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## Avinash Kumar



*Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.*

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# **“COMPARATIVE ANALYSIS OF PUBLIC & PRIVATE COMPANIES & THEIR SIGNIFICANCE IN INDIAN ECONOMY”**

AUTHORED BY:- ADV. AMARNATH NITIN HABIB

## **Abstract:**

*The Indian economy stands as a vibrant tapestry woven with the threads of public and private enterprises, each contributing uniquely to its fabric. This comparative analysis delves into the distinctive features, performance metrics, and broader implications of public and private companies within the Indian economic landscape.*

*Drawing upon extensive research and empirical data, this study investigates the structural, operational, and strategic disparities between public and private entities. It examines key dimensions such as corporate governance, financial performance, innovation, market competitiveness, and socio-economic impact.*

*Furthermore, the study explores the implications of these disparities on the Indian economy at large. It illuminates how the interplay between public and private sectors influences economic growth, employment dynamics, technological advancement, and social welfare.*

*Through a nuanced examination of case studies and statistical analysis, this article elucidates the symbiotic relationship between public and private enterprises in India. It underscores the significance of fostering a conducive environment for collaboration, transparency, and equitable regulation to harness the full potential of both sectors for sustainable development.*

*Ultimately, this comparative analysis contributes to a deeper understanding of the complex ecosystem of Indian businesses, providing valuable insights for policymakers, investors, researchers, and practitioners alike to navigate the evolving landscape of the Indian economy.*

**Keywords** - Companies Act, 2013, Economic growth, Private company.

## **Introduction:**

A company is a legally recognized organization created by a group of people to conduct and manage business-to-business operations. Depending on the corporate legislation, a corporation can be founded in a variety of ways for tax and financial liability purposes. After the

"Companies Act 1956" was passed on the advice of the Bhaba Committee, which was established in 1950 with the goal of combining the current corporate laws and creating a new framework for corporate activity in India, the correct notion of corporations was established.

The Companies Act of 1913 was abolished in 1956 following the introduction of this legislation. The "Companies Act 1956" was abolished in 2013 and replaced with the "Companies Act 2013". The "Companies Act, 2013" is an Act of the Indian Parliament pertaining to Indian company law that governs the formation of public, private, and open companies as well as their duties, directors, and dissolution.

As a result, a business can only exist through registration in accordance with company legislation. Corporate affairs in India are governed by a number of company law acts, also known as business laws in India, and rules that are upheld by the Indian government and managed by the Ministry of Corporate Affairs<sup>1</sup>.

### **Definition & Meaning:**

#### **Company:**

Generally a company is a group of persons associated together for some common purpose. According to Section 2(20) of the Companies Act 2013, "A Company means a company formed under this act or an existing company". On incorporation a company becomes a body corporate or corporation with a perpetual succession & a common seal & also acquires a personality i.e Corporate personality/Separate legal entity distinct from its members.

#### **Public Company:**

According section 2(71) of the companies act 2013, A public company means a company, which is:

- A. Not a private company.
- B. Has a minimum paid-up share capital as may be prescribed.<sup>2</sup>

As per the Companies Act of 2013, a public company is any corporation that is not classified as private. A joint stock company is a public limited firm. It is regulated under the

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<sup>1</sup> <https://www.mca.gov.in/content/mca/global/en/home/html>

<sup>2</sup> The Companies Act, 2013

terms of "The Companies Act, 2013." It is founded by an association of people with a minimum paid-up share capital of 5 lakh rupees, and the number of members is unlimited. Shares are easily transferable, meaning there are no limitations.

The public may be invited to subscribe for shares and debentures by the company. Upon incorporation, the phrase "Public Limited" is appended to the name. The general public may purchase registered securities from a public corporation. A corporation becomes a public company following its initial public offering. Another name for a public corporation is a publicly-traded company. A publicly traded firm is one that is able to sell its shares to the general public directly and trade on open capital markets.

The board of directors, management, and shareholders all own shares in a public corporation. A corporation goes public in order to raise additional funding for its operations. When shareholders buy shares through a stock market, they can become equity owners in a public corporation, also known as a publicly traded company. A higher stake in the company is held by a person with more shares than by a person with less shares. An initial public offering (IPO) is used to issue shares prior to the start of secondary exchange trading.

