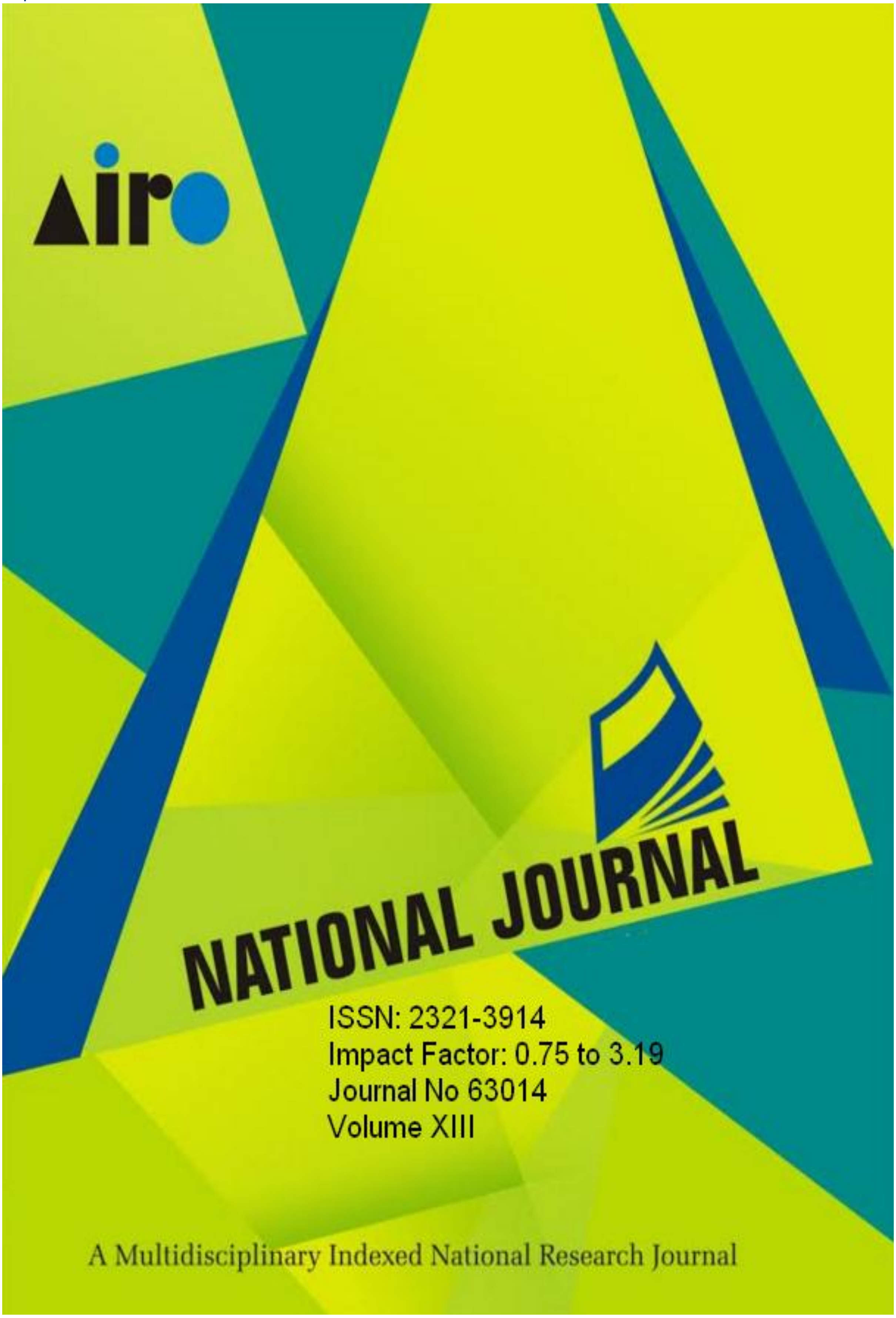
Airo National Research Journal

ज्ञान-विज्ञान विमुक्तये

Volume XIII, ISSN: 2320-3714
March, 2018 UGC Approval Number
63014
Impact Factor 0.75 to 3.19



Airo National Research Journal

Volume XIII, ISSN: 2320-3714
March, 2018 UGC Approval Number
63014
Impact Factor 0.75 to 3.19

SIGNIFICANCE OF INDIAN CONSTITUTION WITH A REFERENCE OF CORPORATE LAW

Prem Praksh Verma
Research Scholar Swami vivekanand University Sagar
Dr Ravi Pavadashetti
Associate Professor

ABSTRACT

Corporate law is a part of a broader company's law (or law of business associations). It is often considered to be a branch of civil law and deals with issues of both private law and public law. The most prominent kind of company, usually referred to as a "corporation", is a "juristic person", i.e. it has separate legal personality, and those who invest money into the business have limited liability for any losses the company makes, governed by corporate law. The largest companies are usually publicly listed on stock exchanges around the world. Even single individuals, also known as sole traders may incorporate themselves and limit their liability in order to carry on a business. All different forms of companies depend on the particular law of the particular country in which they reside.

