

MOHANLAL SUKHADIA UNIVERSITY, UDAIPUR

FACULTY OF LAW

THIRD YEAR BACHELOR OF LAWS

PAPER – V (PAPER CODE - 8005)

PAPER NAME – **COMPANY LAW**

Unit-I Definition of Company, Kinds of Company, Corporate Personality, Incorporation of Company, Memorandum and Articles of Association. Promoters and Preliminary Contracts, Prospectus and Allotment of Securities.

THE COMPANIES ACT, 2013

(Amended in 2015, 2017 & 2019)

Historical background of Company law in India:

(भारत में कम्पनी विधि की ऐतिहासिक पृष्ठभूमि)

- 1- Joint Stock Companies Act, 1850 was a first written legislation. (based on British Companies Registration Act, 1844)
(मिश्रित पूंजी कम्पनी अधिनियम, 1850)
- 2- The Companies Act, 1866 (Previous Act repealed)
- 3- The Companies (Consolidation) Act, 1882 (Previous Act repealed) (कम्पनी समेकन अधिनियम, 1882)
- 4- The Companies Act, 1913 (based on British Companies (consolidation) Act, 1908)
- 5- The Indian Companies (Amendment) Act, 1936 (based on British Companies Act, 1929)
- 6- The Indian Companies (Amendment) Act, 1951

7- The Companies Act, 1956 (on the recommendation of Bhabha committee, which came into force on 1st April, 1956)

PREAMBLE: An Act to consolidate and amend the law relating to companies.

SECTION -1: Short title, extent, commencement and application-

This Act may be called the Companies Act, 2013. It extends to the whole of India.

SECTION -2: Interpretation clause- (94 terms defined in this section)

Introduction:

The Companies (Amendment) Bill, 2011 was passed by the House of People on 18th December, 2012 and the Council of the States on 8th August, 2013 and assent of the President of India received on 29th August, 2013 and was notified in the official gazette on 30th August, 2013 for public information stating that different dates may be appointed for enforcement of different provisions of the Companies Act, 2013 through notification. Section 1 came into force on 30th August, 2013 and so on. The entire Companies Act, 2013 has been divided into 29 chapters 470 sections and 7 schedules. The Companies Act, 2013 aims to improve corporate governance, simplify regulations and strengthen the interest of investors.

Meaning and definition of Company:

A Company is an organization that sells goods or services in order to make money. A Company is an artificial, invisible, intangible and created by or under law.

Definition of Company:

- 1- The Companies Act, 2013 Section 2 (20) r/w (67): A company incorporated under this Act or under any previous company law.
- 2- Justice James: Company means an association of persons united for a common purpose.
- 3- Justice Charlesworth: A Company is an artificial person incorporated for certain specified objects.
- 4- Prof. Haney: Company is an artificial person created by law having a separate legal entity with a perpetual succession and a common seal.
- 5- Lord Justice Lindley: LJ Lindley has defined a company as “an association of many persons, who contribute money or money’s worth to a common stock and employ it for a common purpose.
- 6- Lord Justice Marshal: A company is an artificial person, invisible, intangible and existing only in the eyes of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it, either expressly or an incidental to its very existence.

Characteristics of Company:

1. Limited liability
2. Social form of company
3. Citizenship
4. Voluntarily association.
5. Common seal
6. Separate legal entity
7. Right to sue and be sued
8. Separate property
9. Perpetual succession
10. Incorporation association
11. Transferability of shares

Kinds of Company:

1. Chartered Company

2. Statutory Company

- a) Banking Act, 1949
- b) Electricity Act, 2003
- c) LIC Act, 1938
- d) Food Corporation Act, 1964
- e) SEBI Act, 1992

3. Registered Company

a) On the basis of members liability

- Limited by Shares (The C.A, 2013 Section 2(22))
- Limited by Guarantee (The C.A, 2013 Section 2(21))
- Unlimited Company (The C.A, 2013 Section 2(92))

b) Number of members

- One person company (The C.A, 2013 Section 2(62))
- Private company (The C.A, 2013 Section 2(68))
- Public company (The C.A, 2013 Section 2(71))

c) Others

- Charitable company (The C.A, 2013 Section 8)
- Government company (The C.A, 2013 Section 2(45))
- Foreign company (The C.A, 2013 Section 2(42))
- Small company (The C.A, 2013 Section 2(85))
- Illegal association (The C.A, 2013 Section 464)
- Subsidiary and holding company (The C.A, 2013 Section 2(87) (46))
- Public financial institution (The C.A, 2013 Section 2(72))

