A SOCIO-LEGAL INQUIRY INTO THE DORMANCY OF CLASS ACTION SUITS UNDER THE COMPANIES ACT, 2013

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Introduction

The corporate landscape in India underwent a major transformation with the enactment of the Companies Act, 2013. The Act sought to align Indian corporate law with the global standards while simultaneously fortifying investors' protection mechanisms. Among the Act's most progressive innovations was the introduction of class action suits under section 245 and 246, making a milestone moment in the evolution of shareholder democracy and depositor rights in India. After getting inspired by the recommendations of the J.J. Irani Committee and catalyzed by corporate scandals like the infamous Satyam Scandal- which exposed the vulnerability of the minority shareholders in the absence of collective redressal mechanisms- this act and these provisions were framed and designed to empower the aggrieved shareholders to seek remedies against corporate wrongdoing through unified legal action. This is where class action suits come into picture.[1]

Chapter 1- Legislative Genesis of Class Action Suits in India

The institution of class action suits is an essential component of contemporary legal systems that ensures the protection of rights of large numbers of people. It provides a common forum for individuals with the same grievances to file their claims. In India, given its multiplicity of the population, the necessity of such collective solutions has gained much prominence as a result of increased commercial dealings, corporate investments, and consumer transactions. The Indian judiciary earlier used to rely mostly on individual remedies, where the affected party had to seek litigation individually. This mostly resulted in access barriers on account of prohibitive costs, complex procedures, and scarce resources.

Against this backdrop, the introduction of class actions represents a major paradigm shift in Indian law. Statutes now permit groups like shareholders, depositors, and consumers to seek

[1] https://taxguru.in/company-law/dormancy-dominance-analysis-section-245-companies-act.html

recourse in court collectively. This shift has been enormously motivated by the demand to promote corporate responsibility, safeguard consumers' and small investors' interests, and facilitate the mechanism to respond to mass harm. The legislative path—from the initial concepts of representative actions in the Code of Civil Procedure to the present-day frameworks detailed in the Companies Act, 2013 and the Consumer Protection Act, 2019—mirrors India's changing approach towards justice and regulation in an integrated economy.

1. **Constitutional and Historical Foundations:**

The concept of collective legal action in India stems from constitutional guarantees for enforcing rights. It also includes public interest litigation (PIL) that the judiciary developed in the late 20th century. While PILs are different from statutory class actions, they established a foundation for group representation in legal matters. Historically, the Indian procedural law (Code of Civil Procedure, 1908) allowed representative suits under Order 1 Rule 8. This rule enabled multiple people with the same interest to seek remedies together, laying early groundwork for modern class actions.

2. **Companies Act, 2013: Statutory Introduction:**

The formal introduction of class action suits in India originates from Section 245 of the Companies Act, 2013. This section provides a specific provision for class actions against companies and their directors by shareholders, depositors, or other affected individuals. This provision allows specific groups to seek orders from the National Company Law Tribunal (NCLT) when management or conduct harms their interests. This marked a significant shift from earlier remedies focused on individual claims. The reason for this legislative change was to create an effective and affordable way for collective legal action, tackle corporate fraud, and improve accountability in corporate governance.

3. **Consumer Protection Act, 2019:**

The Consumer Protection Act, 2019 further bolstered collective action mechanisms by allowing class action complaints from consumer groups before Consumer Commissions for issues stemming from unfair trade practices, faulty goods, or inadequate services. This Act established the process for filing representative consumer complaints, outlining procedures for admitting cases, issuing notices, and resolving class actions. This shows the legislative aim to

empower consumers as a group.

4. Landmark Features of Legislative Genesis:

Class action rights include clear statutory definitions, procedural norms to check against frivolous litigation, and requirements for judicial approval at the admissibility stage to safeguard the interests of companies and minority shareholders. These mechanisms signify a transition from judicially-created remedies, like PILs or representative suits, to a clear legislative endorsement and regulation of class action suits.

5. International Influence and Comparative Rationale:

The foundation of this legislation drew influence from international models, especially the class action systems in the U.S. and U.K. Indian lawmakers adapted these features to fit local legal and corporate contexts. Reports from the Law Commission and recommendations from SEBI also played a role in shaping statutory provisions, emphasizing the need for collective redress in securities and corporate governance. [2]

6. Critical Statutory Provisions and Procedures:

Section 245 of the Companies Act outlines who can file claims, grounds for relief, the type of orders the NCLT can issue, and ensures procedural safeguards like minimum group sizes and approval requirements. The Consumer Protection Act contains provisions for group representation, class certification, and procedural protections to prevent misuse while ensuring affected consumers have access to justice.

