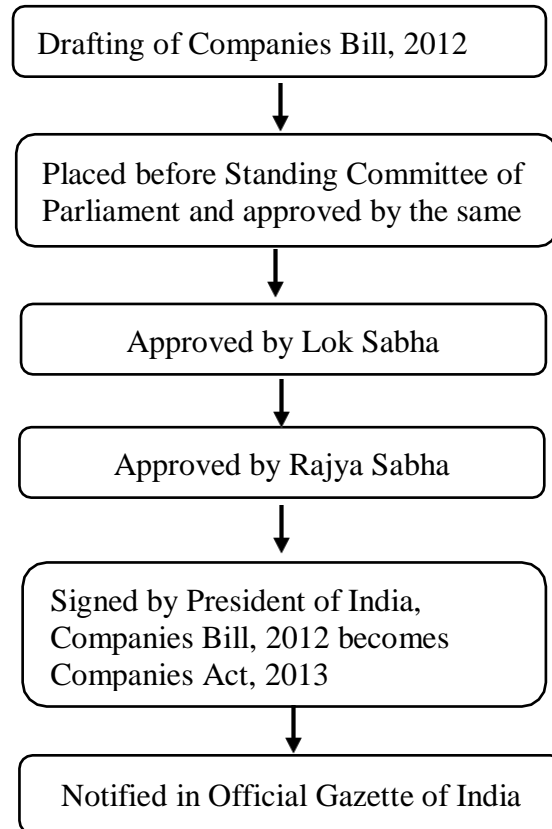


Ch.1 Introduction-Companies Act, 2013

Historical Information		
Companies Bill, 2012	Passed in Lok Sabha on	18-12-2012
Companies Bill, 2012	Passed in Rajya Sabha on	8-8-2013
Companies Bill, 2012	President gave assent on	29-8-2013
Companies Bill, 2012 became Companies Act, 2013		
Companies Act, 2013 notified in the Official Gazette of India		30-8-2013
Total 281 Sections notified in Official Gazette of India	Commencement for one section (Sec. 1)	30-8-2013
	Commencement of 98 Sections out of 470 Sections in the Act came on	12-9-2013
	Notification for the applicability of 183 Sections from	1-4-2014
General Information		
Total number of Sections		470
Total number of Chapters		29
Total number of Schedules		7
Rules notified under Chapters		21
Provisions relating to NCLT/NFRA/IEPF/ Winding up are yet to be notified by C. Govt.		
<p>National Company Law Tribunal (NCLT) is a proposed quasi-judicial body in India that will govern the companies in India.</p> <p>The National Financial Reporting Authority (NFRA) is the proposed apex body for accounting and auditing standards.</p> <p>Investor Education and Protection Fund (IEPF) is for promotion of investors' awareness and protection of the interests of investors.</p>		

Procedure adopted for the introduction of new Companies Act, 2013



History of Company Legislation

The company legislation in India is primarily based on the company legislation in England. In order to register Joint Stock Companies in India, the first enactment, i.e., Companies Act, was passed in the year 1850, which was based on English Companies Act, 1844. Over the period of time, a number of amendments were made in the Companies Act, closely following the amendments made in the English law.

Till 1956, the companies in India were regulated by the Companies Act, 1913. In 1950, the government of independent India appointed a Company Law Committee under the chairmanship of Shri H.C. Bhaba to review the entire functioning of Indian Companies Act. The committee submitted its report in 1952. On the basis of recommendations of this committee in general, a bill to enact The Companies Act, 1956, was introduced in the Parliament. The Companies Act, 1956, by and large, once again followed the English Companies Act, 1948.

After a number of amendments in the Companies Act, 1956, this Act has been replaced by new Companies Act, 2013, keeping in view the changed global economic scenario.

Introduction to Companies Act, 2013

COM + PANIES
Meaning

The word “company” is derived from the Latin term “COM” means “with or together” and the term “PANIES” means bread).

	Originally, it referred to an association of persons who took their meals together.
In Smith v. Anderson	It was observed as “a company may mean an association of individuals formed for some purpose”.
A company may be an incorporated company (or a “corporation”) Or an unincorporated company.	
Incorporated company	An incorporated company is a separate person distinct from the individuals constituting it.
Unincorporated company	An unincorporated company, such as a partnership, is mere collection or aggregation of individuals. The partnership, which is governed by Partnership Act, is the most apt example of an un-incorporated association.

Definition Sec 2(20)	“Company” means a company incorporated under Companies Act, 2013 or under any previous company law.”
Meaning	A co. is a voluntary association of persons for some common purpose, with capital divisible into parts, known as shares, and is an artificial person, having separate legal personality with a perpetual succession and common seal.

NATURE OF A COMPANY		
Person	Law divides persons into two categories: - Natural Persons (such as Human Beings) and Legal Persons (such as Companies – which are created by law). So we have natural persons and legal persons.	
	Human Persons	The natural persons are called human beings, which are created by a process of natural birth.
	Legal Persons	The non-human (Legal Persons) are called Companies, which are created by a process other than natural birth, i.e., by complying with the legal Formalities to form a company.
	A human person is a legal person all his life, but all legal persons are not human.	
Law has granted same rights to legal persons in relation to running of business as have been given to human being. But there are certain similarities and distinction in these two persons.		
SIMILARTIES		
Basis	Natural Person	Legal Person
Contract	Natural person can enter into contract.	Legal person can also enter into contract.
Buy assets	Natural person can buy assets.	Legal Person can also buy assets
Open Bank account	Natural person can open bank account	Legal Person can also open bank account.
Business	Natural person can start doing any lawful business	Legal Person can also start doing some lawful business
Sue and be sued	Natural person can file suit against others and suit can be filed against him also.	Legal person can file suit against others and suit can be filed against it also.

