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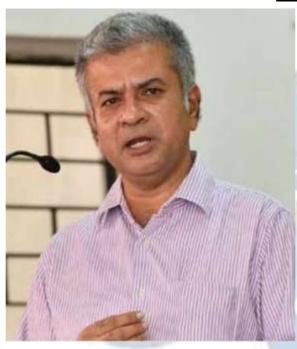
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With this thought, we hereby present to you

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# INCORPORATION OF COMPANY IN PARLANCE TO COMPANIES ACT, 2013

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#### **AUTHORED BY - AMAN KUMAR RANA**

LL.M (BUSINESS LAW)

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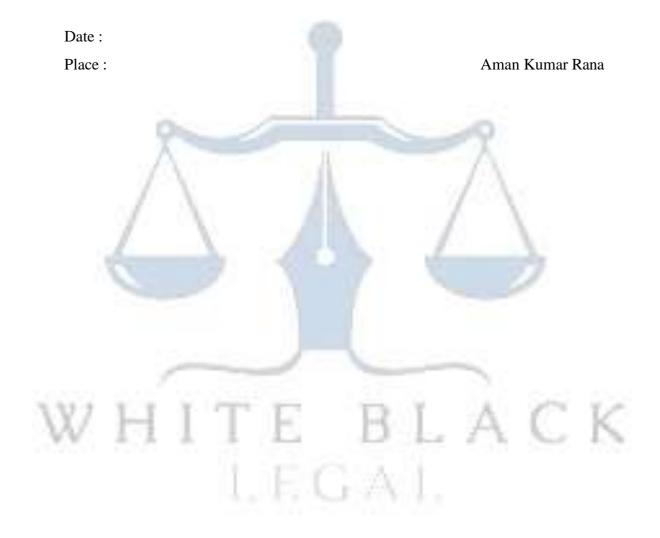
Under the guidance and Supervision of Dr Mishal Qayoom Naqshbandi (Assistant

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This is Certified that the material embodied in the present work entitled, "Incorporation of company in parlance to Companies Act, 2013" is based on my original research work. It has not been submitted in part or in for any other diploma or degree of any University.

My indebtedness to other works has been duly acknowledged at relevant places.



### SUPERVISOR'S CERTIFICATE

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This is to certify that the thesis titled "Incorporation of company in parlance to Companies Act, 2013", which is being submitted by Mr. Aman Kumar Rana for the award of degree of Master in Law is a bona-fide research. He has worked on the above topic under constant supervision and guidance to my entire satisfaction and his dissertation is complete and ready for the submission. I am satisfied that this thesis is worthy of consideration for the award of the Degree of Master in Law. As this dissertation meets the requirements laid down by Amity University, Noida for awarding the Degree of Master in Law, I recommend that this dissertation may be accepted for evaluation by the University.

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### LIST OF ABBREVIATIONS

1.	AGM - Annual General Meeting
2.	AoA - Articles of Association
3.	CAA - Companies Appellate Tribunal
4.	CDSL - Central Depository Services Limited
5.	CIN - Corporate Identification Number
6.	CMA - Certified Management Accountant
7.	CPC - Civil Procedure Code
8.	CSR - Corporate Social Responsibility
9.	FEMA - Foreign Exchange Management Act
10.	FDI - Foreign Direct Investment
11.	IIT - Indian Institute of Technology
12.	MCA - Ministry of Corporate Affairs
13.	MCA21 - Ministry of Corporate Affairs e-Governance Project
14.	MoA - Memorandum of Association
15.	NCLT - National Company Law Tribunal
16.	NCLAT - National Company Law Appellate Tribunal
17.	ROC - Registrar of Companies
18.	SEBI - Securities and Exchange Board of India
19.	WTO - World Trade Organization
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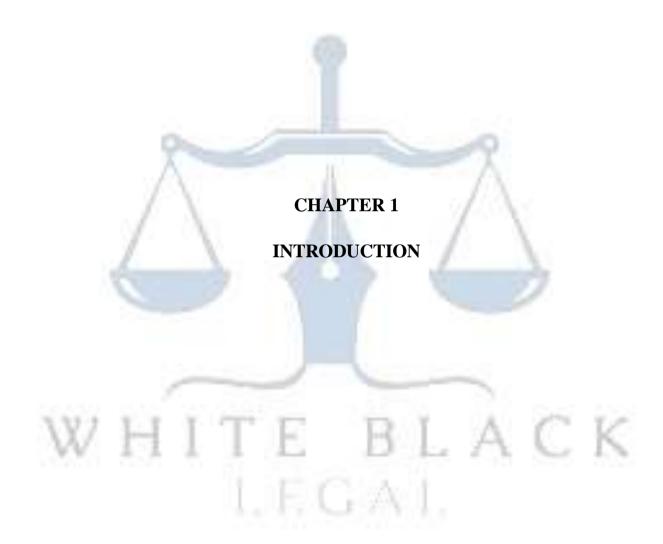
#### **ABSTRACT**

The Companies Act, 2013, is a landmark legislation aimed at modernizing corporate governance and improving the regulatory framework for businesses in India. Among its pivotal provisions is the process of company incorporation, which grants a legal identity to business entities, enabling them to operate within a statutory framework. Despite its intent to simplify incorporation and enhance ease of doing business, the Act poses significant challenges, including procedural complexities, compliance hurdles, and ambiguities in interpretation. This dissertation critically analyzes the incorporation process under the Companies Act, 2013, highlighting its legal, procedural, and practical dimensions. Through a detailed examination of statutory provisions, case laws, and stakeholder feedback, the study aims to propose reforms to create a streamlined, business-friendly incorporation framework.

**Keywords:** Company incorporation, Companies Act 2013, regulatory framework, statutory compliance, legal reforms







The incorporation of a company is a crucial legal process that establishes a business as a separate legal entity. In India, this process is primarily governed by the Companies Act, 2013, which replaced the Companies Act, 1956, to modernize corporate regulations and align them with international standards. Incorporation provides businesses with legal recognition, limited liability, and perpetual succession, which are essential for their smooth operation and growth. The significance of company incorporation lies in its ability to provide businesses with a distinct identity, allowing them to enter into contracts, own property, and engage in litigation separately from their owners or shareholders. It also fosters economic development by creating a structured business environment that encourages entrepreneurship and investment.<sup>1</sup>

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The Companies Act, 2013, was enacted to streamline corporate governance and make company incorporation more efficient. It introduced several reforms aimed at reducing bureaucratic delays, ensuring transparency, and promoting ease of doing business in India. The Act simplified the incorporation process by leveraging technology, introducing digital filing systems, and reducing the compliance burden on small businesses and startups. The establishment of the Ministry of Corporate Affairs (MCA) and the Registrar of Companies (RoC) as the primary regulatory authorities further enhanced the efficiency of the process. Despite these improvements, various challenges persist, including procedural delays, regulatory ambiguities, and compliance complexities, which sometimes hinder the seamless incorporation of companies.<sup>2</sup>

Historically, company incorporation laws in India have evolved significantly. The Companies Act, 1956, was the first comprehensive legislation governing corporate entities in independent India. However, as the business landscape changed, the need for a more flexible and modern framework became evident. The Companies Act, 2013, introduced critical changes such as the introduction of the One Person Company (OPC) concept, stricter corporate governance norms, and enhanced disclosure requirements. These changes were intended to make company formation

<sup>&</sup>lt;sup>1</sup> "Company Law in India-Frequently Asked Questions," Singhania & Partners *available at*: https://singhania.in/blog/company-law-in-india-frequently-asked-questions (last visited March 21, 2025).

<sup>&</sup>lt;sup>2</sup> "Features of the Company Act 2013: Objectives, Importance & Key Provisions," *available at*: https://thelegalschool.in/blog/features-of-company-act-2013 (last visited March 21, 2025).

more inclusive and adaptable to different business needs. The new Act also incorporated provisions for electronic governance, ensuring that company registration and compliance requirements could be fulfilled online, thereby reducing manual intervention and improving efficiency.<sup>3</sup>

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The procedural aspects of company incorporation involve several steps, including name reservation, preparation of necessary documents, filing applications with the RoC, obtaining digital signatures, and securing the certificate of incorporation. Each of these steps requires compliance with various legal provisions to ensure that the company operates within the regulatory framework. The MCA's digital initiatives, such as the MCA21 portal, have played a crucial role in facilitating online submissions, reducing paperwork, and expediting approvals. However, certain procedural bottlenecks remain, particularly in cases involving foreign direct investments, complex shareholding structures, or regulatory scrutiny.<sup>4</sup>

While the Companies Act, 2013, aimed to simplify the incorporation process, businesses still face several challenges. One of the most significant hurdles is procedural delay, often caused by the high volume of applications received by the RoC and other regulatory authorities. Additionally, ambiguities in legal provisions sometimes lead to misinterpretations, causing delays in approvals. Compliance requirements, though necessary for maintaining corporate accountability, can be burdensome for small businesses and startups with limited resources. Moreover, bureaucratic inefficiencies and technical glitches in online portals further complicate the process. Addressing these challenges requires a combination of regulatory reforms, technological advancements, and administrative improvements.

Judicial interpretation of incorporation laws has played a crucial role in shaping the legal landscape of corporate governance in India. Courts have clarified various provisions of the Companies Act, 2013, through landmark judgments, influencing how incorporation laws are implemented and enforced. For instance, judicial decisions have addressed issues related to the lifting of the corporate veil, ensuring that companies are not misused for fraudulent purposes. These rulings have reinforced the principles of transparency, accountability, and good corporate governance, which

<sup>&</sup>lt;sup>3</sup> "History of Company Law in India: Evolution, Origin, & Key Developments," *available at*: https://thelegalschool.in/blog/history-of-company-law-in-india (last visited March 21, 2025).

<sup>&</sup>lt;sup>4</sup> "Procedure for Incorporation of a Private Company," Lawrbit Lextech India Private Limited.

are essential for maintaining investor confidence and protecting stakeholders' interests.<sup>5</sup>

A comparative study of company incorporation laws in different jurisdictions provides valuable insights into best practices that India can adopt. Countries such as the United States, the United Kingdom, and Singapore have streamlined their incorporation processes, making them more efficient and business-friendly. For example, in Singapore, companies can be registered within a day due to a fully digitalized and automated system. Similarly, the UK's Companies House provides an efficient online registration system that minimizes bureaucratic hurdles. By analyzing these models, India can identify potential reforms that can make its incorporation process more efficient, thereby improving its global ranking in ease of doing business.

Proposed reforms to enhance the incorporation process in India should focus on reducing procedural complexities, leveraging technology, and adopting global best practices. Introducing artificial intelligence (AI) and blockchain technology into regulatory frameworks can help automate approvals and ensure data security. Simplifying compliance requirements for small businesses, reducing government intervention in minor regulatory matters, and ensuring better coordination between different regulatory bodies can further improve the system. Additionally, periodic legislative reviews can ensure that incorporation laws remain relevant and adaptable to changing business dynamics.

# 1.1. IMPORTANCE OF INCORPORATION IN BUSINESS

The incorporation of a company is a fundamental aspect of corporate law, providing businesses with a distinct legal identity, operational flexibility, and financial security. Under the Companies Act, 2013, incorporation grants an entity the status of a separate legal person, ensuring that it can own property, enter into contracts, and sue or be sued in its own name. This legal recognition enhances business credibility and facilitates investment, fostering economic growth and entrepreneurship. The Act lays down specific provisions that define and regulate the incorporation process, ensuring that companies operate within a well-structured legal framework.

<sup>&</sup>lt;sup>5</sup> Cyril Shroff, Anchal Dhir and Anshu Choudhary, "Corporate Governance Laws and Regulations India 2024-2025" International Comparative Legal Guides International Business Reports, 15 July 2024.

One of the most significant advantages of incorporation is limited liability, which protects the personal assets of shareholders from the company's debts and liabilities. Section 2(22) of the Companies Act, 2013, defines a "company limited by shares," wherein the liability of members is restricted to the unpaid amount on their shares. Similarly, Section 2(21) defines a "company limited by guarantee," where members are only liable to contribute a predetermined amount in case of liquidation. This principle of limited liability encourages entrepreneurship by reducing financial risks for investors, thereby promoting capital formation and business expansion.<sup>6</sup>

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Another crucial benefit of incorporation is perpetual succession, as provided under Section 9 of the Companies Act, 2013. Unlike partnerships or sole proprietorships, where the business ceases to exist upon the death or insolvency of the owner, an incorporated entity continues its operations regardless of changes in ownership. This ensures stability and longevity, making corporations more attractive to investors, creditors, and stakeholders. Even in the event of the resignation or death of a director or shareholder, the company remains unaffected, maintaining business continuity.

The separate legal entity principle is a fundamental aspect of corporate incorporation, ensuring that a company is distinct from its shareholders and directors. Under Section 2(20), a company incorporated under the Act is recognized as a legal person capable of holding property, entering into contracts, and assuming legal obligations in its own name. This separation provides businesses with greater operational flexibility, allowing them to expand, secure financing, and engage in commercial activities without direct liability falling upon the owners. Additionally, Section 7(7) states that the Certificate of Incorporation serves as conclusive evidence of the company's legal existence, reinforcing the corporate entity's independent status.

Incorporation also enhances a company's ability to raise capital through various financial instruments. Section 23 of the Companies Act, 2013, permits companies to issue securities, including equity and preference shares, enabling them to attract investments from public and private sources. Unlike unregistered businesses, incorporated companies can list their shares on recognized stock exchanges under Section 40, thereby accessing a wider investor base. Additionally, Section 42 provides

<sup>&</sup>lt;sup>6</sup> Harsh Thakur, "Company Law - Unit i" Scribd, 2023 *available at*: https://www.scribd.com/document/681781962/Company-Law-Unit-i (last visited March 21, 2025).

for private placement of securities, allowing companies to raise funds without public offering, making capital acquisition more flexible and efficient.

Further, incorporation facilitates compliance with tax laws and regulatory requirements, ensuring transparency and legal accountability. Companies are subject to corporate taxation under the Income Tax Act, 1961, and benefit from structured tax planning opportunities. They are also governed by statutory obligations under the Goods and Services Tax (GST) Act, 2017, the Securities and Exchange Board of India (SEBI) Act, 1992, and the Foreign Exchange Management Act (FEMA), 1999, depending on the nature of their operations. Compliance with these regulations enhances business credibility, attracts foreign investment, and ensures legal protection against financial misconduct.<sup>7</sup>

Additionally, incorporation allows businesses to safeguard their brand identity and intellectual property. Under the Trade Marks Act, 1999, an incorporated entity can register its brand name, logo, and other distinguishing marks, preventing unauthorized use by competitors. Intellectual property protection strengthens market positioning and provides companies with exclusive rights over their commercial assets. The ability to enter into legally enforceable agreements, as per the Indian Contract Act, 1872, further strengthens a company's operational framework by securing contractual obligations.

Incorporation also improves business credibility and facilitates commercial transactions. Banks, financial institutions, and suppliers prefer dealing with incorporated entities due to their structured governance and financial transparency. Section 129 of the Companies Act, 2013, mandates companies to prepare financial statements in compliance with accounting standards, ensuring accurate disclosure of financial information. Additionally, Section 134 requires directors to sign and approve financial reports, reinforcing accountability and investor confidence. These provisions enhance the company's reputation in the business environment, making it easier to secure loans, enter into joint ventures, and establish strategic partnerships.

# 1.2. CONNECTION TO THE COMPANIES ACT, 2013

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<sup>&</sup>lt;sup>7</sup> CA Mohammed S Chokhawala, "Income Tax Act 1961: Chapters, Objectives, Features, Provisions" ClearTax, 24 May 2023.

