A Critical Analysis of the Loopholes that Exist in the Indian Companies Act

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ABSTRACT

As, we all know there are many laws, codes and acts which are made by the Indian Parliament and by the Indian Judiciary. But we all know that every laws, codes and act have some loopholes which help individuals to use those loopholes against the Judiciary, the Indian system and also, the government.

Loopholes are the vagueness or insufficiency in a system, such a legislation or security, that may be exploited to go around or otherwise defeat the intention of the system. Loopholes are always used to avoid something like Taxes etc. Loopholes are also known as alternatives, escape clauses, and way out.

In India, normal people don't know that much about the loopholes and they also don't have any knowledge about it. But knowledgeable people like businessmen, politicians etc use loopholes as a defence against the Indian Legal System.

The Indian Company Law is made up of many loopholes which are used by the company, politicians and businessmen. And there are many sections and sub-sections of the Company Law which create loopholes in the law.

Keywords: Company Law, Loopholes, Section 182, Tax Evasion

INTRODUCTION

As we all well know in India there are various laws, rules & regulations, orders, codes, etc. But every country crates some mistakes/faults in making the law such as, miswritten and ambiguity in the law, these are also, known as loopholes.

The term Company law "**is a body of law that governs the rights, relations, and conduct of companies, businesses, organizations, and people. It also refers to the legal practice of law relating to corporations**"[1]. It balances the need for flexibility and entrepreneurship with the necessity for accountability and legal compliance.

The word "Loopholes" was given by "William Garrard" in the late 1500s and in the early 1600s "**Loophole is formed within English, by compounding**[2]".

What is Loophole

A loophole is a legal provision that permits someone to break the law or a set of regulations because it is

[1] legal Service India, Lawyers in India, Advocates, Law Firms, Attorney Directory, Indian L https://www.legalserviceindia.com/legal/article-13573-why-do-we-need-company-law-.html.

[2] http://www.oed.com.

poorly drafted, unclear, or has other flaws.

A chance to legally escape an unpleasant obligation, typically as a result of a drafting error in regulations or legislation:

- **The new law is designed to close most of the tax loopholes**[3].

They were then used to shoot at onslaught. Figuratively, loopholes are "holes" or "faults" in legal documents or laws that are recognized and taken advantage of to advance an argument.

Kinds of Loopholes

Loopholes are gaps in a system, law, or contract that can be exploit to achieve an unintended outcome. In legal contexts, loopholes can emerge due to imprecise language in laws or regulations, and in tax laws, loopholes allow individuals and corporations to reduce their tax liability legally.

So, there are many kinds of loopholes, but a few main loopholes are:

Legal Loopholes:

In legal aspects, loopholes can emerge due to imprecise language in law or regulations. Individuals and businesses may exploit these gaps to avoid compliance or gain advantages.

Over time, lawmakers often work to close these loopholes by amending legislation or drafting more precise laws.

Tax Loopholes[4]:

Tax laws are notorious for containing loopholes that allow individuals and corporations to reduce their tax liability legally.

Government, periodically reform tax codes to eliminate or minimize these loopholes and ensures fair and equitable taxation.

Corporate Loopholes[5]:

Many companies may exploit loopholes in business regulation to gain a competitive edge or reduce costs. The regulatory bodies and government constantly update and refine corporate laws to prevent abuses and maintain a level playing field.

So, as we saw above there are various kinds of loopholes in different sectors. But in this research paper, our main focus is on "Legal Loopholes" which explains the rules and regulations in any country, and in this paper, we pick up the Indian Company Law 2013. Because, as we think company law there are many mistakes and faults which can also denoted as loopholes. These mistakes and faults can easily be used by any individual, or group of persons and also, used by various companies.

Company Law

As, we all know company law was first introduced by British Government in 1850 which is known as The Indian Companies Act,1850. This act is based on British Legislation and The English Joint Stock Companies Act of 1844[6].

Neither a Royal Charter nor a Special Act of Parliament was required to register joint stock companies in India under the act. In addition, the act granted companies the status of distinct legal entities.

[3] http://dictionary.cambridge.org.

[4] https://chat.openai.com/c/c4bd178a-bbe1-4f2b-a5a8-58074d225177.

