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ANALYSIS OF CLASS ACTION LAWSUIT **UNDER INDIAN LAWS.**

SUBMITTED BY - Ms. MAARIA LAKDAWALA(A017)

YEAR: BBA-LLB 3rd YEAR, SEMESTER-VI, BBA LLB [HONS.]

THE SVKM'S NMIMS, NAVI MUMBAI KIRIT P. MEHTA SCHOOL OF LAW

DECLARATION

I, **Maaria Lakdawala**, hereby declare that the paper titled 'Analysis of Class Action Suits under Indian Law' submitted to the Kriti. P. Mehta, School of Law represents my original work and has not been previously submitted for academic or publishing purposes. Furthermore, this paper represents my own opinions and conclusions. The materials/sources utilized in this paper are given their due credit.

ACKNOWLEDGEMENT

I would like to express my deep and sincere gratitude to Prof. Shreya Madali, who guided me throughout the whole process of writing this paper. I Thank Ma'am for giving me an opportunity to research on the present topic and for answering any doubts or queries I have had throughout the course of this research.

Thank you,

MAARIA LAKDAWALA A017.

ABSTRACT

This Research paper solely focuses on the topics of Class Action Lawsuits in accordance with Indian Companies Act 2013. This Research paper also aims to understand the need for Class Action Lawsuits, limitation in the statute and landmark case law namely "Satyam Scam" that have marked class action lawsuits to prevail as an emerging and prevalent lawsuit in Indian Legal Systems. Due to limitations the topics are not elaborated but portrayed in a format as such any prudent man can interpret. This paper also cite some secondary sources, journals and looks into the background of these laws to gain a better understanding.

RESEARCH OBJECTIVE

- To understand the need for Class Action Lawsuit and analyse limitations if any in the statute.
- To look briefly into the remedies available for Class Action Suits in India.

RESEARCH QUESTIONS

- Are Class Action Suits necessary in the Indian Judicial System?
- What was the issue and aftermath of Satyam Scam?
- Are there Remedies Available in various Acts for Class Action Suits?

CHAPTER 1: INTRODUCTION

The concept of Class Action Suit although a familiar concept in western states such as US and UK is a fairly new concept inculcated in Indian Law. Class Action suit refers to a lawsuit where one single plaintiff or several other plaintiff join hands together to move forward with a law suit as a class on behalf of a larger group. Here the settlement or judgement awarded or decided upon is divided among the members of the lawsuit equally. The concept of Class Action Lawsuits was introduced in Sec 245 of Companies Act 2013 which defines “*specialised classactions*” in Chapter XVI pertaining to "Prevention of Oppression and Mismanagement". by shareholders and depositors of a company to the Indian regulatory system, and is anticipated to have a far-reaching impact on the utilisation of class actions as an effective remedy under the Indian legal regime.

Section 37 of the Companies Act additionally includes a separate framework for a "securities class action." For a false statement or the inclusion or omission of any matter in a company prospectus, a lawsuit (or any other action) can be filed (or any other action can be taken) under this section. Any person, group of persons, or organisation of persons harmed by the statement/inclusion/omission can file such an action.

Although collective or class action suit is not a sought-after remedy in India, the notion of class action can be found in the Code of Civil Procedure, 1908, in the forms of representative suit under Order 1 Rule 8 and Public Interest Litigation under article 32 and 226 of the Indian Constitution before the High Court and Supreme Court respectively, each with its own set of

limitations.

The history of class action suits in India may be traced back to the Satyam case, but the Companies Act of 2013 provided formal recognition. Because there was no provision under Companies Act, 1956, the shareholders were unable to make a claim. The section 245 of the Companies Act, 2013, is examined in depth in this research. The majority of the provisions of the Companies Act were derived from the United States and the United Kingdom, including class action lawsuits. Thus, the goal is to analyse landmark case law and see regulation in regard to class action suit in India.

CHAPTER 2: NEED FOR CLASS ACTION SUITS – ANALYSIS OF SATYAM SCANDAL¹.

Summary: India's largest corporate fraud was the Satyam Computer Services Scam². Satyam Computer Services' founders and directors cheated the company by falsifying accounting, inflating the stock price, and stealing enormous sums of money. It's all about corporate governance and fraudulent auditing methods with the help of auditors and chartered accountants. The corporation falsified its financial statements to its board of directors, stock exchanges, regulators, investors, and other stakeholders.

