CHAPTER-4

THE NEW PROVISIONS IN COMPANIES ACT 2013, FOR PROTECTING RIGHTS OF STAKEHOLDERS
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In order to prevent the companies from slipping into sickness and insolvency, the Companies Act 2013, has introduced certain measures like Corporate Criminal liability, One Person Company, whistle blower, class action suit, rotation of auditors, SFIO, rotation of auditors and most importantly setting up of NCLT, which is likely to make the liquidation process more fast, efficient, less rigid and it will go a long way in inducing confidence in the stakeholders. These provisions of the Companies Act 2013 are preventive in nature as they will make the management of the company transparent and accountable and thus may prevent the company from becoming sick and getting pushed into liquidation. This chapter shall deal with:

- CORPORATE CRIMINAL LIABILITY
- ONE PERSON COMPANY
- WHISTLE BLOWER
- CLASS ACTION SUIT
- CORPORATE SOCIAL RESPONSIBILITY
- CLEAR DEFINITION OF FRAUD AND STRINGENT PUNISHMENT
- SFIO
- INDEPENDENT DIRECTORS
- SETTING UP OF NCLT
CORPORATE CRIMINAL LIABILITY

Truly, the criminal law has been the vehicle for preventing crimes. Companies are progressively noteworthy performing artists in our economy and, to the degree their activities can defraud and harm the society, they too ought to be punished.

The corporate identity of an organization or corporate entity is separate and different from the promoters, shareholders and members of the company. This is a broadly known guideline in law and has its source in the landmark case of Solomon v. Solomon. For this situation, the Court held that the company is unique in relation to the general people who are into the running of the organization. The abuse of this rule prompted "Lifting of the Corporate Veil" wherein the investors or creditors of the company are safeguarded if the organization is involved in any kind of fraudulent practices or other criminal performances.

In the legislation which defines crimes, the denial is generally directed against any individual who has committed an act prohibited by law of the land. In numerous statutes the term -individual has been defined. Section 3(42) of General Clauses Act, 1897 defines person as:

Person shall include any company or association or body of individuals, whether incorporated or not. A company can sue and be sued in its own particular individual name. The corporate entity can be prosecuted against in criminal cases. But it is quite ineffective as the company cannot be punished with detention or can be awarded a death sentence. The only punishment that can be inflicted on the corporate entity is by way of fine, which at various occasions is quite trivial. The question which arises then is as to whether a corporate entity can ever be prosecuted for criminal offences and be punished with more than just money related fine.

The contention on the priority of crediting criminal liability to company in India is a long way from being done. There have been views expressed both in support and against corporate criminal liability. The rivals of the similar contend that a corporate entity does not have mind of its own, therefore it cannot exhibit the moral turpitude, or negative intent which is needed to build up a criminal guilt. Moreover they argue that it would be useless to treat a company

as if it possesses a blameworthy state of mind which, by definition, it can neither have nor come to possess. In addition to this, they contend that since it is impossible to send an organization behind the bars, it thwarts any endeavour to achieve the objectives of deterrence, punishment and rehabilitation, as sought after by penal sanctions. Those who advocate corporate criminal liability argue that corporate entities are not fictions. They exist and occupy a tangible, overwhelming position within the society, and are as capable as human beings, (if not more) of causing hurt. Hence, it is just and reasonable to treat them like natural persons and hold them responsible for the crimes they have committed. Corporation which have the power to affect the society are required to respect the fundamental, basic values of the same. These qualities are upheld by criminal law, and in this way drawing an obvious conclusion, corporate persons should be held criminally liable. In the course of the last century, wrong doing has developed from being a single perpetrator, singular acts to white-collar crimes, being monstrous in nature and spreading over outskirts.

While taking a gander at criminal liability in a general sense, it can fasten only those acts in which there is a violation of criminal law, which means that there can be no liability without a criminal law which forbids certain demonstration or exclusions. The essential rule of criminal liability spins around the fundamental Latin proverb “actus non facit reum, nisi mens sit rea” 234

It means that for one to be liable, it must be shown that an act or omission has been done which was forbidden by law and the same has been done with guilty mind. Hence every crime has two elements: the physical element (Actus Rea) and the mental one (Mens Rea). 235

Here, the question emerged concerning how a corporate entity could be believed to have a guilty mind. In the Bhopal Gas Tragedy, Union Carbide was held to be criminally liable, however basically in light of the fact that it was held to be strictly liable, wherein mens rea was pointless.

Consequently, the inquiry still emerged: what of corporate mens rea?

235 Ibid.
THEORIES OF CORPORATE LIABILITY

There are two theories which have been used in various different contexts, to hold corporations criminally liable for crimes and other similar offences. These theories are those of Vicarious Liability and the theory of Identification.

The traditional theory of vicarious liability holds the master liable for the acts of the servant done in the course of the master’s business (without proof of any personal fault on the part of the master). The identification theory on the other hand recognises that the acts and intent of certain senior officers in a corporation are the directing force of the corporation and are therefore esteemed to be the actions and intent of the corporate entity. The corporate entity is, hence, rather than being vicariously liable, held to be directly liable.

STATUTORY INADEQUACY WITH RESPECT TO CORPORATE CRIMINAL LIABILITY

Indian statues as they still make only the officials responsible for the act criminally liable and not the corporate itself. Instances of this are:

• Sections. 63, 68, 203, etc, of the Indian Companies Act, where in only the officials of companies are held liable and not the company itself; the same is also seen in various other Indian statutes and norms.\(^{237}\)

• The various sections of the Indian Penal Code that deal with compulsory imprisonment do not take into account corporations since such sanctions cannot work against corporations.\(^{238}\)

There are different other Indian statues that that likewise experience the ill effects of similar deficiencies, but at the same time, with advance of times, certain positive changes are entering the Indian lawful scene.

\(^{236}\) Ibid.

\(^{237}\) Ibid.

\(^{238}\) Ibid.
In *Oswal Vanaspati & Allied Industries v. State of U.P.* 239, the Full Bench of the Allahabad High Court held that:

“A company being a juristic person cannot obviously be sentenced to imprisonment as it cannot suffer imprisonment. The question that requires determination is whether a sentence of fine alone can be imposed on it under Section 16 of the Act or whether such a sentence would be illegal and hence cannot be awarded to it. It is settled law that sentence or punishment must follow conviction and if only corporal punishment is prescribed a company which is a juristic person cannot be prosecuted as it cannot be punished. If, however, both sentence of imprisonment and fine is prescribed for natural persons and juristic persons jointly then though the sentence of imprisonment cannot be awarded to a company, the sentence of fine can be imposed on it. Thus, it cannot be held that in such a case the entire sentence prescribed cannot be awarded to a company as a part of the sentence, namely, that of fine can be awarded to it. Legal sentence is the sentence prescribed by law. A sentence which is in excess of the sentence prescribed is always illegal but a sentence which is less than the sentence prescribed may not in all cases be illegal.”

In the case of *Standard Chartered Bank & Others v. Directorate of Enforcement & Others.* 240, the Supreme Court considered the issue as to whether a company, or a corporation, being a juristic person, could be prosecuted for an offence for which the punishment is mandatory imprisonment and fine; and if found guilty, whether the court has the discretion to impose a sentence of fine only. The Hon’ble Supreme Court held that “there is no dispute that a company is liable to be prosecuted and punished for criminal offences. Even though there are earlier authorities to the effect that corporations cannot commit a crime, the generally accepted modern rule is that except for such crimes as a corporation is held incapable of committing by reason of the fact that they involve personal malicious intent.” The court further added that “a corporation may be subject to indictment or any other criminal process, although the criminal act was committed through its agents.” However, the question of whether or not a corporation could be held liable for crimes requiring mens rea was still left open.

239 1993 1 Comp LJ 172
240 (2005) 4 SCC 530
This question was answered by the Iridium case, which was a landmark case with respect to Corporate Criminal Liability. In *Iridium India Telecom Ltd vs. Motorola Inc.,* 241

The Hon’ble High Court stated that “a corporate body can be prosecuted when offence is committed in relation to business of a company by applying the Doctrine of attribution”242 and imputation.” By applying the principle of alter ego the court held that, “if degree of control is so intense that a corporation may be said to think and act through a person or body of persons, who hold positions of power in the corporation, and are heads of the same, mens rea of person or persons in control is attributable to the corporation - A corporate body cannot also escape criminal liability merely on the ground that punishment prescribed is imprisonment and fine.”Thus, while upholding its stance on the Standard Chartered case, the Supreme Court has also removed the doubts plaguing corporate criminal liability in India.243

From the above cases and their individual judgments, it can be seen that the topic of whether a corporate entity can be held criminally liable has been replied, and that the company can be held at risk in criminal cases. Nonetheless, there are as yet various statutes that are still left to be changed to expel all uncertainty from the same. We can't depend just on courts interpretation, as they can change starting with one occasion then onto the next. There must be solid changes that must be actualized, that can bring about a more grounded, and more secure corporate world. Besides, the Legislature ought to likewise take a gander at different disciplines that ought to go with fines, for example, brief closure of company, sanctions, delisting of the company, or corporate demise244.

241 (2011) 1 SCC 74
244 CORPORATE CRIMINAL LIABILITY: A REVIEW IN LIGHT OF TATA-ULFA NEXUS,Sumit Baudh, Can be accessed at https://www.nls.ac.in/students/SBR/issues/vol10/1007.pdf.
ONE PERSON COMPANY

The concept of OPC is comparatively new to India. The Companies Act, 2013 opens a new era for organizing a business in India by providing the concept of OPC which is a legitimate way to incorporate a company with only one member. OPC is similar to the existing concept of Sole-proprietorship with separate legal entity distinct from its proprietors and promoters. OPC can run and embrace its professional Sole-proprietorship with the status of Company. This type of business is as of now thriving in nations like USA, Singapore, China and different nations in Europe. This contemporary concept of business will provide a whole new bracket of opportunities for those who look forward to start their own ventures with a structure of organized business.

One Person Company (hereinafter mentioned as OPC) is a radical idea which came into the picture with the introduction of the Companies Act, 2013. The introducing of the new concept of OPC in the lawful framework will support corporatization of miniaturized scale organizations. In India, in the year 2005, the JJ Irani Committee suggested the creation of OPC. It had suggested that such a corporate person might be given a more straightforward lawful administration through exclusions with the goal that the little business person is not constrained to give significant time, vitality and assets on complex lawful compliance.