[5] Groww - Online Demat, Trading and Direct Mutual Fund Investment in India, Online Demat, Trading and Direct Mutual Fund Inves http://groww.in.

[6] Corporate Laws, ICSI https://www.icsi.edu/ccgrt/research/bare-acts/corporate-laws/.

It is important to understand that company law is a wider concept based on commercial law. It is a regulation that is set out to state all legal rights, relations, and conduct of a person, company, organization, and business, as well as the formation, funding, governance, and death of a corporation.

Origin and development of Company Law In India,[7]

The word "company" is derived from the Latin words "com" and "panis", which refer to togetherness and bread, respectively. In other words, a company is an association of people who eat together.

The purpose of the Companies Act of 1956 was to reform and combine several legal regulations. This act becomes operative on April 1st, 1956.

The Bhabha committee, sometimes referred to as the Company Law Committee, created this statute and filed a report on it in March 1952. The Indian parliament has never before seen a longer piece of legislation than this one. Comprising 658 parts and 15 schedules, each alteration was done individually. This enormous piece of law gave Indian businesses a legal structure.

3. Define "company," "existing company," "private company," and "public company."

In this Act, unless the context otherwise requires, the words "company," "existing company," "private company," and "public company" shall, unless the context otherwise direct, have the following meanings: Meaning will be, subject to the restrictions of sub-section (2):

"company" denotes an organization created and authorized under this Act's provisions or a previously registered company as described in sub-section (ii).

"Existing company" refers to a business founded and incorporated pursuant either of the prior companies laws

2(20) "Company" refers to an organization formed under this legislation or any earlier company statute;

The legal field that oversees the establishment, management, dissolution, and other legal facets of corporations or firms is called company law, often referred to as corporate law or business law. Company law's main objective is to balance the interests of different stakeholders, including as shareholders, directors, workers, creditors, and the general public while regulating and ensuring the seamless operation of enterprises.

A wide range of legal topics are usually covered by company law, such as financial reporting, mergers and acquisitions, corporate governance, and securities regulation.

The principal law controlling company law in India is the Companies Act, of 2013. It provides the legal foundation for the establishment and management of businesses in India and has superseded the Businesses Act, of 1956. The Act applies to all kinds of businesses, including sole proprietorship's, public businesses, and private businesses. In India, the regulatory agency in charge of company law administration is the Department of the Ministry of Company Affairs.

As we all know in India company law was introduced in 1956 and was replaced by the Companies Act 2013. So, we talk about the major difference between both the acts:

[7] legal Service India, Lawyers in India, Advocates, Law Firms, Attorney Directory, Indian L https://www.legalserviceindia.com/legal/article-7931-origin-and-development-of-company-law-in-india.html.

A. One-person companies[8]:

The Companies Act of 2013 introduced the concept of one-person companies, which were not permitted in the Companies Act of 1956.

B. Conversion of companies[9]:

The Companies Act of 2013 does not require approval to convert a private company into a one-person company or a public company.

C. Registered Companies[10]:

The Companies Act of 2013 defines registered companies as those that have their securities registered on the stock exchange. The Companies Act of 1956 defines registered companies as those that have their securities in any notable stock exchange.

There are many differences between both the acts but the main difference is explained above.

OBJECTIVE

There are too many objectives for writing the research paper on this topic are as:-

- Locating particular gaps in statutes and regulations about corporation laws.
- Examining the origins and effects of these loopholes, including how they affect shareholder rights, corporate governance, and financial transparency.
- Analyzing case studies or instances where businesses or people have taken advantage of these gaps.
- Evaluating the effectiveness of current regulatory frameworks in addressing these gaps.
- Outlining possible changes or policy suggestions to plug these gaps, improve corporate responsibility, and ensure legal compliance.

LOOPHOLES IN COMPANIES ACT 2013

The term "loophole" in the context of company law generally refers to gaps, ambiguities, or unintended consequences in the legal framework that individuals or entities might exploit to gain advantages or circumvent certain provisions. It's important to note that it may not be explicitly used in legal texts, but situations or practices that can be described as exploiting legal ambiguities are often colloquially referred to as loopholes.

