
CORPORATE LAW IN A GLOBALIZED ERA: REIMAGINING INDIA'S REGULATORY FRAMEWORK THROUGH A COMPARATIVE LENS

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ABSTRACT

The corporate form of business has emerged as the dominant model for commercial activity due to its structural and economic advantages. Corporate laws play a vital role in regulating business entities while simultaneously promoting economic growth through transparency, accountability, and ease of doing business. This paper undertakes a comparative analysis of corporate laws in select developed jurisdictions namely the United States, the United Kingdom, and Singapore with India's Companies Act, 2013. Adopting a doctrinal and analytical methodology, the study examines the evolution of corporate law in India, identifies gaps in the existing regulatory framework, and evaluates whether the Act effectively addresses contemporary economic and corporate governance challenges. The paper further analyzes global trends in company law, particularly in the context of increasing digitalization and evolving governance standards, and assesses the feasibility of adapting select foreign legal principles to India's socio-economic conditions. Relying primarily on secondary sources such as books, journal articles, and credible online materials, the study concludes with suggestions aimed at strengthening India's corporate regulatory regime.

I. Introduction

Corporate governance constitutes a dynamic legal framework that significantly influences a nation's economic stability and growth. In an increasingly globalized and digitized business environment, corporate law must balance regulatory oversight with the flexibility necessary to encourage entrepreneurship, investment, and innovation. An effective corporate legal regime not only ensures accountability and protection of stakeholder interests but also facilitates sustainable business development.¹

India's Companies Act, 2013 marked a significant shift from a control-oriented regime to a governance-focused framework emphasizing transparency, accountability, and ethical corporate conduct. The legislation introduced several progressive reforms, including One Person Companies, enhanced duties and responsibilities of directors, and mandatory corporate social responsibility provisions.² However, evolving business models, rapid digital transformation, and heightened expectations relating to Environmental, Social, and Governance (ESG) standards have necessitated a critical evaluation of the Act's adequacy and adaptability.³

This paper undertakes a comparative study of India's corporate law framework alongside those of the United Kingdom, the United States, and Singapore jurisdictions that represent distinct regulatory philosophies and approaches to corporate governance. By examining key features such as directorial obligations, shareholder rights, compliance mechanisms, and digital governance practices, the study seeks to identify best practices and assess their potential relevance within the Indian context.

The analysis aims to contribute to the ongoing discourse on corporate law reform in India by emphasizing the need for a balanced legal framework one that ensures regulatory certainty while remaining flexible enough to respond to emerging economic and technological challenges. Through this comparative exploration, the paper seeks to offer insights that may

¹ Reinier Kraakman et al., *The Anatomy of Corporate Law: A Comparative and Functional Approach* 1–3 (3d ed., Oxford Univ. Press 2017).

² Ministry of Corporate Affairs, Govt. of India, Report of the Expert Committee on Company Law ¶¶ 4.1–4.7 (2005).

³ Umakanth Varottil, Evolution and Effectiveness of Independent Directors in Indian Corporate Governance, 37 *Hastings Int'l & Comp. L. Rev.* 175, 182–89 (2014).

assist in strengthening India's corporate governance regime in alignment with global standards and domestic realities.⁴

II. Salient features of corporate laws around the world.

1. UK⁵

The following are the salient features of their Companies Act 2006

- 1.1 Section 7 prescribes the mode of forming a company and one or more persons to subscribe to the memorandum having lawful objects. The main criteria is that there has to be a lawful purpose and more than 1 person. It also prescribes the member to be personally liable if a company carries on business with less than 2 members for a period of more than 6 months.
- 1.2 Section 763 prescribes the minimum capital to be 50000 euros and no company can be formed with a capital lesser than the amount specified.
- 1.3 Interestingly they do not consider the doctrine of constructive notice and even if a 3rd party is aware that a director is acting outside the defined authority, the burden of proving lies on the company to show mala-fide intent of the 3rd party.⁶
- 1.4 Section 724 allows a company to hold its own shares by way of treasury shares and the name of company is entered into the register of members.⁷
- 1.5 Section 154 requires 2 directors in case of a public company and 1 director in case of a private company.
- 1.6 Section 157 prescribes the minimum age of director to be 16 years
- 1.7 Section 160 states that directors in public companies are to be voted individually. There cannot be a single resolution for appointing multiple directors