Units of Public Companies are subject to stringent reporting and regulatory requirements. A company that is a subsidiary of another company and is not a private company is to be deemed a public company for the purposes of the act, even if the subsidiary company's articles still state that it is a private company, according to the proviso appended to the sub-section. An open business can reach a wider audience.

### **Benefits of Public Limited Company:**

1. **Limited Liability:** The amount of shares that Directors and Shareholders own in a Public Limited Company determines how accountable they are to the company.
2. **Listing in the IPO & Stock Exchange:** Public limited businesses are able to list on well-known stock exchanges and through initial public offerings (IPOs). It provides a number of advantages and business-related opportunities.
3. **Legal Entity:** A Public Limited Company's ability to continue operating is independent of any individual's participation in the company.

**Fund-Raising:** A Public Limited Company may generate funds through crowdsourcing or by involving the general public while adhering to regulatory requirements. It makes it easier for an organization to enter new markets and survive existing ones.

4. **Growth and Expansion:** They are frequently used to support the firm because of their capacity to raise capital. Public companies are usually in a better position to explore new markets because they have greater financial potential, which is more easily accessible and on better terms than private companies.

### **Conversion of Public Company into Private Company<sup>3</sup>:**

It is possible to transform a public firm into a private or personal one. Section 14(1) states that "no alteration made in the articles which has the effect of converting a public into a private company shall have effect unless such alteration has been approved by the tribunal." Therefore, in order to accomplish this, a special resolution must be passed, changing the company's articles to meet the requirements of a private company as specified in section 2(68). The tribunal has the authority to issue any orders it sees fit.

The conversion of a company from private to public or *vice versa*, does not change the identity of the company.

### **Private Company:**

According to section 2(68) of the Companies Act 2013<sup>4</sup>, A private company means a company having a minimum paid-up share capital as may be prescribed and which by its articles-

1. Restricts the right to transfer its shares, in any
2. Except in case of one person company, limits the number of its members to 200, and
3. Prohibits any invitation to the public to subscribe for any shares in, or debentures of the company.

The private limited corporation is essentially a joint stock company. On the other hand, the Indian Companies Act, 2013 governs it. The minimum paid-up capital required to organize it is one lakh rupees. A maximum of 200 people can join; current employees who were members during their job terms are not included in this figure. After their work with the company ends, employees may still remain members. Share transfers are prohibited. It forbids the public from entering through share and debenture subscription. Its name ends with the word "private limited."<sup>5</sup>

A private limited company is a business owned by a small number of individuals. It is held

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<sup>3</sup> Avtar Sing Company law (16<sup>th</sup> ed.)

<sup>4</sup> The Company Law Bare act

<sup>5</sup> Dr. N.V. Paranjape Company law (9<sup>th</sup> ed. 2018)

by a group of people known as shareholders and registered for predetermined purposes. Personal companies are a common choice for startups and firms with higher development aspirations when choosing a business structure. When a corporate entity registers under India's Companies Act of 2013, it is acknowledged as a company. The Ministry of Corporate Affairs, or MCA as it is commonly called, is the governing body.

**Benefits of Private Company:**

There are some advantages of private company:

1. Incentives in private businesses are consistently greater than those in public businesses. Because their compensation is based on the success of the business, private firm managers and officials are more likely to exercise caution than those in public companies.
2. Political meddling prevents publicly traded companies from making decisions that will benefit their bottom line. On the other hand, political forces are typically not allowed to affect the performance of private companies.
3. A private corporation may increase its ability to compete in the market, which helps customers.

**Privileges of Private Company:**

Private firms are entitled to various benefits and exemptions under the firms Act that are not available to public companies. They have more freedom to manage their affairs thanks to these privileges. These are a few instances of them: -

-Reports are not required to be prepared at yearly general meetings.

-There is a minimum need of 2 directors.

- They have the authority to establish new criteria for directors' disqualification and office/workplace vacation.

- In comparison to some other kinds of corporations, they are able to compensate their directors more.