DISSIMILARITIES

Birth	Natural person gets birth through the process of nature.	Legal person gets birth through compliance with the legal formalities.
Physical body	It has a physical existence and visible to others.	It has no physical existence and not visible to others except to law. These physical disabilities make a company an artificial person. A co., being an artificial person, can do everything like a natural person except that: It cannot take oath, It cannot be sent to jail, It cannot marry, It cannot practice a profession like medical & it cannot vote.

Company as an artificial person

Whatever rights, the law has granted to natural person to do business, the same rights to do business are also granted companies. Since, Human being come into an existence through natural process, they are therefore, termed as natural persons. But company come into an existence through compliance of legal process, therefore, company can be termed as legal person or juristic person. However, a natural person has body, mind and soul. Legal person does not have any body, mind or soul but still it is a person. Therefore, a company is an artificial person created by law. It is called an artificial person since it is invisible, intangible, existing only in the contemplation of law. It is capable of enjoying rights and being subject to duties. Since law has created it, it is considered as a legal person which can enter into contracts, possess properties in its own name, sue and can be sued by others etc. It is not a human being but it acts through natural person (human beings).

COMPANY – ITS CHARACTERISTICS**1. Separate Independent Legal Entity**

A co. is a legal entity quite distinct and separate from its members. It is an artificial person created by law. Though it exists only in the contemplation of law, it has the qualities similar to those of individuals. It can hold, and deal with in any type of property, of which it is owner. It can enter into a contract.

Effect of separate Legal Entity	It can open a bank account in its own name. It can sue and be sued by its members as well as outsiders. A co. cannot be the property of the person who owns all the shares in the co., nor can it be considered to be his agent. The rights and obligations of a co. are distinct from its constituent members. A co. can enter into partnership with one or more individuals or another co. It can buy shares and debentures of another co. The principal of separate legal entity of the company is clarified in the following case.
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Salomon V. Salomon & Co. Ltd.

Salomon carried on business as a leather merchant. He sold his proprietorship business for a sum of £30,000 to a company formed by him along with his wife, a daughter and four sons. The purchase consideration made by the company was as follow: -

Allotment of 20,000 shares of £1 each and issue of secured debentures worth £ 10,000 to Mr. Salomon. The other family members subscribed for one share of £ 1 each. Mr. Salomon was also the managing director of the company. The company immediately ran into difficulties and eventually became insolvent and winding up commenced.

At the time of winding up, the financial position of the company is as follow: -

Total assets - £6,050;

Liabilities: - £10,000 secured debentures
£ 8,000 owing to unsecured trade creditors

Contention of Unsecured creditors: one man cannot owe money to himself. The unsecured creditors contended that Salomon was carrying on business in the name of Salomon & Co. Ltd. Thus, Salomon and Co. Ltd. was a mere agent for Salomon. The unsecured creditors claimed the whole of the company's assets, viz. £6,050 on the ground that the company was a mere agent for Salomon.

Decision of the Court:

1. Once the certificate of incorporation is issued, the company comes into an existence and it becomes a separate legal entity which is different from those seven persons who formed such company.
2. Even if almost all the shares of the company are held by one individual and the company is virtually a "One Man Company", controlled by such individual, still it has its own separate legal existence apart from such individual.
3. A single individual can be shareholder as well as creditor of the company simultaneously. Therefore, the contention of the trade creditors could not be maintained, because the company being in law a person quite distinct from its members, could not be regarded as an agent of Salomon.

Also, the company's assets must be, applied in payment of the debentures as a secured creditor is entitled to payment out of the assets on which his debt is secured in priority to unsecured creditors.

Held that, in this case, Mr. Salomon, being a secured creditor, shall be paid before other unsecured creditors.

Lee v. Lee Air Farming Ltd.

Lee, a qualified pilot, held all but one of the shares in the company. He was appointed governing director of the company and chief pilot. Lee was killed while piloting the company's aircraft, and his widow claimed compensation for his death under the Workmen Compensation Act.

Contention by the company

The company opposed the claim on the ground that Lee was not a 'worker' as the same person could not be employer and the employee.

Decision of court

It was held that Lee was a separate person from the company he had formed.

There is a valid contract between Lee and the Company, and Lee was, therefore, a worker.

Therefore, he could be legally employed under the company.

As he was killed in the course of employment under the company, Mrs. Lee's was entitled to get compensation.

Bacha F. Guzdar v. The Commissioner of Income-Tax

A shareholder received dividend income from a company carrying on agricultural business. The income from agriculture business was exempt from tax.

Contention by the shareholder

The shareholder contended that her dividend income should be treated as agricultural income and therefore exempt from tax.

Decision of court

The Court held that the company was a separate person from its members, having its own business, and its own income. The income received by the shareholders was not the same income as earned by the company.

2. Limited Liability

In case of company limited by shares, the liability of the members of a company is limited to the extent of the nominal value of the shares held by them. In no event can a shareholder be asked to pay anything more than the unpaid value of his shares.

The liability of members in different types of companies is explained below: -

Type of Company	Extend of Liability
Company limited by shares	Up-to the face value of shares held by him
Company limited by guarantee	Amount guaranteed by every member
Company limited by guarantee and having share capital	Aggregate of amount unpaid on the shares held by a member and the amount guaranteed by him.
Unlimited Liability Co	Liable to contribute to the asset of the company until all the debts of the company are paid in full.

