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**INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH**

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**COMPANIES ACT, 2013: A NEW LAW WITH MAJOR CHANGES<sup>1</sup>****ABSTRACT**

Companies Act 2013 was introduced and have become a benchmark legislation This act of Companies Act 2013 is more outward looking and was framed basically in order that to enhance and to bridge the gap and therefore the differences which might be in Companies Act 1956. Companies Act 2013 was made with the view that transparency level is often raised, interests of the investors are often protected, efforts were made in order that we will align with international requirements. In companies act, 2013 efforts were also made in order that corporate governance norms are strictly complied with. This article will specialize in Companies act, 2013, rationale behind introducing companies act 2013 and comparison between Companies act 2013 and corporations act 1956 and can also highlight the concept of corporate governance and Insider trading.

**INTRODUCTION**

The companies act, 2013 has created a standard in the corporate sector. There was an urgent need to reform the 1956 act so that new changes would suit the more contemporary and modern world and would become relevant to corporate regulators and other stakeholders. Since then so many attempts were made to revamp companies act, 1956 which unfortunately became unsuccessful. The most recent attempt was made in the year 2009. In the year 2009, companies bill was introduced and even was referred to further committees for approval so that it can become an act and changes can be made to companies act, 1956. But in 2011, due to introduction of companies bill, 2011, companies bill 2009 was withdrawn. The bill was considered and got approval by the Lok Sabha on December 18 2012. Then Rajya Sabha gave approval on August 8 2013. This bill received president assent on 29th August 2013 and has now become the Companies Act 2013. Companies Act 2013 was genuinely needed as there were so many concepts which were not in Companies Act 1956 which was so important to

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bring significant changes to the manner the corporate sector was running in this world.

According to Companies Act 2013 there are around 470 sections, 7 schedules and 30 chapters but in this article I would be highlighting only those concepts and sections which are new and which were introduced only in Companies Act, 2013 and was not in any previous company law before.

### **CORPORATE GOVERNANCE**

Actually, what is corporate governance and what constitutes good corporate governance?.....

We need to understand this as its very debatable issue since the time when high profile and reputed organizations were involved in this and was criticized by shareholders. This thing was actually affecting the development of the country, therefore there was a requirement of such transparent rules and regulations so that this all can be eradicated.

Corporate governance basically refers to the below mentioned through which a company is governed.

Systems principles processes In a general sense corporate governance is such a concept which determines the manner in which a company functions in their operations. Corporate governance also enhances the value of the company and protection of stakeholders interest.

The basic principle which is involved in corporate governance is that there must be transparency in every dealing of the company. Fairness and impartiality should be there. Every person whether in top level management , middle level management and lower-level management while taking decisions should consider with other persons and take their opinion into consideration as well. Actually, in real life situations, companies need to have more confidence and good corporate governance so that foreign institutional investors can take the decision of which company to invest in. This concept was introduced and was one of the criteria through which foreign institutional investors and other investors will take the right decision related to investment .Definitions of corporate governance

- 1) In layman language<sup>2</sup>, definition of corporate governance refers to the concept that board of directors will be accountable to each and every stakeholder of the corporation which includes shareholders, employees, suppliers, customers and society in general with the objective towards giving the corporation fairness and impartial treatment in terms of administration.
- 2) By Cather wood - “ Corporate governance means that a company manages its business in a

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<sup>2</sup> DEFINITIONS OF CORPORATE GOVERNANCE <https://www.yourarticlelibrary.com/business/corporate-governance-business/corporate-governance-in-india-concept-needs-and-principles/69978>

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manner that is accountable and responsible to the shareholders. In a wider interpretation, corporate governance includes company's accountability to shareholders and other stakeholders such as employees, suppliers, customers and the local community."