JJ Irani Committee recommended that “with increasing use of information technology and computers, emergence of the service sector, it is time that the entrepreneurial capabilities of the people are given an outlet for participation in economic activity. Such economic activity may take place through the creation of an economic person in the form of a company.” The committee further added that “it would not be reasonable to expect that every entrepreneur who is capable of developing his ideas and participating in the market place should do it through an association of persons.” Further the Committee felt that “it is possible for individuals to operate in the economic domain and contribute effectively”. To facilitate this, the Committee recommended “that the law should recognize the formation of a single person economic entity in the form of ‘One Person Company’. Such an entity may be provided with

\[246\text{ Master Guide to Companies Act 2013 & Company Rules – Taxmann’s}
a simpler regime through exemptions so that the single entrepreneur is not compelled to fritter away his time, energy and resources on procedural matters."

The Committee further held that the concept of ‘One Person Company’ may be introduced in the Act with following characteristics:-

“a) OPC may be registered as a private Company with one member and may also have at least one director;

b) Adequate safeguards in case of death/disability of the sole person should be provided through appointment of another individual as Nominee Director. On the demise of the original director, the nominee director will manage the affairs of the company till the date of transmission of shares to legal heirs of the demised member.

c) Letters ‘OPC’ to be suffixed with the name of One Person Companies to distinguish it from other companies;247,

OPC is defined under sub section (62) of section (2) of the Companies Act, 2013. It defines OPC as ‘a company which has only one person as a member’, where all the legal and financial liabilities are limited to the company and not to its members.248 It is a sort of progressive idea in the new Companies Act, 2013, as beforehand under the old Companies Act, 1956 at least two individuals were required to shape an organization.249

Sub- Section 62 of Section 2 of the Companies Act, 2013, reads as follows:

“One Person Company means a company which has only one member”.

It should likewise be essential to take note of that Section 3 arranges OPC as a Private Company for all the legitimate purposes with a single person. Each and every arrangements identified with the privately owned business are appropriate to an OPC, unless generally explicitly avoided. Just a natural person who is an Indian national and inhabitant in India might be qualified to go about as a member and nominee of OPC.250

248 As per Rule 2.1 (1) of the Draft Rules under Companies Act,2013 only a natural person who is an Indian Citizen and resident in India shall be eligible to incorporate a One Person Company.
250 FQA on One Person Company; available at:< http://www.mca.gov.in/MinistryV2/onepersoncompany.html> accessed on 12th june 2017
For the above reason, the expression "resident in India" implies a man who has remained in India for a time of at least one hundred and eighty two days during the immediately preceding one financial year.\textsuperscript{251}

The fundamental purpose behind considering and presentation of the idea of OPC on the lines of what has been presented in different nations is to urge the sole proprietors to go into the sorted out segment of business and to limit the obligation of the proprietors to the degree of the risk and obligation of the company. The other reasons being pushed are that the idea will motivate foreign funds stream within our country, to bring the little and medium endeavours inside the area of corporate element and so on and so forth\textsuperscript{252}

An OPC is a decent other option to running a sole proprietorship, to a great extent since it gives constrained obligation to the entrepreneur. This implies your obligation is constrained to the sum, the resources you've put into the business; business debts can't be recouped from individual belonging. So the liability incurred by the business owners in OPC will not fear them of bankruptcy on the event of inability to pay the financial debts. Also, a sole proprietorship ceases to exist on the death of its promoter. In the case of an OPC, the nominee director takes over and the entity continues to exist. Single business visionaries who don't have another accomplice to begin a private limited company may likewise think of it.\textsuperscript{253}

There is no difference in capital requirement between an OPC and a private limited company. It needs an authorised capital of Rs. 1 lakh to begin with, but none of this actually needs to be paid-up. This means that you don’t really need to invest any money into the business.\textsuperscript{254}

**Following are the Steps to Incorporate One Person Company (OPC)\textsuperscript{255}**

1. Obtaining the Digital Signature Certificate [DSC] for the proposed Director(s).
2. Obtaining the Director Identification Number [DIN] for the proposed director(s).
3. Choosing an appropriate Company Name, and there after making an application to the Ministry of Corporate Office for availability of the said name.
4. Draft Memorandum of Association and Articles of Association [MOA & AOA].

\textsuperscript{251} Ibid.
\textsuperscript{252} Available at: \url{www.allbusiness.com/glossaries/liquidation/4942579-1.html} [accessed on February 2016]
\textsuperscript{253} Company Secretary Module(2014),One Person Company(OPC).The Institute of Company Secretaries of India.
\textsuperscript{254} One Person Company (2014) Altacit Global,pg 17.
\textsuperscript{255} Intelligent Legal Risk Management Solution (iPleaders) 2014. National University of Judicial Sciences.
5. Sign and file various documents including MOA & AOA with the Registrar of Companies electronically.

6. Payment of Requisite fee to Ministry of Corporate Affairs and also Stamp Duty.

7. Scrutiny of documents at Registrar of Companies [ROC].

8. Receipt of Certificate of Registration/Incorporation from ROC

FEATURES OF ONE PERSON COMPANY (OPC)

1. Freedom From Compliance

There is no need for OPC to call an Annual general meeting or Extra-ordinary general meeting. Where there is only one director of an OPC, in the case of anything requiring Board Resolution, it shall be sufficient if the resolution is prepared, entered in the minutes book dated and signed and such date shall be deemed to be the date of the meeting of the Board.²⁵⁶

It is important to note that OPC, Small Company and Dormant Company shall be deemed to have complied with Section 173 relating to meeting of Board of Directors, if at least one meeting of the Board of Directors has been conducted in each half of a calendar year and the gap between the two meetings is not less than 90 days. It is really not possible to understand why the gap should not be less than 90 days. Once a board meeting is called and held, it seems the law does not want the OPC to have another board meeting within the next 90 days and holding a board meeting within the next 90 days after a board meeting seems to be an offence.²⁵⁷

Quorum: The provisions of Section 174 (Quorum for meetings of Board) won’t make a difference to One Person Company in which there is only one director on its Board of Directors.

²⁵⁷ Ibid.
Where there is only one director of an OPC, in the case of anything requiring Board Resolution, it shall be sufficient if the resolution is prepared, entered in the minutes book dated and signed and such date shall be deemed to be the date of the meeting of the Board.  

Provisions relating to appointment of Woman Director, Independent Director and small shareholder director do not apply.  

Provisions relating to mandatory need for appointing Key Managerial Personnel including the need for appointment of a company secretary or the need for a mandatory Secretarial Audit will not apply.

2. Perpetual Succession:

As OPC is an incorporated entity will also have the elements of perpetual succession and will make it less demanding for business people to raise capital for business. The OPC is a non natural entity which is separate from its member. Hence the Creditors should be cautioned that their claims against the business cannot be hard-pressed against the owner of the company.

3. Only One Shareholder:

Just a natural person, who is an Indian citizen and resident of the county, shall be qualified to incorporate a One Person Company. By the term "Resident in India" we mean a man who has remained in India for a time span of not less than 182 days during the immediately preceding one calendar year. This is the key concept of a One Person Company. Actually, One Person Company is defined in the Companies Act as a Company which has only one member. A single shareholder holds 100 percent shareholding.

The thing to be remembered is that the Company Incorporation Rules give that exclusively a natural person who is an inhabitant of India and furthermore a national of India can formulate a ‘one person company’. It implies that other legal personalities like ‘companies or societies

258 Ibid.
259 Ibid.
260 Ibid.
262 FQA on One Person Company; available at: <http://www.mca.gov.in/MinistryV2/onepersoncompany.html> accessed on 12th June 2017
or other corporate entities’ can't frame a ‘one person company’. In addition to this it likewise implies that ‘Non resident Indians’ or ‘foreign citizens’ can't create a ‘One Person company’. Furthermore the law also denote that a man can be a shareholder in just a single ‘one person company’ at any given time. It just means an individual can’t have two different one person companies in his name.

4. Nominee for the Shareholder:

The Shareholder should nominate someone else who might step into his shoes in the event of death/inadequacy of the original shareholder. Such chosen one should give his/her assent and such assent for being designated as the Nominee for the sole Shareholder. Just a natural person, who is an Indian subject and resides in India, might be a candidate for the sole member from a ‘One Person Company’. This is a critical idea where the individual formulating the ‘One Person Company’ needs to name a Nominee with his written consent who, in case of death or inability to contract of the owner of the ‘One Person Company’.264

It would be ideal if you take note of that the prerequisites of being a resident of India and an Indian citizen additionally apply to the nominee.265 Further if the individual so nominated turns into a member of such a One Person Company and is as of now a member of another ‘One Person Company’, in the meantime, by virtue of principles needs to choose within half a year that with which one person company he needs to proceed. One more thing which needs to be mentioned over here is that, the member of ‘one Person Company’ can change the ‘nominee’ at anytime. On the demise of the member of ‘one Person Company’, the chosen nominee shall be the individual perceived by the organization as having title to every one of the shares of the member. Such a nominee should be qualified for similar profits, dividends and other rights and liabilities to which such sole member of ‘One Person Company’ was entitled or liable266.

After becoming member, such nominee shall nominate some other individual with the prior written consent of such individual who, shall in the event of the demise of the member, become the member of the company.267

265 Supra n.262
266 Supra n.256
267 Ibid.
5. **Director:** ‘One Person Company’ must have at least one Director; the Sole Shareholder would himself be able to be the Sole Director. The Company may have a greatest number of 15 directors. The other vital point is that a ‘One Person Company’ may have just a single director. In any case, in the meantime there is no bar on more number of directors. In any case, according to the Act, the aggregate number of directors might not be more than 15.²⁶⁸

According to the Companies Act, if nothing is specified in the incorporation records, it would be presumed that the sole shareholder might likewise be the sole director in the ‘one person company’ and which should the case in almost ‘One Person Companies’ formed.

6. **Limited Liability**

The director’s personal property is for all times safe in a ‘private limited company’, regardless of the obligations and debts of the business. The greatest distinction between a sole proprietor and a ‘One Person Company’ would be that in the event of a One Person Company, your liability in case of a failure of business is restricted to just the business assets and resources. In the event of a proprietorship, the liability is boundless and the lenders of your business can even grab hold of your home and individual resources like your home, individual financial balances, ornaments and so on which can be utilized to settle the business liabilities.²⁶⁹

7. **Greater Credibility**

As an ‘OPC’ needs its books inspected annually, it has more prominent credibility among sellers and lending organisations.

