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ABOUT US

"Journal of Unique Laws and Students" (JULS) which shall provide law students, young lawyers and legal professionals to deliberate and express their critical thinking on impressionistic realms of Law. The JULS aims to provide cost free, open access academic deliberations among law students and young lawyers. The ISSUE IV of Volume I focuses on three themes i.e. (i) Environmental Law (ii) Company Law, (iii) Labour Law, (iv) Constitution Law and the themes from our previous issues.

The journal strives to contribute to the community with quality papers on a vast number of legal issues and topics written by authors from various groups that have been reassessed and revised by our editorial team to reach the highest possible standard.

UNIQUE LAW is a law related Ed-tech premier start up in India that excels in imparting legal education. The research papers which are published undergo 3 stages of review. Firstly, pre-screening is executed in which the paper that does not satisfy the technical criteria for example, the paper which is plagiarized is ruled out. Second stage checks the grammatical consistency of the content. Lastly, the depth of the research is reviewed and it is checked whether the research is imparting the relevant knowledge to the readers or not. At every stage, the authors are given reviews and a chance to make the required changes. This grants an opportunity to the authors for publishing the paper in the suitable and appropriate manner.

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PREFACE

Legal research is the "hands on" subject you will take in the course of your legal education. Although numerous books discuss research methods and techniques, there is no substitute for actually performing the task of legal research. Our journal`s Issue IV of Volume I has worked on crucial themes such as Environmental Law, Company Law Law, Labour Law, Constitution Law. We would like to express our deep appreciation of the cooperation of the contributors, who so willingly devoted their time and energies.

We have tried to cover these wide topics with the relevant research and landmark judgments in the form of Research Paper, Case Analysis, Short Notes and Case Commentaries. We have used a standard of words for the explanation, evenly attempted to clear the concepts and presented captivating writing to the readers. The work also contains some suggestions in respective fields.

The views expressed in the articles are purely and solely of the authors and the entire team of the Journal has no association with the same. Although all attempts have been made to ensure the correctness of the information published in the articles, the Editorial team shall not be held responsible for any errors that might have been caused due to oversight or otherwise. It is up to the rest of us to help make the journal a success story in the next several years.

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EDITOR'S NOTE

Volume 1 Issue IV of **Journal of Unique Laws and Students (JULS)**

This journal has become a successful climb in reaching to our goal of gaining visibility in the academic front and becoming a great platform in education community.

The journal aims to present merit papers on the numerous legal issues and these topics are authored by various groups of individuals that have been reappraise and emended by our team of editors to attend the highest possible excellence. These research papers, case analysis and shortnotes are the result and we feel privileged to have been able to act as editors.

We thank to all our authors for their obedient submission to the third issue of the journal and also for their productive cooperation with the editorial team to garnish their work with perfection. We would also like to express our gratitude to our diligent editorial board, whose restless support and commitment made this Journal's Issue IV a success.

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COMPANY LAW AND ITS VARIOUS ELEMENT

Author: Ishika Jain[*]

ABSTRACT

Law acts as a guideline to what is accepted in society. Hence, it is imperative for various organisations who abide by these guidelines. Indian Company Law was presented by government for the benefit of people. Companies Law is a means of discipline, regulations and guidelines while governing an enterprise. In order to understand Company Law, it is important for us to know about what a company is and what are its various forms. Seeing the need of the hour, our national government created a team, IRANI COMMITTEE, which introduced Companies Bill in 2012 which got approved and is known as Companies Act, 2013 today. Companies Act states the framework of an enterprise or an organisation. The authors try to elucidate on the journey of Indian Company Law by discussing various forms of companies, incorporation of a business and approval and removal of its Board of Directors.

Keywords:- *IRANI Report, Incorporation of Company, Board of Directors, Corporate Social Responsibility, Amendment in Company Law*

INTRODUCTION

People come and go but companies remain forever. The word company is acquired from the Latin word Com which means 'together' and Panis which insinuates 'bread'. Altogether, it depicts an association of people coming together and sharing their meal. Now, the word company has a wider meaning. It is now known for a business that is run by its investors in which people contribute large amount of capital. Company is called a body corporate because the persons hustle it according to the laws. In the legal sense, a company is both an artificial person as well as a natural person which is established under a law that already exists in the country. Law suggests that an enterprise and the owner of the enterprise are two different entities. They are treated as separate

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members. Being the creation of law, companies possess only the properties which are conferred to them according to the Memorandum of Association.

RESEARCH OBJECTIVE

- Understand the concept of incorporation of company.
- Analysis of Indian Corporate Law Concepts.

RESEARCH QUESTION

Evaluate the concept of Indian corporate law and analyse its various categories.

