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The British corporate legislative measures in historical perspective: A case study of advancement of companies Act 2006 for sustainable economic development in UK

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Abstract

This research paper focuses on the history of the reforms introduced in the UK company law to maintain sustainable economic development of the country at a broader level. The changes additionally have purpose at converting it as easy and as accessible as possible for smaller firms and their advisers and should avoid imposing unnecessary burdens on the ways companies operate. It is the purpose of this research to discuss and highlight the key legislative measures taken by institutions with some prominent initiative by the government to enhance business opportunities both on small and larger level, hence brought key amendments in such areas. Furthermore, with introducing of Companies Act 2006, a number of changes are brought but this paper will discuss focused and prominent areas of this legislation. For this purpose, this paper will discuss in detail, firstly a brief introduction of companies Act 2006; secondly, history of reforms in company law, thirdly, the process and sources of reforms in detail with the contribution of all concerned institutions, fourthly, companies constitution provisions and finally object clause provision under current legislation. In addition this will provide judicial concern where relevant and also different thoughts and discussions from imminent jurists, legal practitioners and scholars in the field.

Keywords: Corporate Governance; Companies Act 2006; Company's Constitution; Legislative Process; Object Clause; Sustainable Economic Development

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1. Introduction

The amendments in the company law then titled as the Company Law Reform Bill was introduced in Parliament on November 4, 2005. It received the Royal Assent on November 8, 2006 and came to be called as Companies Act 2006 (the "Act") and implemented on October 1st, 2009. The Act contains 47 parts with 1300 sections and is followed by 16 Schedules. Omar (2009) argues that it is the largest Act of Parliament ever enacted. Although the reforms are huge but only those reforms are selected in this research which reflect predominantly judicial concern and have been subject to extensive analysis by the commentators. The aims of the reforms introduced in the company law are to lead the improvement of the law more generally. The changes additionally have purpose at converting it as easy and as accessible as possible for smaller firms and their advisers and should avoid imposing unnecessary burdens on the ways companies operate. It is the purpose of this research to bring at front the efforts of UK government and legislative institutions for sustainable economic development through effective and fair provisions of doing business. For this reason, it is the object of this paper to conclude these changes critically with the help of case laws and commentary given by different scholars. In addition, this essay looks at the history and primary sources of reforms which consists different stages and events (Explanatory notes, Companies Act 2006).

2. History

Historically, company law reforms have been impressive. The twenty years' span of reviewing the company law resulted in legislation in 1862, 1883, 1908, 1929, and 1948 and after a larger gap, 1985 with the new Act now seeing the light of a day in 2006. Throughout these years there has been a conscious effort being made to keep company law relevant to current needs. Although the Act has not dealt with every concern of company criticism but it remains sufficiently modern in content and scope (Explanatory notes, Companies Act, 2006).

Saleem (2008) explains that the UK is one of the countries who took effective measures to create a legal system under which equal rights and representation should be given to large companies as well as small companies within corporate governance system. Companies Act 2006 predecessors looked upon large companies only and a very small attention paid towards small companies and their profit. It was the great desire of that time to introduce a new company law which has an aim to guide the development of law more generally. The changes further aim at making it as simple and as accessible for smaller firms and their advisers and should avoid imposing unnecessary burdens on the ways companies operate. In the same vein De Lacy (2003) argues that the implementation of Companies Act 2006, company law in UK largely based upon case laws, and self regulation and that was the main concern while reform process get started, whether the new legislation should be self regulated or a part of statute? Reforms are part of company law since it beginning in its history which began 150 years ago. The Gladstone's Act (1844) which considers first to give idea of registered companies in UK was amended after 20 years period because of new requirements at that time. That mean it is a gist of company law to mould it according to the needs of present time. In 1997, labour government took the charge of UK government and start working to modernise and make UK company law lesser complicated. Responsibility to make current company law more effective, simple, and efficient was given to the independent steering group by the State Department of Trade and Industry (DTI). In 2001 Company Law Review (CLR) finalised his suggestions and submitted to Department of Trade and Industry (Companies House, 2006).

