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Company Laws Ii India: Comparative Analysis of Companies Act 1956 and Companies Act 2013

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ABSTRACT

The concept of a company act was inspired by the English Companies Act of 1844. The Joint Stock Companies Act, India's first company legislation, was enacted in 1850. This Act was succeeded by the Joint Stock Companies Act of 1857, which introduced the notion of limited liability in India for the first time. The concept of a company act was inspired by the English Companies Act of 1844. The Joint Stock Companies Act, India's first company legislation, was enacted in 1850. This Act was succeeded by the Joint Stock Companies Act of 1857, which established limited liability for the first time in India. The corporate sector in India is diversified, and the law, like a living creature, governs the corporate sector of any economy. On the one hand, it is made up of multinational corporations, but it also comprises a large number of small and medium-sized businesses that fuel growth and inject dynamism into the sector. This intriguing patchwork of Corporate India has contributed significantly to India's economic growth. In this study, the researcher attempted to focus on several aspects of company law. For this objective, the researcher collected data from primary and secondary sources.

1. Introduction

During the eleventh and thirteenth centuries in London, the oldest business associations were known as "merchant guilds." These guilds received Crown charters primarily to secure a monopoly on a specific trade or commodity for their members. In the fourteenth century, certain merchants used the term 'Company' to describe their international enterprise. By the end of the sixteenth century, Royal Charters granted members of the company a monopoly on trade within a certain zone. These corporations were referred to as "Regulated Companies," including the East India Company. The East India Company was established in the 17th century under Queen Elizabeth's Royal Charter.The purpose was to share. The East India Company's constitution and operations exemplified modern corporate structures. The firm's charter named a corporate governor, who was comparable to today's chairman of the Board of Directors, as well as numerous committee members who resembled today's directors. The Governor and committee members were expected to submit periodic reports on their important decisions for confirmation by the company's General Courts of all subscribers, which coincided with today's shareholder meetings.

The current corporations have changed several times. The Companies Act's major law is the Companies Act of 1956 and the Companies Act of 2013.

This study aims to explore key aspects of modern Company Law, particularly in relation to company administration. It seeks to examine recent developments in the field, analyze revisions to the Companies Act, 2013, and highlight key differences between the Companies Act, 1956 and the Companies Act, 2013. By reviewing these legislative changes, the research aims to provide a deeper understanding of their impact on corporate governance and regulatory compliance.

2. Method

The current research work was completed using a primary as well as secondary sources. Primary data were collected through case laws and statutes. the secondary sources were collected through of books, papers, websites, international journals, Central and state government publications; Committee and commission reports and recommendations on current research.

3. Result and Discussion

3.1. Characteristics of Company

3.1.1. Incorporation as association

A group of people (association) can organise and incorporate a company by providing the appropriate facts, documents, and information to the ROC, such as the MOA (Memorandum of Association), AOA (Association of Company), and others. The MOA defines the essential purpose, aims, and conditions of the newly formed company, whereas the AOA creates the governance standards and regulations for the firm's internal management.

Any action that does not comply with the MOA is null and void. Furthermore, the "Registration Certificate" or "Certificate of Incorporation" allows the firm to enter into contracts in its own name and perform the essential actions and processes to assure compliance. Company shall be liable for any breach of contract and may sue and be sued on its own behalf.

3.1.2. Separate Legal Entity

A corporation is distinguished from its owners under the Companies Act of 2013. According to the law, they are separate entities with unique rights and obligations. In layman's terms, a company is an autonomous and self-governing entity that owns its own assets and properties, controls its own bank accounts, enters into agreements/contracts, sues and is sued, and so on. The firm, regardless of its shareholders or owners, has its own nationality, domicile, and habitation, but it cannot demand that fundamental rights be respected. It can also invest in other companies by buying or subscribing to their securities (shares, debentures, etc.). It can also establish subsidiaries by signing their agreement of understanding. However, corporations cannot be imprisoned. However, both civil and criminal proceedings are feasible.

The concept of a separate legal entity of a company was first established in 1867 by the House of Lords in the case of Oakes v. Turquand and Hording (LR 2 HL 325), In which it was decided that because an incorporated company has a legal personality distinct from its members, a creditor of such a firm has recourse only against the company and not against an individual shareholder. As a result, the firm's creditors may collect and recoup their debts solely from the company, rather than its shareholders/members/owners.

