

**INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH****CLASS ACTION SUITS UNDER INDIAN LEGAL REGIME**

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*"Alone we can do so little; together we can do so much."*

– Helen Keller

**ABSTRACT**

Class action suit are those suits where a suit is instituted by a group of people or a class of people who share a common interest against the defendant. Class action suits are not a common practice in India. It is a useful remedy for individuals who have faced similar injuries caused by the defendant. This paper will highlight the process of class action suits and Importance of class action suits. It will also focus on the practicability of Class action or collective action suit in India. Further, the author has tried to explain, discuss and analyze class action suits under different Indian Laws and its origin and applicability in Companies Act, Civil Procedure Code, Consumer protection Act, Competition Law and in form of PIL.

**INTRODUCTION TO CLASS ACTION SUIT:**

A class action or collective action lawsuit as the name suggests is a type of lawsuit filed by a particular group or a collection of people who share the same peril against a defendant. It is a useful remedy for individuals who have faced similar injuries caused by the defendant. Class action suits otherwise called as “Representative Action” as under this type of a case numerous people together bring an assertion to the court with help of a representative (Plaintiff). The class represented in a class suit action can be anyone including employees, shareholders, investors etc. all those who have similar claims against the defendant. Class Action lawsuits are mainly filed against governmental bodies, financial institutions, company managements, retailers etc. In this particular article, we will throw light on Class Action suits filed under various laws in

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India.

### **IMPORTANCE OF CLASS ACTION SUIT**

The main objective behind the concept class action suit is collective representation. This particular type of lawsuit gives redress to those individuals whose separate claims are too small to be worthwhile. Hence under a class action suit, all such individual claims are collectively represented by the plaintiff to get a proper remedy. On the other hand, this also helps in curbing the burden on the court. When one suit is filed instead of multiple ones it makes the trial speedy and cost-effective. A class action suit also helps individuals who cannot afford attorneys to get proper restitution. Hence now, they can get the same through collective representation. In a corporate system, Class Action suits are also accessible to the outnumbered shareholders in case of any oppression or mismanagement by the administration of the company.

Class Action suits enforce accountability and responsibility. It ensures that the organizations are fair and transparent in their activities. In other words, class action suit is needed for good corporate governance in any corporate unit.

### **CLASS ACTION SUIT UNDER VARIOUS INDIAN LAWS**

#### **COMPANIES ACT, 2013 (SECTION 245)**

In 2016 the Indian Legislature introduced section 245 of the Companies Act, 2013. This section features the concept of Class Action Suits by shareholders and depositors of a company to the Indian Legal system. In India, **J J Irani Committee**<sup>2</sup> recommended the need to codify class action suits. The leading factor behind such an amendment was one of the biggest corporate scandals in India- The Satyam Scam (2009). Satyam Computers Services Limited (SCSL) was involved in material overstatement in their revenues by providing fraudulent invoices and misrepresented accounts to its board, investors and stakeholders. As a result, the shareholders of SCSL lost millions both in India and in the US. Due to lack of proper provisions of class action suit under the companies act the Indian investors lost their money while the American investors were able to claim their part of damages in the US courts. To deal with such instances the Indian Legislature came up with Section 245 of Companies Act. 2013.

#### **SECTION 245 OF THE COMPANIES ACT, 2013**

Section 245 of the Companies Act, 2013 is a self-sustaining provision. It provides with both the

<sup>2</sup> Expert Committee on Company Law, Ministry of Corporate Affairs, Government of India, Report on Company Law, May 31, 2005

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procedure and the remedy that can be sought. It states that a particular number of members and depositors can bring a case against the management of the company if they have reason to believe that "*the management or conduct of the affairs of the company is being conducted in a manner prejudicial to the interests of the company or its members or depositors*". Such members or depositors in these cases can file an application before the NCLT on behalf of rest of the members or depositors. The section illustrates 10 different sub clauses that deal with various facets of a class action suit in India.

