

LEGAL EAGLE

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Class Action Lawsuits in India

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Amit Saraogi

President, MCCI

Following what is reportedly the largest breach of Personally Identifiable Information (PII) to date, which involved more than 200 gigabytes of data containing nearly 3 billion records containing sensitive information like Social Security numbers and criminal records, several class action lawsuits were recently filed against National Public Data, a data brokerage firm based in Florida.

When at least one person or organization acts as a representative of a group of persons or corporate entities that have all incurred common harms as a result of the defendants' actions, the lawsuit is known as a class-action lawsuit. The issues in dispute are shared by all class members, even though the issues of a class action can differ.

When a group of people with a common goal file a lawsuit against one or more people or entities, the class is recognized as a single entity and seeks redress. This is known as a class action suit. This article examines class action lawsuits under Section 245 of the Companies Act of 2013 (CA 2013) and examines the present system's shortcomings.

Class action lawsuits have also increased in India since the Companies Act of 2013 was implemented. Minority shareholders' recent applications demonstrate how effective these lawsuits may be as instruments for corporate governance and accountability. Stakeholders can contest management actions that might be harmful to their interests under the Indian legal system.

In India, class action lawsuits are a developing legal field that seeks to improve corporate responsibility and consumer protection. These lawsuits may become a more crucial instrument for collective redress across a range of industries as awareness rises and legal frameworks continue to evolve.

I hope the readers get more value and insights through this legal issue and enjoy reading.

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Mamta Binani

Chairperson,
Council on Legal and
Corporate Governance,
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The Indian setting is not wholly unfamiliar with the idea of class action lawsuits. The idea of class action lawsuits, also referred to as representative suits, was first established in India by the Code of Civil Procedure, 1908 ("CPC"). Among other things, Order I, Rule 8 of the CPC states that if multiple people share an interest, one or more of them may file a lawsuit, be sued, or defend a lawsuit on behalf of everyone involved.

For corporations, the increase in class action litigation presents both opportunities and hazards. On the one hand, they may result in significant financial obligations, harm to one's reputation, and expensive settlements. However, businesses that take proactive measures to resolve problems and cultivate an open culture may reduce risks and increase customer confidence.

As a result, a sophisticated and established system for class actions has been created, complete with specialized courts and extensive statutes. This, among other things, is what led to the US becoming a litigious society.

However, in order to take legal action against a corporation in India, shareholders had to rely on the additional rules included in Chapter XVI, which is known as the Prevention of Oppression and Mismanagement of the Companies Act. These clauses do not explicitly state whether depositors have the right to file a lawsuit or whether they can file a lawsuit against auditors and/or consultants.

Class actions continue to be an essential tool for citizens looking for justice and changing business practices. The relationship between class action lawsuits and corporate conduct will surely continue to influence the litigation landscape as we move forward.

I hope the said issue shall augment great insights and value to our readers.

MESSAGES



ARTICLE I

Class Action Lawsuits: A New Prospect For Corporate Litigation

Introduction

Following what is reportedly the largest breach of Personally Identifiable Information (PII) to date, which involved more than 200 gigabytes of data containing nearly 3 billion records containing sensitive information like Social Security numbers and criminal records, several class action lawsuits were recently filed against National Public Data, a data brokerage firm based in Florida. An undetermined number of people from the US, Canada, and the UK are impacted by the incident ¹.

With the cases of Jindal Poly Films and ICICI Securities demonstrating the increasing use of class action actions to confront corporate malfeasance and protect minority shareholders, class action lawsuits have finally taken off even in India. Minority shareholders holding a 4.99% interest in Jindal Poly Films claim financial mismanagement caused losses of Rs 2,500 crore and are requesting judicial intervention to look into suspicious transactions. In the meantime, a class of 100 investors in the ICICI Securities case, headed by portfolio manager Manu Rishi Gupta, allege that I-Sec was purposefully undervalued to benefit the parent business, ICICI Bank ².

A class-action lawsuit: What is it?

When at least one person or organization acts as a representative of a group of persons or corporate entities that have all incurred common harms as a result of the defendants' actions, the lawsuit is known as a class-action lawsuit. The issues in dispute are shared by all class members, even though the issues of a class action can differ.

When a group of people with a common goal file a lawsuit against one or more people or entities, the class is recognized as a single entity and seeks redress. This is known as a class action suit. This article examines class action lawsuits under Section 245 of the Companies Act of 2013 (CA 2013) and examines the present system's shortcomings.

All of the group's interests are represented by the lead plaintiff, which allows those with minor claims to combine their cases into one larger action. When individual damages are too little to warrant a separate legal case, this is especially helpful.

¹ <https://www.biometricupdate.com/202408/data-breach-exposes-3-billion-pii-records-class-action-suits-filed>

² <https://www.moneylife.in/article/class-action-lawsuits-make-a-beginning-after-11-years-but-significant-reforms-still-needed/74202.html>

Historical Background

The Federal Rules of Civil Procedure, Rule 23, were amended in 1966 with the intention of facilitating collective remedy for civil rights violations and consumer protection issues. This marked the beginning of the formalization of class actions in the U.S. legal system. Class actions have developed over time to handle a variety of complaints, such as employment discrimination, product liability, and securities fraud ³.

Benefits of Class Action Lawsuits

Why combine all the actions into a single class-action lawsuit when any litigant may file their own? The argument is that it is frequently more practical for the defendants, the plaintiff, and the court to combine their separate actions into a single case.