⁴ William L. Cary, Federalism and Corporate Law: Reflections Upon Delaware, 83 Yale L.J. 663, 666–70 (1974).

⁵ Paul Heyman, International Corporate Fraud (Frank H. Easternbook Publ'g UK 2016).

⁶ Paul L. Davies & Sarah Worthington, Gower and Davies: Principles of Modern Company Law ¶¶ 7-10 to 7-12 (11th ed., Sweet & Maxwell 2021).

⁷ Ellis Ferran, Principles of Corporate Finance Law 145–48 (2d ed., Oxford Univ. Press 2014).

- 1.8 Sec 161 protects the outsiders as any act done by a director when purporting to act as one will not be vitiated by virtue of any irregularity in appointment or holding of office
- 1.9 Sections 162 to 165 prescribe the manner, place and obligations regarding maintenance of the register of directors.
- 1.10 Section 168 lays down procedure to remove director, it can be done by way of ordinary resolution and requires special notice
- 1.11 Section 171 lays down duties of directors, it places an obligation for the directors to act in accordance with company's constitution. Sections 172 to 177 further elaborate on various roles to be performed by directors which include: to promote success, independence of judgment, use of reasonable care, declare interest in a transaction if any.⁸
- 1.12 Section 420 and 422 requires a report to be prepared and affirmed by the secretary regarding remuneration of each director.
- 1.13 Section 439 requires the approval of members, of the Director's remuneration report. Although the payment of remuneration is not subject to approval by members, the existing directors have to place the report or will be subject to penal liability.
- 1.14 Section 270, 271 and 273 deal with qualification, duty and function of secretary. It is interesting to note that even a Chartered Accountant can perform the role of a secretary provided he is of requisite knowledge and experience. Section 275 lays down the place and maintenance of register of Secretaries. As per Section 276 any changes in secretary or non-compliance must be reported to registrar within 14 days.
- 1.15 Section 386 specifies duty to keep accounting records which must be of reasonable accuracy and sufficient to show transactions of company. Companies involved in trading of goods must specify stock held at the end of each financial year.
- 1.16 Public companies are required to preserve records for 6 years from the date they have been made whereas private companies are required to preserve records for 3 years from the date

⁸ Andrew Keay, *The Duty to Promote the Success of the Company: Is it Fit for Purpose?*, in *The UK Companies Act 2006: A Commentary* 169, 172–75 (John Lowry & Arad Reisberg eds., 2d ed., Bloomsbury 2020).

they have been made- Section 388.

1.17 The directors must approve financial statements only if they are satisfied with their accuracy and not otherwise- Section 393

1.18 Observations:

First off, we can see a lot of similarity in the provisions of our companies Act and theirs. Members to be personally liable if number of members drop below prescribed limit, maintenance of registers and records and procedure to remove director, are all provisions that are very similar to our companies Act, the only difference is that our laws are more draconian in nature (example: No of directors required are higher in our country). However there is a stark difference when it comes to the provision of treasury shares. India a company is not allowed to hold shares in its own name, after a buyback the shares are to be destroyed. The company's own name cannot be entered in its register of members.