Keywords: *Corporate, Law, Business*

1. INTRODUCTION

Corporate law deals with firms that are incorporated or registered under the corporate or company law of a sovereign state or their sub-national states. The four defining characteristics of the modern corporation are:

- Separate legal personality of the corporation (access to tort and contract law in a manner similar to a person)
- Limited liability of the shareholders (a shareholder's personal liability is limited to the value of their shares in the corporation)
- Shares (if the corporation is a public company, the shares are traded on a stock exchange)
- Delegated management; the board of directors delegates day-to-day management of the company to executives

Other types of business associations can include partnerships or trusts (like a pension fund), or companies limited by guarantee (like some community organizations or charities). Under corporate law, corporations of all sizes have separate legal personality, with limited or unlimited liability for its shareholders. Shareholders control the company through a board of directors which, in turn, typically delegates control of the corporation's day-to-day operations to a full-time executive.

In many developed countries outside the English speaking world, company boards are appointed as representatives of both shareholders and employees to "codetermine" company strategy. Corporate law is often divided into corporate governance (which concerns the various power relations within a corporation) and corporate finance (which concerns the rules on how capital is used).

Other types of business organizations, such as cooperatives, credit unions and publicly owned enterprises, can be established with purposes that parallel, supersede, or even replace the profit maximization mandate of business corporations.

For a country-by-country listing of officially recognized forms of business organization.

There are various types of company that can be formed in different jurisdictions, but the most common forms of company are:

- *A company limited by guarantee*. Commonly used where companies are formed for non-commercial purposes, such as clubs or charities. The members guarantee the payment of certain (usually nominal) amounts if the company goes into insolvent liquidation, but otherwise they have no economic rights in relation to the company .

- *A company limited by guarantee with a share capital*. A hybrid entity, usually used where the company is formed for non-commercial purposes, but the activities of the company are partly funded by investors who expect a return.

- *A company limited by shares*. The most common form of company used for business ventures.

- *An unlimited company* either with or without a share capital. This is a hybrid company, a company similar to its limited company (Ltd.) counterpart but where the members or shareholders do not benefit from limited liability should the company ever go into formal liquidation.

One of the key legal features of corporations are their separate legal personality, also known as "personhood" or being "artificial persons". However, the separate legal personality was not confirmed under English law until 1895 by the House of Lords in *Salomon v. Salomon & Co.* Separate legal personality often has unintended consequences, particularly in relation to smaller, family companies.

And in *Macaura v. Northern Assurance Co Ltd.* a claim under an insurance policy failed where the insured had transferred timber from his name into the name of a company wholly owned by him, and it was subsequently destroyed in a fire; as the property now belonged to the company and not to him, he no longer had an "insurable interest" in it and his claim failed.

2. SIGNIFICANCE OF CORPORATE LAW

Historically, because companies are artificial persons created by operation of law, the law prescribed what the company could and could not do. Usually this was an expression of the commercial purpose which the company was formed for, and came to be referred to as the company's *objects*, and the extent of the objects are referred to as the company's capacity. If an activity fell outside the company's capacity it was said to be *ultra vires* and void.

By way of distinction, the organs of the company were expressed to have various *corporate powers*. If the objects were the things that the company was able to do, then the powers were the means by which it could do them. Usually expressions of powers were limited to methods of raising capital, although from earlier times distinctions between objects and powers have caused lawyers difficulty.

Most jurisdictions have now modified the position by statute, and companies generally have capacity to do all the things that a natural person could do, and power to do it in any way that a natural person could do it.

However, references to corporate capacity and powers have not quite been consigned to the dustbin of legal history. In many jurisdictions, directors can still be liable to their shareholders if they cause the company to engage in businesses outside its objects, even if the transactions are still valid as between the company and the third party. And many jurisdictions also still permit transactions to be challenged for lack of "corporate benefit", where the relevant transaction has no prospect of being for the commercial benefit of the company or its shareholders.

As artificial persons, companies can only act through human agents. The main agent who deals with the company's management and business is the board of directors, but in many jurisdictions other officers can be appointed too. The board of directors is normally elected by the members, and the other officers are normally appointed by the board. These agents enter into contracts on behalf of the company with third parties.

Although the company's agents owe duties to the company (and, indirectly, to the shareholders) to exercise those powers for a proper purpose, generally speaking third parties' rights are not impugned if it transpires that the officers were acting improperly. Third parties are entitled to rely on the ostensible authority of agents held out by the company to act on its behalf.

