Note on Companies Act, 2013
Kabir¹, Dr. Biswadeep Mishra²
¹Research Scholar, Department of Management Studies, Guru Ghasidas Vishwavidyalaya, INDIA
²Associate Professor, Department of Management Studies, Guru Ghasidas Vishwavidyalaya, INDIA

ABSTRACT
The Companies Act, 1956 is an Act of the Parliament of India, enacted in 1956, which enabled companies to be formed by registration, and set out the responsibilities of companies, their directors and secretaries.

The Companies Act 1956 is administered by the Government of India through the Ministry of Corporate Affairs and the Offices of Registrar of Companies, Official Liquidators, Public Trustee, Company Law Board, Director of Inspection, etc. The Registrar of Companies (ROC) handles incorporation of new companies and the administration of running companies.

Since its commencement, it has been amended many times, in which amendment of 1988, 1990, 1996, 2000 and 2011 are notable.

The erstwhile Companies Act 1956 (the ‘1956 Act’), which had been in existence for over fifty years, appeared to be somewhat ineffective and restricted at handling and governing some of the present day challenges of a growing and developing industry and the interests of an increasing class of sophisticated stakeholders. And as a result of the ever changing business scenario and dynamic corporate environment Companies Bill, 2013 received the assent of Hon’ble President of India on 29 August 2013 and came into force on 12 September 2013. It is an Act of the Parliament of India which regulates incorporation of a company, responsibilities of a company, directors, and dissolution of a company. The 2013 Act is divided into 29 chapters containing 470 clauses as against 658 Sections in the Companies Act, 1956 and has 7 schedules. The Act has replaced The Companies Act, 1956 (in a partial manner) and it also brought about some drastic changes in several areas of company administration and management.

The main objective of this paper is to make a comparative analysis of some of the major changes brought in to the corporate law and its governance by the Companies Act, 2013 with respect to corresponding sections of Company Law, 1956.

Keywords: Companies Act, 1956, Companies Act, 2013, Sections of Companies Act, 1956, Clauses of Companies Act, 2013.

I. INTRODUCTION
The Companies Act, 1956 is an Act of the Parliament of India, enacted in 1956, which enabled companies to be formed by registration, and set out the responsibilities of companies, their directors and secretaries.

The Companies Act 1956 is administered by the Government of India through the Ministry of Corporate Affairs and the Offices of Registrar of Companies, Official Liquidators, Public Trustee, Company Law Board, Director of Inspection, etc. The Registrar of Companies (ROC) handles incorporation of new companies and the administration of running companies.

Since its commencement, it has been amended many times, in which amendment of 1988, 1990, 1996, 2000 and 2011 are notable. Like most of Indian acts, it also extends to the whole India except State of Jammu and Kashmir (Sec 3) (Article 370). Notwithstanding anything contained in the Act every company, international or indigenous will work under the provisions of the Act. This Act is general in nature and not subrogative. So if a special Legislation applies on a Company, then the Company has to, in addition to Companies Act, comply the special Legislation. For example, all banking Companies in India have to comply with Banking Regulation Act 1949, in addition to the Companies Act 1956.

II. CESSION OF COMPANIES ACT, 1956 AND PROVISIONS OF NEW COMPANIES ACT, 2013
The Companies Bill, 2011 was introduced in Lok Sabha on 14 December 2011, was referred to Standing Committee on 5 January 2012. The standing committee submitted its report on 26 June 2012. Incorporating recommendations of the standing committee the Companies Bill, 2012 was introduced and
passed in Lok Sabha on 18 December, 2012. And it was passed by Rajya Sabha on 8 August, 2013.

The Companies Bill, 2013 on receiving the assent on Hon’ble President of India on August 29, 2013 was notified in the gazette of India on August 30, 2013 as the Companies Act, 2013.

Companies Act, 2013 is an Act of the Parliament of India which regulates incorporation of a company, responsibilities of a company, directors, and dissolution of a company. The 2013 Act is divided into 29 chapters containing 470 clauses as against 658 Sections in the Companies Act, 1956 and has 7 schedules. The Act has replaced The Companies Act, 1956 (in a partial manner) after receiving the assent of the President of India on 29 August 2013.

III. OBJECTIVES OF THE STUDY

- To make a relative analysis of the Companies Act, 1956 and Companies Act, 2013.
- To throw some light on the major amendments brought in the Company Act, 2013 with corresponding section of Companies Act, 1956.

