Aayushi International Interdisciplinary Research Journal (AIIRJ)
Vol - VI Issue - V MAY 2019 Peer Review e-Journal Impact Factor 5.707 ISSN 2349-638x

Origin And Evolution Of The Modern Company Law

Pankaj Kumar
Research Scholar
Tantia University, Sri Ganganagar

Dr. V.K.Bakshi
Research Supervisor

Introduction

Gone are the days when sole proprietorship (Proprietorship Concern) and partnership (Partnership Firm) were the most preferred forms of the business entities where in the person(s) used to invest and earn profits out of business for themselves. Though these forms of businesses still exist, but they are not the most common forms of business entities today as now the taste of the consumers has changed, technology has advanced manifold and businesses require huge funds. Due to the involvement of just a few persons in sole proprietorship and partnerships, the requirement of huge investments, production in large scale etc. were not possible. So to justify these needs, the company form of business came into existence, as also with time, the demand shifted from traditional goods to capital goods and technological products which required vast labour component and capital. Various forms of association were known to medieval law and concept of incorporation was recognized therein. At first however, the concept of incorporation seem to have been used only in connection with ecclesiastical and public bodies such as chapter monasteries and boroughs, which had corporate personality conferred upon them by a charter from the Crown or were deemed by prescription to have received such grant.

In the commercial sphere, the principal medieval associations were the guilds of merchants; organizations having few resemblances to the modern day companies but corresponding roughly to our trade protection associations with the ceremonial and mutual fellowship, relics of which can be seen in the modern Freemasons and Livery companies. Many of these guilds, in due course, obtained charter from the Crown, mainly because that was the only effective method of obtaining for their members, a monopoly of any particular commodity or branch of trade. Incorporation, as a convenient method of distinguishing the rights and liabilities of the association from those of its members was hardly needed since each member traded on his own account subject only to obedience to the regulation of the guild.

It was not until second half of the seventeenth century that the differentiation between unincorporated partnerships and incorporated companies was firmly established. Many joint stock companies were originally formed as partnership by agreement under seal, providing for division of undertaking into shares which were transferable by the original partners with greater or lesser freedom according to the terms of the partnership agreement. At this time, there was not limit to the number of partners but in fact, they were generally small in number and additional capital was raised by levitations or calls on the existing members rather than by invitations to the public.

Nature and Characteristics of Company

Since a corporate body is the creation of law, it is not a human being. It is an artificial person (created by law) being clothed with many rights, obligations, powers and duties prescribed by law and it is called a “person”. Being the creation of law, it possesses only the properties conferred upon it by its memorandum of association. Within the limits of powers conferred by the Charter, it can do all acts as natural person may do. The most striking characteristics of a company are as follows:

Corporate Personality

By incorporation under the Act, the company is vested with a corporate personality quite distinct from individuals who are its members. Being a separate legal entity, it bears its own name and acts under a corporate name. It has seal of its own. Its assets are separate and distinct from those of its members. It is also a different “person” from the members who compose it. As

such it is capable of owning property, incurring debt and borrowing money having a bank account, employing people, entering into contracts and suing or being sued in the same manner as an individual. Its members are its owners but they can be its creditors simultaneously as it has a separate legal entity. A Shareholder in a company cannot be held liable for the acts of the company even if he holds virtually the entire share capital. The shareholders are not the agents of the company and so they cannot bind it by their acts. The company does not hold its property as an agent or trustee for its members and they cannot sue to enforce its rights, nor can they be sued in respect of its liabilities. Thus, "incorporation" is the act of forming a legal corporation as juristic person. A juristic person in law is conferred with rights and obligation and is dealt with in accordance with law. In other words, the entity acts like a natural person but only through a designated person, whose acts are processed within ambit of law. The Salomon v. Solomon case has clearly established the principle that once a company has been validly constituted under the Companies Act, it becomes a legal person distinct from its members and for this purpose it is immaterial whether any member has a large or small proportion of the shares, and whether he/she holds those shares beneficially or as a mere trustee.