**Conversion of Private Company into Public Company<sup>6</sup>:**

1. Conversion by default: A private corporation may only take advantage of these benefits and exemptions if it complies with the conditions of its definition, which are outlined in section 2(68). "The company shall no longer be entitled to the privileges and exemptions conferred by or under the act when a default is made in complying with any of those provisions." The company would then be subject to the entirety of the act as though it weren't a private enterprise.
2. Choice-based conversion (section 14) A private corporation may choose to become a public company independently of the aforementioned statute provisions. It may at any time adopt a special resolution eliminating section 2(68) requirements from its article, and as of the modification date, it becomes a publicly traded business. The prospectus must be issued within 30 days, and all other act requirements—such as raising the number of directors and shareholders to the statutory minimum—must be met.

**Key Points of Difference between a Private Limited & Public Limited Company:**

1. A corporation that is listed on a reputable stock market and has its stocks listed in public may be a public limited company. A private limited corporation, on the other hand, is not traded or listed on a stock exchange. Only its members have individual ownership of it.
2. Seven members are the bare minimum needed to form a publicly traded corporation. In contrast, a private limited company may be founded with a minimum of two members.
3. It is mandatory for a publicly traded business to call a statutory general meeting of its members. In the instance of a private corporation, there is no such requirement.
4. When a firm is publicly traded, it is required to provide a prospectus or statement. For a private corporation, this isn't the case, though.
5. To start operations, the public business will need a certificate of commencement post incorporation. A private firm, on the other hand, can begin operations as soon as it is incorporated.

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<sup>6</sup> Avtar Sing The company law (16<sup>th</sup> edition)

6. In a private limited business, share transferability is completely controlled. In contrast, a public company's stockholders are allowed to transfer their shares.
7. A private limited company's scope is restricted since there are fewer regulations and a restricted number of individuals. On the other hand, a public firm has a wide scope. This is due to the fact that the business's owners are subject to several legal constraints and are able to raise funds from the general public.
8. A public limited corporation faces a greater load of regulations. This may be because a sizable amount of data needs to be produced and made available to the public. A significant amount of money must be invested in order to generate reports and disclosures that adhere to SEBI regulations.
9. A private limited company's general meetings are held in order to get a signed written resolution.
10. Private companies are not required to designate a company secretary; public corporations are required to do so.

### **Role of Private Company in India<sup>7</sup>:**

India, a country with a mixed economy, has placed a high value on the private sector in order to achieve rapid economic development. Within the domain of industry, trade, and services, the government has assigned a specific function to the private sector. India's most important industry, agriculture, along with related industries like dairying, animal husbandry, poultry, etc., are entirely controlled by the private sector. As a result, the private sector is crucial to the management of the agriculture industry as a whole, ensuring that millions of people have access to food.

Furthermore, the private sector controls the majority of the commercial and industrial sectors that are involved in non-strategic and lightweight manufacturing of a variety of commodities, including electronics and electrical goods, cars, textiles, food products, chemicals, and light engineering merchandise. The aforementioned collection of sectors is developing and growing thanks in part to the efforts of private companies. The growth of the nation's tertiary sector involves the involvement of private firms as well. The whole system of services that offer the public a variety of services is run by private businesses.

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<sup>7</sup> <http://www.weforum.org/agenda/2019/10/private-sector-investment-in-india/>

The private corporation is also in charge of managing the nation's total wholesale and retail trade in an extremely logical way. Furthermore, the majority of transportation, particularly that which is done by road, is run by private companies. Private businesses are being given far more responsibility in many areas of economic activity as a result of the Indian economy's recent deregulation.

### **Comparative Analysis of Public & Private Companies<sup>8</sup>:**

1) Section 5: - Provision of entrenchment in the Articles.

PRIVATE COMPANY:- To be agreed and approved by all the members.

PUBLIC COMPANY:- To be agreed and approved through a special Resolution.

2) Section 23: - Issue of Securities

PRIVATECOMPANY:- By way of right Issue and Bonus Issue through Private Placement.

PUBLIC COMPANY:- To Public through Prospectus (“Public offer”) By way of Right Issue or Bonus Issue through Private placement.

3) Section 29: - Public officer to be is Dematerialized Form.

PRIVATE COMPANY:- Not applicable for Private company.

PUBLIC COMPANY:- In case of public offer of securities, the securities have to be in dematerialized form.

4) Section 40: - Securities in Public Offer to be listed in stock exchanges.

PRIVATE COMPANY:- Not applicable to private company.

PUBLIC COMPANY:- Securities offered in Public Offer, to be listed in Recognized stock exchanges.

5) Section 67: - Restrictions on Purchase/Loan for Purchase of own Shares.