The Companies Act, 2013 serves as the cornerstone of corporate governance and regulation in India, providing the legal framework for the incorporation, management, and dissolution of companies. It replaces the Companies Act, 1956, which was deemed outdated and inefficient in addressing the growing complexity of corporate structures and global business practices. The 2013 Act introduces a more comprehensive and streamlined approach to company incorporation, offering modern mechanisms that encourage ease of doing business and improve transparency in corporate operations.<sup>8</sup> Incorporation, as defined under Section 3 of the Companies Act, 2013, is a process that legally establishes a company as a distinct legal entity. This section requires a company to be registered with the Registrar of Companies (RoC), and it must comply with the procedures outlined in the Act to gain legal status. One of the fundamental provisions under the Act that governs the process of incorporation is Section 7, which mandates that a company must submit certain documents, including the Memorandum of Association (MoA) and Articles of Association (AoA), to the RoC. These documents outline the company's objectives, internal governance, and the scope of its operations, ensuring that the entity operates within the legal framework defined by the Act. Section 7(1)(c) specifically stipulates that the company must also submit a declaration that the requirements for registration have been complied with, making the legal process of incorporation transparent and accountable. The Companies Act, 2013, also introduces provisions for different types of companies, including private companies, public companies, and One Person Companies (OPCs). As per Section 2(68), a private company is defined as a company that restricts the transfer of its shares and limits the number of members. On the other hand, Section 2(71) defines a public company as a company that is not a private company and allows unrestricted share transfers and a minimum number of members. A significant reform introduced under the Act is the One Person Company (OPC), as defined in Section 2(62), which allows a single individual to establish a company, thereby fostering entrepreneurship among those who may not have the resources to form a traditional partnership or corporate entity.

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Incorporation under the Companies Act, 2013, also facilitates the adoption of modern digital tools to streamline the process. The MCA21 portal, an initiative by the

<sup>&</sup>lt;sup>8</sup> "Adequate provisions under the Companies Act, 2013 (Act) for strengthening corporate governance and transparency in the management of companies," *available at*: https://pib.gov.in/PressReleaseIframePage.aspx?PRID=2110416 (last visited March 21, 2025).

Ministry of Corporate Affairs, allows businesses to submit registration documents online, thereby reducing the paperwork and the time needed to complete the incorporation process. This digitization is in line with the Ease of Doing Business initiatives by the government, aimed at creating a more transparent and accessible business environment. The portal provides services such as name reservation (under Section 4), where applicants can submit a proposed company name for approval, and incorporation applications that allow for the submission of key documents like the MoA and AoA, in accordance with the provisions of the Companies Act. 9

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In addition to the technical requirements for incorporation, the Act also ensures that companies adhere to various compliance norms. For instance, Section 12 of the Act mandates that a company must establish a registered office within 30 days of its incorporation, which is necessary for the company to conduct business, receive legal notices, and fulfill statutory obligations. Further, the Act requires companies to appoint a director in accordance with Section 149, which mandates that every company, other than a One Person Company, must have at least two directors. These provisions ensure that a company operates with proper governance structures and has the required legal framework to function effectively. Moreover, Section 18 of the Companies Act, 2013, provides that a company can be converted from one type to another, for example, from a private company to a public company, in compliance with prescribed procedures. This offers companies the flexibility to adapt to changing business needs. Similarly, Section 366 facilitates the conversion of existing entities, such as partnerships or limited liability partnerships (LLPs), into companies, thus promoting the growth of formal business structures in India.

### 1.3. STATEMENT OF PROBLEM

Despite the Companies Act, 2013, being designed to simplify the company incorporation process, stakeholders continue to face significant challenges. These include procedural delays, lack of clarity in certain provisions, and stringent compliance requirements that add to the operational burden. The complexities surrounding registration, the inconsistent application of laws, and the bureaucratic inefficiencies result in delays that hinder business operations. These issues counteract

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<sup>&</sup>lt;sup>9</sup> Mohammed Basheer, "Ministry of Corporate Affairs: Process & Compliance Guide" Vakilsearch | Blog, 2024 *available at*: https://vakilsearch.com/blog/ministry-of-corporate-affairs/ (last visited March 21, 2025).

ess-friendly environment and promoting

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the government's vision of fostering a business-friendly environment and promoting ease of doing business in India, ultimately discouraging entrepreneurship and stifling economic growth. Therefore, there is an urgent need for further reforms to address these inefficiencies and ensure smoother incorporation.

### 1.4. RESEARCH OBJECTIVES

- 1. To analyze the procedure of incorporation under the Companies Act, 2013.
- 2. To identify challenges faced by stakeholders in the incorporation process.
- 3. To study judicial interpretations of key provisions related to incorporation.
- 4. To suggest legal and procedural reforms for a streamlined incorporation process.

### 1.5. RESEARCH QUESTIONS

- 1. What are the procedural requirements for incorporating a company under the Companies Act, 2013?
- 2. What challenges do stakeholders face in complying with these requirements?
- 3. How do judicial pronouncements influence the interpretation of incorporation provisions?
- 4. What reforms can enhance the ease of incorporating a company in India?

### 1.6. LITERATURE REVIEW

**Sharma, R.** (2021).<sup>10</sup> In this article, Sharma analyzes the impact of the Companies Act, 2013, on corporate governance practices in India. The paper discusses the statutory obligations imposed on companies for ensuring transparency, accountability, and protection of shareholders' interests, particularly focusing on the role of independent directors, audit committees, and corporate social responsibility (CSR).

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<sup>10</sup> Sharma, R. (2021). "Corporate Governance and Its Implications under the Companies Act, 2013," Journal of Corporate Law and Practice, 13(2), 34-45.



**Patel, S.** (2020).<sup>11</sup> Patel's article delves into the challenges faced by entrepreneurs and businesses during the company incorporation process under the Companies Act, 2013. It critically examines procedural issues such as delays in obtaining the Corporate Identification Number (CIN), the complexities of drafting the Memorandum of Association (MoA) and Articles of Association (AoA), and the role of various stakeholders like the Registrar of Companies (RoC) and the Ministry of Corporate Affairs (MCA).

**Gupta**, **A.** (2019). <sup>12</sup> Gupta's article focuses on the pivotal role played by the Registrar of Companies (RoC) in the company incorporation process under the Companies Act, 2013. It explores the responsibilities and functions of the RoC, such as verifying documents, processing applications, and ensuring compliance with statutory requirements. The paper also discusses the challenges faced by the RoC in dealing with high volumes of incorporation requests and the increasing reliance on digital platforms like the MCA21 portal to expedite the process. Gupta advocates for better infrastructure and clearer guidelines to enhance the effectiveness of the RoC.

Verma, P. & Khurana, V. (2020).<sup>13</sup> In this collaborative article, Verma and Khurana examine the various reforms introduced in the Companies Act, 2013, with a particular focus on simplifying the company incorporation process. They assess the amendments aimed at reducing the bureaucratic burden, such as the introduction of the single-window clearance system and the online incorporation process. The authors also highlight how these reforms have impacted businesses, particularly startups, and suggest further changes that could improve the efficiency and speed of incorporation in India, including enhancing the digital infrastructure and providing more user- friendly guidance for applicants.

Nair, K. (2021).<sup>14</sup> Nair's article reviews the key judicial decisions that have shaped the interpretation of various provisions of the Companies Act, 2013. It discusses how courts have interpreted provisions related to company formation, the powers of

<sup>&</sup>lt;sup>11</sup> Patel, S. (2020). "Challenges in Company Incorporation under the Companies Act, 2013," Indian Business Law Review, 12(4), 56-68.

<sup>&</sup>lt;sup>12</sup> Gupta, A. (2019). "The Role of the Registrar of Companies in Company Incorporation," Indian Journal of Corporate Law, 8(1), 22-31.

<sup>&</sup>lt;sup>13</sup> Verma, P. & Khurana, V. (2020). "Reforms in the Companies Act: Simplifying the Incorporation Process," Business Law Journal, 17(3), 40-52.

<sup>&</sup>lt;sup>14</sup> Nair, K. (2021). "Judicial Interpretation of the Companies Act, 2013: Key Trends and Developments," Corporate Law Review, 14(2), 98-112.

directors, and shareholder rights, and explores the role of the judiciary in ensuring that the Act is enforced in line with its legislative intent. Nair examines trends such as the judiciary's approach towards corporate governance and disputes arising out of non-compliance with statutory requirements.

**Singh, R.** (2018). Singh's article provides a historical perspective on the evolution of the Companies Act in India, tracing its development from the Companies Act, 1956, to the enactment of the Companies Act, 2013. The paper highlights the key reforms introduced in the 2013 Act, including provisions related to corporate governance, the incorporation process, and the protection of minority shareholders. Singh compares the old and new Acts, illustrating how the Companies Act, 2013, reflects global best practices and the changing needs of the Indian business environment.

### 1.7. **HYPOTHESIS**

- 1. The incorporation process under the Companies Act, 2013, is overly complex, involving a detailed procedural framework that can hinder ease of doing business.
- 2. Many small and medium enterprises (SMEs) face challenges in understanding and adhering to legal requirements during incorporation.
- 3. There exists a significant gap between the legislative intent of simplifying incorporation and its practical implementation.
- 4. Simplifying procedural requirements, increasing awareness among stakeholders, and reducing bureaucratic hurdles can lead to improved compliance and better regulatory outcomes.
- Judicial interpretations and technological interventions, such as the MCA21
  portal, play a crucial role in addressing the challenges faced in incorporation
  processes.

### 1.8. RESEARCH METHODOLOGY

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<sup>&</sup>lt;sup>15</sup> Singh, R. (2018). "The Evolution of the Companies Act from 1956 to 2013," Journal of Indian Law and Society, 9(1), 55-70.

The research methodology employed in this study is doctrinal in nature, focusing on the analysis of existing legal texts, statutes, case laws, and scholarly articles. The doctrinal approach involves a comprehensive review of the Companies Act, 2013, relevant sections, rules, and regulations governing the incorporation process, as well as judicial interpretations and administrative guidelines issued by the Ministry of Corporate Affairs (MCA). This study will systematically examine the procedural framework for company incorporation, identify key challenges faced by stakeholders, and assess how judicial decisions have shaped the legal landscape of incorporation. Data for this research will be collected from primary and secondary legal sources, including statutes, judgments, reports, and legal commentaries.

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### 1.9. STUDENT LEARNING OUTCOMES

- 1. Gained insights into company incorporation procedures and compliance under the Companies Act, 2013.
- 2. Enhanced skills in legal research, statutory interpretation, and critical analysis.
- 3. Developed an understanding of the practical challenges faced by stakeholders during incorporation.

### 1.10. CHAPTERIZATION

### Chapter 1: Introduction

This chapter will provide an overview of the dissertation, explaining the concept of company incorporation, its importance, and its connection to the Companies Act, 2013. It will outline the objectives, scope, and significance of the research.

### Chapter 2: Historical background of companies Act, 2013

This chapter will trace the evolution of company incorporation laws in India, from the Companies Act, 1956, to the enactment of the Companies Act, 2013. It will highlight the legislative intent behind introducing changes in incorporation processes.

### Chapter 3: Procedural analysis of incorporation of companies

This chapter will examine the step-by-step process of company incorporation, including the roles of key stakeholders such as the Ministry of Corporate Affairs, the Registrar of

Companies, and digital platforms like the MCA21 portal.



### Chapter 4: Challenges in incorporation of companies

This chapter will analyze the practical challenges faced by stakeholders, such as procedural delays, legal ambiguities, and compliance burdens, and their impact on ease of doing business in India.

### Chapter 5: Judicial interpretation

This chapter will explore significant judicial decisions that have influenced the understanding and application of incorporation provisions under the Companies Act, 2013.

## Chapter 6: Comparative Study of different company laws of various jurisdiction

This chapter will compare India's incorporation process with those of other jurisdictions, identifying global best practices and their relevance to the Indian framework.

### Chapter 7: Proposed reform of smooth incorporation of companies in India

This chapter will suggest reforms to simplify the incorporation process, reduce procedural hurdles, and align the Companies Act, 2013, with global standards. It will also explore the future of incorporation laws in India in light of technological advancements and economic changes.

### Chapter 8: Conclusion and Recommendations

This final chapter will summarize the key findings of the dissertation, restate its significance, and provide practical recommendations to improve the incorporation process.



## CHAPTER 2

### HISTORICAL BACKGROUND OF THE COMPANIES ACT, 2013

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# 2.1 EVOLUTION FROM THE COMPANIES ACT, 1956 TO 2013

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The evolution of company law in India traces its roots back to the British colonial period, with the Companies Act, 1857, being the first significant legislation that dealt with the incorporation of companies in India. This Act was followed by a series of amendments until the Companies Act, 1956, which served as the primary corporate law in India for more than five decades. The Companies Act, 1956, was a comprehensive piece of legislation that governed all aspects of corporate activity, including the formation, governance, and dissolution of companies. It was largely based on the English Companies Act of 1948 and was aimed at fostering a regulatory framework for both public and private companies in India. 16

The Companies Act, 1956, had several limitations that became apparent over time, particularly in the areas of corporate governance, transparency, and ease of doing business. The Act was often criticized for being outdated, cumbersome, and overly bureaucratic. The incorporation process was complex, compliance requirements were stringent, and the role of directors and shareholders was not clearly defined. Additionally, the economic liberalization in the 1990s, which opened up the Indian economy to global markets, highlighted the need for a more robust, modern, and business-friendly regulatory environment to meet the challenges of the globalized economy.<sup>17</sup>

As a response to the growing demands for better governance, simpler procedures, and enhanced transparency, the Indian government undertook a comprehensive review of the Companies Act, 1956. The Securities and Exchange Board of India (SEBI), along with the Ministry of Corporate Affairs (MCA), initiated discussions about overhauling the old framework. This led to the introduction of the Companies Bill, 2009, which was eventually passed as the Companies Act, 2013. The Act came into

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<sup>16</sup> DR.MARIAPPAN GOVINDARAJAN, "COMPANY LEGISLATION IN INDIA"

Taxmanagementindia.com (A unit of MS Knowledge Processing Pvt. Ltd.) *available at*: https://www.taxmanagementindia.com/visitor/detail\_article.asp?ArticleID=13269 (last visited March 21, 2025).

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<sup>17</sup> Elearnmarkets, "Corporate Governance: Purpose, Importance, Structures" Elearnmarkets *available at*: https://www.elearnmarkets.com/school/units/corporate-governance (last visited March 21, 2025).



concerns raised by stakeholders.<sup>18</sup>

force on April 1, 2014, after extensive deliberations and several amendments to address

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The new Companies Act, 2013, was designed to cater to the modern needs of businesses, focusing on improving governance, increasing corporate responsibility, enhancing transparency, and simplifying the regulatory framework. The evolution from the Companies Act, 1956, to the Companies Act, 2013, represents a shift towards a more progressive, transparent, and investor-friendly approach to company law, aligning with global practices and responding to India's economic growth and changing business environment.

# 2.2 <u>LEGISLATIVE INTENT BEHIND THE</u> <u>CHANGES</u>

The legislative intent behind the changes from the Companies Act, 1956, to the Companies Act, 2013, was primarily to simplify company registration, improve corporate governance, and enhance transparency while ensuring that India's corporate laws were in line with global standards. The intention was also to foster an environment that would facilitate the ease of doing business, especially in the context of India's growing economic stature and the need to attract both domestic and foreign investment.<sup>19</sup>

One of the key drivers of the reforms was the recognition of the limitations of the Companies Act, 1956, in addressing the evolving corporate needs in India. The Act was seen as being overly complex, bureaucratic, and rigid in its provisions, which made compliance burdensome for small and medium-sized enterprises (SMEs). This hampered entrepreneurship, stifled innovation, and created barriers to entry for new businesses. The introduction of the Companies Act, 2013, aimed to eliminate these barriers by simplifying the incorporation process and reducing the compliance burden on companies.

<sup>&</sup>lt;sup>18</sup> J. P. Singh, Naveen Srivastav and Shigufta hena Uzma, "The changing landscape of corporate governance framework in India" Inderscience Publishers, 2011 *available at*: https://www.researchgate.net/publication/264441573\_The\_changing\_landscape\_of\_corporate\_governance framework in India (last visited March 21, 2025).