- This section features the following orders that the members and depositors can seek through an application to NCLT [Section 245(1)]-
  - The company can be restrained from committing act which is ultra vires to the articles or memorandum of company
  - The company can be restrained from breaching the rules in memorandum of the company
  - All such amendment shall be declared void which is made in the articles of the company by either suppression of facts or misstatement.
  - Refrainment on the action by the company and its directors.
  - The company can be restrained from doing an act contrary to the provisions of Companies Act 2013.
  - The company can be restrained from performing against the resolution passed by the members.
  - Claim damages or compensation from the company.
  - The tribunal may pass any other order it deems fit.
- It is pertinent to discuss the yardstick that needs to be adhered to while filing a class suit action under this section. Until very recently there was no threshold limit to file a class action suit. On May 8 2019 the government amended National Company Law Tribunal Rules, 2016 (Rule 84) and introduced the following threshold limits [Sec 245(3)]-
  - A class action suit in case of a company can be filed by its members representing 5% of total numbers of a company. It can also be done by 100 members of the company, whichever is less. (same criteria for depositors of deposit taking companies)

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- In case of an unlisted company, member(s) holding minimum 5% of issued share capital can file for class action lawsuits. For listed companies this would be 2%.
- Once NCLT admits such a complaint, a public notice has to be served to all the concerned members and depositors. Once a public notice is served, the following conditions needs to be followed [Section 245(5)]-
  - A representative needs to be selected by class members who would be the lead. If they fail to do so the tribunal may appoint a representative on their behalf.
  - There shall be only one application for one cause of action.
  - The company or person responsible for oppression or mismanagement will bear the cost of the suit.
  - Banking companies do not come under the purview of this section.
- In case of a class action suit all orders passed by the tribunal are binding and enforceable. The responsible parties have to comply with its orders failure to do so they have to face the following consequences [Section 245(7)]-
  - In case of Company-
    - a. Not less than five lakh rupees
    - b. But which may extend to twenty-five lakh rupees
  - In case of Officer in default-
    - a. imprisonment for a term which may extend to three years and
    - b. with fine which shall not be less than twenty-five thousand rupees
    - c. but which may extend to one lakh rupees

In addition to section 245, the Companies Act also provide for section 37 that talks about "action by affected parties". This section illustrates that "*a lawsuit can be filed, or any other action may be taken by any person, group of persons or any association of persons affected by any misleading statement or the inclusion or omission of any matter in the prospectus*" under

Section 34<sup>3</sup>, Section 35<sup>4</sup> and Section 36<sup>5</sup> of The Companies Act, 2013.

### **CODE OF CIVIL PROCEDURE, 1908**

Under Indian Law, the collective or representative suits can be reported under “*Order 1, rule 8 of the Code of Civil Procedure (“CPC”), (1908)*”. Accordingly, “representative suit” can also be described as in Code of Civil Procedure, “A ‘representative suit’ is a suit filed by or against one or more persons on behalf of themselves and others having the same interest in the suit.” There are certain necessary conditions which are to be fulfilled in cases where this rule will be applied which are stated below:

- A class of people- The numbers of parties is not fixed to any particular limit, but it simply implies about ‘group of persons’. A collective case filed in the name of village residents regarding the property of village or various members representing particular sections, class, caste or a bunch of people is applicable in this law.<sup>6</sup>
- The parties must have same interest in the suit- The interest of the parties must be same or there must be a common grievance of all the parties for which they seek to get redressed in the court of law. “In *Duke of Bedford v. Ellis*<sup>7</sup> , Lord MacNaughten elucidated that “given a common interest and common grievance a representative suit was in order if the relief sought was in its nature beneficial to all whom the plaintiff proposed to represent”. This explanation was included after the Amendment Act of 1976 and which clearly stated that, the persons must have ‘same interest’ but not certainly the ‘common cause of action’ and it need not arise from the ‘same particular transaction’. So, regardless of whether the grieved parties are having a alike source of action or not in the same transaction, a case under Order 1, rule 8 practicably be initiated when each and every party is having common interest”.<sup>8</sup>

