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# The Companies Amendment Act, 2020: An Initiative Towards Ease of Doing Business

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## ABSTRACT

*The Companies (Amendment) Act, 2020 was introduced in the Lok Sabha on 28th September, 2020 with a view to promote the ease of doing lawful business in the country by legitimizing compoundable offences and hence, helping in laying the foundation for the direct overseas listing of Indian companies in the foreign stock exchange. This is the second phase of the decriminalization campaign which had initiated its process in the Companies Amendment Act, 2019 and it is the 4th Amendment Act that was introduced after the rejuvenation of the Companies Act 2013. This research paper emphasizes on creating a deeper and detailed understanding of The Act and the different non-grievous offences like minor, procedural and technical faults in the principal act. The paper showcases various amendments proposed by the Government of India towards the 'Ease of Doing Business Grand Challenge' issued by the Hon'ble Prime Minister of India and also offers a comparative analysis between the Indian Company Law legislation and the UK Companies Act, 2006 to formulate a better understanding about the changes proposed in company law with the enactment of this act.*

## I. INTRODUCTION

The Liberalization, Privatization and Globalization process of the Indian economy paved the way for the formulation of various laws relating to setting up of industries and companies which included laws related to corporate governance. However, the repealment of the previous framework of company laws under the purview of the Companies Act, 1956 became necessary following various national and international financial debacles, spearheaded by the Satyam Scandal<sup>2</sup>, which put forth an impending question in front of the Indian government as well as the Indian and foreign investors. Also, many contributing factors like the UK Companies Act, 2006 and the J.J Irani Committee report<sup>3</sup> played a role in the formulation of

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<sup>2</sup> National Judicial Academy India, *Corporate Accounting Fraud: A Case Study of Satyam Computers Ltd.*, P-948, [http://www.nja.nic.in/P-948\\_Reading\\_Material/P-948\\_Audit\\_of\\_Fraud\\_in\\_economic\\_crimes/ACCOUNTING%20FRAUD.pdf](http://www.nja.nic.in/P-948_Reading_Material/P-948_Audit_of_Fraud_in_economic_crimes/ACCOUNTING%20FRAUD.pdf) (Last Visited 13 May 2020).

<sup>3</sup> See, Dr. J.J. Irani Committee Report( 2005) available at <http://reports.mca.gov.in/Reports/23-Irani%20committee%20report%20of%20the%20expert%20committee%20on%20Company%20law,2005.pdf> ( Last Visited 13

the Companies Act, 2013. The new companies act is a landmark legislation in corporate governance and helps in facilitating international business relations, increasing the credit worthiness of a company, mitigating fraud and investor protection among many commercial issues.

However, discrepancies arose in the new act which required persistent amendments to ensure proper functioning of both public as well as private companies, as well as, the vested interest of their stakeholders and investors. Subsequently, corporate law was reformed several times by the government to ensure proper functioning of the business and financial industry. Despite this fact, there was still a gaping hole left which was due to the reason that the business conglomerates did not have flexibility in performing business operations due to the needless restrictions imposed on them by various corporate statutes. A Company Law Committee, chaired by Shri Injeti Srinivas, was constituted in September, 2019 for the sole purpose of finding these discrepancies and providing remedial measures for the same. A report<sup>4</sup> was prepared and was presented in November, 2019, considering which, a act to decriminalize offences and help in conducting ethical business was tabled before the Parliament in the form of the Companies Amendment Act, 2020. The Minister of State for finance had put forth the act in front of the parliament, proposing 72 changes to 35 sections, which would help in decreasing the quantum of criminality of the offences and also promote the government's initiative of bolstering India's position in the World Bank's, "Doing Business Index"<sup>5</sup> vis a vis The Ease of Doing Business Grand Challenge. This was a move which was formulated by the government on 19<sup>th</sup> November, 2019 which, coupled with the updated company law legislation, would help in elevating India's place among the top economies of the world. The challenge instituted a new era of doing ethical business and gave the world an instance of how developing economies are taking different initiatives to stack up against the developed economies in all aspects within the ambit of economic development.

## **II. THE EASE OF DOING BUSINESS GRAND CHALLENGE**

### **Need for the Grand Challenge**

The International Bank for Reconstruction and Development (IBRD) or commonly referred to as the World Bank measures and compares the ranking of 198 countries and creates a

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May, 2020).