JOURNEY OF INDIAN COMPANY LAW

- Just like Common Law and Statute Law, Company Law has also been customised from English Acts. Company Law in India is one of the most cherished and dearest conventions. The very first Companies Act was passed in India in 1850 which followed the Joint Stock Companies Act, 1844 in England. By way of this Act, registration of the companies and transferability of the shares became easier.[1] The right of registration was given with or without liability, according to the Amending Act of 1857. Later, a law of 1860 granted similar rights to banking and insurance companies. The Companies Act of 1856 amended the existing law. The law governed matters regarding the establishment, directives, and dismissals of legal entities and other bodies. In 1951, the Government of India promoted the idea of the Indian Company Ordinance, which empowers the central government and the courts to directly interfere with the business of the company and take necessary measures for the welfare of the company. Later, the 1951 Amendment Act replaced the ordinance.
- The Companies Act of 1956 came into effect on April 1, 1956. This demonstration was ordered to integrate previous legislation that existed at the time and was equated with the enterprise. The Organizing Law Committee shared its report on the 1952 Walk, which proposed the current Organizing Law. This demonstration is the longest regulation ever

[1] ICSI, *History of Companies Act in India*, THE INSTITUTE OF COMPANY SECRETARIES OF INDIA (Jan.22, 2021, 13:10 PM), https://www.icsi.edu/ccgrt/research/bare-acts/corporate-laws/#:~:text=A%20Royal%20Charter%20established%20the,the%20first%20time%20in%201844.&text=After%20this%20the%20Joint%20Stock,the%20first%20time%20in%20India.

passed by Congress. There were sometimes many adjustments made in the demonstration. Currently, the Companies Act consists of 658 sections and 15 registers.

- The main features of the 1956 Companies Act are the complete and proper disclosure of the various problems faced by miners, the complete details of the financial companies of the organization to be recorded, the arrangement of mediation and scrutiny by the authorities, and the authority to manage staff. Restrictions and requirements are included for the organization of the board to properly fulfill its obligations and protect the interests of the minority shareholders.[2]

CONCEPT PAPER ON COMPANY LAW, 2004; IRANI REPORT

The government was again responsible for the detailed amendments to the Companies Act of 1956. A concept paper was produced in legal form for public inspection, through which all the stakeholders were able to express their views on various aspects of the company's business law and encourage conceptualization.

The Government has found a Commercial Code Concept Paper to help submit relevant proposals to an independent expert committee for evaluation. The council was chaired by a Dr. JJ Irani. They aimed to simplify compact legislation and introduce the adoption of internationally recognized best practices, along with sufficient resilience to assess new positions in a timely manner.

The Dr. JJ Irani Business Law Expert Committee has produced a report on the new company law, which is elastic, snappy and user-friendly. All views, realities, and concerns are taken into account while creating stakeholder reports to enable adoption of best practices. The Commission's report also considers developing ideas for multiple progressive and visionary concepts to encourage a remarkable shift from a "government approval system" to a "shareholder approval and disclosure system." It also suggested to private and SMEs, the need for flexibility, freedom of management, and low-cost consent.[3]

[2] Sanjay Rawat, *Nature of a company: History, Meaning and Definition*, SOCIAL LAWS TODAY (Nov. 27, 2021), https://sociallawstoday.com/nature-of-a-company-history-meaning-and-definition/?amp=1.
[3] Mahavir Lunawat, *J.J. Irani Committee Report on Company Law – The recommended legislative Scheme and major recommendations*, IRANI COMMITTEE REPORT COMPANIES ACT, (Jan 19, 2022, 1:00 PM), http://mahavirlunawat.in/html/%5B2005%5D061SCL0047(MAG).htm.

COMPANIES ACT, 2013 & ITS APPLICATION

After the government took into account the recommendations of the Iranian Commission, a bill was introduced in Lok Sabha that puts more emphasis on self-regulation and minimizes coordination permits when regulating the company's operations. Following certain changes to the existing bill, the revised company bill, 2011, was introduced. Lok Sabha on December 18, 2012 and Rajya Sabha on August 8, 2013 amended the law. The law was later renamed as the Companies Bill, 2012.[4]

The 2012 Company Bill later became the 2013 Company Law. With the approval of the President, it was subsequently published in the Indian Bulletin on August 30, 2013. The Companies Act has been amended four times. The 2015 and 2017 Companies Act focuses on improving and facilitating the ease of running a business. It was subsequently revised by the Bankruptcy and Bankruptcy Act (2016) and the Finance Act (2017), omitting Section 253, Section 289, Section 304, and Section 325. The ministry has also issued notifications, messages, orders, and various revised policies for the smooth operation and enforcement of the law.