“In the landmark case of *T.N. Housing Board v. T.N. Ganapathy*<sup>9</sup>, there were some residential buildings which were allotted by the Housing board to the applicants who belonged to the low income group. After the settlement of price, the board started demanding in excess. The people who were the grieved party challenged the demands made by the board by filing a representative suit. So, the board contended that the representative action suit was not

<sup>3</sup> criminal liability for misstatements in a prospectus

<sup>4</sup> civil liability for misstatements in a prospectus

<sup>5</sup> punishment for fraudulently inducing persons to invest money

<sup>6</sup> ‘*Hasanali v. Mansoorali*’; AIR 1984 PC 66

<sup>7</sup> [1901] AC 1

<sup>8</sup> *T.N. Housing Board v. T.N. Ganapathy* ; (1990) 1 SCC 608

<sup>9</sup> (1990) 1 SCC 608 : AIR 1990 SC 642

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maintainable as separate demand notices are provided to the allottees and so there is separate cause of action. The Apex Court after dismissing this contention of the board decided that all the parties to the suit have same and common interest so, the suit was maintainable.”

- The bench must accord and circulate regulations- This is one of the essential conditions in filing of a representative suit. The bench is having discretionary power permitting an individual to file a suit in representative capacity and for that the bench must be satisfied that there is common interest between the parties.
- A Notice has to be issued to the particular parties who are interested parties in the representative suit- The bench is bound to issue notice to the people interested in the suit and provide them information regarding suit so that they may seek for turning out to be litigant in the lawsuit.

In this way, a judgment pronounced by the bench in the representative suit is obligatory on every party of the case, whatever the case is.<sup>10</sup>

Under Code of Civil Procedure, there's also a different provision in regards of the class action other than rule 8 of order 1. Under Section 91, a suit can be instituted by two people or numerous individuals by authorization of bench for a pronouncement and order or some type of aid in opposition to any illegal act which is having adverse effects. So, a case can be filed under this even though there's no extraordinary injury being done to such people due to these unlawful acts.

#### Objective:

To save cost and time of the court as well as parties and to make sure that there's a single case in which various parties are intrigued and to keep the parties away from badgering by multiplicity of suits.<sup>11</sup> To keep away from filing of cases on a specific similar dispute, Order 1 rule 8 has been implemented.<sup>12</sup>

#### **CONSUMER PROTECTION ACT, 2019**

“*The Consumer Protection Act, 2019*” was informed to general public by Government of India, in official Gazette in an official notification on August 9, 2019. And on July 20, 2020, with the notification by the Government of India “*The Consumer Protection Act, 2019*” came into force and now, the previous act which is “*The Consumer Protection Act, 1986*” stands repealed.

This concept has been incorporated in the consumer protection laws to allow the group of

<sup>10</sup> Order 1 Rule 8(6), Code of Civil Procedure, 1908.

<sup>11</sup> *Lingam Ramaseshayya v. Myneni Ramayya* ; AIR 1957 AP 964

<sup>12</sup> *Kodia Goundar v. Velandi Goundar* ; AIR 1955 Mad 281

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consumers to jointly file a complaint if they have a common interest. And under this act, the definition of consumer is not confined to Indian citizens only.

The Consumer Protection Act provides remedy on customer disputes by building a quasi-judicial body at local, state and national level which are known as:-

- *District Forum*
- *State Consumer Dispute Redressal Commission (SCDRC)*
- *National Consumer Dispute Redressal Commission (NCDRC)*

Section 12(1)(c) of the Consumer Protection Act, 1986 permits, a consumer , the state government or the central government , any willful association registered under law, or numerous customers who have similar concern can institute a litigation at the lowest local forum which is at district level, for any goods which are traded or conveyed or are consented to be delivered. Such grievance can be instituted in the district forum.

In the latest consumer protection act, 2019, the District Commission shall have jurisdiction to entertain complaints where the value of the goods or services paid as consideration does not exceed INR 1 crore.