3. Primary sources of reforms in Companies Act 2006

In 1990s, UK labour government declared the review of existing company law. For that purpose, task was given to a steering committee on instructions by department of trade and industry (DTI). That committee was consisted of different people from different sectors like academics, business, and judiciary and company sector as well. That steering group got involved with different company law review groups which helped to issue different proposals and recommendations to bring desired changes in company law (Company law reform, 2005). From 1990 to 1998 steering group with the help of department of trade and industry compiled different suggestions and recommendations, but the main work on reforms started after labour government came in to power again in 1998. For the purpose of getting sources of reforms, the period from 1998 to 2005 can be divide into six stages, which will be easy to understand about different contributions in UK company law reform.

3.1. Stage 1

On 4th March 1998, Margaret Beckett, Secretary of state of trade and industry at that time announced the review of structure of company law and given the proposed idea of reforms (Modern company law, 1998). Margaret (1998) explores that the labour government intended that it was right time to amend UK company law and make it perfect for the future needs. Moreover almost 40 years had been elapsed to bring a modern change in company law which had a bad impact on UK economy. Saleem (2008) reveals that before implementation of companies Act 2006 all companies were regulated under the Companies Act 1985, whether they were big size or small companies but more attention was given to large companies which disregard the business of small companies and caused disappointment to start a business on a small scale. In the history of UK company law, basically two big reforms happened before. First was the Joint Stock Companies Act 1844 and second was the Limited liability Act 1855, which gave the idea that in case of bankruptcy, shareholders are only liable for the amount of their shares and not for personal recovery. Those two Acts largely considered as primary source of principles for modern company law. Basically at the first stage, Department of trade and industry with the help of review group started to modernise company law with the object to promote competitiveness of British company law with both codified law and self regulation system.

3.2. Stage 2

The second stage of reforms in company law called as strategic stage. In February 1999, steering group put the first consulting paper which is known as Modern Company Law for a Competitive economy. That first paper gave the idea about the new legislation and arrangements prepared by the steering group.

3.3. Stage 3

Third stage considered as most important because the key changes in company law discussed in that stage like governance matters of the company, director duties, problems in accounting. Overall third stage combined all the previous efforts and proposals made for the reforms. In March 2000, the steering group issued the second consultation document namely modern company law for a competitive economy, developing the framework (Department of trade and industry, 2000). The most important issue which was discussed in third stage was “in whose interest companies should be run?” That matter has under discussion from very long period. Berle and Means (1932) in their very famous book on the particular issue called as “The Modern Corporation and Private Property” which discussed that issue whether directors or shareholders are more entitled for the benefits and ownership. Dodd (1932) provides historical articles on that discussion “for whom corporate managers are trustees” in which Dodd gave his pluralist approach that company should be run in all stakeholders interest while Berle denied that fact and assumed that company only should be run in the interest of shareholders only. In their second paper modern company law for a competitive economy, developing the framework, steering group rejected the pluralist approach and insisted on enlightened shareholder value which can be seen more valuable. In this paper group argued that maximum benefit and company’s progress could be achieved through enactment of director duties, which required directors to have good understanding with all people who affiliated with company and to whom company depended upon (Company law reform bill, white paper 2005). In July 2000, another paper namely Modern company law for a competitive economy: capital maintenance issued by steering group which mostly covered the minor issues as compare to its predecessor papers. The main part of that paper consisted of Aveling Barford (1998) case in which distribution of assets and profits were discussed.

3.4. Stage 4

Getting more and more proposals and with consultations, In November 2000 Steering group issued its next consultation document called as Modern company law for a competitive economy: Completing the structure (Department of trade and industry, 2000). Saleem (2008) argues that since the reforms started, first time consideration was given to small companies in stage 4 when certain needs discussed about small and private companies. The group intended that most of the companies working in UK are small and private companies so in the new Act changes should be done according to the needs of small companies. In the precious Acts law was complicated and difficult to understand for ordinary people who wished to establish a small company. That strategy also known as “Think small first” which was first introduce in 2000. A comprehensive consideration shall be given to that principle in chapter as I moved further. Think small first idea was first in UK history which enabled the structure for small and medium enterprises. The main intention behind that idea was to create an ideal society in which small and medium firms can grow in a better way.

