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Corporate Misconduct and Shareholder Rights: An Analysis of Class Actions under Section 245 of the Companies Act, 2013



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Class action (suits), recognized globally as an efficient legal mechanism, enable groups of similarly affected individuals to collectively pursue litigation against corporations. By balancing the power dynamics between investors and corporate entities, these suits reinforce shareholder rights and promote corporate accountability. In India, Section 245 of the Companies Act, 2013 (hereafter "the Act") was introduced as a progressive tool to empower shareholders through collective legal action, aiming to democratize access to justice and strengthen investor protections.

Despite its transformative intent, the provision saw minimal traction in India for nearly a decade, hindered by stringent procedural requirements, stakeholder unfamiliarity, and ambiguities in implementation. A notable shift occurred in 2024, however, when minority shareholders of Jindal Poly Films Ltd. and ICICI Securities Ltd. invoked Section 245 in separate applications before the National Company Law Tribunal (NCLT). Though these cases marked the first substantive attempts to operationalize class actions under the Act, their impact remained stillborn, failing to catalyze tangible outcomes and have left the mechanism in legal limbo, untested and devoid of enforceable precedents. Nevertheless, these efforts ignited discourse on the role of collective redressal in India's corporate governance framework.

This article examines the nascent stage of class action (suits) in India, analyzing their statutory foundation under the Act and clarifying their distinction from remedies for oppression and mismanagement—a separate legal avenue often conflated with collective shareholder action. By evaluating early attempts to deploy these provisions, the discussion underscores the embryonic nature of class actions in India. While these developments hint at a fledgling shift toward collective redressal, they reveal systemic challenges in translating legislative intent into enforceable outcomes, positioning class actions as a mechanism still navigating foundational uncertainties within India's evolving corporate governance ecosystem.

The Concept of Class Action Suits under the Companies Act, 2013:

A class action (or representative action) is a legal proceeding initiated by or against one or more individuals acting as representatives of a broader group. It involves a suit, petition, or application filed or defended by a representative party on behalf of all members sharing a common grievance. Under Section 245 of the Companies Act, 2013, this mechanism empowers minority stakeholders to approach the NCLT when a company's affairs are conducted prejudicially to their interests or the public interest. Rooted in the principle of protecting minority rights, class actions

address power imbalances by offering recourse to stakeholders who lack the collective bargaining strength to challenge corporate misconduct independently.

These suits serve as a critical remedy in cases involving mismanagement, misleading statements, or breaches of fiduciary duty by a company or its officers. A foundational requirement for filing a class action is the existence of a shared common interest among all members of the group; such actions are generally inadmissible if individual claims for damages are distinct or fragmented. The relief sought must benefit the entire represented group, and any judgment or order issued by the tribunal binds all class members, ensuring uniform redressal while preventing conflicting outcomes.

The Evolution of Class Action Suits in India:

Class action suits are not novel to India. Their origins trace back to Order I, Rule 8 of the Code of Civil Procedure, 1908 (CPC), which permits representative suits: if numerous persons share a common interest, one or more individuals may sue or be sued on behalf of the entire group. However, this framework lacked the specificity of modern class actions, focusing on procedural representation rather than collective redressal for corporate grievances.

The Companies Act, 1956 introduced remedies for oppression and mismanagement under Sections 397 and 398. These provisions aimed to rectify corporate governance failures but were limited to addressing internal mismanagement, excluding third-party liability (e.g., auditors or consultants) and denying personal compensation to shareholders. The absence of a robust class action mechanism became evident during the 2009 Satyam scandal, where defrauded shareholders resorted to fragmented individual lawsuits—a stark contrast to the U.S., where Enron shareholders secured a historic \$7.2 billion settlement (2008) through a unified class action following the 2001 collapse.

Recognizing this gap, the J.J. Irani Committee Report (2005) on company law reforms advocated formalizing class action suits in India. This recommendation materialized with Section 245 under the Companies Act, 2013, notified on 1 June 2016. The provision empowered minority shareholders to collectively approach the NCLT against corporate misconduct prejudicial to their interests or public interest. However, its implementation faced ambiguity due to undefined procedural thresholds, such as the minimum number of shareholders required. Clarity emerged in 2019 when the Ministry of Corporate Affairs notified thresholds for constituting a "class".