8. **Simple to Get Loan from Banks:**

‘Banking’ and ‘financial institutions’ like to give cash on loan to the company rather than proprietary firms. In an extensive part of the conditions, the business visionaries to change over their firm into a Private Limited company before authorizing funds. So it is ideal to register your start-up as a One Person company rather than proprietary firm.

²⁶⁸ ibid.
DISADVANTAGES OF ONE PERSON COMPANY

1. One person Company can have Minimum or Maximum no. of 1 Member.  
2. A minor shall not be eligible to become a member or nominee of the One Person Company or can hold share with beneficial interest.

3. Only a natural person who is an Indian citizen and resident in India shall be eligible to incorporate a One Person Company and shall be a nominee for the sole member of a One Person Company.

4. Suitable only for small business: OPC is suitable only for small business. OPC can have maximum Paid up share capital of Rs.50Lakhs or Turnover of Rs.2 Crores. Otherwise ‘OPC’ need to be changed into ‘Private Ltd Company’.


6. Tax Liability: The concept of One Person Company is not a recognized concept under IT Act and hence such companies will be put in the same tax slab as other private companies for taxation purposes. As per the Income Tax Act, 1961, private companies have been placed under the tax bracket of 30% on total income. Then again; sole proprietors are burdened at the rates relevant to individuals, which imply that diverse tax rates are applicable for various income sections. Accordingly, from tax assessment perspective this idea is by all accounts a less lucrative idea as it forces substantial money related weight when contrasted with a sole proprietorship.

The basic income tax rate for a one person company is 30% which may result in a higher tax as compared to the income tax slab rates of an individual (i.e. 10% to 30%).Proprietorships have a clear advantage here in that a proprietor is subject to individual income tax slab rates...
from 10% to 30% and get benefits of basic exemptions. Henceforth, in the event that you select a one person company over a proprietorship you should surrender these benefits.275

7. Perpetual Succession: This is Very idea of a distinct ‘legal entity’ being made for a never-ending progression that is continuation of the organization even after the demise or retirement of a member. Since the chosen one whose name has been specified as the nominee will turn into the member in case of death of the current member. Be that as it may it is dicey that it would do any gain for the company in light of the fact that the individual is not being an individual from the ‘one person company’ and furthermore not associated with the everyday operation of the ‘one person company’, would not have the capacity to succeed the business after the demise of the original sole member.

8. When contrasted with proprietorships, ‘One person company’ should be enrolled with the ‘registrar of companies’ under the Companies Act, 2013. This would involve forthright expenditure on government charges and expert expenses which you should pay your CA or CS276. Proprietorships don't have to ‘register’ with the government and consequently don't incur these ‘formation of company’ charges.

9. Despite the fact that the Act stretches out slew of exclusions to a ‘One Person company’ as far as leading AGM, EGM, ‘Quorum of meetings’, limitation on voting rights or ‘filing of financial statements’, yet the formation of such a company requires huge amount of ‘paper work’ when contrasted with a sole proprietorship. These procedural complexities concerning formation of ‘One Person Company’ may make this idea less appealing for sole ‘business entrepreneurs’.

10. Compared to proprietorships, a one person company would have recurring compliance costs yearly, as it will need to get its accounts audited and will need to file returns every year with the registrar of companies like any other company. The MCA is sceptical about a single person in charge of a large corporation. Thus, it requires all OPCs to be changed over into ‘private limited’ or ‘public limited company’ on intersection of a specific amount. As of now, if there arise an occurrence of a normal turnover of Rs. 2 crore or more for the three back to back years or a paid-up capital of over Rs. 50 lakh, the OPC should obligatorily be changed over into a ‘private company’. The cost of an OPC is only marginally lower than that of a

private limited company. You’ll be shelling out around Rs. 12,000 to incorporate, and then paying around Rs. 15,000 a year in compliance fees and an auditor to inspect your books.

11. Separation of Owner and Control: This is one of the characteristics of the company, which is seriously challenged by the new Companies Act, 2013, where the line between the ownership and control is blurred, which might result in unethical business practices.

12. A person shall not be eligible to incorporate more than a One Person Company or become nominee in more than one such company. NRIs not allowed incorporating One Person Company.

The concept of One Person Company is advantageous both for the regulators and the market players. From regulators point of view, ‘One Person Company’ by organizing the unorganized sector of proprietorship will make the regulation of these entities convenient and efficient.

- Further, the conferment of the status of ‘private limited company’ on a ‘One Person company’ won't just limit the ‘liability’ of sole business visionaries yet additionally give access to ‘market players’ to different credit and ‘loan facilities’ and thus would support enterprise. Be that as it may, this idea has been criticized a lot on grounds of too many procedural formalities i.e. red-tapism and taxation rate. Further, this idea is additionally being viewed as pointless as India as of now has a ‘Limited Liability Partnership Act, 2008’, which constrains the liabilities of the members of a ‘partnership firm’. In the long run any choice made on which lawful business structure to choose will rely upon a case by case premise and individual needs and prerequisites of a particular business. However, one ought to know about the above detriments of a ‘one person company’ before either beginning another proprietorship or choosing to change over your current proprietorship into a ‘one person company’ in India.

This new concept opens up spectacular possibilities for sole proprietors and entrepreneur who can take the advantages of Limited liability and corporatization but were held back in doing so because of the requirements of finding a second director or second shareholder.

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277 Supra n.256
This is a concept that is expected to give big impetus to Corporatization in the country. The main care to be taken is that there ought to be no administrative chaos like the ones which hampered the development of Limited Liability Partnerships in this nation. Generally the standards surrounded so far regarding ‘One Person Company’ have been exceptionally sensible. With the Companies Act, 2013 the idea of OPC has now progressed toward becoming reality. This idea has been an unmistakable fascination among business people anticipating working with the entrepreneurial flexibilities as managed by proprietorships yet without the burden of ‘personal liability’ that a proprietorship will undoubtedly carry with it.

OPC give numerous chances to each one of the individuals who are anticipating starting their own business with a structure of the ‘organised businesses. This idea will enable the youthful or start-up business visionaries to test a plan of action, ‘a product or a service’ before drawing in new creditors. The ‘compliance pressure’ which must be compulsorily taken n to consideration is nearly less and the element of ‘limited liability’ is an additional benefit to it. Such an idea will profit a great deal to all the individual proprietors and proprietors occupied with little scale enterprises. It will give a more noteworthy adaptability to a person to deal with his business in the meantime appreciate the advantages of a company. The point to be noted here is that with the implementation of this idea it will make a path for more great banking facilities, especially provision relating to loans and advances to singular proprietors. In the meantime, it will likewise help to boost ‘foreign funds’ in India as the necessity of ‘nominee shareholder’ would be discarded.
The origination of ‘Class Action Suits’ is one of the numerous change presented in the Companies Act, 2013 vide Section 245. The idea of Class Action is not new but rather in Indian setting, it has discovered acknowledgment and enforceability now just by methods of Companies Act, 2013.\textsuperscript{278} The ‘class action suit’ first time went to be featured with regards to securities market, when the Satyam scam came into picture in the year of 2009. Hence, the Indian creditors in India couldn't take any legal action against the organization while their partners in USA filed ‘class action suit’ demanding ‘compensation’ from the company.\textsuperscript{279} This instrument has been developed to conquer the notable ‘Collective Action’ issue, where suits by small ‘stakeholders’ are not practical, thus may never get filed. Accordingly, this is relevant not simply in corporate law, but rather in all cases.

CONCEPTUALIZATION IN INDIAN SCENARIO

It was the Satyam scam which broke out in 2009, which brought into spotlight the class action suit came in the context of securities market. At that time, the Indian investors in India couldn't take any legal recourse against the company while their counterparts in USA filed class action suit claiming damages from the company and the auditing firm.\textsuperscript{280} Provision relating to class action suit is mentioned in Section 245 of the new Companies Act, 2013. In straightforward terms, ‘a class action’ suit refers to a lawsuit that permits a huge number of individuals with a ‘common interest’ in a matter to sue or be sued as a group. It is a procedural gadget empowering one or more plaintiffs to file and prosecute litigation on behalf of a bigger group or class, wherein such class has common rights and grievances.\textsuperscript{281}
PROVISIONS DEALING WITH CLASS ACTION SUIT MENTIONED IN COMPANIES ACT, 2013

Section 245 of the Companies Act, 2013 (Act) consists of the various provisions dealing with the Class Action Suits which are discussed as follows.

Section 245. of Companies Act, 2013 – Class Action

(1) Such number of members or members, depositors or depositors or any class of them, as the case may be, as are indicated in sub-section (2) may, if they are of the opinion that the management or conduct of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors, file an application before the Tribunal on behalf of the members or depositors for seeking all or any of the following orders, namely:

(a) to restrain the company from committing an act which is ultra vires the articles or memorandum of the company;
(b) to restrain the company from committing breach of any provision of the company’s memorandum or articles;
(c) to declare a resolution altering the memorandum or articles of the company as void if the resolution was passed by suppression of material facts or obtained by mis-statement to the members or depositors;
(d) to restrain the company and its directors from acting on such resolution;
(e) to restrain the company from doing an act which is contrary to the provisions of this Act or any other law for the time being in force;
(f) to restrain the company from taking action contrary to any resolution passed by the members;
(g) to claim damages or compensation or demand any other suitable action from or against—
(i) the company or its directors for any fraudulent, unlawful or wrongful act or omission or conduct or any likely act or omission or conduct on its or their part;
(ii) the auditor including audit firm of the company for any improper or misleading statement of particulars made in his audit report or for any fraudulent, unlawful or wrongful act or conduct; or
(iii) any expert or advisor or consultant or any other person for any incorrect or misleading statement made to the company or for any fraudulent, unlawful or wrongful act or conduct or any likely act or conduct on his part;
(h) to seek any other remedy as the Tribunal may deem fit. 282

Where the members or depositors seek any damages or compensation or demand any other suitable action from or against an audit firm, the liability shall be of the firm as well as of

282 Sec. 245(1) of Companies Act, 2013
each partner who was involved in making any improper or misleading statement of particulars in the audit report or who acted in a fraudulent, unlawful or wrongful manner.\textsuperscript{283}

The requisite number of members provided in sub-section (1) shall be as under:— (a) in the case of a company having a share capital, not less than one hundred members of the company or not less than such percentage of the total number of its members as may be prescribed, whichever is less, or any member or members holding not less than such percentage of the issued share capital of the company as may be prescribed, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares; (b) in the case of a company not having a share capital, not less than one-fifth of the total number of its members.