3.5. Stage 5

After great consultation steering group succeeded to hand over the final report at stage 5 of reforms. In July 2001, modern company law for a competitive economy, final report: was published by the group. That report comparatively considered as best review of company law since last 40 years (Company law reform bill, 2001). Final report consisted on two parts called as two volumes. In volume one all the recommendations on company law reforms were given while volume two described draft clauses proposed for new company law Act (Department of Business, innovation and skills, 2001). Final report basically gave a mirror image of what the steering group members intended to change in company law. Moreover Final report covered three basic elements of reforms with priority given to private companies for instance make company law more flexible and simple in perspective of private companies, built a legal structure that fulfil the requirements of modern economy, to create a institutional structure that provide comprehensive check over the progress and development of UK companies. Emphasis was given in final report to unanimous consent rule, criteria for holding AGM, appointment of company's secretary, simple way for auditing, and most prominent the alternative dispute resolution to settle down the disputes arise between the shareholders. With the reference of Director's duty, that was codified as statutory provision and they have to be acted in good faith. Furthermore steering group in their final report assigned different type of duties to company law and reporting commission, standards board, private companies committee, and reporting review panel (Department of Business Innovation & Skills, 2000). De Lacy (2003) argues that it was further discussed in final report that there should be an independent committee who will be responsible to advice main committee and other bodies involved in operation of company law.

3.6. Final Stage

In the final stage of reforms process, UK government revised all the suggestions and recommendations given by steering group and law commissions and considering these documents government published two white papers during two different years.

4. Modernising company law: White paper (July2002)

In July 2002, UK government announced its first white paper in response of the recommendations given by the steering group. Patricia Hewitt, secretary of state for trade and industry at that time announced that former company law has failed to meet the requirements of present economic situation especially with reference of small industries and global markets. Therefore Government established an independent company law review group to bring the desired changes according to present situation (Department of Business Innovation & Skills, 2002). Higgs (2002) explores that under the first white paper, government also took other steps with special consideration given to corporate governance matters for example, importance and role of non executive directors.

4.1. Company law reform: White paper (March 2005)

In march 2005, after a long period of consultation, work done by company law review and suggestions given by government in subsequent white paper, UK government published the second white paper (Department of Business Innovation & Skills, 2006). That white paper having great value because of it laid down the basic structure of Companies Act 2006. Much emphasised given to the corporate governance system and also that white paper suggest the way in which company's formation and operation will be happened.

4.2. Effective dates

It is pertinent to mention about the different dates and compilation of different documents which played vital rule in reforms of company law. The process which started in 1998, by the initiative of labour government and successfully become a new law with amendments in 2006. To make it more easy to understand, a table of effective dates given as following.

Date	**Progress**
1998	Start working on reforms with idea of modern company law for a competitive economy.
1999	Company law steering group proposed reforms to general meetings and effective communication between shareholders.
2000	Modern company law for a competitive economy: Developing the framework.
2000	Modern company law for a competitive economy: completing the structure.
2001	Report submitted by steering group to government officials.
2002	First white paper published by government with name of modernising company law.
2005	Second and final white paper published by government with the name of company law reform.
1st November 2005	Company law reform bill presented in House of Lords.
25th April 2006	Reform Bill was amended by House of Lords
24th May 2006	Reform Bill sent to the House of Commons
19th October 2006	Reform Bill was passed by House of Commons.
8th November 2006	Reform Bill received Royal Assent and become the Companies Act 2006.

5. Areas of reforms which are subject to this paper

In this part of research paper, emphasis will be on particular areas of reforms which have great value in sense of practical implication and judicial concern. Intentionally I choose two prominent areas which included company's constitution and object clause.

