
PRINCIPLES OF MODERN COMPANY LAW AND ITS ADVANTAGES AND DISADVANTAGES IN INCORPORATION OF A COMPANY

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ABSTRACT

The corporate legal system is built around company law, which governs the creation, operation and winding up of companies. A company is a complex legal entity that provides for the formation of an artificial juridical subject, which is separate from the shareholders, to which can be transferred a property, concluded contracts and engaged in business in its own name. The concepts of separate legal personality, limited liability, perpetual succession, company governance, fiduciary duties of the directors and the shareholder democracy form the basis of modern company law.¹ These principles have helped in developing industry, attracting investment, and bolstering investor confidence by offering a secure and predict legal landscape for businesses.

The Companies Act, 2013 has modernized the Indian company law by adding provisions that are company-friendly in terms of transparency, accountability and good corporate governance and has introduced provisions for electronic registration for incorporation of companies. Limited liability, perpetual succession, added credibility and easier access to capital are just some of the benefits of incorporation. It also carries a number of statutory duties in the areas of regulatory compliance, financial disclosure, corporate governance and taxation. That incorporation is not a privilege except in rare cases is further illustrated by the way it has been used for fraudulent ends.

The aim of this paper is to look at the development of the modern companies law; to analyse the principles underpinning the law of incorporated companies; to assess the incorporation process in the Companies Act, 2013 and critically consider the pros and cons of incorporation. It also emphasizes the need for the balance between commercial freedom and regulatory responsibility, to sustain the growth of companies and to ensure a good protection of the interests of their stakeholders.²

Keywords: *Company Law, Incorporation, Separate Legal Entity, Limited Liability, Corporate Governance, Companies Act, 2013.*

1. INTRODUCTION

One of the most important areas of commercial law is company law, which deals with the structure and operation of companies, their formation and dissolution. In the modern business world, the incorporation of a company has emerged as the most common way of organizing the business owing to the legal benefits that it provides. A company will have a legal identity separate from the members and can own property, enter into contracts, sue and be sued and it will continue to exist even if ownership changes. The corporate form has become essential in economic development and industrialisation and for the formation of capital.

However, the idea of incorporation has been a developing one over the centuries and has grown as business activities have become more complex. In the early days, business organisations were operated in the form of partnerships and unincorporated associations but these had disadvantages including unlimited liability and succession of ownership being uncertain and difficult to raise capital. With the rise of joint-stock companies in the Industrial Revolution, there arose a need for a legal structure that would be able to safeguard the investors as well as allow for large-scale commercial enterprises. As a result, the concept of an independent legal personality of the incorporated company from its shareholders was developed in modern company law. The doctrine was entrenched in the House of Lords case of *Salomon v. A. Salomon & Co. Ltd.* and is still followed today throughout common law countries.³

¹ *Salomon v. A. Salomon & Co. Ltd.*, [1897] AC 22 (HL)

² Companies Act, 2013 (Act 18 of 2013), ss. 3, 7, 9, 134, 135, 149 & 166

³ Avtar Singh, *Company Law* (17th edn., Eastern Book Company, Lucknow, 2023)

There are major changes in the Company Law in India. For over a half century, the Companies Act, 1956 was the law for corporate regulation, though it was recently replaced by the Companies Act, 2013. The Act 2013 aims to bring in greater measures of corporate governance, transparency, investor protection and convergence of Indian Corporate Law with international best practices. It brought much needed changes to the directors' duties, independent directors, corporate social responsibility, electronic incorporation, class actions and disclosure. The new changes are due to the evolution of the role of companies in a globalised economy, whereby companies are held accountable not just to shareholders, but to employees, creditors, consumers and society generally.

Incorporation is not just a 'procedure' but a legal act and a creation of a separate legal personality. A company becomes separate from the members when it is incorporated. Concurrently, statutory duties arise for companies that must be met to comply with the regulatory, financial and governance requirements set by the Companies Act, 2013. Therefore, although there are a number of legal and commercial benefits to incorporation, it also brings with it a number of obligations intended to ensure that business is conducted responsibly and in the interests of various stakeholders.