Exceptions to the principle of limited liability

1. False information	Where a company has been incorporated by furnishing any false or incorrect information or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company or by any fraudulent action, the Tribunal may, on an application made to it, on being satisfied that the situation so warrants, direct that liability of the members of such company shall be unlimited. [Section 7(7)(b)(Section 7(7) is yet to be notified]
2. Committing fraud during winding up	Under section 339(1), where in the course of winding up it appears that any business of the company has been carried on with an intent to defraud creditors of the company, the Tribunal may declare the persons who were knowingly parties to the carrying on of the business in the manner aforesaid as personally liable, without limitation of liability, for all or any of the debts/liabilities of the company. [Section 339 is yet to be notified]
3. Unlimited Company	When the company is incorporated as an Unlimited Company under Section 3(2)(c) of the Act.
4. Wrong information	Under Section 35(3), where it is proved that a prospectus has been issued with intent to defraud the applicants for the securities of a company or any other

in Prospectus	person, every person who was a director at the time of issue of the prospectus or has been named as a director in the prospectus or every person who has authorized the issue of prospectus or a person referred to as an expert in the prospectus shall be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.
5. Failure to repay deposits	As per section 75(1), where a company fails to repay the deposit or part thereof or any interest thereon within the time specified or such further time as may be allowed by the Tribunal and it is proved that the deposits had been accepted with intent to defraud the depositors or for any fraudulent purpose, every officer of the company who was responsible for the acceptance of such deposit shall also be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by the depositors.
6. Fraud by director, KMP etc.	Section 224(5) states that where the report made by an inspector states that fraud has taken place in a company and due to such fraud any director, key managerial personnel, other officer of the company or any other person or entity, has taken undue advantage or benefit, whether in the form of any asset, property or cash or in any other manner, the Central Government may file an application before the Tribunal for appropriate orders for holding such director, key managerial personnel, officer or other person liable personally without any limitation of liability.

3. Perpetual Succession (permanent existence)

Section 9 of the Companies Act, 2013 states that an incorporated company has perpetual succession. The term perpetual means continuous and the term succession means one after another. This means that the death or insolvency of individual members does not in any way, affect the corporate entity, its existence or continuity. The company shall continue to exist indefinitely till it is wound-up in accordance with the provisions of the Companies Act. Members may come and members may go but the company can go on forever. In case of partnership firm having just two partners, if any one of the two partners dies, then the partnership firm stands dissolved. In case of a company, even if all the members of a company die, still that company is alive. As the company gets its birth by complying with the provisions of law (i.e., procedure for incorporation) similarly, it goes out of existence by following other provisions of Law (i.e., procedure for the winding up). However, in case of “One Person Company” having one member, if such member dies, then his shares are transmitted to his nominee, and still the company continues to exist.

4. Transferability of Shares

The capital of a company is divided into parts, called shares. The shares are movable property and freely transferable. In the case of a private company, the Companies Act requires it to put certain restrictions on the transferability of shares. In the case of a public limited company, every member having fully paid-up shares is at liberty to dispose them off according to his choice. Any absolute restriction on the right to transfer shares is void.

Section 44 of the Companies Act, 2013 enunciates the principle by providing that the shares held by the members are movable property and can be transferred from one person to another in the manner provided by the Articles of Association.

If the articles do not provide anything for the transfer of shares and the Regulations contained in Table “F” in Schedule I to the Companies Act, 2013, are also expressly excluded, the transfer of shares will be governed by the general law relating to transfer of movable property.

5. Separate Property

The company is entitled to own and hold property in its own name. No member can claim ownership of any item of the company’s assets.

Although its capital is contributed by its shareholders, they are not the private or joint owner of its property.

Gramophone & Typewriter Co. v. Stanley

“The property of the company is not the property of the shareholders; it is property of the company.”

Bacha F. Guzdar v. Commissioner of I.T, Bombay

The Supreme Court, in this case, held that, though the income of a tea company is entitled to be exempted from Income-tax up to 60% being partly agricultural, the same income when received by a shareholder in the form of dividend cannot be regarded as agricultural income for the assessment of income-tax.

It was also observed by the Supreme Court that a shareholder is not the part owner of the company or its property, he is only given the certain rights by law, e.g., to vote, to attend meetings, or to receive dividend. No member can individually or jointly claim any ownership rights in the assets of the co. during its existence or on its winding up.

Macaure v. Northern Assurance Co. Ltd.,

Even where a shareholder held almost entire share capital, he did not even have an insurable interest in the property of the company.

In this case, Mr. Macaure held all except one share of a timber company. He insured the company's timber in his personal name. On timber being destroyed by fire, his claim was rejected for want of insurable interest. The Court applying principle of separate legal entity held, the insurance company was not liable.

6. Common Seal

In order to enter into some contract, the company needs to sign the documents. Since a company is an artificial person, it cannot sign documents in order to enter into some contract. It performs this formality by making use of the common seal of the company to act as the official signature of a company. The name of the company must be engraved on its common seal. A rubber stamp does not serve the purpose. A document not bearing common seal of the company is not authentic and has no legal force behind it.

The common Seal must be kept in the custody of a director or any other responsible officer of the company. The Article of Association of the company specifies that whose manual signature shall be affixed along with the common seal on a document belonging to the company.