<sup>&</sup>lt;sup>19</sup> Roji Kanungo and Sakti Ranjan Dash, "A CONCEPTUAL VIEW ON COMPANIES ACT 2013: WITH SPECIAL REFERENCE TO SHARE CAPITAL" unknown, 2016 *available at*:

https://www.researchgate.net/publication/328262628\_A\_CONCEPTUAL\_VIEW\_ON\_COMPANIES\_ACT\_2013\_WITH\_SPECIAL\_REFERENCE\_TO\_SHARE\_CAPITAL (last visited March 21, 2025).



The Companies Act, 2013, reflects a significant shift in approach by prioritizing corporate governance and accountability. The emphasis on improving transparency and protecting the interests of stakeholders, particularly minority shareholders, became a focal point of the new Act. For instance, provisions related to independent directors (Section 149) and audit committees (Section 177) were introduced to enhance oversight and ensure that companies operate in the best interests of all stakeholders.<sup>20</sup>

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Furthermore, the Act introduced provisions aimed at protecting minority shareholders, ensuring their rights are upheld in situations where there is a conflict of interest between controlling shareholders and minority stakeholders. The move to allow easier regulation of small companies and One Person Companies (OPCs) also demonstrated a legislative intent to encourage entrepreneurship and accommodate diverse business models. Another important aspect of the legislative intent was to introduce greater flexibility in corporate structures. The Companies Act, 2013, offers companies greater ease in adapting to changing business conditions, such as the ability to easily convert from one type of company to another (e.g., from private to public). Additionally, the introduction of e-governance measures, such as the MCA21 portal, is a step towards reducing bureaucratic hurdles and facilitating the digital filing of documents, thus contributing to a smoother and faster incorporation process.

## 2.3 KEY FEATURES OF THE COMPANIES ACT, 2013

The Companies Act, 2013 represents a paradigm shift in corporate law in India, with several key features designed to modernize and streamline company incorporation and regulation. The Act introduces various reforms and innovations that significantly impact the structure, governance, and operations of companies in India. Below are the key features of the Act, with reference to specific sections and laws:

Simplified Incorporation Process The Act makes significant strides in simplifying the process of company incorporation. Section 7 provides that the company can be incorporated by filing an application with the Registrar of Companies (RoC), which

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<sup>&</sup>lt;sup>20</sup> "Adequate provisions under the Companies Act, 2013 (Act) for strengthening corporate governance and transparency in the management of companies," *available at*:

https://pib.gov.in/PressReleaseIframePage.aspx?PRID=2110416 (last visited March 21, 2025).

<sup>&</sup>lt;sup>21</sup> Sneha Mahawar, "Rights of minority shareholders: principle and provisions" iPleaders, 2023 *available at*: https://blog.ipleaders.in/rights-of-minority-shareholders-principle-and-provisions/ (last visited March 21, 2025).

includes essential documents like the Memorandum of Association (MoA) and Articles of Association (AoA). The introduction of the MCA21 portal (Section 403) allows for the electronic filing of documents, thereby reducing paperwork and speeding up the registration process. Additionally, the One Person Company (OPC) concept, introduced

under Section 2(62), simplifies incorporation for individuals, allowing a single person

to set up a company, making it easier for entrepreneurs to start their businesses.<sup>22</sup>

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Corporate Governance The Companies Act, 2013, places a strong emphasis on corporate governance, which is aimed at improving transparency, accountability, and investor confidence. Section 149 mandates the appointment of independent directors, ensuring that decisions taken by the board are subject to proper oversight. The audit committee, as stipulated in Section 177, is another important governance mechanism, ensuring that financial statements are properly scrutinized and that companies comply with accounting and auditing standards. These provisions are designed to enhance accountability and safeguard the interests of shareholders and stakeholders.

Protection of Minority Shareholders The Companies Act, 2013, introduces several provisions designed to protect the interests of minority shareholders, who were often marginalized under the old framework. Section 244 allows shareholders who collectively hold at least 10% of the paid-up share capital of a company to file a complaint with the National Company Law Tribunal (NCLT) if they believe that the company's management is not operating in accordance with the law. This provision empowers minority shareholders and ensures that their voices are heard in cases of corporate misconduct or mismanagement.

E-Governance and Digitalization The introduction of MCA21 (Section 403) has made it possible for companies to file their documents electronically, greatly reducing the need for physical paperwork and speeding up the registration and compliance process. The system also allows for real-time tracking of company-related filings and statuses, making the entire process more transparent and efficient. This shift towards egovernance is in line with global best practices and makes doing business in India more efficient and cost-effective.

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<sup>&</sup>lt;sup>22</sup> "Section 7.Incorporation of company," Companies Act Integrated Ready Reckoner|Companies Act 2013|CAIRR *available at*: https://ca2013.com/incorporation-of-company/ (last visited March 21, 2025).

Small Companies and One Person Companies One of the most progressive features of the Companies Act, 2013, is the recognition and regulation of small companies (Section 2(85)) and One Person Companies (OPCs) (Section 2(62)). The Act defines small companies as those that meet specific criteria regarding paid-up capital and turnover, and provides them with a simplified regulatory framework, thereby encouraging entrepreneurship. Similarly, the OPC provision allows an individual to incorporate a company without needing partners, promoting individual entrepreneurship while still benefiting from the advantages of limited liability.<sup>23</sup>

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Financial Transparency and Accountability The Companies Act, 2013, places a significant emphasis on financial transparency, requiring companies to maintain proper books of accounts and prepare financial statements in compliance with accounting standards. Section 129 mandates that companies prepare their annual financial statements, while Section 134 requires directors to sign the financial statement and provide a detailed report of the company's operations. These provisions ensure that companies remain accountable to their shareholders and other stakeholders.

Corporate Social Responsibility (CSR) Another notable feature of the Companies Act, 2013, is the introduction of mandatory Corporate Social Responsibility (CSR) for certain companies. Section 135 requires companies with a net worth of ₹500 crore or more, a turnover of ₹1000 crore or more, or a net profit of ₹5 crore or more to allocate at least 2% of their average net profit towards CSR activities. This provision reflects the growing global focus on ethical business practices and community development.

Stronger Enforcement and Penalties The Companies Act, 2013, strengthens enforcement mechanisms to ensure compliance. It introduces penalties for non-compliance, including fines and imprisonment for directors and officers who fail to comply with statutory requirements. Section 447 lays down stringent penalties for fraudulent activities, including the imprisonment of individuals involved in misrepresentation of financial statements, highlighting the government's intent to enhance corporate responsibility and integrity.

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<sup>&</sup>lt;sup>23</sup> "Section 2(85).Small Company," Companies Act Integrated Ready Reckoner|Companies Act 2013|CAIRR *available at*: https://ca2013.com/section-285-small-company/ (last visited March 21, 2025).

## 2.4 PREVIOUS CHALLENGES IN COMPANY INCORPORATION

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The Companies Act, 1956 served as the guiding legislation for corporate governance in India for several decades. However, over time, it became apparent that the Act was increasingly out of sync with the evolving needs of the business landscape, particularly in terms of the incorporation process. Several challenges were identified in the incorporation process under the Companies Act, 1956, which hindered the ease of doing business in India.<sup>24</sup>

One of the primary challenges was the complexity of the incorporation procedure. The process of registering a company under the 1956 Act was often cumbersome, requiring numerous documents and approvals from different regulatory bodies. The incorporation involved a multi-step procedure, with the need to reserve a company name, obtain a Certificate of Incorporation from the Registrar of Companies (RoC), and submit multiple documents, including the Memorandum of Association (MoA) and Articles of Association (AoA). These documents had to be filed in hard copy, making the process both time-consuming and prone to errors.

Moreover, bureaucratic inefficiencies within government departments exacerbated the situation. Delays in the approval process, lack of clear communication from the RoC, and inconsistent application of the law created significant uncertainty for businesses. Entrepreneurs often found themselves stuck in long waiting periods, not knowing when their incorporation would be finalized. Additionally, there were often ambiguities in the interpretation of certain provisions of the Companies Act, 1956, which resulted in inconsistent decisions and increased the risk of legal challenges. These delays not only impacted new businesses but also increased the operational costs associated with establishing a company in India.

The stringent compliance requirements of the Companies Act, 1956, also posed challenges for companies, especially small and medium enterprises (SMEs). The Act imposed several ongoing compliance obligations, such as the maintenance of detailed financial records, regular filings with the RoC, and adherence to complex rules governing shareholder meetings, board meetings, and reporting. These compliance costs were burdensome, especially for SMEs with limited resources. The Act did not

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<sup>24</sup> "Companies Act 1956: Meaning, Features, Repeal, 2013 Act & More," *available at*: https://thelegalschool.in/blog/companies-act-1956 (last visited March 21, 2025).



distinguish between large, complex corporations and smaller, simpler businesses, thereby imposing the same regulatory requirements on all companies, which further deterred entrepreneurship. Another key challenge was the limited flexibility of the Companies Act, 1956, to cater to the emerging needs of the Indian business environment. With the advent of the Information Technology (IT) and services sector and a growing globalized economy, the existing framework became inadequate for addressing the needs of new business models. Small businesses, particularly startups, struggled with the high cost of incorporation, the complexity of governance structures, and the lack of flexibility in regulatory requirements. The absence of provisions for One Person Companies (OPCs) was a glaring gap in the Companies Act, 1956, since it failed to provide a mechanism for individuals wishing to start businesses without partners.<sup>25</sup>

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Furthermore, the inconsistent enforcement of laws under the Companies Act, 1956, contributed to an uncertain business environment. The lack of stringent measures to address corporate fraud, mismanagement, and failure to comply with corporate governance norms led to a situation where companies could easily circumvent the law, negatively affecting investor confidence.

The lack of a modernized approach to digitalization was another challenge. While some companies were able to comply with the provisions of the Act through physical submissions, others found it difficult to navigate the bureaucratic hurdles associated with paperwork and physical filings. The absence of online facilities for filing documents and tracking company status led to further delays, errors, and inefficiencies in the incorporation process.

# 2.5 IMPACT OF THE COMPANIES ACT, 2013 ON BUSINESS

#### **ENVIRONMENT**

The Companies Act, 2013 brought about significant reforms to the corporate landscape in India, transforming the way businesses are incorporated, governed, and regulated. The Act was designed with the goal of improving corporate governance, fostering transparency, reducing compliance burdens, and creating a business-friendly

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<sup>&</sup>lt;sup>25</sup> Mariarosaria Comunale and Andrea Manera, "The Economic Impacts and the Regulation of AI: A Review of the Academic Literature and Policy Actions," 2024 IMF Working Papers (2024).

environment in India. Its impact has been wide-ranging, influencing various aspects of business formation, governance, and operations.

One of the most significant impacts of the Companies Act, 2013, is the simplification of the company incorporation process. Under the previous framework, incorporating a company involved a complex, time-consuming procedure, with multiple steps and approvals required from different regulatory authorities. In contrast, the Companies Act, 2013, introduced several measures aimed at streamlining this process. The MCA21 portal (Section 403) was launched to facilitate online filing of incorporation documents, eliminating the need for physical submissions and reducing the bureaucratic delays that previously plagued the system. This digitalization of the process has allowed businesses to complete registration faster and more efficiently, providing a significant boost to the ease of doing business in India.<sup>26</sup>

The introduction of One Person Companies (OPCs) under Section 2(62) is another transformative feature of the Companies Act, 2013. The Act provides a legal framework for individuals to establish a company without requiring a partner, thereby encouraging entrepreneurship and enabling solo entrepreneurs to take advantage of the benefits associated with limited liability. This provision has had a particularly positive impact on startups and small businesses, as it reduces the financial burden associated with forming a company and allows individuals to operate as a separate legal entity without the need to collaborate with others.

The emphasis on corporate governance and accountability under the Companies Act, 2013, has had a significant impact on business operations. The Act introduced provisions such as the mandatory appointment of independent directors (Section 149) and the establishment of audit committees (Section 177) to ensure that companies adhere to best practices in governance and accountability. These measures have increased corporate transparency, fostered investor confidence, and minimized the potential for corporate fraud and mismanagement. The provisions related to financial disclosures under Section 134 and Section 129 have also contributed to improving financial transparency, ensuring that companies maintain accurate and accessible records of their financial performance.

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<sup>&</sup>lt;sup>26</sup> Admin, "Effect of Registration: Understanding Its Implications under the Companies Act, 2013" The Law Codes, 2024 *available at*: https://thelawcodes.com/effect-of-registration-understanding-its-implications-under-the-companies-act-2013/ (last visited March 21, 2025).

The Companies Act, 2013, has also had a positive impact on small and medium enterprises (SMEs). By introducing the concept of small companies (Section 2(85)), the Act has provided a more flexible regulatory framework for businesses with limited turnover and paid-up capital. This has reduced the compliance burden for smaller businesses, enabling them to focus more on growth and innovation. Additionally, the Act's provisions for streamlining the governance structures and reducing regulatory costs have made it easier for SMEs to comply with legal requirements, encouraging more businesses to formalize their operations and contribute to the country's economic growth.<sup>27</sup>

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The corporate social responsibility (CSR) provisions introduced under Section 135 have had a dual impact. On one hand, they have increased the accountability of companies towards the community and the environment by mandating that companies meeting specific criteria allocate a portion of their profits towards social initiatives. This has contributed to a shift towards more sustainable business practices in India, with companies focusing on not just profitability but also on the welfare of society. On the other hand, the CSR provisions have helped create a culture of corporate responsibility, ensuring that businesses contribute positively to national development goals.

Furthermore, the Companies Act, 2013, has contributed to improving investor protection and market efficiency. The introduction of provisions aimed at enhancing shareholder democracy and minority rights, such as the ability for shareholders to approach the National Company Law Tribunal (NCLT) under Section 244 in case of oppression or mismanagement, has given investors more power to challenge the actions of corporate management. This has resulted in better governance and has ensured that companies are more accountable to their shareholders.

The increased regulatory oversight introduced by the Companies Act, 2013, has also helped curb the incidence of corporate fraud and misconduct. With stricter penalties for violations, such as those under Section 447 for fraudulent activities, and provisions for the imposition of fines and criminal liability on directors, the Act has

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<sup>&</sup>lt;sup>27</sup> "Small Companies – privileges and issues under the Companies Act, 2013," *available at*: http://www.companiesact.in/Companies-Act-2013/Expert-Column-Details/87/Small%20Companies%20%E2%80%93%20privileges%20and%20issues%20under%20the %20Companies%20Act,%202013 (last visited March 21, 2025).

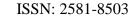
contributed to the creation of a more disciplined and compliant corporate environment. This enhanced enforcement has made India's corporate sector more attractive to both domestic and international investors, as it fosters trust and reliability.<sup>28</sup>

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The Companies Act, 2013, has also had a positive impact on India's ranking in the global ease of doing business index. The simplification of the incorporation process, the introduction of online filing systems, the encouragement of small businesses through more lenient regulatory requirements, and the improvement of corporate governance mechanisms have all played a part in improving India's reputation as a business destination. These reforms have attracted greater foreign direct investment (FDI), as global investors seek markets that offer transparent and efficient regulatory environments.

In conclusion, the Companies Act, 2013 has had a profound impact on the business environment in India. By simplifying the company incorporation process, promoting corporate governance, protecting minority shareholders, and improving transparency, the Act has contributed to creating a more business-friendly environment. The introduction of provisions for One Person Companies, CSR, and small companies has helped foster entrepreneurship, particularly in the startup and SME sectors, while the enhanced enforcement mechanisms have improved corporate accountability. Overall, the Companies Act, 2013, has played a pivotal role in modernizing India's corporate landscape, making it more aligned with global standards and facilitating sustainable economic growth.