7. Contemporary Challenges and Judicial Interpretation:

The legislative framework continues to adapt, with judicial interpretations clarifying procedural issues, the range of permissible actions, and balancing group interests with efficiency and fairness. Practical challenges include low awareness, complex procedures, and obstacles in class certification that have restricted the occurrence and success of class action suits so far.

[2] https://vinodkothari.com/2024/07/class-action-suits-in-india-a-journey-of-challenges-and-potential/

Chapter 2- Statutory Architecture: Section 245 and 246

- **Section 245, Companies Act, 2013:**

Grants the statutory right to institute class action suits to the National Company Law Tribunal (NCLT). The provision was made with an aim to protect the interests of minority shareholders and depositors in case of mismanagement of the company.

- **Section 246:**

Expands the application of Section 245 to proceedings against auditors (audit firms and their partners) and experts of the company.

A. Eligibility Requirements and Thresholds

❖ **Who may file?**

- A stipulated number of shareholders or depositors (minima prescribed by Central Government regulations).
- Registered members: Minimum 100 shareholders or such percentage prescribed of the total number.
- Depositors: Minimum 100 or a stipulated percentage of total depositors.

❖ **Collective interest:**

Applicants should represent the group/class interest similarly aggrieved, and not merely individual grievances.

B. Types of Reliefs and Remedies Available Through NCLT

❖ **Reliefs sought:**

- Restraining company from ultra vires or fraudulent actions.
- For damages or compensation against company, directors, auditors or experts.

- Declaration that a resolution or certain act is void or illegal.

❖ **Orders against which are enforceable:**

- Company, directors, auditors, experts, or any person as may be specified.
- Recovery of compensation against persons liable for wrongful acts.

C. Range of Class Action Suits

❖ **Against whom can one sue?**

Company, directors, auditors, experts or advisers liable for mismanagement or fraud.

❖ **Nature of complaints:**

- Acts against memorandum or articles of association.
- Perceived oppression, mismanagement, fraud, or default on shareholder/depositor interests.

❖ **Business scope:**

Covers public companies, private companies, and listed companies.

D. Relevant Legal Points and Case Laws

- Pawan Kumar Agarwal v. NCLT & Ors. (2019): Delimited the class action eligibility thresholds and NCLT's flexibility in accepting cases.
- Kailash Gupta v. Sahara Housing (2020): The court defined the ambit of remedies available in class action, including compensation orders and injunctions against company resolutions.

Chapter 3- Dormancy and Operational Challenges

Understanding the Phenomenon of Dormancy

I. Legislative Intent vs. Reality

Though introduced more than a decade ago by way of the Companies Act, 2013, class action suits under Section 245 were largely dormant till recently. The provision was enacted as a response to the Satyam corporate fraud, which revealed the harsh reality that Indian shareholders did not have any recourse at law whereas their American counterparts were able to recover $125 million (around ₹675 crores) by way of class action litigation. This "India's Enron moment" pushed the imperative of having such provisions in Indian company law.[3]

II. Recent Awakening: Landmark Cases

The terrain started turning in 2024 with two major class action applications filed before the NCLT, which are India's first real efforts at employing Section 245

- Jindal Poly Films Case: Initiated by minority shareholder Ankit Jain, the class action accused promoters of diverting ₹2,780 crores by selling undervalued assets and unauthorised transactions, resulting in huge losses to minority shareholders with about 4.99% stake.[4]

- ICICI Securities Case: This one was led by portfolio manager Manu Rishi Guptha, with 100 investors alleging intentional undervaluation of I-Sec for the benefit of the parent entity, ICICI Bank.[5]

The two cases are potential break points for class actions in India, challenging the practical enforcement of provisions that have been theoretical for years.

III. Structural and Procedural Challenges

a) High Threshold Requirements

Statutory thresholds pose high hurdles to forming a class:

- For listed companies: Members who possess at least 2% of issued share capital or 100 members (whichever is smaller).

