
Evolution of Companies Law in India

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The common consciousness of the people are instrumental, to a great extent, in the development of the laws. Even in corporate laws it came to realise and play a pivotal role. Even in the period of Kotilya they were corporations. they had modern look and aspects in that period also. the institution of "Shreni" was a corporation of man following the same trade, art and craft and they had simulacrum and akinness with the "Guilds" of medieval Europe. There were other types of corporate organisations. trade was carried on the joint-stock principles.¹ There is evidence to suggest that traders would organise into a partnership form for the purposes of engaging in longer distance travel and trade over sea and land. All these glimpses lend view to a sense of similarity in the concept of partnership like that of today.

The company law embraces all companies in corporate sector. it has a broad area of controlling and regulatory powers, company law is also know as corporation law. we can explain the term company law as the law of business association.² companies is the amalgamation of "com+panies" there the word com implies "with or together" and panies means "Bread". Thus, it inheres a group of persons taking meals together.³ in the common wealth countries the word company is more widely used to describe the same sort of entity like partnership. They are not to be referred to companies in British for they are not a separate legal entity.⁴

According to Lord Justice Lindley, "Company is an association of many person who contribute money or money's worth to a common stock and employ it for a common purpose. The common stock so 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."⁵

According to Justice James, a company means, "an association of persons united for a common object. Such association may be in the form of an ordinary firm or a Hindu joint Family business or a society registered under the Societies Registration Act or provident fund Society, or a Trade Union or company incorporated by Royal Charter or by an Act of

¹ R C Majumdear, "Ancient India", p. 215-216.

² <https://en.wikipeids.org/wiki/corporate-law>

³ <http://www.legalserviceindia.com?company%20law/com.htm>

⁴ <http://en.wikipedia.org/wiki/company> rule in India

⁵ Lord Lindley on Companies, p. 1.

parliament or by some Indian Law or it may be a company incorporated under an Act relating to companies".⁶

In *Dormouth Cottege v. Woodward*⁷, Chief Justice Marshall defines, a Joint Stock Company as, "an artificial person invisible, intangible and existing only in the eyes of law. Being a mere creation of law, it possesses only those properties which the charter of its creation confers upon it either expressly or as incidental to its very existence, among the most important are immortality and if the expression may be allowed, individuality, properties by which a perpetual succession of many persons is considered as the same and may act as a single individual."

Companies is a kind of persons and legal citizen. It does not mean or connote human rather, it is a juristic person as a corporation. They who invest in these sectors have limited liability to the company. In case of any loss caused by the company, it is the rules and regulations of the corporate law that governs them. We can define company as the place or common person where people invest money with common purpose and has a legal entity in the form of company.⁸ In lack of group of people the entity of the company cannot exist. A company is not only collection of individuals but also that of corporations, partnerships, charitable activity and so on. Normally corporate law is a part of company law.⁹

The company legislation in India has almost followed the company legislation in England. The first legislative enactment in regard to registration of joint stock company was passed in 1850. It was based on the English companies Act, 1844. This Act provided the companies a legal entities but they did not have the concept of limited liability. The companies Act 1857 made measure for the recognition of concept of limited liability. In this regard, it followed the English companies Act, 1856. However, the companies Act 1857, kept the liability of the members of the banking companies unlimited but it was in 1858 that the limited liability concept was extended to the banking companies also. Later on the companies Act, 1866 was passed with a view to consolidate and amend the law pertaining to incorporation, regulation and winding up of trading companies and other association. This Act had its basis in the English companies Act 1862. The Act of 1866 was re cast in 1882 in order to create a sense of consistency with the various amendments of the English companies Act, 1862. This Act was in vogue till 1913 but was replaced by the companies, Act 1913 and it was passed in accordance with the English companies consolidation, Act 1908. All the business companies in India were regulated by this Act till 1956. However, there were certain Amendment and they were in 1914,1915,1920,1926,1930 and 1932. The Act witnessed a large scale amendment in 1936 and it was, to a great extent, in line with English companies Act, 1929. By the coming of 1950, the government of free India appointed a committee under H.C. Bhabha for revising the Indian companies act and its bearing on the Indian trade industry.

⁶ Coated by N.V. Paranjape: Company law, 2013 ed. 7th 2016 p. 40

⁷ 4 Wheat [US] 518

⁸ <http://www.bbamantra.com/kinds-of-companies>

⁹ <https://en.wikepids.org/wiki/corporate-law>

After the recommendations of the company law committee the companies Act 1956 was introduced in the parliament. This Act was the longest piece of legislation ever passed by our Parliament. amendments have been made in this Act periodically. The companies Act, 1956 consisted of 658 Section and 15 Schedules.