<sup>&</sup>lt;sup>28</sup> Aayan Birla, "Corporate Fraud: Companies Act Section 447 Explained" Metalegal Advocates, 2024 *available at*: https://www.metalegal.in/post/corporate-fraud-surfing-the-legal-tides-of-section-447-of-the-companies-act-2013 (last visited March 21, 2025).



# CHAPTER 3 PROCEDURAL ANALYSIS OF INCORPORATION OF

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## 3.1 KEY STAKEHOLDERS IN COMPANY INCORPORATION

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In the process of company incorporation under the Companies Act, 2013, several stakeholders are involved, each playing a distinct role to ensure that the incorporation is legally valid and complies with the regulatory framework. The key stakeholders include entrepreneurs, legal advisors, the Ministry of Corporate Affairs (MCA), the Registrar of Companies (RoC), and third-party service providers like professionals and technology platforms.<sup>29</sup> The entrepreneurs or founders of the company are the primary stakeholders. They are responsible for initiating the incorporation process by preparing the necessary documentation, selecting the appropriate type of company (such as a private limited company, public limited company, or One Person Company), and ensuring that all legal requirements are met. These individuals are typically guided by legal advisors or company secretaries, who provide professional services in drafting key documents, such as the Memorandum of Association (MoA) and Articles of Association (AoA). Legal advisors also help in choosing the right structure for the company and ensuring compliance with various statutory provisions.<sup>30</sup>

The Ministry of Corporate Affairs (MCA) is the central body that oversees the overall corporate governance framework in India. It is responsible for ensuring that the incorporation process adheres to the provisions of the Companies Act, 2013, and related rules. The MCA also oversees the online platform (MCA21 portal), where a large part of the incorporation process takes place. The ministry monitors the compliance of companies after incorporation, ensuring their legal standing and maintaining the official records of companies in India.

The Registrar of Companies (RoC) plays a central role in company incorporation. The RoC is a government official responsible for registering companies, maintaining their records, and monitoring their compliance with statutory provisions under the Companies Act, 2013. The RoC is tasked with reviewing the documents submitted by the company for incorporation, issuing the Certificate of Incorporation, and registering the company in the official records. The RoC is also responsible for

<sup>&</sup>lt;sup>29</sup> "Incorporation of a Company under Companies Act, 2013," *available at*: https://www.vakilkaro.com/blogs/incorporation-of-a-company-under-companies-act-2013 (last visited March 21, 2025).

<sup>&</sup>lt;sup>30</sup> Adam Hayes, "Incorporation: Definition, How It Works, and Advantages" Investopedia, 10 July 2007.

overseeing the ongoing compliance of companies, such as conducting annual filings and updating corporate records.<sup>31</sup>

Finally, third-party service providers, including chartered accountants and company secretaries, play a vital role in guiding companies through the incorporation process. They assist with the preparation of legal documents, the submission of forms, and the overall regulatory compliance. Additionally, technology platforms, such as the MCA21 portal, facilitate the submission of electronic forms, making the process more efficient and transparent.<sup>32</sup>

#### 3.2 STEP-BY-STEP PROCESS OF INCORPORATION

The process of incorporating a company under the Companies Act, 2013 is designed to ensure that all legal requirements are met, and the company is officially recognized as a separate legal entity. The steps involved are relatively straightforward but require careful attention to detail.

Step 1: Name Reservation The first step in the incorporation process is selecting and reserving the name of the company. The name must comply with the provisions of the Companies (Incorporation) Rules, 2014, which mandate that the name should not be identical or similar to an existing company or trademark. The applicant submits the proposed name(s) through the MCA21 portal using Form SPICe+ (Simplified Proforma for Incorporating Company electronically Plus). The Ministry of Corporate Affairs (MCA) reviews the name and grants approval, or requests a revision.

Step 2: Preparation of Documents Once the name is approved, the next step is the preparation of essential documents, such as the Memorandum of Association (MoA) and the Articles of Association (AoA). The MoA outlines the company's objectives, powers, and scope of operations, while the AoA lays down the rules and regulations governing the internal workings of the company. These documents must be signed by the subscribers (the individuals who are forming the company), who must also provide proof of their identity and address.

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<sup>&</sup>lt;sup>31</sup> Ishita Ramani, "What are the Roles of Registrar of Companies (ROC) in India?" Taxmanagementindia.com (A unit of MS Knowledge Processing Pvt. Ltd.) *available at*: https://www.taxmanagementindia.com/visitor/detail\_article.asp?ArticleID=12028 (last visited March



<sup>21, 2025).</sup>  $\,^{32}$  "The changing role of the company secretary," Deloitte, 26 November 2013.

Step 3: Submission of Forms After preparing the documents, the next step is submitting the required forms on the MCA21 portal. The relevant forms include Form SPICe+, which integrates several services like obtaining a Director Identification Number (DIN), Digital Signature Certificate (DSC), and the Tax Deduction Account Number (TAN), and Permanent Account Number (PAN) for the company. These forms are uploaded electronically via the portal, simplifying the submission process.<sup>33</sup>

Step 4: Payment of Fees Upon successful submission of the forms, the applicant is required to pay the prescribed government fees. The fees vary depending on the authorized capital of the company. Payment can be made online via the MCA21 portal, and once the payment is processed, a receipt is generated.

Step 5: Issuance of Certificate of Incorporation Once the forms are reviewed and approved by the Registrar of Companies (RoC), and all the required documents are in order, the Certificate of Incorporation is issued. This certificate serves as proof that the company has been officially registered and recognized under the Companies Act, 2013. At this point, the company exists as a separate legal entity.

Step 6: Post-Incorporation Compliance After incorporation, the company must comply with certain post-incorporation formalities, such as opening a bank account, applying for a Goods and Services Tax (GST) registration (if applicable), and issuing share certificates to shareholders. Additionally, companies are required to maintain statutory records, conduct annual general meetings (AGMs), and file annual returns and financial statements with the RoC to ensure continued compliance with the Companies Act.

#### 3.3 ROLE OF THE MINISTRY OF CORPORATE AFFAIRS (MCA)

The Ministry of Corporate Affairs (MCA) is the central government authority responsible for overseeing the regulatory framework governing companies in India. The MCA plays a pivotal role in ensuring that the process of company incorporation is conducted in compliance with the Companies Act, 2013.

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<sup>&</sup>lt;sup>33</sup> CS Palak Gupta (Ex-employee), "All About New MCA Filing Form SPICe+ (SPICe Plus) for Company Registration" SAG Infotech Official Blog, 2020 *available at*: https://blog.saginfotech.com/spice-plus-form-mca (last visited March 21, 2025).

One of the MCA's most significant contributions to the incorporation process is the creation and maintenance of the MCA21 portal, a digital platform that streamlines and simplifies the submission of incorporation-related documents. Through this portal, entrepreneurs can apply for the reservation of company names, submit incorporation documents, make payments, and track the progress of their application. The portal provides an efficient and transparent mechanism for conducting business-related filings and interactions with the government.<sup>34</sup>

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In addition to the MCA21 portal, the MCA is responsible for updating and issuing regulatory rules, amendments, and guidelines related to company incorporation. The Ministry also plays an active role in ensuring compliance by monitoring the activities of companies and enforcing regulations concerning corporate governance, annual filings, and compliance with statutory obligations under the Companies Act, 2013.

## 3.4 ROLE OF THE REGISTRAR OF COMPANIES (ROC)

The Registrar of Companies (RoC) is the government official responsible for registering companies and maintaining the official records of all companies in India. The RoC is tasked with reviewing the documents submitted by companies for incorporation and ensuring that they comply with the requirements laid down under the Companies Act, 2013. Upon receiving the incorporation documents through the MCA21 portal, the RoC scrutinizes the Memorandum of Association (MoA), Articles of Association (AoA), and other statutory forms. The RoC verifies whether the company's proposed name complies with the regulations, if the company's objects are lawful, and if the documents are signed and filed correctly.

Once the documents are reviewed and approved, the RoC issues the Certificate of Incorporation under Section 7 of the Companies Act, 2013, signaling the company's legal existence. The RoC also plays an essential role in the post-incorporation compliance process. Companies are required to submit annual returns, financial statements, and other required filings with the RoC. If a company fails to meet these compliance requirements, the RoC has the authority to impose penalties or take corrective action.

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 $^{34}$  Mayashree Acharya, "What is MCA 21 Portal? - MCA 21 Services, MCA Registration and MCA V3" ClearTax, 24 January 2023.

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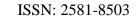
## 3.5 <u>USE OF DIGITAL PLATFORMS (MCA21 PORTAL)</u>

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The MCA21 portal has been a key technological advancement in the incorporation process under the Companies Act, 2013. The introduction of this online platform has dramatically streamlined the submission and processing of incorporation applications, reducing the reliance on physical paperwork and bureaucratic delays. The MCA21 portal serves as a one-stop solution for entrepreneurs and businesses to file forms, reserve company names, pay fees, and track the status of their incorporation application. This platform supports various services, such as the filing of Form SPICe+, which integrates multiple processes, including the issuance of Director Identification Numbers (DIN), Digital Signature Certificates (DSC), and Permanent Account Numbers (PAN). Entrepreneurs can also make online payments for filing fees, making the entire process more efficient and transparent.<sup>35</sup> In addition to its role in incorporation, the MCA21 portal is also used for filing annual returns, financial statements, and other compliancerelated documents required under the Companies Act, 2013. The portal provides a secure and centralized platform for companies to ensure they meet ongoing regulatory obligations. Furthermore, it offers tools for stakeholders to access company information, such as financial statements, director details, and annual filings, enhancing the transparency and accountability of corporate entities in India. In conclusion, the MCA21 portal has significantly improved the efficiency of company incorporation and ongoing compliance. By reducing paperwork, enabling online submissions, and integrating multiple services into one platform, the portal has played a vital role in simplifying the incorporation process, making it faster, more cost-effective, and more accessible to entrepreneurs and businesses across India.

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<sup>&</sup>lt;sup>35</sup> Mohammed Basheer, "Ministry of Corporate Affairs: Process & Compliance Guide" Vakilsearch | Blog, 2024 *available at*: https://vakilsearch.com/blog/ministry-of-corporate-affairs/ (last visited March 21, 2025).



#### **CHAPTER 4**

#### **CHALLENGES IN INCORPORATION OF COMPANIES**

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## 4.1 PROCEDURAL DELAYS AND BOTTLENECKS

Despite the simplification efforts under the Companies Act, 2013, procedural delays and bottlenecks remain significant challenges in the incorporation process. One of the key reasons for delays is the complexity involved in the approval process. While the MCA21 portal aims to streamline submissions, the process still requires manual verification by the Registrar of Companies (RoC), which can lead to delays in reviewing and approving documents. Under Section 7 of the Companies Act, 2013, the RoC is tasked with ensuring that all incorporation documents comply with legal requirements before issuing the Certificate of Incorporation. However, this review process may sometimes be slower than expected, particularly in cases where there are discrepancies or errors in the documentation.<sup>36</sup>

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Another source of delay is the time-consuming process of obtaining the Director Identification Number (DIN) and Digital Signature Certificate (DSC). Although these can now be obtained online through the MCA21 portal, the manual verification of documents submitted by the applicants can still cause delays. The MCA21 portal has, in some cases, been prone to technical glitches or issues with server responsiveness, further contributing to delays. Even after the Form SPICe+ is submitted, which integrates multiple services into a single filing process, the clearance may not be immediate, and this can lead to extended waiting times.<sup>37</sup>

The regulatory complexity of the process, combined with human errors in document submission, often leads to the return of forms for resubmission or corrections, resulting in further delays. The Ministry of Corporate Affairs (MCA) has taken steps to improve the system, but these inefficiencies continue to impact the incorporation timeline, especially for small businesses and entrepreneurs who are more likely to encounter obstacles in meeting complex requirements.

#### 4.2 <u>LEGAL AMBIGUITIES IN COMPANY</u> <u>FORMATION</u>

Another challenge faced in the incorporation process is the presence of legal ambiguities in certain provisions of the Companies Act, 2013. The Companies Act is

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<sup>36</sup> Latifa Albshaier, Seetah Almarri and M. M. Hafizur Rahman, "A Review of Blockchain's Role in E-Commerce Transactions: Open Challenges, and Future Research Directions," 13 Computers (2024). <sup>37</sup> "How to Apply for a Director Identification Number (DIN)," *available at*: https://companyformationindia.com/blog/how-to-apply-for-a-director-identification-number(din) (last visited March 21, 2025).



intended to provide clarity and ease of compliance, but there are still areas where legal interpretations are not entirely clear. For example, Section 7 of the Companies Act, which governs the process of company registration, has provisions regarding the Memorandum of Association (MoA) and Articles of Association (AoA), but there can be confusion about the exact scope of these documents in relation to the company's objectives, power, and internal regulations. The drafting of these documents is crucial to the incorporation process, yet many entrepreneurs and legal advisors face challenges in interpreting the requirements correctly.<sup>38</sup>

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Moreover, the Companies (Incorporation) Rules, 2014, that provide additional details on the incorporation process, leave room for interpretation regarding specific provisions such as the definition of "public interest" or the criteria for a private company to convert into a public company. These ambiguities may lead to mistakes in the filing process or result in delays when RoC officers ask for clarifications. The lack of absolute clarity in certain terms or procedures often leads to unnecessary back-and- forth communication between the RoC and the applicants.

The concept of "the company's name" is another example of a provision that invites legal ambiguity. Section 4 of the Companies Act, 2013, and the related rules provide guidelines on the naming of companies, but many businesses face difficulties in interpreting the legal requirements surrounding the use of words like "limited" or "private limited" in the company name, or when a proposed name is too similar to an existing company or a trademark. There is a need for more clear-cut guidelines to help reduce the confusion and ensure smooth registration.

#### 4.3 COMPLIANCE BURDEN ON ENTREPRENEURS

Entrepreneurs, especially those who are new to the process, often face significant **compliance burdens** when incorporating a company under the Companies Act, 2013. From obtaining a Director Identification Number (DIN) to preparing and filing Memorandum of Association (MoA) and Articles of Association (AoA), the legal formalities can be overwhelming, especially for small and medium enterprises

<sup>38</sup> Admin, "A COMPANY: INCORPORATION AND LEGAL COMPLIANCE » Lawful Legal"

Lawful Legal, 2025 *available at*: https://lawfullegal.in/a-company-incorporation-and-legal-compliance/ (last visited March 21, 2025).



(SMEs). Section 7 of the Companies Act, 2013 mandates compliance with specific requirements for document submission, which can be cumbersome.

The compliance burden is particularly heavy for startups that may not have the resources to hire professionals, such as company secretaries or chartered accountants, to assist them with legal and regulatory documentation. These entrepreneurs must navigate through a complex system of forms and rules, often requiring significant legal knowledge. This burden is exacerbated by the stringent filing deadlines and the need to maintain continuous compliance with post-incorporation requirements, such as annual filings, financial disclosures, and the holding of annual general meetings (AGMs) as per Sections 118-121 of the Companies Act, 2013.

Additionally, small businesses often struggle with the cost of compliance. The costs of obtaining Digital Signature Certificates (DSCs), paying filing fees, and hiring professionals can be prohibitive for entrepreneurs with limited capital. This not only burdens the company during the incorporation phase but also forces them to maintain compliance on an ongoing basis, leading to an increased cost of doing business.

# 4.4 IMPACT OF BUREAUCRATIC HURDLES ON EASE OF DOING BUSINESS

The bureaucratic hurdles present in the company incorporation process remain one of the most significant obstacles to improving the ease of doing business in India. Despite the government's push for simplification, the incorporation process still involves substantial interaction with government agencies, and these interactions can be slow and inefficient due to bureaucracy.

One example of such hurdles is the reliance on government officials to review and approve incorporation applications manually. Although the introduction of the MCA21 portal has streamlined the process, certain steps still require human intervention, such as verifying the identity of directors or approving the Memorandum of Association (MoA) and Articles of Association (AoA). These manual reviews can lead to inefficiencies and delays, especially when officials require additional documentation or clarification from the applicants. As per Section 7 of the Companies

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<sup>39</sup> "OECD Legal Instruments," *available at*: https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0413 (last visited March 21, 2025).