5.1. Company's constitution

Part 3 of the Companies Act 2006 deals with the constitution of company. That part comprises of 4 chapters. Most of the provisions of this part remained same as prescribed in Companies Act 1985. Chiu (2009) noted that Company's constitution which also known as basic document deals with relationship between members with members and members with company. Hannigan (2009) provides that under the Companies Act 2006, every company should have its articles of association which known as constitution of company. These articles of association are legally binding on both company and its members. In companies Act 2006, section 17 starts with the definition and carry on with the main provisions like its article of associations, resolutions and agreements. Under the previous Act, constitution of company was characterised by memorandum of association (outsider dealings) and articles of association (insider dealings). However under Companies Act 2006, memorandum of association become only a formal document having use only for form a company and become its members (Constitution of registered company, 2009). That seems to be more purposeful because under new provision registration of company become simpler and easy especially small enterprises, furthermore no technicalities involve for registration of company. Its compulsory now that companies register articles of association under section 18(1) but if we compare section 19 of companies Act 2006 with previous Act, model articles now can be adopted in parts or as whole but previously if company's articles are not registered, the model articles apply automatically. With the reference of Articles of association, two main questions come into mind (a) whether there is any possibility to amend the articles, (b) legal effects of articles on company and its members? Answering the questions, articles can be altered under companies Act 2006 section 21(1) by bring a special resolution but certain limits are there like there should be no conflict between the new amendment and companies Act or statutory protection given by the statute to members must not be effected, no compulsion towards the members for more contribution in respect of shares without written consent and most importantly there should be no abuse of majority power while bring any resolution to amend the articles. The rule for Alteration in articles was enshrined by a famous punt v. Symons case (1903) where articles of the company having provisions limiting the appointment of directors to Mr Symons (the company's founder) and in case of Mr Symons death, the authority only belongs to his executors. The company entered into a contractual agreement that it would not alter its articles to remove this restriction. The court announced that the limitation was illegal. Where a company does enter into such an agreement and then alters its articles in breach of the agreement, the injured party cannot prevent the alteration from being made by way of injunction, but can sue for damages for breach of the contract (Southern foundries case, 1940). Under Companies Act 2006 the articles of a company restrict the company and its members S 33(1) but members are not bound in case of an alteration to its articles after the date on which they became a member if and so far as the alteration needs them to get or subscribe for shares except those held at the date of the alteration, or in any way increases their liability to contribute to the company's share capital or otherwise pay money to the company S. 25.

Before the enactment of the Companies Act 2006, the company's constitution was characterised between the memorandum of association and the articles of association. Moreover the clauses that were needed to be in the memorandum, the company could insert clauses in the memorandum and fix them against amendment. This was not case for provisions given in the articles which were always eligible of alteration. In order to provide the same possibility of companies inserting provisions in their constitution, the law give the opportunity that a company's articles may contain provisions (provision for adding) to the effect that specified provisions of the articles may be altered or repealed only if conditions are fulfilled, or procedures are followed, that are more restrictive than those applicable in the case of a special resolution: s. 22(1). Provisions for adding may only be made in the articles on formation, or by an alteration of the articles consented to by all the members: s. 22(2). Provision for entrenchment does not save amendment of the articles by mutual consent of the members, or by order of the court or other authority having power to amend the company's articles S. 22(3). The registrar of companies should have knowledge of provisions for adding and also of their removal S. 23. Companies in doing so before the enactment of the Companies Act 2006 are subject to s. 28, which provides that provisions given in the company's memorandum should be followed as provisions of the company's articles, including provision for adding. Where the alteration of the articles constitutes a variation of class rights, the alteration cannot be made under s. 21(1) but only in accordance with s. 630 which requires alteration in accordance with provision in the company's articles for the variation of those rights or, where the articles contain no such provision, if the holders of shares of that class consent to the variation either by (i) consent in writing of the holders of three-quarters of the issued shares, or (ii) a special resolution at a separate class meeting (Cumbrian newspaper group case, 1986). The most controversial aspect on company's right to amend the articles is abuse of majority power or where the court thinks that mala fide intention was behind this alteration or where the act of alteration does not seem to be in the benefit of the company.