The aim of this paper is to throw light on the concept of modern company law and its analysis on the legal aspects of company incorporation in India. It then considers the benefits and limitations of incorporation based on statutory requirements, case law and current corporate governance principles. The paper seeks to evaluate whether the current legal framework achieves a good balance between commercial flexibility and corporate accountability through this analysis.

2. EVOLUTION OF MODERN COMPANY LAW

Modern Company Law is linked with the development of trade, industrialisation, and growing demands for organised business enterprises. The legal system which regulates the process of incorporating has changed from a system where incorporation was seen as a special privilege granted by the sovereign to one where incorporation is now a statutory right provided by the law for the person who meets the law's requirements. The transformation has allowed companies to be the main means of activity and economic development for the entire countries.

The early business organisations were mainly partnerships or chartered corporations in England, from where the origin of company law can be followed. In the sixteenth and the seventeenth centuries the Crown issued a number of royal charters to trading companies: the East India Company, for example, had been granted special rights to trade in the Far East. These corporations had similar features to contemporary corporations, but incorporation was a privilege, not a right, for any company.¹

As trade boomed in the eighteenth and nineteenth centuries, the current laws were recognized as being inadequate. Partnerships were not the preferred form of business because partners were personally liable for all debts of the business. A large-scale commercial venture required a lot of money that could not readily be raised in partnership because each partner personally could have to pay all debts of the business. To meet these challenges, the Joint Stock Companies Act 1844 was passed by the English Parliament, which changed the incorporation system to one that was mainly based on statutory registration.² The Limited Liability Act 1855 followed, thus further developing the law of companies as the shareholders of a company were only liable for the amount invested in it, which encouraged the growth of public investment and industrial growth.³

The House of Lords in *Salomon v. A. Salomon & Co. Ltd* was a landmark ruling in the history of company law that established the principle that a company is legally distinct from its shareholders, once it has been properly incorporated. The doctrine of separate legal personality, which remains the issue fundamental of company law, was established in the judgment. It accepted the fact that there was a distinction between the liabilities of the company and the members of it, and the assets of the company were not available to the members of the company.⁴

The developments of company law in India was closely related to the English company law. The Companies Act, 1850 (Joint Stock Companies Act) was the first act on companies in India and led to the concept of

¹ Paul L. Davies & Sarah Worthington, *Gower: Principles of Modern Company Law* (11th edn., Sweet & Maxwell, London, 2021)

² S. Ramaiya, *Guide to the Companies Act* (20th edn., LexisNexis, Gurugram, 2022)

³ Paul L. Davies & Sarah Worthington, *Gower: Principles of Modern Company Law* (11th edn., Sweet & Maxwell, London, 2021)

⁴ Joint Stock Companies Act, 1844 (7 & 8 Vict. c.110) (U.K.)

registration.¹ It was followed by the Indian Companies Act, 1913 which brought together the different acts relating to company incorporation, management and winding up. The Companies Act, 1956, was passed based on the recommendations of the Bhabha Committee, and for more than five decades was the main legislation governing companies in India, playing a vital role in the development India's industry.²

Since the liberalisation of the Indian economy in 1991, new challenges have arisen, which require additional reforms in corporate regulation. Several drawbacks of the Companies Act, 1956 were brought to light due to the process of globalisation, technological development, foreign investments and the growing complexity of corporate structure. This led to the enactment of the Companies Act, 2013 aimed at improving corporate governance, transparency, investor protection and incorporation procedures through a number of significant changes made in the Act, such as codification of Directors' duties, mandatory Corporate Social Responsibility for certain companies, increased disclosures, independent directors, class action suits, and electronic incorporation through the MCA's digital platform.

