Emergence of Class Action Law Suit in India: Empowering the Powerless

Dr. KiranRai
Associate Professor, School of Law, Galgotias University, India

Abstract

Company Law in India is in transition stage. The prime focus is to bring accountability by ways of disclosures and penalty. Apart from creditors, shareholders and depositors have valuable participation in the finances of a company. Incorporation of class action suit is a revolutionary step towards empowering the shareholders and depositors of the company. Its objective is to instill confidence in citizens to invest in a company’s business as it is a tool in their hands to keep a check on the management and penalize them for their misdemeanors. Also it stretches the accountability from management to people working in close association with management in case of fraudulent practices. This paper analyses the relevance of class action in its present form and suggests the improvements required to make it more effective in delivering justice.

Key Words: Class action Law Suit, Shareholders, Management, Accountability, Class Counsel

Introduction

Satyam Computers Ltd. brought a glaring difference in the relief given to the shareholders of the same company, only differentiated by nationality. With RamalingaRaju’s confession, Satyam Computer’s share price nose-dived, leaving aggrieved shareholders, both in India and US. Satyam and PriceWaterhouse Coopers paid to US shareholder $ 125million and 25.5million respectively, in a class action suit but got away paying nothing to the wronged Indian Shareholders. India’s Enron left Indian shareholders bleeding in absence of class action suit. Their claims were rejected at all forums; from National Consumer Disputes Redressal Commission to the Supreme Court.

Representative Action is not new to Indian companies but incorporating Class Action in New Companies Act has made it more specific in terms of relief available to a particular aggrieved class in seeking justice, which would have been otherwise difficult and costly affair in their individual capacity. This provision is a deviation from the usual principle of litigation as it recognizes plaint on the basis of the nature of grievance and not according to the parties to the plaint. Here the plaintiffs are large in no. seeking reprisal for the same complaint against the common defendant/s. Looking at the common interest of different plaintiffs, instead of allowing them to approach a court in their individual capacity, this legislation allows them to come together and file a single plaint collectively. This not only helps public at large but also saves court’s time by avoiding filing of and dealing with multiple plaints similar in nature.

Seeking justice under criminal justice dispensation system has been equitable as State is one of the parties. Jurist never envisaged the challenges thrown up by the changed market condition where small frauds by big corporations would not be feasible to seek relief under usual civil procedure of claiming one’s right in individual capacity. The cost of litigation supersedes each individual claim of little monetary value against multinationals or executive branch of Gov. causing deterrence in seeking justice.

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1 Apart from being listed on National Stock Exchange and Bombay Stock Exchange, Satyam Computers was also listed on New York Exchange where it traded through Satyam’s American Depository Receipt (ADR).
3 S. 399 of Companies Act, 1956.
4 S. 245 of Companies Act, 2013.
justice. This in turn encourages mighty corporations to continue their wrongdoings as these miniscule amounts (total damages done to that class, when added) give great profit to them. Hence in multiple civil cases of similar nature against a common defendant, through class action, court may exercise jurisdiction over the various individual claims in a single proceeding. This motivates the claimants/shareholders to come together and in turn acts as deterrent to the companies involved in fraudulent practices.

Though Class Action, being incorporated for the first time in Indian Legal system yet it has been extensively used by few countries, in particular US. Historically, the class action has served as a procedural device to enable courts of equity to render comprehensive decrees in litigation involving numerous individuals. It was common in medieval England but slowly died by 1850. But in US under Law of Equity, it was seeded in West v. Randall but became phenomenon when Equity Rule 38 became Rule 23 of the Federal Rules of Civil Procedure. Its success in US over a period of time has let other countries like few European Nations, Australia, Canada, Singapore and others to follow the pursuit.

US: Leading the way

In US, Class Action started as a call to law of equity but advanced as a sole means of justice to people with meager resources to take on more powerful entities. In the words of Former United States Supreme Court Justice William O. Douglas, "The class action is one of the few legal remedies the small claimant has against those who command the status quo." The success of class Action has travelled from Hansberry v. Lee to Apple’s e-books price-fixing class action lawsuit. US lawmakers have widely interpreted Rule 23 of the Federal Rules of Civil Procedure in providing relief by Class Action. In Califano v. Yamasaki, the respondent argued that language of statute clearly mentions "any individual" and hence class relief would be inappropriate as in Weinberger v. Salji. But Blackmun J. opined “The fact that the statute speaks in terms of an action brought by "any individual" or that it contemplates case-by-case adjudication does not indicate that the usual Rule providing for class actions is not controlling, where under that Rule certification of a class action otherwise is permissible. Indeed, a wide variety of federal jurisdictional provisions speak in terms of individual plaintiffs, but class relief has never been thought to be unavailable under them. Since the issues involved were common, question of law it was applicable in same manner to each member of the class and factual background had no effect on the outcome of legal issue, hence class action applicability was appropriate.