(ii) The requisite number of depositors provided in sub-section (1) shall not be less than one hundred depositors or not less than such percentage of the total number of depositors as may be prescribed, whichever is less, or any depositor or depositors to whom the company owes such percentage of total deposits of the company as may be prescribed.\textsuperscript{284}

In considering an application under sub-section (1), the Tribunal shall take into account, in particular— (a) whether the member or depositor is acting in good faith in making the application for seeking an order; (b) any evidence before it as to the involvement of any person other than directors or officers of the company on any of the matters provided in clauses (a) to (f) of subsection (1); (c) whether the cause of action is one which the member or depositor could pursue in his own right rather than through an order under this section; (d) any evidence before it as to the views of the members or depositors of the company who have no personal interest, direct or indirect, in the matter being proceeded under this section; (e) where the cause of action is an act or omission that is yet to occur, whether the act or omission could be, and in the circumstances would be likely to be— (i) authorised by the company before it occurs; or (ii) ratified by the company after it occurs; (f) where the cause of action is an act or omission that has already occurred, whether the act or omission could be, and in the circumstances would be likely to be, ratified by the company.\textsuperscript{285}

If an application filed under sub-section (1) is admitted, then the Tribunal shall have regard to the following, namely:— (a) public notice shall be served on admission of the application to

\begin{footnotes}
283 Sec. 245(2) of Companies Act, 2013
284 Sec. 245(3) of Companies Act, 2013
285 Sec. 245(4) of Companies Act, 2013
\end{footnotes}
all the members or depositors of the class in such manner as may be prescribed; (b) all similar applications prevalent in any jurisdiction should be consolidated into a single application and the class members or depositors should be allowed to choose the lead applicant and in the event the members or depositors of the class are unable to come to a consensus, the Tribunal shall have the power to appoint a lead applicant, who shall be in charge of the proceedings from the applicant’s side; (c) two class action applications for the same cause of action shall not be allowed; (d) the cost or expenses connected with the application for class action shall be defrayed by the company or any other person responsible for any oppressive act. 286

Any order passed by the Tribunal shall be binding on the company and all its members, depositors and auditor including audit firm or expert or consultant or advisor or any other person associated with the company. 287

Penalty for non compliance of order passed by the tribunal

‘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.’ 288 ‘Where 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.’ 289

Provisions relating to class action suit do not apply to a banking company. 290

It may be summed up that ‘class action suits’ will be a beneficial stage for members and depositors to raise their grievances against the administration of an organisation including ‘directors, advisors, consultants, auditors’ etc for acts or omission that is prejudicial, unlawful or wrongful to the interest of the company. ‘Class action suits’ might be embraced as an redressal apparatus by minority shareholders having common interest for advancement of transparent ‘corporate governance’. Class Actions would change customary administration

286 Sec. 245(5) of Companies Act,2013
287 Sec.245(6) of Companies Act,2013
288 Sec.245(7) of Companies Act,2013
289 Sec.245(8) of Companies Act,2013
290 Sec.245(9) of Companies Act,2013
style in India and advance more aggressive corporate democracy in the bigger interest of shareholders.
WHISTLE BLOWER

History is witness that there have always been informers who reveal inside information to others. Ancient Greeks talked about whistle blowing centuries before. Lykourgos, the Athenian orator, in his speech against Leokratis said: neither laws nor judges can bring any results, unless someone denounces the wrongdoers.

Indeed, even in Ancient India, the concept of a ‘Whistleblower’ was in presence, Kautilya proposed- “Any informant (súchaka) who supplies information about embezzlement just under perpetration shall, if he in the event of succeeding in proving it, get as reward one-sixth of the amount in question; if he happens to be a government servant (bhritaka), he shall get for the same act one-twelvith of the amount.”

The expression "whistle blowing" started from the act of British policemen who blew their whistles at whatever point they watched commission of a wrongdoing. ‘Whistle blowing’ implies drawing the attention of the top administration to some wrongdoing happening inside an association. A whistle blower might be a worker, previous worker or individual from an association, a government office, who have readiness to make remedial move on the wrongdoing.\(^2\) As per Sec.177 (9) of the Companies Act, 2013, certain corporate entities need to set up a Vigil/Whistle-blowing instrument to report any unethical conduct or different worries to the corporate administration.

The vigil instrument would make available for satisfactory protections against exploitation of persons who utilize this tool and for direct access to the ‘chairperson of the Audit Committee’ in appropriate/exceptional cases. Subtle elements of such a method shall be unveiled on company’s website and Board’s Report. It is a critical arrangement to overhaul Indian legislative structure to worldwide best governance practice and will make the corporate managements’ more responsible and accountable.

**Sorts of Whistle Blower**

There are two types of whistle blowers:

1. Internal:

\(^2\) Available at: http://taxguru.in/company-law/whistleblowing-vigil-mechanism-companies-act-2013.html#sthash.0UuMvlno.dpuf. Accessed on 24\(^\text{th}\) March 2017
A Whistle Blower might be inside the organization who uncovers any illegal, immoral or illicit practices to the employer. He/she might be:

Employee

Superior officer or

Any designated officer

2. External:

A whistle Blower might be outside the organization who unveils any illicit, immoral or illegitimate, shameless practices to the company. He/She may be;

Lawyers

Media

Law enforcement agencies

Watchdog agencies

People who uncover data with respect to wrongdoing, misrepresentation, corruption or blunder and report such acts inside an association i.e. to the Chief official officer or any individual from the senior administration are called as ‘internal whistle blower’. While people who report of such wrongdoings outside of the association i.e. to the media, law enforcement organizations, and so forth are called as ‘external whistle blower’. 292

It is not an issue that can be overlooked, because of its negative impact on both workers and organization. For example, a recent review of whistle blowing incidents shows that among the whistleblowers surveyed, 62% lost their jobs, 18% felt that they were harassed or transferred, 11% had their job responsibilities or salaries reduced, 51% of the incidents resulted in external investigations of the companies involved, 37% in management shake-ups, 22% in criminal investigations, and 11% in indictments. 293

A ‘whistleblower’ reports the wrongdoings as he/she does not have the authority to amend the reported organisation’s exercises. In other words we can say that he lacks the requisite

authority for making the change. Likewise individual attributes of a person to a great extent decide if he/she would blow the whistle or not. Spectators who have low regard might be detached about most organisational activities or may pull back from circumstances; they would be less inclined to blow the whistle than with individuals with adequate self esteem. 294

Likewise it is imperative to take note of that earlier, auditors did not need to legitimately discover whether fraud had happened or not. They were to primarily report material identified with fake revealing or potentially misappropriation of assets. There is presently difficult obligation on auditors to go about as ‘whistle blower’ by revealing straightforwardly to the Central Government if they have reasons to trust that an extortion is being, or has been committed against the organization by its officers or workers. 295

There have been different occasions of threatening, badgering and even murder of large number of informants. An engineer, Satyendra Dubey, was killed in November 2003; Dubey had blown the whistle in a corruption case in the National Highways Authority of India's Golden Quadrilateral task. After two years, an Indian Oil Corporation officer, Shanmughan Manjunath, was killed for sealing an oil pump that was selling out impure fuel. A motion picture/Film has been made in light of the said episode titled 'Manjunath'(2014).

There’s no denying that whistle-blowing and a culture which advances whistle-blowing won’t just be to a great degree advantageous to the organisation and its workers but also to its shareholders, society and country at large. There have been various instances of whistleblower exploitation that have stunned the conscience of the nation at large but then pragmatically thinking it is true that corruption can only be limited and can’t be completely driven out of any society. 296

So as to rise above corporate scandals and scams, organisations other than incorporating an efficient whistle blowing apparatus, likewise needs to imbibe in their very formulation the supremacy of ethics over unpredictable rate of cash making. The Companies Act 2013 having introduced provisions to battle the growing rate of frauds that can only be effectively

executed if the companies acknowledge the need to educate and train independent directors and audit committees. Setting up in place robust internal controls to identify and report deceitful activities, utilizing innovation for monitoring activities, employing internal auditors to strengthen internal control systems are different methods through which an organisation can control whistle blowing activities.

Formulation of concrete, comprehensive laws and effective implementation of such laws can lessen the regularly rising levels of corruption and wrongdoings. It is just organisation-employee compliance together with Government and legislation going about as a benefactor that can not only guarantee viability of a whistleblower policy as well as a corporate world and society which is free from fraudulent practices and racket.

The question as to the of feasibility of a ‘whistleblower’ policy is not measuring the greatness of quick result as it does not have a proverbial Midas touch. We need to acknowledge that ‘a journey of thousand miles begins with a single step’. The seed has already been sown and only dynamic participation in nurturing will blossom into the blossoms of a corruption free society.
The Serious Fraud Investigation Office (SFIO)\textsuperscript{297}

The Serious Fraud Investigation Office (‘SFIO’) is a fraud investigating bureau in our country. The SFIO is a multi-disciplinary association and was set up by Govt. of India under Ministry of Corporate Affairs, comprising of specialists in the diverse fields for identifying and prosecuting crimes/frauds pursuance to Government of India by methods of a resolution dated 2nd July 2003 (Resolution No. 45011/16/2003-Adm-I) and was later given formal lawful status vide Section 211 of the Companies Act, 2013. SFIO is an organisation formed on the recommendations of Naresh Chandra committee which was approved in January 2003.

At first SFIO did not enjoy a formal lawful status. It completed examinations in the suspected cheats and fraud within the current legal system under Section 235 to 247 of the past Companies Act, 1956 - as ‘an executive agency’ on behalf of the Central Government or a Court of ‘competent jurisdiction’. There is no reference of SFIO in the Companies Act, 1956, however different officers of SFIO have been approved under Section 621 of the Companies Act, 1956 (as individual approved by Central Government) to record complaints against defaulting organizations.