The same court confirmed the same notion again in 1897 when it decided the Salomon v. Salomon & Co. Ltd. (UKHL 1, AC 22) case, in which the company's unsecured creditors demanded to be paid before satisfying the dues of debenture-holders (including Mr. Salomon himself). The court denied the creditors' plea/application, stating that because debentures have a floating charge on assets, they would be settled first, and that there is a clear distinction between the firm and its members/shareholders/owners, who may also be creditors.

3.1.3. Perpetual Succession

The company shall have perpetual succession (an unlimited life span), which ensures the company's continuity and existence independent of the lives of its members. Members' share transfer rights make this quite clear. Only the law can terminate and end a company's existence through winding up. Because the company is an artificial juridical person, it will continue to exist even if all of its members/founders/promoters/subscribers die or leave the company. "Members may come and go, but the company can last forever," as the saying goes.

3.1.4. Company Seal

Company being an artificial person acts through natural persons namely directors and shareholders. Unlike the shareholders, the directors might represent the company as its agents and enter into contracts on company's behalf. All the corporate actions and acts must be authorized by its common seal . The common seal is the official signature of the company. Any document/action/act non-bearing the seal on company would be bound the company for its performance/execution.

3.1.5. Restrictive Liability

Because the firm and its owners are independent entities, they have separate liabilities. Shareholders' obligation is restricted to the "unpaid value of shares held up." Their responsibility ceases after they have fully paid the money on the shares. When the corporation suffers a loss, they cannot be compelled to refund or pay extra.

Furthermore, they are not required to repay the company's obligation to creditors from their personal income or property. However, if the firm is a guarantee company, shareholders/members must pay the sum insured during the company's winding up.

3.1.6. Share Transferability

Share transferability implies selling of shares by an existing shareholder to an interested/prospective investor. The shares are freely transferable in public companies; however, the act places few restrictions on share transfer by shareholders of a private company.

Companies Act 1956 is a significant legislation empowering and enabling CG to inspect the books, direct audit and investigation, prosecute the company and control and regulate corporate affairs like its formation, working, winding up etc. It was worked upon and amended several times to keep pace with the changing business environment.

3.1.7. Capacity to sue
Company have right to sue or sued in the name of company.

3.1.8. Artificial Person
Company has an artificial person.

3.1.9. Separation of ownership and management
Because they own the company, shareholders are in charge of running it. They are tough to handle since they are broad and numerous. To avoid this circumstance, shareholders must declare the company's aims, purposes, and goals. They are also tasked with appointing directors who will act as their representatives or agents. Finally, the directors are in charge of the company's management.

The directors may hire professionals to assist in the daily operation and management of the firm. These professionals will work under the guidance and supervision of the board and will be responsible and answerable to the board.

3.2. Types of Company
The companies Act of 2013 classifies businesses based on the number of members. The Micro, Small, and larger Enterprises (MSME) Act categorises businesses as micro, small, or larger in order to qualify for MSME advantages. Companies can also be classified based on their members' liability, firm ownership, and listing status. The different kinds of companies in view of various boundaries are covered underneath:

3.2.1. Types of Company Under Companies Act, 2013
Under the corporations Act, 2013, company owners in India can form numerous types of corporations to direct their operations and provide a legal framework for their operations. The following are the numerous types of businesses:

3.2.1.1. One Person Company
The notion of a One Person Company (OPC) was introduced by the Act. According to the Act, an OPC is a single-member business. The member may also serve as a director of the company. The OPC, on the other hand, should have no more than one member and no more than fifteen directors.

3.2.1.2. Private Limited Company
A private limited company is one that has no more than 200 shareholders. A private limited business must have at least two members. Members cannot transfer their shares, therefore it is reasonable for enterprises to enlist as private entities. A private limited company must have at least two directors and a maximum of 15 directors.

3.2.1.3. Public Limited Company
A public limited corporation is one in which the entire population can own business stock. There is no maximum number of shareholders for a public limited company, but it must have at least seven members to be formed. The firm must have two directors and can have up to fifteen.

3.2.1.4. NGO
Section 8 of the Represent magnanimous purposes Act allows a group of groups or individuals to form a company. These organisations are set up to enhance commerce, science, handicraft, education, sports, research, religion, social government assistance, good cause, climate insurance, and other such things. The corporation should use its advantages and various sources of income to advance its operations. Such businesses want to limit any profit distributions to their employees.