**KEY OBJECTIVES OF CORPORATE GOVERNANCE OR THE FACTORS THROUGH WHICH NEED OF CORPORATE GOVERNANCE IS HIGHLIGHTED**

- 1) **WIDE SPREAD OF SHAREHOLDERS** - as there are a number of shareholders which have been spread all over the nation but there are a number of shareholders who have different perspectives towards corporate affairs. As the concept of shareholder's democracy remains confined only to law and articles, there is urgent need for practical implementation through a uniform code of conduct of corporate governance.
- 2) **CHANGING OWNERSHIP OF STRUCTURE** - there is increase in investments by foreign institutional investors in modern times and change in pattern of corporate ownership because of the reason that institutional investors and mutual funds have become largest shareholders in large corporate private sector. Corporate managements urged the investors to comply with the certain code of conduct of corporate governance to build up its image in the society.
- 3) **CORPORATE SCAMS AND SCANDALS** - corporate governance has been in debate since the time when there was an increase in rate of scams and frauds in the country. These scams and frauds have shaken the public confidence in the corporate management. That's why the requirement of such a concept was needed so that investors and other stakeholders could again build their trust and confidence in the corporate sector and towards the development of the society.
- 4) **GREATER EXPECTATIONS OF THE SOCIETY FROM CORPORATE SECTOR.** As every business, firms, and corporations are part of society because they are existing in the society. So, to fulfill the expectations which a society may have from corporates that includes reasonable prices, better quality of products and services and optimum utilization of resources etc.. There is a need for a code of corporate governance for the best management of the company.
- 5) **GLOBALISATION** - as corporate governance has set up a standard which needs to be followed by all the corporate. In today's times every company wants to be listed on the stock exchange which requires focusing on corporate governance . also, there is no doubt that the international capital market wants to invest in those companies who are clear on the front and have good corporate governance.

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- 6) HUGE INCREASE IN TOP MANAGEMENT COMPENSATION - It has been felt in developing countries and as well as in developed countries that there has been an increase in payments ( compensation) packages of total level corporate executives. But, no declaration is given by the management regarding such payments to top ranking managers out of funds which are property of shareholders and society<sup>3</sup>.

### **RELEVANT CASE LAWS UNDER CORPORATE GOVERNANCE**

**SATYAM SCANDAL CASE** -This case was one of the biggest corporate frauds. The concept of corporate governance has been debated after the corporate fraud by founder and chairman Ramalinga Raju. In fact, trouble started brewing at Satyam around December 16 when Satyam announced its decision to shop for stakes in maytas properties and infrastructure for \$1.3 billion. The deal was soon called off owing to major discontentment on the part of shareholders and manipulated share price. However, in what has been seen in one of the largest corporate frauds in India. Raju confessed that the profits in Satyam books had been manipulated and inflated, also the cash reserve with the company was minimal<sup>4</sup>. After Raju's confession the golden peacock global for excellence award which was presented to Satyam was stripped of as soon as the confession was being made.

### **HARSHAD MEHTA SCAM**

The entire securities system collapse in the Indian stock market because of the 1992 scam of security system in India which was committed by Harshad Mehta. To buy stocks on the Bombay Stock Exchange Mehta allegedly committed a fraud of over 1000 crores from the banking system of India The scam impacted the entire exchange system as the securities system collapsed and investors lost thousands of rupees in the exchange system. The health budget and education budget of India was far more less than the net value of stocks which was involved in scam. The scam was coordinated in such a manner that Mehta secured securities from the State Bank of India against many forged cheque signed by corrupt officials and failed to deliver the securities. Mehta made the prices of the stocks soar high through fictitious practices and would go on to sell the stocks that he owned in these companies. The significant effect of the scam had many consequences which included the loss of money to lakhs of families but more indispensably the immediate impact of the scam was a massive fall in the share prices<sup>5</sup>.

