "the company was formed by the assessee purely and simply as a means of avoiding supertax and the company was nothing more than the assessee himself. It did no business, but was created simply as a legal entity to ostensibly receive the dividends and interests and to hand them over to the assessee as pretended loans". The Court decided to disregard the corporate entity as it was being used for tax evasion.

THE WORKMEN EMPLOYED IN ASSOCIATED RUBBER INDUSTRIES LIMITED, BHAVNAGAR V. THE ASSOCIATED RUBBER INDUSTRIES LTD., BHAVNAGAR AND ANOTHER[39]

The facts of the case were that a new company was created wholly by the principal company with no assets of its own except those transferred to it by the principal company, with no business or income of its own except receiving dividends from shares transferred to it by the principal company i.e. only for the purpose of splitting the profits into two hands and thereby reducing the obligation to pay bonus. The Supreme Court of India held that the new company was formed as a device to reduce the gross profits of the principal company and thereby reduce the amount to be paid by way of bonus to workmen. The amount of dividends received by the new company should, therefore, be taken into account in assessing the gross profit of the principal company.

KAPILA HINGORANI V. STATE OF BIHAR.[40]

In this case, the petitioner had alleged that the State of Bihar had not paid salaries to its employees in PSUs etc. for long periods resulting in starvation deaths. But the respondent took the stand that most of the undertakings were incorporated under the provisions of the

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[38] A.I.R. 1927 Bombay 371

[39] A.I.R. 1986 SC 1.

[40] 2003(4) Scale 712

Companies Act, 1956, hence the rights etc. of the shareholders should be governed by the provisions of the Companies Act and the liabilities of the PSUs should not be passed on to the State Government by resorting to the doctrine of lifting the corporate veil. The Court observed that the State may not be liable in relation to the day-to-day functioning of the PSUs but its liability would arise on its failure to perform the constitutional duties and the functions of these undertakings. It is so because, "life means something more than mere ordinal existence. The inhibition against deprivation of life extends to all those limits and faculties by which life is enjoyed".

CONCLUSION

The judicial provisions under S.135 of Companies Act 2013 in their respective field are devoid of necessary legal aspects. Although, law has also developed to an extent with regard to certain other penal provisions under S.135 of Companies Act 2013; notwithstanding it won't be adequate that if an organization negates the arrangements of this section, the organization might be punished with fine which should not be under fifty thousand rupees but rather which may reach out to a quarter century rupees and each officer of the organization who is in default should be punished with detainment for a term which may stretch out to three years or with fine which should not be under fifty thousand rupees but rather which may stretch out to five lakh rupees, or with both, yet it is concerned just with the CSR reporting perspective. The penal provisions should be harsh for the corporations when they are found to be guilty for committing harm against the society by violating the social, economic and environmental aspects. Also Directors of CSR committee should be held liable in case of poor decision making related to CSR fund utilisation policy.

The Companies Act, 2013 (the Act), was one of the most significant legal reforms in India in the recent past, aimed at bringing Indian company law at par with global standards. It was incorporated after taking into consideration the recommendations made by various committees such as the J. J. Irani Committee, and the Naresh Chandra Committee. Before bringing forth the Act, the Companies Bill was prepared, and views and suggestions were invited from various chambers, professional institutes, other regulators, stakeholders, etc. The Bill was thoroughly examined by the Parliamentary Standing Committee and finally it was enacted. Initially, the Act was brought into force with the provisions which are required in the day-to-day affairs of the corporate sector and keeping pending the provisions for the establishment of the National Company Law Tribunal (NCLT).

The aim

The Act aimed at introducing significant changes in the Indian corporate scenario, focusing on accountability, disclosures, investor protection and corporate governance. On the introduction of new changes, the stakeholders faced several difficulties from time to time in the process. All the four chambers, namely, the CII, FICCI, ASSOCHAM and PHDCCI arranged a seminar with the participation of Government officials and expressed industries' point of view. Similarly, all the three professional bodies raised their concern on the practical difficulties being faced during implementation.

Constitution of the Companies Law Committee

The Government issued various Orders, Notifications and Circulars from time to time. Even exemption notifications from some of the provisions of the Act for private companies, section 8 companies, Government companies and Nidhis were issued in June 2015. During the same period, the Government constituted the Companies Law Committee (CLC) under the chairmanship of the Secretary, Ministry of Corporate Affairs, with the Joint Secretary (Policy) as its convener. A former Judge of the Delhi High Court, the presidents of all the three professional institutes and two industry nominees were the other members of CLC. The Committee co-opted representatives from the RBI and the SEBI as its members.