Facts- Satyam Computer Services Limited was India's 4th largest information, communication, and technology corporation. It was known as "IT Crown Jewel of India". It was founded in 1987 by the Raju Brothers, The company's clients were distributed across India and the United States. The corporation was listed on the National Stock Exchange, the Bombay Stock Exchange, and the New York Stock Exchange. The company operated on a global level and it was incorporated in more than 55 countries with more than 30,000 employees who served more than 500 companies of the corporation. Out of 500 companies, 150 companies constituted a part Fortune 500 companies The economy was affected by the 2008 recession this resulted in a decrease in property prices his last chance to preserve SCSL and close the difference between actual profits and manipulated profits in the company's books of accounts. He decided to purchase Maytas Properties and Maytas Infra, believing that this was the only way to get out of the situation and mitigate the deception he had perpetrated. The transaction was designed such that the companies

¹ M/S Satyam Computer Services vs. Directorate of Enforcement 2018 Writ Petition No 37487 of 2012.

would be purchased solely on paper, with no actual financial transaction, resulting in a balance of the amounts already recorded in the books of accounts. SCSL's board of directors decided and sanctioned the acquisition of enterprises without shareholder approval. The issue arose once more when the purchase angered investors, resulting in a sharp drop in the company's stock price. SCSL was also the subject of a lawsuit, which resulted in a 55 percent drop in its stock on the NYSE.

Satyam's board of directors convened a meeting to discuss a proposal to buy Maytas Properties and Maytas Infra Limited. It was a related party transaction because the promoter's family owned 30% of the Maytas company. The move was opposed by the company's shareholders, and the stock price dropped. The mounting pressure was the final nail in Mr. Raju's coffin, and he admitted to manipulating books of accounts and committed fraud in front of the Securities Exchange Board of India.

It was determined that Matyas' acquisition was used to conceal a previous financial crime in which Satyam inflated profits. Thus, the price of the stock fell from 304.80 to 54.05 Rs in less than two months. And eventually fell to Rs. 11.50 compared to Rs. 544 in 2008. Additionally the house of his younger brother Raju was raided and 112 sale deeds for purchasing various different lands and 13,000 fake records of employees were recorded which amount to an estimated scam amount of Rs 7800 crores which accumulated to be an estimated Rs 12,320 fiasco. The scam had international repercussions which led to a drop in companies share price by 5-15% and Sensex falling by 7.3%.

Also, Prince Water Coopers India failed to detect the fraud of financial accounts. Also, Satyam had given incentive to PWC India to get the required treatment. They contested that failure was due to mis information and mis management.

“Fake customer identities, false invoice¹ were created to inflate the revenue amount. Also, the board resolution was molded and loans were issued by illegal means. Even the money, which was received from the American Depository Receipts were not shown in the balance sheet”².PWC India overlooked 1.4 billion dollar, which was claimed by the company to be in

² Madan Lal Bhasin, ‘Corporate Accounting Fraud: A Case Study of Satyam Computers Limited’ [2013] OJA26.

its balance sheet as “non- interest bearing”. This conduct of PWC raised question as to whether it was involved in the scam³.

As a result, the company's shareholders incurred a significant loss. Additionally “We do not have the infrastructure to deal with such kind of petition CBI and CLB (are) already seized with the matter”. When the appeal was made before Supreme Court, the decision was same.

The hit on India’s stock market was enormous and action for recovery was plunged into action by the Government. A new board was appointed with a primary and singular goal to sell the company in 100 days.

Winning bid was placed by Tech Mahindra who acquired 51% company stakes and bought out the company for 1/3 its price before the scam hit the news.

Issue: According to PWC and Satyam Computer, India has the territorial jurisdiction for hearing the lawsuit and claiming forum non conveniens. As a result, the question of whether India was eligible for an investor class action arose, as well as whether Indian laws could deal with such a measure.

Judgement: Hon’ble Supreme Court held that because of provisions mentioned in the SEBI Act, 1992 and the Securities and Contract Act, 1956, India was not eligible for a class action suit for the following reasons: it was not possible in India due to provisions listed in the SEBI Act, 1992 and the Securities and Contract Act, 1956. Suit had no scope of representation. Representative action is merely a procedural remedy available under the CPC under Order 1 Rule 8. When there is a bar established by a statute, there is no right to suit. If the representative litigation was successful, a new issue of award enforceability arose. How will an investor who is not a party make the claim enforceable? The Indian judicial system has rejected the investor's claims, citing a lack of provisions to deal with such matters.