Act, 2013, which lays down the process for incorporation, delays in obtaining approval from the Registrar of Companies (RoC) can hold up the entire registration process, adversely affecting businesses looking to operate quickly.<sup>40</sup>

Moreover, the bureaucratic process is often not transparent. Entrepreneurs and business owners may not receive clear timelines for the processing of their applications or may find that their forms are rejected or returned without clear reasons. This lack of transparency often leads to frustration and confusion among entrepreneurs, particularly when they are trying to navigate complex government regulations without professional assistance.

These bureaucratic inefficiencies run contrary to the government's stated goal of improving the Ease of Doing Business in India. In the World Bank's Ease of Doing Business index, the bureaucratic hurdles in the company incorporation process are often highlighted as a factor that limits India's ranking. The introduction of digital systems has reduced some of these obstacles, but much remains to be done to fully streamline the process.

### 4.5 POSSIBLE SOLUTIONS TO OVERCOME CHALLENGES

To overcome the challenges faced during company incorporation under the Companies Act, 2013, several solutions can be proposed to simplify the process and reduce the compliance burden.

First, enhancing the functionality of the MCA21 portal is crucial. Expanding the range of services available online, reducing the number of manual approvals required, and improving the portal's user interface would make the incorporation process smoother. Additionally, improving the backend infrastructure to ensure that technical glitches and system downtimes are minimized will help reduce delays in form submission and approval.

Second, providing clear and more comprehensive guidelines in relation to legal ambiguities, especially concerning the Memorandum of Association (MoA) and Articles of Association (AoA), would ease the documentation process for

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<sup>&</sup>lt;sup>40</sup> shanKariasacademy, "U.K. Sinha Committee on MSMEs - Recommendations," 2019 available at:

https://www.shankariasparliament.com/current-affairs/uk-sinha-committee-on-msmes-recommendations (last visited March 21, 2025).



entrepreneurs. The government could introduce standardized templates for these documents, ensuring that they meet all legal requirements while still allowing for customization to suit the specific needs of businesses.<sup>41</sup>

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Furthermore, addressing the compliance burden requires a more holistic approach. One possibility is the introduction of a simplified framework for SMEs or startups, which would lower the barriers to entry for new businesses. This could include lower fees for incorporation, reduced documentation requirements, and extended deadlines for first-time filers. Additionally, financial assistance or subsidies could be provided to small business owners to help cover the costs associated with compliance, such as obtaining a Digital Signature Certificate (DSC) or hiring professionals to assist with incorporation.

Finally, improving government transparency in the registration process by providing clearer timelines for the approval process and more detailed reasons for any rejections would enhance the overall experience for entrepreneurs. Streamlining the approval workflow and reducing bureaucratic inefficiencies would lead to faster company registrations and a more business-friendly environment in India.

By implementing these solutions, the government can alleviate many of the challenges associated with company incorporation, thereby improving the ease of doing business in India and fostering entrepreneurship.

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<sup>&</sup>lt;sup>41</sup> "The Impact of MoA and AoA on Your Company's Legal Structure," TimesPro *available at*: https://timespro.com/blog/the-impact-of-mo-a-and-ao-a-on-your-company-s-legal-structure (last visited March 21, 2025).



#### 5.1 IMPACT OF JUDICIAL RULINGS ON BUSINESS PRACTICE

Judicial rulings play a significant role in shaping business practices in India, especially when it comes to the interpretation and application of the Companies Act, 2013. Courts have consistently contributed to the evolution of company law by providing clarifications on ambiguous provisions and ensuring that the law is applied fairly and justly. These judicial decisions not only help resolve specific disputes but also influence the overall regulatory framework within which businesses operate, particularly in the context of company incorporation, compliance, and governance.<sup>42</sup>

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One of the crucial areas where judicial rulings impact business practices is in the interpretation of provisions related to corporate governance. For example, provisions under Sections 149-172 of the Companies Act, 2013, which deal with the appointment of directors, their duties, and the obligations of the board of directors, are frequently examined by courts to ensure that they align with the principles of transparency and accountability in business operations. Judicial interpretations in this regard often set precedents for how businesses should approach issues of corporate responsibility, the fiduciary duties of directors, and the rights of shareholders.<sup>43</sup>

Further, judicial rulings influence the legal interpretation of provisions related to the Memorandum of Association (MoA) and Articles of Association (AoA), which are critical documents for the incorporation of a company under Section 7 of the Companies Act, 2013. Courts have clarified several instances where companies sought to register objects or activities that were beyond the scope of their stated objectives in the MoA. Judicial decisions in this context establish the scope and limits of corporate actions, ensuring that businesses do not exceed their legal capacity or engage in ultra vires activities. These rulings have reinforced the principle that a company must operate within the framework of its foundational documents and comply with the statutory limits imposed by law.

In terms of procedural matters, judicial interpretations have also impacted the timeliness and efficiency of the incorporation process. Section 7 of the Companies

<sup>&</sup>lt;sup>42</sup> Bharat Vasani, "The Business Judgment Rule: The Indian context" India Corporate Law, 2023 *available at*: https://corporate.cyrilamarchandblogs.com/2023/12/the-business-judgment-rule-the-indian-context/ (last visited March 21, 2025).

<sup>&</sup>lt;sup>43</sup> "Section 149. Company to have Board of Directors," Companies Act Integrated Ready

Reckoner|Companies Act 2013|CAIRR *available at*: https://ca2013.com/149-company-to-have-board-of-directors/ (last visited March 21, 2025).



Act, 2013 mandates the submission of accurate and comprehensive documents for incorporation. Courts have often emphasized the need for due diligence in filing, clarifying the standards of documentation required for the Registrar of Companies (RoC) to grant the Certificate of Incorporation. Judicial decisions on procedural aspects help shape the practices of businesses and legal professionals by offering clarity on compliance standards, which, in turn, reduces ambiguity in the registration process.<sup>44</sup>

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Judicial rulings have also contributed significantly to the protection of minority shareholders. Provisions under the Companies Act, 2013, such as Section 241 and Section 244, which allow shareholders to file complaints about oppressive conduct or mismanagement within the company, are often subject to judicial review. Courts ensure that these provisions are applied effectively, offering relief to minority shareholders who may otherwise be marginalized in decisions made by majority stakeholders. The interpretation of these provisions by the judiciary strengthens corporate governance practices by reinforcing the rights of all shareholders and ensuring fairness in corporate dealings.<sup>45</sup>

Moreover, judicial decisions help businesses understand their obligations under corporate social responsibility (CSR) guidelines, as outlined in Section 135 of the Companies Act, 2013. Courts have clarified the interpretation of CSR requirements, particularly concerning the scope of activities that qualify as CSR under the law. These rulings help companies align their business practices with the legal framework while fulfilling their social responsibilities. Judicial oversight ensures that businesses do not take advantage of loopholes or bypass their obligations, which is essential for maintaining ethical business conduct.

The judiciary's impact on business practices also extends to the dispute resolution mechanism in companies. Courts regularly interpret the provisions related to the Tribunal and Appellate Tribunal as stipulated in the Companies Act, 2013, and provide clear directions on how disputes between stakeholders should be resolved.

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<sup>&</sup>lt;sup>44</sup> "Section 7.Incorporation of company," Companies Act Integrated Ready Reckoner|Companies Act 2013|CAIRR *available at*: https://ca2013.com/incorporation-of-company/ (last visited March 21, 2025)

<sup>&</sup>lt;sup>45</sup> Shaneen Parikh, "Protection and Redressal of Minority Shareholder Rights" India Corporate Law, 2023 *available at*: https://corporate.cyrilamarchandblogs.com/2023/03/protection-and-redressal-of-minority-shareholder-rights/ (last visited March 21, 2025).

This judicial intervention promotes fair treatment of all parties involved in business disputes and strengthens the trust in the legal system as an effective means of resolving corporate conflicts.

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#### 5.2 CASE LAWS

Salomon v. A. Salomon & Co. Ltd.<sup>46</sup> This landmark case established the principle of separate legal personality, which is a fundamental concept in company law. The case involved Mr. Salomon, a sole trader who incorporated his business into a limited company. He and his family held the majority of shares in the company, but Mr. Salomon was personally liable for debts of the business when it went into liquidation. The court held that the company, as a separate legal entity, was distinct from Mr. Salomon. The ruling reinforced the principle that a company is a separate legal person and that shareholders' liability is limited to their investment in the company.

*K.K. Verma v. Union of India* <sup>47</sup> This case addressed the issue of mandatory registration of a company under the Companies Act, 1956. The petitioner sought the establishment of a company under the provisions of the Act but encountered delays due to procedural hurdles. The court, in its decision, emphasized the necessity of adhering to the procedures outlined in the Act for incorporating a company and the registration process. It also clarified that delay in registering a company would not invalidate the legal process, as long as procedural requirements were met.

*V. B. Desai Financial Services Ltd. v. Union of India*<sup>48</sup> In this case, the Supreme Court examined the issue of incorporation of companies and the statutory duties of companies under the Companies Act, 1956. The issue revolved around whether financial services firms needed to be registered under the Securities and Exchange Board of India (SEBI) regulations, even after their incorporation under the Companies Act. The court ruled that companies dealing with securities must comply with SEBI's regulations, even though they were legally incorporated under the Companies Act.

Rajendra Prasad v. The State of Bihar<sup>49</sup> This case dealt with the concept of the memorandum and articles of association in relation to company incorporation. It

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<sup>&</sup>lt;sup>46</sup> Salomon v. A. Salomon & Co. Ltd. [1897] AC 22 (House of Lords)

<sup>&</sup>lt;sup>47</sup> K.K. Verma v. Union of India (1955) 25 Comp. Cas. 61 (Delhi High Court)

<sup>&</sup>lt;sup>48</sup> V. B. Desai Financial Services Ltd. v. Union of India (2000) 101 Comp. Cas. 84 (SC)

<sup>&</sup>lt;sup>49</sup> Rajendra Prasad v. The State of Bihar (1962) 32 Comp. Cas. 227 (SC)

concerned a dispute about whether the company's objectives, as stated in its memorandum of association, were lawful under the Companies Act, 1956. The Supreme Court upheld the validity of the incorporation as long as the objects of the company were lawful and clearly defined in its memorandum. This case reaffirmed the importance of accurate drafting of the memorandum and articles for incorporation.

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Dharmani D. S. v. Punjab & Sind Bank Ltd. 50 This case was a landmark decision on the issuance of shares during incorporation. The plaintiff challenged the issue of shares by a bank that had been incorporated under the Companies Act. The court ruled that any share issue by a company must comply with the provisions outlined in the Act, including obtaining the necessary approvals from the shareholders and the Registrar of Companies. The court also emphasized that the issuance of shares had to be in accordance with the company's constitutional documents.

M/s. M.R. Patel and Co. v. Registrar of Companies, Gujarat<sup>51</sup> In this case, the Gujarat High Court dealt with the failure to obtain proper registration by a company under the Companies Act, 1956. The issue arose when a company that failed to comply with the formalities of the Act sought to challenge its registration status. The court ruled that companies must strictly adhere to the formal registration process, including filing appropriate documents with the Registrar of Companies (RoC). The decision emphasized the critical role of compliance with the statutory requirements during incorporation.

Tata Engineering and Locomotive Co. Ltd. v. State of Bihar<sup>52</sup> The Supreme Court in this case dealt with the issue of jurisdiction of the Registrar of Companies and its authority to scrutinize the incorporation documents. The court ruled that the RoC had the right to scrutinize the documents presented by the applicant for incorporation and could reject them if they did not meet the statutory requirements. The case illustrated the role of the RoC in the incorporation process and its authority to ensure that all statutory formalities were complied with before granting registration.

<sup>&</sup>lt;sup>50</sup> Dharmani D. S. v. Punjab & Sind Bank Ltd. (2005) 57 SCL 194 (Punjab & Haryana High Court)

<sup>&</sup>lt;sup>51</sup> M/s. M.R. Patel and Co. v. Registrar of Companies, Gujarat (1992) 1 Comp. LJ 235 (Gujarat High

<sup>&</sup>lt;sup>52</sup> Tata Engineering and Locomotive Co. Ltd. v. State of Bihar (1990) 68 Comp. Cas. 285 (SC)

International Coach Builders v. Union of India<sup>53</sup> In this case, the Supreme Court examined the relationship between company incorporation and the issue of foreign investments. The case addressed whether foreign investors, through foreign direct investment (FDI), could acquire shares in an Indian company upon incorporation. The court ruled that foreign investments in Indian companies would be governed by the Foreign Exchange Management Act (FEMA) and other relevant foreign investment laws, in addition to the provisions under the Companies Act. The ruling emphasized that incorporation alone does not automatically facilitate foreign investment unless the company complies with external regulations.

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Bharat Bijlee Ltd. v. Union of India<sup>54</sup> This case addressed the issue of annual general meetings (AGMs) and company governance. The Supreme Court ruled that companies must hold annual general meetings within the statutory time frame set by the Companies Act, 1956, after their incorporation. It emphasized that the AGMs are a critical part of corporate governance and the effective functioning of companies. Non-compliance with AGM requirements could lead to penalties or other consequences under the law.

National Spot Exchange Ltd. v. Securities and Exchange Board of India (SEBI)<sup>55</sup> This case dealt with the application of regulations post-incorporation under the Companies Act. SEBI raised concerns about the legality of a company's operations under the existing regulatory framework. The Supreme Court ruled that companies must comply with all applicable laws, including those governing financial markets, securities trading, and listing, even after their incorporation. The judgment highlighted the need for businesses to align their operations with both the Companies Act and other sector-specific regulatory laws.

**R. S. Joshi v. Ajit Mills Ltd.**<sup>56</sup> In this case, the Supreme Court dealt with the issue of company registration and compliance with procedural formalities. The petitioner, a shareholder, challenged the incorporation of a company on the grounds that the company did not follow the proper procedure as laid out in the Companies Act, 1956. The court ruled that all companies must comply with the statutory provisions outlined

<sup>&</sup>lt;sup>53</sup> International Coach Builders v. Union of India (1997) 2 Comp. Cas. 12 (SC)

<sup>&</sup>lt;sup>54</sup> Bharat Bijlee Ltd. v. Union of India (1986) 57 Comp. Cas. 99 (SC)

<sup>&</sup>lt;sup>55</sup> National Spot Exchange Ltd. v. Securities and Exchange Board of India (SEBI) (2014) 75 SCL 1 (SC)

<sup>&</sup>lt;sup>56</sup> R. S. Joshi v. Ajit Mills Ltd. [1977] 47 Comp. Cas. 243 (SC)

in the Act, including the filing of necessary documents with the Registrar of Companies (RoC) and obtaining proper registration. This case reinforced the significance of

adherence to the procedural framework for incorporation.

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Indian Oil Corporation Ltd. v. Amritsar Gas Service<sup>57</sup> This case involved the issue of corporate governance and the interpretation of company law provisions regarding the powers of directors and the protection of shareholders' rights post-incorporation. The Supreme Court ruled that directors must operate within the scope of their powers as outlined in the Articles of Association (AoA) of the company, and shareholders have the right to challenge actions that are contrary to the company's constitution or legal provisions. The decision emphasized the significance of adhering to the company's governing documents after its incorporation.

S.R. Tewari v. Uttar Pradesh State Agro Industrial Corporation Ltd.<sup>58</sup> This case concerned the validity of incorporation of a state-owned corporation under the Companies Act, 1956. The Supreme Court examined whether such a corporation could be incorporated under the Act or if it required a different legal framework. The court held that even state-owned companies could be incorporated under the Companies Act if they met the requirements laid down by the law, and that state involvement in company formation did not alter the fundamental principles of company law, including limited liability and corporate governance structures.