The idea how to give protection to amendments of the articles was firstly enshrined in Allen case (1900). In an action brought by Mr. Allen (executor) for a declaration that the alteration was void, the court held that the power of the company to alter its articles under what is now CA 2006, s. 21(1) had to be exercised, not only in the manner required by the law, but also bona fide for the benefit of the company as a whole. In that case Lord Lindley MR held that "like all other powers [to] be exercised to those general principles of law and equity which are applicable to all powers conferred on majorities and enabling them to bind minorities. It must be exercised, not only in the manner required by law, but also bona fide for the benefit of the company as a whole, and it must not be exceeded..It is easy to imagine cases in which even a member of a company may acquire by contract or otherwise special rights against the company, which exclude him from the operation of a subsequently altered article something needs to be shown which allows that shareholder is to be treated differently (i.e. class rights). No special circumstances here. The altered articles applied to all holders of fully paid shares, and made no distinction between them. The directors cannot be charged with bad faith" (Allen case, 1900). Hannigan (2009) further defines that particular approach can be seen in two perspectives, a practical approach and a merely an assumption. Under the practical approach, the court itself look into the matter, whether or not the proposed amendment was in the benefits of the company, while under the assumption, the court is only deals to establish whether the shareholders, who participate in voting for the alteration, make it confirm that they were doing in the best interests of the company as a whole. Furthermore a difference of opinion can be seen within these approaches while taking a look into Sidebottom case (1920) which approved the practical approach, and Dafen Tinplate case (1920) which considered only an assumption. These two cases deal an amendment of the articles to give the company the authority to forcefully acquire the shares of minorities who were competing with the company. In the case of practical approach, all that the court has to look in to is that the members, who use their votes in favour of the resolution, with good faith believed that it was in the benefit of the company. While in case of the assumption, the court emphasis on diplomatic approach and judged on the basis of whether the court believes that the amendment is in the company's benefit. That issue between these two approaches was decided in favour of the practical approach in Shuttle worth case (1927). In Greenhalgh case (1951) however, the court intended to decide that there is an aspect of the assumption since that court was to accept, whether the consequence of the amendment was to discriminate between the majority and the minority shareholders. The decision in Clemens case (1976) even not linked with an amendment of the articles is considered as a good example of an unfair use of majority position. Where a minority shareholder alleges that there has been an alteration of the articles which constitutes an abuse by the majority of their power, the claim should be brought as a claim of unfair prejudice under s. 994. If a claim is brought under this section and the court decides in favour of the claimant, the court has unlimited power to make orders under s. 996(1). Without prejudice to the generality of its powers under that sub-section, the court may make specific orders under s. 996(2). As regards the alteration of its articles, the court can require the company not to make any, or any specified, alterations in its articles without the leave of the court: S.996(2) (d).

5.2. Object clause

Object clause considered as important part of memorandum of association under previous Acts, like companies Act 1985 clearly mention that memorandum of association must contain an object clause, which shows the limitation of company in respect of its business. In the past that part of memorandum considered as much complex area of law because of ultra vires doctrine that strictly forbidden the companies to go outside their object clause (Reminder of Director's obligations, 2015). Dignam and Lowry (2009) argue that if we look in to the time when companies start to exist, special charter was given by Crown or Legislators. In that charter the object of the company or limitation of their business was clearly mentioned those companies never supposed to cross their limits. The classic example of that is East India Company who grant with a special charter of tea business in subcontinent. That was the initial shape of object clause. Now return to the main issue which had a major role to bring object clause as part of reforms. Before the implementation of Companies Act 2006 ultra vires doctrine was the most controversial issue in constitution of company. Courts in that respect faced different type of problems like strict nature of object clause, sometimes variation happened in registered company's business but in good faith, doctrine of constructive notice which makes it confirm that a party entered in to a contract with company have all knowledge about its business. Because of that reasons courts really confused about how to decide the matters in the light of ultra vires doctrine while dealing with company's object clause.