<sup>4</sup> Dr. Injeti Srivastava, Ministry of Corporate Affairs, Company Law Committee Report, 2019, [http://www.mca.gov.in/Ministry/pdf/CLCReport\\_18112019.pdf](http://www.mca.gov.in/Ministry/pdf/CLCReport_18112019.pdf), (Last Visited at 15 May, 2020).

<sup>5</sup> *Companies Amendment Act, 2020 introduced in the Lok Sabha* published at <https://economictimes.indiatimes.com/news/politics-and-nation/cos-amendment-act-2020-introduced-in-lok-sabha/articleshow/74680721.cms?from=mdr>. (Last Visited at 15 May, 2020).

consensus on the,” Ease of Doing Business” relying on various factors including, but not limited to, establishing a business, introducing a new framework for corporate insolvency and enforcing contracts among many other aspects<sup>6</sup>. It is to be noted that the apex bank in the report,” Doing Business 2015: Going Beyond Efficiency” had positioned India at 142 out of a total of 189 economies<sup>7</sup>. Upon the introduction of the Grand Challenge, India has eminently moved up 80 positions in a span of 5 years. After seeing the endangered position of the country which had its economic situation in perils, the Government took an initiative to come out of this problematic situation. The challenge issued by the Government stipulates for India to climb up the rankings with the top 50 economies of the world and the government has taken numerous measures to achieve this incredible feat. The measures pertaining to corporate governance consists of reforming the Insolvency and Bankruptcy Laws by combining various different statutes that were present in the previous regime including the Companies Act, 1956 and the Companies Act, 2013 that deal with the winding up of companies and the Recovery of Debts due to Banks and Financial Institutions Act, 1993 which deals with the setting up of Debt Recovery Tribunals (DRT) and formulating them into the Insolvency and Bankruptcy Code (IBC) in 2016. Before the introduction of the IBC, 2016, it was a tedious process for creditors to recover their debts on the default of payment by the debtors and with the introduction of the Corporate Insolvency Resolution Process (CIRP), the need for liquidation has been reduced to a minimum and updating the Companies Act with consistent amendments to ensure the promotion of the “Ease of Doing Business Grand Challenge

### **The current Scenario**

In the Doing Business Report 2020, India was ranked among the economies that had restructured their business policies and made it easier to conduct business within the country as well as universally. According to the report, the prime minister’s “Make in India” campaign which was centralized on attracting foreign investment, promote the ease of doing business by reforming policies and laws and to show India’s steadfastness and tenacity to strengthen international business relations, was the reason behind India moving up to the 63<sup>rd</sup> position in the current year’s Doing Business Index, 14 positions up as opposed to 77<sup>th</sup> position in the previous year<sup>8</sup>. The country also made improvements in starting a business

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<sup>6</sup> Ministry of Commerce and Industry, Ease of Doing Business Grand challenge available at [https://www.startupindia.gov.in/content/dam/invest-india/Templates/public/EODB%20Grand%20Challenge%20Details\\_v6.pdf](https://www.startupindia.gov.in/content/dam/invest-india/Templates/public/EODB%20Grand%20Challenge%20Details_v6.pdf). (Last Visited at 20 May, 2020).

<sup>7</sup> Press Information Bureau, Ministry of Commerce and Industry, ” World Bank 2017 report” available at <https://pib.gov.in/newsite/PrintRelease.aspx?relid=151967>. (Last Visited at 1<sup>st</sup> June 2020).

<sup>8</sup>Dr. S.P Sharma, *India jumps 14 spots in Ease of Doing Business Rankings 2020*, PHD Chamber of Industry and

wherein Memorandum of Associations (MOA) and Articles of Associations (AOA) were made electronically and relaxations were provided in the cross-border trading facilities by assimilating all the stakeholders electronically. The prominent reason for the trivial nature of the Indian economy was the non-renewal of the company legislation on a term to term basis as the present companies' act posed grave problems in terms of the ease of conducting ethical and honest business. The government undertook a resolution in this dominion and this resulted in the proposal of various new amendments for improving the relationship between the investors and stakeholders and to create an increase in the Foreign Direct Investment (FDI).