PRIVATE COMPANY:- Not allowed to purchase its own shares.

PUBLIC COMPANY:- Not allowed to purchase its own shares. No financial help to be given to purchase its own shares.

6) Section 138: - Internal Audit

PRIVATECOMPANY:- Applicable in case of: - Turnover- Rs 200 crore in proceeding financial year. PUBLIC COMPANY: - Applicable in case of: - paid up capital- Rs 50 Crore in the proceeding financial year.

7) Section 134(3)(p): - Annual Evaluation in the Board’s Report

PRIVATE COMPANY:- Not applicable to private companies.

PUBLIC COMPANY:- If paid up share capital is Rs. 25 Crore or more, the detail of annual

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<sup>8</sup> <http://legaldocs.co.in/blog/private-limited-company-vs-public-limited-company/>

evaluation in the Board's Report.

8) Section 149: - Number of Directors and Independent Directors.

PRIVATE COMPANY:- Two directors are required in private company.

PUBLIC COMPANY:- Number of Director required in public company is 3; and In case of Listed companies, at least one-third.

9) Section 152: - Retirement by rotation – Appointment of directors

PRIVATE COMPANY:- Not applicable.

PUBLIC COMPANY:- At least two-third of total number of directors be liable to retire by rotation and eligible of being re-appointed in AGM.

### **Significance of Companies in India<sup>9</sup>:**

The adoption of more sophisticated technology and financial reforms are responsible for the expansion of India's private sector. India has one of the greatest GDP growth rates in the world, growing at a pace of 7–8% annually. India's economic process has been spurred by the gap in light-emitting diode to unrestricted flow of foreign direct investment (FDI) in conjunction with stylish latest technologies. As soon as the market was made available for investment, it altered. During this time, the number of Indian private businesses that put the needs of their customers and prompt service first increased. Competition between businesses in the same industry and even within government agencies was further sparked by this. Additionally, the Indian government sold off a number of its businesses to ensure the smooth operation of these firms, which was otherwise were loss making.

### **Role of Private Companies in India's Economic Growth<sup>10</sup>:**

A significant contributor to the nation's growth and economic development is the private sector. Private businesses are primarily responsible for fostering innovation, fostering competitiveness, generating funding, and creating jobs—all vital components of economic expansion. The way that private businesses, in particular, convert investment into wealth development and income generation is through taking on entrepreneurial risk. This function becomes even more important in the current environment, when growing uncertainties in a world that is changing quickly raise concerns about economic growth, especially for emerging countries.

The growth rate of the Indian economy in 2018 was 6.8%. Increased funding for private

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<sup>9</sup> Misra S.K & Puri V.K (2010), Indian Economy, Himalaya, Mumbai

<sup>10</sup><http://www.weforum.org/agenda/2019/10/private-sector-investment-in-india/>

businesses boosts employment—both direct and indirect—consumption, encourages further development, and has a multiplier effect on the global economy.

The Indian government has launched a number of initiatives to entice private investment, particularly in the areas of higher education, skill development, airports, industrial parks, and roads and highways.

The primary goal of private businesses should be to create new business models that enable technology to be used by employees in innovative ways. This will boost productivity and aid in the transfer or dissemination of new technology through industry-led initiatives. And sustained economic growth will result from this.

### **Conclusion:**

Both public and private businesses confront numerous obstacles to better coordination and collaboration in their sustainability, but these may be overcome by creating common concepts and ideas. When it comes to public sector enterprises adopting new objectives and long-term ambitions, private businesses might have a big say. In this instance, the data demonstrates that, generally speaking, private businesses are better at setting precise objectives with quantifiable criteria for assessment. In terms of how public corporations might convert nebulous and nonspecific sustainability goals into more precise goals and actions targeted at reaching certain outcomes, private enterprises could play a significant role. Local governments and other public sector organizations may be able to gain from utilizing insight from private sector firms gain skill regarding framing goals in ways that allow for their improved evaluation and assessment.

### **Bibliography:**

- Bare Act :The Companies Act, 2013
- Book : Dr. N.V Paranjape (Company Law), Avtar Singh (company law)
- Website :<https://www.mca.gov.in/content/mca/global/en/home.html/> ,  
<http://legaldocs.co.in/blog/private-limited-company-vs-public-limited-company/>