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6 Stephen C. Yeazell, Medieval Group Litigation to the Modern Class Action (Yale University Press, 1987).
7 29 F. Cas. 718 (R.I. 1820). In words of J. Story “It is a general rule in equity, that all persons materially interested, either as plaintiffs or defendants in the subject matter of the bill ought to be made parties to the suit, however numerous they may be.”
11 In making this argument, the Secretary relied on the language of the S. 205(g) of Social Security Act which authorizes suit by "any individual," speaks of judicial review of "any final decision of the Secretary made after a hearing to which the plaintiff was a party," and empowers district courts "to enter . . . a judgment affirming, modifying, or reversing the decision of the Secretary." This language, the Secretary said, indicates that Congress contemplated a case-by-case adjudication of claims under S. 205(g) that is incompatible with class relief.
12 422 U.S. 749, 95 S.Ct. 2457, 45 L.Ed.2d 522 (1975)
13 Full judgement available at: https://www.law.cornell.edu/supremecourt/text/442/682, last seen on 25/06/2015.
14 Ibid.
**Class Action in India**

Satyam Case showed the Indian policymakers the importance of Class action in empowering the shareholders. Indian courts refused to admit any case against the directors and auditor for claim of compensation by the shareholders whereas investors in US got relief of $125million and 25.5million respectively, from the same directors and auditors in a class action suit. Taking a lesson from this, a parliamentary committee recommended for class action as a relief to only shareholders and depositors way back in 2012, yet it has not been enforced. Reading section 245 of Indian Companies Act, 2013, which deals with class action, shows that it is still in very nascent stage. The idea to extend class action from shareholders to consumers has yet not seen the light of the day. For the first time in the history of Consumer Protection Act, 1986, Government of India filed the class action suit under section 12 (1)(d) against Nestle. Though State of West Bengal had successfully used this provision, against Coca Cola Co. in the year 2010 yet Central Gov. for the first time is using this power. But the development in the Nestle case explains well that government has not fully conceptualized the implementation of class action. US success story has not given confidence to Indian law makers to incorporate it full throttle in India.

**Table 1. Class Action in India and US: Comparative Analysis**

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<td></td>
<td>Prerequisites to a Class Action</td>
<td>One or more members of a class may sue or be sued</td>
<td>Difficult for single member of class to file for class action. Revised by including Minimum No. of person who may apply for such suit.</td>
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<td></td>
<td>Types of Dispute</td>
<td>Very Wide; involvement of any question of law or fact</td>
<td>Narrow; when the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors</td>
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16 Independent directors were not named as defendants. Class Action was only allowed against few Executive directors and auditors.
18 *Ibid*, at 16. The recommendation stated that “It has been felt that since creditors can enforce their claims through contracts/agreements with borrower companies, they may not be given statutory right for class action. On the other hand since depositors do not have any contractual rights and are mainly of unsecured nature, they are being proposed to be empowered with right to file class action petitions before Tribunal”.
19 National Company Law Tribunal has yet not become fully functional.
20 **THE CONSUMER PROTECTION BILL, 2015**
21 The Central or the State Government, as the case may be, either in its individual capacity or as a representative of interests of the consumers in general, files a suit claiming damages for them. This provision has been based on the doctrine of *parens patriae* which has its roots in English Common Legal System. This Latin maxim means that King/State has the inherent power and authority to protect its subject/citizen who are legally unable to act on their own behalf. For more, see https://www.law.cornell.edu/wex/parens_patriae, last seen on 16/8/2015
22 In fact: In first class action suit, boot may be on other foot now - See more at: http://indianexpress.com/article/explained/in-fact-in-first-class-action-suit-boot-may-be-on-other-foot-now/#sthash.qswg3zCT.dpuf last seen on 19/8/2015
23 S.C. CASE NO. CC/09/13
24 100 or 1/10 of members/depositors; or 10% of shareholding/total deposits.
Appointment of class counsel

The court must appoint class counsel under Rule 23(g) that too who have expertise in handling the class suit.