The Eligibility to Initiate Class Action (Suits):

As per Section 245(3) of the Act, the requisite number of members to make an application under sub section (1) is as follows:

For Members:

(a) In Case of Company having Share Capital:

- At least 5% of total number of members of the company or one hundred members of the company, whichever is less; or
- Member or members holding not less than 5% of the issued capital of the company – in case the company is unlisted.
- Member or members holding not less than 2% of the issued capital of the company – in case the company is listed.

(b) In Case of Company not having Share Capital: Not less than one-fifth of the total number of its members.

For Depositors:

- At least 5% of total number of depositors of the company or one hundred depositors, whichever is less; or
- Depositor or depositors to whom the company owes 5% of the total deposits of the company.

Who can be Sued:

The scope of class action (suits) encompasses not just the company management but also the third parties whose professional negligence may harm the stakeholders. Under Section 245, the following parties are entitled to be sued:

- i. **Company** – for actions prejudicial to the interest of the members and stakeholders.
- ii. **Directors** – for fraud, mismanagement or breach of duty.
- iii. **Auditors** – for issuing false or misleading reports.
- iv. **Advisors, Experts or any other person**– like consultants or valuers for providing inaccurate or misleading information or issuing inaccurate or misleading statement.

The NCLAT, vide an order in *Shanta Prasad Chakravarty v. Bochapathar Tea Estate (P.) Ltd. [Company Appeal (AT) No. 297 of 2017]*, observed that while a petition under section 241, 242 and 244 of the Act may be preferred only against the company, board of directors, shareholders or its members, under section 245, one may proceed against the statutory auditors and/ or advisors as well.

It is pertinent to note that according to sub-section (9) under this section, banking companies are excluded from the ambit of Section 245. This move to exempt banks from the purview of class action followed Reserve Bank of India's (RBI's) opposition to their inclusion, by citing comprehensive regulatory framework under the Banking Regulation Act, 1949 and well defined grievance redressal mechanism.

The Procedural Framework for Class Action (Suits) under Section 245:

Section 245 of the Act, read with the NCLT Rules, 2016 lay down the legal framework for class action. The Procedure for filing such suits is as follows:

- (i) **Application to NCLT:** After qualifying the threshold laid down in section 245(3), the shareholders can file an application to NCLT through Form No. NCLT-9. A copy of every application shall be served on the company, other respondents and all such persons as the Tribunal may direct through Form No. NCLT-5.
- (ii) **Considerations by the Tribunal:** As per Section 245(4) if the At, the Tribunal shall take into account the good faith of the application, the validity of the cause of action, the eligibility of applicants, proper evidence and documentation. In addition to these, the Tribunal also considers whether there are questions of law or fact common to the class and if the representative parties will fairly and adequately protect the interests of the class. If any application filed before the Tribunal is found to be frivolous or vexatious, it shall reject the application and order the applicant to pay to the opposite party such cost, not exceeding one lakh rupees, as may be specified in the order.
- (iii) **Admission of the Appeal:** Upon the admission of the application the Tribunal shall have regard to the following - all similar applications prevalent in any jurisdiction shall be consolidated into a single application and the class members or depositors should be allowed to choose the lead applicant, two class action applications for the same cause of action shall not be allowed and the cost or expenses connected with the application for class action shall be borne by the company or any other person responsible for any oppressive act.
- (iv) **Publication of Notice:** Upon the admission of an application filed under Section 245(1) of the Act, a public notice shall be issued by the Tribunal as per Form No. NCLT-13 to all the members of the class by publishing the same within seven days of admission of the Application by the Tribunal at least once in a vernacular newspaper in the principal vernacular language of the State in which the registered office of the company is situated and at least once in English in an English newspaper that is in circulation in that State. Additionally, the Company is required to place public notice on its website, (if any) in addition to publication of such public notice in newspaper. Such notice shall also be placed on the websites of the Tribunal and the Ministry of Corporate Affairs, the concerned Registrar of Companies and in case of a listed company on the website of the concerned stock exchange where the company has any of its securities listed, until the application is disposed of by the Tribunal.
- (v) **Hearing and Final Order:** After allowing the opposite party a fair chance of being heard, the Tribunal passes an order which 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.