Limited Liability

The privilege of limited liability for business debts is one the principal advantages of doing business under the corporate form of organization. The company, being a separate person/entity, is the owner of its assets and bound by its liabilities. The liability of its members as shareholders extends to contributing to the assets of the company up to the nominal value of the shares held and not paid by him/her. Members, even as whole, are neither the owners of the company's undertakings nor liable for its debts. In other words, a share holder is liable to pay the balance if any, due on the shares held by him, when called upon to pay and nothing more, even if the liabilities of the company far exceeds its assets. This means that the liability of the member is limited. Buckley J, in Re London and Globe Finance Corporation, has observed "the statues relating to limited liability have probably done more than any legislation of the last fifty years to further the commercial prosperity of the country. They have, to the advantage of the investor as well as of the public, allowed and encouraged aggregation of small sums into large capitals which have been employed in undertakings of great public utility largely increasing the wealth of the country."

Separate Property

A company being a legal person and entirely distinct from its members, is capable of owning, enjoying and disposing of property in its own name. The company is the real person in which all its property is vested, and by which it is controlled, managed and disposed off. Their Lordship of the Madras High Court in R.F. Perumal v. H. Johan Deavin, held that "no member can claim himself to be the owner of the company's property during its existence or in its winding up." A member does not even have an insurable interest in the property of the company. The Supreme Court in Mrs Bacha F. Guzdar v. The Commissioner of Income Tax held that though the income of a tea company is entitled to be exempted from income tax up to 60%; being partly agricultural, the same income when received by a share holder in the form of dividend cannot be regarded as agricultural income for the assessment of income tax. It was also observed by the Supreme Court that a shareholder does not, as is erroneously believed by some people, become the part owner of the company or its property; he is only given certain rights by law, e.g., to receive or to attend or vote at the meetings of the shareholders. The Court refused to identify the shareholder with the company and reiterated the distinct personality of the company.

Transfer of Shares

The capital of a company is divided into parts, called shares. The shares are said to be movable property and, subjected to certain conditions, freely transferrable, so that no shareholder is permanently or necessarily wedded to a company. When the joint stock companies were established, the objective was that their shares should be capable of being easily transferred.

The Companies Act 1956 enunciates the principle by providing that the shares held by the members are movable property and can be transferred from one person to another in the

manner provided by the articles. If the articles do not provide any thing for the transfer of the shares and the Regulations contained in Table "A" in schedule one in the Companies Act 1956 are also expressly excluded, the transfer of the share will be governed by the general law relating to transfer of movable property. A member may sell his shares in the open market and realize the money invested by him. This provides liquidity to member and ensures stability to the company. The stock exchange provides adequate facilities for the sale and purchase of shares. Further as of now, in most of the listed companies, the shares are also transferable through electronic mode i.e. through Depositary Participants instead of physical transfers.

Contractual Rights

A company, being separate legal entity different from its members, can enter into contracts for the conduct of the business in its own name. Shareholder cannot enforce contract made by his company, is neither a party to the contract nor entitled to the benefit of it, as the company is not trustee for its shareholders. Likewise, shareholder cannot be sued on contracts made by his company.

The distinction between company and its members is not confined to the rules of privity, however it permeates the whole law of contracts. Thus, if a director fails to disclose a breach of his duties to his company, and in consequence a shareholder is induced to enter into contract with director which he would not have entered into had there been disclosures, the shareholders cannot rescind the contract.

Similarly, a member of company cannot sue in respect of torts committed against the company, nor can he be sued for torts committed by the company. Therefore, the company as legal person can take action to enforce its legal rights or be sued for breach of its legal duties. Its rights and duties are distinct from those of its constituent members.

Voluntary Association for Profits

A company is voluntary association for profits. It is formed for the accomplishment of some public goals and whatsoever profit is gained is divided among its share holder or restored for the future expansion of the company.

Termination of Existence

A company, being an abstract and artificial person, does not die a natural death. It is created by law, carries on its affairs according to law through its life and ultimately is effaced by law. Generally, the existence of the company is terminated by means of winding up.

However, to avoid winding up, sometimes companies change their form by means of re-organization, re-construction and amalgamation.