### OUTLINE OF THE COMPANIES ACT, 1956 AND THE COMPANIES ACT, 2013:

<table>
<thead>
<tr>
<th>Details</th>
<th>1956</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chapters</td>
<td>13</td>
<td>29</td>
</tr>
<tr>
<td>Sections</td>
<td>658</td>
<td>470</td>
</tr>
<tr>
<td>Schedules</td>
<td>15</td>
<td>7</td>
</tr>
<tr>
<td>No. of clauses in Section 2</td>
<td>67</td>
<td>95</td>
</tr>
</tbody>
</table>

### COMPARISON OF CLAUSES AND CORRESPONDING SECTIONS OF THE COMPANIES ACT, 2013 AND COMPANIES ACT, 1956:

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Clauses of Companies Act, 2013</th>
<th>Corresponding Sections of Companies Act, 1956</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>Preliminary</td>
<td>1-2</td>
<td>1-10</td>
</tr>
<tr>
<td>II</td>
<td>Incorporation of Companies</td>
<td>3-22</td>
<td>11-54</td>
</tr>
<tr>
<td>III</td>
<td>Prospectus and Allotment of Securities</td>
<td>23-42</td>
<td>55-81</td>
</tr>
<tr>
<td>IV</td>
<td>Share Capital and Debentures</td>
<td>43-72</td>
<td>82-123</td>
</tr>
<tr>
<td>V</td>
<td>Acceptance of Deposits by Companies</td>
<td>73-76</td>
<td>58A and 58B</td>
</tr>
<tr>
<td>VI</td>
<td>Registration of Charges</td>
<td>77-87</td>
<td>124-145</td>
</tr>
<tr>
<td>VII</td>
<td>Management and Administration</td>
<td>88-122</td>
<td>146-197</td>
</tr>
<tr>
<td>VIII</td>
<td>Declaration and Payment of Dividends</td>
<td>123-127</td>
<td>205-207</td>
</tr>
<tr>
<td>IX</td>
<td>Accounts of Companies</td>
<td>128-138</td>
<td>209-223</td>
</tr>
<tr>
<td>X</td>
<td>Audit and Auditors</td>
<td>139-148</td>
<td>224-233B</td>
</tr>
<tr>
<td>XI</td>
<td>Appointment and Qualification of Directors</td>
<td>149-172</td>
<td>252-284</td>
</tr>
<tr>
<td>XII</td>
<td>Meeting of Board and its Powers</td>
<td>173-195</td>
<td>285-308</td>
</tr>
<tr>
<td>XIII</td>
<td>Appointment and Remuneration of managing Personnel</td>
<td>196-205</td>
<td>309-311</td>
</tr>
<tr>
<td>XIV</td>
<td>Inspection, Enquiry and Investigation</td>
<td>206-229</td>
<td>234-251</td>
</tr>
<tr>
<td>XV</td>
<td>Compromise, Arrangements, and Amalgamations</td>
<td>230-240</td>
<td>390-396A</td>
</tr>
<tr>
<td>XVI</td>
<td>Prevention from Oppression and Mismanagement</td>
<td>241-246</td>
<td>397-409</td>
</tr>
<tr>
<td>XVII</td>
<td>Registered Value</td>
<td>247</td>
<td>-</td>
</tr>
<tr>
<td>XVIII</td>
<td>Removal of Names of Companies from the Register</td>
<td>248-252</td>
<td>560</td>
</tr>
<tr>
<td>XIX</td>
<td>Revival and Rehabilitation of Sick Companies</td>
<td>253-269</td>
<td>424A-424L</td>
</tr>
<tr>
<td>XX</td>
<td>Winding Up</td>
<td>270-365</td>
<td>425-559</td>
</tr>
<tr>
<td>XXI</td>
<td>Companies Authorised to Register under this Act and Winding Up of Unregistered Companies</td>
<td>366-378</td>
<td>565-581 &amp; 582-590</td>
</tr>
<tr>
<td>XXII</td>
<td>Companies Incorporated Outside India</td>
<td>379-393</td>
<td>591-608</td>
</tr>
<tr>
<td>XXIII</td>
<td>Government Companies</td>
<td>394-395</td>
<td>617-620</td>
</tr>
<tr>
<td>XXIV</td>
<td>Registration Offices and Fees</td>
<td>396-404</td>
<td>609-614A</td>
</tr>
<tr>
<td>XXV</td>
<td>Companies to furnish information and Statics</td>
<td>405</td>
<td>615</td>
</tr>
<tr>
<td>XXVI</td>
<td>Nidhis</td>
<td>406</td>
<td>620A</td>
</tr>
<tr>
<td>XXVII</td>
<td>NCLT and NCLAT</td>
<td>407-434</td>
<td>10FB-10GF</td>
</tr>
<tr>
<td>XXVIII</td>
<td>Special Courts</td>
<td>435-460</td>
<td>-</td>
</tr>
<tr>
<td>XXIX</td>
<td>Miscellaneous</td>
<td>447-470</td>
<td>621-658</td>
</tr>
</tbody>
</table>
IV. HIGHLIGHTS OF THE COMPANIES ACT, 2013