3.2.2. Types of Companies Based on Size:
The MSME Act classifies businesses based on their size in order for the government to provide benefits to MSMEs. The following companies are classified according to their size in order to qualify for MSME benefits:

3.2.2.1. Micro Companies
A micro company is defined as an organisation whose interest in plant and hardware, i.e. machinery, does not exceed Rs.1 crore and whose annual turnover does not exceed Rs.5 crore.

3.2.2.2. Small Companies
A small company is one that has less than Rs.10 crore in plant and machinery and less than Rs.50 crore in annual revenue.

3.2.2.3. Medium Companies
A medium firm is one whose interest in equipment and machinery does not exceed Rs.50 crore and whose annual turnover does not exceed Rs.250 crore.

3.2.3. Types of Companies Based on Liabilities
When it comes to member responsibility, businesses might be restricted by shares, limited by guarantee, or simply limitless.

3.2.3.1. Limited by Shares
The risk of the company's individuals is limited by the Memorandum of Association (MOA) in a company restricted by shares. Individuals in the company are solely liable for any missed or unpaid sums on offers held independently by them. The value of shares held by a

shareholder represents the shareholder's ownership in the company.

3.2.3.2. Limited by Guarantee

A business limited by guarantee means that the member's liability is limited to the amount they pledge to contribute to the firm's resources. The business MOA limits the members' responsibility. Individuals agree in the Memorandum of Understanding to donate a certain sum in the event that the firm is dissolved. The sum ensured by the member determines the level of possession.

3.2.3.3. Unlimited Company

An unlimited company means that the owners' obligations are unbounded. If a debt is incurred, the member's liability is infinite and includes personal assets. Typically, business owners choose not to incorporate this sort of corporation.

3.2.4. Types of Company Based on Control

The companies can be classified based on the ownership structure and control as follows:

3.2.4.1. Holding Company

A holding company is a company that owns the majority of voting stock in another company (a subsidiary). The holding company is the parent firm that controls the subsidiary company's policies, assets, and management decisions. However, it is not involved in the subsidiary's day-to-day operations.

3.2.4.2. Subsidiary Company

A subsidiary firm is owned in part or fully by another company (holding company). The holding company controls the structure of the subsidiary firm's board of directors, as well as more than half of its voting power. When a single holding company owns 100% of a subsidiary, the subsidiary is known as the holding company's Wholly Owned Subsidiary (WOS).

3.2.5. Types of Company Based on Listing

In terms of capital access, the companies are classified as listed or unlisted. Each listed corporation must be a public company; however, the reverse is not required. An unlisted corporation might be either private or public.

3.2.5.1. Listed Company

A listed firm is one that is listed on several stock exchanges both inside and outside of India. The listed company's shares can be freely traded on the stock exchange. They must follow the guidelines established by the Securities and Exchange Board of India (SEBI).

A corporation that wishes to list its shares on the stock exchange should present the general public with a plan for purchasing its debentures or shares. A corporation can list its shares in an IPO, but a publicly traded company can make a Further Public Offering (FPO).

3.2.5.2. Unlisted Company

Unlisted firms are those that are not listed on any recognised stock exchange and do not have their shares freely tradable on those exchanges. To achieve their capital requirements, these enterprises obtain investment from friends, family members, relatives, financial institutions, or private placement. To offer its securities on stock exchanges, an unlisted company must convert to a public company and publish a prospectus.

3.3. Contents under Companies Act 1956 and Companies Act 2013

Followings are the contents cover under this part.

Sr. No	Particulars	The Companies Act 2013	The Companies Act 1956
1	Company's Formation	Section 3	Section 11
2	MOA	Section 4	Section 13
3	AOA	Section 5	No Section
4	Not for profit companies	Section 8	Section 25
5	Business commencement	Section 11	Section 149
6	Registered office of company	Section 12	Section 146
7	Name rectification	Section 16	Section 22
8	Alteration in MOA	Section 13	Section 17
9	Alteration in AOA	Section 14	Section 31
10	Holding of shares by subsidiaries	Section 19	Section 42
11	Communication of documents	Section 20	Section 51