### III. PROPOSED AMENDMENTS FOR THE EASE OF CONDUCTING BUSINESS

#### Initiation of the proposed amendments

The report<sup>9</sup> published by the Company Law Committee concocted a proposal for the compartmentalization of 46 compoundable offences and started treating them as civil wrongs with civil remedies rather than imposing penal provisions on the charged offences to provide certain relaxations with respect to how business is conducted in the country and also reduce the burden on the National Company Law Tribunal (NCLT) or any other adjudicating authority. The main recommendations of the report include: -

- The compartmentalization of 23 out of the 66 compoundable offences to the appropriate adjudicating authority.
- Omitting 7 compoundable offences and limiting 11 compoundable offences to fine only
- Providing a mechanism which has the power to exclude a certain class of companies as “listed companies” in consultation with the Securities and Exchange Board of India (SEBI)
- Inclusion of benches in the National Company Law Tribunal (NCLAT)
- Giving payment to the non-executive directors in case of inadequacy of profits with similar action being taken as enlisted in the provisions for the executive directors
- Providing power to the adjudicating authority to decide on the applicability of the Corporate Social Responsibility provisions

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Commerce, <https://www.phdcci.in/wp-content/uploads/2019/10/India-jumps-14-spots-in-Ease-of-Doing-Business-rankings-2020-ranks-63rd-out-of-190-countries.pdf>

<sup>9</sup> *Id.*

Based on these recommendations furnished by the CLC, the Ministry of Corporate Affairs presented the Companies Amendment Act, 2020 to the Lower house and proposed for 72 changes in 35 sections which subsists of non-compoundable offences.

### **Decriminalization of Offences**

Corporate criminal liability had resulted in creating procedural and technical complications which led to a decrease in the availability of investors who, whether domestic or foreign, wanted to invest both their time and money in promoting the, “Make in India” initiative of the government. The dominating presence of criminality in corporate law led to the time consuming and tedious process for the companies wherein the offence that was committed was not grievous or would cause any damning legal injury to the other party. The Minister of State for Finance in the 4<sup>th</sup> Company Amendment Act, created a proposition for the decriminalization of a host of offences under the Companies Act, 2013, which includes minor and technical defaults and does not include offences like fraud, injury to public interest and any other compoundable offence. This, in turn, reduces the criminal liability imposed on the person who incurs such defaults. It was decided by the CLC that all the aspects of corporate law which involved penal provisions as remedial measures were to be mitigated by the provisions present in criminal law and the actions which led to minor, procedural or technical defaults were to be adjudicated under civil laws<sup>10</sup>.

The Act provides for the decriminalization of a total of 47 clauses within which there are 21 clauses for removal of imprisonment, 6 clauses for reduction of penalties and 20 clauses for amendment of the list of offences that will be remedied by imposing penalties instead of fines. The CLC categorized the various offences into 5 categories<sup>11</sup> in relation to the ease of doing business namely: -

<b>CATEGORY</b>	<b>OFFENCES</b>	<b>OLD PROVISION</b>	<b>PROPOSED AMENDMENT</b>
<b>A</b>	This category deals with the non-adherence to the orders of the authorities to furnish the copy of the order in case of mergers	The company would be liable to pay a fine of Rs 1,00,000 which may extend to Rs 25,00,000 and entails imprisonment which may extend to 1 year.	Amending the provision by omitting the imprisonment term and fine and imposing a penalty of Rs. 20,000 with a further penalty of Rs 1,000 per day if the default persists

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

	and amalgamations <sup>12</sup> and the powers vested with the central government to command companies to provide sufficient information and statistics <sup>13</sup>		
<b>B</b>	<p>Category B refers to the offences related to the non-sustention of the documents that are to be kept with the company like the maintenance of registers and the non-adherence to any obligation mentioned under Section 56(1)-(5)</p> <p>On the other hand, Section 128(6) provides for the sustention of the books of accounts and financial statements.</p>	The company should maintain a register consisting of the members and documents in their registered office and if there was an occurrence of any default, the company, or the members responsible would be liable to pay a fine of Rs. 50,000 which could exceed up to Rs. 3 Lakhs or 5 Lakhs or imprisonment which could extend to a period of 1 year.	<p>The new amendments proposed the following provisions: -</p> <ul style="list-style-type: none"> <li>• In the default of registration of members, the fine and imprisonment term were omitted and were replaced with the imposition of a penalty of Rs. 3 Lakhs and every officer in default was liable to pay Rs50, 000.</li> <li>• In the case of the exchange of securities between the companies, the company and the officers in default are now liable to pay a sum of Rs. 50,000.</li> <li>• The section dealing with providing the books of accounts remained unchanged as it presented the true financial situation of the company.</li> </ul>