SFIO got statutory acknowledgment once the new Companies Act, 2013 was formulated. In the new Companies Act, 2013, powers, for example, treating the examination reports which is filed by SFIO officers as a report recorded by a Police Officer, power to capture the suspected, power to issue letter of request in cases including corporate entity having business/interests outside the nation and so forth are allowed. (The Companies Act 1956 did not have any arrangement for examination/gathering of proof on account of transactions and people based outside India. Other investigating offices like CBI and Enforcement Directorate have these powers. (Wherever required, the matters of international ramifications were referred to CBI and / or Enforcement Directorate and both these agencies were looking into the issue of defaulting companies abroad.)

This office was set up to investigate corporate frauds of very serious and complex nature. SFIO is a multidisciplinary investigating office, wherein specialists from (i) banking; (ii) corporate undertaking; (iii) tax assessment; (iv) forensic audit; (v) capital market; (vi)

\textsuperscript{297}INSPECTION, INQUIRY AND INVESTIGATION, The Institute of Company Secretary of India; available at:<https://www.icsi.edu/portals/0/INSPECTION,%20INQUIRY%20AND%20INVESTIGATION.pdf> accessed on 28\textsuperscript{th} December, 2016
information technology; (vii) law; or (viii) such different fields as may be prescribed, work
together to unearth a corporate fraud. The authority of SFIO is constrained to investigating
frauds related to a company under the Companies Act and its investigation is viewed
separately from other normal investigation into the affairs of the company.

Investigation Procedure of SFIO

(i) According to Section 212 (1) of the Companies Act, 2013, “the Central Govt. may assign
the investigation into the affairs of a company to the Serious Fraud Investigation Office –

(a) On receipt of report of the Registrar or Inspector under section 208;

(b) On intimation of a special resolution passed by a company requesting an investigation into
its affairs;

(c) In public interest;

(d) On the request of any Department of Central Government or State Government”.

When such an order from the Government is received, Director, SFIO might select such
number of Inspectors as he may deem proper for the reason of making such investigation and
examination.

(ii) According to sub-section (3) of section 212 of Companies Act, 2013, “the investigation
into the affairs of a company shall be conducted in the manner and by following the
procedure specified in Chapter XIV of Companies Act, 2013. The SFIO shall submit its
report to the Central Government within the period specified in the order.”

(iii) According to sub-section (4) of section 212 of Companies Act, 2013, “the Director SFIO
shall cause the affairs of the company to be investigated by an investigating officer, who shall
have the powers of the Inspector under section 217 of the Companies Act, 2013.”

(iv) According to sub-section (5) of section 212 of Companies Act, 2013, “it shall be the
responsibility of the company, its officers and employees, who are or have been in the
employment of the company to provide all information, explanation, documents and
assistance to the investigating officer as he may require for conduct of business”.

Investigation Procedure of SFIO; available at: http://www.sfio.nic.in/inves_proc.aspx. accessed on 24th March 2017
(v) According to sub-section (11) of section 212 of Companies Act, 2013, “the Serious Fraud Investigation shall submit an interim report, if so directed by the Central Government”.

(vi) According to sub-section (12) of section 212 of Companies Act, 2013, “on completion of investigation, the SFIO shall submit the Investigation Report to the Central Government.”

SFIO gets into the investigation only upon receiving an order from the central government in this regard. In other words, it cannot take up cases on its own. In addition to this, if any case has been given by the Central Government of India to the SFIO for carrying out investigation under Companies Act, 2013 no other investigating agency of the Union Government or any State Government can proceed with the investigation in such cases and in the event any such investigation has already been started, it can’t continue further, and the related agency will have to transfer the relevant records as well as the documents with regard to such offences to ‘Serious Fraud Investigation Office.’

IMPORTANT CASES TAKEN UP BY (SFIO)

The latest scam that took place in the Saradha group of companies has brought into sharp focus the requirement for effective investigation and prosecution of corporate for committing fraud. The Saradha group allegedly used a ‘consortium of companies’ with various cross linkages to set in movement an elaborate ‘Ponzi scheme’. The plan was touted as a realty business and there were regular changes in its operational methodology trying to stay away from the scrutiny of regulatory authorities. In addition to the Saradha group, it is suspected that many companies are currently indulged in fraudulent chit fund schemes in West Bengal. In an attempt to rein in the operations of such companies, the Central government announced a probe by the Serious Fraud Investigation Office (SFIO).

SATYAM CASE:

Serious Frauds Investigation Office (SFIO) an agency to break complex white collar crimes to investigate the money related inconsistencies in Satyam Computer Services and report its findings in three months. Serious fraud investigation officer examined and investigated the satyam case and came to the conclusion that the ‘independent directors’ did not know about existence of such fraud in accounts and they were kept in dark by chairman of company. The government of India had ordered SIFO for investigating such when they discovered 7800 crore scam and fraud at the organisation by the chairman.
DECCAN HOLDING LTD CASE:

Hyderabad DCHL which is the owner of English dailies Deccan and Asian age was charged of committing monetary abnormalities and failed to reimburse the loan to their money lenders. MCA had made examination done through SIFO which investigated and pointed the infringement of twenty sections of Company Act, 1956. The SFIO revealed that the company had taken the loan from banks through sale of ‘non convertible debentures’. DCHL declared to be sick and lenders had taken action against them through Securitization Act.

The Companies Act 2013 has attempted to strengthen the SFIO. In its new avatar, the SFIO will be a statutory body with the ability to initiate prosecution when directed by the Central government.

In order to frame the charges the SFIO will file the investigation report with the criminal court. Now this report will be considered to be a report which is filed by the police under the Code of Criminal Procedure, 1908 (CPC). This measure will prevent duplication of obligations and delay. The director of the SFIO will have the power to arrest individuals if he has reason to believe that such person is blameworthy of certain crimes, including fraud under the Companies Act. An investigator of the SFIO will have the powers vested in a civil court under the Code of Civil Procedure ‘regarding discovery and production of books of accounts and different documents, the inspection of books, registers and other documents and the summoning of and enforcing of attendance of persons’. It is significant to note over here that, the Companies Act 2013, endeavour to pre-empt the confusion caused by a number of agencies investigating the similar case. Where a case has been doled out to the SFIO, no other investigating office of the Central or the State government is to proceed with investigation. Further, any other investigating bureau, State government, police or income tax authority having data or documents with respect to a crime being investigated by the SFIO is required to make such reports available to the SFIO.

While the new system is a positive stride forward, the reliance on the Central government to begin an investigation is of some worry. Under the Companies Act 2013, for the SFIO to investigate a corporate entity, the Union government must be of the supposition that such an

299 INSPECTION, INQUIRY AND INVESTIGATION, The Institute of Company Secretary of India; available at: <https://www.icsi.edu/portals/0/INSPECTION,%20INQUIRY%20AND%20INVESTIGATION.pdf> accessed on 28th December, 2016
300 Ibid.
301 Ibid.
investigation is important. Also, the SFIO may start with the execution just when the union government guides it to do so. The claimed inclusion of politicos in the ‘Saradha scam’, and in addition the current mayhem over the government’s interference with the CBI examination concerning Coalgate, harshly features the threat of such reliance. Further, the viability of the SFIO will likewise be determined to a great extent by the sufficiency of assets and manpower committed to it by the Central government. It is intriguing to take note of that SEBI likewise has the power of a civil court as for ‘production of documents’ — powers which have been conceded to the SFIO under the Companies Act 2013. The Saradha group, in any case, supposedly abstained from giving related data to SEBI by doing a "record dump" of containers of immaterial data. The nonexistence of sufficient resources and labor could, along these lines, effectively frustrate the new SFIO. It stays to be seen whether SFIO's power to arrest will go about as an adequate deterrence to such endeavors to cloud the investigation.

One should likewise remember that the progressions considered by the Companies Act 2013, are of import simply after a scam breaks out. These measures are not pre-emptive in nature and they are not liable to significantly affect the phase at which the legislature ends up noticeably mindful of a fraudulent plan in movement. There is, in this way, a basic need to reinforce investigation at the level of the Registrar of Companies — the inception point of distinguishing the issue. A corporate entity is required to submit different reports to the Registrar as a part of the compliance requirements under the law. A SFIO examination might be founded on a Registrar's report that a company’s undertakings are being completed in an unacceptable way. It is additionally fundamental to make linkages between grievances made at the primary case by private people with the police and other administrative bodies, on one hand, and investigative bodies, for example, the SFIO, on the other hand. Successful ‘corporate governance’ is, subsequently, predicated on facilitated activity of the different implementation offices.
Corporate fraud is a noteworthy concern which is intensifying both in its frequency and gravity. Research evidence has established that rising number of frauds have diluted the ‘integrity of financial reports’. In addition to this it has resulted in significant monetary losses, and has shaken investors’ confidence with respect to the utility and trustworthiness of financial statements. The expanding rate of white-collar crimes demands harsh penalties, exemplary punishments, and effective enforcement of law with the correct spirit.\textsuperscript{302}

Before the new Companies Act, 2013 fraud was to a great extent observed as a broad legal concept. The term is not new; the old Act already provides punishment for fraud in different sections however the new Act has accompanied more particular and clear provisions identifying with fraud and fraud reporting. The extension and scope is very wide and dissimilar its predecessor. The Companies Act, 2013 provides similar punishment for all kinds of frauds.\textsuperscript{303}

The Act has introduced "fraud" for the first time and given it a wide scope.\textsuperscript{304} Apart from the definition, the Act also contemplates presumption of fraud in certain instances. For example furnishing false information or suppressing material information upon incorporation, providing misleading or false statements in prospectus, issuing duplicate share certificates to defraud, fraudulently transferring or transmitting shares and fraudulently applying for removal of company's name. For the board, this may have varied connotations. Proof of negligence or wilful misconduct by a director may weigh heavily in adjudging guilt for fraud. It is immaterial if there is any actual wrongful gain or loss, and proof of intent to defraud will suffice. Along these lines, the director will now be required to discharge their statutory obligations in a sensible and industrious way while practicing independent judgment to give a positive deduction of non-contribution in any claimed ‘fraudulent conduct’.