Unincorporated companies have been declared illegal and do not fall within the scope of the Companies Act 2013. Under Article 464 of the Companies Act 2013, an association or partnership may not represent more than the number of people specified to continue its business. The maximum number of people who can run a business are 100. Section 464 would not govern the number of members involved in the joint Hindu family business. This section does not apply even if the freelancer operates a business or partnership subject to certain laws.[5]

TYPES OF COMPANIES

There are numerous kinds of businesses. Businesses can be distinguished by size, control, motive, incorporation and number of staff present. Legal persons can be classified based on charter companies, registered companies and statutory companies. On the other hand, they can be recognized on the basis of a clear and endless commitment to risk organizations. It can be

[4] The Companies Bill, 2012.
[5] Divesh Goyal, *Applicability of Companies Act, 2013 based on Limits*, TAX GURU (Aug. 30, 2019), https://taxguru.in/company-law/applicability-companies-act-2013-based-limits.html#:~:text=Applicability%20of%20Provision%20under%20Companies,Managing%20Director%2F%20Whole%20Time%20Director%2C.

categorized as a single organization, a private company, or a public organization based on the number of workers in a large company. Little ventures and different organizations can be partitioned based on structure. There are organizations that can be recognized based on control also. They might be grouped into holding organization, auxiliary organization and partner organization. There are organizations which can be named as non-benefit organizations that are authorized under segment 8. These are government organizations, unfamiliar organizations, auxiliary organizations, venture organizations and so forth.

The three main types of companies that can be incorporated under the Companies Act 2013 are:

- Private companies,
- Public companies, and
- One Person company

Private businesses are the ones businesses which have minimal contributed capital and the articles prescribe that the personal businesses now no longer provide the rights of transferability of shares.[6] Except in case of 1 individual organisation, the maximum number of individuals could be 200. Private businesses restrict calling the general public with the intention to subscribe for securities in their organisation. One individual organisation refers to the businesses this is run with the aid of using unmarried human as a member. They are fashioned as a personal restrained organisation only. Public organisations are the businesses that are not personal. They have a minimal paid-up percentage capital.[7]

INCORPORATION OF A COMPANY

Under the Companies Act 2013, "A company may establish a public limited company with seven or more people for legal purposes[8]." Private companies need more than one person, but partnerships, as the name implies, require only one member.

[6] Arjun Radhakrishnan Nair, Private Companies – Restrictions on Transferability of Shares, IPLEADERS, (Aug. 6, 2017), https://blog.ipleaders.in/private-companies-restrictions-transferability-shares/.
[7] Types of Companies, BUSINESS JARGONS (Jan. 20, 2022, 11:00 AM), https://businessjargons.com/types-of-companies.html
[8] AK Prasad, *Public Limited Company Registration*, TAX GURU (Oct. 17, 2018), https://taxguru.in/company-law/public-limited-company-

The companies can either be-

- limited by shares
- or limited by guarantee
- or can be an unlimited company
- The first step in establishing a company is to apply to the registrar in your jurisdiction where the company's registration office is located, with form number INC32, along with the fees listed below. [9] There are various other documents and information that need to be linked to the application.

1. Signed memorandums and articles of company subscribers
2. A statement from the auditor, solicitor or company secretary, director, company secretary, and anyone involved in the establishment of the company that all legal and regulatory requirements are taken into account in the registration.
3. Directors must agree that they have not been angry with the company's advertising, incorporation, or management in the last five years, or have been the victim of fraud or breach of duty against other companies that execute the document.
4. An alternative place to contact his registration office.
5. In addition to proof of personality, the application for registration must include details such as name or family name, private land, and citizenship.[10]
6. The registrar then registers all required documents in the register subsections and issues a legal entity establishment certificate indicating that the company is registered under the law.
7. The registrar then gives the company a company ID number. This number is also included in the certificate and has a different ID than other existing companies.
8. The company is required by law to retain a second copy of all registered documents until it is finished. If the person deliberately sends fraudulent or false information or documents to the registrar, they will be charged with fraud under Section 447.

registration.html#:~:text=Minimum%20Seven%20People%3A%20Minimum%20seven,in%20the%20public%20limited%20company.

[9] Shweta Maheshwari, *Incorporation of company-Form SPICE+*, TAX GURU (Sep. 16, 2020), https://taxguru.in/company-law/incorporation-company-form-spice-plus.html.

[10] The Companies Act, 2013, No. 18, Acts of Parliament, 2013 (India).

