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A COMPARATIVE STUDY OF THE COMPANIES ACT, 2013 AND THE COMPANIES ACT, 1956

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Abstract

The Indian Companies Act has undergone many changes, over the years, which have helped in building a strong corporate culture and has helped to make sure that the spirit of corporate culture has not surpassed government laws and regulations. The first Companies Act after independence was passed in 1956, which governed business entities in the country. The 1956 Act was based on the recommendations of the Bhabha Committee. This Act was amended multiple times, and in 2013, major changes were introduced. The Companies Act 2013 regulates the formation and functioning of corporations or companies in India. The Companies Act 2013 has replaced the 1956 Act. The attempt of the study is to highlight the major and minor changes as are done in the Act.

Keywords: *MCA-21, The Companies Bill, 2012; The Companies Act, 1956; The Companies Act, 2013.*

Introduction

The company legislation in India relates back to 19th century. The Companies Act, 1956 remained in force for a long time, though amended from time to time. Major amendments were made in year 2000 (postal ballot, audit committee, shelf prospectus, etc. introduced with emphasis on Corporate Governance). Amendments in 2002 introduced the concept of NCLT, NCLAT (which faced impediments in form of Court cases questioning their constitutional validity). In 2006, Project MCA-21 providing for DIN and online filing of documents was launched.

A stage came where need was felt to replace the voluminous legislation with a new compact Companies Act and Dr J.J. Irani (the then Director, Tata Sons was appointed as the chairman of expert committee) Committee was appointed. The orientation initially was liberalizing the law and making it more user friendly. However, Satyam Scam had its impact on orientation and the focus got shifted a bit so as to retain certain stringencies in the Act. The recommendations of J.J. Irani Committee finally culminated in the form of the Companies Act, 2013. It received the assent of the President on 29th August, 2013. The Companies Act, 2013, applies to the whole of India. The Companies Act, 2013, finally replaced the decades old Companies Act, 1956 which was a very much outdated legislation guiding companies in India. The statute contains 29 chapters, 470 sections and 7 schedules, which is comparatively more streamlined than the Companies Act, 1956 which contained 658 sections and 14 schedules. The phrase "as may be prescribed" has been used around 336 times in the 2013 Act which gives the Central Government ample power to fine-tune the workings of the Act to the continuous economic changes that plague the present world. However, probably the main aim of the Companies Act, 2013 has been to reduce the bureaucratic red tape and bring down the continuous hurdles that businesses and start-ups face when and after incorporating themselves into a company. The Companies Act, 2013 aims at lessening Government approvals and boosting self-regulations by companies so as to provide for speedy workings by companies and to enable them to be competitive players in the world economy. However, with rising concerns about scams and tax-fraud by company directors, the Company Act 2013 has redefined the term "financial year" and the Listing Agreement makes it mandatory for listed companies to publish its consolidated accounts which is neither required to be filed before the AGM or put before the Registrar of Companies. Although these have been the golden aims of the Government, it can be said that the Companies Act, 2013 has brought in a mixed basket of results with some successes and some failures.

Objectives of the Study

1. To compare The Companies Act, 2013 and The Companies Act, 1956.
2. To know the various developments in Act.
3. To understand the basic difference in application of various amendments to the Act.

Research Methodology

The present study is an attempt to understand the basic differences in both the Companies Act, 2013 and the former Companies Act, 1956. This study is based on the information collected from various secondary sources such as books, bare acts, magazines, newspaper articles, research journals available online and various websites in order to achieve its objectives. The study covers the comparative analysis of The Companies Act, 2013 and The Companies Act, 1956.