Disadvantages of Corporate Form of Enterprise

There are, however, certain disadvantages and inconveniences in incorporation. Some of these disadvantages are:

1. Formalities and Expenses: Incorporation of a company is coupled with complex, cumbersome and detailed legal formalities and procedures, involving considerable amount of time and money. Even after the company is incorporated, its affairs and working must be conducted strictly in accordance with legal provisions. Thus various returns and documents are required to be filed with the Registrar of Companies, some periodically and some on the happening of an event. Certain books and registers are compulsorily required to be maintained by a company. Approval and sanction of the Company Law Board , the Government, the court, the Registrar of Companies or other appropriate authority, as the case may be is necessarily required to be obtained for certain corporate activities.
2. Corporate disclosures: Notwithstanding the elaborate legal framework designed to ensure maximum disclosure of corporate information, the members of a company comparatively have restricted accessibility to its internal management and day to day administration of corporate working.
3. Separation of control from ownership: Members of a company do not have an effective and intimate control over its working as one can have in other forms of business organization, say, a partnership firm. This is particularly so in big companies in which the number of members is too large to exercise any effective control over its day to day affairs.

4. Greater social responsibility: Having regard to the enormous powers wielded by the companies and the impact they have on the society, the companies are called upon to show greater social responsibility in their working and, for that purpose, are subject to greater control and regulation than that by which other forms of business organization are governed and regulated.
5. Greater tax burden in certain cases: In certain circumstances, the tax burden on a company is more than that on other forms of business organization including partnership firms.
6. Detailed winding-up procedure: The Act provides elaborate and detailed procedure for winding-up of companies which is more expensive and time consuming than that which is applicable to other forms of business organization.

Lifting of the corporate veil

By the provision of law, a corporation is clothed with a distinct personality, yet in reality it is an association of persons who are in fact, in a way the beneficial owners of the property of the body corporate. A company, being an artificial person, cannot act on its own; it can only act through natural persons. It means the company has a separate legal entity from the persons constituting its members. Indeed, the theory of corporate entity is still the basic principle on which the whole law of corporations is based. But as the separate personality of the company is a statutory privilege, it must be used for legitimate business purposes only. Where a fraudulent and dishonest use is made of the legal entity, the individuals concerned will not be allowed to take shelter behind the corporate personality. The Court will break through the corporate shell and apply the principle of what is known as "lifting of or piercing through the corporate veil". The Court will look behind the corporate entity and take action as though no entity separate from the members existed and make the members or the controlling persons liable for debts and obligations of the company. The corporate veil is lifted when in defense proceedings, such as for the evasion of tax, an entity relies on its corporate personality as a shield to cover its wrong doings. However, the shareholders cannot ask for lifting veil for their purposes.

Statutory Recognition of Lifting of Corporate veil.

The Companies Act 1956 contains some provisions which lift the corporate veil to reach the real forces of action. Taxation Laws have also made deep inroads to crack the corporate shell for efficient administration of tax laws. For the purpose of Wealth Tax and Estate Duty Legislation, new statutory formulae have been enacted for shares of private companies which substantially disregard the separate corporate entity and proceed on the basis that the ownership of such corporate entity belongs to the shareholders. In terms of income –tax Law, directors of private companies have been made personally liable for the tax liabilities of such companies. The face of the corporation is examined in order to pay regard to the economic realities behind the legal façade.

Brief History of Company Law in India and England

The history and development of Company Law in India is closely lined with that of England and for that reason it becomes essential to have a brief account of the history of English Company law for proper appreciation of our law.

Background of English Company Law:

The history of modern company law in England began in 1844 when the joint Stock Companies Act was passed. The Act provided for the first time that a company could be incorporated by registration without obtaining a Royal Charter or sanction by a special Act of Parliament. The office of the Registrar of Joint Stock Companies was also created. But the Act denied to the members the facility of limited liability. The English Parliament in 1855 passed the Limited Liability Act providing for limited liability to the members of a registered company. The Act of 1844 was superseded by a comprehensive Act of 1856 which marked the beginning of a new era in company law in England. This Act introduced the modern mode of creating companies by means of Memorandum and Articles of Associations. The first enactment to bear the title "Companies Act" was the Companies Act, 1862. By these Acts, some of the modern provisions of a company were clearly laid down. Firstly, two

documents, namely, (a) the Memorandum of association, and (b) the Articles of association formed the integral part for the formation of a limited company by guarantee. Thirdly, any alteration in the object clause of the memorandum of association was prohibited. Provisions for winding-up were also introduced. Thus, the basic structure of the company as we know had taken shape. Sir Francis Palmer described this Act as the "Magna Carta of co-operative enterprises".