<sup>3</sup> <https://www.corpvgonet/2015/05/corporate-governance-in-india/>(last visited on June 08, 2020)

<sup>4</sup> . VENTURE GLOBAL ENGINEERING VS SATYAM COMPUTER SERVICES LTD & ANR. (J. T. 2008 (1) SC 468)

<sup>5</sup> HARSHAD S. MEHTA & ANR VS THE STATE OF MAHARASHTRA; APPEAL (CRL.) 319-320 OF  
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### COMPANIES ACT, 2013 - LEGISLATIVE FRAMEWORK

The 2013 Act introduces a new form of entity 'one-person company' and incorporates certain new provisions in respect of memorandum and articles of association.

Firstly, I would like to discuss some new concepts which were introduced only in companies act, 2013

- 1) **One person company** - Companies act, 2013 introduced a new type of company other than public and private company and that is 'one person company'. According to companies act, 2013 'one person company' means a company which has only one person as a member. Under this only a natural person who is an Indian Citizen and resident in India can incorporate an OPC or be a nominee for the sole member of an OPC.
- 2) **Memorandum of association-** The 2013 Act specifies the mandatory content for the memorandum of association which is analogous to the prevailing provisions of the 1956 Act and refers inter-alia to the following: • Name of the company with last word as limited or private limited as the case may be • State in which registered office of the company will be situated • Liability of the members of the company However, as against the existing requirement of the 1956 Act, the 2013 Act does not require the objects clause in the memorandum to be classified as the following: (i) The main object of the company (ii) Objects incidental or ancillary to the attainment of the main object (iii) Other objects of the company [section 4(1) of 2013 Act] the essential purpose within the 1956 Act for such a classification as began in section 149 of the 1956 Act, is to limit a company from commencing any business to pursue 'other objects of the company' not incidental or ancillary to the most objects except on satisfaction of certain requirements as prescribed in the 1956 Act like passing a special resolution, filing of declaration with the ROC to the effect of resolution. Reservation of name: The 2013 Act incorporates the procedural aspects for applying for the supply of a reputation for a replacement company or an existing company in sections 4(4) and 4(5) of 2013 Act.
- 3) **Articles of association-**The 2013 Act introduces the entrenchment provisions in respect of the articles of association of a corporation . A more restrictive procedure has to be followed when entrenchment provision is there than passing a special resolution for altering a specific

clause of articles of association. A personal company can include entrenchment provisions as long as agreed by all its members or, just in case of a public company, if a special resolution is passed[section 5 of 2013 Act<sup>6</sup>].

- 4) **Incorporation of company-** The 2013 Act mandates inclusion of declaration to the effect that each one provisions of the 1956 Act are complied with, which is in line with the prevailing requirement of 1956 Act. Additionally, an affidavit from the subscribers to the memorandum and from the first directors possesses to be filed with the ROC, to the effect that they are not convicted of any offence in reference to promoting, forming or managing a corporation or haven't been found guilty of any fraud or misfeasance, etc., under the 2013 Act during the last five years alongside the entire details of name, address of the corporate , particulars of each subscriber and therefore the persons named as first directors. The 2013 Act further prescribes that if an individual furnishes false information, he or she, alongside the corporate are going to be subject to penal provisions as applicable in respect of fraud i.e., section 447 of 2013 Act.
- 5) **Formation of an organization with charitable objects-** An OPC with charitable objects could even be incorporated in accordance with the provisions of the 2013 Act. New objects like environment protection, education, research, welfare etc., are added to the prevailing object that a charitable company might be incorporated. As against the prevailing provisions under which a company's license might be revoked, the 2013 Act provides that the license is often revoked not only where the corporate contravenes any of the wants of the section but also where the affairs of the corporate are conducted fraudulently or during a manner violative of the objects of the corporate or prejudicial to public interest. The companies act, 2013 has embodied with more strict and restrictive provisions for the companies incorporated with charitable objects.
- 6) **Commencement of business etc.-** The prevailing provisions of the 1956 Act as began in section 149 which give for requirement with reference to the commencement of business for public companies that have a share capital would now be applicable to all or any companies. The 2013 Act empowers the ROC to initiate action for removal of the name of a corporation just in case the corporate 's directors haven't filed the declaration associated with the payment of the worth of shares agreed to be taken by the subscribers to the memorandum which the paid-up share capital of the company isn't but the prescribed limits as per the 2013 Act, within 180 days of its incorporation and if the ROC has reasonable cause to believe that the

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<sup>6</sup>Articles of association available at <https://www.pwc.in/> (last visited on June 08, 2020)

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corporate isn't carrying on business or operations [section 11 of 2013 Act].