Fraud is a ‘non-compoundable, cognizable offence’ culpable with detention between 6 months to 10 years and fine running between the sum involved to 3 times of such amount. No
bail will be granted to an accused person unless the ‘public prosecutor’ is provided with a chance to oppose and the court is satisfied that there are reasons for innocence. Further, an auditor needs to report occurrences of fraud within a time span of sixty days, to the Central Government, if while carrying out his duties as an ‘auditor’, he has reason to believe that an crime involving fraud is being or has been committed against the corporate entity by officers or its workers. Failure on the part of auditor to report could lead to penalty between INR 0.1 million (US$ 1,583) to INR 2.5 million (US$ 39,572). An auditor may also be disqualified from appointment for five years, if NCLT definitively finds one to be guilty. The ambit of auditor's responsibility is sufficiently wide enough to cover board abnormalities of any nature in the event they are not supported by sensible and satisfactory clarifications.

The new Act is an appreciated change if the same is implemented suitably. The new company law conceives the transformation of the statutory auditors from being a watchdog to an informant i.e. a ‘whistleblower’. ‘The Auditing and Assurance Standards Board of The Institute of Chartered Accountants of India’ considering the need and significance of Fraud and Fraud Reporting under the Companies Act, 2013 has effectively constituted a specialist gathering to build up a guidance on ‘Fraud Reporting’.

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305 S.143 of the Companies Act, 2013 read with Rule 13 of the Companies (Audit and Auditors) Rules, 2014
INDEPENDENT DIRECTORS (ID)

“Citizens never support a weak company and birds do not build nests on a tree that does not bear fruits.”

– Salman Khurshid, quoting Kautilya’s Arthashastra

A general lack of accountability and the consequent failure of institutional structures is perhaps the greatest ill affecting Indian public life. Over the last few decades, a fair bit of work has been done in both policy and regulatory circles to deal with this problem of trust deficit afflicting Indian corporations. In India, the gravity of Independent Directors (referred as "ID's") was recognized with the introduction of corporate governance. The Companies Act, 1956 (referred as "the Act, 1956") do not directly talks about ID's, as no such provision exists regarding the compulsory appointment of ID's on the Board. Be that as it may, Clause 49 of the listing agreement which is pertinent on all listed companies mandates the appointment of ID's on the Board. A need has been felt to update the Act and make it universally consistent and more important with regard to ‘investor protection and customer interest’. The institution of the independent director is a tool of corporate governance.

Independent directors as the name suggests are directors on Board of a company who are independent individuals, not having any other relationship or transaction with the company. The concept of Independent directors picked up force in the late 1980s and early 1990s because of the exposure of various ‘corporate frauds and misfeasance’. In our country, Clause 49 of the listing agreement mandates appointment of ‘independent directors’ on Board of a listed company. With the passage of the new Companies Act of 2013, the idea of independent directors has found place in the Companies Act itself. The requirement prescribed under the Companies Act 2013 appears to be more stringent than that of the listing agreement.

306 Indian Minister of State for Corporate Affairs, Foreword to the Corporate Governance Voluntary Guidelines 2009.
According to Section 2(47)\textsuperscript{308}, “independent director” means an independent director referred to in sub-section (6) of section 149;

Section 149 (6)\textsuperscript{309} contains that –

“An independent director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director,—

(a) Who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;

(b) (i) who is or was not a promoter of the company or its holding, subsidiary or associate company;

(ii) Who is not related to promoters or directors in the company, its holding, subsidiary or associate company;

(c) who has or had no pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;

(d) None of whose relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;

(e) Who, neither himself nor any of his relatives—

\textsuperscript{308} Sec.2(47) of Companies Act,2013
\textsuperscript{309} Sec.149(6) of Companies Act,2013
(i) holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;

(ii) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of—

(A) A firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or

(B) Any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent. or more of the gross turnover of such firm;

(iii) Holds together with his relatives two per cent. or more of the total voting power of the company; or

(iv) Is a Chief Executive or director, by whatever name called, of any nonprofit organization that receives twenty-five per cent. or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent, or more of the total voting power of the company; or

(f) Who possesses such other qualifications as prescribed below:

An independent director shall possess appropriate balance of skills, experience and knowledge in one or more fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations or other disciplines related to the company’s business.”

Following categories of companies are required to appoint at least 1/3 of total number of directors on their Board of Directors as independent directors: “Listed Companies, Public Companies having paid up share capital of one hundred crore rupees or more; or Public Companies
having turnover of three hundred crore rupees or more; Public Companies which have, in aggregate, outstanding loans or borrowings or debentures or deposits, exceeding two hundred crore rupees."

The requirement for the ID's stirred because to the need of a strong system of corporate governance in the administration of the company. There is a "growing significance" of their role and responsibility. The Act, 2013 makes the role of ID's altogether different from that of 'executive directors’. An ID is vested with a wide range of roles, duties, obligation and liabilities for ‘good corporate governance’. The ‘independent director’ helps a company to defend the interest of ‘minority shareholders’ and make sure that the board is not biased towards any particular group of shareholders or stakeholders.

The part that they play in a company broadly includes enhancing ‘corporate credibility’, ‘governance standards’, and the ‘risk management’ of the company. The entire and sole reason behind introducing the idea of ID is to make decisions without favoring anyone and to checking various decisions taken by the management and ‘majority of the stakeholders’. An ‘Independent Director’ brings the accountability and credibility to the board process. These ID’s are regarded as the trustees of good corporate administration.

The part to be played by an ID is considered to be of a great importance. The guidelines, role and functions and duties of the ‘independent directors’ and etc finds place in a code described in Schedule IV of the Act, 2013. The code lays down certain significant functions like protecting the interest of all stakeholders, especially the minority holders, balancing the contradicting interest of the stakeholders, analyzing the performance of management, intervening in circumstances like clash between management and the shareholder's interest and etc.

The code likewise sets out certain critical duties like keeping themselves updated about the happenings in the company and the external environment in which it is operating, not revealing important and secret data of the company unless approved by the board or required by law, actively taking part in committees of the board in which they are chairperson or members, keeping themselves up to date and undertaking proper induction and revitalizing their knowledge, skills and acquaintance with the company, on a regular basis attend the general meetings of the company and etc.

The evolvement of the new concept of ID is an appreciated move for corporate governance in India. The Act, 2013 enables the ID's to have a positive say in the management & affairs of a company in order to ensure that the company is being run fairly and smoothly. Nonetheless, it
is additionally vital to remember that, greater accountability has also been placed upon them. The Act, 2013 empowers the ID's to have a definite 'say' in the management of a company, which would thereby immensely strengthen the corporate governance. At the same time it is also important to keep in mind that good corporate governance is not just the outcome of appropriate selection and effective functioning of ID's. Every director, whether independent/non-independent, executive/non-executive has a separate role to play in the functioning of the company. It is only when the entire board functions successfully that result into ‘good corporate governance’ and benefit minority as well as majority shareholder in its long term which maintains a decent corporate image in the market.
‘Corporate social responsibility’ is not a new concept that came into existence to explode after the development of industrialization. India has a long tradition of paternalistic philanthropy. The process, though acclaimed recently, has been followed since ancient times albeit informally. Philosophers such as Kautilya from India and pre-Christian era philosophers in the West preached and promoted ethical principles while doing business. The concept of helping the poor and disadvantaged was cited in several ancient literatures. In the pre-industrialized period philanthropy, religion and charity were the key drivers of CSR. The industrial families of the 19th century had a strong inclination toward charity and other social considerations. However, the donations, either monetary or otherwise, were sporadic activities of charity or philanthropy that were taken out of personal savings, which neither belonged to the shareholders nor did it constitute an integral part of business. During this period, the industrial families also established temples, schools, higher education institutions and other infrastructure of public use.\(^{310}\)

The term CSR itself came into common use in the early 1970s. The last decade of the twentieth century witnessed a shift in focus from charity and traditional philanthropy toward more direct engagement of business in mainstream development and concern for disadvantaged groups in the society. In India, there is a growing realization that business cannot succeed in isolation and social progress is necessary for sustainable growth. An ideal CSR practice has both ethical and philosophical dimensions, particularly in India where there exists a wide gap between sections of people in terms of income and standards as well socio-economic status.\(^{311}\)

The Companies Act 2013 (Companies Act) has presented various new provisions which change the face of Indian corporate business. One of such new concept is ‘Corporate Social Responsibility’ (CSR).\(^{312}\) The concept of CSR is based on the philosophy of ‘give and take’.


\(^{311}\)Bajpai, G.N., Corporate Social Responsibility in India and Europe: Cross Cultural Perspective, 2001; ibid.

\(^{312}\)Ministry of Corporate Affairs has recently notified Section 135 and Schedule VII of the Companies Act as well as the provisions of the Companies (Corporate Social Responsibility Policy) Rules, 2014 (CRS Rules) which has come into effect from 1 April 2014.
The Companies take resources in the form of raw materials, human resources and so on from the society. By performing the assignment of ‘Corporate social responsibility’ activities, the companies are trying to give something back to the society.

Section 135 of the Companies Act provides the limit for applicability of the CSR to a Company i.e. “(a) net worth of the company to be Rs 500 crore or more; (b) turnover of the company to be Rs 1000 crore or more; (c) net profit of the company to be Rs 5 crore or more.”

Further according to the CSR Rules, the provisions of CSR are not only applicable to Indian companies, but are also applicable to branch and project offices of a ‘foreign company’ in India.

Each qualifying company is required to spend at least 2% of its average net profit for the immediately preceding three financial years on CSR activities. In addition to this, the qualifying company will be required to constitute a committee (CSR Committee) of the Board of Directors (Board) comprising of three or more directors. The CSR Committee shall after forming a policy demonstrating the activities to be taken up as a part of Corporate Social Responsibility recommend to the Board; suggest the amount of expenditure to be incurred on the activities referred as well as to monitor the CSR Policy of the company. The Board shall take into account the recommendations put forward by the CSR Committee and thereafter approve the CSR Policy of the company.

**CORPORATE PHILANTHROPY & CORPORATE SOCIAL RESPONSIBILITY:**

**CORPORATE PHILANTHROPY**

Those exercises that corporate entities will fully embrace to positively affect society, including financial contributions, contributing items and services, volunteerism, and different business exchanges for the advancement of a cause, issue or non-benefit association is called ‘corporate philanthropy’. Donation of cash and other corporate assets to social causes is additionally viewed as ‘corporate philanthropy’.