The Companies (Memorandum and Association) Act, 1890 made relaxation with regard to change in the object clause under the leave of the Court obtained on the basis of special resolution passed by the members in general meeting. Then the liability of the directors of a company was introduced by the Directors' Liability Act, 1890, and the compulsory audit of the company's accounts was enforced under the Companies Act, 1900. The concept of private company was introduced for the first time in the Companies Act, 1908. The earlier ones were called public companies. Two subsequent Acts were passed in 1908 and in 1929 to consolidate the earlier Acts. The Companies Act, 1948 which was the Principal Act in force in England then was based on the report of a committee under Lord Cohen. The Act introduced inter alia another new form of company known as exempt private company.

Another outstanding feature of the 1948 Act was the emphasis on the public accountability of the company. Generally recognized principles of accountancy were given statutory force and had to be applied in the preparation of the balance sheet and profit and loss account. Further, the 1948 legislation extended the protection of the minority shareholders and the powers of the Board of Trade to order an investigation of the company's affairs and for the first time the shareholders in general meeting were given powers to remove a director before the expiration of his period of office. The independence of auditors vis-à-vis the directors was strengthened. The 1948 Act was amended by the Companies (Amendment) Act, 1967. The Amending Act was based upon the report and recommendations of the Jenkins Committee presented in 1962.

The 1967 Act adopted and considerably extended in some respects, the recommendations of the Committee as to disclosure. The Act abolished the exempt private company, and required all limited companies to file accounts. More stringent provisions were imposed in relation to director's interests in the company and disclosures thereof. The Companies Act, 1976 attempted to remedy a variety of defects which had become evident in the application of the Acts of 1948 and 1967. The 1976 Act strengthened the requirements of public accountability and those relating to the disclosure of interests in the shares of the company.

The Companies Act, 1980 was a major measure of company law reform in England. Insider dealing was made a criminal offence. The shareholders were given a right of pre-emption in the case of new issues of shares in specified circumstances. Dealings between the directors and their companies became greatly restricted and maximum financial limits were introduced for such dealings.

The protection to the minority shareholders was extended by enabling them to petition for relief if their position was unfairly prejudiced. The Companies Act, 1981 introduced other important changes for the purposes of accounting and disclosure. Companies were divided into small, medium-sized and other companies and their disclosure requirements were differentiated accordingly.

The law relating to the names of companies was simplified by the abolition, in principle, of the approval of the name by the Department of Trade. The company was authorized, subject to certain conditions, to issue redeemable equity shares and to purchase its own shares. The 1981 Act further abolished the register of business names which had to be kept under the Registration of Business Names Act, 1916.

Active steps were taken to prepare consolidating measures relating to the Companies Acts 1948 to 1981. In November, 1981, the Department of Trade published a consultative document entitled "Consolidation of Companies Acts". In this document, the various methods of consolidation and their relative advantages for the practice were discussed. The whole of the existing

statute relating exclusively to companies was consolidated in the Companies Act, 1985, and Companies Acts 1948 and 1983 repealed by the Companies Consolidation (Consequential Provisions) Act, 1985.

At the same time, two minor consolidating enactments; the Business Names Act, 1985 and the Company Securities (Insider Dealing) Act, 1985, were passed to consolidate certain provisions of the Companies Acts 1980 and 1981, which affected sole traders and partnerships and persons other than companies as well as companies regulated by the Companies Act, 1985.

The whole of the present stature, therefore, was contained in the Companies Act, 1985 and the two minor consolidating enactments together with the temporary and transitional provisions of the Companies consolidation (Consequential Provisions) Act, 1985, all of which have come into force from 1st July, 1985.

The U.K. company law has further been amended and has been substituted by U.K. Companies Act, 2006. The Act has been brought into force in stages and circumscribes enhanced duties of directors, simpler regime for private companies, increased use of e-communication, enhanced auditor liabilities etc.