According to Companies Act, 2013, the common seal is compulsorily required to be affixed only on following two documents:

Section 22 (2) In case of Power of Attorney issued by the company, the company may, by writing under its common seal authorize any person, either generally or in respect of any specified matters, as its attorney to execute other deeds on its behalf in any place either in or outside India.
 Section 46(1) In case of issue of Share Certificate in physical form.
 However, a company may voluntarily affix its common seal on other documents also.

7.Capacity to Sue and Be Sued

A company being a body corporate, can sue and be sued in its own name. All legal proceedings against the company are to be instituted in its own name. Similarly, the company may bring an action against anyone in its own name.

8. Contractual Rights

A company, being a legal entity, is different from its members. It can enter into contracts for the conduct of the business in its own name.

A shareholder cannot enforce a contract made by his company; he is neither a party to the contract, nor be entitled to the benefit derived out of it. Similarly, a shareholder cannot be sued on contracts made by his company.

9. Limitation of Action

A company cannot go beyond the power stated in its Memorandum of Association. The Memorandum of Association of the company regulates the powers and fixes the objects of the company. Any act done beyond the objects specified in the Memorandum of Association shall be ultra vires.

10. Termination of Existence

A company, being an artificial juridical person, does not die a natural death. It is created by law, carries on its affairs according to law throughout its life and ultimately is put to an end by law. Generally, the existence of a company is terminated by means of winding up.

Meaning of a Company

A company is a body corporate and a legal person having status and personality distinct and separate from the members constituting it.

Why it is called a Body Corporate?

Body Corporate	It is called a body corporate because the persons composing it are made into one body by incorporating it according to the law, and clothing it with legal personality.
Incorporation	Thus, ‘incorporation’ is the act of forming a legal corporation as a juristic person. A juristic person is in law also conferred with rights and obligations and is dealt with in accordance with law.

	In other words, the entity acts like a natural person but only through a designated person, whose acts are processed within the ambit of law [Shiromani Gurdwara Prabandhak Committee v. Shri Sam Nath Dass]. CASE	
Corporation	The word “corporation” is derived from the Latin term “corpus” which means “body”.	
Existence of company	The incorporated company owes its existence to a special Act of Parliament or to Companies Law.	
	The public corporations like Life Insurance Corporation of India and SBI have been brought into existence through special Acts of Parliament.	Companies like Tata Steel Ltd., Reliance Industries Ltd. have been formed under the Companies Act, 1956 which is being replaced by Companies Act, 2013.

Doctrine of Lifting of or Piercing the Corporate Veil

A co. is a legal person distinct from its members. This is known as principle of the “veil of corporation”. Yet in reality, it is an association of persons who are, in fact, the beneficial owner of the co.’s property. Real persons behind a co. are disregarded once they have formed the co. The persons working to assist the company in performing its functions have to work according to rules. If these members work according to rules and regulations, then for all their acts, the company is liable. However, if members abuse their powers and try to make the company liable for their wrong deeds, then in that case, the company shall not be responsible for their acts; rather they shall be held personally liable for all consequences.

Meaning of lifting up or piercing the corporate veil

Lifting up of corporate veil means ignoring the separate legal identity of a company.
Lifting of corporate veil means disregarding the corporate personality and looking back at the persons who are actually controlling the affairs of the company.

Reasons for lift up of corporate veil

The advantages of incorporation are allowed to be enjoyed only by those who want to make an honest use of the 'company'.
In case of dishonest and fraudulent use of the facility of incorporation, the law lifts the corporate veil and identifies the persons who are behind the scene and are responsible for the perpetration of fraud
Therefore, corporate personality is to be respected, but when this benefit is misused courts are not powerless to lift the veil.

Prem lata Bhatia v. Union of India

However, the shareholders cannot ask for the lifting of the veil for their purposes. This was held in Premlata Bhatia v. Union of India wherein the premises of a shop were allotted on a licence to the individual licensee. She set up a wholly owned private company and transferred the premises to that company without Government consent. She could not remove the illegality by saying that she and her company were virtually the same person.

Circumstances to lift up the corporate veil	The circumstances under which the courts may lift the corporate veil may broadly be grouped under the following two heads: (A) Under judicial interpretations (B) Under statutory provisions
Cases falling under Judicial Interpretation	
1. For the determination of character of the company, whether it is an enemy co. (Doctrine conflicts with public policy)	<p>Daimler Co. Ltd. v Continental Tyre & Rubber Co. Ltd. A company was formed in England for the purpose of selling tyres made by a German company. The German company virtually held the entire share capital of the English company. All the directors were German national and residents. During the First World War, the English company commenced an action to recover a trade debt from another English company.</p> <p>Decision of the Court It was held that the corporate personality of the company be ignored and the persons in the ultimate control of the company shall be considered. Since the persons controlling the company were enemies, the suit was not maintainable. Accordingly, the suit filed by the company to recover a trade debt was dismissed on the ground that such payment would amount to trading with enemy.</p>
	<p>Connors Bros. v. Connors In this case, the Holding company was incorporated in Germany and its Subsidiary company was formed in England. Subsequently Germany declared war against England. The British subsidiary company filed the suit against its customers in England to realize the proceeds of credit sales made to them.</p> <p>Decision of the Court The court denied the recovery of sale proceeds by the British subsidiary company on the ground that its shareholders were from Germany and that the revenue earned by British company would go ultimately to German shareholders who were in fact of enemy character.</p>
2. Protection of revenue	<p>Where it was found that the sole purpose for which the company was formed was to evade taxes the Court will ignore the concept of separate entity, and make the individuals liable to pay the taxes which they would have paid but for the formation of the company.</p> <p>Sir Dinshaw Maneckjee Pettit, Re: An assessee was receiving huge dividend and interest income on certain investments. In order to avoid the payment of taxes, he formed four private companies. The whole of the investments were transferred to these private companies. The interest and dividend received by these companies were within the exempted limits under the Income Tax Act of that time. These companies did not have any business or asset except these investments. The income received on investments by these companies was diverted to the assessee in the form of pretended loans, which were never paid back by him.</p> <p>Decision of the Court</p>