No help from court. The class/representative appoints the counsel.

Procedure to serve notice

For any class certified under Rule 23(b)(1) or (2), the court may direct appropriate notice to the class.

Only provides for notice to be served to the class but court does not direct the contents of notice.

Exclusion Principle

that the court will exclude from the class any member who requests exclusion, stating when and how members may elect to be excluded

No proviso of exclusion.

Identification of Class and issue

When appropriate (A) an action may be brought or maintained as a class action with respect to particular issues, or (B) a class may be divided into subclasses and each subclass treated as a class, and the provisions of this rule shall then be construed and applied accordingly

No guidelines

Settlement, dismissal and compromise

Provision and procedure for settlement, voluntary dismissal, or compromise

No guidelines

Class Counsel

Details given of procedure of appointment, qualification and fees payment of class counsel

No guidelines

Misuse

Not concerned about misuse

Safeguard against misuse of this provision has been included.

Jurisdiction

It extends to all civil cases meeting the prerequisite, hence part of civil procedure.

Only applicable under companies law hence no changes brought into Code of Civil Procedure, 1908. Banking Companies have been exempted

Role of Court

Guiding and adjudicating

Only adjudication

Fine and Punishment

No upper limit to fine

Maximum fine limit has been given by statute

Conclusions and Suggestions

Public interest Litigation has changed the outreach of judiciary in India. Class Action Suit would further help poor and helpless victims, in particular shareholders and depositors, to obtain some measure of justice for significant wrongs committed against them by multinational corporations. This will save the resources of not only the courts but also of the parties by permitting an issue potentially affecting a particular class to be litigated in an economical fashion. Incorporating class action suit is in consonance with Article 39A of Indian Constitution, ‘that opportunity for securing justice are not denied to any citizen by reason of economic or other disabilities’. This was reiterated by Supreme

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25 Federal Rules of Civil Procedure

26S. 245(8) of Indian Companies Act, 2013 states thatWhere any application filed before the Tribunal is found to be frivolous or vexatious, it shall, for reasons to be recorded in writing, reject the application and make an order that the applicant shall pay to the opposite party such cost, not exceeding one lakh rupees, as may be specified in the order.

27S. 245(7) of Indian Companies Act, 2013 states "Any company which fails to comply with an order passed by the Tribunal under this section shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.”
Indian Government with respect to reforms takes one step forward and two steps backward. To achieve US like success, major changes should be brought in Order 1 Rule 8 of Civil Procedure Code\(^3^0\) similar to Rule 23 of Federal Rules of Civil Procedure. In wary of misuse State should not discourage investors from filing class action suit. To serve the purpose of class action, changes should be brought in rules of Bar Council of India and in the outlook of Indian Courts. Special class counsels should be identified. Their fees should be attached to the damages recovered from the case and not from the parties, unlike other ordinary civil cases. Also prohibitive cost of filing class action should be taken away and the cases should be decided expeditiously. In US class action can be brought against any civil wrong affecting a class but in India it is only available under Companies Act against corporate misconduct or securities fraud. Here also Banking Companies have been exempted. Also in US there is no upper limit for damages and imprisonment whereas in India maximum limit has been given to award damages by tribunal. In case of huge monetary scam, like that of Satyam, it may not suffice to redress all the victims.

With the availability of Order 1 Rule 8 of Civil Procedure Code\(^3^1\), Section 398 of Companies Act \(^3^2\), and PIL, yet Courts in India did not admit the case brought by Satyam shareholders to seek damages from the management. If the Indian lawmakers genuinely want to make justice available to common man then they should extend the Class Action Suit to other civil offences; in particular to consumer protection, unsafe environment and unfair employment practices as in US. This will not only increase judicial efficiency by converting many individuals claim into one representational law suit but also help people with paltry resources to claim justice from powerful entity. Class Action Suit is also going to increase the standards of Corporate Governance in India as it has widened the horizons of section 397/398 of Companies Act, 1956 by bringing auditors, experts, consultants in its ambit. Also this relief is not only available to shareholders but to depositors as well. Incorporation of, class action in Company Law is certainly a positive step towards bringing greater accountability for people at the helm of company’s business but still lot need to be done to make it a success.

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28 AIR 1981 SC 1325
29 ILC-2012-SC-CRL-Jan-6; MANU/SC/0700/2012; 2012(8)SCALE308
30 1908
31 Ibid.
32 1956