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**A GATEWAY TO COMPANY LAW BY UNDERSTANDING THE
FUNDAMENTALS OF COMPANY: WITH SPECIAL REFERENCES TO
THE EMERGING ISSUES AND ITS LEGISLATURE INTENT**

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ABSTRACT

A company is a legal body that is created by the collaboration and union of individuals with the purpose of collectively pursuing a shared goal. It might be either a commercial or an industrial enterprise. The classification of a corporation is determined by its tax treatment, as different types of firms are subject to distinct tax regulations. This research paper focuses on the establishment of a company, its definition, different types of companies, and a comprehensive analysis of the advantages and disadvantages associated with each form. This study also explores the historical aspects and processes involved in business formation, as well as the varying criteria for different types of companies.

INTRODUCTION

Industrialization leads to emergence of large scale business organizations. These huge giants require large amount of investment and risk involved is also very high. To overcome the limitation of partnership business (limited resources and unlimited liability are two main limitations) in undertaking big business, so in order to cope up with this problem company come into picture and become extremely popular. There are various kinds of company that we discuss in the paper and also there salient features.

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RESEARCH QUESTION

- What is company and what different kinds of company under Companies Act 2013?
- What are the emerging issues involved in Company Law and its reforms?

OBJECTIVE

The objective of the paper is:

- To study the meaning of company
- To study the different kinds of company
- To study some important features of different kinds of company.
- To study the issues of company laws and its reforms implemented by the legislature.

LITERATURE REVIEW

A company is that form of business organization which is created by law. The Companies Act 2013 provides for the kind of companies that can be promoted and registered under Companies Act 2013. The two common type of company registered under the act:

- a) Private company
 - i) One person company
 - ii) Small company
- b) Public company

These companies may be incorporated either as limited liability companies or an unlimited liability companies.

Limited liability companies may be:

- i) Companies limited by shares;
- ii) companies limited by guarantee;
- iii) companies limited by guarantee as well as shares.

Companies may also classify as:

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- i) Statutory Company.
- ii) Government Company.
- iii) Foreign company.
- iv) Holding and subsidiary Company.

RESEARCH METHODOLOGY

The methodology used in this study is doctrinal. It is based on the information from secondary source. They include publication research, historical information of both past and present and books. Doctrinal research is a theoretical study where most of the secondary sources of data are used. Its scope is very narrow and there is no such need of field work.

WHAT IS COMPANY?

The word 'company' has no strictly technical or legal meaning. It may be described to imply an association of persons for some common object or objects. The purposes for which people may associate themselves are multifarious and include economic as well as non-economic objectives. But, in common parlance, the word 'company' is normally reserved for those associated for economic purposes, i.e, to carry on a business for gain. Used in the aforesaid sense, the word 'company', in simple terms, may be described to mean a voluntary association of persons who have come together for carrying on some business and sharing the profits there from. Indian Law provides two main types of organizations for such associations: 'partnership' and 'company'. Although the word 'company' is colloquially applied to both, the Statute regards companies and company law was distinct from partnerships and partnership law. Partnership Law in India is codified in the Partnership Act, 1932 and Limited Liability Partnership Act, 2008. Both these legislations are based on the law of agency, each partner becoming an agent of the others, and it, therefore, affords a suitable framework for an association of a small body of persons having trust and confidence in each other. A more complicated form of association, with a large and fluctuating membership, requires a more elaborate organization which ideally should confer corporate personality on the association, that is, should recognize that it constitutes a distinct legal person, subject to legal duties and entitled to legal rights separate from those of its

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members.³ This can be obtained easily and cheap Companies Act, 2013, by registering an association as a company under the It should be noted that the Companies Act, 2013 even allows a company to be formed and registered for the promotion of commerce, art, science, sports, religion or charity, ie, for non-economic purposes.

DEFINITION OF COMPANY

The Companies Act, 2013 does not define a company in terms of its features. Section 2(20) of companies Act 2013 defines Company to mean a company incorporated under this Act or previous company law. This definition does not clearly point out the meaning of a company. In order to understand the meaning of a company let us see the definitions as given by some authorities. Some of these definitions are:

Lord Justice Lindley- "A company is an association of many persons who contribute money or monies worth to a common stock and employed in some trade or business and who share the profit and loss arising there from. The common stock so contributed is denoted in money and is the capital of the company. The persons who contribute to it or to whom it pertains are members. The proportion of capital to which each member is entitled is his share. The shares are always transferable although the right to transfer is often more or less restricted".

Chief justice Marshall - "A corporation is an artificial being., invisible, intangible, existing only in contemplation of the law. Being a mere creation of law, it possesses only the properties which the Charter of its creation confers upon it, either expressly or as incidental to its very existence."

Prof. Haney- "A company is an artificial person created by law, having separate entity, with a perpetual succession and common seal."

The above definitions clearly bring out the meaning of a company in terms of its features. A company to which the Companies Act applies comes into existence only when it is registered

³ 1 Dr. G.K Kapoor and Dr. Sanjay Dhamija, Company Law And Practice 6, Taxmann(23rd ed 2018)
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under the Act. On registration, a company becomes a body corporate, ie, it acquires a legal personality of its own, separate and distinct from its members. A registered company is, therefore, created by law and law alone can regulate, modify or dissolve it.

In *GV. Pratap Reddy Through G.P.A. TSR Research (P.) Ltd. v. K.V.V.S.N. Associates*⁴

, the Supreme Court of India held that where notice inviting tender (NIT) by State of Telangana required that bidder must be an individual/company, word company in NIT could only mean a company as understood under Companies Act and cannot be read to include a firm and, therefore, bid of respondent which was neither an individual nor a company but a firm was rightly rejected by State.