Settlement: “Whereas, in United States, a sum of 125 million dollar was paid compensation by Mahindra Satyam who reached a settlement with SEC to reimburse united state investors”⁴. “The

³ Varottil Umakanth, ‘Evolution and Effectiveness of Independent Directors in Indian Corporate Governance’ Hastings Business Law Journal, Vol. 6, No. 2, p. 281

⁴ ArjyaMajumdar, ‘Class action suit – Genesis, Analysis and Comparison’ [2014] HNLJ 23

US regulators yesterday fined the software firm and its auditors Price Waterhouse India up to USD 17.5 million for the accounts manipulation that went undetected for several years. The company also paid USD 70 million to the UK-based company, Upaid Systems Ltd in 2009 for settling another suit, filed in 2005, accusing Satyam Computer of fraud and forgery. ⁵

“Tech Mahindra, which overtook Satyam, was directed to settle all pending litigation with the investor, who had claimed loss because of depreciation in the value of share.”⁶

Whatever the case may be, the question remains: where does this leave Indian shareholders? They've been taken on a royal tour, to say the least. They couldn't bring class action lawsuits since Indian law didn't allow it at the time; however, Section 245 of the Companies Act, 2013 now allows it.

Tech Like any other suitor in an M&A deal, Mahindra pressed its advantage, offering one share of its business for every 8.5 Rs per Satyam shares. It was a double whammy for Satyam's regular Indian stockholders, but they couldn't amidst no judicial alternative.

CHAPTER 3: REMEDIES AVAILABLE FOR CLASS ACTIONS

The primary institution for launching a class/collection action differs depending on the type of claim and the applicable governing statute.

Actions taken in accordance with the CPC: Concerned persons can take actions under Order 1, Rule 8 of the CPC before a court by asking authorization from the court or following the court's direction. The action must be filed in a court with the necessary geographical and monetary jurisdiction. While geographical jurisdiction is dependent on (among other things) the cause of action and/or the locations of the defendants, pecuniary jurisdiction is based on the lawsuit's value, which varies among Indian states.

Representative actions under Civil Procedure Code⁷: Order 1, Rule 8 of the CPC contains provisions governing the filing of representative actions. Under this regulation, an individual or a group of individuals can file a lawsuit on behalf of everyone who is interested in the case's

⁵ Read more at:

https://economictimes.indiatimes.com/tech/software/sec-settlement-in-best-interests-of-shareholders-satyam/articleshow/7883857.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

⁶ Companies Act 2013, s 241.

⁷ 1908

subject matter. However, in order to file a lawsuit, the following requirements must be met:

- The representative action must include a large number of parties.
 - All parties must be interested in the same issue (commonality of interest).
 - Only with the authorization of the court may the action be continued.
 - When a court grants permission, the court is required to notify all interested parties.
-
- Unless all interested parties are given notice, no part of the action can be withdrawn or a compromise recorded.
 - If the person suing or defending in a representative capacity fails to act diligently, the court may substitute any other person with a similar interest in the representative action in his or her place.
 - As a result, a court's decision in a representative action is binding on all parties on whose behalf or for whose benefit the suit was filed (or defended, as the case may be) (Order 1 Rule 8(6), CPC).

The CPC has another provision dealing to collective action in addition to Order 1 Rule 8. Section 91 allows two or more people to file a lawsuit with the court's approval, seeking a declaration and injunction or any other type of relief against a public nuisance or other wrongful act that affects or is likely to affect the public. Even if no exceptional damage has been caused to such persons as a result of the public nuisance or other wrongful behaviour, such an action can be launched.

Class action cases filed under the Companies Act⁸: must be filed with the National Company Law Tribunal, according to Section 245(1) of the Companies Act (NCLT). The NCLT and National Company Law Appellate Tribunal (NCLAT) were established on June 1, 2016, by the Ministry of Corporate Affairs (MCA) to execute and fulfil the powers and functions conferred on it by the Companies Act. The MCA also notified section 245 of the Companies Act⁹ on the same day. The MCA also notified the National Company Law Tribunal Provisions¹⁰ and the National Company Law Appellate Tribunal Rules¹¹, which contain pertinent rules relating to class actions under section 245¹² after establishing the NCLT and NCLAT.

⁸ 2013.

⁹ 2013

¹⁰ 2016

¹¹ 2016

¹² Companies Act 2013.

Actions taken in accordance with the Consumer Protection Act¹³:

- A complaint under the Consumer Protection Act can be brought before the following authorities, depending on the claim's value:
- Forum for the District (for claims of up to INR2 million). By notification, the state government establishes a consumer dispute resolution forum in each district of the state.
- Commission of the State (for claims of between INR2 million and INR10 million). By notification, the state government established a Consumer Disputes Redressal Commission in the state.
- Commission Nationale (for claims of more than INR10 million). The Consumer Disputes Redressal Commission was created by notification from the central government.