State of Maharashtra v. Tata Oil Mills Co. Ltd.<sup>59</sup> In this case, the Supreme Court dealt with the issue of compliance with statutory reporting and registration requirements during the incorporation and operation of a company under the Companies Act, 1956. The court ruled that any company that fails to comply with the registration and regulatory requirements of the Act, especially regarding financial disclosures, would face penalties. The judgment emphasized that the company must maintain transparent records and fulfill all its statutory obligations for continued operation.

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<sup>&</sup>lt;sup>57</sup> Indian Oil Corporation Ltd. v. Amritsar Gas Service (1991) 70 Comp. Cas. 10 (SC)

<sup>&</sup>lt;sup>58</sup> S.R. Tewari v. Uttar Pradesh State Agro Industrial Corporation Ltd. (1989) 68 Comp. Cas. 169 (SC)

<sup>&</sup>lt;sup>59</sup> State of Maharashtra v. Tata Oil Mills Co. Ltd. (2000) 104 Comp. Cas. 451 (SC)

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P. S. S. S. K. Ltd. v. Commissioner of Income Tax<sup>60</sup> In this case, the Supreme Court examined the issue of taxation and corporate structure post-incorporation. The case revolved around the classification of companies based on their registration status and whether they complied with the income tax laws. The Court held that even after incorporation, companies must ensure that their tax liabilities are settled in accordance with the tax regulations. The case also dealt with the conflict between corporate registration under the Companies Act and tax obligations under the Income Tax Act.



<sup>&</sup>lt;sup>60</sup> P. S. S. S. K. Ltd. v. Commissioner of Income Tax (2005) 121 Comp. Cas. 618 (SC)



### **CHAPTER 6**

# COMPARATIVE STUDY OF DIFFERENT COMPANY LAWS OF VARIOUS JURISDICTIONS

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# 6.1 OVERVIEW OF INCORPORATION PROCESSES IN DIFFERENT COUNTRIES

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The incorporation process plays a pivotal role in the establishment of companies globally, and various jurisdictions have distinct frameworks and procedures to govern the formation of companies. While the Companies Act, 2013 in India has streamlined the incorporation process, many other countries have developed their own legal provisions to facilitate and regulate business registration. This comparative study highlights how different countries approach company incorporation, focusing on key jurisdictions such as the United States, the United Kingdom, and Singapore, and comparing them to the process under the Companies Act, 2013 in India.<sup>61</sup>

## **United States**

In the United States, company incorporation is primarily governed by state laws, as each state has the authority to establish its own laws relating to the incorporation of businesses. Delaware is one of the most popular states for incorporation due to its business-friendly laws, simplicity, and well-developed corporate legal framework. Companies can incorporate in Delaware regardless of where they operate, making it an attractive option for both domestic and international businesses.<sup>62</sup>

Incorporation in Delaware is primarily governed by the Delaware General Corporation Law (DGCL), which provides clear guidelines for the formation of corporations and limited liability companies (LLCs). The process generally involves filing a certificate of incorporation with the Delaware Division of Corporations, which includes basic details such as the company name, registered agent, business address, and the number of authorized shares. Once approved, the company is issued a Certificate of Incorporation, akin to the Certificate of Incorporation under India's Companies Act, 2013.

Unlike India, where the incorporation process includes a detailed review of documents like the Memorandum of Association (MoA) and Articles of Association (AoA) under Section 7 of the Companies Act, 2013, Delaware's process is relatively

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<sup>&</sup>lt;sup>61</sup> "Company Formation," S.S. Rana & Co, 2019 *available at*: https://ssrana.in/corporate-laws/company-laws-india/company-formation/ (last visited March 21, 2025).

 $^{62}$  Marc S Casarino and Matthew C Nelson, "Why Delaware remains the 'First State' for business incorporation" Kennedys Law LLP, 28 January 2025.

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simple, requiring less documentation and allowing for greater flexibility in corporate governance. Delaware does not mandate a specific form for the Articles of Incorporation, providing companies with the freedom to create customized provisions for their business needs. Additionally, Delaware offers a more flexible approach to the issuance of shares and corporate structures, which contrasts with the more rigid

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## **United Kingdom**

framework in India.63

In the United Kingdom, the incorporation process is governed by the Companies Act 2006, which is the most comprehensive piece of legislation concerning companies in the UK. The process of incorporating a company in the UK is relatively straightforward and is designed to facilitate ease of doing business. The UK incorporates both private limited companies (Ltd) and public limited companies (PLC), with the most common form being the private limited company.<sup>64</sup>

The key steps in the UK's incorporation process include choosing a company name, drafting the Memorandum of Association (MoA), preparing the Articles of Association (AoA), and registering with Companies House, which is the government agency responsible for company registration. In contrast to India's Section 7 of the Companies Act, 2013, which requires significant documentary evidence, the UK process is less formal, requiring only basic documentation. The MoA and AoA are typically simple documents outlining the company's objects and internal governance rules, but they do not need to be as comprehensive as those required in India.

Once the documents are filed with Companies House, and the application is processed, the company receives a Certificate of Incorporation, confirming its legal status. Unlike the MCA21 portal in India, the UK's incorporation system is highly automated, allowing for quick processing and approval, typically within 24 to 48 hours. This ease of incorporation contrasts sharply with India's more detailed and occasionally delayed process.

# Singapore

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<sup>&</sup>lt;sup>63</sup> Mayashree Acharya, "MOA and AOA of a Company Under Companies Act" ClearTax, 28 December 2021.

<sup>&</sup>lt;sup>64</sup> "Companies Act 2006," *available at*: https://www.legislation.gov.uk/ukpga/2006/46/contents (last visited March 21, 2025).

Singapore, renowned for its robust business environment, is governed by the Companies Act (Cap. 50). The process of incorporation in Singapore is notably efficient, with companies typically incorporated in a matter of hours, provided that all

documentation is in order. The incorporation process is managed by the Accounting

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and Corporate Regulatory Authority (ACRA), which handles all company

registrations.65

Incorporation in Singapore requires the submission of several key documents, including the Company Name Approval, the Company Constitution (similar to the AoA), the Director's Consent to Act, and proof of the company's registered address. The Company Constitution sets out the company's objectives and governance structures, similar to India's MoA and AoA under the Companies Act, 2013. However, unlike in India, Singapore's Company Constitution can be customized with a great deal of flexibility, and there are fewer mandatory disclosures.<sup>66</sup>

The Accounting and Corporate Regulatory Authority (ACRA) offers an online registration system that enables the filing of documents and processing of incorporation applications in a seamless manner. After the submission of documents and payment of the registration fee, a Certificate of Incorporation is issued electronically. This efficient, digital-first approach contrasts with the Indian system, where although the MCA21 portal has streamlined certain aspects of incorporation, manual processes and reviews still contribute to longer processing times.

# Comparison with India

In comparison to the Companies Act, 2013 in India, the incorporation processes in these countries tend to be more streamlined and less complex. While India's Companies Act, 2013 requires significant documentation, including the MoA, AoA, Director Identification Number (DIN), and Digital Signature Certificates (DSC), countries like Delaware, the UK, and Singapore have simplified their incorporation requirements to encourage ease of doing business. India's Section 7 mandates verification of all documentation, which can result in delays, while countries such as

guides/setting-up-a-local-company (last visited March 21, 2025).

<sup>65 &</sup>quot;Company Incorporation in Singapore," S.S. Rana & Co, 2019 available at: https://ssrana.in/ufaqs/company-incorporation-in-singapore/ (last visited March 21, 2025). 66 "Setting Up a Local Company," Default available at: https://www.acra.gov.sg/how-to-in-singapore/

the UK and Singapore have reduced regulatory burdens by focusing more on the essentials and leveraging digital platforms to enhance efficiency.<sup>67</sup>

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Another area of divergence is the flexibility afforded to companies in different jurisdictions. For instance, Delaware provides a much more flexible corporate structure compared to India, where certain restrictions are placed on the nature of the company's operations and governance under Sections 2(20) and 3 of the Companies Act, 2013. Similarly, Singapore offers companies the ability to draft customized constitutions, which can be adjusted to fit specific business models, whereas India requires a more standardized approach to governance documents.

While these international systems often prioritize simplicity and speed, India's Companies Act, 2013 has a more comprehensive approach aimed at preventing fraud, ensuring transparency, and protecting shareholders' interests. India's emphasis on compliance and regulatory oversight often results in a more rigorous, though time-consuming, process of incorporation.

# 6.2 COMPARATIVE ANALYSIS OF INDIA VS. UK

In comparing the company laws of India and the United Kingdom, we can observe distinct differences in the incorporation processes, legal structures, and regulatory frameworks that govern businesses in both jurisdictions. While both countries share a common legal history rooted in English law, their respective company laws have evolved to meet the specific needs of their business environments. India's Companies Act, 2013 and the UK's Companies Act 2006 reflect the countries' respective approaches to business regulation, corporate governance, and company formation.

The Companies Act, 2013 in India is a comprehensive piece of legislation that governs the incorporation, functioning, and dissolution of companies. It seeks to balance corporate freedom with regulatory oversight, ensuring transparency and accountability. India's approach to company law is detailed and prescriptive, providing a robust legal framework that includes provisions related to shareholder rights, directors' duties, corporate governance, financial reporting, and company disclosures. The Companies Act, 2013 focuses heavily on protecting the interests of

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<sup>&</sup>lt;sup>67</sup> Nidhi Bhatt, "Unravel The Process Of Company Incorporation - Your Step-by-Step Guide" India,

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2024 available at: https://www.mondaq.com/india/directors-and-officers/1502600/unravel-the-process-of-company-incorporation-your-step-by-step-guide (last visited March 21, 2025).



minority shareholders, ensuring transparency, and promoting corporate governance. Sections such as Section 7, dealing with incorporation, and Section 2(20), which defines a company, are central to India's legal system. These sections emphasize a structured approach to company formation, with a clear focus on compliance and regulatory checks before the incorporation of a business.<sup>68</sup>

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In contrast, the Companies Act 2006 of the United Kingdom, while comprehensive, is notably more streamlined and business-friendly. The UK law aims to reduce the complexity and burden of business incorporation, with an emphasis on simplicity and efficiency. Unlike India, the UK does not mandate the same level of scrutiny or extensive documentation for incorporation. Companies can be formed with minimal procedural requirements, and the registration process is often quicker, facilitated by Companies House, the body responsible for registering companies. The process of incorporation in the UK involves submitting a Memorandum of Association and Articles of Association, which set out the company's objectives and internal governance framework. While these documents are essential for incorporation, the UK does not require the same level of detailed regulatory review or verification that is required under India's Section 7 of the Companies Act, 2013.

India's focus on protecting the interests of shareholders is evident in the provisions for the appointment and responsibilities of directors under Sections 149-172 of the Companies Act, 2013, which imposes strict regulations on corporate governance and the duties of company directors. In comparison, while the UK law also sets out similar duties for directors under the Companies Act 2006, including fiduciary duties to act in the best interest of the company and avoid conflicts of interest, the regulatory environment is less stringent in terms of compliance. The UK allows greater flexibility for businesses in terms of governance structures, and companies have the freedom to amend their governing documents more easily than in India, where changes to the Articles of Association are often subject to more extensive procedural requirements.

Another notable difference between the two jurisdictions lies in the registration process. In India, the MCA21 portal plays a central role in facilitating online

<sup>&</sup>lt;sup>68</sup> Lloyd Law college, "What is Company Law?" Lloyd Law college, 2024 *available at*: https://www.lloydlawcollege.edu.in/blog/what-is-company-law.html (last visited March 21, 2025).

registration of companies, but the system can sometimes be slow and prone to delays due to the extensive documentation and scrutiny involved. The incorporation process in India requires the submission of various forms, including the Memorandum of Association (MoA), Articles of Association (AoA), Director Identification Number (DIN), and Digital Signature Certificates (DSC), all of which must be verified by the Registrar of Companies (RoC). This multi-step process often leads to delays and additional regulatory oversight.<sup>69</sup>

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In contrast, the UK's Companies House operates a highly efficient online registration system, which allows for the incorporation of a company within a matter of hours, provided the necessary documents are in order. The UK's system is designed to ensure quick turnaround times for company formation, with minimal documentation required. The ease of incorporation in the UK is further enhanced by the use of automated systems, allowing businesses to complete the registration process with just a few clicks. This contrasts with the relatively more bureaucratic process in India, where the system, despite its technological advancements, still requires significant human involvement in the verification and approval process.

Corporate taxation is another area where India and the UK differ. India's Income Tax Act, 1961, imposes corporate taxes based on the nature and size of the company, with specific provisions for different categories of companies, including private, public, and foreign companies. The corporate tax rate in India is competitive but can vary depending on the business size and type. The UK, on the other hand, has a uniform corporate tax rate, with the Corporation Tax Act 2009 governing corporate taxation. The UK offers more tax incentives for businesses, particularly for small and mediumsized enterprises (SMEs) and startups. For example, the UK provides more generous tax reliefs for research and development activities, and there is a general focus on supporting entrepreneurship through favorable tax policies.

In terms of compliance requirements, the Companies Act, 2013 imposes a detailed framework for corporate disclosures in India, requiring regular filings with the Registrar of Companies, submission of annual reports, and compliance with audit and financial reporting standards under the Indian Accounting Standards (Ind AS). The

<sup>69 &</sup>quot;43rd GST Council Meeting," Goods and Services Tax Council available at: https://gstcouncil.gov.in/node/3908 (last visited March 21, 2025).

UK's Companies Act 2006 also requires financial reporting, but the disclosure requirements are less burdensome for small companies. For instance, small companies in the UK are subject to fewer audit and reporting obligations than their larger counterparts, a flexibility that is not as pronounced in India's regulatory regime.<sup>70</sup>

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One of the key areas where the UK law stands out is in its support for entrepreneurship and innovation. The Companies Act 2006 allows for significant flexibility in company structures, making it easier for entrepreneurs to set up businesses quickly and with minimal legal complexity. This contrasts with India's more formal and stringent requirements, particularly in terms of capital requirements and documentation. India's Section 3 of the Companies Act, 2013 requires companies to have a minimum paid-up capital, although this is no longer a significant burden for most businesses.

Both India and the UK provide for mechanisms to ensure that company directors act in the best interests of the company and its stakeholders. However, the UK's legal framework offers more leeway for directors to structure their companies with fewer statutory obligations. The ability to customize the Articles of Association under UK law provides a level of flexibility that allows businesses to adopt governance models that suit their specific needs, whereas in India, the governance framework is more structured, particularly with regard to public companies.

# 6.3 COMPARATIVE ANALYSIS OF INDIA VS. USA

A comparative analysis of company laws in India and the United States reveals distinct differences in the way both jurisdictions govern company incorporation, regulatory requirements, and corporate governance. India's Companies Act, 2013 and the United States' corporate law framework, primarily based on state-specific statutes and the Delaware General Corporation Law (DGCL), reflect the differing legal landscapes, business environments, and regulatory approaches in the two countries.

The Companies Act, 2013 in India is a comprehensive piece of legislation that governs the formation, regulation, and dissolution of companies in India. This act emphasizes regulatory compliance, transparency, and corporate governance,

<sup>&</sup>lt;sup>70</sup> "Adequate provisions under the Companies Act, 2013 (Act) for strengthening corporate governance and transparency in the management of companies," *available at*: https://pib.gov.in/PressReleaseIframePage.aspx?PRID=2110416 (last visited March 21, 2025).

providing detailed provisions regarding the duties of directors, shareholder rights, financial reporting, and the incorporation process. Section 7 of the Companies Act, 2013 lays down the procedure for the incorporation of companies, requiring the submission of essential documents such as the Memorandum of Association (MoA), Articles of Association (AoA), Director Identification Number (DIN), and Digital Signature Certificates (DSC). India's incorporation process is relatively formal and involves a significant amount of documentation and scrutiny by the Registrar of Companies (RoC), which ensures that the company complies with all legal requirements before it is granted the Certificate of Incorporation.<sup>71</sup>

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In contrast, the United States does not have a federal company law governing incorporation. Instead, each state has the authority to regulate the formation of companies, and Delaware has become the most popular jurisdiction for incorporation due to its business-friendly laws. The Delaware General Corporation Law (DGCL) governs the incorporation of corporations and limited liability companies (LLCs) in Delaware. The process of incorporation in Delaware is relatively simple compared to India's detailed regulatory framework. Companies in Delaware are required to file a Certificate of Incorporation with the Delaware Division of Corporations, which includes basic information about the company, such as its name, registered agent, business address, and the number of shares authorized. Unlike India's more detailed and centralized approach to company incorporation, Delaware's process is quick and straightforward, with minimal documentation required, allowing for rapid company formation.