INITIATIVES FOR DEALING WITH ISSUES UNDER COMPANY LAW

With a view to deal with various issues that emerged in the wake of changing corporate paradigm, the government set up committees to suggest changes in regulatory framework.

(i) Joint Parliamentary Committee on Stock Market Scam

The Parliament constituted a Joint Committee on Stock Market Scam and matters relating thereto in April 2001 to go into the irregularities and manipulations in all their ramifications including insider trading relating to shares and other financial instruments and the role of banks, brokers and promoters, stock exchanges, financial institutions, corporate entities and regulatory authorities; to fix the responsibility in respect of such transactions; to identify misuse, if any, of and failures / inadequacies in the control and the supervisory mechanisms; to make recommendations for safeguards and improvements in the system to prevent recurrence of such failures; to suggest measures to protect small investors; and to suggest deterrent measures against those found guilty of violating the regulations. The Committee has since submitted its report.

(ii) Naresh Chandra Committee on Auditor Company Relationship

The Enron debacle of 2001 and subsequent scandals triggered another phase of reforms in company law with thrust on corporate governance, accounting practices and disclosures — this

⁴ (2016) 127 CC 0204.

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time more comprehensive than ever before. The Department of Company Affairs (DCA) appointed a High Level Committee headed by Shri Naresh Chandra to examine various corporate governance issues. The Committee in its report observed that while corporate governance reforms in India far outstrip that of many countries, the performance in either lags very much behind.

LEGISLATIVE INITIATIVES FOR COMPATIBLE COMPANY LAW

Company Law in India has been undergoing a phase of transition over the last 25 years. More than a dozen major legislative initiatives have been introduced or attempted in Indian Company Law. The prime mover for this high level of company law reforms process has been the changing corporate landscape and internationalisation of business. However, with the initiation of market oriented policies in July 1991, the Government has expedited the process to modify the company law in line with policy objectives and to harmonise it with the international developments.

In the year 1996, a Working Group was constituted to re-write the Companies Act, to facilitate healthy growth of Indian corporate sector under a liberalised, fast changing and highly competitive and contestable business environment. Based on the Report prepared by the Working Group and taking into account the developments that had taken place in corporate structure, administration and the regulatory framework the world over, the Companies Bill, 1997 was introduced in Rajya Sabha on August 14, 1997 to replace the Companies Act, 1956. Since the Bill of 1997 was under consideration and an urgent need was felt to amend the Companies Act, the President of India promulgated the Companies (Amendment) Ordinance, 1998 which was later replaced by the Companies (Amendment) Act, 1999 to surge the capital market by boosting morale of national business houses besides encouraging FIIs as well as FDI in the country.

The amendment of 1999 brought about number of important changes to tailor the Companies Act in consonance with the then prevailing economic environment and to further Government policy of deregulation and globalisation of economy.

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The corporate sector was given the facility to buy-back company's own shares, provisions relating to investments and loans were rationalised and liberalised besides the requirement of approval of the Central Government on investment decisions was dispensed with, and companies were allowed to issue "sweat equity" in lieu of intellectual property. With a view to ensure standardization of accounting practices of financial reporting, the compliance of Indian Accounting Standards was made mandatory. Accordingly, National Committee on Accounting Standards was set up. Investor Education and Protection Fund was constituted to educate the investors to enable them to take well informed and considered investment decisions.

With a view to expedite the harmonization process, the Companies Act was further amended in the year 2000 to provide certain measures of good corporate governance and for ensuring meaningful shareholders' democracy in the working of companies. The amendments effected in the year 2000, included *inter alia* setting up of Audit Committee, introduction of Postal Ballot and Shelf Prospectus, abolition of the office of the Public Trustee, abolition of the concept of "Deemed Companies", appointment of auditors in the Government companies directly by the Comptroller and Auditor General of India, restricting a person to become director in more than 15 companies, prohibiting an auditor to hold securities carrying voting rights, introduction of secretarial compliance certificate to ensure better compliance of Companies Act by smaller companies, deletion of redundant provisions relating to managing agents, secretaries and treasurers and increase in penalties by way of fine to ten fold.

Thus with the globalization and growing competition and emerging new opportunities the Companies Act, 1956 is undergoing frequent changes in the last few years. The Act has been amended in 1996, 1999, 2000, 2001, 2002 (twice) and Companies (Amendment) Bill, 2003 is pending with the Parliament. Various issues have been realized and new concepts and innovative provisions have been recently introduced through amendment in the Act, such as buy-back of securities, sweat equity shares, passing of resolutions by postal ballot, shares with differential rights, audit Committee, directors' responsibility statement, shelf prospectus, establishment of National Company Law Tribunal, liquidators from panel of professionals, producer companies and Compliance Certificate.

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The Companies (Amendment) Bill, 2003 - Latest Legislative Initiative

The Companies (Amendment) Bill, 2003 is the latest legislative initiative towards dealings with emerging issues under Company Law to implement the findings of Naresh Chandra Committee on Corporate Audit and Governance, the recommendations of Joint Parliamentary Committee which examined the recent Stock Market Scams and R D Joshi Committee on remaining provisions of Companies Bill, 1997. The Bill seeks to introduce 174 amendments to the Companies Act, 1956.

CONCLUSION

Company may be defined as group of persons associated together to achieves some common objective. A company formed and registered under the Companies Act has certain special features, which reveal the nature of a company. These characteristics are also called the advantages of a company because as compared with other business organizations, these are in fact, beneficial for a company. Companies can be classified as private company, public company, Limited Liability Company, unlimited liability company, statutory company, registered company, government company, foreign company, holding and subsidiary company. Due to the various advancement in the recent past, there was an urgent need for the reforms in the company law which could help the intent of the legislature.

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