Difference between Companies Act, 2013 & Companies Act, 1956

Areas of development	**The Companies Act, 1956**	**The Companies Act, 2013**
Share Capital	For issuance of Equity Share Capital with differential voting rights, following conditions have been prescribed in the rules:	For issuance of Equity Share Capital with differential voting rights, the conditions to

	- Authorization in the Articles. - Shareholders‟ approval by Special Resolution. In Shareholders‟ approval by Special Resolution. In case of listed company, by postal ballot. - Number of such shares = 25% of the total post issue paid up equity share capital. - Distributable profits for last 3 preceding financial year. - No default in the repayment payment of deposits or interest thereon on due date or redeem its debenture on due date or pay dividend. - No default in meeting investors grievances. - Disclosures in Explanatory Statement with respect to Number, Price, Scale, etc. - Existing equity share capital with voting rights shall not be converted into equity share capital carrying differential voting rights and vice–versa. [Rule 3 of the Companies (Issue of Share Capital with Differential Voting Rights) Rules, 2001]	be complied has been changed. Some of key conditions are: - Authorization in the Articles. - Shareholder's approval by Special Resolution. In case of listed company, by postal ballot or a poll at a General Meeting. - Number of such shares is 25% of the total post issue paid up equity share capital. - Track record of dividend payment of 10% for the last 3 preceding financial year. No default in the payment of a declared dividend to its shareholders or repayment of its matured deposits or redemption of its preference shares or debentures that have become due for redemption or payment of interest on such deposits or preference shares or debentures or repayment of any term loan from a public financial institution or State level financial institution or scheduled Bank that has become repayable or interest payable thereon or dues with respect to statutory payments relating to its employees to any authority. - Disclosures in Explanatory Statement and Directors Report with respect to Number,Price, Justification, Allotters‟, Pre and Post Shareholding Pattern etc. - Existing equity share capital with voting rights shall not be converted into equity share capital carrying differential voting rights and vice–versa. (Rule no. 3)
Voting rights	- No such provision in this Act. - Preference shares were classified as cumulative and non-cumulative preference shares for the purpose of identification of voting rights. - In case of cumulative Preference shares, if the dividend has remained unpaid for an aggregate period of not less than 2 years preceding the date of commencement of meeting	- Where preference shareholder are entitled to vote on every resolution placed before the meeting then the proportion of the voting rights of Equity shareholders to the voting rights of the preference shareholders shall be in the same proportion as the paid-up capital in respect of the equity shares to the paid-up

	and in case of non-cumulative shares either in respect of period of not less than 2 years ending with the expiry of the financial immediately preceding the commencement of the meeting or in respect of any aggregate period of not less than 3 years comprised in the 6 years ending with the expiry of the financial year aforesaid, then such preference shareholders can vote on every resolution placed before the company at any meeting.	capital in respect of the preference shares. - No classification of preference shares as cumulative and non-cumulative for the purpose of identification of voting rights. - Preference shareholders can vote on every resolution placed before the company at any meeting only when dividends payable in respect of a class of preference shares are in arrears for a period of 2 years or more.
Application of premium	There is no such provision under this Act.	Certain class of companies, as may be prescribed, and whose financial statements comply with the accounting standards prescribed for such class of companies under section 133, can utilize the share premium account only for the following 3 purposes. 1. in paying up unissued equity shares of the company to be issued to members of the company as fully paid bonus shares or 2. in writing off the expenses of or the commission paid or discount allowed on any issue of equity shares of the company or 3. for the purchase of its own shares or other securities under section 68.
Issue of shares at discount	A company may issue shares at a discount subject to the conditions specified and prior approval of the Central Government.	Company cannot issue shares at discount other than as sweat equity
Employee stock option (ESOP)	No specific provision is provided in the Act. In case of listed companies, SEBI ESOP guidelines were to be complied with. In case of Unlisted Public companies, rules as prescribed under Unlisted Public Companies (Preferential. Allotment) Rules, 2003 to be followed.	Where a company having share capital proposes to increase its subscribed capital by the issue of further shares, such shares apart from existing shareholder may also be offered to employees by way of ESOP subject to the approval of shareholders by way of special resolution and subject to certain conditions – In case of listed company, with SEBI ESOP Guidelines. In case of Unlisted company, with the conditions as prescribed under Rule No. 12)
Sweat Equity Share	A company may issue sweat equity shares: - By passing a special resolution in general meeting.	A company may issue sweat equity shares: - By passing a special resolution in general meeting.