<sup>12</sup> Section 232, Companies Act, 2013 read with Companies Amendment Act, 2020.

<sup>13</sup> Section 405(4), Companies Act, 2013 read with Companies Amendment Act,2020.

<p><b>C</b></p> <p>The offences related to the adjudication of corporate law have already been amended with the help of the recommendations from the offence committee</p> <p><b>D</b></p> <p>Offences for not adhering to the provisions related to the registration of charges and any other pursuant default for that matter</p>	<p>-</p> <p>Imposition of fine on the company amounting to Rs. 1 lakh which may stretch up to Rs 10 Lakhs. If any employee of the company is caught up in this default, he may be imprisoned for a term not exceeding 6 months or pay a fine which is not more than Rs 25,000 but does not exceed Rs 1 Lakh.</p>	<p>None under the purview of this act</p> <p>The latest amendments in corporate governance provide for the removal of any imprisonment term or fine, but, results in the levying of a penalty of Rs 5 Lakhs and every employee of the company involved in the offence is liable to pay Rs. 50,000.</p>
<p><b>E</b></p>	<p>This category deals with grievous offences that pose a threat to the company and may force the company towards liquidation and may cause serious financial loss to the various shareholders of the company. Some of these offences include:</p> <ul style="list-style-type: none"> <li>• The company secretary may in contravention to the provisions of this act certify the annual return of the company</li> <li>• A company may breach its limitations with respect to the provisions under this act in relation to furnishing of financial statements, Board's report etc. under</li> </ul> <p>The old provision in accordance with the aforementioned offences stipulates that: -</p> <ul style="list-style-type: none"> <li>• The company secretary in question is liable to pay a fine of Rs 50,000 which may extend to Rs. 5 Lakhs</li> <li>• The company which has committed the offence is liable to pay a fine of Rs. 50,000 which may extend up to Rs. 25 Lakhs and the employees involved in the offence may undergo imprisonment for up to 3 years and may have to pay a fine of Rs.50, 000 and not more than 5 Lakhs.</li> <li>• The auditor in question may have to pay a fine of Rs.1 Lakh, but, not more than 25 Lakhs</li> </ul>	<p>The proposed amendments in company law stipulate for the omission of any imprisonment or fine and:</p> <ul style="list-style-type: none"> <li>• The company secretary would be liable to pay a penalty of Rs 2 Lakhs without any imposition of fine or a prison term[1].</li> <li>• The company which has committed the offence would be liable to pay a fine of Rs. 3 Lakhs and every employee involved in the offence would have to pay Rs. 50,000[2].</li> <li>• The auditor in question may be penalized to pay Rs 5 Lakh if it is a listed company and Rs 1 Lakh if it is otherwise[3].</li> </ul>