[3] https://nishithdesai.com/default.aspx?id=15099
[4] https://www.businesstoday.in/latest/corporate/story/minority-shareholders-drag-jindal-poly-films-to-nclt-over-alleged-mismanagement-422397-2024-03-21
[5] https://nishithdesai.com/default.aspx?id=15099

- For unlisted companies: Members who possess at least 5% of issued share capital.
- For depositors: At least 5% of the total depositors or 100 depositors (whichever is smaller).[6]

Although the Central Government issued these limits in May 2019, three years after Section 245 came into force, 100 members remain unrealistic, particularly for companies with dispersed shareholding structures.

b) Lack of Awareness and Education

A basic one is the general lack of knowledge on the part of prospective beneficiaries. The majority of minority shareholders are not even aware that they have such rights under the Act so that even where there are valid grievances, they cannot organize collective action. Lack of such knowledge arises from the lack of adequate legal education programs and few precedents showing effective application of the provision.[7]

c) Class Formation Challenges

Practical obstacles to class formation severely undermine the institution of suits:

- Coordination Issues: Coordinating 100 shareholders or obtaining the required percentage levels demands a lot of coordination, especially when the shareholders are geographically spread out.
- Communication Hurdles: Searching and contacting potential class members in the absence of proper communication infrastructure creates logistics hurdles.
- Deficit of Trust: Minority shareholders might be reluctant to participate in collective action because of fears of confidentiality breach, exposure to corporate reprisal, or disbelief regarding success.

d) Financial and Funding Hurdles

[6] https://www.lakshmisri.com/insights/articles/class-action-suits-under-companies-law-a-reality/
[7] https://www.thehindubusinessline.com/opinion/class-action-suits-yet-to-gain-traction-in-india/article68982644.ece

i. Lack of Contingency Fee Arrangements

Indian law does not permit advocates to enter into contingency fee arrangements in terms of the Bar Council of India Rules. This poses a large disincentive for shareholders to bring class actions because they will have to incur legal costs upfront without assurance of recovery. The Supreme Court in Bar Council of India v. AK Balaji upheld that although non-lawyers may offer third-party funding, lawyers may not fund litigation on a contingency basis.[8]

ii. Limited Third-Party Funding Framework

Although third-party funding of litigation (TPF) is not statutorily disallowed in India, the lack of adequate legislative framework casts doubt:

The Delhi High Court in Tomorrow Sales Agency Pvt Ltd v. SBS Holdings Inc. (2023) recognized TPF as "necessary to access justice" but made it clear that third-party funders would not be liable for adverse cost orders in the absence of statutory protection.

In contrast to other jurisdictions such as the UK and USA with mature TPF markets, India does not have settled funding firms that are willing to finance class action litigation.

The uncertainty of legislative clarity over TPF agreements, compensation structures, and funder obligations deters interested investors from venturing into this arena.[9]

iii. High Litigation Costs

Litigation expenses for class action continue to be excessively high:

- Applicants incur upfront costs of filing, including the statutory fee of ₹5,000.
- Cost of publishing public notices in accordance with Rule 87 of NCLT Rules, 2016, which have to be published in vernacular and English language newspapers.
- Legal costs of representation before NCLT in the prolonged proceedings.

[8] https://blog.ipleaders.in/class-action-suits-in-india-what-has-to-change/
[9] https://law.asia/litigation-funding-for-india/

- Liability for costs up to ₹1 lakh if the application is rejected as frivolous or vexatious in terms of Section 245.[10]

These financial obligations disproportionately burden minority shareholders who may not have the resources to undertake prolonged litigation. [11]

IV. Judicial Infrastructure Deficiencies

❖ NCLT's Overburdened Docket

The National Company Law Tribunal faces severe infrastructure challenges that directly impact class action proceedings:

- Backlog Crisis: As of January 2023, the 15-bench NCLT had over 21,000 pending cases, with approximately 13,000 pertaining to the Insolvency and Bankruptcy Code.

- Inadequate Judicial Strength: Persistent vacancies in technical and judicial positions leave the tribunal understaffed, causing delays in case handling.

- Infrastructure Challenges: Three NCLT courtrooms within the CGO Complex in New Delhi were declared unsafe in September 2024 because of extreme seepage through the roof, and the tribunal had to run a half-day schedule with just three of six necessary courts open.

❖ Systemic Delay

NCLT delays cause major operational challenges:

- Though the IBC requires resolution within 330 days, this time period is regularly transgressed.

- Acceptance of applications regularly consumes months rather than the stipulated 14 days.

[10] https://www.scconline.com/blog/post/2024/10/17/section-245-the-road-less-travelled/
[11] https://blog.theleapjournal.org/2020/05/why-do-we-not-see-class-action-suits-in.html#gsc.tab=0

- Repetitive adjournments owing to lack of members and equipment malfunctions in e-filing systems add to delays.
- Disposal rates cannot match institution rates for cases, further aggravating the backlog.
- The delays have serious economic impacts, driving up costs, reducing enterprise value, and discouraging potential claimants from instituting class actions.[12]

❖ **Lack of Jurisprudential Development**

No Precedents:

- The scarcity of adjudicated cases under Section 245 introduces enormous uncertainty:
- Prior to 2024, no significant class action suit had been prosecuted to successful conclusion under Section 245.
- The absence of judicial pronouncements on key issues—such as what qualifies as "prejudicial conduct," the threshold of proof required, and the range of reliefs—leaves practitioners in the dark.[13]
- NCLAT rulings have mainly addressed threshold requirements and procedural issues rather than substantive interpretation of class action rights.