Dine and Koutsias (2009) noted that in early judicial interpretations, courts looked to be consider the registered companies as same status as public companies and that's why more strict while implemented the ultra vires doctrine. To get the better idea about the history of reforms in object clause, I would like to refer Ashbury railway carriage company case (1875). House of Lords with unanimously agreed upon held that "the contract was beyond the objects as defined in the objects clause of its memorandum and, therefore it was void, and the company had no capacity to ratify the contract". Furthermore House of Lords held that an Ultra Vires act or contract is void in its inception and it is void because the company had not the capacity to make it and since the company lacks the capacity to make such contract, how it can have capacity to ratify it. If the shareholders are permitted to ratify an Ultra Vires act or contract, it will be nothing but permitting them to do the very thing which, by the Act of Parliament, they are prohibited from doing. The House of Lords has expressed the view that a company incorporated under the Companies Act has power to do only those things which are authorized by its objects clause of its memorandum and anything not so authorized (expressly or impliedly) is Ultra Vires the company and cannot be ratified or made effective even by the unanimous agreement of the members. Another example of judicial interpretation of ultra vires doctrine while, determining the company's object clause is Great Eastern Railway case (1880). That case made it easier about the courts idea of ultra vires doctrine in the past. In this case the House of Lords again gave the same judgement as in Ashbury case but with some addition of word reasonable. Later on if the company in bad faith, deviate from its contents of the memorandum, that supposed to be ultra vires and declared as null and void (Company Constitution and ultra vires). For example, the terms and conditions of the contract seems to be in favour of the outsider and on same terms and conditions that specific person or organisation wants to run the contract and on the other side the insiders of the company like shareholders they want little change in good faith and in good interest of the company with subject to fulfil the terms and conditions of the contract but they are not authorise to do that. That has created many problems for the business of the company. Under the previous Acts there were so many obstacles for the decision makers in the company. If the manager or other authorised persons felt any good change in the affairs of the company, first they had to look in to the object clause and must make it sure that their purposed act did not amount to be an ultra vires and come within the object clause. That caused different barriers in the way of progress of company. If sometimes management of the company arranged to amend the object clause to fulfil their goal and avoid the ultra vires rule, even at that time they needed a lot of time and very long process to achieve that thing and make the amendment within the object clause. In nutshell previous condition of object clause affected negatively on the smooth run of the business of a company. A milestone achievement happened after the reports of Cohen committee and Jenkins committee. These reports recommended that doctrine should be declared as null and void and should not be encouraged. Furthermore these reports explained different weak points of that doctrine and asserted to stop its application while giving judgements in concerned cases (European's community directive).

Sealy and Collier (1973) noted that in the recommendation of these committees that is unfair for a company not to amend the object clause for the benefit of its business with the exception of good faith. Both the committees have given same recommendations about the effect of doctrine of ultra vires. After the Ashbury's case the shortcomings of that doctrine become more prominent and eventually UK parliament passed an Act which is called as European Communities Act, 1972 and later that was become as section 35 of Companies Act 1985. It was stated as, (1) "in favour of a person dealing with a company in good faith, and transaction decided on by the directors is deemed to be one within the capacity of the company to enter into, and the power of the directors to bind the company is deemed to be free of any limitation under the memorandum or articles. (2) A party to a transaction so decided on is not bound to inquire as to the capacity of the company to enter in to or as to such limitation on the powers of the directors, and is presumed to have acted in good faith unless the contrary is proved". UK courts adopted that changing in implementation of ultra vires doctrine with certain rules which they followed. Under the powers given by the statute a company can do a thing or use any right given by Companies Act or under any other Act, regardless of the fact that it covered by object clause or not. Likewise in Attorney General's case (1880), the court given a ruling that company can use powers not only given by his object clause but also which are necessary, incidental or consequential because of those powers. Under that rule if a company running the business of purchasing and selling the coil, definitely it needed hiring trucks or labour for that purpose which is incidental or consequential but still under legal approach. That rule can be seen more clear in Evans case (1921) in which court finally announced that "the expenditure authorized by the resolution was necessary for the continued progress of the company as chemical manufacturers and thus the resolution was incidental or conductive to the attainment of the main object of the company and consequently it was not ultra vires. "Acts incidental or ancillary" are those acts, which have a reasonable proximate connection with the objects stated in the objects clause of the memorandum" (Deuchar case, 1925). Likewise in Attorney General Case (1907) a company was formed for running a hotel business. With some connection of hotel business, company need to hire some people for labour purpose and buy some furniture. That was not in the object clause of the company that it can do these things. On that ground it was challenged in the court to hold that act as ultra vires. Later on court held that those acts are not ultra vires because they are part of the main object of the company and that is to run a hotel business therefore the acts which become necessary to attain the basic idea of the business does not fall in the ultra vires doctrine whether or not they are given in the object clause. There was another principle established by courts to interpret the ultra vires rule. In the past at many occasions court looked into the main intention of the company's object clause, rather than to go strictly on word to word of object clause. In that case court only ascertains the idea of object clause and then implemented it accordingly. In Re, German date coffee co case (1882) court observed the basic intention rule. In the past different companies also used independent objects clause in which that was clearly written that every object in object clause supposed to be independent, and if in any case any of them not achieved, that does not mean to close down the company only because of that reason. In Cotman case (1918) where a company acquired some shares in oil company. That was in the object clause of the company that it had many objects as one of them is to hold shares of other different companies. That was also stated in object clause that every object remained independent. The court recognised that thing and held that it is not ultra vires.