‘Corporate philanthropy’ refers to the activities of companies of all sizes and various sectors making magnanimous contributions to tackle a variety of social, economic and other issues as part of their overall ‘corporate citizenship’ technique. It forms a noteworthy connection between the corporate entity and its communities.
CORPORATE SOCIAL RESPONSIBILITY:

Obeying the letter and spirit of the law; mitigating or remedying operational harm; and sustainable development of natural resources is regarded as ‘corporate social responsibility.’ It strives to achieve commercial success in ways that honour ethical values and respect people, communities, and the natural environment. In addition to this it addresses the legal, ethical, commercial and other expectations society has for business, and making decisions that fairly balance the claims of all key stakeholders. Companies that consciously integrate strategies that seek to maximize the creation of environmental and social value within their core business models, operations and supply chains are applying corporate social responsibility in their commercial activities.

SOCIAL COMPLIANCE, SOCIAL ACCOUNTABILITY & CORPORATE SOCIAL RESPONSIBILITY:

The concept of responsible business conduct is very much prevalent from ancient times. Yet, since the 1990s, expanding fear over the effects of financial globalization has prompted new demands for organizations to assume a focal part in endeavours to dispose of destitution, accomplish fair and responsible frameworks of administration and guarantee ecological security. Fundamentally, the approach is to see business as a feature of society and to discover approaches to expand the positive advantages that business endeavour can convey to human and ecological prosperity while limiting the disastrous effects of reckless business. The motivation that has come about because of these worries has differently been called 'corporate citizenship', 'corporate social responsibility' (CSR), 'corporate accountability' or basically 'corporate responsibility'.

As we all know, Corporate Social Responsibility (CSR) is an articulation used to depict what some observe as a company’s commitment to be delicate to the necessities of all to consider not just of the money related/financial measurement in basic leadership, yet additionally the social and ecological results.
CORPORATE ACCOUNTABILITY:

Accountability in its basic sense implies rendering of accounts and, by extension, indicate answer-ability to an external agency or group and, further, implies ensuring propriety, legality and safeguarding public interest in satisfying of the hopes of the external agency or group. ‘Social accountability’ implies accountability to the people. This is the central part in a democratic set-up. In a decentralised democracy the most basic goal is to provide power to the common man.

Today ‘Corporate accountability’ traverses developing CSR issues like business morals, decent variety, commercial centre conduct, administration, human rights and worker rights and in addition to this more traditional areas of monetary and environmental activities. Thus, an expanding number of corporate personalities are revealing openly on their social, ecological and moral performances, both as a communication to stakeholders and as an administration instrument. In any case, as this training has just turned out to be more prevalent since the mid-1990s, there are so far no standard arrangements to address the kind of data companies choose to report, or how that data is gathered, investigated and displayed.

Successful and accountable management framework enable companies shape cultures that help and reward CSR performance at all levels.

CSR AND GOOD GOVERNANCE:

A standout amongst the most important issues inside the ‘Corporate Social responsibility’ agenda concerns the dynamic connection amongst CSR and great public governance. The limits both to corporate responsibility through law and to "deliberate" CSR-related activities by organizations lie with the ‘public good governance’ programme.

Enactment to manage most pessimistic scenario, examples of reckless conduct and to set a base floor for business conduct won't work without powerful drivers for business execution and enforcement, regardless of whether they are ‘market-based’, or an after effect of implementation through the state. The need of the hour is to implement social, moral and environmental policy commonly known as ‘codes of conduct’ through the development of objectives, programmes and mechanisms for observing social compliance execution.
One very significant facet of ensuring ‘social accountability’ is establishment of social compliance through the method of constant auditing and monitoring. Today the requirement for increased ‘corporate accountability’ is needed in all sectors. So we can say that ‘social accountability’ removes ambiguity, reduces loop holes, forces proper expenditure of funds, generates faith and harmony, and forms demand led enhancement in services. So, it is a regular audit and a continuous check on malfeasance.

**BENEFITS OF CORPORATE SOCIAL RESPONSIBILITY**

**Following are the benefits of Corporate Social Responsibility:**

1. **HUMAN RESOURCES**
   A Corporate Social Responsibility program can be viewed as a guide to recruitment procedure and retention especially inside the aggressive ‘graduate student market’. Potential recruits frequently ask about a company’s CSR policy during an interview, and having an extensive strategy can give favourable position. Corporate Social responsibility can likewise enhance the impression of an organization among its staff, especially when staff can become involved through payroll giving, fund raising exercises or group volunteering.

2. **RISK MANAGEMENT**

   Management of risk is a focal point of numerous corporate systems. It takes decades to build a reputation that can be destroyed in hours through episodes, like, scams, corruption or accidents which pose a serious threat to the environment. These occasions can likewise draw undesirable attention from controllers, courts, governments and media. Building a bona fide culture of ‘doing the correct thing’ inside a company can counterbalance these dangers.

   In swarmed commercial centres, organizations make attempts toward an extraordinary selling proposal which can isolate them from the competition in the brains of shoppers. CSR can assume a part in building client dedication in light of particular moral values. A few noteworthy brands, for example, The ‘Co-operative Group’ and ‘The Body Shop’ are based on moral values. Business service associations can profit too from building a good name for honesty and best practice.
It has been quite a while for companies, for example the Birlas and the Tatas, idea of ‘nation building’ and trusteeship have been alive in their operations much before Corporate Social Responsibility turned into a mainstream cause.

**Corporate Social Responsibility of TATA:**

‘Tata Group’ is a pioneer in advancing CSR in India. The Tata Group is a gigantic group of businesses that commands Indian markets. What’s more, Tata Steel is one of twenty-eight noteworthy corporations inside the Tata Group. Founded in 1907, it is the largest private sector steel company in India, with a capacity of 3.5 million tones per annum crude steel production. Operations are spread across the country, with steel manufacturing and mining activities situated in the states of Jharkhand and Orissa at eight locations. The company employs approximately 48,000 people as at April 2002.

Tata Steels CSR activities started as early as its inception. Initially, these activities were only philanthropic in nature and the company believed more in ‘giving’ back to the society. CSR activities are now ranging from community development, improving health care, reducing poverty, occupational health and safety risk control and protecting the environment that means covering almost all the stakeholders.

With an expanding business and generous attitude Tata Group is a multinational aggregation which begun as a trading company by Jaksetic Tata in 1868. It has extended in sweeping activities, having more than eighty companies. Under Ratan Tata, the Tata group experienced major organizational stages as for example rationalization, globalization, and now modernity, as it expects to come to a detailed $500 billion in revenue by 2020-21, approximately the size of the multinational organisation ‘Walmart’. More than half of the ‘equity’ of the parent firm is held by charitable trusts given by the ‘founders’ of the Company. The Tata Group was given the Carnegie Medal of Philanthropy in 2007 recognizing its different magnanimous exercises.

The Tata Group is guided by the words of JRD Tata, "No success or achievement in material terms is worthwhile unless it serves the needs or interests of the country and its people." Tata Sons spent approximately 8-14% of the profits for the purpose of different social activities through the trusts.

Even in the 1990's, when the economy of the country was unstable and precarious, the contribution of the Tata group in the direction of social exercises did not diminish. It increased from Rs 670 million in 1997-98 to Rs 1.36 billion in 1999-2000. In the year 2004,
Tata Steel group alone distributed Rs 45 crore on social service. From supporting Gandhiji’s crusade in South Africa against racial discrimination to wellbeing, sports, education, socio-economic strengthening measures in different states, helping government during natural catastrophe, providing research facilities and funds for the same, presenting labour welfare laws, and some more Tata group has contributed a lot as a part of Corporate Social Responsibility.

As to business methodology, keeping in mind the end goal to guarantee the sustainability of exercises, the Tata group follows the ‘Triple Bottom-line Approach’ in this manner increasing the value of the work of the individuals, natural preservation and enhancing wellbeing and urban advancement. The Company additionally made corrections to the Articles of Association and in this way included fresh grounds the extent of which identifies with the community and moral obligations of the organization to eventual shoppers, labours and workers, investors and society in general. Another change was brought about to the Clause 10 of the Code of Conduct to additionally perceive CSR. Corporate Social Responsibility finds place in its major business forms recognized by TISCO’s administration which was viewed as critical for the advancement of the organization. An estimate of around 66% of the benefits from the venture branch of Tata sons goes to philanthropy and various different activities, being the country's biggest employment centre, Tata Group is gigantic achievement and a splendid example of CSR from India. Jamshed Irani, the Director of Tata Sons Ltd, once said, ‘The Tata philosophy is that 'return to the general population what you have earned from them’.

Corporate Social Responsibility is one such special region of Corporate Behaviour and Governance that requirement to get aggressively addressing and implementing carefully in the organizations. In addition to this CSR is one such successful apparatus that synergizes the endeavours of Corporate and the social sector organisations towards sustainable development and advancement of societal goals at large. India is a quickly developing economy and is booming with national and multinational firms. The Indian land likewise confronts social difficulties like poverty, population explosion, scam, corruption, lack of education just to name a few. Consequently it is all the more vital for the Indian companies to be sensitized to corporate social responsibility in the correct perspective so as to encourage and make an empowering situation for equitable partnership between the civil society and business.
It must be remembered that it is not only the benefit intention that the companies have, in addition to this there is also the commitment to satisfy the different stakeholders of the organization that constitutes the customers, policies of the government and so forth. Yet then again the company likewise has the benefit of wandering into and taking upon itself the task of charitable exercises. It encourages the corporate business to build up a positive goodwill and affinity with the buyers in this manner pulling in to an ever increasing extent, accordingly expanding the sale and hence the benefit. The extent of cash spent on such exercises must be less than what is earned, or it would end up in a corporate suicide. Each circumstance must be monetarily tried and tested, and such an appropriately tried issue should be considered to advance its magnanimous exercises for the community’s motivation
There is a noticeable fashion around the globe towards rationalisation of business activities and simplification of statutes for its proper governance. This trend is being driven to a certain extent, by the utilization of electronic communication and information technology that has speeded up business transactions as well as making them global. Time is, along this line, ready to guarantee ripe that dispensation of justice and disposing of business matters by the court and authorities ought to be tuned in to the speed with which business is being carried out. In addition to this certain business matters require specific domain knowledge in order to deal with the issues reasonably. Keeping in mind the backlog of legal cases and the requirement for ‘specialized knowledge’ of the persons discharging the duty of adjudicating the issues involving intricate issues relating to the subjects, the process of setting up of specialized tribunals has gained momentum over a period of time.