	<p>Section 134(8)</p> <ul style="list-style-type: none"> <li>If an auditor or company secretary hired by a company has sufficient evidence to believe that corporate fraud is being committed and does not act under Section 143(15)</li> </ul>		
<b>G</b>	<p>The offences relate to all those instances where there is noncompliance towards the provisions of this act and no specific punishment is mentioned under the principal act.</p>	<p>According to the old provision, the company would be liable to pay a fine of Rs.50,000 on the committal of an offence related to the appointment of directors<sup>[4]</sup> and Rs. 10,000 in the case of no specific provision related to any punishment or fine under this act<sup>[5]</sup></p>	<p>The latest amendments stipulate for a payment of Rs 50,000, which may extend up to Rs 3 Lakhs with an additional Rs 500 per day if the default is a continuing one in the first case. In the second case, the payment of penalty is to be of Rs. 10,000 which may extend to Rs. 2 Lakhs, if a company is at fault or Rs 50,000 in the case when an employee of the company is at fault.</p>
<b>H</b>	<p>The failure to furnish legal disclosures of information by shareholders<sup>[6]</sup>, independent directors<sup>[7]</sup> and significant beneficial owner<sup>[8]</sup> in the interest of the company</p>	<p>The company would be liable to pay a fine of Rs. 1 Lakh which may extend to Rs 10 Lakh in the case of significant beneficial owners, Rs 50,000 in the case of interest in shareholders and Rs1, 00,000 in the case of non-disclosure of interest by the independent directors and further, a payment of Rs 1,000 per day if the default continues to persist.</p>	<p>After the proposed amendments, the fine and the imprisonment term has been omitted and: -</p> <ul style="list-style-type: none"> <li>Penalty of Rs 50,000 which could be maximum extended up to Rs 5 Lakhs and Rs 2 Lakhs has been imposed in the case of interest in any shareholder and significant beneficial owner respectively</li> <li>The independent director would be liable to pay a penalty of Rs 1 Lakh</li> </ul>

### Producer Companies

According to the Indian Companies Act, 2013, “A Producer Company is a body corporate having objects or activities specified in section 378 B and registered under this act or under

the Companies Act, 1956”<sup>14</sup>. A producer company relates to the performance of activities related to marketing, processing, insurance, primary produce and, activities related to the conservation and rejuvenation of land and water resources. These kinds of companies are a hybrid of private and public companies and deal with a plethora of activities related to the welfare of their members including providing education, technical assistance, training and research and development regarding mutual existence. The Act proposed to remove the first proviso under sub section (1) of section 465 which say that the Part XIA provisions of the Companies Act, 1956 are to be applicable to a producer company until a special act is enacted, for the producer companies<sup>15</sup>. Once, any special provisions are made for the producer companies by the Indian Companies Act, 2013, then, there will be no need for the requirement of adhering to the old companies act. The parliament was also conscious of the increasing number of cases in relation to the dispute resolution process of the producer companies and provided for the remedy of these issues to be taken up for arbitration, whose decision shall be legally binding.

The act proposes to insert a new Chapter in the principal act which focuses on producer companies and hence, proposes the inclusion of Chapter XXIA. This new chapter, according to the act will range from Section 378A to 378ZU<sup>16</sup>. These sections help in reducing the excessive burden put on the shoulders of the Company Law tribunals and place it on the Central government in relation to the situation when change of registered office is required from one state to another included in the proposed Section 378H (4). Also, there has been a decrease in the number of days given to the company for filing of certain documents. The provisions for the producer companies have also decriminalized the earlier clauses and sub clauses of the old act by omitting the fines and imprisonment terms that were to be imposed on the offenders and provided for the imposition of penalties in the case of the Chief Executive not providing a notice to the Board of Directors within 7 days prior to the board meeting All of these amendments have been made in the futuristic view of making the business policies and laws more flexible towards the ease of doing business.

#### **IV. BRIEF ANALYSIS OF THE CORPORATE GOVERNANCE IN UK AND INDIA**

The UK Companies Act, 2006<sup>17</sup> is often regarded as the guiding principle of the formulation of corporate laws in India. Keeping the guiding principle in mind, the Indian Companies Act,

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<sup>14</sup> Part IXA, Companies Act, 1956, No. 1, Acts of Parliament, 1956.

<sup>15</sup> *Id.*

<sup>16</sup> 52<sup>nd</sup> Amendment, Companies Amendment Act, 2020, No. 29, Acts of Parliament, 2020.

<sup>17</sup> U.K Companies Act, 2006, British Parliament, available at [http://www.legislation.gov.uk/ukpga/2006/46/pdfs/ukpga\\_20060046\\_en.pdf](http://www.legislation.gov.uk/ukpga/2006/46/pdfs/ukpga_20060046_en.pdf). (Last Visited at 23<sup>rd</sup> June 2020).

1956 was inculcated in the corporate governance measures. The companies act provided for abundant provisions, rules and regulations which deal with the promotion of the interest of stakeholders, tightening business policies and initiating relaxations in trade practices. However, there was a swift change in the way companies had started operating with an increase in the number of multinational companies. This led to the requirement of a new company legislation which would deal with issues such as investor protection, the moderation of fraudulent activities and more relaxations in foreign investment procedures. All these issues were addressed by the parliament by introducing the new Companies Act of 2013.