Other than District Forum, grievance can directly be made to:-

- State Consumer Commission (SCDRC), if the estimated valuation of goods and services or the remuneration is between INR 1 Crore to INR 10 Crore.
- National Consumer Commission (NCDRC), if the estimated valuation of goods and services or the remuneration is exceeding INR 10 Crore.

In the Consumer Protection Act, 2019, under section 2(5)(v) it is defined under the definition of a complainant as “*a complainant can means one or more consumers, where there are numerous consumers having the same interest.*”

Similar to Section 12 of Consumer Protection Act, 1986, the Consumer Protection Act, 2019 also have provisions regarding the collective suit.

Under Section 35(1)(c) of the Consumer Protection Act,2019, a suit can be instituted in respect of the goods which are traded or conveyed , or are consented to be conveyed and assistance granted or are consented to be granted, in district forum, by numerous customers who have a common regard with the authorization of district forum , or for the benefit of, or on sake of all the consumers as interested.

In a major development of class action suits, in year of 2015, the union of India initiated legal proceedings against Nestle India Ltd, for ‘Maggie Noodles’ in National Consumer Redressal Commission<sup>13</sup>. It was a class action suit, as it was filed for the benefit of the consumers claiming remuneration of around INR 6.4 Billion on part of false and misleading advertisements, unfair trade practices, etc. This complain was a ray of hope and opened up doors for the class action and collective action suits under the ‘Consumer Protection Act’ by the consumers who have similar concern.

“The case of *Ambrish Kumar Shukla v. Ferrous Infrastructure Pvt Ltd.*<sup>14</sup> is a Landmark case in which the question of legitimacy or a class action suit or collective suit was raised in front of NCDRC; in this case, it was held that:

- A complaint on sake of or for the benefit of individuals having same interest and are seeking relief from the same person can be instituted under Section 12(1)(c) of Consumer Protection Act, 1986.
- The value of goods purchased and services rendered or the damages claimed must exceed INR 10 Million, then the complaint can be filed directly in NCDRC.
- The court must be aware of every minute detail in taking any matter of collective suit or class action suit in hand if it fulfills the need under section 12(1)(c) of the Consumer Protection Act, 1986 read with Order 1 Rule 8 of CODE OF CIVIL PROCEDURE, 1908.”

The decision of NCDRC in Ambrish Kumar Shukla case was upheld and re-affirmed respectively by apex court in *Rameshwar Prasad Shrivastava v. Dwarkadhis Projects (Pvt.) Ltd.*<sup>15</sup>

“In another case of *Anjum Hussain & ors v. Intellicity Business Park Private Ltd. & ors*<sup>16</sup>, an application was filed by all the buyers under section 12(1)(c) against the builders. The application was dismissed by NCDRC. The appellants than filed an appeal against the order of NCDRC in the Apex Court, the appeal was allowed by the court. While observing the matter in hand, the apex court held that NCDRC overlooked the earlier judgments made by Apex court and failed to give the correct judgments and hence the NCDRC order is set aside and the application is maintainable under the court of law.”

<sup>13</sup> *UOI v. Nestle India Ltd.* ((2015) SCC OnLine NCDRC 4797)

<sup>14</sup> (2016) SCC OnLine NCDRC 1117

<sup>15</sup> (2019) 2 SCC 417

<sup>16</sup> (2019) 6 SCC 519

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In respect of provisions associated to collective action litigation, similarity in both acts i.e. Consumer Protection Act, 1986 and Consumer Protection Act, 2019, the provisions will remain same.

Under Consumer Protection Act, 2019 an executive agency Central Consumer Protection Authority ('CCPA)<sup>17</sup> is being established which will help in promoting and protecting the rights of consumers in class action suits and will help in initiating the suits and demanding the refunding for the products.

