Analyzing Companies Act: A move towards better Governance.

1Nishant Sharma*, 2Ruchita Dang
1Research Scholar Department of Commerce Delhi School of Economics University of Delhi
2Motilal Nehru College University of Delhi.

Abstract: With the ever-changing business environment the way in which business firms are supposed to work also changes. No nation can avoid the change in the corporate culture that comes as an external force due to the rapid linkage of various economies & their corporate entities & that not only provide ample of opportunities but poses a lot of challenges especially on the governance front. With this changing environment it is in the best interest of the country to keep on incorporating various governance aspects arising in terms of challenges due to changes taking place in corporate arena. This paper is therefore an attempt to understand such the changing corporate laws in India by comparing the two major companies act i.e. Companies Act 1956 & the recently introduced Companies Act 2013.

Keywords: Companies Act 1956, Companies Act 2013, Corporate Governance, Corporate Social Responsibility, Class Action Suit.

I. Introduction

The history of corporate laws is ages old in India & dates back to the time of Chola & Patliputra who were patrons of trade. The paper attempts to explain the development of corporate laws over time in India & then to bring about the major differences between the almost 57 years old Companies Act, 1956 & the recently introduced Companies Act, 2013. In order to make the understanding of the paper more clearer the paper has been divided into certain sections wherein the first section that is the present section talks about the concept, meaning & importance of corporate laws or rather strong and effective corporate laws followed by section II that provides the objectives & methodology of the paper next is section III that talks of the historical developments in the Indian corporate laws. Section IV is the core section wherein we produce a table showing major points of differences between Companies Act 1956 & Companies Act 2013. Conclusions & suggestions are contained in section V followed by the references in the last section.

II. Objectives

1. The first & the foremost objective the paper is to understand the need of having a very comprehensive & revamped companies act that is to analyze the flaws of companies act 1956 & how these flaws have been addressed.
2. Also, to understand the points where Companies Act 2013 has got an edge over Companies Act 1956.
3. To understand the various developments of Companies Act 2013 & its role in ensuring better corporate governance in the country.
Methodology

The present study is based on the information collected from various secondary sources such as research journals available online, newspaper articles, various websites, bare acts & personal interaction with professionals like Chartered Accountants, Company Secretaries & others.

III. Historical Background/Development of Companies Act.

India has got the independence from British control 1947 but the process of making & strengthening corporate laws had already begun before that. With the advent of various enactments in England various laws were getting enacted in India too that resulted in acts such as Joint Stock Companies Act, 1850 of India, Joint Stock Companies Act, 1857 of India, Companies Act, 1866 of India, Indian Companies Act, 1913 but the biggest of all procedural act of independent India came into being in 1956 to be called as Companies Act, 1956 which is now replaced by the Companies Act, 2013. A brief historical background of companies act is given below.

Joint Stock Companies Act, 1850
Based on the premises of Joint Stock Companies Act, 1844 of England this act provided for registration of joint stock companies in India & the three Supreme Courts (Madras, Bombay, and Calcutta) were authorized to give order for registration.

Joint Stock Companies Act, 1857
The act introduced the concept of limited liability but the benefits were not extended to banking & insurance companies. The right was afterwards granted through an amendment act.

Indian Companies Act, 1913
Based on the Companies Act, 1908 Of England the concept of Private Limited Company was materialized. This act went through many amendments.

Companies Act, 1956
Based on the recommendations of H.C. Bhaba Committee the biggest of all procedural laws in country was enacted on April 1. 1956 divided into XIII parts with 658 sections, 6 tales & 15 schedules. Companies Act, 1956 repealed all earlier Companies Acts.

Companies Act, 2013
Based on the recommendations of J. J. Irani committee companies bill came into existence in the year 2008 that went through critical evaluations & after due considerations took the shape of Companies Act, 2013. The bill was passed on 18th of December, 2013 by Lok Sabha & Rajya Sabha passed the same bill on 8th of august, 2013. The bill then got presidential assent & was gazetted to become an act. Companies Act, 2013 not only repealed the Companies Act 1956 but also provides for so many unheard concepts. The act comprises of 29 chapters, 470 clauses & 7 schedules.