Development of Indian Company Law

Company Law in India, as indicated earlier, is the cherished child of the English parents; our various Companies Acts have been modeled on the English Acts. Following the enactment of the Joint Stock Companies Act, 1844 in England, the first companies Act was passed in India in 1850. It provided for the registration of the companies and transferability of shares. The Amending Act of 1857 conferred the right of registration with or without limited liability. Subsequently this right was granted to banking and insurance companies by an Act of 1860 following the similar principle in Britain. The Companies Act of 1856 repealed all the previous Acts. This Act provided inter alia for incorporation, regulation and winding up of companies and other associations. This Act was recast in 1882, embodying the amendments which were made in the Company Law in England up to that time. In 1913 a consolidating Act was passed, and major amendments were made to the consolidated Act in 1936. In the meantime England passed a comprehensive Companies Act in 1948. In 1951, the Indian Government promulgated the Indian Companies (Amendment) ordinance under which the Central Government and the Court assumed extensive powers to intervene directly in the affairs of the company and to take necessary action in the interest of the company- The ordinance was replaced by an Amending Act of 1951.

The Companies Act, 1956

This law was enacted with a view to consolidate and amend the earlier laws relating to companies and certain other associations. The Act came into force on 1st April, 1956. The Companies Act 1956 was based largely on the recommendations of the Company Law Committee (Bhabha Committee) which submitted its report in March, 1952. The Act was the longest piece of legislation ever passed by Indian Parliament. Amendments have been made in the Act periodically. The Companies Act consists of 658 Sections and 15 Schedules. Full and fair disclosure of various matters 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.

The Companies Act, 1956 has 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 by enactment of Depositories Act 1996. Based on the recommendations of Shastri committee, the Companies (Amendment) Act, 1960 introduced some of the major changes, such as clear definition of the main and subsidiary objects of a company in its Memorandum of Association; strengthening the provisions relating to investigation into the affairs of the company, etc.

The Companies Act was amende twice in 1966. These amendments consisted of four sections only. Two important changes were introduced by the Companies (Amendment) Act, 1969. The institutions of managing agents and secretaries and treasurers were abolished with effect from April 3, 1970. Secondly, contributions by companies to any political party or for any political purpose were prohibited. The Companies (Amendment) Act, 1974 which came into force from February 1, 1975 had introduced some important and major changes in the Companies Act, 1956.

The object of the Amendment Act was to inject an element of public interest in the working of the corporate sector. The important changes introduced by the Amendment Act of 1974 are given below;

1.Deemed to be public limited companies
2. Acceptance of deposits from the public to be in accordance with the Rules.
3.Maintenance of a separate account for unclaimed dividend by public limited companies.
4.Control over foreign-owned companies brought within the purview of the Act
5.Appointment of Company Law Board benches in metropolitan cities.
6.Power to prohibit the appointment of a sole-selling agent by Central Government.
7. Appointment of a whole- time secretary.

The Companies (Amendment) Act 1977

This legislation brought about certain changes in Sections 58A, 220, 293, 620 and 634A. The amended Section 58A empowered the Central Government to grant extension of time or to exempt any company in deserving cases from all or any of the provisions of Section 58A. Section 293 empowered a company to make donations for charitable purposes up to 5 per cent of its average net profit or up to Rs. 25,000.00 whichever was higher. This section as amended by the Act of 1977 raising the ceiling to Rs. 50000.00

The Companies (Amendment) Act, 1985: The Amending Act substituted Section 293A with a new section permitting Non-Government companies to make political contributions, directly or indirectly. With a view that legitimate dues of workers ranked pari passu with secured creditors in event of closure of the company and above even the dues to Government, Sections 529 and 530 of the Companies Act, 1956 were amended and a new Section 529 A was introduced.

In order to give effect to the recommendations of the Committee on Subordinate Legislations (Seventh Lok Sabha) that the Company Law Board should be empowered to reassess compensation on appeal from the order of the prescribed authority assessing the compensation payable under an order of amalgamation under Section 396, and that the order of amalgamation itself may provide for the continuation of any pending legal proceeding by or against the transferee company on the lines of the existing provisions of Section 394 of the Act under which the High Court orders amalgamation, Section 396 of the Act was amended.

The companies (Amendment) Act, 1988

Based on the recommendations made by the Expert Committee (Sachar Committee), the Companies (Amendment) Act, 1988 substantially amended the Companies Act, 1956 in order to streamline some of the existing provisions of the Companies Act, 1956 and to ensure better working and administration of the Act. It was for the first time that the Companies Act provided that every public company of a certain size shall have a managing or whole-time director. The companies were also given freedom to fix the managerial remuneration on the basis of certain limits.