Saleem (2008) argues that in Companies Act 2006 all history covered in section 31, which provided that companies can have now unlimited objects unless they specifically restricted by their articles. This is time where we can say that the doctrine of ultra vires totally abolished. Dignam and Lowry (2009) elaborates that institution of the suit against the directors for their alleged frauds against the company, has been discarded. However the restrain is imposed upon the shareholders that prior permission is required from the judicial authorities before filing an action against directors. The Act sets out the statutory criteria of prima facie case and good faith for the courts to determine whether to grant such permission for the claims to proceed further. This reform criticised on the basis that this will lead to increased litigation against directors by activist's shareholder. While looking in to the present scenario it can be said that most of the companies in UK doing their businesses on a good track and suitable environment. These companies facing problems internally specially in legal sector. That is included the above said issue of shareholders rights. In part two of the Companies Act 2006, sections 261-264 deals with the newly introduced provision of derivative claims. Under that provision a member of the company have a right to file a case in the court if anything wrong done by director of the company or any other person in respect of infringement of his or her rights (Companies Act 2006, section 260). Milman (2010) argues that with the inclusion of that provision that was likely to be resulted in a lot of cases will be presented in courts for litigation. But seeing the present situation most of the cases announced at their first stage and not proceeded for complete trial. The interesting factor of present litigation is that most of the times judges allowed the applicant to go for unfair prejudice suit, which caused the end of derivative claim suit in the very beginning. For example if we look in to the Mission capital plc case (2008) and Franbar holdings ltd case (2008) in which court denied to grant further progress and announced that claim did not sustained. Before the implementation of companies Act 2006, a custom was prevailed that most of the times shareholders claimed that their suit is a personal claim which should not be treated as derivative action as enshrined in Foss v Harbottle case and further more that it should be considered as private claim which created by the breach of private share holder right. The difficulty for determining the share holder rights can be argued by the no reflective loss rule which was discussed in Johnson v Gore case (2002). Furthermore it can be said that if the loss only has its effect on company and not on the shareholder, than the company has been entitled to file the suit in the court not the shareholder as a personal claim. It can be said now that the reasons or justifications to prove the derivative claims are more broaden as compare to rule that was drawn in Foss v Harbottle case (1843).

Sykes (2010) points out that now the courts will judge this share holder right with the idea to prevent the fraud and promote minority share holders right and decide whether the suit for derivative action should be proceeded or rejected at initial stage. Under the new legislation, now only concept of fraud by the director is not enough or not a mandatory condition to file a derivative suit, but the words mere breach of duty, trust or negligence have been used. With the interpretation of same section now it is open to bring the suit not only against the director of the company but also against the person who assisted him or have any type of contribution in the breach to exercise the duty or negligence or any type of fraud which resulted in violation of shareholders rights. Under that provision now the rights of shareholders will be more protected and the area of liability in case of breach become wider (Civil procedure rules, 1998). While dealing with the procedure for filing a suit under section 260, companies Act 2006 tells a new two stage process. In the first stage there should be an application of ex parte given to the court (Companies Act 2006, section 261) and claimant has to be proved that there is prima facie case against the defendant otherwise suit will be dismissed by the court. After the establishment of grounds to entertain the case, second stage will be the acceptance of evidence in the court given by the company. Regarding that process much criticism has been seen mostly when the court proceed the case at its first stage and rejected the suit with the reason that insufficient written evidence has been submitted to the court. During the process of reforms in company law an idea was given by the thinkers that minimum 28 days prior notice by the shareholder to the court about initiating derivative suit should be compulsory. In that notice reasons on which shareholder relied should be given (Law commission consultation paper, 1996). Moreover a suggestion or amendment was proposed that a suit for derivative claim only be entertained, if the directors of the company denied initiating the proceedings (HC official report, 2006).