	- After the lapse of 1 year from the date on which the company has commenced business. - In case of Unlisted Company, subject to the compliance of the following conditions: No validity period prescribed for special resolution; Maximum Number of sweat equity shares during the year: 15% of the existing paid-up equity share capital in a year or shares of the issue value of Rs 5 crore, whichever is higher. - Locked in Shares: Sweat equity shares issued to employees or directors shall be locked in for a period of 3 years from the date of allotment period of 3 years from the date of allotment. - Disclosures in Explanatory Statement and Directors Report. Preparation of Register. - In case of Listed Company, compliance required with the Securities and Exchange Board of India (Issue of Sweat Equity) Regulations, 2002.	- After the lapse of 1 year from the date on which the company has commenced business. - In case of Unlisted Company, subject to the compliance of the following conditions but not limited to: the special resolution passed for the purpose of issue of sweat equity shares is valid for 1 year; maximum number of sweat equity shares during the year: 15% of the existing paid-up equity share capital in a year or shares of the issue value of Rs 5crore, whichever is higher. However, at any time, the maximum number of sweat equity shares should not be more than 25% of the paid-up equity capital of the company. - Locked in Shares: Sweat equity shares issued to directors or employees shall be locked in/non-transferable for a period of 3 years from the date of allotment. The fact that the share certificates are under lock-in for the specified period shall be mentioned on the share certificate. - Disclosures in Explanatory Statement and Directors Report. - Preparation of Register in accordance with Form No. SH.3. - In case of Listed Company, compliance required with Securities and Exchange Board of India (Issue of Sweat Equity) Regulations, 2002. - Sweat Equity cannot be granted to employee of subsidiary company incorporated outside India. (Rule no 8)
Bonus Shares	Company can issue Bonus Shares but no detailed conditions was prescribed.	A company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of its free reserves, securities premium account or the Capital Redemption Reserve account. Member's resolution is now mandatory. No bonus issue from revaluation reserves possible now even for unlisted companies. Bonus

		issue once announced cannot be withdrawn. (Rule no. 14).
Preference Shares	No company limited by shares shall issue any preference shares which are redeemable after the expiry of a period of 20 years from the date of issue. There is no such provision regarding consent of shareholders and Tribunal for issuance of further redeemable shares. No such disclosures required to be made in the resolution.	A company engaged in the setting up and dealing with of infrastructure projects as prescribed under Schedule VI of Companies Act, 2013 may issue preference shares for a period exceeding 20 years subject to the redemption of a minimum 10% of such preference shares per year from the 20 first year onwards or earlier, on proportionate basis, at the option of the preference shareholders. (Rule no 10) For the issuance of further redeemable shares in case if the company is not in a position to redeem any preference shares or to pay any dividend on such shares as required, the consent of the holders of 3/4th in value of such shares is required along with the consent of Tribunal. Disclosures such as payment of dividend, conversion, voting rights, redemption etc. shall be made by the company in the resolution with respect to the issue of preference shares (Rule No. 9)
Provisions related to Transfer and Transmission	- Scope of the section limited to shares and debentures only. - Period of 12 months or book closure, whichever is later, in case of listed companies and 2 months in case of unlisted companies within which an instrument of transfer shall be deposited with the company. - The power of making appeal in case of refusal of transfer is to the transferor or the transferee or the person who give intimation for the transmission by operation of law as the case may be. - The penalty in case of contravention of the order of the Tribunal in case of registration of transfer is compoundable. - Instrument of transfer was in Form No. 7B.	- Scope of the section has been widened to all Securities. - The period for depositing instrument of transfer has been modified. It shall be delivered within 60 days of its execution irrespective of the nature of the company. In case instrument of transfer is deposited after the prescribed time, the company will register the transfer subject to indemnity. - The power of making the appeal in case of refusal of transfer has now been limited for the transferee only. The penalty in case of contravention of the order of the Tribunal regarding registration of transfer or transmission or rectification of register is now non-compoundable. - Instrument of transfer shall be in Form no. SH 4 (Rule No. 11(1)).
Private Placement	- Private Companies were out of purview of the private placement. - Not more than 49 persons can be offered or invited to subscribe to	- Separate provisions for Private Placement of securities for both Listed and Unlisted Companies Funds can be raised only through