Sources: Companies Act, 1956 & 2013

3.4. Companies Act 2013 V/S Companies Act 1956

The Companies Act of 1956 was revised several times during the last 57 years, although many of its provisions were inadequate and out of date. The goal of the 2013 Act was to eliminate government approvals and increase self-regulation, with an emphasis on corporate democracy. The following are the main differences between the aforementioned acts:

Table 1. Synoptic view of differences between Companies Act 1956 & Companies Act, 2013

No	Particulars	1956 Act	2013 Act
1	Ending of FY	As decided by companies.	31st March every year.
2	Preparation and presentation of financials	VI Schedule	II Schedule
3	Ceiling limit on maximum partners	Banking business-10 Others-20	100
4	Ceiling limit on maximum shareholders in a private company	50 excluding employees (both past and present)	200 excluding employees (both past and present)
5	OPC	No such concept existed.	Recognised the OPC concept. OPC is a Company with only one natural person as a member.
6	Utilisation of Securities Premium	Sec 77A & 78	Sec 52 (2)
7	Maximum rate of interest on calls in arrear	5%	10%
8	Shares issued at discount	Allowed by Sec 79.	Sec 53 makes this illegal. Sec 54 permits such issuance, but only if made to employees under the ESOP plan.
9	Maximum rate of interest on calls in advance	6%	12%
10	Default format of AOA	Table A	Table F
11	Minimum Subscription	Section 69 only applies to shares. If the minimum subscription is not met, no shares will be allocated.	Securities are covered by Section 39. If the minimum subscription is not met, no securities will be issued.

Source: Companies Act 1956 & 2013.

4. Conclusion

The years 2013 and 2014 saw significant changes in company law. The former "Companies Act 1956" was replaced with a new piece of legal law known as the "Companies Act 2013." The Act of 2013 included 470 sections as opposed to the previous Act's 658 sections. It includes seven schedules as opposed to the Act of 1956's fifteen. The revised Companies Act of 2013 made provisions and rules that were notified under several parts of the Act.

Thus, in order to obtain a clear and tangible picture of the law, a reader must read all relevant parts, its associated requirements, and the announced Rules. The following provisions have been newly incorporated into the 2013 Act: one person company, small company, enrichment provisions in Articles, private placement, class action, disgorgement provisions, requirement of certificate to commence business for private companies, electronic voting, notice of general meeting in electronic mode, electronic voting, consolidated financial statements, subsidiary accounts on company's web site, electronic voting, consolidated financial statements, subsidiary accounts on company's web site, electronic voting, consolidated financial statements, subsidiary accounts on company's web site, electronic voting, Mandatory spending on CSR activities by designated companies, mandatory internal audit, mandatory rotation of auditors, Tribunal's power to dismiss auditors, fraud detection and duty of professionals, particularly, CA/CS/CWA, prohibition of non-audit services by auditors, and mandatory audit of audited services, mandatory rotation of auditors, Tribunal power to remove auditors, fraud detection and duties of professionals, namely, CA/CS/CWA, prohibition of non-audit services by auditors, mandatory resident director, woman director on the Boards of notified companies, elaborate provisions relating to appointment and role of IDs, BODs meet via digitalization (video conferencing), statutory recognition of Serious Fraud Investigation Office (SFIO), amalgamation procedure for notified Companies Act 2013 have also dropped various provisions which were earlier contained in the Act. These include – Certificate of incorporation, statement in lieu of prospectus, statutory meeting and filing of statutory report, Central Government‘s power to remove disqualification of moral turpitude in relation to directors, share qualification, compliance certificate from a practicing Company Secretary, share issue at discount except ESOP, etc. As a consequence, professionals are finding it hard to comprehend the new position of law on the subject.

According to the findings of this study, local, state, and federal governments, as well as other organisations, should consider establishing new rules or amending existing ones. This is critical for attracting financial investment in both established and new markets. Following substantial tax reforms in India, such as the Companies Act of 2013, the goods and services tax went into effect on July 1, 2017, absorbing nearly all existing indirect taxes. This opened the door for both domestic and international startups to establish themselves in India. The Companies Act of 2013 was one of the statutes that changed. India has become a respectable investment destination for both domestic and international investors as a result of economic liberalisation, increased domestic demand, and a good return on investment. Despite the fact that worldwide markets are competitive, India is investing in infrastructure to help entrepreneurs get off the ground, which will lead to additional chances for those enterprises.

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