- 7) **Registered office of company-** Where a corporation has changed its name within the last two years, the corporation is required to color , affix or print its former names alongside the new name of the corporation on business letters, bill heads, etc. However, the 2013 Act is silent on the deadline that the previous name must be kept [section 12 of 2013 Act].
- 8) **Alteration of memorandum-** The 2013 Act imposes additional restriction on the alteration of the thing clause of the memorandum for a corporation which had raised money from the general public for one or more objects mentioned within the prospectus and has any non-utilized money. The 2013 Act specifies that alongside obtaining an approval by way of a special resolution, a corporation would be required to make sure following if it intends to change its object clause:
  - Publishing the notice of the aforesaid resolution stating the justification of variation in two newspapers
  - The promoters and shareholders who are having control often give exit options to dissenting shareholders in accordance with regulations to be specified by the securities and exchange board of India (SEBI) [section 13 of 2013 act]
- 9) **Subsidiary to not hold shares in its company,** the prevailing provision of section 42 of the 1956 Act which prohibits a subsidiary to carry shares in its company continues to be upheld within the 2013 Act. Thus, the sooner concern that if a subsidiary may be a body corporate, it's going to hold shares in another body c6. Commencement of business, etc. <sup>7</sup>the prevailing provisions of the 1956 Act as began in section 149 which give for requirement with reference to the commencement of business for public companies that have a share capital would now be applicable to all or any companies. The 2013 Act empowers the ROC to initiate action for removal of the name of a corporation just in case the corporate 's directors haven't filed the declaration associated with the payment of the worth of shares agreed to be taken by the subscribers to the memorandum which the paid-up share capital of the company isn't but the prescribed limits as per the 2013 Act, within 180 days of its incorporation and if the ROC has reasonable cause to believe that the corporate isn't carrying on business or operations [section 11 of 2013 Act].

### **OTHER CONCEPTS WHICH WERE INTRODUCED IN COMPANIES ACT, 2013** <sup>89</sup>

- 1) **E - governance** - This concept was introduced for the first-time which states that maintenance

<sup>7</sup> New concepts introduced under companies act, 2013 <https://www.pwc.in/publications/publications-2013/companies-act-2013-key-highlights-and-analysis.html>(last visited on June 08, 2020)

<sup>8</sup> [http://www.academia.edu/Documents/in/Companies\\_Act\\_2013-1](http://www.academia.edu/Documents/in/Companies_Act_2013-1)(last visited on June 09, 2020)

<sup>9</sup> Avtar Singh, Introduction to company law, (1998)

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of accounts and inspection of accounts can be done in electronic mode by companies.