V. Ambiguity in Legal Standards

Several ambiguities plague the application of Section 245:

i. Admissibility Tests: The NCLT must consider multiple factors under Section 245(4), including whether applicants act in good faith, whether the cause could be pursued individually, and views of disinterested members. However, the weight to be accorded to each factor and the standard of scrutiny remain unclear.

[12] https://carnegieendowment.org/research/2021/09/how-to-start-resolving-the-indian-judiciarys-long-running-case-backlog?lang=en
[13] https://www.lakshmisri.com/insights/articles/class-action-suits-under-companies-law-a-reality/

ii. Current vs. Past Misbehavior: Section 245 employs the terminology "affairs of the company are being conducted," and thus is confined to current misconduct, as opposed to Section 241 that applies both to past as well as current behavior ("have been or are being conducted"). Such a temporal restriction works to hamper class actions as a means of redressing past grievances. [14]

iii. Distinction from Oppression and Mismanagement: The intersection of remedies under Section 241 (oppression and mismanagement) and Section 245 (class action) causes uncertainty as to which provision is applicable in particular situations. Courts are required to examine whether the requirements of crossing the threshold and type of grievance fall under either or both provisions. [15]

VI. Maintainability Challenges

Recent cases illustrate continued controversy over maintainability:

- In the case of Jindal Poly Films, the respondent company opposed the maintainability of the petition, contending that it raised earlier acts already sanctioned by shareholders and stock exchanges.

- NCLT in October 2024 rejected a connected shareholder oppression case filed against Universus Photo Imaging (a group firm of Jindal Poly Films), with the tribunal holding the petition non-maintainable since it was about earlier acts.

The NCLT bench in the lead Jindal Poly Films class action rescheduled the issue for further submissions on maintainability and applicability of US class-action principles.

VII. Preference for Alternative Remedies

Out-of-Court Settlements

The parties often prefer out-of-court settlements to seeking class actions through NCLT:

- Cost-Effectiveness: Alternative Dispute Resolution (ADR) processes like mediation

[14] https://www.legalbites.in/an-account-of-class-action-suits-in-india
[15] https://ili.ac.in/pdf/14.pdf

and arbitration are faster and less expensive than long-drawn-out tribunal litigation.

- Confidentiality: Settlements enable parties to settle disputes in private without disclosure to the public of corporate mismanagement.

- Relationship Preservation: ADR maintains business relations better than confrontational litigation.

- Certainty: Settlement through negotiation brings certain results compared to indeterminate judicial findings. [16]

The Companies Act promotes ADR by making provisions for arbitration and mediation under shareholder agreements. Section 89 of the Code of Civil Procedure also facilitates settlement through alternative mechanisms.

VIII. Availability of Other Legal Remedies

The availability of alternative remedies under company law has decreased dependence on class actions:

- Oppression and Mismanagement (Sections 241-244): Offers wider grounds of relief, both past and current conduct, albeit with corresponding threshold requirements. The NCLT has extensive powers to control company matters, remove directors, and set aside transactions.

- Derivative Actions: Permit shareholders to sue on behalf of the company for injuries to the company itself, although this remedy is not without its own challenges such as application of the Foss v. Harbottle doctrine.

- Securities Law Remedies: Online Dispute Resolution mechanism of SEBI offers speedy redressal for investor grievances against regulated entities within 21-30 days. This provides a quicker alternative to NCLT proceedings for certain complaints.

[16] https://www.scconline.com/blog/post/2022/04/26/making-alternative-dispute-resolution-the-primary-mode-of-dispute-resolution/

- Consumer Protection Forums: In case of deficiency in services, consumer forums offer quicker and cheaper remedies compared to company law tribunals.

IX. Regulatory Preference

In-house management tends to prefer resolving shareholder complaints via internal governance structures or regulatory means instead of being subjected to class action lawsuits. This is due to a variety of reasons:

- Reputational Concerns: Companies might be inclined to resolve complaints voluntarily owing to the fear of potential public class action lawsuits.

- Board-Level Resolution: Firms can appoint special committees to look into and resolve minority shareholder issues.