Actions under the Competition Act¹⁴. Applications made under section 53(N)(1) of the Competition Act must be filed before the Competition Appellate Tribunal¹⁵ (COMPAT).

Specialised class actions for securities litigation under the Companies Act¹⁶.

A provision relating to class action securities litigation has been introduced into the Companies Act by section 245¹⁷. The notion of specialised class actions by shareholders and depositors of a firm is introduced to the Indian legal environment under Section 245. The JJ Irani Committee advocated the introduction of a notion of representative action that can be commenced by one shareholder on behalf of one or more other shareholders, based on the assumption that they would all have the same locus standi to take action against an erring firm. Section 245 expands the definition of "prevention of oppression and mismanagement" by granting the ability to initiate a class action lawsuit to both: Shareholders of a company and Depositors.

Section 245 of the Companies Act¹⁸ also allows a company's members or depositors to sue a professional/expert/advisor for, among other things, making any false or misleading statements to the company, or for any fraudulent, unlawful, or wrongful acts or conduct, or any likely acts or conduct on his part. The inclusion of the firm's auditors and consultants, as well as the

¹³ 1986

¹⁴ 2002

¹⁵ 2009

¹⁶ 2013

¹⁷ (Chapter XVI of the Companies Act, which deals with "Prevention of Oppression and Mismanagement").

¹⁸ ¹⁹ 2013

corporation and its management, within the scope of the class action suit gives stakeholders even more authority to pursue action against such individuals for specific wrongdoings. This clause is designed to ensure that a company's specialists, consultants, and auditors behave with caution and diligence before recommending the company's management. The provision is also (to a degree) a result of the Satyam fraud.

A "securities class action" is also allowed under section 37 of the Companies Act¹⁹. Any person, group of persons, or association of persons impacted by any deceptive statement or the inclusion or omission of any matter in the prospectus may file a lawsuit or take any other action under the following provisions:

- Section 34 (criminal liability for misstatements in a prospectus).
- Section 35 (civil liability for misstatements in a prospectus).
- Section 36 (punishment for fraudulently inducing persons to invest money).

A minimum number of members required to file such a suit/alternative action has not yet been prescribed.

- Section 37 has been notified and is currently in force.

CHAPTER 4: REVIEW OF LITERATURE

CHAPTER 4 A: Consumer Class Actions: A Comparative Analysis of Legislative Proposals²⁰ - Stanley F Rose.

This Research paper elaborates on the legislative policies regarding consumer class action suits in regard to the United States of America. The paper looks into the change of policy and amendment carried out in the Federal Rules of Civil Procedure amended in 1966. The paper has elaborated how the amendment has procedural advantage and how aggregation of claims helps in disembarking evils of society such as disparity, poor litigation for certain classes, pendency of multiple similar suits burdening the court etc. The paper has special focus on Rule 23 which enables the provision of lumping class action suits in a single suit instead of separate duplicate litigations. The paper also distinguishes between anti-trust law and securities law in areas of private and governmental action through analysis of proposed legislation, one of the major

¹⁹ 2013

²⁰ The Journal of Consumer Affairs Vol. 5. No.2 (Winter 1971), pp. 140-153
Published By: Wiley

concerns highlighted is that in anti-trust law and securities law a private action as well as a government action can be brought however this legislation does not seem to recognise the necessity for private consumer action. The paper adequately highlights the point that a customer essentially only can rely on the Federal Trade Commission or the Justice Department as the only remedy which in my opinion is a limitation on consumer rights of private redress in case of grievances.

The paper has an elaboration of the eleven types of executive bills proposed. The paper has also looked into how the final bill can be strengthened. Furthermore the paper has suggested comparisons of previous bills to new proposed class action bills to ensure clarity. The paper has also looked into how class action bills were at times a low priority for the congress at the time and subsequent consequences have also been highlighted adequately.

CHAPTER 4 B: Governance and Legitimacy in the Law of Class Actions²¹ - Samuel Issacharoff

This Research Paper highlights two very prevalent and important issues- 1- the ingredients necessary for class action to the prosecution of perceived group harms as well and -2- under what terms and who shall be the one to control such class actions. This paper in my opinion has attributed to the importance of how class actions should be disaggregated and how it requires doctrinal and theoretical sensitivity to study the field of class action suits. The analysis of Hobbes, Locke and Montesquieu theory in this paper give an outlook of various forms of governance to identify the issue of legitimacy. Very crucial points highlighted regarding class action suits is that these actions are an effort of the congress to discipline individualized members so they be taxed and reach a collective consensus and award or settlement of same shall be distributed equally and same has been reiterated by the Supreme Court in *Amchem*. The paper analyzes this theory in full depth. Furthermore the analysis of the consequences of non-participating litigants and disregarding collective action would not lead to a bright line test for structure of class action administration is a limitation in my opinion as the opposite of non-participant would lead to mandatory participation in class actions and eventually would lead to an abuse of such suits.