As the company law has developed, it has moved from a vehicle for commerce to a mechanism for good corporate governance and safeguarding of the interests of shareholders. In the modern era, companies are afforded the status of an entity that has a great impact on the economy and society, and hence, they are legally responsible to run their business within the limits of commercial freedom. This change in approach is reflected in the Companies Act, 2013 which is combination of flexibility in business operation with robust governance and compliance, thereby fostering sustainable growth of companies and trust among members of the society in the corporate sector.³

3. PRINCIPLES OF MODERN COMPANY LAW

Modern company law is based on several fundamental legal principles which define the character, rights and duties of a company. These principles separate a company from other types of business organisations and give a basis for corporate legislation.⁴ They have grown up over the years through legislation and judicial interpretations, and still shape how the Companies Act, 2013 is interpreted. Some of these principles are considered the pillars of modern company law, namely separate legal personality, limited liability, perpetual succession, company governance, fiduciary duty of directors and shareholder democracy.⁵

3.1 Separate Legal Personality

Separate legal personality is the key element for an incorporated company. A company gets a legal identity separate from its shareholders, directors and promoters when it is incorporated. It thus can hold property, make contracts, borrow money, start legal action, and conduct business under its name. The rights and liabilities of all company are distinct from those of any of its members.

In Salomon's case the House of Lords ruled that after a company has been duly incorporated its property is vested in the company and not in its shareholders, and its debts cannot normally be recovered from its members.⁶

This doctrine has been upheld by the courts in India on numerous occasions. The rule of "separate legal personality" is meant to foster commercial certainty by allowing companies to operate separately irrespective of changes in ownership or management.⁷

3.2 Limited Liability

Another key feature of the modern law of companies is that of limited liability. It keeps the liability of shareholders limited to the unpaid amount (if any) on the shares they hold or to the amount they guarantee in the case of a company limited by guarantee. This means that typically shareholders are not liable for their companies' creditors.

¹ Limited Liability Act, 1855 (18 & 19 Vict. c.133) (U.K.)

² *Salomon v. A. Salomon & Co. Ltd.*, [1897] AC 22 (HL)

³ Companies Act, 1956 (Act 1 of 1956)

⁴ Avtar Singh, *Company Law* (17th edn., Eastern Book Company, Lucknow, 2023).

⁵ Joint Stock Companies Act, 1850 (India).

⁶ S. Ramaiya, *Guide to the Companies Act* (20th edn., LexisNexis, Gurugram, 2022)

⁷ *Salomon v. A. Salomon & Co. Ltd.*, [1897] AC 22 (HL)

Limited liability had a major impact on the nature of business activity, allowing people to invest in business enterprises without risking their own personal assets.¹ If investors' liability is limited to what they invest, they are more likely to invest in a company. It has helped in the development of industries, entrepreneurs and economic development by allowing companies to collect significant amounts of capital from many investors.

The protection of limited liability is not, however, complete. Courts can ignore the corporate entity when its incorporation was for the purpose of fraud, or to avoid corporate duties or to circumvent public policy. The doctrine of lifting the corporate veil is thus interpreted as an exception to the rule to keep the corporeality of a company separate and to prevent companies from being used for unlawful purposes.²

3.3 Perpetual Succession

The perpetual succession is the continuous existence of a company regardless of the change of its membership. Whereas a partnership can be terminated upon the death, retirement or insolvency of a partner, a company does not end as soon as a partner dies, retires or becomes insolvent, rather, the company continues until it is wound up in accordance with the law. The company's legal identity remains unchanged with the transfer of shares, appointment of new directors or change in ownership.

This principle plays an important part in the commercial stability by providing continuity of business. Long-term contracts, investments and commercial relationships are not affected by membership changes. Perpetual succession further provides investors with increased confidence in the company due to the fact that the company does not rely on the lives or participation of individual investors. The Companies Act, 2013 explicitly states perpetual succession as one of the features of an incorporated company in Section 9.³

3.4 Corporate Governance and Fiduciary Duties

The concept of corporate governance has become a central tenet of company law. It is the mechanism in which the companies are directed, managed and controlled to ensure accountability, transparency and fairness in corporate decision-making. Good corporate governance aims at balancing the interests of shareholders, creditors, employees, consumers and other stakeholders and striving to ensure ethical business practices.