9. Under corporate law, capital is the capital provided by an organization and is referred to as apparent capital, approved or enlisted capital, donated capital, purchased capital, redemption capital, settled stock capital, value stock capital, and sloping stock capital.[11]

BOARD OF DIRECTORS & THEIR APPOINTMENT

The board is the highest authority and chair of an organization. You run a business as a company or a corporation. The board of directors runs the company. They play a central role in functioning of the company. The board of directors is responsible for the overall functioning of the company. [12]Section 2 (10) of the Companies Act 2013 provides that the equivalent of an association, the "board of directors," means an integrated organization of regulatory agencies. They steer, manage and regulate business issues.

As indicated by area 149 of the Organizations Act, 2013, Top managerial staff ought to be people and not firm, affiliation or some other corporate body. By passing a special resolution, there can be maximum 15 directors in a public company. The section also provides that there should be at least one Director of India period of not less than 182 days during the year.

Assuming that there is no arrangement to appoint a Chief in articles of relationship of the organization, as indicated by segment 152, the supporters of the declaration shall be seen as the primary supervisor of the organization until the individuals delegate the chief. A person cannot be appointed as the director until he has a director identification number or any other number. Director Identification Number is extremely important for any Director. If the Director does no longer has his Director Identification Number, he is not taken into consideration to become the legitimate Director beneath the Act.[13] Person shall no longer be appointed as Director until he gives his consent and files the same with the registrar within 30 days of his fixture. Board is empowered to

[11] Dhruv Bhardwaj, *Incorporation of a company*, IPLEADERS (June 22, 2019), https://blog.ipleaders.in/incorporation-of-company/.

[12] James Chen, *Board of Directors*, INVESTOPEDIA (Aug. 29, 2021), https://www.investopedia.com/terms/b/boardofdirectors.asp.

[13] TG Team, *Disqualification of Directors not Deactivate or Cancel DIN*, TAXGURU (Nov. 4, 2019), https://taxguru.in/company-law/section-1642-disqualification-directors-not-deactivate-cancel-din.html.

appoint a director, in case the original one is missing for the duration not less than 3 months, from the state in which board meetings are ordinarily held, in accordance to the Companies Act. [14]

If a director is appointed by a majority of the shareholders of the Company, the Company may be dismissed at any time after the appointment of the director and before the expiration of the term of office. This does not apply to directors appointed by the National Company Court. Independent directors reappointed in the second term may be dismissed by the Company if a majority of 3/4 pass the resolution and are given the opportunity to be heard. The recalled director vacancies will be filled by the directors present at the current recalled meeting. A board of directors is held to operate the company efficiently and effectively. Company should hold a minimal number of meetings [15]for the proper functioning according to the Companies Act, 2013.

The board is very important because it discusses policies, management, strategies, and stakeholders' expectations. The first meeting of the board of directors must be held within 30 days of the merger date. There are at least four consecutive executive meetings, and the interval between the two meetings is within 122 days. Section 8 states that the entity should hold a meeting at least every 6 months. Two directors or one-third of all the powerholders must attend the meeting. We also hold a general meeting of shareholders. Shareholders' meetings are held when it is necessary to comply with the Companies Act 2013 and the provisions of the Act. The general meeting is the first meeting of the company. The power of decision-making is in the hands of members and the board of directors. Regular meetings provide individuals and managers with the opportunity to maintain a perspective on organizational issues. Gathering yearly and comprehensive gathering is necessary. The hole between two yearly comprehensive gatherings ought not to surpass 15 months. It very well may be called during business hours from 9 AM to 6 PM. It ought to be stowing away at the enlisted office of the organization or the state where the enrolled office is arranged. As indicated by area 102(2) (a) ought to be considered extraordinary other than—

•thought of budget summaries and reports of the Directorate and evaluators

[14] *Directors and Managing Directors*, LEGAL SERVICE INDIA (Jan. 22, 2022, 1:25 PM), https://www.legalserviceindia.com/company%20law/com_6.htm#:~:text=A%20person%20shall%20not%20act,30%20days%20of%20his%20appointment.

[15] MCA, GOI, *Management and Board Governance*, MINISTRY OF CORPORATE AFFAIRS (Jan.22, 2022, 12:30 PM), https://www.mca.gov.in/MinistryV2/management+and+board+governance.html#:~:text=25.1%20The%20requirement%20of%20the,should%20not%20exceed%20four%20months.

