

## Let's understand Entrenchment Clauses

The word '**Entrenchment**' has not been defined in Companies Act, 2013. However, according to the Oxford dictionary, the word 'entrench' literally means **firmly added, surrounded and a vital part of something**.

### **What is Entrenchment Clause**

An **Entrenchment clause** is a provision within a legal document, such as a constitution, corporate charter, contract, etc., which makes certain amendments or changes to the document more difficult to implement.

### **Types of Entrenchment**

Entrenchment can be either absolute or conditional:

- **Absolute entrenchment** implies that certain provisions are unalterable and impossible to change unless there is a court/tribunal order.
- **Conditional entrenchment**, on the other hand, implies that certain provisions can be altered, subject to fulfilment of certain conditions or compliances with specific procedures.

**Purpose:** Entrenchment clauses are often used to protect fundamental rights, organizational structures, or important policies of an organization.

### **Examples of Entrenchment Clauses**

- **In Constitutions:** Some countries have entrenched clauses to safeguard critical rights or principles, such as the basic structure of the state or human rights provisions, which cannot be amended or can only be amended with stringent conditions.
- **In Corporate Governance:** A company's articles of association may include entrenchment clauses to protect certain shareholder rights or ensure that key decisions require a higher level of approval.

## Entrenchment Provisions under the Companies Act, 2013:

- **Section 5(3) (4) & (5)** of the Companies Act, 2013 contains the entrenchment provisions. It allows a company to specify that certain provisions of the AOA can only be altered if conditions/procedures, more restrictive than those applicable to a special resolution, are met.

## Adoption of Entrenchment Clauses:

- **At Incorporation:** Entrenchment clauses can be included at the time of the company's incorporation, and they would form part of the original Articles of Association.
- **After Incorporation:** If a company wishes to add an entrenchment clause after incorporation, it requires:
  - For Public Companies, a **special resolution** passed by the members of the company.
  - For Private Companies, the consent of **all the members of the Company**.

## 2. Filing Requirements:

- When an entrenchment provision is adopted, the company must notify the Registrar of Companies (ROC) in the prescribed form (Form MGT-14) within 30 days of passing the special resolution.

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