

A STUDY ON COMPANY LAW REFORMS IN INDIA

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Abstract- With an exceptional change in the country's domestic and international situations, the Government of India decided to replace the previous Companies Act, of 1956 with the new legislation, i.e., the Companies Act, of 2013. The Companies Act, 2013 is a landmark codification with a far-reaching outcome for all companies incorporated in India. The act of 2013, came into existence to provide for better audit accountability, e-governance initiatives, and good corporate governance. This paper is focused on the regulatory frameworks of companies in the post-independence era, its objectives, and highlights and also focused on major findings of the companies act, 2013.

Keywords- Companies act, 2013, Companies act, 1956, One Person Company (OPC), Corporate Social Responsibility (CSR), good corporate, framework, legislation,

INTRODUCTION

The companies act, 2013 is an act of parliament on Indian company law which deals with the formation, regulation, responsibilities, and dissolution of a company. The act replaced the companies act, of 1956 after receiving the assent of the President of India on 29 August 2013. The company bill was passed by the Lok Sabha on 18 December 2012 and in Rajya Sabha on 8 August 2013. As a result, the companies Act 2013 only consists of 29 chapters and 470 sections divided into 29 chapters. With the formation of the new companies act, of 2013 many of the rules and regulations mentioned in the companies act, of 1956 have been rebuilt and modernized¹.

OBJECTIVES OF THE STUDY

- 1) To provide reasoning behind the study of the new companies act, 2013, its major objectives, and findings.
- 2) To study the legislative framework of companies after independence.
- 3) To have a detailed examination of the new companies act, 2013.

RESEARCH METHODOLOGY

The proposed study is descriptive in nature. The data are mainly connected from secondary sources like- websites, magazines, newspapers, books, research papers, thesis, and journals.

RELEVANCE OF THE STUDY

The recent enactment that is, the new companies act, 2013 is a vast change in the corporate world. It brings to light many new concepts like- better accountability, broad governance, annual reports, and many new other provisions. This study mainly focuses on the legislative framework of companies incorporated in India and many other aspects related to the company itself and its members. This study will be beneficial to individuals, businessmen, lawyers, and companies in their fields.

REGULATIONS OF COMPANY AFTER INDEPENDENCE

After independence, our leaders realized that it was high time to revise the former act that was, companies act, of 1913, and this led to the enactment of the companies act, 1956 which is further discussed below:

Companies act, 1956: After the realization by our leaders, a committee was appointed by the government on 25th October 1950 consisting of 12 members under the chairmanship of H.C. Bhabha which submitted its report in 1952. Based on the recommendations mentioned in the report, the companies act, of 1956 was passed. The companies act of 1956 was based on the English companies act of 1948 with some modernization to suit the Indian conditions. The companies act, of 1956 came into force on 1st April 1956. The Companies Act of 1956 separated itself into 13 parts, consisting of 658 sections, and 15 schedules. It remained in force for a long time because after independence the corporate sector saw a massive boom. Also, the Companies Act, of 1956 has been amended from time to time in response to the changing business environment.²

¹ ARUNACHALA RAMAIIYA, GUIDE TO COMPANIES ACT (Lexis Nexis 2021).

² NET LAW MAN, <https://www.netlawman.co.in/ia/companies-act-1956> (last visited Sept.5, 2022).

Companies act, 2013: The companies act, of 1956 was immense legislation and demanded a repeal, to meet this requirement a new committee was formed named the J.J. Irani committee. The report recommended by the committee led to the enactment of the companies act, 2013, which is the existing law on corporate affairs in India. This Act is divided into 19 Chapters and consists of 470 Sections and 7 Schedules. It contains fewer provisions as compared to the companies act, of 1956. The act was amended numerous times and major changes were introduced in 2013.³

RATIONALE BEHIND THE COMPANIES ACT, 2013

- 1) Origination of immaculate concepts like- one person company, national company law tribunal, one person company, and corporate social responsibility.
- 2) Placing certain new provisions to meet the current economic and corporate affairs of the country.
- 3) Insertion of extra-legal safeguards of the article of association.
- 4) Making Corporate Social Responsibility (CSR) mandatory.
- 5) Building up of National Financial Reporting Authority (NFRA).

FOCAL POINTS OF COMPANIES ACT, 2013

- 1) **National Company Law Tribunal:** The introduction of the National Company Law Tribunal and the National Company Appellate Tribunal through the Companies act, 2013 was for the purpose to reduce the burden of high courts so that the companies could seek justice easily and desirably, and replacing the Company Law Board and Board for Industrial and Financial Reconstruction.
- 2) **One-person company:** The concept of a one-person company has come into existence and it requires to have only one member and one shareholder. It has been defined under section 2(62) of the companies act, 2013. And gave one-person company various relaxations for running the business in the country. The companies act, of 2013 has also removed the need for prior approval to convert a private company into one person company and also made it easier for sole proprietors to run their business effectively in the country. While there was no such concept of OPC in the 1956 act, the disadvantage to this was, that if you wanted to set up a private company, you need at least one other person because the law mandated a minimum of two shareholders.