It's crucial for legislators and regulatory authorities to regularly review and amend company laws to close potential loopholes and ensure that the legal framework remains robust and aligned with the intended goals of promoting transparency, fairness, and accountability. Additionally, legal professionals and corporate governance experts play a role in identifying and addressing potential loopholes through legal interpretations and best practices.

The Companies Act, of 2013, is a comprehensive legislation governing companies in India. While it has introduced several reforms and improvements over its predecessor, the Companies Act, of 1956, there are still some loopholes and areas that could be subject to exploitation or improvement. Here are some of the perceived loopholes in the Indian Companies Act, of 2013:

[8] https://cleartax.in/s/one-person-company-registration-procedure-india.

[9] [FAQs] on Company Conversion Types – Private | Public | Section 8 | OPC | LLP, Section 8 (July 25, 2023), https://www.taxmann.com/post/blog/faqs-on-company-conversion-types-private-public-section-8-opc-llp/.

[10] https://www.mca.gov.in/content/mca/global/en/contact-us/roc.html.

- **Complexity and Length**: The Act is quite lengthy and complex, making it challenging for small and medium-sized enterprises (SMEs) to understand and comply with all its provisions. This complexity can also create loopholes that can be exploited by individuals or companies with the resources to navigate through the legal intricacies.
- **Corporate Governance:** While the Act mandates corporate governance norms, including the constitution of boards, audit committees, and disclosure requirements, there may still be gaps in enforcement and oversight, leading to instances of corporate malpractice or fraud.
- **Related Party Transactions (RPTs):** The Act regulates RPTs to prevent conflicts of interest and self-dealing. However, there may be instances where related parties manipulate transactions to benefit themselves at the expense of the company and its shareholders. The definition of related parties and the thresholds for disclosure could be clearer.
- **Shareholder Activism and Minority Rights:** While the Act provides for the protection of minority shareholder rights, including mechanisms for shareholder activism and class action suits, there may still be challenges in practice, such as instances where minority shareholders are oppressed or sidelined by majority shareholders.
- **Regulatory Oversight and Enforcement:** The Act establishes regulatory bodies such as the Securities and Exchange Board of India and the Ministry of Corporate Affairs to oversee and enforce compliance. However, there may be gaps in enforcement due to resource constraints or bureaucratic inefficiencies, leading to instances of non-compliance or regulatory arbitrage.
- **Corporate Social Responsibility**: The Act mandates certain companies to spend a portion of their profits on CSR activities. While this is a positive step towards corporate philanthropy and social responsibility, there may be challenges in monitoring and evaluating the impact of CSR spending, as well as instances of green washing or tokenism.
- **Insolvency and Bankruptcy Code (IBC) Integration**: While the IBC is a separate legislation aimed at addressing insolvency and bankruptcy proceedings, there may be overlaps or inconsistencies with the Companies Act, leading to confusion or uncertainty, particularly in cases of corporate restructuring or winding up.

So, these are the various loopholes in The Indian Companies Act of 2013 shortly.
Now, let us discuss the various loopholes in the lengthy form:

1. Contribution to The Political Party:

The reason behind taking this particular topic as a loophole of The Companies Act, 2013 is that before the Amendment Act 18 of 2013, there was a limit for the amount to be contributed to the political party. After the Amendment Act 18 of 2013, the limit on the amount to be contributed to the political party is removed. So, after this amendment corporate sectors or companies use this as a loophole for invading the tax liability, this also helps them (i.e. Companies) to grow their business as they need, and the reason behind this is because they give unlimited funding to political parties for winning the elections.

What is Political Funding?[11]

The term "political funding" describes the monetary donations given to political organizations or candidates to finance their campaigns, initiatives, and general operations.

[11] Disclosure of Political Funding, (Dec. 1, 2023), https://www.drishtiias.com/daily-updates/daily-news-analysis/disclosure-o-political-funding.

Political parties require political finance to run campaigns for elections, take part in democratic processes, and carry out other political operations.

Section 293A and 182 of the Companies Act, 1956 or 2013

As, per section 293A of The Companies Act,1956 the maximum limit for Political Contributions is 5 per cent.

