

Quadrant II – Notes

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Module Name: Evolution of Company Law in India, Definition and Nature

Module No: 01

Evolution of Company Law in India

India has received several enactments from England. Company law is one such enactment which was embraced from England. In 1850 the first Company enactment was presented in India for the registration of a joint company which was based on the English Company Act 1844. The idea of limited liability was presented in the English Company Act of 1856 which was later presented in India in the year 1857. The Companies Act was altered a few times between 1850 and 1852 and the Act in 1852 repealed all other Act and stayed till 1912. The Indian Companies Act of 1913 was based on the British Companies Act of 1908. This Act experienced a few amendments. After independence it was discovered that the Companies Act must be changed to fit into the Indian situation, subsequently Companies Act 1956 was passed. This Act is currently replaced by the Companies Act 2013 which got the assent from the President on 29 August 2013.

Meaning and Definition of a Company

“Company” in the common usage refers to a voluntary association of individuals formed for the purpose of attaining a common social or economic end. Strictly speaking, the term “Company” has no technical or legal meaning. In the common law, a company is a juristic personality or legal person separate from its members. Thus, it exists only in the contemplation of law.

In other words, a company is an artificial or legal person created and devised by the laws for a variety of purposes such as promotion of charity, art, research, religion, commerce or business. The company, just like a natural person possesses similar rights and owes similar obligations, but has neither a mind nor a body of its own.

Characteristics of a Company

The definitions quoted above illuminate the principal attributes of a company, otherwise known as a corporation. They are given below:

Legal Personality

The law divides person into two kinds viz.,

- i. natural persons, and
- ii. legal persons.

Natural persons are human persons such as men, women, children etc. The natural persons are the creations of nature.

Legal persons or artificial persons, on the other hand, are created and devised by human laws i.e. created by a legal process and not through natural birth. An artificial person, though abstract, invisible and intangible, can do everything like a natural person except a few acts, which only natural persons can do.

A company is a distinct legal person, existing independent of its members. The independent corporate existence is the outstanding feature of a company.

Limited Liability

The principle of limited liability is a feature as well as a privilege of the corporate form of enterprise. In other words, the liability of the members is limited. It means that the shareholders enjoy immunity from liability beyond a certain limit. A shareholder cannot be called upon to pay anything more than the unpaid value of the share that he has undertaken to pay under a contract between himself and the company.

Perpetual Succession

As a juristic person, a company enjoys perpetual succession. In other words, a company never dies, nor its life depends on the life of its members. Even if all the members die, it shall not affect the privileges, immunities, estates and possessions of the company.

Right to Property

A company, being a legal person has a right to acquire, possess and dispose of property in its own name. Its property is not that of the shareholders. Although the members contribute the capital and assets of company, the property of the company will not be considered as the joint property of the members constituting the company.

Common Seal

The common seal is considered as the Official Signature of the company. Its common seal must authenticate all the acts. When common seal is affixed on a document, it is considered as the authoritative document of the company. The secretary of the company should keep the seal under lock and key. He should make use of it only according to the directions of the Board of Directors.

Transferability of Shares

The capital of a company is divided into several small parts known as shares. The primary objective of joint stock companies is that it should be able to transfer shares easily. The law also considers the share of a company as movable property and hence like any other movable asset, the shareholder can transfer his title over his share to some other person.

Capacity to Sue and be Sued

A company being a legal person, can sue other persons in its corporate name. Similarly, others can also sue the company in their own name. It can also be fined for contravening any law but it cannot be imprisoned for a criminal offense.

Not a Citizen

Although a company is a legal person, it is not a citizen under the Indian Constitution. It can act only through natural persons.