CORPORATE PERSONALITY: निगमित व्यक्तित्व

As per the law, a corporation is an artificial person. It has the ability to enjoy rights, fulfill its duties and hold property in its own name. Hence, the concept of corporate personality is a singular creation of the law. The best example of this is the corporate personality of a company under the Companies Act, 2013. The doctrine of Corporate personality was approved for the first time in a leading case **Soloman vs Soloman & Co. Ltd. (1897) A.C 22 (1895-99) All E.R. 33 (H.L)**. A corporation has a personality of its own which is different from the personalities of the individuals. A corporation can sue and be sued. A Corporation can enter into contracts. A Corporation can have property and rights and duties. It does not die in the way natural persons. Law provides special procedure for the winding of a corporation.

CORPORATION - निगम/कम्पनी

A corporation or Company is an artificial or fictitious Person created by the personification of a group or a series of individuals. The individuals forming the corpus of the corporation is called its members. In simple words, it is an organized the body of coexisting or successive persons, which by a legal fiction is regarded and treated as itself a person. There are two types of Corporation, Corporation aggregate or Corporation sole. The municipal corporation or company incorporated and registered under the Companies Act is an example of Corporation aggregate, on the other hand, a sovereign is a corporation sole.

A corporation is either a corporation aggregate or a corporation sole.

एक निगम या तो सकल निगम या फिर एकल निगम होता है।

There are two kinds of Corporation or a Company- निगम/कम्पनी के दो प्रकार है।

1) Corporate Aggregate and 2) Corporate sole.

1) Corporation Aggregate - सकल निगम

A Corporation aggregate is an incorporated group or body of coexisting persons United for the purpose of advancing certain points of interests. The number of corporations aggregate is very large and they are of various kinds. Their importance is also very

great in the field of law. Thus, we have a very large number of Limited companies having millions of shareholders spread in different parts of the world. It is to be observed that a limited company is something different from its shareholders. It has a personality of its own which is different from its shareholders. The property of the company is not the property of the shareholders. The assets and liabilities of the company are different from those of its members. A company can contact with its shareholders. It is liable for tort. Even if the member of shareholders is reduced to one the shareholder and the company are two distinct persons.

2) Corporation sole - एकल निगम

Corporation Sole is an incorporated series of successive persons. It is a corporation, which has one member at a time. It is a body of politic having a perpetual succession. It is constituted in a single person who, in right of some office or function, has the capacity to take, purchase, hold and demise land and hereditaments. A corporation sole is perpetual but there may be and mostly are periods in the duration of corporations sole, occurring irregularly, in which there is vacancy or no one in existence in whom the Corporation resides and is visibly represented.

THEORIES OF CORPORATE PERSONALITY- निगमित व्यक्तित्व संबंधी सिद्धांत

There are many theories of Corporate Personality. Different Jurists propounded different theories to explain the nature of corporate personality, but the best-known theories of a Corporate Personality are as follows:

1) Fiction Theory: परिकल्पना सिद्धांत

The Fiction theory was propounded by Savigny. According to Savigny "a personality is attached to corporations, institutions and funds by a pure legal fiction. The Personality of Corporation is different from the personality of its members, that means there is a double fiction in the case of Corporation. Salmond, Kelson, Grey and Holland are the supporters of his theory. According to Salmond, corporation is nothing more than the outcome of metaphor and fiction. The main defect of this theory is that it exists in the eyes of law only.

2) Realist theory: यथार्थता सिद्धांत

Realist Theory was propounded by the great German Jurist Gierke. It was followed by Sir Fredrick Pollock, Geldart, Maitland etc. According to Gierke, Corporation is a real but mysterious entity, every group has a real mind, a real will and real power of action. According to this theory, every group comes to have personality of its own whether that group is social or political one.

3) Bracket Theory: कोष्ठक सिद्धांत

Thering is the chief exponent of Bracket theory. Bracket theory is also known as symbolise theory. According to this theory, the members of a corporation are the bearers of the rights and duties which are given to the corporation for the sake of convenience. It is not always practicable or convenient to refer to all the innumerable members of a corporation. A bracket is placed around them to which a name is given. That bracket is the corporation. The weakness of this theory lies in the fact that it is not able to indicate when the bracket may be removed and the mask lifted for the purpose of taking note of the members constituting the corporation.