	<p>The Court held that the only purpose of incorporating these private companies was to evade taxes. Each of these companies was a sham. Therefore, income earned by all these private companies was treated as the income of the assessee.</p>
<p>3. Commission of fraud or improper conduct</p>	<p>Where the corporate veil has been used for commission of fraud or improper conduct, Courts have lifted the veil and looked at the realities of the situation.</p> <p>Gilford Motor Co. Ltd. v Horne An employee entered into a contract with his employer that he will not solicit the customers of the employer after leaving the employment. After leaving the employment, the employee formed a company along with his wife and one other person. The company started soliciting the customers of the employer.</p> <p>Decision of the Court The Court held that the purpose of formation of the company was to avoid a legal obligation arising from a contract. Therefore, the company was restrained from soliciting the customers of the employer.</p>
	<p>Jones v. Lipman L agreed to sell certain land to J. Pending completion of formalities of the said deal, L sold and transferred the land to a company which he had incorporated with a nominal capital of £100 and in which he and a clerk were the only shareholders and directors. This was done in order to escape a decree for specific performance in a suit brought by J.</p> <p>Decision of the Court The Court held that the company was the creation of L and a mask to avoid recognition. In the eyes of law L must complete the contract, since he had the full control of the limited company in which the property was vested.</p>
<p>(4) Formation of Subsidiaries to act as agent</p>	<p>In Merchandise Transport Limited v. British Transport Commission, a transport company wanted to get licenses for its vehicles, but it could not do so if it made the application in its own name. It, therefore, formed a subsidiary company and the application for licenses was made in the name of the subsidiary. The vehicles were to be transferred to the subsidiary.</p> <p>Decision of the Court Held, the parent and the subsidiary company were one commercial unit and the application for licenses was rejected.</p> <p>In Re. R.G. Films, a subsidiary company (in Britain) was incorporated by the holding company (of USA) only as an instrument (tool). Holding company transferred its entire business to its Subsidiary company due to lower tax rates in Britain and Subsidiary company (in Britain) had no real business of its own.</p> <p>Decision of the Court The Court held that in this case, the corporate veil shall be lifted up and the income of Subsidiary company in Britain can be taxed as income of American Holding company.</p>

<p>5. To avoid welfare legislation</p>	<p>Workmen of Associated Rubber Industry Lid. v. Associated Rubber Industry Ltd. A company was earning huge profits. According to the Bonus Act, some amount of bonus was to be paid to the workers in proportion of the profits of the company. The company incorporated a subsidiary company and transferred some valuable investments to it. The subsidiary company did no business, and had no assets except the investments. Decision of the Court Looking at the purpose of formation of the subsidiary, the Supreme Court lifted the corporate veil. It was held that the subsidiary was formed merely for the purpose of reducing the liability of bonus payable under the Bonus Act. It amounted to avoiding welfare legislation by escaping the liability to pay bonus. Such an action was not permissible, and therefore the profits earned by the subsidiary company were held to be the profits of the holding company.</p>
	<p>Kapila Hingorani v. State of Bihar In this case, the petitioner had alleged that the State of Bihar had not paid salaries to its employees in PSUs etc. for long periods resulting in starvation deaths. But the respondent took the stand that most of the undertakings were incorporated under the provisions of the Companies Act, 1956, hence the rights etc. of the shareholders should be governed by the provisions of the Companies Act and the liabilities of the PSUs should not be passed on to the State Government by resorting to the doctrine of lifting the corporate veil. Decision of the Court The Court observed that the State may not be liable in relation to the day-to-day functioning of the PSUs but its liability would arise on its failure to perform the constitutional duties and the functions of these undertakings.</p>
<p>6. In case of economic offences</p>	<p>Santanu Ray v. Union of India In case, a company has committed an economic offence, e.g., not paying the taxes, directors of the company can be held liable for wrong. Decision of the court The Court held that the veil of the corporate entity could be lifted by adjudicating authorities so as to determine as to which of the directors was concerned with the evasion of the excise duty by reason of fraud, concealment or willful misstatement or suppression of facts or contravention of the provisions of the Act and the rules made there under.</p>
<p>Lifting the Corporate Veil of Small Scale Industry</p>	<p>Inalsa Ltd. v. Union of India Where small scale industries were given certain exemptions and the company owning an industry was controlled by some group of persons or companies. Decision of the court</p>