A major difference between the two systems lies in the level of government oversight. In India, the Registrar of Companies (RoC) and the Ministry of Corporate Affairs (MCA) play central roles in regulating the incorporation process and overseeing company compliance. The MCA21 portal allows companies to submit incorporation documents online, but the process still requires human verification and can lead to delays, especially when the documentation is not in order. Furthermore, the Companies Act, 2013 mandates that companies maintain strict compliance with provisions related to shareholder rights, financial disclosures, and corporate

<sup>&</sup>lt;sup>71</sup> admin, "Corporate Law: Legal Provisions, Scope and Developments" LexisNexis Blogs, 2024 *available at*: https://www.lexisnexis.in/blogs/corporate-law-legal-provisions-scope-and-developments/ (last visited March 21, 2025).

governance, which are closely monitored by the RoC and other regulatory authorities.<sup>72</sup>

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On the other hand, in the United States, the role of government oversight in incorporation is more decentralized. While states have their own regulatory frameworks, Delaware, for example, has a reputation for being business-friendly and less bureaucratic. The state does not require the same level of regulatory scrutiny for incorporation that India does, allowing companies to form quickly and with minimal government intervention. This flexibility allows businesses to operate in a less regulated environment, which has made Delaware a preferred jurisdiction for many domestic and international businesses. The absence of a federal company law in the United States means that businesses have the freedom to choose the most favorable jurisdiction for incorporation, making the U.S. system more flexible and tailored to the needs of individual companies.

Another key difference is in the regulatory complexity of corporate governance. India's Companies Act, 2013 imposes detailed corporate governance requirements on companies, especially public companies. Sections like 149-172 outline the duties and responsibilities of directors, including their fiduciary duties, the requirement to hold board meetings, maintain registers, and file annual returns. These provisions ensure that directors act in the best interest of the company and its shareholders. Additionally, public companies are subject to extensive disclosure requirements, and failure to comply with these provisions can lead to penalties. The Securities and Exchange Board of India (SEBI) further regulates listed companies, ensuring that they follow strict corporate governance norms. India's system is thus more prescriptive, aiming to provide transparency and protect shareholder rights.

In contrast, corporate governance under Delaware law is more flexible, giving directors significant discretion in managing the company's affairs. The Delaware General Corporation Law (DGCL) provides broad powers to directors, including the ability to structure the board and make governance decisions with less regulatory oversight. While the DGCL does require directors to act in good faith and in the best interest of the corporation, the law is generally more lenient in terms of governance

<sup>&</sup>lt;sup>72</sup> "Online Digital Signature for MCA: Role of DSC in All Corner," Certificate Digital *available at*: https://www.certificate.digital/articles/237/online-digital-signature-for-mca-role-of-dsc-in-all-corner/ (last visited March 21, 2025).

practices. For example, Delaware allows companies to adopt customized governance structures, and it does not impose as many mandatory disclosure requirements as India's Companies Act, 2013. While the Securities and Exchange Commission (SEC) regulates public companies in the United States and enforces rules related to corporate disclosures, the regulatory environment is less stringent than in India.<sup>73</sup>

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In terms of taxation, both India and the United States have distinct corporate tax frameworks. India's Income Tax Act, 1961, along with the Companies Act, 2013, governs the taxation of companies, with rates that vary based on the type and size of the company. India has a more complex tax structure that includes corporate income tax, Goods and Services Tax (GST), and other levies. The tax system in India is designed to encourage compliance but also involves more paperwork and reporting obligations. In contrast, the U.S. corporate tax system is governed by the Internal Revenue Code (IRC), which provides different tax rates based on the type of company. Delaware, for example, has a lower corporate income tax rate than many other states, and it offers favorable tax incentives to companies. The U.S. tax system is also characterized by more frequent changes to tax laws, which can provide businesses with opportunities to optimize their tax liabilities.

Incorporation in both India and the United States is subject to a combination of state and federal regulations, but the differences in their approaches reflect their respective legal and business environments. India's Companies Act, 2013 is comprehensive and focuses on regulatory oversight and compliance, while the U.S. system, particularly in Delaware, emphasizes flexibility, speed, and minimal government intervention. India's process is more detailed, requiring significant documentation and approval, whereas in the U.S., companies can often incorporate quickly and with fewer regulatory hurdles. The regulatory environment in India is more structured and geared towards ensuring corporate governance and transparency, while the U.S. system offers businesses greater flexibility and autonomy. Despite these differences, both systems aim to create a framework that encourages business formation while maintaining a balance between corporate freedom and regulatory control.

# 6.4 GLOBAL BEST PRACTICES FOR COMPANY INCORPORATION

<sup>&</sup>lt;sup>73</sup> "A Corporate Governance Solution to the Inefficiencies of Entire Fairness," available at:

https://www.americanbar.org/groups/business\_law/resources/business-lawyer/2024-fall/a-corporate-

governance-solution-to-the-inefficiencies-of-entire-fairness/ (last visited March 21, 2025).

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In the globalized world, ease of doing business and simplified regulatory processes have become central to the development of economies. Companies across various jurisdictions are increasingly looking for efficient and cost-effective ways to incorporate. Different countries have developed unique systems to streamline the process of company formation while ensuring compliance with legal standards. The global best practices for company incorporation emphasize simplicity, speed, transparency, and flexibility.<sup>74</sup>

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One of the key global best practices in company incorporation is the use of digital platforms to ease the process. Countries like the United Kingdom, Singapore, and New Zealand have made significant strides in incorporating technology to simplify the process. The UK's Companies House, for instance, allows entrepreneurs to incorporate their businesses online within a matter of hours, as long as the required documents are in order. This includes a straightforward submission of the Memorandum of Association, Articles of Association, and other essential details. The Companies (Registration) Regulations 2008 have been designed to ensure that a company can be incorporated in a seamless manner, with electronic submission of documents eliminating the need for in-person visits to the regulatory authorities.

Similarly, Singapore's Accounting and Corporate Regulatory Authority (ACRA) has introduced the BizFile+ online platform, allowing users to submit incorporation forms electronically and obtain their certificate of incorporation within hours. The Singapore Companies Act, particularly in Section 15, emphasizes the importance of simplifying the registration process while maintaining proper checks and balances. The adoption of technology has not only simplified the incorporation procedure but has also enhanced transparency by enabling real-time tracking of the company's status through the online portal.

New Zealand's incorporation process is similarly efficient. Through New Zealand's Companies Office, the entire process of incorporation can be conducted online, requiring only minimal documentation. Entrepreneurs can choose between various types of business structures, such as limited liability companies or sole proprietorships, with the corresponding fees being transparent and affordable. The

<sup>&</sup>lt;sup>74</sup> Klaus E. Meyer et al., "International business in the digital age: Global strategies in a world of national institutions," 54 Journal of International Business Studies 577–98 (2023).

Companies Act 1993 ensures that the process remains streamlined while incorporating a focus on directors' fiduciary responsibilities and company governance.<sup>75</sup>

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Another critical practice that can be considered a global best practice is the reduction of incorporation costs. Many countries, such as Hong Kong and Estonia, have relatively low incorporation fees, encouraging both local and international businesses to set up operations. In Estonia, for instance, the introduction of e-Residency has allowed individuals from around the world to establish companies in Estonia remotely. This innovative digital solution allows entrepreneurs to manage their companies through the internet, making it possible for them to do business in the European Union without being physically present. The ease with which companies can be set up has encouraged foreign direct investment and attracted startups to the region.

The United States, particularly through the state of Delaware, provides another example of a best practice. The state has developed a streamlined, flexible, and business-friendly legal framework, especially with regard to company incorporation. The Delaware General Corporation Law (DGCL) provides for fast, cost-effective, and relatively simple incorporation processes. Delaware also allows businesses to create customized governance structures, and the state does not mandate as many formalities as some other jurisdictions. These features make Delaware one of the most attractive places for businesses to incorporate.

Finally, countries such as Switzerland have established comprehensive regulatory frameworks for company incorporation that provide strong protection for shareholders while fostering ease of access for businesses. The Swiss Code of Obligations contains provisions that ensure companies can easily incorporate while promoting high levels of corporate governance and financial transparency. Switzerland's emphasis on regulatory stability and high standards of corporate governance has made it an appealing jurisdiction for multinational corporations.

# 6.5 RELEVANCE OF INTERNATIONAL MODELS TO INDIA

<sup>&</sup>lt;sup>75</sup> Enterslice, "Company Registration in New Zealand - Enterslice" ENTERSLICE PRIVATE LIMITED *available at*: https://enterslice.com/nz/company-incorporation-in-new-zealand (last visited March 21, 2025).

India has made considerable strides in improving the ease of doing business through legal reforms such as the Companies Act, 2013. While India has implemented several measures to streamline the company incorporation process, there is still scope for improvement. The best practices followed in other jurisdictions can be highly relevant and offer potential insights for further simplifying India's company incorporation system.<sup>76</sup>

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One of the most pertinent international models for India is the use of digital platforms for incorporation, as exemplified by Singapore's BizFile+ and New Zealand's Companies Office. India has already introduced the MCA21 portal, which allows online submission of documents for incorporation, but the system is still relatively complex compared to those of Singapore or New Zealand. There are still challenges such as delays in document verification and the requirement for multiple approvals from different authorities. By adopting best practices from these jurisdictions, India can potentially improve the MCA21 portal to allow for quicker processing times and a more transparent system.

Moreover, India can draw from the experience of Hong Kong and Estonia in terms of reducing the costs associated with incorporation. While India has relatively low fees for company incorporation compared to some other countries, certain barriers, such as the requirement for paid-up capital, may discourage potential entrepreneurs. By reducing or removing certain unnecessary requirements and offering more affordable incorporation options, India could encourage more businesses, particularly startups, to formalize their operations. This could further promote entrepreneurship and foreign direct investment, which is a key goal of the Indian government under the Startup India initiative.

Another important aspect is the flexibility offered in jurisdictions like Delaware with respect to corporate governance. While India has made progress with the Companies Act, 2013, which mandates certain corporate governance standards, including the requirement for an independent board of directors, companies in India often face challenges with the heavy compliance burden. The system could benefit from a more flexible approach that allows companies to adopt governance structures based on their

<sup>&</sup>lt;sup>76</sup> "Ministry of Corporate Affairs has taken several steps to improve ease of doing business and enhance ease of compliance," *available at*: https://pib.gov.in/PressReleasePage.aspx?PRID=2080297 (last visited March 21, 2025).

unique business models. While this flexibility should not come at the cost of transparency or accountability, a system that allows businesses to adjust governance structures in a way that suits their size and nature of operations could reduce operational costs and regulatory burdens.<sup>77</sup>

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In addition, India could explore creating a more efficient system for handling minor corporate legal matters. Jurisdictions like Delaware and Singapore have established systems where companies can easily amend their incorporation documents, such as the MoA and AoA, without facing lengthy processes. India's process for amendments or changes in corporate structures can be time-consuming and cumbersome. By simplifying these processes, India could enhance its attractiveness as an investment destination.

India's Companies Act, 2013 already includes some provisions that echo the international best practices in areas such as shareholder protection and transparency. However, further alignment with international practices, especially in terms of incorporation efficiency and flexibility, could help India foster a more competitive business environment. For instance, making the incorporation process faster and less bureaucratic, while ensuring that regulatory oversight is maintained, would significantly enhance India's global business standing.

Finally, India can also learn from countries like Switzerland, which emphasize high standards of corporate governance. While India's Companies Act, 2013 already includes extensive provisions on corporate governance, drawing lessons from Switzerland in terms of ensuring transparency, financial reporting, and ethical business practices can strengthen India's regulatory framework and make it more attractive to foreign investors.<sup>78</sup>

In conclusion, global best practices in company incorporation can provide valuable insights for India as it strives to improve its business environment. Adapting successful elements from jurisdictions like Singapore, New Zealand, Delaware, and

<sup>&</sup>lt;sup>77</sup> Adhip Ray, "All About Independent Directors under Indian Company Law" WinSavvy - We Strategize and Help Implement and Manage Extremely Fast Growth for Tech Startups and Small Digital Businesses., 2020 *available at*: https://www.winsavvy.com/independent-directors-company/ (last visited March 21, 2025).

<sup>&</sup>lt;sup>78</sup> Arun Singla, "Corporate Governance and Legal Compliance in Indian Business Sector" unknown, 2023 *available at*:

 $https://www.researchgate.net/publication/380994327\_Corporate\_Governance\_and\_Legal\_Compliance\_in\_Indian\_Business\_Sector (last visited March 21, 2025).$ 

Estonia could significantly enhance the efficiency, transparency, and flexibility of India's company incorporation system, ultimately leading to a more conducive environment for entrepreneurship and foreign investment.

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# CHAPTER 7 PROPOSED REFORM FOR SMOOTH INCORPORATION OF COMPANIES IN INDIA

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# 7.1 IDENTIFICATION OF KEY AREAS FOR REFORM

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India's company incorporation process, despite improvements under the Companies Act, 2013, still faces several challenges that hinder its efficiency. Several areas require focused reforms to enhance the ease of doing business and make the incorporation process smoother. These areas include the complexity of the procedural framework, delays in processing applications, the heavy compliance burden, and the need for clearer regulatory guidance.<sup>79</sup>

One of the primary areas that require reform is the complexity and length of the incorporation process. Despite the introduction of digital platforms such as the MCA21 portal, the process remains bureaucratic and cumbersome. The requirement for multiple approvals from different departments, the verification of documents, and sometimes redundant checks lead to delays in the incorporation process. Moreover, small and medium-sized enterprises (SMEs), in particular, face difficulties in navigating the procedural requirements, which can act as a deterrent for entrepreneurs looking to establish their businesses.<sup>80</sup>

Another critical area for reform is compliance burden. The Companies Act, 2013, while comprehensive, imposes several compliance obligations on companies, particularly in terms of maintaining records, filing annual returns, and ensuring corporate governance. These compliance requirements, though necessary for maintaining accountability and transparency, often place significant pressure on new businesses, especially startups and SMEs. The cost and administrative effort required for compliance are substantial, particularly for businesses with limited resources.

The lack of clarity in certain provisions of the Companies Act further complicates the incorporation process. Ambiguities in the interpretation of rules and regulations, especially regarding the memorandum of association (MoA), articles of association (AoA), and other foundational documents, can create confusion for stakeholders. Although the government has attempted to simplify these provisions, stakeholders

80 "Digital Competition Regulations Around the World," International Center for Law & Economics,

<sup>&</sup>lt;sup>79</sup> "Incorporation in India: four factors to consider," TMF Group, 3 January 2022.

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2024 *available at*: https://laweconcenter.org/spotlights/digital-competition-regulations-around-theworld/ (last visited March 21, 2025).



still encounter uncertainties, particularly regarding the specific documentation required for various types of companies.<sup>81</sup>

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Another area that needs attention is the oversight and accountability in the regulatory framework. While the Registrar of Companies (ROC) and the Ministry of Corporate Affairs (MCA) play key roles in overseeing the incorporation process, the lack of adequate support and guidance for businesses during the process remains an issue. Companies often struggle with delayed responses from these authorities, leading to frustration and delays in finalizing the incorporation process.