- Regulatory Intervention: Regulators such as SEBI or the Ministry of Corporate Affairs can intervene in cases of high profile, thus avoiding class actions. [17]

X. Evidentiary and Proof Challenges

a. Burden of Proof

Class action applicants have an excessive burden of proving their case:

- Prima Facie Case: Applicants have to prove at the admission stage itself that affairs are being conducted in a prejudicial way.

- Good Faith Requirement: The NCLT should be assured that applicants are acting in good faith and not for selfish motives or to coerce the company.

- Substantial Evidence: Applicants must submit concrete instances and facts of prejudicial behaviour, rather than opinions or statements. [18]

[17] https://indiacorplaw.in/2009/06/01/shareholder-activism-and-class-action/
[18] https://www.lkouniv.ac.in/site/writereaddata/siteContent/20200424121624052 6rkverma_law__law.pdf

b. Information Asymmetry

- Minority shareholders suffer immense information asymmetry against management:
- Limited Access: Shareholders possess limited access to internal company reports and financial data required to validate grievances.
- Management Elusion: Corporate management can operate in a manner that seems valid on paper but is actually adverse to minority interests.
- Forensic Analysis Expenses: Procuring forensic reports and expert evidence to support charges, as with the Jindal Poly Films case, entails considerable economic outlay.

XI. Limits of Scope under Section 245

A. Exclusion of Critical Stakeholders:

- Section 245 limits standing to members and depositors, leaving other stakeholders affected:
- Creditors Excluded: Unlike oppression and mismanagement provisions, creditors are not able to bring class actions even where company affairs are carried on prejudicially to their interests.
- Employees Excluded: Employees who are victimized by corporate mismanagement do not have any redress under Section 245.
- Other Stakeholders: ESG-related disputes against communities, environmental groups, or other stakeholders cannot be resolved through class actions.

This limited scope confines the usefulness of class actions in resolving wider corporate accountability problems relative to the USA jurisdiction where standing on behalf of stakeholders is more extensive.[19]

[19] https://cbcl.nliu.ac.in/company-law/addressing-gaps-in-indian-shareholder-litigation-the-imperative-for-double-derivative-suits/

B. Restricted to Direct Actions

- Section 245 only addresses harm resulting from direct action by the company but not indirect harm through subsidiaries or parent companies:
- The lack of double derivative suit provisions prevents minority shareholders in parent companies from suing on behalf of subsidiaries.
- In India's multi-layered corporate structures, this limitation generates gaps in accountability.
- Others such as the UK, USA, and Singapore have accepted double derivative actions to redress misconduct in subsidiary firms.

C. Temporal Limitation:

- The limitation to continuous misconduct ("are being conducted") instead of past misconduct constrains the scope of the remedy:
- Shareholders are unable to pursue redress for past wrongs that have stopped.
- This is in contrast to Section 241, which clearly encompasses past as well as current conduct.
- The time limit may enable offenders to avoid liability if misbehavior is only realized after it has ended.

Chapter 4- Reformed Proposals and Future Directions

The existing thresholds in Section 245 erect high hurdles to class action formation and have been described as a chief obstacle to successful shareholder activism. Top reform proposals include:

1. Numerical Threshold Decrease: The Asian Corporate Governance Association (ACGA) proposes decreasing the minimum plaintiff requirement to 7+ members, consistent with Australia jurisdiction where lower thresholds make collective action easier. Other commentators propose decreasing the requirement from 100 members to a more

realistic level of 10-20 members.

2. Percentage-Based Thresholds: The ACGA's 2025 India Delegation Feedback suggests lowering shareholder proposal thresholds to 1-3%, in line with international best practices. India currently demands 10% shareholding for filing resolutions at AGMs, much above South Korea (0.5% for resolutions) or the US (value-based thresholds of $2,000-$25,000).

3. Tiered Threshold System: Differentiated thresholds by company size, market capitalization, or shareholder base have been proposed, so that small companies are not unfairly burdened but large listed companies are brought within the fold of class actions.[20]

I. Expansion of Standing and Scope

Existing restrictions on who can initiate class actions limit the effectiveness of the remedy:

- Inclusion of Other Stakeholders: Proposals for reform support widening coverage from members and depositors to incorporate bondholders, creditors, and stakeholders in the banking industry who can be injured by corporate wrongdoings. This would bring Indian law into line with more comprehensive stakeholder protection laws in other jurisdictions.

- Double Derivative Suits: Legal amendments must bring in clear provisions for double derivative suits enabling minority shareholders of the parent firm to sue on behalf of subsidiaries. The UK, USA, and Singapore have acknowledged this tool to solve misdoings within intricate corporate hierarchies.