Filing of a complaint by numerous consumers is not an ordinary practice in India. But in recent trends class action suits are escalating and are seen as an efficacious tool as when there are a numerous complaints regarding the same matter against a same person by different parties sharing common interest, this burdens the work of court, so the class action suits are an effective way to deal with such issue as it will help in reducing the multiplicity of the matter having same cause of action. This will save the time of the court as well as the cost of parties in filling suit. It is being explored as the effective and best way to reduce the numerous numbers of cases having same cause of action and lessen the burden upon the court.

## **THE COMPETITION ACT, 2002**

The Competition Act, 2002 was brought into force “*inter alia* with the objective of curbing anti-competitive behaviour which causes appreciable adverse effect on competition in the Indian market, to ensure a fair competitive environment”<sup>18</sup>. The preface of the Act provides “*that it intends to promote and sustain competition in the markets, to protect the interest of consumers and to ensure freedom of trade carried on by other participants in the market.*”

The Act provides with penal provisions through which the Competition Commission of India (CCI) ensures compliance with legal provisions. The Act also provides the parties with various mechanisms to get compensated for the damages that they have suffered due to anti-competitive actions of the other party.

Sections 53-N, 53-Q and 42-A of the Act recognises “the need to compensate parties for loss or damage caused as a result of anti-competitive behaviour”. These sections enumerate the mechanism of class action suit so that numerous parties who were affected by anti-competitive behaviour can get compensation as form redressal. Where numerous individuals having the

<sup>17</sup> Section 10(1) Consumer Protection Act, 2019.

<sup>18</sup> Recital 3 to the Statement of Objects and Reasons, Competition Act, 2002

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same interest have endured damage because of anti-competitive conduct of an organisation, such person(s) can make an application of a class suit to the Competition Appellate Tribunal (COMPAT) to recover the damages that they have suffered<sup>19</sup>.

However considering that Competition Law is still a developing concept in India, these provisions remain mostly untested till date. The sole case involving the provisions is between **National Stock Exchange (NSE) and MCX Stock Exchange (MCX-SX)**<sup>20</sup>. But that matter also remains *sub judice*<sup>21</sup>.

Presently, the powers of Competition Appellate Tribunal (COMPAT) is vested in National Company Law Appellate Tribunal (NCLAT)<sup>22</sup>, the NCLAT now has original jurisdiction to hear applications of class action suit filed under this act. Such application can be made by the central government, the state government or any individual or enterprise. Under Section 53 (N)(1) of the Act, once such an application is filed, the Tribunal will conduct an inquiry and will award compensation to the aggrieved party based on the same. Under Section 53T of the Act, an appeal can be made in the Supreme Court on any decision taken by the Tribunal.

## **PUBLIC INTEREST LITIGATION**

"Public Interest Litigation" or "Social Interest Litigation" (PILs) is mainly instituted either by the court *suo moto*<sup>23</sup> or by any individual who fight for the group people. PILs are lodged against the state or public authorities in the High Court under Article 226 and Apex Court under Article 32 of the Constitution of India 1950.

Through various judicial precedents it has been held that the technical rules of CrPC regarding PILs can be relaxed so as to safeguard the socio economic rights of people especially the minority and poor. Accordingly, the theory of *locus standi*<sup>24</sup> has allowed group of people who have not individually suffered any legal injury due to any unlawful act to initiate the case against the same. In landmark case of **Fertilizer Corporation Kamgar Union v. Union of India**<sup>25</sup> Justice Krishna Iyer held that "*there was no need to strictly adhere to the principle of*

<sup>19</sup> Section 53N(4), Competition Act ,2002

<sup>20</sup> MCX Stock Exchange Ltd. v. National Stock Exchange of India Ltd., 2011 SCC Online CCI 52

<sup>21</sup> Not yet judicially decided

<sup>22</sup> As per an amendment made in 2017

<sup>23</sup> on its own motion

<sup>24</sup> Legal right to appear before the court.

<sup>25</sup> 1981 SCC (1) 568

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*locus standi and a broader, holistic picture needs to be taken so as to enable them to examine and adjudicate upon grievances of the public at large or issues involving public interest”.*

In the recent times the scope of PILs has expanded to incorporate issues related to the rights and privileges of the poor and issues that influence community *in rem* such as matters related to ecological issues, corporate scams etc.