The Companies Act, 2013 brought about substantial changes in the area of corporate governance in India.⁴ These reforms were mainly adopted in response to corporate scandals that revealed lack of corporate governance transparency in corporate practices and financial reporting, among others.⁵

Directors have a fiduciary duty to act in good faith, honestly and in the best interests of the company. They should be careful, not indulge in any conflict of interest, and not seek any benefit to themselves at the company's cost. The Companies Act, 2013 has introduced the concept of fiduciary duties in the company, which further emphasizes the responsible exercise of corporate powers and their use for the legitimate purposes of the company.⁶

3.5 Shareholder Democracy

Another key element of today's company law is that of shareholder democracy. The board of directors is the management board of a company but the actual control of the company lies in the hands of the shareholders. Shareholders attend important meetings of the company, such as the annual general meeting, and extraordinary general meeting,⁷ where they are able to attend and vote on key issues, including the appointment and removal of directors, appointment of auditors, approval of financial statements, alteration of the company's constitutional documents and approval of major corporate transactions.⁸

¹ *Bacha F. Guzdar v. Commissioner of Income Tax*, AIR 1955 SC 74

² *State Trading Corporation of India Ltd. v. Commercial Tax Officer*, AIR 1963 SC 1811

³ Companies Act, 2013, s. 9

⁴ Companies Act, 2013, ss. 149–177

⁵ *Regal (Hastings) Ltd. v. Gulliver*, [1967] 2 AC 134

⁶ Companies Act, 2013, ss. 96, 108, 169 & 241–244

⁷ Avtar Singh, *Company Law* (17th edn., Eastern Book Company, Lucknow, 2023)

⁸ Paul L. Davies & Sarah Worthington, *Gower: Principles of Modern Company Law* (11th edn., Sweet & Maxwell, London, 2021)

The Companies Act, 2013 enhances shareholders' participation, which includes the recognition of voting rights and electronic voting facilities and remedies against oppression and mismanagement, aimed at safeguarding minority shareholders from arbitrary acts by the majority shareholders. Concurrently, they foster transparency and accountability as directors are accountable to the company's members.¹

3.6 Critical Analysis

The principles of modern company law have all together made the company the most effective business organisation to conduct commercial ventures. Legal certainty is provided by the concept of separate legal personality, limited liability, perpetual succession, corporate governance, fiduciary duties and shareholder democracy, which are essential to attract investment and to foster economic development. The principles have facilitated the raising of massive capital, long-term business ventures and significant national and global economic contributions.

However, there are criticisms of these principles. Sometimes limited liability and separate legal personality are abused to avoid legal duties, to defraud. Similarly, the effectiveness of shareholder democracy is unlikely to be translated where the ownership is highly concentrated in the hands of a few controlling shareholders.² Thus, today's company law aims to strike a balance between the autonomy of the company and the proper supervision by the law through the implementation of statutory obligations, disclosure obligations, governance requirements, and judicial protection.³ This balance is captured in the Companies Act, 2013, which provides the advantages of incorporation that are familiar to shareholders while introducing increased accountability and safeguarding interests of shareholders.

4. INCORPORATION OF A COMPANY UNDER THE COMPANIES ACT, 2013

The Companies Act, 2013, requires a company to be incorporated as a distinct entity. Upon incorporation, a company becomes a legal entity of itself, and can exercise rights and incur obligations separately from its members. Incorporation is therefore considered as the cornerstone of corporate identity since it renders the association of people who want to conduct business in corporate form legally recognized. The company starts to have perpetual succession, limited liability and the power of ownership from the moment of incorporation, enter into contracts and sue in its own name. These legal implications are different from other business organisation like partnership and sole proprietorship.⁴

The Companies Act, 2013 provides a detailed procedure for the incorporation of companies. Section 3 sets out those who have authority to subscribe to the Memorandum of Association and comply with the statutory requirements of the Act to form a company. The minimum number of subscribers required for incorporation of a public company is seven, private company minimum subscribers is two and One Person Company minimum subscribers is one. There is a minimum one director requirement in every proposed company, which is a resident of India for the duration provided by the Act.⁵