"293A. PROHIBITIONS AND RESTRICTIONS REGARDING POLITICAL CONTRIBUTIONS

(1) Despite anything stated in any other section of this Act,

(a) No Government firm and,

(b) No other business that has been in operation for fewer than three fiscal years shall make any direct or indirect contributions of any kind to any of the following:

(i)To whatsoever political party; or

(ii)To any individual for any political objective.

(2) A corporation may donate any sum, directly or indirectly,provided that the firm is not one of the companies mentioned in the preceding clause (a) or clause (b), respectively, of sub-section (1);

(a) To any political group; or

(b) To any individual for any political purpose

Provided that the total amount—or, in the case of a company, the total amount of amounts that may be contributed in this manner—never exceeds five per cent of the company's average net profits—as determined by the applicable sections 349 and 350—during the three fiscal years that immediately precede it. Justification. When a component of the company's fiscal year occurs earlier than the implementation of the Companies (Amendments) Act, of 1985's start, and another portion occurs beyond that date, the later portion will be considered a fiscal year for this subsection;

Furthermore, it should be noted that a company cannot make any such contributions unless a resolution establishing them is passed at a conference of the Board of Directors. This resolution will be deemed, subject to the remaining conditions of this section, to be a legal justification for the making and acceptance of the contributions authorized by it."[12]

So, according to section 182 of The Companies Law, the maximum limit for Political Contribution is increased by 2.5 per cent, which is now 7.5 per cent.

"182. PROHIBITIONS AND RESTRICTIONS REGARDING POLITICAL CONTRIBUTIONS.

(1) Regardless of the limitations outlined in other sections of this Act, any company—aside from government-owned businesses and those that have been in operation for fewer than three fiscal years—may make direct or indirect contributions to any political association in any amount:

Provided. that the total amount that the firm may donate in any one fiscal year—or, if applicable, the amount mentioned in sub-section (1)—must not be higher than seven and a half per cent (%) of the average net earnings for the three fiscal years that immediately precede it:

Furthermore, it should be noted that a company cannot make any such contributions unless an ordinance authorizing them is passed at a board meeting of the corporation's Board of Directors. This resolution will be deemed, subject to the remaining rules of this section, to be a legal justification for the making and acceptance of the contributions authorized by it.

[12] https://www.mca.gov.in/Ministry/pdf/Companies_Act_1956_13jun2011.pdf.

(2) Notwithstanding the sweeping nature of the limitations of sub-section (1), a company may, on its behalf or its account, make a donation, subscription, or payment to an individual who, to the best of the company's knowledge, is engaged in any activity that, at the time of the donation, subscription, or payment, can be reasonably recognized as likely to trigger the general support for a company that contributes to genuine and charitable funds, etc."[13]

152. AMENDMENT OF SECTION 182[14]

In the Companies Act, 2013, in section 182—

(i) Under sub-section (1) the following will happen:

(a) **The first proviso is removed;**

(b) the second proviso —

(A) The phrase "further" should be removed;

(B) The phrase "and the approval" shall be removed;

(ii) the following modification shall be used in place of sub-section (3), specifically:

(3) Each business must include the entire amount it donated under this section in its statement of profits and losses for the fiscal year the account is related to.

(3A) Despite of sub-section (1)'s provisions, a donation under this section may only be made through the use of an electronic clearing system via a bank account, a fund payee bank draft, or an account payee check drawn on a bank:

P**rovided** that a business may donate to any instrument for political party contributions that is issued in accordance with any plan announced under any currently enacted legislation.

Now,

After this Amendment (Act 7 of 2017) the section 182 proviso was omitted by the government, which gave the chance to the political party to take unlimited Political Funding from different companies.

Who can contribute to the Political Party?

There are various persons or corporate personalities who can contribute to Political Party are as follows-

1. Individual
2. State/Public Funding
3. Corporate Funding
4. By Electoral Trusts Scheme, 2013
5. By Electoral Bonds Scheme

As we know companies can contribute to the political party by **creating a good relationship between the company and the political party**. Various companies contribute to the political party such as JSW Steels, Apollo Tyre, DLF, DLF Home Developers and many more.[15]

As, per the Non-profit Association for Democratic Reforms (ADR). In the FY 2022-23 **Rs. 363.71 crore was to electoral trust**, which is a total donation to the political party. A total of **34 of them paid Rs 360.46 crore to the Prudent Electoral Trust**, while the remaining **Rs 2 cr went to the Samaj Electoral**

[13] (Sept. 2, 2013), http://164.100.158.181/the_companies_act_2013.pdf.