The Important Changes Introduced by the Amendment Act of 1988

Definition of Secretary brought in line with the definition of 'Company Secretary' in the Company Secretaries Act, 1980 and included individuals possessing prescribed qualifications. The concept of company secretary in practice was introduced for the first time in the Companies Act. A practicing secretary has been authorized to file declaration of compliance under Sections 33 and 149. Every listed company is required to file annual return under Section 161 which must also be signed by a practicing secretary apart from other signatories. In the absence of a company secretary, the practicing secretary may also certify that the requirements of Schedule XII have been complied with.

The amended Act, among other things, also set up an independent Company Law Board to exercise such judicial and quasi-judicial functions, earlier being exercised either by the Court or the Central Government. It also dispensed with the requirement of getting Government approvals for managerial appointments and remuneration subject to the fulfillment of certain statutory guidelines which were incorporated in the Act itself. It delinked the rates of depreciation from the rates specified under the Income-tax Act and laid down rates of depreciation in the Act itself to reflect the true and fair view of the state of affairs of the company.

Amendments made to the Companies Act by the Depositories Act, 1996.

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. Section 83 was repealed, as requirement of distinguishing each share in a company by an appropriate number is no more mandatory. However, section 83 was reintroduced by the Depositories Related Laws (Amendment) Act, 1997.
3. Stamping of transfer instruments is not required where both the transferor and transferee are entered as beneficial owners in the records of a depository.
4. Power of company to refuse to register transfer of shares would apply to a private company only.
5. The securities of a company other than a private company have been made freely transferable. The transfer has to be effected immediately by the company/depository. However, if it is proved that the transfer is in contravention of SEBI Act/SICA, the aggrieved party can move to CLB to determine if the alleged contravention has taken place.
6. The register of members shall indicate the shares held by a member in demat mode but such shares need not be distinguished by a distinct number.
7. The register of debenture holders shall indicate the debentures held by a holder in demat form but such debentures need not be distinguished by distinct numbers.
8. The company is required to indicate in the offer document that an investor has the option to subscribe for securities in the demat mode.
9. Sections 153, 153A 153B, 187B, 187C and 372 of the Companies Act made inapplicable to the securities held in a depository on behalf of the beneficial owners.

The Companies (Amendment) Act, 1999-Salient Features

- The infrastructure Development Finance Company Limited recognized as one of the Public Financial Institutions.
- Companies allowed buy-back of their own securities.
- Companies enabled to issue Sweat Equity shares.
- Facility for nomination provided for the benefit of share/debenture/deposit holders.
- An Investor Education and protection Fund proposed to be established.
- National Advisory Committee on Accounting Standards for companies proposed to be established.
- Companies freed from obtaining prior approval of Central Government for their intercorporate investment/ lending proposals.

Salient Features of the Companies Act 2013

The salient features of the Companies Act, 2013 are-

- Insurance companies, Banking Companies, and public electric companies are brought under the Companies Act.
- Definition of company is widened; even single person can constitute company which is called as "One Person Company."
- Even the membership of Private Companies is enhanced to two hundred persons.
- Further Act has prescribed the quantum of investment for different kind of companies.
- Act has enhanced the fine amount considerably to the extent of Crores under different sections which will be imposed on the guilty officer and company.

- Act has introduced the concept of minimum mandatory punishment to deter companies from committing wrongful act.
- Act has introduced the concept of "Corporate Social Responsibility" to make company more responsible for the cause of the society.
- Act has authorized the Central Government to constitute "National Company Law Tribunal" and "National Company Law Appellate Tribunal" to adjudicate the matters in speedy manner.
- Act has empowered the Central Government to Constitute Special Court to try the offence committed by company and its official which ensures speedy justice.