Lords Hansard (2006) makes it clear that despite of all these factors, the intention of the legislators behind that reform is to minimise any factors which affect the wrong doer control process and become a reason to interrupt the genuine claim brought by the shareholders. Under section 263(3) of companies Act 2006, an effort has been made to create a system in which court examine all the factors involve in the shareholders claim, and it can be said that while examining and deciding those factors, case laws also can be generated for the future litigation.

Payne (2002) argues that under section 261 of companies Act 2006, court only accept the written piece of proof given by the claimant and under section 263 a list of different factors has been given, which the court shall take in to consideration while deciding the claim that whether it should be accepted for litigation or refused at its initial stage. Under section 263 (3) (a), the requirement of good faith by the shareholder has been described which seems to be controversial. Shareholders might found their selves in difficulty while meet with this requirement because unavoidably there will be an interaction between the different subsections in probing, whether the shareholders acted in good faith and take the proper measures for the benefit of the company or not? There is not a big list of cases that prove the effectiveness of reforms in that particular area but some cases can be referred as for understanding the attitude of the courts.

In Airey v. Cordell case (2007) claimant come to the court with derivative claim and asked the permission to continue it. Warren J announced that “the assessment to be checked was whether a rationale autonomous board could come to a decision that it was proper to bring actions. The court should not apply its own vision of how the board ought to continue. The court was anxious not to close down the minority shareholder on the basis of the court's probably insufficient evaluation of the case at this stage. The proceedings were temporarily stayed to let the negotiations to take place. Same approach has been adopted in Callard v. Pringle case (2007) in which court of appeal announced that there is not sufficient evidence on the record which proved that whether an offer in good faith had been made to obtain the shares of minority share holder. Because of that reason court ordered for eight weeks stay to give parties some time for settle down their dispute.

In Franbar Ltd case (2008) which can be called as first reported case carry the matter of recently implemented derivative claim, in which court denied to grant the leave for further proceedings regarding the suit and held that “there was matter to the complaints, and there may have been breaches of duty barring endorsement, there was still “work to be completed” in advancing a sustainable claim. It was possible that a theoretical director would refuse to carry on with a derivative claim at this stage. It was possible that he may do so in the future, but this was outweighed by the subsistence of three sets of proceedings where the complaints were similar, including a claim for breach of the SHA, and s.994 petition through which the company should be able to achieve its objectives therefore the best thing to do is refused to allow further progress which seems to be in the interest of justice”. Court also refused to grant further progress in Mission capital case in which court announced that claim looks insufficient to grant leave for further proceedings.

6. Conclusion

In conclusion it would be right to argue that UK was one of the first nations to establish rules for the operations of companies. Today system of its company law and corporate governance, setting out the legal basis on which the companies are formed and run, is a vital part of legal framework within which business is conducted. As the business environment evolves, there is a risk that the legal framework can become gradually divorced from the needs of companies. In particular the needs of smaller private businesses, creating obstacles to ways those companies want and need to operate (Companies Act 2006, explanatory notes). With the help of these arguments, it can be said that the rules and principles upon which previous Act formed did not meet with the present business situation which makes it compulsory to bring certain changes according to new scenario. Furthermore UK government keen to introduce new legislation regarding small business, effective relationship between shareholders and company, flexibility to set up a new business and create a business environment in which everyone feels comfortable.

As it discussed above, history, sources, and two main areas of reforms, it can be said that reforms in Companies Act 2006 have been impressive and appreciated overall. Although in this research paper all the areas of reforms have not been discussed but the importance is given to the dominant and judicial concern reforms. The history of reforms in UK company law considered as the need of modern business regime. The Companies Act 2006 fulfils this need in such a manner that is beneficial not only for Public companies but also valuable for small and private companies.

Flexibility for future is also an intention of the Government behind the reforms which carry the vision to bring changes in company law in future by secondary legislation which will make it easy to get access to company law for all and most importantly for small businessmen and private firms. In the conclusion it can be said that while struggling with achieving goals of sustainable economic development which can be seen in all major economies, reforms in UK company law has been inevitable and successfully promote and uphold these goals through ease and comfort of doing business in United Kingdom.

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