[14] (Aug. 4, 2017), https://www.scobserver.in/wp-content/uploads/2021/10/Finance_Act__2017.pdf.

[15] India Inc.'s Biggest Political Donors To Electoral Trusts In 2019-20, (June 23, 2021), https://www.ndtvprofit.com/politics/in-charts-india-incs-biggest-political-donors-to-electoral-trusts-in-2019-20.

Trust, Rs **75.50 lakh to the Paribartan Electoral Trust**, and **Rs 50 lakh to the Triumph Electoral Trust**. Trusts received donations from **eleven different people**.

In which **BJP got the Rs.259 crore or 70.69%** of total contribution in FY. 2022-23 **BRS got Rs.90 crore** or a fourth of the total donation. Other three political parties such as **AAP, The Congress and YSR Congress together got Rs. 17.40 crore.**

BJP is the only one political party that can get the highest political funding from the companies. Since 2013, the Bharatiya Janata Party (BJP) has received the majority share of donations disbursed by the electoral trusts. Before, 2013 Congress having the biggest share in political funding.

It refers that, **when any party having a chance to win a election then they take a funding's from companies and assure these companies that they win the elections and they help them to grow in India.** So, we analysis that before 2013 the congress is the ruling party so they get highest funding. But, now BJP is the ruling party so they takes the highest funding's from companies.

So, as per our finding's we find that these parties using corporate sector as they want, and the last amendment shows that it is not good for our country, because if political parties take funding from big companies. Then in return they have to help them for grow the companies as they want which sounds not good for any country.

2. CORPORATE SOCIAL RESPONSIBILITY:-

Though the business sector uses the phrase "corporate social responsibility" often, many people are not familiar with its fundamental meaning. The term "corporate social obligation " describes the financial commitment made by companies to charitable organizations or societal obligations.

Every firm with CSR provisions needs an elected board of members that pledges to use at least 2% of average net earnings from the preceding three fiscal years to provide CSR services to the underprivileged throughout each fiscal year that adheres to the company's CSR policy.

Requires the allocation of 2% of the median net earnings generated over the preceding three fiscal years in corporate social responsibility (CSR) if the firm has not completed three fiscal years since its founding.

135. Corporate Social Responsibility

1. Each organization with a **net worth of at least Rs. 500 crore, a turnover of Rs. 1,000 crore, or a net profit of Rs. 5 crore or more in any given financial year is required to form a corporate social obligation panel of the board, which must be composed of a minimum of three directors, a minimum of one of with whom have to be an independent.**
2. Section 134 subsection 3 mandates that the composition of the company's social responsibility council be revealed in the board's report.
3. One of the committee's responsibilities is corporate social responsibility;

(a) Drafting a company's social responsibility policy and suggesting to the board that it be followed;

(b) Suggesting the budget to be allocated to the activities specified in paragraph (a); and

(c) Regularly examining the company's social responsibility policy of the organization.

1) The following actions must be taken by the boards of each firm listed in sub-section (1):

(a) After taking the committee's suggestions into account, approve the business's corporate social responsibility policy;

(b) Ensure that the business follows the guidelines outlined in the policy's terms and that it publishes the policy's contents on its website and in its report.

2) A minimum of two per cent of the average net income from the previous three fiscal years must be spent by the board of each company listed in sub-section (1) following the company's corporate social responsibility strategy.

With the caveat that when allocating funds for csr initiatives, the business would prioritize supporting the community in which it works and the surrounding areas:

With the additional caveat that should the company neglect to expend said amount, the board will be required to provide a detailed report under clause (o) of sub-section (3) of section 134, outlining the reasons for the non-spending of said amount. Explanation.—for the purposes of this section "average net profit" shall be calculated in accordance with the provisions of section 198.[16]

135.Corporate Social Responsibility

1) Any firm having a **net worth of at least Rs. 500 crore, a revenue of Rs. 1,000 crore, or a net profit of at least Rs. 5 crore within 1 [the immediately prior financial year]** is required to constitute a corporate social accountability committee of the board.