A line of common law cases reaching back to *Royal British Bank v Turquand* established in common law that third parties were entitled to assume that the internal management of the company was being conducted properly, and the rule has now been codified into statute in most countries.

Accordingly, companies will normally be liable for all the act and omissions of their officers and agents. This will include almost all torts, but the law relating to crimes committed by companies is complex, and varies significantly between countries.

3. DISCUSSION

Corporate governance is primarily the study of the power relations among a corporation's senior executives, its board of directors and those who elect them (shareholders in the "general meeting" and employees). It also concerns other stakeholders, such as creditors, consumers, the environment and the community at large. One of the main differences between different countries in the internal form of companies is between a two-tier and a one tier board.

Recent literature, especially from the United States, has begun to discuss corporate governance in the terms of management science. While post-war discourse centered on how to achieve effective "corporate democracy" for shareholders or other stakeholders, many scholars have shifted to discussing the law in terms of principal–agent problems.

On this view, the basic issue of corporate law is that when a "principal" party delegates his property (usually the shareholder's capital, but also the employee's labour) into the control of an "agent" (i.e. the director of the company) there is the possibility that the agent will act in his own interests, be "opportunistic", rather than fulfill the wishes of the principal. Reducing the risks of this opportunism, or the "agency cost", is said to be central to the goal of corporate law.

It is quite common for members of a company to supplement the corporate constitution with additional arrangements, such as *shareholders' agreements*, whereby they agree to exercise their membership rights in a certain way. Conceptually a shareholders' agreement fulfills many of the same functions as the corporate constitution, but because it is a contract, it will not normally bind new members of the company unless they accede to it somehow.[18] One benefit of shareholders' agreement is that they will usually be confidential, as most jurisdictions do not require shareholders' agreements to be publicly filed.

he most important rules for corporate governance are those concerning the balance of power between the board of directors and the members of the company. Authority is given or "delegated" to the board to manage the company for the success of the investors. Certain specific decision rights are often reserved for shareholders, where their interests could be fundamentally affected. There are necessarily rules on when directors can be removed from office and replaced. To do that, meetings need to be called to vote on the issues. How easily the constitution can be amended and by whom necessarily affects the relations of power.

Companies generally raise capital for their business ventures either by debt or equity. Capital raised by way of equity is usually raised by issued shares (sometimes called "stock" (not to be confused with stock-in-trade)) or warrants.

A share is an item of property, and can be sold or transferred. Holding a share makes the holder a member of the company, and entitles them to enforce the provisions of the company's constitution against the company and against other members. Shares also normally have a nominal or par value, which is the limit of the shareholder's liability to contribute to the debts of the company on an insolvent liquidation.

"A corporation is described to be a person in a political capacity created by the law, to endure in perpetual succession." Nonetheless, Wilson believed that, in all cases, corporations "should be erected with caution, and inspected with care." The actions of corporations were clearly circumscribed: "To every corporation a name must be assigned; and by that name alone it can perform legal acts."

4. CONCLUSION

For non-binding external actions or transactions, corporations enjoyed the same latitude as private individuals; but it was with an eye to internal affairs that many saw principal advantage in incorporation. The power of making by-laws was "tacitly annexed to corporations by the very act of their establishment."

While they must not directly contradict the overarching laws of the land, the central or local government cannot be expected to regulate toward the peculiar circumstances of a given body, and so "they are invested with authority to make regulations for the management of their own interests and affairs.

Each is meant to facilitate the contribution of specific resources - investment capital, knowledge, relationships, and so forth - towards a venture which will prove profitable to all contributors. Except for the partnership, all business forms are designed to provide limited liability to both members of the organization and external investors. Business organizations originated with agency law, which permits an agent to act on behalf of a principal, in exchange for the principal assuming equal liability for the wrongful acts committed by the agent.

For this reason, all partners in a typical general partnership may be held liable for the wrongs committed by one partner. Those forms that provide limited liability are able to do so because the state provides a mechanism by which businesses that follow certain guidelines will be able to escape the full liability imposed under agency law. The state provides these forms because it has an interest in the strength of the companies that provide jobs and services therein, but also has an interest in monitoring and regulating their behavior.

REFERENCES

[1]. Statutory Materials: The companies Act, 1956, The Companies Act, 2013, Stock Exchange Board of India Act, 1992.

[2]. Decided Cases: Use of Supreme Court, High Court and National Company Law Tribunal Cases reported in various Law Reports like A.I.R., S.C.C., S.C.R., and S.C.J., and Company law journals.

[3]. Periodical Writings: Use of Indian and Foreign Law Journals on the point.

[4]. Reports of Committees etc.: Use of reports of various committees like The Kumarmangalam Birla Committee, Report of Stock Exchange Board of India, Naresh Chandera Committee, N.R. Narayana Murthy Committee etc.