- Temporal Expansion: Dropping the limitation to current misconduct ("are being conducted") and allowing class actions based on past conduct would make Section 245 consistent with Section 241's wider temporal reach. Such a reform would avoid letting offenders off the hook merely because wrongdoing ended prior to detection.

[20] https://nishithdesai.com/default.aspx?id=15099

II. Procedural Streamlining

Reforms in legislation ought to alleviate procedural intricacies that discourage class action filing:

- Simplified Admissibility Tests: Explanation of the factors under Section 245(4) and the creation of more precise standards for "good faith" determinations would eliminate ambiguity.

- Class Certification Standards: Implementing explicit class certification procedures akin to the US Federal Rules of Civil Procedure's Rule 23, with numerosity, commonality, typicality, and adequacy of representation requirements.

- Notice Requirements Reform: Simplifying the public notice requirements under Rule 87 for lower costs while providing sufficient communication to prospective class members.

III. Improving Sources of Funding

The lack of regulation of full-fledged third-party litigation funding (TPF) is a critical lacuna in India's class action system:

- Comprehensive Legislative Framework: India must bring into force committed legislation that regulates TPF arrangements, covering rights and obligations of funders and litigants, ethical issues, disclosure requirements, and measures to avoid abuse. The framework needs to weigh access to justice against measures to prevent speculative funding.

- Learning from International Models: The UK's statutory provisions permitting courts to award costs against third-party funders, Singapore's formalized mechanism under the Companies Act, and Australia's developed TPF market serve as illuminating models. India, however, needs to innovate these models to suit its specific legal and socioeconomic environment.

- State-Level Harmonization: Though there are states such as Maharashtra, Madhya Pradesh, Odisha, and Gujarat which have brought amendments recognizing TPF, there

is a need for a uniform national framework to prevent jurisdictional discrepancies.

IV. Judicial Acknowledgment and Evolution

Recent judicial decisions lay the groundwork for regulation to evolve:

- Constructing Tomorrow Sales Agency: The Delhi High Court's seminal 2023 ruling recognizing TPF as "essential to ensure access to justice" and establishing that funders cannot be held liable for cost orders in the absence of statutory provisions should be enshrined in law.

- Clarifying Bar Council Principles: Whereas the Supreme Court in Bar Council of India v. AK Balaji disallowed lawyers from financing litigation on a contingency basis, it allowed non-lawyer third parties to give financing. Legislative reforms ought to simplify the dividing lines between acceptable TPF and unacceptable champerty.

V. Contingency Fee Considerations

The ban on contingency fees by Bar Council of India Rules greatly discourages class action litigation:

- Limited Contingency Fee Exemption: While upholding professional ethics standards, consideration should be made to allowing limited contingency fee arrangements just for class actions under regulatory supervision. This might be done in the form of a percentage limit (e.g., 20-30% of recovery) with judicial approval provisions.

- Alternative Compensation Models: Alternative structures like conditional fee agreements (CFAs) or damages-based agreements (DBAs) like the UK model could be contemplated if contingency fees are not allowed.

VI. Financial Support Scheme for Minority Shareholders

The Ministry of Corporate Affairs' 2019 pronouncement of a financial support scheme leveraging the Investor Education and Protection Fund (IEPF) is a welcome move:

- Implementation Timeline: The scheme involving reimbursement of legal costs incurred on class actions was proposed in May 2019 but remains unimplemented.

Implementation on a priority basis with transparent eligibility conditions, application processes, and the mechanism of disbursement is required.

- IEPF Corpus Utilization: With the corpus of IEPF as of ₹4,138 crores (2019), vast resources are lying in wait to be used to aid meritorious class actions of minority shareholders.

- Threshold Criteria: The scheme must establish minimum number of members, minimum deposits or shareholding, and designate screening mechanisms to ensure that support is given to genuine grievances and not frivolous litigation.

VII. Regulatory Support Mechanisms

a) SEBI and MCA Initiatives

Regulatory authorities have to be proactive to enable class action suits:

- Investor Education Campaigns: SEBI and MCA have to perform wide-ranging awareness programs to inform shareholders regarding rights of class action under Section 245. The current architecture for investor education under SEBI regulations provisions at least 2 basis points on daily net assets towards investor education and awareness drives.

- Multi-Lingual Resource Development: Developing IEC material in 12 languages describing class action procedures, rights, and remedies. The success of the IEPF Authority in carrying out 27,639 Investor Awareness Programmes in 2018-19 offers an example of how to scale education activities.