The committee will consist of a minimum of three directors, with at least one being an independent director: [Seemed that a business exempt from the obligation to nominate a director who is independent under subsection (4) of section of section 149 would have a minimum of two directors in the company's social responsibility committee.]

2) The membership of a corporate social responsibility council is required under section 134, paragraph (3) to be reported in the board's report. This is what the Committee for Corporate Social Responsibility will do:

a) Formulate a strategy for corporate social responsibility that outlines the company's plans for the areas or themes specified in schedule vii and recommends it to the board.

b) Make recommendations about the financial outlay for the tasks listed in paragraph (a); and

c) Examine the business's ethical behaviour policy regularly.

3) The boards of each company listed in subsection (1) shall, in compliance with the committee's recommendations, approve the company's corporate social responsibility policy, disclose its contents in reports, and, if applicable, post it on the website in the manner directed by the board. They shall also ensure that the company engages in the activities specified in the company's social responsibility policy.

4) The board of each company listed in sub-section (1) must ensure that the company spends, within each fiscal year, a minimum of a quarter of its average net revenue from the last three fiscal years [or, if the company hasn't completed all three fiscal years given that the date of its incorporation, from all three fiscal years]

Provided that, with the caveat that when allocating funds for csr initiatives, the business would prioritize supporting the community in which it works and the surrounding areas:

Further provided that, if the company does not spend the required amount, the board will report under clause (o) of sub-section (3) of section 134, explain why the money was not spent, and, unless it is for a project that is still in progress as mentioned in sub-section (6), transfer the unused funds to one of the funds listed in schedule vii within six months of the end of the fiscal year.

Additionally, it is provided that in the event that the company spends more than the amounts specified in

[16] (Sept. 2, 2013), http://164.100.158.181/the_companies_act_2013.pdf.

this sub-section, the excess amount may be deducted from the amount that the company is required to spend for a specified number of subsequent fiscal years and in a prescribed manner.

1) If a company has any money remaining from sub-section (5) for any ongoing endeavor that it is carrying out following its corporate social responsibility policy and it meets the requirements, the company will transfer the money within thirty days of the end of the fiscal year in question to a special account that has been opened in that name in any scheduled bank. The funds will need to be spent by the company in its responsibilities under the policy within all three fiscal years of the date of the transfer, and if not, the company will transfer the money to a fund listed in schedule (vii) within thirty days of the third financial year's completion date.
2) A firm that breaches any of the conditions stipulated in sub-section (5) and (6) shall be fined twice the amount of the fine that has to be deposited into the unspent corporate responsibility account, which is the fund mentioned in the schedule (vii), or a total of one crore rupees, whosoever is lower. Every corporate official who disobeys these conditions will also be penalized two lakh rupees or one-tenth of the sum that needs to be deposited to the fund specified in schedule vii.
3) To ensure adherence to the regulations in this section, the central government may grant general or specific directives to a firm or group of enterprises. It is the responsibility of the company or group to follow these rules.

(8) A business or class of companies may receive general or particular instructions from the central government as it deems appropriate to guarantee compliance with the provisions of this section, and the business or class of companies should abide by the directions.]

[**(9)** In situations where the amount that a company is required to spend according to sub-section (5) is under fifty lakh rupees, the obligation under sub-section (1) over the establishment of a social responsibility panel shall not be applicable; in such instances, the board of executives of the company in question will carry out the duties of such committee as specified under this section.]

First revised by amendment act 1 of 2018, this section 135 of the CSR was lastly amended on January 22, 2021. Additionally, it introduces section 135's subsections 7 through 9.

According to our research, corporate social responsibility (CSR) is a loophole for our society. This is because firms open trusts with NGOs and provide CSR funds, which represent 2% of a company's net profit. Following that, they are free to spend the trust's funds anyway they see fit. These trusts also get investment from the general public, other businesses, and other sources.

According to our research, these companies merely disclose their contributions to corporate social responsibility, which is required by the 2013 company act. However, these large bulls are merely demonstrating their CSR contributions. However, in actuality, they had no part in this.