Full and fair disclosure of various matter in prospectus; detailed information of the financial affairs of company to be disclosed in its account; provision for intervention and investigation by the Government into the affairs of a company; restrictions on the powers of managerial personnel; enforcement of proper performance of their duties by company management; and protection of minority shareholders were some of the main features of the companies Act, 1956. And it was, to a great exten, consistent with the English companies Act, 1948. the Indian companies Act 1956 introduced some new elements or changes as compared to the Act of 1913. There changes were on-

1. The promotion and formation of companies;
2. Capital structure of the companies;
3. Company meetings and procedures;
4. Presentation of companies accounts, there audit and the power and duties of auditors.
5. Inspection and investigation of the affairs of company;
6. the constitution of Board of directors, their powers and duties in the capacity of Directors, Managing directors and Manager;
7. The administration of company law;

However, the companies Act, 1956 has undergone amendments several times since then. Because of economic reforms from time to time the government realised that several provisions of companies Act were not conducive to the growth of corporate sector. The Companies Act, 1956 had undergone changes by amendments in 1960, 1962, 1963, 1964, 1965, 1966, 1967, 1969, 1971, 1977, 1985, 1988, 1996, 1999, 2000, 2002 (Amendment), 2002 (second Amendment), and 2006 . The companies Act, 1956 was also amended pursuant to the enactment of the Depositories Act, 1996.

The Depositories Act, 1996 made the following major amendments to the Companies Act, 1956:-

1. Every person holding equity share capital of a company and whose name is entered as beneficial owner in the records of the depository shall be deemed to be a member of the concerned company.
2. stamping of transfer instruments is not required where both the transferor and transferee are entered as beneficial owners in the records of depository.
3. The securities of company other a private company have been made freely transferable. The transfer has to be effected immediately by the company/ depository.

4. The register of member shall indicate the shares held by member in demat mode but such shares need not be distinguished by a distinctive number.
5. company to give in the offer document option to the investor to ask for issue of securities in demat mode.

As a result this an attempt was made to recast the Act but the companies Bill, 1993 was withdrawn. Nevertheless there were certain amendments incorporated by the companies (Amendment) Act, 1996.

In the year 1996, a working group was constituted to rewrite the companies Act, with an announcement by the then Finance minister in his budget speech to this effect. The objective of the group was to facilitate healthy growth of Indian corporate sector under a liberalised, striding and competition-oriented business environment on the grounds of the report prepared by the working group and regard being has to the developments in the structure administration and the regulatory frame work the world over, the companies Bill, 1997 was introduce in Rajya Sabha on 14 Aug 1997. This was replaced by repealing the companies Act, 1956. The President of India promulgated the companies (Amendment) ordinance, 1998 as a part of the reform process and the need of the hour. This ordinance was later replaced by the companies (Amendment) Act 1999 in order to surge the capital market through augmenting the morale of nation business and encourage FII and FDI. The subsequent changes were compatible with the economic environment in furtherance of Government policy and globalisation of economy. The corporate sector was ensured companies own share. The provisions concerning investments and loans were rationalised and liberalised. Now, the problem of seeking approval of central government on investments could be done away with. The companies were free to issue “sweat equity” in lieu of intellectual properly. The compliance of Indian Accounting standards was incorporated in the Act with a view to make the accounts of Indian companies compatible with international practices. The provision of “Investor Education and protection fund was setup for the welfare of investor, apart from the introduction facility of nomination to shareholders, debenture holder.¹⁰

The first amendment of 2002 provides for producer companies. The second amendment of 2002 replaces the company law Board with National company law tribunal. Henceforth the National company law tribunal has been vested with the jurisdiction of High court under the companies Act. In this way the jurisdiction of High court under the companies Act. In this way the jurisdiction of High Court has been minimized. since this amendment has not been enforced, the original Act holds good.¹¹

Evolution of the companies Act, 2013 :-

The companies Act, 1956 was a cumbersome and gigantic legislation. Need was felt to streamline this Act. The recommendations of Sacchar committee, than again in 1998, 2002 and through companies (2nd amendment Act) 2002 created conditions to frame a law so as to enable competitiveness with the fast changing strides of economy. The government felt it apposite to constitute a committee under the chairmanship of Dr. J.J. Irani Director, Tata Sons, in order to give his report for advising the government and rendering his pivotal role in rendering a simplified compact law. In view of the rapid changes at the national and

¹⁰ A.K. Majmudar and Dr. G.K. Kapoor: Company Law and Practice ed. 15th, pp. 1-5.