	shares and debentures of the Company. Any offer beyond such number shall be treated as public offer. - No other conditions were provided in this Act.	issuance of a private placement offer letter to not more than 200 people in aggregate in a financial year. Any offer beyond such number shall be treated as public offer. - The value of such offer or invitation per person shall be with an investment size of not less than Rs 20 thousand of face value of securities. - Allotment of securities shall be made within 60 days from the date of receipt of application money.
Further issue of Share Capital	- The provisions related to issue of further shares applicable only if the company at any time after the expiry of 2 years from the incorporation of the company or at any time after the expiry of the one year from the allotment of shares in that company made for the first time after its formation, whichever is earlier, proposed to increase the subscribed share capital. - This provision was only applicable to public company. - No time period was provided in respect of validity of the resolution. - No such term was defined. - In case of right issue, the offer shall remain open for not less than 15 days but no maximum period was defined.	- The provision of this section will be applicable in case of allotment of shares at any time after the incorporation of the company. - The provisions of this shall also be applicable to private company. - An allotment pursuant to a special resolution is needed to be completed within a period of 12 months from the date of the passing of special resolution. In case the company fails to do so, a fresh special resolution shall be needed to be passed by the company. - The price at which share will be issued in case of company other listed, shall be determined by the registered valuer. - The term preferential issue is defined. - In case of right issue, the offer shall remain open for not less than 15 days and not exceeding 30 days from the date of the offer, within which the offer, if not accepted, will be deemed to have been declined. - The disclosure requirement in the explanatory statement has been increased. (Rule no 13). - Provisions of the preferential allotment shall be read with private placement provisions.
	A company cannot make buyback if a default regarding:	Apart from general condition, a company can make buyback if any default regarding:

Prohibition on Buyback in certain cases	- repayment of any term loan or interest payable thereon to any financial institution or bank is subsisting. - Provides for buy-back out of odd-lots.	- repayment of any term loan or interest payable thereon to any financial institution or bank have been remedied and a period of 3 years must have lapsed after such default ceased to subsist. - No concept of buy-back from odd lot since it is not relevant today.

Major Highlights of the Companies Act, 2013

1. **Strengthening Women Contributions through Board Room:** The Companies Act 2013 stipulates appointment of at least one-woman director on the Board of the prescribed class of Companies so as to widen the talent pool enabling big Corporates to benefit from diversified backgrounds with different viewpoints.
2. **Corporate Social Responsibility:** The Companies Act 2013 stipulates certain class of Companies to spend a certain amount of money every year on activities/initiatives reflecting Corporate Social Responsibility. There may be difficulties in implementing in the initial years but this measure would help in improving the Under-privileged & backward sections of Society and the Corporate would in fact gain in terms of their reputation and image in the Society.
3. **National Company Law Tribunal:** The Companies Act 2013 introduced National Company Law Tribunal and the National Company Law Appellate Tribunal to replace the Company Law Board and Board for Industrial and Financial Reconstruction. They would relieve the Courts of their burden while simultaneously providing specialized justice.
4. **Increase in number of Shareholders**: The Companies Act 2013 increased the number of maximum shareholders in a private company from 50 to 200.
5. **Limit on Maximum Partners:** The maximum number of persons/partners in any association/partnership may be up to such number as may be prescribed but not exceeding one hundred. This restriction will not apply to an association or partnership, constituted by professionals like lawyer, chartered accountants, company secretaries, etc. who are governed by their special laws.
6. **One Person Company**: The Companies Act 2013 provides new form of private company, i.e., one person company is introduced that may have only one director and one shareholder.
7. **Electronic Mode**: The Companies Act 2013 proposed E-Governance for various company processes like maintenance and inspection of documents in electronic form,

option of keeping of books of accounts in electronic form, financial statements to be placed on company's website, etc.