	It was held that it was permissible to lift the veil of the company to see whether it was the subsidiary of another company and, therefore, not entitled to the proposed exemptions.
Experience of promoters	<p>Re. New Horizons Limited (NHL) Facts of the Case</p> <p>The Union of India invited tender to print the telephone directory. NHL filled up the tender and submitted it to Union of India. NHL is a joint venture of four companies (namely, TPI (Thomson Press India Ltd.), LMI (Living Media India Ltd.) and WML (World Media Ltd.) as well as a Singapore based company, I IPL (Integrated Information Pvt. Ltd.).</p> <p>TPI, LMI, WML and Mr. Arun Purie hold 60% shares and I IPL holds 40% shares.</p> <p>These four companies and Mr. Arun Purie have past experience of printing telephone directories.</p> <p>The Tender Evaluation Committee of Union of India rejected the tender of NHL on the ground that NHL does not have past experience of printing telephone directories.</p> <p>NHL Preferred appeal in the court.</p> <p>Decision of the Court</p> <p>The court held that by lifting the corporate veil of the NHL, the past experience of the promoters of the NHL, can be considered as the past experience of NHL. Therefore, the Tender Evaluation Committee cannot reject the tender of NHL on the ground that NHL does not have any past experience of printing the telephone directories.</p>

2. Statutory Provisions for Lifting the Veil-

- Reduction of Number of Members** - Under Companies Act 2013, if a company carries on business for more than six months after the number of its members has been reduced to seven in case of a public company and two in case of a private company, every person who knows this fact and is a member during the time that the company so carries on business after the six months, becomes liable jointly and severally with the company for the payment of debts contracted after six months. It is only that member who remains after six months who can be sued.
- Fraudulent Trading-** Under Indian Companies Act, 2013, if any business of a company is carried on with the intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, who was knowingly a party to the carrying on of the business in that manner is liable to imprisonment or fine or both. This applies whether or not the company has been or is in the course of being wound up. This was upheld in Delhi Development Authority v. Skipper Constructions Co. Ltd. (1997).
- Misdescription of the Company-** Under Indian Companies Act, 2013, provides that if any officer of the company or other person acting on its behalf signs or authorizes to be signed on behalf of the company any bill of exchange, promissory note, endorsement, cheque or order for money or goods in which the companies name is not mentioned in legible letters, he is liable to fine and he is personally liable to the holder of the instrument unless the company has already paid the amount.
- Premature Trading-** Another example of personal liability is mentioned in Section 117 (8) of The English Companies Act. Under this section a public limited company newly incorporated as such must not “do business or exercise any borrowing power” until it has obtained from the registrar of companies a certificate that has complied with the provisions of the act relating to

the raising of the prescribed share capital or until it has re-registered as a private company. If it enters into any transaction contrary to this provision not only are the company and its officers in default, liable to pay fines but if the company fails to comply with its obligations in that connection within 21 days of being called upon to do so, the directors of the company are jointly and severally liable to indemnify the other party in respect of any loss or damage suffered by reason of the company's failure.

5. **Holding and Subsidiary Company-** In the eyes of law, the holding company and its subsidiaries are separate legal entities.

But in the following two cases the subsidiary may lose its separate entity-

Where at the end of its financial year, the company has subsidiaries, it must lay before its members in general meeting not only its own accounts, but also attach therewith annual accounts of each of its subsidiaries along with copy of the board's and auditor's report and a statement of the holding company's interest in the subsidiary.

The Court may, on the facts of a case, treat a subsidiary as merely a branch or department of one large undertaking owned by the holding company.

Conclusion-

Thus it is abundantly clear that incorporation does not cut off personal liability at all times and in all circumstances. "Honest enterprise, by means of companies is allowed; but the public are protected against kitting and humbugger". The sanctity of a separate entity is upheld only in so far as the entity is consonant with the underlying policies which give it life.

Thus those who enjoy the benefits of the machinery of incorporation have to assure a capital structure adequate to the size of the enterprise. They must not withdraw the corporate assets or mingle their own individual accounts with those of the corporation. The Courts have at times seized upon these facts as evidence to justify the imposition of liability upon the shareholders.

The act of piercing the corporate veil until now remains one of the most controversial subjects in corporate law. There are categories such as fraud, agency, sham or facade, unfairness and group enterprises, which are believed to be the most peculiar basis under which the Law Courts would pierce the corporate veil. But these categories are just guidelines and by no means far from being exhaustive.

Company vis-a-vis Body Corporate	
Meaning	Body corporate means an association of persons which has been incorporated under some statute having perpetual succession, a common seal and having a legal entity different from the members constituting it.
Definition Sec 2(7)]	"Body corporate' or 'corporation' includes a company incorporated outside India but does not include: (a) A corporation sole;

	(b) A co-operative society registered under any Cooperative Societies Act; (c) Any other body corporate not being a company which the Central Government may, by notification in the Official Gazette, specify in this behalf."
Types	A body corporate may be - (a) a corporation sole, or (b) a corporation aggregate.
Corporation sole	A corporation sole is a body corporate constituted in a single person who, in right of some office or function, has corporate status. Examples of corporate sole are to be found in perpetual offices such as the President and Governors. A corporation sole is not a "body corporate" for the purposes of the Companies Act, 2013. It is still a legal person and as such person can be a member of a company.
Corporation aggregate	A corporation aggregate consists of a group of persons associated so that they form a single person, e.g., a limited company, a trade union.
NOTE	Every company is a body corporate, but every "body corporate" is not a company. The expression 'corporation' or 'body corporate' is, thus, wider than the word company.
Society	Society is not a body corporate or a company. In Board of Trustees, Ayurvedic and Tibbia College, Delhi Vs. State of Delhi , the Supreme Court held that a society registered under the Societies Registration Act, 1860 does not fall within the term body corporate under the Companies Act, although it is true that a society is a legal person capable of holding property and becoming a member of the company. The Supreme Court also held that though under the several provisions of the Societies Registration Act, 1860, a society has certain privileges, and some of them are similar to those of corporations, but society should not be deemed to be a body corporate within the meaning of Sec. 2(11) of the Companies Act, 2013.

