

STUDY MATERIAL	ROHTAS VIDHI MAHAVIDYALAY SASARAM, BIHAR
PREPARED BY	UMESH PRASAD MISHRA - LECTURER

INTRODUCTION TO COMPANY LAW: MEANING, DEFINITION AND DISTINCTION BETWEEN CO. & PARTNERSHIP + CO & HINDU UNDIVIDED FAMILY BUSINESS.

INTRODUCTION:

The concept of 'Company' or 'Corporation' in business is not new but was dealt with, in 4th century BC itself during 'Arthashastra' days. Its' shape got revamped over a period of time according to the needs of business dynamics.

Company form of business has certain distinct advantages over other forms of businesses like Sole Proprietorship/Partnership etc. It includes features such as Limited Liability, Perpetual Succession etc.

After reading this lesson, you would be able to understand the historical development in the evolution of corporate law in India and England, emerging regulatory aspects including Companies Act, 2013, besides dealing with basic

I. MEANING OF THE COMPANY:

The word 'company' is derived from the Latin word (Com=with or together; panis =bread), and it originally referred to an association of persons who took their meals together. In the leisurely past, merchants took advantage of festive gatherings, to discuss business matters.

Nowadays, business matters have become more complicated and cannot be discussed at festive gatherings. Therefore, the company form of organization has assumed greater importance. It denotes a joint-stock enterprise in which the capital is contributed by several people. Thus, in popular parlance, a company denotes an association of likeminded persons formed for the purpose of carrying on some business or undertaking.

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

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. The word 'corporation' is derived from the Latin term 'corpus' which means 'body'. Accordingly, 'corporation' is a legal person created by a process other than natural birth. It is, for this reason, sometimes called an artificial legal person. As a legal person, a corporation is capable of enjoying many of the rights and incurring many of the liabilities of a natural person.

An incorporated company owes its existence either to a special Act of Parliament or to company law. Public corporations like Life Insurance Corporation of India, SBI etc., have been brought into existence by special Acts of Parliament, whereas companies like Tata Steel Ltd., Reliance Industries Limited have been formed under the Company law i.e. Companies Act,

STUDY MATERIAL	ROHTAS VIDHI MAHAVIDYALAY SASARAM, BIHAR
PREPARED BY	UMESH PRASAD MISHRA - LECTURER

1956 which is being replaced by the Companies Act, 2013.

II. DEFINITION OF COMPANY:

In the legal sense, a company is an association of both natural and artificial persons (and is incorporated under the existing law of a country). In terms of the Companies Act, 2013 (Act No. 18 of 2013) a “company” means a company incorporated under this Act or under any previous company law [Section 2(20)].

In common law, a company is a “legal person” or “legal entity” separate from, and capable of surviving beyond the lives of its members. However, an association formed not for profit also acquires a corporate character and falls within the meaning of a company by reason of a license issued under Section 8(1) of the Act.

A company is not merely a legal institution. It is rather a legal device for the attainment of the social and economic end. It is, therefore, a combined political, social, economic and legal institution. Thus, the term company has been described in many ways. “It is a means of cooperation and organization in the conduct of an enterprise”.

It is “an intricate, centralized, economic and administrative structure run by professional managers who hire capital from the investor(s)”.

Lord Justice Lindley has defined a company as “an association of many persons who contribute money or money’s worth to common stock and employ it in some trade or business and who share the profit and loss arising therefrom. The common stock so contributed is denoted in money and is the capital of the company.

The persons who contributed in it or form it, or to whom it belongs, are members. The proportion of capital to which each member is entitled is his “share”. The shares are always transferable although the right to transfer them may be restricted.”

From the foregoing discussion, it is clear that a company has its own corporate and legal personality distinct which is separate from its members. A brief description of the various attributes is given here to explain the nature and characteristics of the company as a corporate body.

III. Distinction between Company and Partnership

The principal points of distinction between a company and a partnership firm are as follows:

- A company is a distinct legal person. A partnership firm is not distinct from the several persons who form the partnership.
- In a partnership, the property of the firm is the property of the individuals comprising it. In a company, it belongs to the company and not to the individuals who are its members.

STUDY MATERIAL	ROHTAS VIDHI MAHAVIDYALAY SASARAM, BIHAR
PREPARED BY	UMESH PRASAD MISHRA - LECTURER

- 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.
- Partners are the agents of the firm, but members of a company are not its agents. A partner can dispose of the property and incur liabilities as long as he acts in the course of the firm's business. A member of a company has no such power.
- **A partner cannot contract with his firm, whereas a member of a company can.**
- A partner cannot transfer his share and make the transferee a member of the firm without the consent of the other partners, whereas a company's share can ordinarily be transferred.
- Restrictions on a partner's authority contained in the partnership contract do not bind outsiders whereas such restrictions incorporated in the Articles are effective because the public is bound to acquaint themselves with them.
- A partner's liability is always unlimited whereas that of a shareholder may be limited either by shares or a guarantee.
- 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, whereas the death or insolvency of a partner dissolves the firm, unless otherwise provided
- A company may have any number of members except in the case of a private company which cannot have more than 200 members (excluding past and present employee members). In a public company, there must not be less than seven person in a private company not less than two. Further, a new concept of one person company has been introduced which may be incorporated with only one person.
- **A company is required to have its accounts audited annually by a chartered accountant, whereas the accounts of a firm are audited at the discretion of the partners.**
- A company, being a creation of law, can only be dissolved as laid down by law. A partnership firm, on the other hand, is the result of an agreement and can be dissolved at any time by agreement among the partners.

IV. Distinction between Company and Hindu Undivided Family Business

- ☒ A company consists of heterogeneous (varied or diverse) members, whereas a Hindu Undivided Family Business consists of homogenous (unvarying) members since it consists of members of the joint family itself.
- In a Hindu Undivided 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.
- A person becomes a member of a Hindu Undivided Family business by virtue of birth. There is no provision to that effect in the company.
- No registration is compulsory for carrying on a business for gain by a Hindu Undivided Family even if the number of members exceeds twenty [*Shyam Lal Roy v. Madhusudan Roy*, AIR 1959 Cal. 380 (385)]. Registration of a company is compulsory.