

COMPARATIVE AND INTERNATIONAL PERSPECTIVES ON COMPANY LAW

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Abstract

Company law, also known as corporate law, is the legal framework that governs the formation, management, and dissolution of companies. With globalization and cross-border business operations, understanding the comparative and international perspectives of company law has become essential. This paper analyzes the similarities and differences between company law regimes in major jurisdictions such as India, the United Kingdom, and the United States. It further explores the international influences shaping company law, including global governance standards, corporate responsibility, and harmonization efforts by international organizations. The objective is to evaluate how different legal systems approach corporate regulation, governance, and accountability in an increasingly interconnected world.

1. Introduction

Company law plays a vital role in structuring corporate entities, defining their rights, responsibilities, and relationships with stakeholders. Over time, company law has evolved from a domestic framework to one influenced by international standards. The growing interdependence of economies, multinational corporations, and foreign investments has necessitated harmonization and comparison between different national corporate regimes.

The comparative approach to company law helps identify best practices and legal reforms that enhance transparency, corporate governance, and investor protection. International perspectives, on the other hand, highlight the need for uniformity to address transnational corporate issues such as fraud, corruption, and cross-border insolvency.

2. Evolution of Company Law: A Global Overview

2.1 United Kingdom

The roots of modern company law can be traced to the United Kingdom, with the Joint Stock Companies Act, 1844, and the Limited

Liability Act, 1855. These laws introduced incorporation and limited liability – two fundamental pillars of corporate law. The Companies Act, 2006, currently governs UK companies and emphasizes transparency, director duties, and corporate governance. The UK's framework heavily influenced the Indian company law model due to colonial legacy.

2.2 United States

In the United States, company law is largely state-based, with Delaware being the most prominent jurisdiction due to its business-friendly legal environment. The Delaware General Corporation Law (DGCL) and federal laws such as the Sarbanes-Oxley Act (2002) and Dodd-Frank Act (2010) govern corporate conduct, focusing on accountability, securities regulation, and shareholder protection. The U.S. model is characterized by flexibility, corporate autonomy, and a strong focus on shareholder value.

2.3 India

Indian company law originated from the British model. The Companies Act, 2013 replaced the earlier Companies Act, 1956, introducing several

reforms aligned with global standards. It incorporated concepts like corporate social responsibility (CSR), one-person companies, and stricter corporate governance norms. The Insolvency and Bankruptcy Code (2016) and SEBI regulations further strengthened corporate accountability and investor protection.

3. Comparative Analysis of Company Law Systems

3.1 Incorporation and Corporate Personality

UK and India: Both follow the principle of separate legal personality established in *Salomon v. Salomon & Co. Ltd.* (1897), meaning a company has its own legal identity distinct from shareholders.

USA: Similar recognition of corporate personhood exists, but with more flexibility in formation and governance under state laws.

3.2 Corporate Governance

UK: The UK Corporate Governance Code emphasizes the “comply or explain” principle, requiring companies to disclose governance practices.

India: The Companies Act, 2013 and SEBI (LODR) Regulations, 2015 mandate corporate governance provisions, board independence, and audit committees.

USA: The U.S. model prioritizes shareholder activism, with stricter disclosure norms under the Securities and Exchange Commission (SEC).

3.3 Directors’ Duties and Liabilities

UK: Directors owe fiduciary duties of loyalty, care, and good faith codified under the Companies Act, 2006.

India: Section 166 of the Companies Act, 2013 defines duties similar to the UK.

USA: The “business judgment rule” protects directors from liability if decisions are made in good faith and for corporate benefit.

3.4 Shareholders’ Rights

UK and India: Shareholders have rights to vote, receive dividends, and seek remedies for oppression or mismanagement.

USA: Greater emphasis on shareholder activism and class actions to hold management accountable.

3.5 Corporate Social Responsibility (CSR)

India: The first country to mandate CSR under Section 135 of the Companies Act, 2013.

UK and USA: CSR is voluntary but encouraged through soft law instruments and public disclosure.

4. International Perspectives on Company Law

4.1 Role of International Organizations

OECD (Organisation for Economic Co-operation and Development): Provides the OECD Principles of Corporate Governance, adopted globally as benchmarks for transparency and accountability.

World Bank and IMF: Influence corporate reforms in developing nations through financial and policy frameworks.

United Nations (UN): Promotes responsible corporate conduct through the UN Global Compact and UN Guiding Principles on Business and Human Rights.

4.2 Cross-Border Mergers and Insolvency

Globalization has increased cross-border corporate transactions. The UNCITRAL Model Law on Cross-Border Insolvency serves as a guide for countries to harmonize insolvency procedures. India adopted a partial framework under the Insolvency and Bankruptcy Code, while the UK fully integrates these principles.

4.3 Harmonization of Corporate Laws

While complete uniformity is unrealistic due to varying legal systems, efforts by the European Union and OECD have sought to harmonize company law to facilitate international trade and investment. The EU’s Company Law

Directives and Single Market Strategy are examples of regional harmonization.

5. Global Challenges in Company Law

1. Regulatory Arbitrage: Companies often incorporate in jurisdictions with lax regulation (e.g., Delaware, Cayman Islands).

2. Corporate Fraud and Scandals: Incidents like Enron, Satyam, and Wirecard reveal global weaknesses in corporate governance.

3. Environmental and Social Responsibilities: Global demand for ESG (Environmental, Social, and Governance) compliance is transforming corporate law.

4. Technological Disruption: Digital platforms, AI, and fintech require new legal frameworks for corporate accountability and cybersecurity.

5. Cross-Border Enforcement: Difficulty in enforcing judgments and corporate liabilities across jurisdictions remains a major issue.

6. Lessons for India from Global Practices

India can adopt several lessons from developed jurisdictions:

Strengthen independent director accountability and board evaluation processes.

Encourage shareholder activism and collective redress mechanisms.

Improve corporate transparency and disclosure norms similar to SEC standards.

Expand the scope of cross-border merger regulations to attract global investors.

Integrate environmental and social governance (ESG) principles into corporate decision-making.

7. Conclusion

Comparative and international perspectives in company law highlight both diversity and convergence among global legal systems. While the UK and India emphasize statutory governance, the U.S. model favors flexibility and market-driven regulation. International organizations and global economic forces are

gradually pushing toward harmonization and responsible corporate behavior.

In the 21st century, company law is no longer confined to domestic boundaries; it must evolve to address global challenges like sustainability, digitalization, and corporate accountability. For emerging economies like India, adopting best practices from comparative jurisdictions can strengthen corporate governance and attract international investment while maintaining local relevance and legal integrity.

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