The UK Companies Act, on the other hand, has undergone many changes with respect to its corporate law system in the year of 2006. The act comprises of various rules, regulations, statutes, and remedial measures which help in ensuring the smooth functioning of corporate entities. This company law system mainly deals with similar aspects as that of the Indian company law, regarding the formation and registration of companies, constitution of a company, record of companies and remedial measures on the occurrence of a default to name a few. It consists of 1300 sections which are dissected into 44 parts and 16 schedules. It is regarded as the most detailed and lengthiest acts across the world and is used as a source of reference by many countries in the world. The analysis can be done based on various provisions on similar facets of law.

### **Setting up of Companies**

The procedure followed for the setting up of companies in the UK is more complex and stringent as compared to the method and rules provided by the Indian Companies Act, 2013. According to the principal act of India, any legal person is permitted to create and register the company with the registrar. The pre-requisites to form a company include acquiring the digital signatures of the members and the Director Identification Number (DIN) by every person who is to be appointed as a director<sup>18</sup>. After the completion of the pre-requisites, the Memorandum of Association and the Article of Associations are to be prepared and Form INC-7 along with INC-22 and DIR-12 are to be filed with the registrar for the formulation of the company<sup>19</sup>. A new prerogative had also become available which helped in the registration of the companies on an electronic platform called e-form INC 7. The documents would then be scrutinized by the registrars and based on the authenticity of the documents; the company

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<sup>18</sup> Section 153, Indian Companies Act ,2013, No. 18, Acts of Parliament, 2013.

<sup>19</sup> Rule 12, Companies (Incorporation) Rules, 2014 available at [https://www.mca.gov.in/Ministry/pdf/NCARules\\_Chapter2.pdf](https://www.mca.gov.in/Ministry/pdf/NCARules_Chapter2.pdf).

would be registered<sup>20</sup>.

According to the UK Company law legislation, a company may be incorporated by preparing a Memorandum of Association (MOA) which consists of the name of the members of the company along with the application of registration and a statement of compliance and the Article of Association (AOA), which specifies as to how the company will function and other. If a situation arises wherein any person or agent of the applicants submit the application, then the agents would have to give their name and address with the application. The application should consist of details like the name and address of the respective members, whether the company is a public or private company and on what basis is the liability of each member of the company decided upon and should contain the necessary supplementing documents. The necessary documents are to be submitted with the Registrar of companies depending upon the jurisdiction under which the company falls in. The company can be incorporated by filing the necessary details through an electronic incorporation portal by paying a nominal fee of £ 13 and on the registrar's website by paying a nominal fee of £ 15 besides the usual IN01 form<sup>21</sup>.

### **Corporate Social Responsibility**

The Indian Corporate practice fixates on a prime focus towards the need for Corporate Social Responsibility (CSR). The applicability of this provision only applies to a company which successfully meets the requirements under this act. The new amendments to the corporate structure of law also states that the companies that have Corporate Social Responsibility spending obligation of up to Rs. 50 Lakhs are not required to constitute a CSR Committee and permit them to spend any excess amount spent in this obligation to be included in the next financial year's CSR obligation. They have also made it mandatory for the inclusion of 2% of net profit in activities related to social and environmental practices undertaken by the company these amendments came in the light of the Ease of Doing Business initiative undertaken by the government<sup>22</sup>.

The UK companies act, 2006 has introduced new reforms as regard to the Corporate Social Responsibility norms, by including a report to be furnished to the shareholders by the director of the company about various CSR Practices of the company at the end of the financial year. However, the shareholders of the company have rights regarding the gamut of the activities related to all aspects of business including CSR which has put the managerial authorities of

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<sup>20</sup> Rule 18, Companies (Incorporation) Rules, 2014.

<sup>21</sup> Section 9-13, Requirements of Registration, UK Companies Act, 2013 available at <http://www.legislation.gov.uk/ukpga/2006/46/part/2>.