¹¹ Avatar Singh: Company Law 15th ed. 2007 p. 3

international scenario, this task was a challenge to amalgamate all the internationally accepted practices with adequate flexibility in evolution of new arrangements.

As discussed above Dr. J.J. Irani committee kept in mind the ground realities and endeavoured to address the concerns of all the stakeholders so as to make access to internationally accepted best practices. The report was a boon of its kind for it emerged with dynamic and balanced recommendations. There were multifarious progressive and visionary concepts in the report of the committee. It recommended that companies with higher public interest and which have access to capital from the public ought to be subjected to strict regime corporate governance. It also laid stress on the fact that government companies and public financial institutions should be subjected to similar parameters pertaining to matters of disclosure.

The recommend actions of Dr. J.J. Irani committee was presented for detailed discussion and deliberations wherein many stakeholders, industry chambers, professional institutes, legal experts and government departments participated. Thereafter, the companies Bill 2009 was introduced in lok Sabha on 3 August 2009. The Bill emphasised on self regulation and minimization of regulatory approvals in managing affairs of the company. It had great promises of shareholder democracy, greater powers to the shareholder and stricter corporate governance norms. The Committee took the Companies Act, 1956, as amended, as the base and adopted the following approach:¹²

- i) Taking note of the Concept Paper and suggestions/objections and comments on the same received from various quarters, to enable synthesis of opinion on the desirable features of the new law;
- ii) Identifying the essential ingredients to be addressed by the new law, retaining desirable features of the existing framework, segregating substantive law from the procedures to enable a clear framework for good corporate governance that addresses the concerns of all stakeholders equitably;
- iii) Making recommendations to enable easy and unambiguous interpretation by recasting the provisions of the law so as to enable easy understanding and interpretation;
- iv) Enabling greater flexibility in procedural aspects through rule making, so that with the change of time the legal framework may adapt without amendment of the substantive enactment, which would be a time consuming process;
- v) Addressing the concerns arising out of the experience of the stock market scams of the 1990s, the phenomenon of vanishing companies and recommendations made by Join Parliamentary Committee on Stock Market Scam;
- vi) Enabling measures to protect the interests of stakeholders and investors, including small investors, through legal basis for sound corporate governance practices;
- vii) Providing a framework for responsible self-regulation through determination of corporate matters through decisions by shareholders, in the background of clear accountability for such decisions, obviating the need for a regime based on Government approvals;

¹² www.primedirectors.com/.../... J.J. Irani Report-MCA- Prime Directors

viii) Recognizing the relevance of a climate that encourages people to set up businesses and make them grow, addresses the practical concerns of small businesses so that people may deal with and invest in companies with confidence, promotes international competitiveness of Indian businesses and provides it the flexibility to meet the challenges of the global economy;

After introduction in parliament the companies Bill, 2009 was referred to the parliamentary standing committee on finance for examination. The said standing committee submitted its report on 31. 08. 2010 with certain amendments . The revised companies Bill, 2011 was introduced but certain amendment were brought about and the amended Bill was finally passed by lok sabha on 18 December 2012 and by Rajya Sabha on 08 August 2013. On the assent of the president of India it finally became the companies Act, 2013.

Application of The Companies Act, 2013:-

The provision of this Act, are apply to the following companies and bodies corporate: ¹³

- a. companies incorporated under this Act or under any previous company law;
- b. insurance companies; this application is only to the extent to which the provisions of the Act are not inconsistent with those of the Insurance Act,1938 and the Insurance Regulatory and Development Authority Act,1999;
- c. banking companies, subject to the provisions of the Banking Regulation Act, 1949; banking company means a company as defined in Section 5 (c), Banking Regulations Act.
- d. companies engaged in generation or supply of electricity, to the extent to which the provisions of the Act are not inconsistent with those of the Electricity Act,2003
- e. any other company governed by any special Act except to the extent the said provisions are inconsistent with the provisions of such special Act; and
- f. any such body corporate, incorporated by any Act, as the Central Government may be notification specify for such application subject to such exceptions, modifications or adaptations as may be specified in the notification.

¹³ Section 1 (4) of The Companies Act, 2013