4) Concession Theory: रियायत सिद्धांत

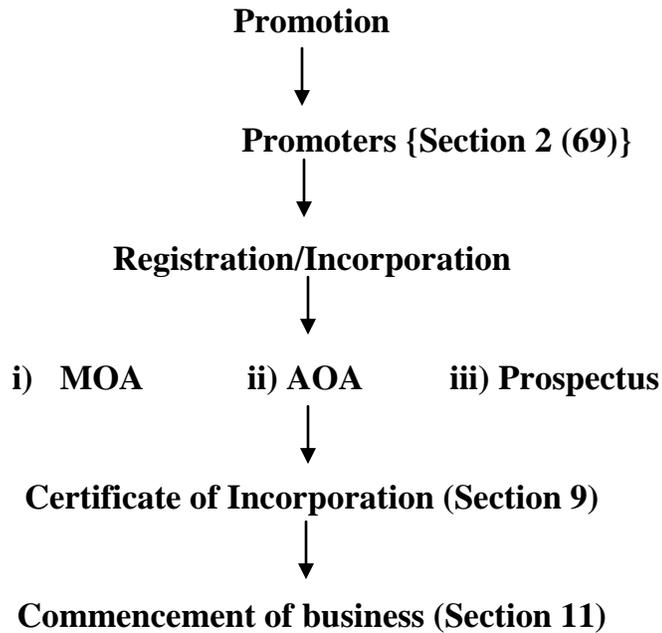
Salmond, Savigny and Dicey are the main supporters of this theory. According to this theory, the only realities are sovereign and individual. The other groups cannot claim recognition as persons. They are treated as persons merely by a concession and the part of the sovereign. Legal personality is conferred only by law. Corporate personality is nothing but a concession given to group or body of individuals by law to act as one body.

5) Purpose Theory: प्रयोजन सिद्धांत

According to this theory, Personality is only enjoyed by human being. German jurist Brinz and Bekker are the main supporter of this theory. Salmond criticised this theory, According to him, it is not applicable to a corporation sole.

LIFTING THE CORPORATE VAIL: कम्पनी के कार्यो के वास्तविक उद्देश्यों को जानने के लिए निगमित कम्पनी और उसके सदस्यों के बीच का पर्दा उठाना आवश्यक होता है ताकि वस्तु स्थिति स्पष्ट हो जाए।

Promotion and incorporation of a company (Section 3):



1. Promotion
2. Registration
3. Raising of capital
4. Certificate of incorporation
5. Commencement of business

Promoter [Section 2(69)]

1. Legal position of promoters
2. Rights and duties of promoters
3. Liabilities of promoters
4. Remuneration of promoters
5. Pre- Incorporation contracts by promoters

कम्पनी अधिनियम, 2013

क. कम्पनी की परिभाषा—

1. कम्पनी अधिनियम, 2013 की धारा 2 (20): कम्पनी से आशय इस अधिनियम या पूर्व के किसी कम्पनी अधिनियम के अंतर्गत निर्मित कम्पनी से है।
2. न्यायाधीश जेम्स : कम्पनी से आशय किसी सामान्य उद्देश्य के लिए निर्मित बहुत से व्यक्तियों के संघ से है।
3. न्यायाधीश चार्ल्सवर्थ : कम्पनी एक कृत्रिम व्यक्ति है, जिसका निर्माण कुछ विशिष्ट निर्धारित उद्देश्यों के लिए हुआ है।
4. प्रोफेसर हैने : कम्पनी विधान द्वारा निर्मित एक कृत्रिम व्यक्ति है, जिसका एक पृथक विधिक अस्तित्व एवं शाश्वत उत्तराधिकार होता है और जिसकी एक सार्वमुद्रा होती है।
5. न्यायाधीश लिण्डले : कम्पनी से आशय कई व्यक्तियों के ऐसे संघ से है जो पूंजी/मनी या पूंजी/मनी के बराबर कोई अन्य सम्पति एक संयुक्त कोष में अंशदान करते हैं, जिसका उपयोग किसी सामान्य उद्देश्य की पूर्ति के लिए करते हैं।
6. न्यायाधीश मार्शल: कम्पनी अदृश्य व अमूर्त होने के कारण एक कृत्रिम व्यक्ति है जिसका अस्तित्व केवल विधिक दृष्टि से होता है। विधि द्वारा निर्मित होने के कारण इसकी वे ही विशेषताएं होती है जो इसको निर्मित करने वाला विधान इसे स्पष्ट रूप से प्रदान करता है, जो कि इसके अस्तित्व के लिए अति आवश्यक है।