2. USA

Since USA is a federation of states, we must look at things from two different perspectives. As, here corporate law is a subject matter of the State whereas security laws and matters of corporate governance are subject matters of the Federation. Interestingly, the existence of 50 different legislations for corporates hasn't caused any chaos rather it has resulted in competition among states to draft better laws so as to facilitate incorporation of more companies in that particular state. In order to govern the securities market, there has been established the Securities Exchange commission which has grown to be one of the most powerful agencies in its class.⁹

The one downfall of such a system is that, there have been numerous questions regarding jurisdiction of the SEC as to what constitutes a Security law matter and as to what constitutes a company law matter (Example: a matter involving takeover)

Salient features- For all academic purposes and for the most part, we must refer the American

⁹ Robert B. Thompson & Hillary A. Sale, Securities Fraud as Corporate Governance: Reflections upon Federalism, 56 Vand. L. Rev. 859, 872–80 (2003).

Bar Association Model Business Corporations Act (MBCA)¹⁰

- 2.1 Section 8.42 deals with standards of conduct for officers. It requires officers to act in good-faith and with reasonable care. It further places a requirement that officers are to inform to their seniors in a timely manner regarding the affairs of company and any other matter which is deemed necessary.
- 2.2 Section 8.43 is regarding resignation and removal of officer. Interestingly, here there is not much any role of shareholders, a senior officer can simply remove a subordinate officer.
- 2.3 Annual meeting is specified under Section 7.01. The company is free to decide the date of annual meeting in accordance with its articles. Annual meeting can be held at a place other than its principal office if mentioned in its bylaws. Failure to hold annual meeting doesn't vitiate any action taken by the corporate.
- 2.4 Special meeting under Section 7.02 states that a special meeting can be called by any of the directors or persons mentioned in the articles. Shareholders holding greater than 10% voting right can also require a special meeting to be held. The bylaws of the company can override the section and cause a lower or higher percentage (not exceeding 25) to be required to call a special meeting.
- 2.5 Section 7.25 has an interesting take on quorum and voting rights of meeting groups. Subject to the articles of the company the general requirement is that majority of the members entitled to vote must be present and majority of votes if casted in favor results in that resolution being passed.
- 2.6 Section 16.01 requires a permanent record of the minutes of meeting to be kept and reasonable accounts are to be maintained in the principal office open for inspection.
- 2.7 As per section 8.02 a director has to be a minimum of 19 years old and need not be a resident of that state or a shareholder unless the articles require otherwise.
- 2.8 Meetings by Board are given under Section 8.20 and requires the board to meet at regular intervals and states that all directors are permitted to attend a meeting, subject to by laws of

¹⁰ Model Bus. Corp. Act Ann. (Am. Bar Ass'n, rev. ed. 2016).

the company.

2.9 Number and election of directors under Section 8.03, only when a variation of more than 30% of directors is to be done, the shareholder's approval is required.

2.10 Board may consist of one or more individuals or as required by the articles.

Apart from these the Sarbanes Oxley Act plays an important role of which the most important sections are Section 302, 404 and 802.

2.11 Section 302 mandates that the senior officer gives a personal certification regarding the authenticity and correctness of financial statements¹¹

2.12 Section 404 is really a double edged sword as it requires the establishment of a rigorous well rounded internal control system. On one hand it improves accountability but on the other hand it becomes a very expensive process.

2.13 Section 802 is regarding maintenance of records. It has three parts to it, first part deals with destruction and falsification of records. Second part deals with duration of preservation and third part deals with preservation of certain records such as electronic communication.

2.14 SOX promotes fairness to shareholder, disclosure and accountability of management.

2.15 Observations

We can see a drastic change in the laws applicable in {UK/India} and USA. This also has largely to do with the structure of the State i.e. the governance mechanism. The laws here are very liberal and give a great deal of flexibility by allowing the company to choose the level of regulation, as required, by means of their articles.¹²

In India as per section 6 the Act overrides the Aloe and MoA but here in USA the articles have been given power to supersede and decide regarding majority of matters. In India non conductance of AGM is seen as a serious offense whereas in the U.S it is not a great deal. This

¹¹ John C. Coffee, Jr., Gatekeepers: The Professions and Corporate Governance 195–205 (Oxford Univ. Press 2006).