8. **Independent Directors**: The Companies Act 2013 provides that all listed companies should have at least one-third of the Board as independent directors. Such other class or classes of public companies as may be prescribed by the Central Government shall also be required to appoint independent directors. No independent director shall hold office for more than two consecutive terms of five years.
9. **Rotation of Auditors**: The Companies Act 2013 provides for rotation of auditors and audit firms in case of publicly traded companies.
10. **Auditors performing Non-Audit Services**: The Companies Act 2013 prohibits Auditors from performing non-audit services to the company where they are auditor to ensure independence and accountability of auditor.
11. **Financial Year**: Every company's financial year will be the period ending on 31 March every year.

Findings & Conclusion

The new Indian Companies Act, 2013 is a positive and welcoming step towards modernising India's company law and places India on par with corporate legislation elsewhere in the globe. The Act is a progressive and forward looking which promises improved corporate governance norms, enhanced disclosures and transparency, facilitation of responsible entrepreneurship, increased accountability of company managements and auditors and strict enforcement processes. It goes a long way in protecting the interests of shareholders and removes administrative burden in several areas. The Act prescribes the utilisation of share premium while there was no such provision in the old Act. As a result, now the security premium is confined to limited uses. Hence company enjoy less flexibility of utilisation of security premium. Earlier a company can issue shares at discount subject to certain condition but as per new Act a company cannot issue shares at discount except sweat equity shares. Thus, as per new Act a company cannot get benefit of issuing shares at discount, simultaneously it is very difficult for company to attract the investor during depression period. As per new Companies Act a company engaged in the setting up and dealing with infrastructure projects as prescribed under Schedule VI of Companies Act, 2013 may issue preference shares but there was no specific percentage and provisions in old Act 1956. Hence in new Companies Act the companies have to create less reserve for redemption as a result there is more money available to business to be used in other purposes which were blocked in redemption reserve earlier. New

Companies Act 2013 widening the scope of private placement than earlier which will help a company to get easy and quick availability of finance. In case of buy back of share, it will help a company in cash management and company can also take the benefit of rising price of share in booming period by purchasing it during demand depression which were taken by Investor in earlier days. It also affects the Cash Flow Statement. As per the new Act no dividend shall be declared or paid by a company from its reserves other than free reserves but in CA 1956 there is no such provision. So that will impact on the availability of finance for business. As dividend is only paid out of free reserve so now the company can channelize such reserve for other purpose earlier which were used in dividend payment purposes. The Act has introduced the concept of 'Dormant Companies'. Dormant companies are those that have not engaged in business for two years consecutively. It introduced the NCLT, a quasi-judicial body in India adjudicating issues concerning companies. It replaced the Company Law Board. The Act provides for self-regulation concerning disclosures and transparency rather than having a government-approval based regime. Documents have to be maintained in electronic form. Having independent directors has been made a statutory requirement for public companies. The Act mandates at least 7 days of notice for calling board meetings. In this Act, the duties of a director has been defined. It has also defined the duties of 'Key Managerial Personnel' and 'Promoter'. For public companies, there should be a rotation of audit firms and auditors. The Act also prevents auditors from performing non-audit services to the company. In case of non-compliance, there is substantial criminal and civil liability for an auditor. The whole process of rehabilitation and liquidation of the companies in the case of the financial crisis has been made time-bound. The Act makes it mandatory for companies to form CSR committees, and formulate CSR policies. For certain companies, mandatory disclosures have been made with regard to CSR. Setting up of the National Financial Reporting Authority (NFRA) has been provided for. It engages in the establishment and enforcement of accounting and auditing standards and oversight of the work of auditors. The Act has launched all-new class action suits that keep the shareholders as well as the stakeholders more aware and informed regarding their major rights. The act lends more power to shareholders wherein their approvals are required for numerous important transactions. The Act has proposed a simple and fast track process for mergers as well as amalgamations of companies in specific class like the subsidiary and holding, as well as small organizations after they have obtained the government's approval.

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