The Act, of 2013 has 470 sections as against 658 Sections in the Companies Act, 1956. The entire Act has been divided into 29 chapters. Many new chapters have been introduced such as Registered Valuers (Chapter 17); Government Companies (Chapter 23); Companies to furnish information or statistics (Chapter 25); Nidhis (Chapter 26); National Company Law Tribunal & Appellate Tribunal (Chapter 27); Special Courts (Chapter 28). The Act is forward looking in its approach which empowers the Central Government to make rules, etc. through delegated legislation (section 469 and others). The Companies Act, 2013 is the result of detailed consultative process adopted by the Government.

V. MAJOR HIGHLIGHTS AND AMENDMENTS OF THE COMPANIES ACT, 2013

→ Financial Year
Under the old Companies Act 1956, companies were allowed to choose freely an accounting year. Though for tax purposes, the financial year runs from the April 1st to March 31st. [Section 2(17)]. It cannot be more than fifteen months but may be shorter than a year (Sec. 210). However, according to the Companies Act 2013, financial year for companies will be set from April 1st to March 31st. However:
- A two-year period is allowed to existing companies to adjust their accounting years,
- Special provisions have been provided for newly incorporated companies.

→ One Person Company
Under the Companies Act 1956, there was no such provision of one Person Company. However as per the [Clause 3(1)(c)] for the first time this concept has been introduced. And Clause 2(62) defines a One Person Company as “a company which has only one person as a member”. It is required to be registered as a “Private Limited Company”.

→ Small Companies
Under the Companies Act, 1956 there is no such concept like small companies though it is defined in Companies (Accounting Standard) Rules 2006. However as per the (Clause 85) of the Companies Act, 2013 a small company is a company:
- Having paid-up share capital of not more than Rs. 5 million or amount prescribed, however the prescribed amount must not exceed Rs. 50 million (paid-up share capital with maximum of Rs. 50 million); or
- As per the last profit and loss account, turnover must not exceed Rs. 20 million or amount prescribed, however the prescribed amount must not exceed Rs. 200 million. However, Private Company concept is in both laws.

→ Transfer of shares of public company
As per section 111A of the Companies Act, 1956 the Shares of public companies are freely transferrable. And as per (Clause 58(2)) of the Companies Act, 2013 the shares of public companies are freely transferrable. However, contract or agreement between 2 or more persons in respect of transfer of securities shall be enforceable as a contract.

→ Holding-Subsidiary Company
As per the Companies Act, 1956 there is no restriction on holding of shares of holding company by its subsidiary company. However, as per clause 2(87) of the Companies Act, 2013 the class or classes of holding company as may be prescribed shall not have layers of subsidiary companies beyond prescribed numbers. And as per Clause 19 Subsidiary company not to hold shares of holding company. However it can have shares as trustee of other beneficiary or as legal representative.

→ Corporate Social Responsibility
No provision of Corporate Social Responsibility is there under the Companies Act, 1956. Whereas by virtue of Clause 135 of the Companies Act, 2013 the concept of CSR has been introduced. Company having net worth of Rs. 500 crores or more or turnover of Rs. 1000 crores or more or net profit of Rs. 5 crores or more during any financial year shall have to constitute CSR committee and implement CSR policies under the companies Act, 2013.

→ Consolidation of Financial Statements
Under the companies Act, 1956 by virtue of clause 41 of listing agreement: If the company has subsidiaries,
(i) It may, in addition to submitting quarterly and year to date standalone financial results to the stock exchange, shall also submit quarterly and year to date consolidated financial results within forty-five days from the end of the quarter; and
(ii) While submitting annual audited financial results prepared on stand-alone basis, it shall also submit annual audited consolidated financial results to the stock exchange within sixty days from the end of the financial year.
Whereas as per clause 129(3) of the companies Act, 2013:
In case a company has one or more subsidiaries, it shall in addition to stand alone financial statements if all the subsidiaries in the same form and manner as that of its own which shall also be laid before the AGM of the company. Further, such companies shall also attach along with its financial statement, a separate statement consisting the salient features of the financial statement of its subsidiaries in such form as may be prescribed. For the purpose of the above provision “subsidiary” shall include ‘associate company’ and ‘joint venture’.