¹² Vikramaditya Khanna, The Convergence of Corporate Governance Systems and the Increasing Role of Courts: The Indian Experience, in Research Handbook on Comparative Corporate Governance 437, 440–45 (Afra Afsharipour & Martin Gelter eds., Edward Elgar 2021).

largely due to the prevailing circumstances, only because this level of flexibility is given companies choose to get incorporated and it suites the needs of the prevailing circumstance. This level of flexibility would largely prove detrimental to interest of public in a country like ours.¹³

3. Singapore

It was in the year 1967 when the first enactment regarding companies was enacted in Singapore. In due course it has now undergone significant amount of change. In lieu of technological advancement and globalization the changes that took place were a must.¹⁴

In the year 1999 a committee known as Company Legislation and Regulatory Framework Committee (CLFRC) was formed. It aims at providing a regulatory framework which will promote a competitive economy. The said committee gave 77 recommendations in a span of 3 years, all of these recommendations were accepted by the government. To give effect to these recommendations major amendments were made in the years 2004 and 2005 to the 1967 Act.¹⁵

Salient Features

3.1 Company to have a minimum of one member and no association of members greater than 20 to do business in any form other than that of a company. (Section 17)

3.2 Shares to not be issued at par w.e.f 30th January 2006 (Section 62A)

3.3 Company can hold own shares and deal with them as provided hereunder (Section 76 H)

3.4 Disposal of treasury shares can be done by way of sale, stock option to employees, cancellation or as the minister may prescribe. (Section 76K)

3.5 Treasury shares not to exceed 10% of class of shares (in case of multiple classes of shares) or 10% of aggregate shares (In case company holds only single class of shares)- Section 76I

¹³ Franklin A. Gevurtz, Corporation Law 85–90 (3d ed., West Academic 2016).

¹⁴ Christopher M. Bruner, Corporate Governance in the Common-Law World: The Political Foundations of Shareholder Power 214–18 (Cambridge Univ. Press 2013).

¹⁵ Hans Tjio, The Making of Singapore's Corporate Law, 18 Sing. Acad. L.J. 1, 5–12 (2006).

3.6 Observations

Provisions given hereunder have a more balanced approach where there is requirement of strict provisions such as in the case of Audit committee and in the case of Annual general meeting, sufficient safeguards have been given and in other cases even though certain measures have been prescribed there is a sense of flexibility involved.¹⁶

III. Conclusion

The comparative analysis reveals that India's corporate legal framework is among the most stringent, drawing heavily from the UK model but with added layers of compliance. While this rigidity aims to protect stakeholders in a diverse and complex economy, it may also stifle innovation and ease of doing business.

Jurisdictions like the U.S. and Singapore demonstrate that strategic flexibility whether through treasury shares, flexible meeting protocols, or adaptable incorporation rules can enhance corporate agility without undermining governance. India has taken positive steps with the introduction of OPCs and dormant companies, but more can be done.

As we move deeper into the 2020s, marked by digital transformation, remote governance, and ESG (Environmental, Social, and Governance) imperatives, Indian corporate law must evolve. Reforms could include adopting treasury shares, further digitalizing compliance, streamlining board procedures, and embracing principles-based governance where appropriate.¹⁷

Ultimately, corporate law must be dynamic responsive to global trends while rooted in local realities. India's challenge is to find the optimal equilibrium between regulatory oversight and operational freedom, ensuring that its corporate ecosystem is both robust and resilient. The journey toward that balance is ongoing, and continued legislative foresight will be key to India's economic aspirations in the coming decade.

¹⁶ Virginia Harper Ho, *Theories of Corporate Governance: The Philosophical Foundations of Corporate Law* 88–95 (N.Y.U. Press 2020).

¹⁷ Lynne L. Dallas, *Law and Public Policy: A Socioeconomic Approach* 305–12 (2d ed., Carolina Academic Press 2021).