3. Dormant Company:

Some people didn't know about the term "Dormant Company". Even I also, don't know about this term or company whose name is "Dormant Company".When I ask about this company from my College Professors they also don't know about this company. When I read the concept of this company I was shocked, and I have to say this **"It is the biggest loophole in Company Law".**

The reason behind this reaction is that the concept of Dormant Company talks about the future company, even if that company does not even exist in the present. It says that the Dormant Company is made up for the future project or holds assets **without having any significant accounting transactions.**

The common meaning of the word "**Dormant**" is inactive or inoperative. And people say that it is an excellent concept. But they even don't know that it is a loophole which is used by the whole corporate sector. On the other hand, since the company has not submitted an annual return for two years, that company is also called a non-performing company.
Firstly this concept is introduced in the company law or Companies Act, 2013. I think that it is the worst decision from the lawmakers because it gives a chance to the companies to use this concept as a loophole and make many dormant companies, which helps the companies to not show the accounting transactions to the government and the public. These companies always use the back seats of the main company, these companies do not have to show the accounting transaction then they can do anything with this. The company may be used for the fraud proposes.

455. Dormant Company

1) A company incorporated and officially registered under this Act for a prospective property or intellectual property ownership project and which has not entered into any significant accounting transactions may be registered with the Registrar in the prescribed manner for the purpose of establishing the status of a dormant company. Can apply for.
Explanation.-- In the context of this section,
(i) An **"inactive company"** is defined as one that has not conducted any operations or activities, has not completed any substantial accounting transactions in the previous two fiscal years, and has not submitted annual reports and financial statements in that time;
(ii) **"Essential accounting transactions"** refers to any transaction that is not one of the following:
(a) a company's fees paid to the Registrar;
(b) payments made to satisfy any legal requirements;
(c) the allocation of shares to satisfy any legal requirements; and
(d) payments for the upkeep of its the office and records.
(2) After reviewing the application, the Registrar approves the applicant the designation of a dormant business and issues a certificate in the format that may be specified to that effect.
(3) As may be specified, the Registrar is responsible for keeping a registry of dormant corporations.
(4)In the case of a business that has not submitted financial information or annual reports for two consecutive fiscal years, the Registrar must notify the company and list the firm's name in the registry for dormant companies.
(5) To maintain its dormant position in the register, a dormant company must have the minimal amount of directors required, file the required paperwork, and pay the annual fee prescribed by the Registrar. An application must be submitted in this regard, along with the required paperwork and fee, for the company to become active.
(1) The identity of a dormant organization that violates this section's standards will be removed by the Registrar from the list of inactive firms.
As, we all well know there are 3 types of companies like Public, Private, Personal and Government Companies. But like a **subsidiary company I.e. (i.e. as that is), is partially or fully owned by other companies, a dormant company is also partially or fully owned by other companies or we say dormant companies are part of the subsidiary company.**
And, I don't think that anyone knows that these companies are **using these loopholes (i.e. for tax evasion or tax avoidance), (i.e. as that is), to reduce the tax liability.** There are too many cases where these

company only uses because of tax evasion or tax avoidance.

So, here we mention some cases related to tax evasion or tax avoidance by subsidiary companies below:-

India vs. M/s Redington (India) Limited[17]

As a component of its corporate restructuring, RIL transferred shares in RG to its step-down corporation (RC), however, the High Court determined that this transfer could not be considered a gift. RIL was forced to transfer the shares due to unrelated circumstances, making the transfer involuntary. The entire deal was set up to satisfy an independent shareholder, who had already placed some restrictions before the transfer took place. The court said that the share transfer was a roundabout arrangement designed to evade paying taxes.

"Thus, if the chain of events is considered, it is clear that the incorporation of the company in Mauritius and the Cayman Islands immediately before the transfer of shares is undoubtedly a means of avoiding taxation in India and the said two companies used It has become a means of evading income tax, the court said."

Additionally, the High Court also rejected the deduction of trademark fees paid by RIL to its Singapore subsidiary. Specifically, the court ruled that it was futile for the subsidiary to demand trademark fees from its parent firm, RIL, due to the lack of supporting documents proving the subsidiary's ownership of the trademark. It was also mentioned that RIL had been using the disputed trademark since 1993, much before the establishment of the Singapore subsidiary in 2005.