→ Registered Valuer
There is no provision provided for registered valuer under the Companies Act, 1956. Whereas as per Clause 247 When valuation is required to be made under the Act, in respect of any property, stocks, shares,
debentures, securities or goodwill or other assets or net worth of company or its liabilities, such valuation shall be done by a registered valuer.

→ **Inter-Corporate Loan, Guarantee, Security and Investment**
  
  Exemption is given to Private Companies under provisions of inter-corporate loans, advances etc. under the Companies Act, 1956. However as per clause 186 of the Companies Act, 2013 the provisions related to inter-corporate loans, guarantees, security and investments will also apply to private companies. Restriction is imposed on investment through more than two layers of investment companies. And listed companies shall take inter-corporate loans and deposits not exceeding prescribed limit.

→ **Resident Director**
  
  There is no provision under Companies Act, 1956 for resident director. However clause 149(3) of the Companies Act, 2013 states that it is mandatory for all companies to have at least one resident director, which is a person who has stayed in India or 182 days or more in the last calendar year.

→ **Women Director**
  
  There is no provision under Companies Act, 1956 for women director. However clause 149(1) of the companies Act, 2013 states that it is mandatory for specified classes of companies to appoint at least to have one female director.

→ **Nomination and Remuneration Committee (NRC)**
  
  In the Companies Act, 1956 the stakeholder relationship committee is governed by Clause 49 of listing agreement. However in the Companies act, 2013 it is covered under clause 178 which says that Board of Directors of listed company or such other company as may be prescribed shall constitute NRC
  
  - Consist of 3 or more non-executive director
  - Not less than one half Independent Director
  - Chairperson of Company may be member but not to chair

→ **Stakeholder Relationship Committee (SRC)**
  
  In the companies Act, 1956 the stakeholder relationship committee is governed by Clause 49 of listing agreement. However in the companies act, 2013 it is covered under clause 178 which says Board of Directors of listed company or such other company as may be prescribed shall constitute SRC Where shareholders, debenture holders, deposit holders exceeds 1000 in number and Chairperson to be non-executive director and such other member to resolve grievances of security holders.

→ **Maximum Directors**
  
  As per Section 259 of the Companies Act, 1956 the existing maximum limit is 12 directors. According to the section 275 of the Act, a person can hold directorship in maximum 15 public companies. However as per clause 149(1) of the companies Act, 2013 a company can have maximum 15 directors but the limit can be increased after obtaining requisite approval. A person can hold directorship in maximum of 20 companies. However, out of the 20 companies, one cannot hold directorship in maximum 15 Public Companies.

→ **Exemptions from Approval of Central Government**
  
  As per the Companies Act, 1956 exemptions are available to companies from approval of central government on Purchase/ sale of goods and materials for cash at prevailing market price. Purchase/ sales of goods and materials or services the cost of which does not exceed Rs. 5000/- in any year during the period of contract and any transaction of banking/ insurance company in the ordinary course of business such company. However under clause 188 of the companies Act, 2013 any transaction entered by company in its ordinary course of business other than transactions which are not an arm’s length basis is exempted from approval of Central Government.

→ **Loan to Director**
  
  Under the Companies Act, 1956 Section 295 covers provisions related to loans to Director of Public companies. And no public company shall directly or indirectly make any loan or give any guarantee or provide any security to its directors and other certain specified persons, except with the approval of Central Government. However as per clause 185 of the Companies Act, 2013 includes provisions related to loans to director of public and private companies. And as per clause 185 (1) no company shall directly or indirectly make any loan including book debt or give any guarantee or provide any security to its directors or to any other persons in whom the director is interested.

→ **Takeover Offer**
  
  Under the Companies Act, 1956 the scheme of compromise and arrangement cannot include a “takeover offer”. However under Clause 230(11) of the Companies Act, 1956 a scheme of compromise and arrangement may include “takeover offer” in a prescribed manner. And in case of listed companies such takeover offer shall be as per SEBI Regulations.

→ **Transfer of Listed Company with Unlisted Company**
  
  Under the Companies Act, 1956 there is no specific provisions for compromise/arrangement between a listed transferror company and an unlisted transferee company. However under clause 232(3)(h) of the Companies Act, 2013 in case of compromise/ arrangement between a listed transferror company and an unlisted transferee company, National Company Law Tribunal (NCLT) to provide that Transferee Company shall remain unlisted company until it becomes listed and exit option be given to the shareholders of the transferror company wherein the exit price to be not less than the price under any Securities Exchange Board of India(SEBI) Regulations.