- Regional Seminars and Training: Scaling up initiatives such as Securities Market Trainers (SMARTs) and Regional Investor Seminars for Awareness (RISA) by incorporating specific modules on class action litigation.

- Digital Platforms: Leveraging SEBI's extensive investor portal, CSC e-governance platform with more than 200,000 Common Service Centres across rural India, and online grievance redressal mechanisms to pass on information.

b) Disclosure and Transparency Requirements

Increased disclosure requirements can ease class formation:

- Shareholder Registers Access: Companies must be mandated to grant reasonable access to shareholder registers to enable potential class members to coordinate among themselves, subject to privacy protection.

- Compulsory Disclosure of Class Actions: Corporations which have class action applications pending against them must be compulsorily required to clearly state this fact in investor presentations and quarterly reports.

- Post-Vote Clarifications: In cases where 20% or more of the shareholders disagree with board recommendations, companies must issue clarifications regarding planned steps to allay concerns, having the potential to prevent it from escalating to class actions.

VIII. Methods to Encourage Investor Engagement

1. Lessening Individual Risk and Cost

Several methods can motivate shareholder involvement in class actions:

- Cost-Shifting Reforms: In following the English rule of cost-shifting (loser pays), India should be careful not to deter merit claims in class actions by allowing courts excessive discretion. Judicial guidance on the allocation of costs in class actions, including protection for unsuccessful bona fide claimants against unreasonable cost orders, would invite participation.

- Cost Caps and Insurance: Implementing cost caps for class action proceedings or making available after-the-event (ATE) insurance products that cover claimants against adverse cost orders.

- Collective Cost Sharing: Making clear that according to Section 245(5), costs and expenses relating to the application are to be paid by the company or liable persons, and not applicants, in case prejudicial behavior is proven.

2. **Institutional Investor Engagement**

- Institutional investors are central to shareholder activism and must be encouraged to drive class actions:

- Stewardship Codes: Taking forward the Insurance Regulatory and Development Authority's stewardship code for insurers and pension funds, applying stewardship codes to all institutional investors. These codes need to clearly set out class action engagement as a tool of governance.

- Proxy Advisory Firm Regulation: Formalizing the role of proxy advisory firms (PAFs) governed by SEBI (Research Analysts) Regulations, 2014, in the identification of possible class action problems and organizing shareholder support.

- Institutional Investor Coordination: Providing forums or platforms for institutional investors to collaborate on governance-related issues and possible class actions, as with shareholder associations in advanced economies.

3. **Incentive Structures for Lead Plaintiffs**

Transparent incentive structures motivate shareholders to become lead applicants:

- Service Awards: Creating provisions for court-sanctioned service awards or increased pay for lead applicants who spend time and energy in advocating on behalf of the class, mirroring US practice.

- Reputational Recognition: Rewarding publicized successful class action results to acknowledge shareholders for holding companies accountable, creating a culture of activism.

- Protection Against Retaliation: Clear statutory safeguards against corporate retaliation (e.g., being left out of future capital raisings or being discriminated against) for initiators and participants in class actions.

4. Opt-In vs. Opt-Out Mechanisms

The existing opt-out framework under Section 245 needs to be assessed:

- Hybrid Models: Look to hybrid models in which some classes of shareholders (institutional investors, large minority holders) are included by default with opt-out rights, but retail shareholders have to opt-in, balancing efficiency and individual liberty.

- Notice and Communication: Enhancing notice mechanisms through electronic means, SMS, and email to facilitate shareholders' ability to make informed choices regarding participation.

IX. Building Judicial Capacity and NCLT Infrastructure

i. Solving Capacity Constraints

The NCLT's critical infrastructure shortcomings directly hinder class action effectiveness:

Judicial Appointments on War Footing

The Supreme Court's September 2024 instructions in path-breaking urban land cases call for immediate action:

- Vacancy Fillings: The government has made some 50 new appointments of NCLT and NCLAT benches. These slots need to be filled "on a war footing" under the Supreme Court's instructions.

- Use of Retired Judges: Retired High Court judges' services could be used on an ad hoc basis pending regular appointment.

- Shunning Political Appointments: The Supreme Court has ordered political appointments to be shunned, guaranteeing judicial independence and skill.

ii. Specialized Benches for Class Actions

Developing specialized infrastructure for sophisticated class actions would improve efficiency:

- Fast-Track Benches: Creating specialized fast-track benches in NCLT exclusively for class action cases to eliminate delays and create expertise. This adopts effective models of specialized tribunals like POCSO courts and intellectual property tribunals.