Switzerland vs. Pharma X SA, 11/2018[18]

The Court upheld the tax officials' ruling. The Dutch parent firm was little more than a paper manufacturer. To replace the royalty arrangement, a cost-plus deal struck with French subsidiary.

The honourable Court determined that the taxpayer had to be aware that a business lacking substance may not be eligible to receive revenues from its R&D endeavors. Based on it, a penalty of 75% of the tax that was avoided had been rightfully levied.

Vodafone International holding vs. Union of India, SC, 2012[19]

The historic ruling in this case was delivered by the Supreme Court of India. It overturned the Bombay High Court's judgment to seek a capital gain tax of 12,000 crore and cleared Vodafone Holding and Hutchingson Telecommunication Limited (which is not a resident for tax reasons).

According to the court ruling, the Indian Revenue Authority lacks jurisdiction to levy taxes on an offshore transaction involving a non-resident firm that results in the acquisition of a controlling stake in a resident company in India. A clear case of tax evasion exists in this situation.

Commissioner of Income Tax vs. Provident Investment Co. Ltd, 1954[20]

The court ruled that although the corporation had given up agency for compensation, it was still liable if it had transferred through a sale. Since the relinquishment did not result in a transfer under Section 12B, the tax exemption was lawful even if it was immoral.

[17] India v. M/s Redington (India) Limited, High Ct. Madras 116 (High Ct. Madras 2020).

[18] Switzerland v. Pharma X SA, Ct. Switzerland 10 (Federal Supreme Ct. 2018).

[19] Vodafone International Holding v. Union of India, Legal Service India (Supreme Ct. India 2012).

[20] Commissioner of Income Tax v. Provident Investment Co. Ltd, Legal Service India (1954).

So, these are the famous cases of tax evasion or tax avoidance. These cases lead me to that many of the subsidiary companies are doing this tax evasion or tax avoidance in the whole world. After that when we know about 'how these companies use these loopholes', then how we can't look into the matter. For this there is a famous line that is **"Aag mai ghee dalna"** i.e. Aag means company and Ghee means these loopholes in company law.

CONCLUSION

Analyzing the loopholes in Indian company law reveals several critical areas that require attention and reform.

1. **Corporate Governance**: Although India has improved corporate governance norms, there are still shortcomings in terms of enforcement and execution. The necessity for more stringent laws and control procedures is highlighted by incidents of insider trading, related-party transactions, and boardroom disputes. Improved shareholder activism, transparent decision-making procedures, and stronger independent directorship are all factors that can lead to improved corporate governance practices.
2. **Regulatory Enforcement** Regulatory enforcement is still difficult even with the presence of regulatory organizations like the Ministry of Corporate Affairs and the Securities and Exchange Board of India. Regulations are rendered ineffective by inconsistent enforcement, protracted court cases and insufficient sanctions for non-compliance. To prevent wrongdoing and protect the rule of law, enforcement procedures must be streamlined, regulatory authorities must work better together, and infractions must result in harsher punishments.
3. **Transparency and Disclosure**: Standards for transparency and disclosure are essential for maintaining investor trust and the integrity of the market. On the other hand, opacity in corporate disclosures is a result of poor disclosure standards, non-compliance with accounting rules, and gaps in reporting requirements. Informed decision-making can be facilitated and investor protection can be increased by strengthening disclosure rules, requiring uniform financial reporting methods and encouraging greater transparency in company affairs.
4. **Accountability and Responsibility**: Building confidence and trust within the business ecosystem requires holding CEO's, directors, and corporate entities accountable for their deeds. The absence of strong accountability measures, such as Tax liability laws and inadequate prosecution of corporate wrongdoing, erodes investor trust and impedes corporate social responsibility initiatives. Improving accountability and responsibility in the corporate sector necessitates tightening fraud and misconduct penalties, strengthening legal frameworks for corporate liability and encouraging ethical business practices.

A comprehensive strategy including legislative changes, regulatory actions and stakeholder involvement is needed to close these loopholes. India can cultivate a more robust and resilient corporate ecosystem that supports sustainable economic growth and investor confidence by strengthening corporate governance standards, enhancing transparency and disclosure norms, promoting accountability and responsibility and improving regulatory enforcement.