

India@75: Evolution of Corporate Law and Jurisprudence

Aug 12, 2022

Insights By Rajat Mohan (Senior Partner, AMRG & Associates)



Law is not static. Law is the sovereign's command; it is an instrument for regulating human behavior in social or business environments. Indian corporate law jurisprudence is desirable, effective, and feasible.

As India celebrates the Platinum Jubilee of its Independence - 'Azadi ka Amrit Mahotsav', we must analyze the history and development of corporate legislation in India. The significance of local conditions in India cannot be overemphasized, resulting in a different approach to forming corporate law in India. Local conditions in India trumped the legal transplant process. In India, social, economic, and political factors all played a role in the development of corporate law. To such an extent, India deviated from English corporate law and followed the path of various jurisdictions. The structured chronologically and progressively to trace the evolution of Indian corporate law using normative legal research. The

study's central premise is that India has deviated from colonial law and current legislation, with no evidence of a strong reliance on English law and little evidence of following in the footsteps of India's colonial past.

The evolution started happening during the pre-colonization era when the first Indian Companies Act came into the picture in the year 1913 which regulated the Corporate industry till 1956 after which the Companies Act, 1956 was regulated with the help of recommendation of H.C. Bhabha Committee leading to major changes such as promotion and growth of companies, in company meetings and procedures etc. During the era of second world war and the postwar years, India experienced unprecedented levels of industrial and commercial activity, with businessmen reaping large profits through incorporated companies.

The major amendment was evident when the Indian markets opened in 1990's during the period of liberalization and the enactment of SEBI Act, 1992 leading to a route towards Foreign Direct Investments and boosting of the capital markets of the national business houses. The current Indian corporate law and the statutes surrounding it have deviated from the transplanted law.

Surprisingly, the triumvirate of Indian corporate laws - company law, competition law, and insolvency law - all are fairly new. In terms of enforcement jurisprudence, this means that the pillars of Indian corporate law are relatively new. The Companies Act, 2013, was enacted in the new society, bringing major amendments such as the development of corporate social responsibility. Another significant year in corporate evolution was 2016, which saw the passage of the Competition Act, as well as the establishment of corporate tribunals.

Introducing a new and ambiguous concept, such as manifest arbitrariness, into corporate law jurisprudence merely creates market uncertainty without providing sufficient guidance for stakeholders to act. In doing so, the court assumes a role in lawmaking, while the majority of court proceedings have been shifted to corporate tribunals, significantly improving the effectiveness and efficiency of the litigation process. As per the data released in 2021, NCLT has disposed of more than 60% of pending cases within 5 years which is a markable achievement in the Indian Judiciary.

As a result, based on the fundamentals of English and American law, Indian corporate law has managed to subscribe to a distinct jurisdictional approach that could define the Indian corporate law regime uniquely.

Insights By Bindiya Raichura (Partner, Juris Corp)



The evolution of Indian corporate law can be traced back to the colonial era with several previous companies' legislation being modeled on parallel English legislation. The influence of colonial laws continued even after decolonization in 1947 when the most significant piece of corporate legislation, the Companies Act, 1956 ("**1956 Act**"), was modeled on the English Companies Act 1948.

Although the 1956 Act was the result of a classic legal transplant, its evolution thereafter took on a different path.

Since the early 1990s, efforts were underway to revamp the Indian companies' legislation due to the difficulties encountered in the implementation of the 1956 Act. With India's economic liberalization in 1991, the variance between Indian corporate law and English Companies Act became clearer.

With increase in foreign investment and development of India's capital markets, triggered a slew of changes to Indian corporate law, including:

- (i) Amendments to the 1956 Act that arose due to local conditions and problems that were unique to the Indian corporate landscape;
- (ii) Introduction of securities legislation namely Securities Exchange Board of India; and
- (iii) Adoption of specific measures to enhance Corporate Governance.

Although several Bills were presented before the Parliament in 1993, 1997 and 2003, it was the appointment of an Expert

Committee on Company Law under the chairmanship of Mr. J.J. Irani (“**Irani Committee**”) that triggered the shaping of the legislation.

The Irani Committee issued its report for drafting a new legislation which suggested simplification of the law, and was indeed business friendly, but at the same time subscribed to stringent norms of Corporate Governance. Based on the recommendations of the Irani Committee, the Companies Bill, 2008 was presented in Parliament, which lapsed. In the interim, Indian corporates were shaken up by a massive corporate governance scandal involving Satyam Computers. In January 2009, the chairman of the company confessed to a fraud to the magnitude of over US\$ 1 billion. This triggered calls for strengthening corporate law and governance norms in India.

Intriguingly, the Companies Bill, 2009 was presented in Parliament and was referred to the Parliamentary Standing Committee (“**PSC**”). The PSC reviewed the Bill and issued its report in 2010 recommending detailed provisions namely standards of corporate governance and measures to rein in company management, impose higher standards on gatekeepers such as independent directors and auditors, a broader stakeholder approach, insisting that directors have a duty to promote the objects of the company in the interests of employees, community and the environment.

Based on the PSC Report, the Government introduced the Companies Bill, 2011 in the Parliament, which was referred back to the PSC for review of the revised provisions. The PSC issued a report, following which the Companies Bill 2013 was passed by the Parliament, which received the assent of the President of India on 29th August 2013.

The Companies Act, 2013 (“**2013 Act**”) has replaced the 1956 Act in stages. Significant changes have been introduced in the 2013 Act such as corporate governance, e-management, compliance and enforcement, disclosure norms, auditors and mergers and acquisitions. Also, new concepts such as one-person company, small companies, dormant company, class action suits, registered valuers and corporate social responsibility have been included.

More Insights on the topic!

***[Click here](#) to know the insights of Mr. Kuldeep Sharma (ADIT, FTI, Insolvency Professional).

***[Click here](#) to know the insights of Advocate Dr. Ravindran Pranatharthy and Yashojit Mitra (Partner, Economic Laws Practice).

***[Click here](#) to know the insights of Apurv Sardeshmukh (Partner, Legasis Partners) and Bhmesh Verma (Managing Partner, Corp Comm Legal).