The incorporation process has been greatly streamlined with the adoption of electronic filing and digital incorporation. Applications for incorporation are filed electronically in the Ministry of Corporate Affairs' integrated SPICe+ (Simplified Proforma for Incorporating Company Electronically Plus). The online procedure has provided a huge relief in terms of the reduction in procedural delays, minimisation of paperwork, and ease of doing business in India. It also allows applicants to apply for multiple statutory registrations like Permanent Account Number (PAN), Tax Deduction and Collection Account Number (TAN), Goods and Services Tax (GST) registration and Employees' Provident Fund (EPF) registration via a single integrated application.⁶

The initial step in the process of incorporation is reserving the name of the company to be incorporated. The name should adhere to the terms of the Companies Act, 2013 and Companies (Incorporation) Rules, 2014. It should not be the same as or confusingly similar to the name of an established company or registered trademark and it should not be undesirable or misleading. The Registrar of Companies has the power to refuse registration

¹ S. Ramaiya, *Guide to the Companies Act* (20th edn., LexisNexis, Gurugram, 2022).

² Companies Act, 2013, ss. 3, 149

³ S. Ramaiya, *Guide to the Companies Act* (20th edn., LexisNexis, Gurugram, 2022)

⁴ Ministry of Corporate Affairs, *Companies (Incorporation) Rules, 2014*

⁵ Companies Act, 2013, s. 4; Companies (Incorporation) Rules, 2014

⁶ Companies Act, 2013, ss. 4, 5 & 10

of names that are likely to cause confusion or are prohibited by the statute.¹ The Registrar of Companies can refuse to register the name if it is likely to cause confusion or is restricted by the laws.

Once the company name is approved, the promoters should prepare and file Memorandum of Association (MOA) and the Articles of Association (AOA). Memorandum of Association can be called a charter of the company as it sets out the company's name, registered office, objects, liability of the members, authorised share capital and information about the subscribers. The Articles of Association, which set out rules for the internal management of the company, cover matters such as the appointment and powers of directors, rules for meetings, voting rights, the issue and transfer of shares, declaration of dividends and others relating to company administration. These are all together the company's constitution.²

As per the provision of section 7 of the Companies Act, 2013, it is mandatory to file the documents such as declaration of compliance by the subscribers and professionals, proof of the registered office, director particulars, etc. prescribed under the Companies (Incorporation) Rules, 2014. The Registrar of Companies reviews these documents and issues the certificate of incorporation once he is satisfied that all statutory requirements are satisfied.³

If the Registrar is satisfied that the requirements of the Act are met, the Registrar issues a Certificate of Incorporation. The certificate is a conclusive proof that the company has been properly incorporated and has an independent legal life. The purpose of the certificate was given its proper significance in *Jubilee Cotton Mills Ltd. v. Lewis*, where it was held that the validity of incorporation ought not to be attacked, in the absence of a certificate, on the grounds of any irregularity in the incorporation procedure.⁴ This rule affords security to commercial transactions involving third parties.

The implications of incorporating are far-reaching. Most importantly the company becomes a separate legal entity which can own property, enter into contracts, borrow money and sue or be sued in its own name. Incorporation also means perpetual succession so that the company rolls on regardless of the members changing. A company limited by shares has limited liability which means that the personal assets of the members are not liable for the debts of the company beyond the amount unpaid on their shares. In addition, an incorporated company is more credible in business dealings and can easily obtain capital by raising capital by issuing shares and other securities.⁵

There are also a number of statutory duties associated with incorporation. They must keep statutory registers, draw up financial accounts every year, have statutory audits, file an annual return, and observe regulations that cover corporate governance, financial disclosure, and reporting to regulators. Possible civil penalties, prosecution or other regulatory action may apply under the Companies Act 2013 for failure to meet these obligations. Incorporation also confers legal privileges, and also imposes a full system of legal responsibility upon businesses.