<sup>22</sup> *Id.*

the companies in tight fix. Although, regardless of the recommendations of the Company Law Review Steering Group (CLSG)<sup>23</sup>, the CSR activities of the companies in accordance with the UK Company Law are still at the backseat due to the glorified value of shareholders.

### **Board of Directors**

The recent amendments in company law have brought the independent directors and the executive directors at the same platform in regards to the compensation that is paid to them. The amendments also provide for decriminalization of the offences pursuant to the provisions related to the functioning of the directors as well as their vacations from the office. The companies act also provides for the presence of a resident director who assumes control over the managerial activities of the company, ensuring smooth functioning and greater stability in the daily activities of the business enterprise.

The UK Companies, 2006 is silent in the aspect of a resident director, but provides for a shadow director who governs the managerial aspects of the company from behind the scenes. The duties, powers and functions of the director were clearly defined in the case, *Aberdeen Railway. Co v/s Blakie (1854)*<sup>24</sup>, in which, Lord Cranworth exclaimed that the powers and duties of the directors pertain to the general functioning and management of the business.

### **Director's duties in Stakeholder's Interests**

The Enlightened Shareholder Value Model (EMV)<sup>25</sup>, which entails for the directors of a company to take a keen interest in their shareholder's varied interests to increase the incessant partnership between the two of them, was designed under the purview of Section 172 in the UK Companies Act, 2006. The Indian company legislation, on the other hand, had created a parity between the interests of the shareholders and stakeholders by aligning both of their interests in accordance with Section 166(2) of the Companies Act, 2013. Under the colonial era, Indian Company law had a prime focus on protecting the interest of the shareholders in order to attract more investment opportunities and capital. The exploration of non-shareholder constituencies began after the end of the old company law legislation and the interests of the creditors, workers and the most important of all, buyers were given equal importance as compared to the interests of the shareholders. All the parties of the non-

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<sup>23</sup> Andrew Johnson's, *The shrinking scope of Scrim UK Corporate Law*, Volume 74( 2), Washington and Lee Law Review, WASH. & LEE L. REV, 1001,1028-1032(2017) available at <https://scholarlycommons.law.wlu.edu/cgi/viewcontent.cgi?article=4556&context=wlulr>.

<sup>24</sup> *Aberdeen Railway Co. V/s Blakie Brothers*, U.K., 1 Macq 461(1854) available at <https://swarb.co.uk/aberdeen-railway-co-v-blaikie-brothers-hl-1854/>.

<sup>25</sup> Richard Williams, *Enlightened Shareholder Value in UK Company Law*, Volume 35(1), UNSW Law Journal, UNSW LJ. 360, 361-362 (2012) available at <http://www.unswlawjournal.unsw.edu.au/wp-content/uploads/2017/09/35-1-2.pdf>.

shareholder constituencies were given various perks and benefits like the employees getting preferential payments in the case of the winding up of companies<sup>26</sup>, creditors acquiring the ability to convert their loan into equity and also the protection of the general public by providing them with a specific set of remedies when, the affairs of the company are conflicting with the interest of the general public<sup>27</sup>.

Under the UK Companies Act, 2006, the business in the country is bound towards the needs and interests of the shareholders. The courts have also concluded that the needs and interests of the shareholders should align with the interests of the company and its various components.

## **V. CONCLUSION**

The company's amendment act came as a breath of fresh air and has dealt with a variety of challenges ranging from the decriminalization of offences to making changes in the Corporate Social Responsibility mandate of companies. The act sets its objectives on many controversial topics, which is the reason why it faced a lot of opposition by various ministers and political leaders of opposing parties as they wanted the act to be referred to the Parliamentary Standing Committee for Finance. The corporate laws of India, when compared with the strong company legislation of the UK comes out as a strong competitor to the existing norms and regulations. The amendments, however, are proving to be a strong contributor to the Ease of Doing Business Grand Challenge, as expert committees, corporate lawyers, and financial advisors are of the opinion that the first draft of the act is a complete winner and will inexorably boost India's position in the Doing Business Rankings of the World Bank.

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<sup>26</sup> Section 529 A, Indian Companies Act, 1956, No. 1, Acts of Parliament, 1956.

<sup>27</sup> Section 394(1) proviso, Indian Companies Act, 1956, No. 1, Acts of Parliament, 1956.

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