<table>
<thead>
<tr>
<th>Basis</th>
<th>Companies Act 1956</th>
<th>Companies Act 2013</th>
<th>Comments/Remarks</th>
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<tbody>
<tr>
<td>1. Composition</td>
<td>It contains 13 parts having 658 sections and 15 schedules.</td>
<td>It contains 29 chapters having 470 sections and 7 schedules.</td>
<td>Both the act gives various laws, rules and regulations to regulate the working of companies.</td>
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<tr>
<td>2. Definition of Charge</td>
<td>“Charge” includes mortgage.(^1)</td>
<td>“Charge” means an interest or lien created on the property or assets of a company and includes a mortgage.(^2)</td>
<td>Earlier it includes only mortgage.</td>
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<td>4. Definition of “officer who is in default”</td>
<td>“Officer who is in default”, in relation to any provision referred to in section 5, has the meaning specified in that</td>
<td>“officer who is in default”, for the purpose of any provision in this Act which enacts that an officer of the company who is</td>
<td>The scope of officer in default has been broadened.</td>
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\(^1\) Section 124 of Companies Act, 1956.
\(^2\) Section 2 (16) of Companies Act, 2013.
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Section 5: For the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any punishment or penalty, whether by way of imprisonment, fine or otherwise, the expression “officer who is in default” means all the following officers of the company, namely:—

(a) the managing director or managing directors; (b) the whole-time director or whole-time directors; (c) the manager; (d) the secretary; (e) any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act; (f) any person charged by the Board with the responsibility of complying with that provision: Provided that the person so charged has given his consent in this behalf to the Board; (g) where any company does not have any of the officers specified in clauses (a) to (c), any director or directors who may be so specified, all the directors: Provided that where the Board exercises any power under clause (f) or clause (g), it shall, within thirty days of the exercise of such powers, file with the Registrar a return in the prescribed form.

5. One person company

Earlier this concept was not there in the act. OPC means a company which has only one person as a member.

6. Prohibition on issue of shares at discount.

Earlier companies have a power to issue shares at discount. Now the companies cannot issue shares at discount except sweat equity shares subject to fulfillment of certain conditions.

7. Power of company to purchase its own securities.

Power of company to purchase its own securities. If company contravenes the provision shall be punishable with a fine not less than one lakh rupees which may extend to five lakh rupees. For the purpose of new act “free reserves” include security premium account.

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5. Section 2(35) of the Companies Act, 1956.
10. Section 77A of the Companies Act, 1956.
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<tr>
<td><strong>8. Prohibition on acceptance of deposits from public</strong></td>
<td>Deposits not to be invited without issuing an advertisement.</td>
<td>Prohibition on acceptance of deposits from public.</td>
</tr>
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<td><strong>9. Notice of meeting</strong></td>
<td>This deals with length of notice and on the other hand other section deals with contents and manner of service of notice.</td>
<td>It explains the procedure of notice of meeting.</td>
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<tr>
<td><strong>10. Minutes of meeting</strong></td>
<td>It covers all the aspects minutes of proceedings of general meetings.</td>
<td>It explains the minutes of proceedings of general meetings, board meetings, and any other general meeting and all the resolutions passed by postal ballot.</td>
</tr>
<tr>
<td><strong>11. Appointment of Auditors</strong></td>
<td>It covers the appointment and remuneration of auditors in government and other companies.</td>
<td>It deals with appointment of auditors.</td>
</tr>
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<td><strong>12. Corporate Social Responsibility</strong></td>
<td>Earlier this section was not there.</td>
<td>Every company having net worth of rupees 5 hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year shall constitute a Corporate social responsibility committee of board consisting of three or more directors, out of which at least one director shall be an independent director.</td>
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<td><strong>13. Debentures</strong></td>
<td>Earlier there were different sections which deals with debentures, which includes debenture trust deed, appointment of debenture trustees etc.</td>
<td>As per new act company can issue debentures with an option to convert them into shares wholly or partly approved by special resolution. Now there is only one section which deals in debentures.</td>
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<td><strong>14. Cost Audit</strong></td>
<td>Cost Audit was allowed in certain cases.</td>
<td>Central government after consultation with regulatory authority may direct certain class of companies for cost audit.</td>
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<td><strong>15. Class Action Suits.</strong></td>
<td>This concept was not there in companies’ act 1956.</td>
<td>The Class Action Suits was not covered in Companies Act 1956. Now the provision of class action suit is introduced, it provided that if class of</td>
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8. Section 68 of the Companies Act, 2013
9. Section 58A of the Companies Act, 1956
13. Section 193, 194,195,197 of the Companies Act, 1956
<table>
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<tr>
<th>Section</th>
<th>Description</th>
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<tbody>
<tr>
<td>16.</td>
<td><strong>Serious Fraud Investigation Office.</strong> This concept was not there in Companies' Act 1956.</td>
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<td>17.</td>
<td><strong>Types of companies.</strong> Private Companies, Public Companies.</td>
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<td>18.</td>
<td><strong>Maximum no of members for private companies.</strong> Earlier maximum number of members was 50.</td>
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<td>19.</td>
<td><strong>Commencement of Business</strong> This provision of Companies' Act 1956 is applicable to only public limited companies.</td>
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<td>20.</td>
<td><strong>Memorandum of Association “Object Clause”</strong> The object clause is divided into different parts main objects, incidental and other objects.</td>
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<td>21.</td>
<td><strong>First Board Meeting</strong> In companies act 1956 no specific time is mentioned for holding first meeting.</td>
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<td>22.</td>
<td><strong>Notice of Board meeting</strong> In this act no specific time period of notice is mentioned.</td>
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<tr>
<td>23.</td>
<td><strong>Penalty with regard to notice of board meeting.</strong> If an officer fails to give notice shall be punishable with fine which may extend to 1000 rupees.</td>
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<tr>
<td>24.</td>
<td><strong>Maximum number of directors.</strong> As per this act the limit is 12. More can be appointed by the approval of central government.</td>
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<tr>
<td>25.</td>
<td><strong>Directorship.</strong> As per old act the maximum number of directorship is 15.</td>
</tr>
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<td>26.</td>
<td><strong>Women Director.</strong> No women director was mandatory earlier.</td>
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<td>27.</td>
<td><strong>Resignation of Director.</strong> No specific provision.</td>
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<td>28.</td>
<td><strong>Registration of pledge.</strong> Earlier pledge of movable property does not require registration with ROC.</td>
</tr>
<tr>
<td>29.</td>
<td><strong>Holding first AGM.</strong> As per old act, maximum time limit for holding of first AGM is 18 months from incorporation or 9 months from closure of accounts whichever is earlier.</td>
</tr>
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</table>