The provisions for incorporation provided in the Companies Act, 2013 show a balanced approach to lawmaking.⁶ The Act streamlines company formation by introducing digital registration and streamlined procedures, but also enhances the regulation of companies to promote transparency, accountability and investor and creditor protection. Thus, the Companies Act, 2013 can be seen as an enabling mechanism to foster entrepreneurship and a tool for good corporate governance.

5. ADVANTAGES AND DISADVANTAGES OF INCORPORATION OF A COMPANY

The corporate form of business has been the most favoured one to conduct commercial activities and has its own legal and commercial benefits. Incorporation also comes with some drawbacks from a statutory perspective, compliance requirements, and corporate form abuse. For a complete picture of the importance of incorporation under today's company law, a careful analysis of both sides is necessary.

¹ Companies Act, 2013, s. 7

² *Jubilee Cotton Mills Ltd. v. Lewis*, [1924] AC 958

³ Companies Act, 2013, s. 9

⁴ Avtar Singh, *Company Law* (17th edn., Eastern Book Company, Lucknow, 2023)

⁵ S. Ramaiya, *Guide to the Companies Act* (20th edn., LexisNexis, Gurugram, 2022)

⁶ Paul L. Davies & Sarah Worthington, *Gower: Principles of Modern Company Law* (11th edn., Sweet & Maxwell, London, 2021)

5.1 Advantages of Incorporation

The establishment of a separate legal entity is one of the key benefits of incorporation. When a company is incorporated, it gains a legal personality different from the shareholders or directors of the company. This allows it to be the owner of property, enter into contracts, institute legal action and assume liabilities on its own. The company has been recognised as a separate legal entity, which means that the personal affairs of the company's members are kept separate from the company's. Legal certainty and continuity of business transactions are key benefits of this principle.¹

One of the other key benefits is the limited liability principle. A company limited by shares is a company whose shareholders are only liable to the company for the unpaid value of their shares. Generally, their personal property will not be used to pay the company's debts. Limited liability: spurs people to invest, because the risk to them is low, and they do not have to be liable for an unlimited amount. This principle has been a major factor in the industrialization and development of the capital markets.²

Another major advantage of incorporation is that the corporation continues to exist perpetually. Company always remains a company, regardless of changes in membership. A shareholder's death or insolvency or retirement or transfer of the shares is not a cause for the company's dissolution. As a result of all of this, the ownership or management of contracts or projects does not affect each other. All of this means that long-term commercial projects and contractual obligations do not interweave. This continuity will further improve the stability of businesses and investor confidence.³

Another advantage of incorporation is that businesses can raise funds in a more efficient way than other types of businesses. Public companies can raise capital by issuing shares, debentures and others securities, which can be done from many investors. Lots of financial resources allow companies to implement massive industrial, commercial and infrastructure projects which may otherwise not be able to be funded via partnerships or sole proprietorships. The principle of separation of ownership and management further promotes investment by enabling the professional managers to run the company's affairs and the shareholders to contribute capital.⁴

One of the other key benefits is improved business credibility. The incorporated companies are registered under Companies Act, 2013 and are regulated under the Companies Act and are more trustworthy for financial institutions, investors, suppliers and their customers. The company has enhanced loan capacity and investment opportunities, as well as has the potential of establishing long term commercial relationships. Meeting requirements for statutory disclosure also makes the corporate sector more transparent and builds trust in the corporate sector.

The Companies Act, 2013 has also added to the benefits of incorporation by streamlining the process of incorporation via electronic filing and using digital platforms. The SPICe+ (Single Portal for Registration of Companies and e-filing of Compliance) system has simplified the filings procedure and made it much easier to do business in India. As a result, it is now possible to start a business more efficiently and at the same time get multiple registrations like businesses and statutory ones such as GMS. Entrepreneurs can now do business more efficiently at the same time getting multiple registrations, including business registration, and statutory registrations like GMS.