It has also some features to highlight:

- It has the minimum paid-up share capital of INR one lakh.
 - One Person shall have a minimum of One Director; and a maximum of 15 directors.
 - One Person Company need not hold annual general meetings every year.
 - Unless excluded by the Act, it has all the characteristics of a private company.
- 3) **Corporate Social Responsibility:** CSR is where businesses make sure they can better serve society as a whole, thereby improving their public image and relations by formulating a CSR policy (at least 2% of the company's profit as CSR). This provision is explained under section 135 of the act and the same would help in the upliftment of underprivileged areas. By enforcing section 135, India became the first country to make CSR mandatory by law, and this section is required reading for all companies that come under the scope of the provision. And, if failed to maintain the CSR policy the company has to give reasons for the same in its annual financial statement.⁴
 - 4) **Directors:** The new act under section 149 has increased the maximum number of directors from twelve to fifteen and can also increase the numbers through a special resolution. The maximum number of directors in a company was 12 under the Companies act, of 1956, and appointing more directors required the approval of the central government. Under the Companies act, 1956, there was no provision for a Resident director, whereas under S. 149(3) of the Companies act, 2013, any company must have at least one director who has stayed in India for a total of at least 182 days in the previous calendar year. A board of directors includes a full-time chairman, MD, treasurer, CEO, and CS.
 - 5) **Female and independent directors:** The Companies act, 2013 set forth the appointment of at least one woman on board as a director to seek different viewpoints from a different set of people under section 149(1). And the act under section 149(4) also stated that one-third of the total directors of a public company needs to be independent directors. And no independent director shall hold office for more than two consecutive years of the five-year term.
 - 6) **Fast track mergers:** The concept of cross-border mergers was allowed by the act and was made simplified, like (a foreign company merging with an Indian company and

³ Zara Suhail Ahmed, *history of company law in India*, law corner (Sept.5, 2022, 9:30 PM), <https://lawcorner.in>

⁴ Taxmann, *Companies Act 2013 in a Nutshell*, TAXMANN TAX AND CORPORATE LAWS OF INDIA (Sept.7, 2022, 7:55 PM), <https://www.taxmann.com>.

reverse). But this could be done only with the prior permission of the Reserve Bank of India. This concept will assist the two companies in taking the requisite measures to achieve their goals as soon as possible.

- 7) **Electronic mode:** The act put forward the concept of E-Governance. E-Governance is a legislative document that calls for better transparency, disclosures, compliance, reporting, accountability, and responsibility. It has been introduced for various purposes like maintaining audit reports, inspection of documents in electronic form, and uploading financial statements on the company's website.
- 8) **Increased numbers of shareholders:** The new act increased the number of shareholders of private companies from 50-200. And the new act has provided some more power to the shareholders, for instance, their approval for various significant purposes.
- 9) **Class action suits for shareholders:** The concept of class action suits has come into existence through this act. It has been forward intending to make shareholders and other stakeholders more informed about their rights and benefits.
- 10) **Prohibition on forward dealings and insider trading:** Forward dealing is the act of purchasing securities of a company at a specified price in the future. The Companies act, 2013 prohibits directors and key managerial personnel from purchasing call and put options of shares of the company, if such person is reasonably expected to have access to price-sensitive information.
- 11) **Board meetings:** The act mentions that not less than 7 days notice is to be given for board meetings which may be given electronically and it should be given to all the directors whether or not in India, it can be sent through any means. Participation of Directors can be in person or by video conference. And, four meetings of the Board of Directors should be held every year in such a manner that not more than 120 days shall intervene between 2 consecutive board meetings.
- 12) **Financial year:** The act under section 2(41) requires the company to end its financial year on 31st March every year. It is the same date that the Government of India uses for tax reporting purposes.⁵