→ **Notice of Meeting**
  
  Under the provisions of Companies Act, 1956 there is no specific provisions for serving of notice to Income Tax and other regulators. However as per clause 230 (5) of the Companies Act, 2013 a notice is required to be served to Central Government, Income-Tax Authorities, Reserve Bank of India, Securities Exchange
Board of India, Stock Exchanges, CCI (competition commission of India), Sectored Regulators/ Authorities.

→ Fast Track Merger
   As per the Companies Act, 1956 there are no specific provision for Fast Track Merger. However under the clauses of Companies Act, 2013 Fast track provisions are being included to facilitate merger between two or small companies or between holding company and it’s wholly owned subsidiary company or such other class of companies as may be prescribed.

→ Merger of Indian Company with Foreign Company
   Under the companies Act, 1956 an Indian company cannot be merged with foreign company. However as per Clause 234 (2) of the Companies Act, 2013 a foreign company, May with the prior approval of RBI, merge into an Indian company or vice versa. The consideration for merger can be in the form of Cash and/or Depository Receipt. This would apply to foreign companies in jurisdiction as notified by Central Government.

→ Offer to sell by Minority shareholders to Majority shareholders
   Under the Companies Act, 1956 there is no such specific provisions for offer to sell by the Minority shareholders to Majority shareholders. However as per Clause 236 of the Companies Act, 2013 the Minority shareholders of the company may also offer to sell their shares to the majority shareholders at a price determined in accordance with the rules as may be prescribed.

→ Purchase of Minority shareholding by Majority shareholders
   As per the Companies Act, 1956 there is no specific provisions for acquisition of Minority shareholders by Majority shareholders. However as per Clause 236 of the Companies Act, 2013 an acquirer and/or PAC (person acting in concert) or person/group of persons holding 90% or more of the issued equity capital of the company by virtue of amalgamation, share exchange, conversion of securities or for any other reasons, can purchase the remaining equity shares of the company form minority shareholders at a price determined by registered valuer. And Minority shareholders may also offer to the majority shareholders to purchase their equity shareholding in the company at the price determined by registered valuer.

→ Grounds for strike off
   As per the section 560 (1) of Companies Act, 1956 a company may be struck off by ROC if it has reasonable cause to believe that a company is not carrying on business or operations. However as per clause 455(6) of the Companies Act, 2013 a company may be struck off by ROC by following reasons: if subscribers to the memorandum have not paid the subscription money within 180 days from the date of incorporation. If a company has failed to commence its business within a period of 1 year from its Incorporation, if the company is not carrying on any business or operation for 2 immediately preceding financial year and has within such period applied for status of dormant company.

VI. CONCLUSION

This important legislation, that has been in the process of making for over 10 years, initiated off as an attempt in 2004 by the then government to make amendments in Indian corporate (company) law in the context of dynamic economic, legal, technical and business environment. The motive behind this attempt was to make Indian corporate environment more simple, transparent and worldwide acceptable. The earlier Companies Act 1956 (the ‘1956 Act’), which had been in existence for over last fifty years, appeared to be somewhat ineffective and restricted at handling, managing and governing some of the today’s challenges of a growing and developing industry and the interests of an increasing class of sophisticated stakeholders. Learning and updating from these experiences, the 2013 Act promises to effectively ‘increase the bar and control on governance’ and in a comprehensive form purports to deal with relevant themes such as investor protection and restricting fraud, inclusive schema, auditor accountability and responsibility, reporting framework and guidelines, director responsibility and efficient streamlining. The level of change and the complexities related with implementing the changes introduced by the Companies Act,2013 are likely to be considerable and important for companies, and the reflection of these changes could be observed throughout their organizations.

As Companies Act, 2013 has brought about a few welcome but remarkable changes for investors and companies alike, it has likewise introduced hurdles and much more additional compliance requirements which shall require significant re working on some of the existing structures compliances and steps used by corporate for raising their capital and managing the rights of planned investors in the company along with the other shareholders including the promoters. It is a fact that these added checks and restrictions are an outcome of some of the scams and frauds that took place in the past wherein the provisions under Companies Act, 1956 were misused by some companies. It is expected that the new provisions of the Companies Act, 2013 will provide a simple and hassle free environment, while at the same time protecting the interest of investors and the general public at large.

REFERENCES