ख. कम्पनी की विशेषताएं—

1. कम्पनी का दायित्व सीमित होता है।

2. कम्पनी का एक सामाजिक स्वरूप होता है।
3. कम्पनी एक नागरिक नहीं होता है।
4. कम्पनी एक स्वैच्छिक संघ होता है।
5. कम्पनी की एक सार्वमुद्रा होती है।
6. कम्पनी पर वाद दायर किया जा सकता है और कम्पनी को भी वाद दायर करने का अधिकार होता है।
7. कम्पनी का एक पृथक विधिक अस्तित्व होता है।
8. कम्पनी की सम्पति भी पृथक होती है।
9. कम्पनी का एक शाश्वत उत्तराधिकार होता है।
10. कम्पनी के अंशों का अंतरण किया जा सकता है।
11. कम्पनी एक समामेलित संघ होता है।

LEADING CASES

1- Aron Saloman v/s Soloman & Co. Ltd. 1897, AC 22.

Facts: (CORPORATE PERSONALITY TOPIC)

Mr. Salomon had incorporated his long standing personal business of shoe manufacture into a limited company. He held 20,001 shares and the other 6 members of his family each got one share making a total of 20,007 shares. The company failed after sometime. The debentures in the company were held mainly by Broderip and Mr Salomon himself. Upon liquidation of the company, Broderip got back his share of debenture money. The rest was taken up by Mr. Salomon himself as he was the next big secured debenture holder. Therefore the minor unsecured creditors got nothing from the liquidation.

Issue:

Should the amount that was paid to Mr. Salomon, the major debenture holder, be paid back to the company and distributed amongst the minor unsecured creditors?

Holding:

High Court – Company is an agent of Mr. Salomon. He should pay the Company's debt.

Court of Appeal – Agreed with the HC. Decision upheld.

House of Lords – The Company was a separate legal entity and a distinct independent corporation. A majority shareholder does not own the Company. The Company will not lose its identity to the majority shareholder.

Rationale:

The Company is a separate legal entity.

The creditors of a company cannot sue the company's shareholders to pay the company's debts.

2- Ashbury Railway Carriage & Iron Co. Ltd. VE. Riche 1875 LR 7, HL 653

Facts:

In this case the objects set out in the company's memorandum were "to make and sell, or lend on hire, railway carriages and wagons, and all kinds of railway plant, fittings, machinery and rolling stock; to carry on the business of mechanical engineers and general contractors; to purchase, lease, work and sell mines, minerals, land and buildings; to purchase and sell as merchants, timber, coal, metals, or other materials, and to buy any such materials on commission or as agents." The Directors of the Company entered into a contract with Riche for financing a construction of a railway line in Belgium. The Contract was ratified by all the members of the company, but later on it was repudiated by the Company. Riche sued the company for the breach of contract.

Issue:

Whether the contract was valid and if not, whether it could be ratified by the members of the company?

Held:

The contract was beyond the objects as defined in the objects clause of memorandum and therefore it was void, and

The Company had no capacity to ratify the Contract.

The contract of employment with Mr Riche was **ultra vires** for the words in the objects clause 'to make sell or lend on hire..... all kinds of railway plant to carry on the business of mechanical engineers and general contractors' **DID NOT** extend to the construction of an actual railway line.

An ultra vires act or contract is void because the Company lacks the capacity to make such contract, how can they have capacity to ratify it. If the shareholders are permitted to ratify an ultra vires act or contract, it will be permitting to do the Act which Parliament is prohibiting to do so.

The Company incorporated under the Companies Act has power to do only those things which are authorized by its object clause of its memorandum and anything not so authorized (expressly or impliedly) is ultra vires the company and cannot be ratified or made effective even by unanimous agreement of the members.

The Directors were made personally liable.