KEY ISSUES IN COMPANIES ACT, 2013

- 1) **Implementation of the act:** the complication started with the rolling out of the act in 2013, First, the United Progressive Alliance (UPA) government opted for a phased implementation of the new Act instead of a full-scale one. Two, most rules that make the Act effective were made public only in the last week of March, and companies were expected to comply with them from April 1. the conclusive set of rules mentioned in the companies act, 2013 was stricter than the drafted rules because they seem to contradict between themselves.
- 2) **Related party transactions:** The law requires some part-related transactions to be cleared by a special resolution of shareholders of the company and bars a shareholder who is a related party from voting. However, all related parties may not be interested party in the relevant transaction but that distinction has not been made under this law. This law creates a problem in smaller or closely held companies because their shareholders are related parties.
- 3) **Loans and subsidiaries:** Companies under the Companies act, of 2013 have also restricted extending loans to directors of the company and to other companies with which a director of the company is associated. Inter-corporate loans have also been restricted and such loans can be extended at a specified rate of interest. The law also places restrictions on lending to subsidiaries and associate companies and specifies when exceptions can be made. Restrictions placed on setting up multiple layers of subsidiaries are another torment area for companies. The act allows companies to have only two layers of investment subsidiaries, with the exception allowed for foreign acquisitions. Indian subsidiaries of multinational corporations will face problems committing funds to CSR requirements because such contributions are not allowed under the Foreign Exchange Management Act.
- 4) **Non-convertible debentures:** The debentures which can't be converted into shares or equities are called non-convertible debentures (or NCDs). Under the companies act, 2013 another issue related to NCDs is that they can be issued for a five-year term, which many see as restrictive as it is typical to issue long-term debentures.
- 5) **Capital-raising:** Capital raising is another area of concern and particularly preferential allotment of shares. The rules have been changed to make it similar to a private placement, where the company is required to issue an offer letter, make various disclosures and specify dates when the preferential offer will open.

⁵ Roji Kanungo and Sakti Ranjan Dash, *A conceptual view of companies act, 2013*, 4 INTERNATIONAL JOURNAL OF FINANCIAL RESEARCH REVIEW(IJOFRR) (2016).

AMENDMENTS MADE IN THE COMPANIES ACT, 2013

- 1) The Companies (Amendment) Act, 2015
- 2) The Companies (Amendment) Act, 2017
- 3) The Companies (Amendment) Act, 2019
- 4) The Companies (Amendment) Act, 2020

The Ministry has come out with numerous circulars, notifications, orders, and various amendment rules to maintain the well-ordered execution of the act.

MAJOR AMENDMENTS IN THE COMPANIES ACT, 2013⁶

- 1) **The Companies amendment act, 2015: -**
 - Common Seal has been made optional.
 - No company shall declare dividend without setting off carried over previous year or years losses and depreciation against profits for the current year.
 - Reporting of fraud by the Auditor to Central Government in case amount exceeds prescribed amount (presently Rs. 1 crore or more). Thus, the principle of materiality has been introduced by specifying the amount. Frauds involving lower amounts shall be intimated to Audit Committee, wherever the company is required to have one or the Board of Directors in other cases.
- 2) **The Companies act, 2017: -**
 - New section related to private placement was substituted using the term identified persons.
 - CSR Committee of a Company that is not required to have an independent director shall have two or more directors in its CSR Committee.
 - Section 3A was inserted which relates to the liability of continuing members in case of a reduction in the number of members below the statutory minimum.
 - Amendment introducing the concept of Significant Beneficial Owner making a declaration to the company in the manner as prescribed was one of the significant amendments as it adds to transparency.
- 3) **The Companies act, 2019: -**
 - Reduced the burden of NCLT by transferring certain approvals, to the Central Government

e.g., conversion of a Public Company into a Private, changing the financial year of a company.

- It also substituted **liable to penalty** in place of **fine** in several provisions, thereby further easing the mounting work pressure on NCLT. The Registrar of Companies (RoC) and Regional Director (RD) can impose penalties directly after issuing a show cause notice (SCN) in place of going to the judiciary for imposing fines under several provisions.
- It added Sec. 10A requires the Company to have a share capital to make certain declarations.

4) **The Companies act, 2020: -**

- A proviso has been inserted to Sec. 2(52) of the Companies Act, 2013 excluding a certain class of companies from the definition of a listed company (mainly for removing companies that are listed only for debt securities).
- Lesser monetary penalty will be imposed on a start-up company, Producer Company, One-Person Company, or small company on failure to comply with provisions of the Companies Act, 2013 which attracts monetary penalties.
- The Amendment Act has decriminalized certain offenses under the Companies Act. In case of defaults which lack any element of fraud or do not involve large public interest, instead of imprisonment and/or fine, the penalty will be imposed under departmental adjudication proceedings.
- Provision has been made to enable public companies to list their securities in foreign jurisdictions.

CONCLUSION:

The Companies Act, of 2013 is a positive and embracing step taken for the betterment of company law in India. And it has taken a great initiative in establishing good corporate governance in India. The act has also introduced various concepts for the promotion, and protection of its directors, members, shareholders, etc. and it also throws light on various procedures for better accountability, audit reports, and transparency of the company. And also brought forward the policy for social upliftment of the country.

⁶ S.A. Rishikesh, *Company act amendments: reasons as well as motivations*, i pleaders (Sept.6 2022, 6:00PM), <https://blog.ipleaders.in>.

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