Various important cases in the historical backdrop of PILs in India are:

- ***MC Mehta and Anr v Union of India and Ors***<sup>26</sup> - In this particular case the Apex Court of held that the Article 32 of the Indian Constitution has formed a constitutional commitment on the court of law to preserve the Fundamental rights of the citizens. Hence, under this interpretation it is the courts duty to protect and safeguard all those who come under Article 32 from any wrongdoings.”
- ***Bandhua Mukti Morcha v Union of India & Ors***<sup>27</sup> - In this case, the Apex Court, opined that, where an individual or group of people to whom legal injury has been caused due to the infringement of a fundamental right and the person cannot approach the court due to reasons such as poverty, disability or a socially or economically disadvantaged position, any person from the general public with bonafide intentions can apply to the court for relief, and seek help for infringement of its fundamental rights.
- ***State of Uttarakhand v Balwant Singh Chaufal and Ors***<sup>28</sup> - In this , the Apex Court held that:

*"According to our opinion, the public interest litigation is an extremely important jurisdiction exercised by the Supreme Court and the High Courts. The courts in a number of cases have given important directions and passed orders which have brought positive changes in the country. The courts' directions have immensely benefited marginalized sections of the society in a number of cases. It has also helped in protection and preservation of ecology, environment, forests, marine life, and wildlife and so on. The courts' directions to some extent have helped in maintaining probity and transparency in the public life. This court while exercising its jurisdiction of judicial review realized that a very large section of the society because of extreme poverty, ignorance, discrimination and illiteracy had been denied justice for time immemorial and in fact they have no access to justice. Predominantly, to provide access to justice to the poor, deprived, vulnerable, discriminated and marginalized sections of the society, this court has initiated, encouraged*

<sup>26</sup> AIR 1987 SC 1086

<sup>27</sup> AIR 1984 SC 802

<sup>28</sup> 2010 3 SCC 402

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*and propelled the public interest litigation. The litigation is upshot and product of this court's deep and intense urge to fulfill its bounden duty and constitutional obligation."*

***Key dissimilarities between class action suits and PILs are:***

- 1) Class action suits could be instituted against any organisation; including private ones on the other hand PILs are instituted only against the state or governmental or public authorities.
- 2) It is necessary for the plaintiff to personally suffer some injury to form a collective suit whereas under PIL, the plaintiffs are not necessarily to go through any harm due to any malpractice introduced in the suit. PIL can also be filed against SEBI and Ministry of Company Affairs (MCA).

**CONCLUSION:**

Perhaps the greatest criticism for filing a collective suit is large fees for attorneys who normally charge contingency fees<sup>29</sup> that leave with very small amount of money for the class holders. In India, it is possible to bring civil claims under CODE OF CIVIL PROCEDURE if there's a common concern between the parties (same as the US). In other words there is no such thing as a plaintiff bar. So, Lawyers in India don't find it as worthy to file such suits as there is no necessity or assurance that they can retrieve the money or gain any profit in the case even after paying for all the charges they have suffered in the suit. While under the Indian Legal system, it can be seen that after the ending a case, the loss is always remunerated by the party who lost the case to the party who has won the litigation. So, therefore in collective lawsuit or class action litigation it is a menace for the one party who is initiating the suit as in case when the party lose the lawsuit, the losing party is not only losing the case but the party has to bear the monetary remuneration of the winning party. This is one of the foremost reason that class action regime is not gaining popularity and is being used as a tool in India as the parties are at very risk of giving up on their money in such suits which is not same as condition of class action lawsuits in the US and various other nations as well.

Having said that, one cannot deny that the intention of the legislature in bringing this law is good. Class activities suits, in India, if it is implemented properly will be profoundly helpful to shareholders to get redressal against all the malpractices of companies and organizations.

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<sup>29</sup> a higher percentage of award money

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