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24 Section: 211 of the Companies Act, 2013.
30. Consent for shorter notice with regard to AGM.
As per earlier act consent for shorter notice was given by all the members entitled to vote at the meeting.
Now the consent is to be given by not less than 95% of the members entitled to vote at the meeting.
Now the consent require only 95% voting of all the members.

31. Financial Year.
Earlier companies were allowed to choose freely its financial year, however it cannot exceed 15 months.
Now the financial year shall be from April 1st to March 31st for all companies.
It will bring uniformity.

32. Key Managerial Personnel.
Earlier KMP does not include Company Secretary.
Now the KMP includes the Company Secretary also.
The role of Company Secretary has broadened.

33. Takeover offer.
Earlier scheme of compromise and arrangement does not include takeover offer.
Now the scheme of compromise and arrangement includes takeover offer.
This provision will work as per the SEBI guidelines.

34. Merger
Earlier the provision of fast track merger was not there.
Now the provision of fast track merger is there between two companies.
It will help the two companies to put forward their steps towards their goal at earliest.

35. Secretarial Audit for Bigger Companies
Earlier this section was not there.
Now every listed company and company of other classes is required to comply with secretarial audit report to be furnished by Company Secretary in practice.25
This will give better governance.

36. Functions of Company Secretary.
No provision was there in old act.
New act gives the clear picture of functions of Company secretary.26
Clear the role of Company Secretary.

37. Committees of Creditors.
No provision was there.
Now the committee of creditors is appointed by interim administrator.27
This will help to save the interest of various creditors.

38. Associate Company
No Provision was there.
Now the concept of associate company is introduced.28
It is not a subsidiary company.

39. Declaration of dividend in case of inadequate profits.
As per the provision of this act the company can declare dividend in case of adequate profits out of the reserves subject to the fulfillment of certain rules.
As per new act in this case company can declare dividends out of its accumulated profits transferred to reserves.
Earlier the maximum rate of dividend was 10%.

40. Special Courts.
No provision was there.
For speedy results for offences the concept of special courts has been introduced in new act.29
Timely and efficient judicial proceedings.

V. Conclusions
On a concluding note we can say that as time passes & corporate sector becomes more & more integrated with the society there is need to incorporate necessary changes in corporate laws governing this sector & the companies. No doubt the introduction of a very comprehensive Companies Act, 2013 is a milestone but the concern is about its implementation. No act is helpful if it is not implemented in its spirit; similarly there is also a need to have unified laws for corporate sectors to remove ambiguities due the existence of multiple acts & statutes. Companies Act, 2013 overcomes some of the major loopholes of Companies Act, 1956 but there might be some loopholes with companies Act 2013 as well specially when in the areas where it does not provide for punitive or penal actions like in the case of Section 135. So there is a need to have a re look at some of the parts of the newly introduced Act.

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