- 2) **Concept of corporate social Responsibility was introduced** - The concept of CSR has occupied a prominent place from all avenues. For a few years, leading firms and corporations who have their business spread across the world, had realized the importance of being associated with socially relevant cases and fulfilling responsibilities. The concept of social responsibility was acceptable by the firms and corporations so rapidly because there arises a need and desire to do well and gain self-satisfaction by promoting their brands. Corporate social responsibility was also introduced under companies act, 2013.
- 3) **Companies become more accountable** - the concept of independent directors was also introduced, addition to this provision related to their tenure and liability was also introduced.
  - a) Committees such as corporate social responsibility (CSR) committee in addition to other committees such as audit committee, remuneration and stakeholder relationship committee will also include independent directors and non-executive directors so that there can be more independence and autonomy in functioning of boards for the effective discharge of the duties and functions.
  - b) **Provisions in respect of the vigil mechanism(whistle blowing)** were encouraged so that ethical behavior can be established. Also, the concept of rewarding employees for their integrity and for providing valuable information to the management deviant practices.
  - c) The central government also has the authority in respect of imposing restrictions as to limit the layers of subsidiaries for any class or class of companies.<sup>10</sup>
- 4) a) **Disclosures norms** - disclosure such as developing and implementation of risk management policy, evaluation on the basis of performance by the board of directors and also include disclosures related to corporate social responsibility<sup>11</sup>.
  - b) **consolidation of accounts** - for the purpose of consolidation subsidiaries have to include 'associate' and 'joint venture'. also, for the purpose of filing with the registrar accounts of foreign subsidiaries have to be attached.
    - c) Every listed company required to file a return with the registrar regarding such change which involves change in the shareholding position of the promoters and top ten shareholders.
- 5) **Facilitating raising of capital by companies** - provisions related to offering or invitation for subscription of securities on private placement basis revised to ensure

<sup>10</sup> <https://taxguru.in/company-law/companies-act-2013-major-highlights.htm>( last visited on June 08, 2020)

<sup>11</sup> companies act, 2013 ( 18 of 2013)

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more transparency and accountability.

b) now companies are allowed to issue equity shares with differential voting rights.

- 6) **Managerial remuneration** - companies who are not having any profits or inadequate profits remuneration shall be payable in accordance with the new schedule of remuneration, and if the company is not able to comply with such schedule then approval from the central government would be required.
- 7) **Independent directors won't be getting any stock option** but will be paid with prescribed fees subject to the limits specified in the bill/rules.
- 8) **Facilitating mergers/acquisitions** - procedures have been simplified through the confirmation from the central government which laid down for compromise or arrangement including for merger or amalgamation of holding companies and wholly owned subsidiaries. This would help the companies to take faster decisions, and will lead to growth and development of the economy as well.
- 9) **Protection for minority shareholders** - exit option became available to the shareholders in case of dissenting interest due to change in objects for which a public issue was made.
  - b) The *tribunal* is also empowered to provide an exit option to dissenting shareholders in case of compromise or arrangement.
  - c) The board may have a person that is basically a director who will be representing shareholders who may be elected in such manner as may be prescribed by rules.
- 10) **Serious fraud investigation office (SFIO)** - Investigation report of SFIO filed with the court for the purpose of framing of charges has to be treated as a report filed by police officer.
- 11) **Compulsory appointment of a one-woman director** in the prescribed class or classes of companies.
- 12) **Appeals from the tribunal** will then lie to the national company law appellate tribunal if any.
- 13) There must be provision for settling up the issues if any arises through *mediation and conciliation* panel for facilitating mediation and conciliation between the parties during any proceeding before the central government and tribunal<sup>12</sup>.

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<sup>12</sup> [https://www.taxmanagementindia.com/visitor/detail\\_article.asp?ArticleID=6950](https://www.taxmanagementindia.com/visitor/detail_article.asp?ArticleID=6950) (last visited on June 08, 2020)

### CONCLUSION

The new Indian companies act, 2013 is a very much positive and forward-looking initiative towards achieving more transparency and independent role of every person engaged in corporate.

Companies act 2013 was made with the view so that we can comply with the international requirements, also to protect the interests of various personalities which are engaged in corporate which includes shareholders, employees, suppliers and investors etc. This act is a great outcome because many new concepts were involved and many significant changes have been made which were not in companies act, 1956 as companies act, 1956 was only confined to some particular concepts, but for the present contemporary and modern times, companies act, 2013 was needed very badly.

This act also ensures that every person who is engaged in corporate has to discharge some of the duties and responsibilities towards the corporate as well as society, therefore there must be some uniform rules and regulations and good corporate governance must be there which will help the company to build its image in the society eventually will lead to a step towards better nation.