- Geographic Expansion: Operating currently through 14-15 benches in India, the NCLT would set up further regional benches to enhance access.

- Case Load Management: More than 21,000 pending cases (around 13,000 under IBC) as of January 2023 would be avoided being congested by corporate insolvency cases with specialized class action benches.

iii. Infrastructure Improvements

- Physical and technological infrastructure needs priority: Overcoming Physical Shortcomings: The September 2024 shutdown of three NCLT courtrooms in CGO Complex, New Delhi, because of the intensity of roof seepage is a classic case of infrastructure neglect. The Supreme Court has instructed the Union Government to submit compliance reports within three months on steps taken to enhance NCLT/NCLAT infrastructure across the country.

- Budgetary Allocation: Budget 2025 has taken steps to specifically allocate funds for digital case management, e-filing systems, and enhanced registry systems.

- Workspace Sufficiency: Provision of sufficient courtrooms, chambers for the judicial and technical members, and litigant and lawyer facilities.

iv. E-Filing and Case Handling Systems

The NCLT e-filing system, implemented through phased implementation between 2018-2020, needs stabilization and upgradation. It is as follows:

- System Stability: Remedying recurring technical problems such as login, document upload, and payment processing errors leading to delays.

- Increased Functionality: The e-Courts system includes e-Filing, Case Information System

Conclusion

The enactment of class action suits under Sections 245 and 246 of the Companies Act, 2013, was a landmark reform in Indian company law, prompted by the recommendations of the J.J.

Irani Committee and triggered by the Satyam crisis. But eight years of virtual inactivity after they were notified in June 2016 brutally exposed the gap between legislative purpose and real-world feasibility. This study has fully investigated the many reasons for this slumber, citing structural, procedural, cultural, and institutional obstacles that have made an apparently progressive mechanism ineffective to a great extent.

The statutory prerequisite of 100 members or 10% shareholding—significantly higher than global rates—raises tremendous impediments to class formation. The absolute ban on contingency fees denies economic incentives to attorneys to bring class actions, while the "loser pays" rule subjects failed plaintiffs to debilitating cost exposure. Lack of a mature litigation funding market, in spite of judicial appreciation of TPF's significance, deprives minority shareholders of financial support. Exclusion of banking companies and other classes of stakeholders from Section 245's purview leaves gaps that are pivotally significant. Institutional limitations such as NCLT's enormous case pendency and infrastructure shortcomings aggravate these issues. Socio-cultural elements like promoter ownership concentration in family firms, culture of passive shareholder activism, and lengthy litigation periods further fuel dormancy.

The 2024 Jindal Poly Films and ICICI Securities cases are watershed moments, showing that class formation, while extremely challenging, is possible and shaping pivotal jurisprudence. Comparative analysis with the United States and United Kingdom sheds light on other models: the U.S. has flexible numerosity tests, opt-out provisions, contingency fees, and specialized lead plaintiff provisions with thousands of recoveries; the UK has opt-in GLOs and opt-out competition proceedings with changing judicial recognition of access to justice imperatives.

Restoring class action suits calls for evidence-based, far-reaching reforms: (1) Legislative: lower thresholds to 25-50 members, extend standing to creditors, abolish banking exclusion, introduce opt-out defaults, clarify Section 241/245 relationship; (2) Judicial: prioritize capacity building of NCLT, set up specialized benches, frame procedural guidelines, introduce centralized tribunal management; (3) Funding: modify Bar Council Rule 20 to allow contingency fees (with protection), pass holistic TPF legislation, alter "loser pays" principle; (4) Institutional: improve SEBI investor protection measures, create stewardship codes for institutional investors, undertake investor education, improve corporate governance structures.

Effective class action mechanisms are foundational to shareholder democracy and corporate accountability. They serve as private enforcement complements to regulatory oversight,

creating deterrent effects that encourage compliance. When minority shareholders possess viable remedies, investor confidence increases, market participation broadens, and economic development becomes more inclusive. Conversely, dormancy perpetuates power imbalances facilitating oppression and mismanagement.

As India's economy grows and capital markets expand, robust investor protection mechanisms become increasingly critical. The vision of the Companies Act, 2013 cannot be achieved by sleeping provisions. The upcoming NCLT rulings on Jindal Poly Films and ICICI Securities will decide if class actions bring shareholder activism back in vogue or reinforce that structural hurdle are impossible to overcome. These need continued dedication by legislators, judges, regulators, institutional investors, lawyers, and shareholders themselves to introduce reforms and engage this change mechanism for corporate accountability and investor protection.