5.2 Disadvantages of Incorporation

Although there are many benefits with incorporation, there are also some disadvantages. One of the key challenges is the large body of regulations that govern corporate bodies. There are several statutory obligations that companies must meet when they are incorporated, keeping statutory registers, preparing financial statements, holding annual general meetings, undergoing statutory audits, filing annual returns and other disclosure obligations. These compliance requirements raise the burden on companies and demand ongoing compliance with legal and regulatory requirements.⁵

¹ Paul L. Davies & Sarah Worthington, *Gower: Principles of Modern Company Law* (11th edn., Sweet & Maxwell, London, 2021)

² *Salomon v. A. Salomon & Co. Ltd.*, [1897] AC 22 (HL)

³ Companies Act, 2013, ss. 2(22), 3 & 9

⁴ Companies Act, 2013, s. 9.

⁵ Avtar Singh, *Company Law* (17th edn., Eastern Book Company, Lucknow, 2023)

The expense of incorporating and complying with regulations after incorporation are also a big disadvantage, especially for small businesses and start-up companies. The costs to companies include registration fees, professional fees, statutory audit fees, secretarial costs, accounting costs, tax costs and regulatory filing costs. Digital incorporation has made the process easier but has not reduced the cost of compliance significantly, compared to sole proprietorships and partnerships.

Still another drawback is the amount of control the government has over incorporated companies. The Registrar of Companies, the Ministry of Corporate Affairs, the Securities and Exchange Board of India, for listed companies and other regulatory authorities have broad powers to keep a check on the conduct of companies and also to ensure compliance of their statutory obligations. Although this kind of regulation is needed to safeguard investors and ensure the integrity of markets, it can also limit managerial flexibility and add forms and formalities to corporate decision-making.

There is also a need to be more transparent in corporate affairs to incorporate. Companies are subject to a legal duty to maintain books of account, draft audited financial statements, make disclosures and provide information about directors, shareholding and important company transactions, and submit a number of documents to regulatory authorities. While the requirements lead to accountability and protect investors, they also decrease the level of confidentiality that may be provided for sole proprietorships and partnerships.

One of the biggest blessings of incorporation is the doctrine of separate legal personality; the same can be a source of abuse.¹ There are a number of ways the corporate form can be misused to avoid paying taxes, avoid contractual obligations, or to engage in fraudulent activities by virtue of the separate legal identity of the corporation. This type of abuse has made it necessary for the courts to develop the concept of lifting the corporate veil, which is the principle that in certain special cases the legal personality of the company can be ignored. Judicial intervention, therefore, acts as a useful check and balances tool against the abuse of the corporate form and a tool which prevents incorporation from being used as a tool of injustice.²

Moreover, one of the most practical difficulties one faces when incorporating is that of separating ownership from management. In large companies, shareholders' presence in the day-to-day management is limited to that of the directors and professional management. The separation can create agency problems which are situations in which management's actions are not necessarily aligned with shareholders' interests.³ Managers' conflicts are minimized by the modern rules of corporate governance, independent directors, audit committees, and statutory disclosure requirements, but it is impossible to rule them out.

The disadvantages of incorporation, overall, are mostly regulatory, and stem from the legal obligations that come with being incorporated. The commitments are designed to create transparency, accountability and protection of stakeholders, not to stop incorporation. The incorporation process does have some steps and costs, but the legal and commercial advantages of incorporating far outweigh the disadvantages, especially for businesses looking to engage in any long-term commercial activities or expand their operations to be large-scale.⁴

6. CRITICAL ANALYSIS AND SUGGESTIONS

The Companies Act, 2013 is a major step forward in corporate law in India that has modernised the law relating to companies and harmonised it with the best international practices in corporate governance. The Act has also made the incorporation process more flexible and easy because it allowed for electronic registration, increased the directors' accountability, increased the disclosure requirements, and added investor protection measures. These changes have helped to make India's business environment more conducive to businesses and have facilitated entrepreneurship by streamlining and making the process of company formation more transparent and efficient.