²¹ The Supreme Court Review Vol. 1999 (1999), pp. 337-392
Published by : The University of Chicago Press.

CHAPTER 4 C: Control of conflicts of Interest in Class-Action Suits²² - Lewis A Kornhauser.

This Research paper analysis the set of legal rules that have arisen as conflict in class action suits against an attorney of such suit in relation to the individuals he represents. This paper has adequately highlighted the remuneration and behaviour of attorney in such class action suits, members in an class action suits usually don't have enough stake in suits to personally monitor suits and their interest in such suits and this can lead to abuse of power on the attorneys and as the markets for class action suits in not well developed, these circumstances eventually leads to poor choice of representatives for class action suits. This papers analysis on the court procedure for approval of proposed settlements is iterated in 4 steps all of which are ambiguous in nature and propose in a vague manner to reach acceptable settlement to an extent these classactions are characterized as economies in scale of litigation. The three areas of problem i.e parties are 1- lawsuits are lumped together in a single suit resulting to binding of parties 2- class actions are traditionally settled instead of litigated however due to the less stake in suit there is often absence of parties resulting in inadequate settlement- 3- Attorney compensation is a difficulty faced because the funds to compensate representative are usually through successful litigation or settlement which poses as a problem of responsibility when suit fails. The paper covers limitations in administration of such class action suits by the representative, court as well as litigants.

CHAPTER 4 D: Mandatory Litigation Class Action: The only option for Mass Tort²³ - David Rosenberg

This Research paper aims to analyse the economic as well as administrative benefit of class action lawsuits. The four step model of binding parties, exploiting the scale of litigation economies courts should lump it in a single suit, to put the responsibility on the courts to assess aggregate liability and assessment of damages, the responsibility of the court to distribute damages should be assessed by relative strength of individual instead of the legal claims

²² Public Choice

Vol. 41, No. 1 (1983), pp. 145-175

Published by Springer

²³ Harvard Law Review

Vol. 115, No. 3 (Jan., 2002), pp. 831-897 (67 pages)

Published by – Harvard Law Review Association.

individually. The fundamental principle of the paper relies on the basis of that the welfare and utility of the people should be upheld and doing so maximise accidental costs. The paper looks into the principle that people would prefer ex-post over ex-ante, the logic being that people would be that courts would look into a major accidental claim and singular accidental claim in a different light for damages in a mass tort liability. The paper has referenced *Autonomy Peace, and Put Options in Mass Tort Class Actions* which specifically mentions the incentive of class members in class actions a parallel to mandatory mass tort class actions. The paper doesn't estimate or rather fails to mention how non-participating parties would affect if filed singular multiple suit and their remedies in such class actions.

CHAPTER 5 CONCLUSION AND SUGGESTION

The inculcation of Class Actions is a need of time in a developing capitalist state. It offers regulations, checks and balances for high scale scams and mis regulation without over burdening the courts with singular duplicate litigation. The CPA also establishes a clear procedure framework. The National Consumer Disputes Redress Commission previously declared that class actions that do not meet the criterion of a sufficient percentage of the class participating in the action would not be accepted. Furthermore, the CPA establishes a Consumer Class Action Panel (CCPA) to investigate class action cases for violations of consumer rights, unfair commercial practises, or false or misleading marketing before they are heard by the consumer forum. The statute of limitations for bringing various class actions is determined by the statute under which the class action is intended to be commenced. If the statute itself is silent on the time restriction for filing an action, the provisions of a specialised statute known as the Limitation Act 1963, which specifies time limits for various actions and suits in India, shall be relied upon. For any cause of action for which no specified period has been imposed, the Limitation Act sets a maximum period of three years. Sections 245 and 37 of the Companies Act do not impose a limitation period on class actions. A class action has a two-year statute of limitations under the CPA. It's also worth noting that Indian courts have the discretion to forgive delays, and a class action can sometimes be heard after the statute of limitations has expired if good cause is demonstrated. This clause is designed to ensure that a company's specialists, consultants, and auditors behave with caution and diligence before recommending the company's management. The provision is also (to a degree) a result of the Satyam fraud.

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