The birth of setting up of specialized tribunals can be traced in the Apex court judgement in Sampath Kumar case\(^{313}\). In this case while adopting the theory of ‘alternative institutional mechanism’ the Supreme Court stated that “since independence, the population explosion and the increase in litigation had greatly increased the burden of pendency in the High Courts.” The Supreme Court further mentioned the studies conducted towards relieving the High Courts of their ever increasing case loads; the recommendations of the Shah Committee for setting up independent Tribunals and likewise suggestion of the Administrative Reforms Commission for setting up of Civil Service Tribunals.

The Ministry of Corporate Affairs (MCA) published a notification with regard to the establishment of the National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) which will come into effect from the June 01, 2016. The formation of the above mentioned Tribunals is in exercise of the powers conferred by Sections 408 and 410 respectively of the new Companies Act, 2013.\(^{314}\) The Companies (Second Amendment) Act, 2002 has provisions relating to the establishment of a National Company Law Tribunal and Appellate Tribunal to substitute the priestly existing ‘Company Law Board’(CLB) and ‘Board for Industrial and Financial Reconstruction’ (BIFR).\(^{315}\)

\(^{313}\) S P Sampath Kumar v. Union of India, 1985 (4) SCC 458.


\(^{315}\) Ibid.
formation of the NCLT as a specialized institution for corporate justice is based on the proposals made by the Justice Eradi Committee. It was a committee which was set up to look into the current laws relating to ‘winding up proceedings’ of companies in order to alter it in line with the most recent advancement and development in the corporate law and governance and to recommend changes in the technique at various stages followed in the insolvency proceedings of companies to avoid superfluous delays in tune with the global practice in this field. The setting up of the NCLT and NCLAT is a piece of the endeavour to move to a regime of speedier resolution of corporate disputes, and therefore improving the ease of doing business in India. NCLT and NCLAT will likewise pave the path for the speedier implementation of the ‘insolvency and bankruptcy code’. Their formation is expected to reduce the burden on courts. According to Livemint, which is an Indian daily, reported that “government data revealed that 48,418 civil cases were pending before the Supreme Court of India as of mid-February 2016, 3,116 million civil cases pending before the high court as of December 31, 2015 and 8,234 million civil cases pending before the district and subordinate courts.”

In **R. Gandhi, President, Madras Bar Association v. Union of India** the petitioner challenged the constitutionality for creation of NCLT and NCLAT on the ground that “Provisions regarding formation of NCLT and NCLAT are ultra vires of Article 14 of the constitution”. The Supreme Court held that ‘the Parliament’s power to create National Company Law Tribunal and National Company Law Appellate Tribunal is clearly traceable to Entries 43 and 44 of List I.’ The Court also viewed that ‘Parliament is thus competent to enact law with regard to the incorporation, regulation and winding up of Companies. The power of regulation would include the power to set up adjudicatory machinery for resolving the matters litigated upon, and which concern the working of the companies in all their facets’.

It may be pointed out that the Law Commission, as referred to by the Supreme Court in the case of **L Chandra Kumar** had also recommended ‘the creation of specialist Tribunals in place of generalist Courts’.

Along these lines, the formation of ‘National Company Law Tribunal’ and ‘Appellate Tribunal’ and vesting in them the powers exercised by the High Court with respect to

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316 Ibid.
317 (2010)11 SCC 1
company matters cannot be said to be unconstitutional. With respect to the challenge of the provisions contained in the new Act relating to the qualifications of technical members of NCLT/NCLAT, the Apex Court held that only officers who are holding the position of Secretaries or Additional Secretaries alone are to be considered for appointment as technical Members of NCLT.\(^{319}\)

NCLT can be called as Mega Tribunal because NCLT will consolidate the corporate jurisdiction of the following forums:\(^{320}\)

1. Company Law Board


3. The Appellate Authority for Industrial and Financial Reconstruction

4. Jurisdiction and powers relating to winding up restructuring and other such provisions, vested in the High Courts.\(^{321}\)

The Company Law Board under the Companies Act, 1956 and BIFR will stand dissolved once the NCLT comes into existence.

The NCLT has been empowered to exercise the following powers:

1. Most of the powers of the Company Law Board under the Companies Act, 1956.

2. All the powers of BIFR for revival and rehabilitation of sick industrial companies;

3. Power exercised by the High Court in cases relating to ‘mergers, demergers, amalgamations, winding up’, etc. will now be exercised by NCLT.

4. The NCLT shall exercise the power to order repayment of deposits which has been accepted by Non-Banking Financial Companies as enumerated in ‘Section 45QA of the Reserve Bank of India Act, 1934’;

5. The NCLT will now exercise the power to wind up companies;

\(^{319}\) Supra n.314

\(^{320}\) Ibid.

\(^{321}\) Ibid.
6. The NCLT will also exercise the power to Review its own orders.

7. Under the old regime, there was no express provision ousting the jurisdiction of the Civil Courts, and various judicial pronouncements have time and again reiterated the requirement of an express provision for ousting Civil Court jurisdiction.”

Putting an end to the debate, Section 430 the Act expressly ousts the jurisdiction of Civil Courts. The provisions in relation to the examination of a “company's accounts, freezing of assets, class action suits, conversion of a public company to a private company” will now be administered by the National Company Law Tribunal, and appeals from NCLT would be made before NCLAT instead of the High Court.

The National Company Law Tribunal will have the powers and jurisdiction of the ‘Board for Industrial and Financial Reconstruction (BIFR)’, the ‘Appellate Authority for Industrial and Financial Reconstruction (AAIFR)’, ‘Company Law Board’(CLB), High Courts in relation to ‘compromises, arrangements, mergers, amalgamations and reconstruction of companies, winding up etc’. Therefore, multiplicity of filing of suits before various courts or quasi-judicial bodies or forums have been tried to be avoided.

**Transition from CLB to NCLT**

The Act has set out in detail the technique to manage cases which are pending in different forums in Section 434. The Indian Government has notified 1st June 2016 for the transfer of cases from Company Law Board to NCLT. On that date, all the pending procedures before the Company Law Board will be transferred to National Company Law Tribunal and the Tribunal will dispose of such issues as per the provisions of law. Tribunal has the discretion to take up the pending CLB cases from any stage. The NCLT has the discretion to take up any case from where it was left by CLB or begin the procedures once again or from any stage it deems fit. The powers of the NCLT shall be exercised by the benches formulated by its President. If any individual is aggrieved by any order passed by the ‘Appellate Tribunal’ he may file an appeal to the Apex Court within sixty days from the date of receipt of the order of the Appellate Tribunal to him on any question of law arising out of such an order:

According to a notice published on the website of the ‘Department of Personnel and Training’ on March 30, 2016, former judge (Retd.) of the Supreme Court of India, Hon'ble
Mr. Justice S.J. Mukhopadhya, was appointed as the chairperson of the NCLAT, and the appointment Committee of the Cabinet approved appointment of Justice (Retd.) M.M. Kumar, who was the Chairman of the Company Law Board, to be the president of National Company Law Tribunal (NCLT). According to Section 466 of the Companies Act 2013, the preset members and staff would be members and staff of the NCLT.322

By the notification on June 01, 2016, the Central Government also formed (eleven) Benches of the NCLT by exercising its powers under sub-section (1) of section 419 of the newly enacted Companies Act, 2013. Of the said 11 benches, two shall be situated in New Delhi, and one each at Ahmedabad, Allahabad, Bengaluru, Chandigarh, Chennai, Guwahati, Hyderabad, Kolkata and Mumbai.323

FEATURES OF NCLT:-

☐ Specialized court for the Corporate entities.

☐ This will be only Tribunal for the Corporate Members.

☐ It shall avoid multiplicity of litigation before various Forums

☐ There would be a number of branches of the NCLT all over the country, which would provide justice almost at one’s doorstep.

☐ There would be a combination of judicial and Technical members in NCLT

☐ There would be a decrease in the time taken for winding-up.

☐ Decline in backlog of cases.

☐ Speedy and swift disposal of cases.

☐ NCLT & NCLAT have deals with exclusive jurisdiction.

With the coming into existence of NCLT/NCLAT, it shall provide numerable opportunities to Practicing ‘Company Secretaries’ as these people have been authorized to appear before the Tribunal/Appellate Tribunal according to (Section 432). Therefore, Practicing Company Secretaries would be given the opportunity for the first time to appear for matters which were up till now dealt with by the High Court.

322 Supra n.314
323 Ibid.
The new avenues opened up for ‘company secretaries’ under NCLT are mentioned below:

- **Compromise and Arrangement**
- **Merger & Amalgamation u/s 391-394.**
- **Revival & Rehabilitation of Sick Companies**
- **winding up proceedings under the Companies Act, 1956**
- **Reduction of Capital**
- **Private liquidator and many others.**
- **Right to appear as Legal Representative”**

The Constitution of NCLT and NCLAT are part of the efforts for faster resolution of corporate disputes, thus improving the ease of doing business in India.\(^\text{324}\) Essentially the setting up of NCLT & NCLAT would give a facelift to the corporate law and practice in India. It shall offer various opportunities to various professionals like CS/CA/CMA as they are authorized to appear before Tribunal/Appellate Tribunal.\(^\text{325}\)

The establishment of the National Company Law Tribunal with its planned wide reach all over the country by prudence of its location, power, capacities and jurisdiction ought to be a component of awesome significance to a great number of individuals, principally because the National Company Law Tribunal is not another name for the regular Company Law Board, nor does its power, capacities, jurisdiction or zone of work are like that of the Company Law Board. The ‘National Company Law Tribunal’ has been set up as another option to the Company Law Board, the Board for Industrial and Financial Reconstruction and seek to practice its powers and capacities through its benches situated all over India. Although it cannot be said for sure how efficacious the substitution from the previous formal method of dispute resolution will be in comparison to the working of the National Company Law Tribunal since it is still in its early stage of formulation and it is far too early to say if in certainty it would be a successful alternative to the courts and various other forums.

The National Company Law Tribunal however would have certain clear advantages, for example, to reduce the burden the of legal work from the shoulder of the Company Courts

\(^{324}\) Ibid.
\(^{325}\) Ibid.
and as well as other forums, which is very essential for the smooth working and fast transport of justice. The National Company Law Tribunal would practice its ‘original jurisdiction’ to decide disputes coming before it. For the ‘National Company law Tribunal’ to be fruitful the freedom of the tribunal must be guaranteed and preserved.