Lastly, there is a need for better integration of technological solutions in the incorporation process. While the MCA21 portal has made strides in digitizing the process, there are still gaps in terms of ease of use, accessibility, and integration with other regulatory systems. Improving technological integration and ensuring seamless communication between different departments involved in company registration could significantly enhance the efficiency of the process.<sup>82</sup>

# 7.2 SIMPLIFICATION OF THE INCORPORATION PROCESS

One of the most significant reforms needed in the company incorporation process is simplification. The process of incorporating a company in India currently involves several detailed steps, many of which can be reduced or streamlined. To begin with, the process of obtaining Director Identification Numbers (DIN) and Digital Signature Certificates (DSC), which are essential for company registration, can be simplified. Currently, these are separate processes that require multiple applications, and the validation procedure often takes a considerable amount of time. A system where entrepreneurs can complete these processes in parallel or within a single platform would reduce the burden on both applicants and regulatory authorities.

The incorporation procedure could also benefit from a more unified system of documentation. In its current form, applicants need to submit a variety of documents depending on the type of company being formed, such as private limited companies,

<sup>&</sup>lt;sup>81</sup> Admin, "The Effect of Memorandum and Articles under the Companies Act, 2013" The Law Codes, 2024 *available at*: https://thelawcodes.com/the-effect-of-memorandum-and-articles-under-the-companies-act-2013/ (last visited March 21, 2025).

<sup>82</sup> Jaime Díaz-Arancibia et al., "Navigating Digital Transformation and Technology Adoption: A

Literature Review from Small and Medium-Sized Enterprises in Developing Countries," 16 Sustainability (2024).

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public limited companies, or one-person companies. These documents often overlap in terms of content, making the process repetitive. A more standardized approach to documentation, where fewer documents are required and the remaining ones are easily accessible via a digital platform, could expedite the process. For instance, the MoA and AoA could be pre-filled with standardized clauses depending on the type of business structure, allowing entrepreneurs to only customize the sections relevant to their business.<sup>83</sup>

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Another area that could benefit from simplification is the requirement for physical signatures in many processes. Even though the MCA21 portal allows for digital submissions, there are instances where documents still need to be physically signed, which delays the process. A fully digital approach, where all steps from the submission of forms to receiving the certificate of incorporation are conducted online, would save both time and resources. This is particularly important in the context of India's large and diverse geography, where entrepreneurs in remote areas may find it difficult to comply with physical document submission requirements.

Simplification can also be achieved by introducing a more flexible system for company name approval. Currently, the process of selecting and approving a company name can be lengthy due to the number of checks involved. A system where names are either automatically approved based on availability or where a faster clearance process is in place could significantly speed up the incorporation timeline.

# 7.3 TECHNOLOGICAL INTEGRATION FOR STREAMLINED PROCESSES

Technological integration has the potential to greatly improve the efficiency of the incorporation process. While India has made strides through the MCA21 portal, additional technological advancements could further streamline processes, reduce delays, and eliminate redundant steps. One of the first steps is to fully integrate the MCA21 portal with other government databases to allow for automatic validation of the information submitted by applicants. For example, an integrated system could automatically verify the identity of the directors and shareholders against government databases, which would speed up the process and reduce errors.

<sup>83</sup> Mayashree Acharya, "Private Limited Company Registration Online in India - Step by Step Process" ClearTax, 14 September 2017.

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Furthermore, India could introduce an automated system for document verification. Currently, officials need to manually verify the authenticity of submitted documents, which can lead to delays and errors. By using artificial intelligence and machine learning tools, the system could automatically flag potential issues or discrepancies in submitted documents, allowing for quicker resolution. This would significantly reduce the need for manual oversight and allow regulatory authorities to focus on more complex issues.<sup>84</sup>

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Additionally, India can take inspiration from countries like Estonia, which offers e-Residency for entrepreneurs. This allows foreign nationals to incorporate businesses remotely without needing to be physically present in the country. By expanding the capabilities of the MCA21 portal and introducing features like e-Residency, India could attract foreign entrepreneurs who wish to establish businesses in the country without the logistical barriers that currently exist.

The integration of blockchain technology could also be explored to improve the transparency and security of the incorporation process. Blockchain could provide a decentralized and immutable record of the company's formation, ensuring that all records are transparent and cannot be tampered with. This would enhance the integrity of the system, reducing the risk of fraud or manipulation.

# 7.4 ALIGNING THE COMPANIES ACT, 2013 WITH GLOBAL STANDARDS

India's Companies Act, 2013 has made considerable progress in aligning with international standards, but there is still room for improvement. One of the areas that need attention is the regulation of corporate governance. While the Companies Act, 2013, mandates several corporate governance provisions, such as the requirement for independent directors in certain companies, these provisions could be made more flexible, particularly for small and medium-sized enterprises (SMEs). Global best practices often allow businesses to choose their governance structure based on their size and operational needs. A similar approach in India would allow for more adaptability while maintaining the necessary checks and balances.

<sup>84</sup> Navin Kumar Parthiban, "AI solution for NBFCs: Strengthening Document Verification for Faster

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Lending" iTech India, 2025 *available at*: https://itechindia.co/blog/ai-driven-document-verification-for-nbfcs/ (last visited March 21, 2025).



Additionally, India can align its company laws with global standards by adopting internationally recognized financial reporting standards, such as International Financial Reporting Standards (IFRS), for smaller businesses and startups. While large companies in India are already required to comply with IFRS, there is an opportunity to extend this requirement to smaller businesses as well. This would improve the transparency and consistency of financial reporting and align India's standards with international norms, making it easier for foreign investors to assess Indian companies.<sup>85</sup>

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India should also consider simplifying its foreign investment regulations. While the Foreign Direct Investment (FDI) policies have been liberalized over the years, the regulatory framework still remains complex for foreign investors. By aligning these regulations more closely with those in jurisdictions like Singapore and the United Kingdom, India could attract more foreign capital and make the process of establishing a company more appealing to global investors.

Lastly, India could also take cues from jurisdictions that have low incorporation fees and quick registration times. Currently, India's incorporation costs are relatively higher compared to jurisdictions like Hong Kong and Estonia, where the costs are minimal, and the process is much quicker. By revising the fee structure and aiming for quicker incorporation timelines, India could encourage more entrepreneurship, particularly from startups and foreign investors.

In conclusion, while India has made significant progress in improving the ease of doing business, there are several key areas where reforms can streamline the company incorporation process. Simplifying procedural requirements, integrating technology, and aligning the Companies Act, 2013 with international best practices will not only make the incorporation process smoother but also enhance India's attractiveness as a destination for business and investment.

<sup>&</sup>lt;sup>85</sup> Dr Bhadrappa Haralayya, "Adaptation to Integration A Review on the Indian Accounting Standards (Ind AS) in Global Financial..." Science Research Society, 2025 *available at*: https://www.researchgate.net/publication/388490561\_Adaptation\_to\_Integration\_A\_Review\_on\_the\_I ndian\_Accounting\_Standards\_Ind\_AS\_in\_Global\_Financial\_Reporting\_Convergence (last visited March 21, 2025).

# CHAPTER 8 CONCLUSION AND RECOMMENDATIONS

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# 8.1. **CONCLUSION**

The incorporation of a company is a crucial step in the establishment of any business. It lays the foundation for the operations of a legal entity, provides a clear framework for accountability, and offers various legal benefits, such as limited liability. The Companies Act, 2013, has been instrumental in shaping the legal landscape for business incorporation in India, providing a modern and comprehensive framework for the registration, governance, and dissolution of companies. However, despite its advances, the incorporation process still presents significant challenges, particularly for small and medium-sized enterprises (SMEs) and entrepreneurs who are unfamiliar with the complex legal and procedural requirements. This has raised questions about the effectiveness of the law in achieving its intended goals and its impact on India's ease of doing business ranking.

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The Companies Act, 2013, was introduced with the intent to simplify the company incorporation process, improve transparency, and ensure better corporate governance. However, the implementation of these objectives has been fraught with challenges. The procedural framework for incorporation remains complex, often requiring entrepreneurs to navigate through multiple steps, various approvals, and extensive documentation. Despite the introduction of digital platforms like the MCA21 portal, which aim to streamline the registration process, entrepreneurs still face delays and frustrations due to bureaucratic inefficiencies, ambiguities in legal provisions, and challenges in fulfilling compliance requirements.

A major issue that hinders the ease of incorporation is the complexity of the procedural requirements. Although the process is digitized to some extent, the amount of paperwork and the number of steps involved are still considerable. There are significant barriers, particularly for SMEs, who may not have access to legal resources or the expertise needed to comply with the regulations effectively. Simplification of the incorporation process is therefore imperative. By reducing the documentation requirements and ensuring that processes such as the Director Identification Number (DIN), Digital Signature Certificates (DSC), and name approvals are quicker and more seamless, the incorporation process can become more accessible.

The compliance burden is another critical issue. While compliance is necessary for the proper functioning of a company, it can be particularly burdensome for new businesses, which often have limited resources. The Companies Act, 2013, imposes several obligations, such as the maintenance of statutory records, filing of annual returns, and adherence to corporate governance standards. While these obligations ensure transparency and accountability, they also increase the financial and administrative burden on new enterprises, potentially stifling entrepreneurial activity. A careful review of these requirements, particularly for smaller businesses, is needed to balance the goals of corporate governance and regulatory simplicity.

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The lack of clarity in certain provisions of the Companies Act, 2013, has also been identified as a significant impediment. For example, the drafting of the Memorandum of Association (MoA) and Articles of Association (AoA) can be complicated, and the legal requirements related to their preparation are often not easily understood by entrepreneurs without legal assistance. Ambiguities in these provisions often result in delays and confusion, creating unnecessary roadblocks for companies that are trying to establish themselves. Addressing these ambiguities through clearer legislative provisions and guidelines would go a long way in reducing the hurdles entrepreneurs face during the incorporation process.

Another area that requires attention is the overlap of regulations and approval authorities. Entrepreneurs must deal with multiple regulatory bodies, including the Ministry of Corporate Affairs (MCA), the Registrar of Companies (RoC), and other sectoral regulators, depending on the type of business they are incorporating. The coordination between these authorities is often cumbersome, and the requirement to submit documents to different departments leads to inefficiencies. A more integrated system that ensures all regulatory approvals are processed through a single window or digital platform could significantly reduce the time and resources spent on navigating these bureaucratic hurdles.

Despite these challenges, the impact of the Companies Act, 2013 on the Indian business environment has been largely positive. The Act has introduced several provisions aimed at improving corporate governance, enhancing transparency, and protecting the interests of stakeholders, particularly shareholders. Provisions such as the mandatory appointment of independent directors, corporate social responsibility

(CSR) requirements, and the protection of minority shareholders have improved the overall governance structure of Indian companies. These measures have made Indian companies more attractive to foreign investors and have contributed to the country's growing reputation as an investment hub.

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The introduction of the MCA21 portal has also been a game-changer, as it has facilitated the online filing of documents and the seamless submission of incorporation forms. This digital shift has increased the speed of processing applications and reduced administrative costs. However, the implementation of this technology has not been without challenges. The portal is often criticized for being difficult to navigate and for not providing adequate support to users who may not be well-versed in legal and procedural matters. More user-friendly features and better training resources for stakeholders could help in overcoming these challenges.

The global best practices in company incorporation have also provided valuable insights into potential reforms that could improve the incorporation process in India. Jurisdictions like Singapore, Hong Kong, and Estonia are often cited as models for efficient and streamlined company registration systems. These countries have simplified their incorporation processes by reducing the time required for registration, lowering the cost of incorporation, and introducing digital systems that allow for easy document submission and verification. India could benefit from adopting similar best practices, such as offering a simplified incorporation process, providing greater regulatory clarity, and enhancing the technological infrastructure.

Aligning India's Companies Act, 2013 with global standards in terms of ease of doing business is essential. Countries like the United Kingdom and the United States have implemented frameworks that provide flexibility for companies while maintaining necessary regulatory controls. These jurisdictions offer several benefits for new businesses, including reduced registration times, lower costs, and fewer bureaucratic hurdles. By adopting similar reforms, India could improve its business environment and attract more domestic and foreign investments.

The technological integration in India's incorporation process has shown promise, but further improvements are needed to ensure smoother and faster operations. The integration of blockchain technology, artificial intelligence, and machine learning in regulatory processes could help reduce the need for manual intervention and ensure that all data is accurate and secure. Furthermore, leveraging digital signatures and e-Residency models could help streamline the process for foreign entrepreneurs looking to establish businesses in India, which would further enhance the country's appeal as a global business hub.

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The future of the Companies Act, 2013 lies in its ability to adapt to changing business realities and technological advancements. The government must continue to review and reform the Act to ensure that it meets the needs of businesses, fosters entrepreneurship, and contributes to the overall growth of the economy. Regular feedback from stakeholders, including entrepreneurs, legal professionals, and regulators, will be vital in identifying the areas that need attention. By continuously improving the legal framework and simplifying the procedural requirements, India can enhance its competitiveness in the global market and create a business-friendly environment that promotes growth and innovation.

In conclusion, while the Companies Act, 2013 has been a significant step forward in reforming India's company incorporation process, several reforms are necessary to make the process more efficient, transparent, and accessible. By addressing issues such as complexity in procedures, compliance burdens, lack of clarity, and bureaucratic hurdles, India can improve its business environment and support entrepreneurship. By integrating technological solutions, aligning with global best practices, and simplifying regulatory frameworks, India can achieve its vision of becoming a global business hub and further enhance its position in the global economic landscape.

# 8.2. RECOMMENDATIONS

To improve the company incorporation process under the **Companies Act, 2013**, the following recommendations are proposed:

 Simplification of Procedural Requirements: The incorporation process should be made more user-friendly, especially for small and medium enterprises (SMEs). By reducing the number of steps and the documentation requirements, entrepreneurs can more easily navigate the registration process. A streamlined procedure that minimizes bureaucratic red tape would be beneficial, especially for first-time entrepreneurs. 2. **Enhanced Regulatory Clarity**: Clearer guidelines and provisions are necessary to eliminate ambiguities in the law, particularly in areas like the Memorandum of Association (MoA) and Articles of Association (AoA). Providing templates, examples, and step-by-step guides on the Ministry of Corporate Affairs (MCA) website can assist entrepreneurs in drafting these documents accurately, thus reducing errors and delays.

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- 3. **Technological Integration**: Strengthening the MCA21 portal and incorporating advanced technologies like artificial intelligence (AI) and blockchain would facilitate faster processing of applications and enhance transparency. Further development of e-filing systems can help reduce manual interventions, ensuring a quicker and more secure process for company incorporation.
- 4. Single Window Clearance System: Implementing a single-window clearance system that consolidates all regulatory approvals under one platform can reduce the time taken to incorporate a company. This approach would eliminate the need for interacting with multiple agencies and enhance coordination between them.
- 5. Revisiting Compliance Requirements: A balanced approach to compliance is essential. While the Companies Act ensures good governance, excessive compliance obligations, especially for smaller companies, should be reassessed. A tiered compliance system based on company size and turnover could ease the burden on smaller businesses.
- 6. **Continuous Training and Support**: Providing ongoing support through online webinars, tutorials, and a dedicated helpline would assist entrepreneurs in understanding the process better. Ensuring that legal professionals are readily available to guide startups can further smoothen the incorporation journey.

These reforms will improve India's ease of doing business, foster entrepreneurship, and promote a more conducive environment for economic growth.

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# **COMPLETION CERTIFICATE**

This is to certify that Mr AMAN KUMAR RANA with Enrollment Number A0319324008, a student of Programme LLM (Business Law) Batch 2024-2025 Semester at Amity Institute of Advanced Legal Studies has pursued Dissertation LWDS600 on topic Incorporation of company in India in parlance to Companies Act, 2013 under my guidance from 07/01/2025 to 07/04/2025. The Student has submitted 13 out of total 13 Weekly Progress Reports.Mr AMAN KUMAR RANA has completed the project-related work and the work done is satisfactory.

Date of Issue: 21/04/2025

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