Duties of Companies Law Committee

CLC was constituted with the mandate of:

(a) Making recommendations on issues arising from the implementation of the Act, and

(b) Examining the recommendations received from the Bankruptcy Law Reforms Committee, the High Level Committee on Corporate Social Responsibility, the Law Commission of India and other agencies. The Committee during its deliberations studied the recommendations and suggestions received from various stakeholders as well as international best practices. The report prepared by the CLC recommends several changes to the Act for proper and effective implementation and to remove the ambiguities in the provisions keeping in view the concept of "ease of doing business."

Working process of the Committee

The CLC had more than eight meetings between July, 2015 and January, 2016. The CLC invited suggestions from the public on an online e-platform specifically created for this purpose. The industry chambers and professional institutes were requested to collate suggestions and submit these through the online platform after necessary vetting. The Secretary General of the Supreme Court of India and the Registrar Generals of all High Courts were also requested to bring it to the notice of the Judges as well as the Bar Association to submit their suggestions on the e-platform. The Comptroller & Auditor General (C&AG) and various regulators, viz., CCI, RBI, SEBI, NHB, TRAI, CERC, and IRDA, were also approached to give their suggestions to the Committee.

Six review groups

Over two thousands comments were received from industry chambers, professional bodies, companies and individuals. Six groups were set up to review the suggestions received during the public consultation. Each group was convened by the member of the committee and included subject matter expert and representatives from other professional bodies and industry.

· The first group studied the registry-related issues, which included the provisions on the incorporation of companies, registration of charges, registration offices and fees payable to the MCA/RoC.

- The second group examined the issues relating to the raising of funds, such as prospectus and allotment of securities, acceptance of deposits by companies, share capital and debentures, declaration and payment of dividend, and registered valuers.
- The third group considered issues relating to accounts, audit and enforcement, including inspection, inquiry and investigation and Nidhis.
- The fourth group studied issues relating to corporate governance, which included including management and administration of companies, meetings of Board and its powers, appointment and qualifications of directors, and appointment and remuneration of managerial personnel.

- The fifth group examined issues relating to the sections yet to be notified owing to litigation on the National Company Law Tribunal.
- They considered, among others, issues related to compromises, arrangements and amalgamations, prevention of oppression and mismanagement, revival and rehabilitation of sick companies, winding up companies, and winding up of unregistered companies · The sixth group studied the penalty provisions in the Companies Act, 2013.

Guiding principles for the review groups

The groups were requested to keep in mind the following guiding principles while examining the suggestions received from stakeholders: ·

Need to balance the interest of various stakeholders like companies, professionals, investors, regulators, etc.

Need to simplify processes or doing away with unnecessary procedures; · Need for greater transparency and disclosures in view of lesser regulatory interference and greater self-regulation;

· Bringing greater clarity in language of the provisions of the Act, wherever required;

· Pros and cons of addressing issues through subordinate legislation, i.e., Rules versus amendment in the Act;

· Compliance requirements for various classes of companies versus public interest;

· Levels of punishment for non-compliance and the necessity to improve compliance.

The MCA engaged the Vidhi Centre for Legal policy for assisting the committee in reaching informed decisions by carrying out research, consulting businesses, practitioners and corporate law academics as well as international practitioners.

Based on the inputs given by the groups, Vidhi and in-house inputs available with the MCA, every relevant issue was examined and analysed.

The report is divided into two parts. Part-I, dealing with the suggested amendments in the Act; and part-II, proposing changes to rules issued under the Act. The recommendations would result in changes in 78 sections, and more than 100 changes in the Act.

Recommendations are in for changes and improvements in some of the definitions with an aim to remove ambiguities and make the definitions more objective.

Such amendments would make the process of incorporation simpler and provide greater flexibility for carrying out business and would fall in line with ease of doing business.

As far as the chapters relating to raising of capital are concerned, the recommendations of the Committee are aimed at simplifying the disclosure regime, streamlining the private placement mechanism, and synchronizing the provisions of the Act with the regulations issued by other sectoral regulators.

The recommendations of the Committee relating to declaration and payment of dividend are aimed at harmonising the provisions in the Act and Rules to provide correct interpretation and for addressing some loopholes to ensure that businesses do not misuse the provisions to pay dividend out of the company's capital.

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