In spite of these advances, there are still some practical issues. Overall, the compliance requirements of the Companies Act, 2013, are heavy, especially in the case of small companies and start-up businesses. Formalities such as annual returns, registers, audits, Board of Directors' meetings, and corporate governance can add to the

¹ Companies Act, 2013, ss. 92, 96, 129, 134, 137 & 139

² *Gilford Motor Co. Ltd. v. Horne*, [1933] Ch. 935; *Delhi Development Authority v. Skipper Construction Co. (P) Ltd.*, (1996) 4 SCC 622

³ Paul L. Davies & Sarah Worthington, *Gower: Principles of Modern Company Law* (11th edn., Sweet & Maxwell, London, 2021)

⁴ S. Ramaiya, *Guide to the Companies Act* (20th edn., LexisNexis, Gurugram, 2022)

expenses of newly incorporated firms. These are essential to ensure transparency and accountability, but can deter small business owners with limited financial and administrative resources.

Another issue has to do with the misuse of the corporate form. While the doctrine of separate legal personality was necessary to stimulate investment and commercial development, it has sometimes been used for the purpose of tax avoidance, hiding a transaction, or breaking a contract or of defeating the rights of creditors. The doctrine of lifting the corporate veil, which is available in the Indian courts, has dealt with such situations by not allowing the privileges of incorporation to be abused by individuals. However, improved enforcement and prompt action by the regulators are still required to stop corporate misbehaviour.

The increasing digitisation of company administration has doubtless made incorporation and compliance with the regulations easier. But it demands increased knowledge and understanding on the part of entrepreneurs about the statutory requirements following incorporation. One of the main reasons for many newly incorporated companies being non-compliant when submitting their legal paperwork is lack of knowledge, not from a malicious intent. Greater technology, simplified compliance for small companies and periodic awareness programmes could help to drive a positive change in regulatory compliance without sacrificing accountability.

Given the above difficulties, some changes could help further improve the effectiveness of company law in India. The compliance regime for smaller businesses and start-ups could be streamlined in order to minimise burdensome procedural hurdles but ensure key protections for creditors and investors. There is also a need to put more focus on improving corporate governance and conduct refresher training for directors and tighten the regulatory oversight of companies with multiple violations. In addition, the efficiency of dispute resolution procedures in corporate law should be enhanced to facilitate the speedy resolution of commercial disputes and to provide more certainty for investors.

In general, the Companies Act, 2013 has created a well-adopted legislation that aims at enhancing the economic development with a responsible corporate behaviour. Legislative scrutiny and robust enforcement will continue to be necessary to meet the challenges of fresh technological advances, globalisation and ever more sophisticated corporate organisations.

7. CONCLUSION

In the transition from older to newer company law, the older law, which was based on special privileges bestowed by the sovereign, has developed into an extensive codified set of rules that govern corporate activity to the benefit of both the company itself and society. The doctrine of incorporation has formed the backbone of this doctrine by establishing an entity with the power to own property, enter into contracts and conduct business outside the members. Separate legal personality, limited liability, perpetual succession, fiduciary duties of directors and the principle of shareholder democracy remain cornerstones of corporate law and continue to inspire certainty in the commerce and economic prosperity.

Companies Act, 2013 has brought a lot of changes and reforms in company law in India which has modernized the Indian law in order to enhance transparency, accountability, investor protection and thereby improving the corporate governance of the companies. The simplified incorporation process and digital registration system has fostered entrepreneurship and provided increased regulatory oversight. Concurrently, the Act brings in statutory provisions that aim to strike a balance between corporate autonomy and public interest and stakeholder protection.

The study concludes that the incorporation offers significant legal and commercial benefits such as limited liability, perpetual succession, increased credibility and access to capital. There are additional compliance requirements, regulatory oversight and the potential for opportunistic use of the corporate form, however. The doctrine of "lifting the corporate veil" and other judicial safeguards prevent the use of the privilege of incorporation for fraudulent or improper purposes.

To conclude, incorporation is one of the most important innovations in commercial law. It is not just the legal rights granted to businesses that are the key to its success, but also good corporate governance, corporate responsibility, and compliance with the laws. Entrepreneurship along with accountability needs to be promoted through a balanced approach to bolster corporate governance and sustainable economic development of India.

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