Is Company a Citizen?	
A company is not a citizen	Under the Citizenship Act, 1955, the citizenship is available only to an individual. Therefore, no company can be a citizen of India. Although it is generally accepted that corporations are not citizens in the same way that real citizens are -, they cannot hold passports or vote in elections, for example - it has been recognized that they do share in some of the same or similar practices, such as paying taxes, engaging in free speech, and expecting certain protections from the state.
Some rights are available to companies	A company can, however, claim the protection of those fundamental rights which are available to all persons, whether citizens or not, for example, the right to own property.

	<p>It is to be noted that certain fundamental rights enshrined in the Constitution for protection of “person”, e.g., right to equality (Article 14) etc. are also available to company.</p> <p>Section 2(f) of Citizenship Act, 1955, expressly excludes a company or association or body of individuals from citizenship.</p>
Nationality and Residence of a Company	
Gasque v. Inland Revenue Commissioners	Though it is established through judicial decisions that a company cannot be a citizen, yet it has nationality, domicile and residence. In Gasque v. Inland Revenue Commissioners, held that a limited company is capable of having a domicile and its domicile is the place of its registration.
Re.State Trading Corporation of India Ltd.	The Supreme Court held that the State Trading Corporation though a legal person, was not a citizen (neither as per Constitution of India, nor as per Citizenship Act, 1955) and can act only through natural persons.
R.C. Cooper v. Union of India (Bank Nationalization case)	Supreme Court held that even if all the members of company are citizen of India, still the company cannot be considered as citizen of India, because even if all the members of the company are married, the company cannot be considered as married.
Re. Bennet Coleman &Company	<p>The Supreme Court held that that the company is not a citizen of India but all the rights of citizenship are available to the company indirectly through its members who are citizens of India.</p> <p>The court said that if any governmental policy adversely affects the trade of the company then it automatically affects the interest of its members who are citizens of India. Therefore, the company can invoke citizenship rights through its members who are citizens or India.</p>

Illegal Association Meaning [Sec 464]

In order to prevent the mischief arising from large trading undertakings being carried on by large fluctuating bodies so that persons dealing with them did not know with whom they were contracting, the law has put a ceiling on the number of persons constituting an association or partnership.

An unincorporated company, association or partnership consisting of large number of persons has been declared illegal.

Rule 10 of Companies (Miscellaneous) Rules, 2014 prescribes 50 persons in this regard.

By virtue of section 464 of the Companies Act, 2013, no association or partnership consisting of more than such number of persons as may be prescribed shall be formed for the purpose of carrying on any business that has the object of earning profits, unless it is registered as a company under this Act or is formed under any other law for the time being in force. The number of persons which may be prescribed under this section shall not exceed 100.

Exceptions:	<ol style="list-style-type: none"> 1. Section 464 of the Act does not apply to the case of a Hindu undivided family carrying on any business whatever may be the number of its members. 2. This section is also not applicable to an association or partnership, if it is Formed by professionals who are governed by special Acts. 3. Stock Exchange – In V.V. Ruia Vs. Dalmia , It was decided that a stock Exchange is not covered by this section, because it is not formed for the purpose of carrying on any business.
Effects of Illegal Association	<ol style="list-style-type: none"> 1. Every member is personally liable for all liabilities incurred in the business. 2. Such an association cannot enter into any contract. 3. Such an association cannot sue any of its members or any outsider. 4. It cannot be sued by a member or an outsider for any debts due to him because it cannot contract any debt. 5. It cannot be wound up by an order of the Court. In fact, the Court cannot entertain a petition for its winding up as an unregistered company, for if it did, it would be indirectly according recognition to the illegal association (Raghubar Dayal v. Sarafa Chamber). 6. A member cannot sue for partition or dissolution or accounts of an illegal association. 7. The illegality of an illegal association cannot be cured by subsequent reduction in the number of its members. 8. The profits made by an illegal association are, however, liable to assessment to income-tax. 9. Every member of an illegal association shall be punishable with fine which may extend to one lakh rupees and shall also be personally liable for all Liabilities incurred in such business.
Can a company become partner in a partnership firm?	
Legal Person	A company being a juristic person is capable of contracting in its own name.
Partnership Act	According to Partnership Act,1932 [section 4] Partnership is a contractual relationship between persons, Thus, there should be no objection to a partnership being created with or by a company.
Doubt	The only doubt that may arise in the minds of the readers is that the liability of a partner being unlimited, can a limited liability company become a partner? To this the simple reply shall be that it is the liability of the members of a limited company which is limited and not that of the company itself. Thus, there should be no objection to a limited liability company becoming a partner of a partnership firm.
Opinion of DCA	The Department of Company Affairs, in this regard has opined that the objects clause must contain a facilitating provision in this regard.