•assertion of any profit commitment of Chiefs instead of those ending

•what`s more the commitment of, and the fixing of the compensation of bookkeeper

Section 99 of the Companies Act states that if any mockery occurs while organising the meeting of the enterprise, the company and the officer who is the law breaker shall be punished with fine of one lakh rupees and if the default continues to happen, the fine would keep on extending by ₹5000 on each fault.[16]

CORPORATE RESPONSIBILITY & BUSINESS ETHICS

There are certain corporate social responsibilities as well. Companies with net worth of more than Rs.500 crore, income of Rs.1000 crore or more or a net profit of Rs.5,00,00,000 or more are responsible for protecting their corporate social responsibility. The board has to maintain a report of Corporate Social Responsibility Committee. The committee of social responsibility for the corporate shall develop the responsibilities that has to be undertaken by the company in its area of subject which is specified in Schedule VII. [17]

The committee also determines the costs that the company must not exceed in order to fulfill these responsibilities. They also need to keep the company in mind while taking the responsibility for their field or topic. The board is responsible for ensuring that each organization borrows consistently at substantially 2% of its normal net income, as set out in the company's social responsibility strategy. Assuming a certain amount is withheld, not used at that time, and is not equated with an on-going venture, that amount will be remitted to the assets determined under Schedule VII within the last six months of the currency year. If this amount is saved for on-going business, the unused amount will be transferred to a special bank record called the Unused Corporate Social Responsibility Record within 30 days of the end of the payment year. The reform order states that the organizations can be fined more than 50,000 rupees and can be fined up to 25 rupees. Employees who are part of the organization and have defaulted will be imprisoned for a long period of time, fined at least 50,000 rupees.

[16] Surabhi Bairathi, *Directors and their liabilities*, LEGAL SERVICE INDIA (Jan. 21,2022, 5:00 PM), http://www.legalservicesindia.com/article/577/Directors-&-Their-Liabilities.html.
[17] Vijaya Lakshmi, *Section 135 Corporate Social Responsibility & Schedule VII*, TAXGURU (May 12, 2021), https://taxguru.in/company-law/section-135-corporate-social-responsibility-schedule-vii-csr.html.

Every business has its associated business ethics. Business ethics generally means business behavior. It helps the company fulfil its social responsibilities, improve profitability and promote employee productivity. It also means doing the right thing at work. The growth of an organization depends on business people who follow business ethics. When a habit is accepted by both society and members of the organization, it becomes the ethics of the organization.

According to Wheeler, business ethics is both an art and a science. It relates to business ethics as it maintains a smooth relationship with the environment, its various types of groups and organizations, and reorganizes its moral responsibility for the right and wrong of doing business. As Rogene states, business ethics refers to the right behavior of an individual in the association when making business decisions. There are times when an individual has to fall into a moral situation. A plight is a situation in which you need to choose from the available options, as well as situations that are considered negative or completely irrelevant. You may have to choose between right and wrong. Finding the right situation seems to be more difficult than choosing the wrong path, known as the moral dilemma. It is also known as the ethical paradox. However, you need to resolve the issue. Dilemmas arise from the failure of an individual's personality and the conflict between individual and organizational values. While making the right decision, businessmen need to keep in mind not only their stakeholders, but also impact of such decisions. In these situations, you need to behave in a resolute manner.[18]

CONCLUSION

Since, the company is a legal entity, it is not a human being, but an artificial person which has many of the policies, obligations, authorities, and licenses recommended under law. Since the owner of the company and the company are two different persons, the company can function as a natural person within the scope of the articles of incorporation.

In order to maintain discipline in business activities, it is essential to define regulations. Companies also need a dispute reading wrestling mechanism that provides a means of resolving day-to-day disputes. Disputes can arise for a variety of interests or other reasons. In such cases,

[18] Kezia Farnham, Business Ethics and Corporate Social Responsibility Debunked, DILIGENT (Apr. 8, 2021), https://www.diligent.com/insights/esg/business-ethics-and-corporate-social-responsibility/#:~:text=While%20business%20ethics%20and%20corporate,customers%2C%20suppliers%20and%20other%20stakeholders.

commercial law plays a central role. Business law also protects corporate intellectual property such as patents, trade secrets, symbols, copyrights and names. It also protects the interests of consumers. The Business Act also defines guidelines for the provision of legal financial statements by companies. It also helps the government by collecting tax information and subsidizing people in need. It sometimes reassures the enterprise.

The government has enacted various laws and regulations to protect businesses and their interests. The 2013 Organization Act, pays homage to new ideas that maintain corporate visibility, commitment, management and support chiefs, extraordinary courts, secretariat norms, prestigious secretaries, class activities, integrated evaluators, accountant changes, refusals to be elected, etc.

However, the Companies Act 2013, does not allow registration of companies that have not been incorporated and have been declared illegal. Certain number of people have to work for the company. The Companies Act 2013 also provides imposition of various types of penalties and indemnities, if a company fails to comply with the law.