CONCLUSION

Industrialization, developments in science and technology have boosted the trade and commerce across the universe. Obviously, community has looked for innovative devices which will help the people of community to carry the business and trade in very effective and smooth manner. Naturally the law invented the idea of creating artificial person in the form of company. Company is very ideal instrument to start business with more number of persons without much problem and difficulty among themselves. The idea of company gained momentum across the universe and become a popular concept. Every nation has enacted company law including India. The greatest advantages of carrying business through company are independent existence,limited liability, unlimited membership in case of public company, perpetual succession, acquiring property in its own name and company has the capacity to sue others and be sued by others. Further, law has facilitated companies to attract more investments and members by providing easy facility of liquidity and transferability of shares in the market. Companies have become multinational and carrying their activities across the universe. Therefore it became imperative for the government of India to pass the comprehensive companies Act. Therefore India passed the comprehensive the Companies Act in 1956. After having experience of nearly sixty years of the Companies Act 1956 the Central Government felt that the time had come to have New Companies Act and therefore the Government of India passed New Companies Act in 2013.

Newly enacted Companies Act 2013 has provided the opportunity of forming the company with single membership. Further, the Act has enhanced the maximum membership of private company from fifty to two hundred. Act has wide application because it covers even Banking Companies, Insurance Companies, and Electric Companies. New Act has provided opportunity for promoters to establish company for future project which has not carried significant transactions to keep such company as dormant company. The New Companies Act 2013 has constituted Special Court which has been given exclusive jurisdiction to try the offences committed by companies under the new Act. Act has prescribed the mandatory minimum punishment in certain offence which is worthy to be noted because it works to be more deterrent. New Act has prescribed the enhanced punishment in case company commits the offence second time. Even the New Act has provided the summary proceedings for offences punishable for less than three years which enables the court to provide speedy justice. Further the Act has empowered the Central Government to maintain the penal of expert to be called as the Mediation and conciliation which would help in resolving the litigation of company in more amicable manner in a short period. That would certainly create healthy environment in company. Further, the Act has enhanced the quantum of fine considerably which has to be imposed on company in case of its wrongful act. It has added new chapter of social responsibility. New Act encourages the company to spend some portion of its earned profits to the cause of society. This is a welcome step in the right direction. Further it has authorized the Central Government to Constitute the National Company Law Tribunal and "National Company Law Appellate Tribunal." All these things ensure that litigation in company matters and offence committed by company would be disposed off speedily.

REFERENCES

1. Wolff "on the Nature of Legal Persons", (1938) 54 LQR 494.

2. Berlie "The Theory of Enterprise Entity", (1947) 47 Columbia Law Review 343.
3. Act No 18 of 2013.
4. Section 2 of sub clause (62) of Companies Act 2013 says that "One Person Company" means a company which has only one person as member.
5. Shiromoni Gurdwara Prabandhak Committee v. Shri Sam Nath Dass, AIR 2000 SCW 139
6. Salomon v. Solomon and Company Ltd, (1897) A.C. 22.
7. Id at 28.
8. Lee v. Lee's Air Framing Ltd, (1961) A.C. 12 (P.C.).
9. In Re London and Globe Finance Corporation, (1903) 1 Ch.D. 728 at 731.
10. R.F. Perumal v. H. Johan Deavin, AIR 1960 Mad 43.
11. Mrs Bacha F. Guzdar v. The Commissioner of Income Tax, AIR 1955 SC 74.
12. Re, Balia and San Francisco Rly., (1968) L.R. 3 Q.B. 588.
13. Act No. 1 OF 1956.
14. Section 82 of the Companies Act 1956. Further see section 56 of the Companies Act 2013.
15. Floating Servicess Ltd v. MV San Fransceco Diploa, (2004) 52 SCL 762 (Guj).
16. TVS Employees Federation v. TVS and Sons Ltd, (1996) 87 Com Cases 37.
17. Latil Surajmal Kanodia v. Office Tiger Data Base Systems India (P) Ltd, (2006) 129 Comp Cas, 192, Mad.
18. Brtish Thomson-Huston Company v. Sterling Accessories Ltd, (1924) 2 Ch. 33.
19. Section 135 of the Companies Act 2013.
20. BSN (UK) Ltd. V. Janardan Mohandas Rajan Pillai, (1996) 86 Comp. Cas. 371 (Bom).
21. Premalata Bhatia v. Union of India, (2004) 58 CL 217 (Delhi).
22. See, Sections 45, 147, 212, 247 and 542 of the Companies Act 1956.
23. See Article 311 of Indian Constitution.
24. Act no,.31 of 1956
25. Act No. 14 of 1948 1