COMPANY VIS-A-VIS OTHER FORMS OF BUSINESS

Distinction between Company and Partnership		
Difference	Partnership	Company
Distinct legal person	A partnership firm is not distinct from the several persons who compose it.	A company is a distinct legal person.
Assets	In a partnership, the assets of the firm are the property of the individuals comprising it.	In a company, the assets belong to the company and not to the individuals comprising it.
Creditors	Creditors of a partnership firm are creditors of individual partners and a decree against the firm can be executed against the partners jointly and Severally.	The creditors of a company can proceed only against the company and not against its members.
Agent	Partners are the agents of the firm.	Members of a company are not its agents.
Contract	A partner cannot contract with his firm.	A member of a company can Contract with company.
Transferability	A partner cannot transfer his share and make the transferee a member of the firm without the consent of the other partners.	A company's share can ordinarily be transferred.
Liability	A partner's liability is always unlimited.	The liability of shareholder may be Limited either by shares or a guarantee.
Insolvency	The death or insolvency of a partner dissolves the firm, unless otherwise provided.	A company has perpetual succession, i.e. the death or insolvency of a shareholder or all of them does not affect the life of the company
Agreement Vs. Law	A partnership firm is the result of an agreement and can be dissolved at any time by agreement.	A company, being a creation of law, can only be dissolved as laid down by law.

Distinction between company and Limited Liability Partnership (LLP)	
Alternative	LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership.
Perpetuity	LLP can continue its existence irrespective of changes in partners.
Separate existence	It is capable of entering into contracts and holding property in its own name.
Liability	Further, no partner is liable on account of the independent or un-authorized actions of other partners, thus individual partners are shielded from joint liability created by another partner's wrongful business decisions or misconduct.
Agreement	Mutual rights and duties of the partners within a LLP are governed by an agreement between the partners or between the partners and the LLP as the case may be.

Hybrid form	Since LLP contains elements of both ‘a corporate structure’ as well as ‘a partnership firm structure’ LLP is called a hybrid between a company and a partnership.
More flexibility	A basic difference between an LLP and a company lies in that the internal governance structure of a company is regulated by statute (i.e. Companies Act) whereas for an LLP it would be by a contractual agreement between partners. LLP have more flexibility as compared to a company. LLP have lesser compliance requirements as compared to a company.

Distinction between Company and Hindu Joint Family Business		
	HUF	Company
Type of Members	A Hindu Undivided Family Business consists of homogenous members since it consists of members of the joint family itself.	A company consists of heterogeneous members.
Authority	In a Hindu Joint Family business, the Karta (manager) has the sole authority to contract debts for the purpose of the business, other coparceners cannot do so.	There is no such system in a company.
Membership	A person becomes a member of Joint Hindu Family business by virtue of birth.	There is no provision to that effect in the company.
Registration	No registration is compulsory for carrying on business for gain by a Hindu Joint Family even if the number of members exceeds twenty.	Registration of a company is compulsory.
Distinction between a Company and a Club		
Association Type	A company is a trading association.	A club is a non-trading association.
Registration	Registration of a company is compulsory.	Registration of a club is not compulsory.

Disadvantages of Incorporation	
Formalities and expenses	Incorporation of a company is coupled with complex, cumbersome and detailed legal formalities and procedures, involving considerable amount of time and money. Even after the company is incorporated, its affairs and working must be conducted strictly in accordance with legal provisions. Thus various returns and documents are required to be filed with the Registrar of Companies, some periodically and some on the happening of an event. Certain books and registers are compulsorily required to be maintained by a company. Other forms of business organizations are comparatively free from these legal complexities and Procedural formalities.
Corporate disclosures	The legal framework is designed to ensure maximum disclosure of corporate information.
Separation of control from ownership	Members of a company are not having as effective and intimate control over its working as one can have in other forms of business organization, say, a partnership firm. This is particularly so in big companies in which the number of members is too large to exercise any effective control over its day-to-day affairs.
Greater social responsibility	Having regard to the enormous powers attached to the companies and the impact they have on the society, the companies are called upon to show greater

	Social responsibility in their working and, for that purpose, are subject to greater control and regulation than that by which other forms of business organization are governed and regulated. [Section 135]
Greater tax burden in certain cases	In certain circumstances, the tax burden on a company is more than that on other forms of business organization. A company is liable to tax without any minimum taxable limit as is prescribed in the cases of registered partnership firms and others. Also it has to pay income-tax on the whole of its income at a flat rate whereas others are taxed on graduated scale or slab system.
Detailed winding-up procedure	The Act provides detailed procedure for winding-up of companies which is more expensive and time consuming than that which is applicable to other forms of business organization.

Can a partnership firm acquire the shares of a company?

No, a partnership firm cannot acquire the shares of a company because partnership firm is neither a natural person nor an artificial person. However, there is one exception that is, a partnership can acquire shares of companies formed under section 8 (Association Not for Profit).

Two companies are incorporated with the same set of shareholders. Are these two companies same or distinct under the Companies Act, 2013?

Two companies which are incorporated with the same set of shareholders are still distinct and separate legal entities. [**Pathinso Vs. Binda Debi**]

Union Bank of India v. Khader International Construction and Other

In this case, the question which arose before the Court was whether a company is entitled to sue as an indigent (poor) person under Order 33, Rule 1 of the Civil Procedure Code, 1908. The aforesaid Order permits persons to file suits under the Code as pauper/indigent persons if they are unable to bear the cost of litigation. The appellant in this case had objected to the contention of the company which had sought permission to sue as an indigent person. The point of contention was that, the appellant being a public limited company, it was not a 'person' within the purview of Order 33, Rule 1 of the Code and the 'person' referred to only a natural person and not to other juristic persons. The Supreme Court held that the word 'person' mentioned in Order 33, Rule 1 of the Civil Procedure Code, 1908, included any company as association or body of individuals, whether incorporated or not.

The Court observed that the word 'person' had to be given its meaning in the context in which it was used and being a benevolent provision, it was to be given an extended meaning. Thus a company may also file a suit as an indigent person.