- (vi) **Penalty on Failure to Comply:** 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
- (vii) **Bearing the Costs:** The cost or expenses connected with the publication of the public notice under this rule shall be borne by the applicant and shall be defrayed by the company or any other person responsible for any oppressive act in case order is passed in favour of the applicant.

Rule 86 of the NCLT Rules 2016 provides for any member to opt-out of the proceedings at any time after the institution of the class action, with the permission of the Tribunal, as per Form No. NCLT-1.

Reliefs that may be Sought in Class Action (Suits):

The purpose of initiating a class action is to prevent mismanagement, hold professionals accountable, seek compensation and uphold the interest of investors. According to Section 245(1) of the Act, the Applicants may seek all or any of the following prayers in the Application:

- (a) To restrain the company from -
- i. committing an act which is ultra vires the articles or memorandum of the company;
 - ii. committing breach of any provision of the company's memorandum or articles;
 - iii. doing an act which is contrary to the provisions of this Act or any other law for the time being in force;
 - iv. taking action contrary to any resolution passed by the members;
- (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 and to restrain the company and its directors from acting on such resolution;
- (d) 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;
- (e) To seek any other remedy as the Tribunal may deem fit.

Section 241 vs Section 245 - Distinguishing Oppression & Mismanagement from Class Actions:

While the two sections may appear similar at first glance, they differ from each other in the following manner:

Aspect	Section 241	Section 245
Focus	Individual shareholder rights	Collective interest of the affected shareholders
Applicability	Can be filed for past and present misconduct.	Can be filed for only ongoing misconduct.
Who can file	Members	Members and Depositors
Against	Company	Company, Board of

whom		Directors, Auditors and Advisors (including experts and consultants)
Threshold	For a Company having share capital: At least 100 members or at least 1/10th the total members of the company, whichever is less or member(s) holding at least 1/10th of the Issued Share Capital of the company. For a Company without share capital: At least 1/5th of the total members.	As mentioned above in the eligibility criteria.
Penalty	No penalty mentioned for frivolous actions.	Penalizes applicants for frivolous actions.

Limitations and Practical Constraints Surrounding Section 245:

Section 245 was designed to give shareholders more power to hold companies accountable through collective lawsuits. However, in reality, it hasn't worked as intended. Here's why:

- i. **Big Investors Benefit More:** The sparsely treaded law is used by professional investors a.k.a not so retail investors. Small, individual investors rarely use it because the rules make it too hard for them to mobilize enough support.
- ii. **High Barriers to Start a Case:** To file a class action, you need a large group of shareholders (at least 100 people or a percentage of investors). For regular investor, gathering this group is almost impossible.
- iii. **Lack of Evidence:** Small investors often can't access the documents or data needed to prove that *all* shareholders were harmed. Without proof, the case falls apart.
- iv. **Long, Complicated Process:** Class action may take years and involve complex legal steps. Most people prefer to sell their shares and move on rather than fight in court.
- v. **People Prefer Easier Options:** Investors often use Section 241 instead (for cases of oppression or mismanagement) because it's simpler, faster, and courts are more familiar with it.
- vi. **No Awareness or Precedents:** Very Few people know about Section 245, and since no major cases have succeeded under it, there's no guidance on how to use it effectively.

In turn, Section 245 exists on paper but barely works in practice. Without fixing these issues, it will remain unused, and its goal of empowering shareholders will remain unfulfilled.

Conclusion:

The introduction of class actions under the Companies Act, 2013 marked a significant shift in Indian corporate law. However, their underutilization—owing to procedural ambiguities and stringent thresholds—contrasts with jurisdictions like the U.S. or U.K., where fewer claimants suffice. Recent cases involving Jindal Poly Films and ICICI Securities may test Section 245's viability. As India's corporate governance matures, NCLT rulings will shape precedents, determining whether class actions evolve into a robust redressal tool or remain overshadowed by traditional remedies. The rise of shareholder activism could catalyze their adoption, redefining investor rights enforcement in India's evolving legal landscape.

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