- For the plaintiffs, class actions are realistic. One set of witnesses, one set of experts, one set of documents, and one set of issues are all involved in class actions. Because of this efficiency, handling a single case by one law firm is easier and less expensive than having one or more law firms try several cases.
- Cost-effectiveness: By combining several claims into a single case, class actions save plaintiffs money on the recurring legal fees connected with individual cases.
- Access to Justice: By imposing hefty financial penalties that discourage future misconduct, class actions can force corporations to change harmful practices.
- Deterrence and Accountability: They allow individuals with limited resources to pursue claims that might otherwise be disregarded due to the high costs of litigation.
- Uniformity in Judgments: They help prevent inconsistent rulings across different jurisdictions regarding similar claims against a defendant, promoting fairness and predictability in legal outcomes.
- A single recovery also ensures that the damages are distributed fairly to all of the victims. When there are numerous lawsuits, the first few plaintiffs to prevail may receive all of the defendant's assets or insurance payouts, leaving those who win their claims later with little to no money.
- Because one lawsuit is less expensive for the courts than several lawsuits, class actions are advantageous for the legal system. There is only one judge and one courtroom for a single lawsuit. Additionally, a single class-action lawsuit eliminates the need for numerous lawsuits to fill the court calendar.

Section 245: Class Action Interpretation

Although Section 245 was first introduced in India in the CA 2013, the idea of a suit is not new to the Indian legal system; it has long existed under various laws and has been a successful remedy for people other than shareholders who have a claim arising out of:

- Code of Civil Procedure, 1908: Under Order 1 Rule 8 of the Code, one or more people—that is, any number of harmed parties with a comparable interest in the case—may file a representative suit. Liabilities resulting from a criminal action cannot be subject to this civil remedy.
- Competition Act, 2002: Under Section 52(N), a group of harmed parties in the relevant market may petition the NCLAT for anti-competitive practices.

- Consumer Protection Act, 2019: Under Section 35(1)(c) of the Consumer Protection Act, 2014, a "joint complaint" may be filed by one or more consumers acting in a representative capacity on behalf of other similarly situated consumers, that is, people who have purchased goods or services from a business and are liable for the liability resulting from that purchase.

Class Action Suits under the CA 2013 are necessary because, while Public Interest Litigations can be seen as class action suits to some extent, they cannot be used as a remedy against a private entity, such as Corporate Entities.

Why File a Class Action Under the 2013 Companies Act?

Only a sizable proportion of a company's members or depositors may invoke the shareholder-specific remedy under Section 245. A company's shareholders actively participate in decision-making and serve as watchful guardians against any misconduct in the business's operations. One such instrument that shareholders might use to demand appropriate action, seek compensation, or claim damages is a class action lawsuit ("CAS") against:

- The business or its executives for any dishonest, illegal, or improper action, inaction, or behavior on their part;
- The auditor, as well as the audit company (and all participating partners' liabilities) for any inaccurate or deceptive statements of facts in the audit report or for engaging in dishonest, illegal, or improper behavior; and
- Any expert, advisor, or consultant who has made a false or deceptive statement to the company, or who has engaged in any fraudulent, illegal, or wrongdoing, or who is likely to engage in any of these actions ⁴.

Class Action Suits with relation to the United States and other jurisdictions:

The Satyam scandal, which is sometimes called India's Enron moment, brought to light how Indian law prevents Indian shareholders from pursuing class action lawsuits. American investors were able to launch a class action lawsuit and obtained a sizable payment, but Indian shareholders were left with no legal options. The US Class Action Suit, also known as the "Representative Suit," which has been around since 1983 and is frequently utilized by people or small groups who are upset about the wrongdoings of larger companies, served as the model for the CAS under the CA 2013.

While class action lawsuits are popular in other common law nations, the Indian CAS was mostly influenced by US class action law. A CAS can be filed in the United States in accordance with Rule 23 of the Federal Laws of Civil Procedure, which allows one or more individuals to sue or be sued against a major corporation as represented parties on behalf of all class members in a direct suit. Although there is no minimum number of students that must be in a class, the requirements for determining whether or not a class is formed are identical to those of the Indian CAS ⁵.

This differs from CAS in India in that it permits the creation of subclasses within a single class, which may include of people who are or are not company shareholders.

³ Cornell Law School. "Rule 23. Class Actions, https://www.law.cornell.edu/rules/frcp/rule_23

⁴ Section 245(1) of the Companies Act, 2013

⁵ Rule 23 of Federal Rules of Civil Procedure, 2023

However, the courts will have to evaluate whether or not the group of people filing such a claim constitutes a class using the same criteria that the Indian CAS has borrowed. According to Rule 23(a), the Numerosity, Commonality, Typicality, and Adequacy of Representation tests must all be passed. Certification is not possible if any one of the four requirements is not met ⁶.

According to Section 245, a class must include the following in order to file a CAS:

- If a corporation has stock, it must have (a) at least 100 members or 5% of all members, whichever is smaller; or (b) members who own 5% of the issued share capital if the company is not listed, or 2% of the issued share capital if the company is listed.
- In the event that a business lacks share capital, at least one-fifth of its members must own shares.

Additionally, in order to determine the admissibility of the CAS, the NCLT will consider whether or not the members submitting the application belong to a class based on the following factors:

- whether a class action is desired because there are so many people in the class that it would be impracticable to join them individually;
- whether the class has any common legal or factual questions;
- whether the representative parties' assertions or defenses are reflective of the class's assertions or defenses;
- whether the class's interests will be appropriately and equitably protected by the representative parties.

Despite their apparent similarities, the two parts differ significantly, with the US provisions being more expansive ⁷.

Class Actions in India

Class action lawsuits have also increased in India since the Companies Act of 2013 was implemented. Minority shareholders' recent applications demonstrate how effective these lawsuits may be as instruments for corporate governance and accountability. Stakeholders can contest management actions that might be harmful to their interests under the Indian legal system.

CAS is a valuable weapon in the shareholders' hands from a governance standpoint. The absence of precedent to assess the viability and timeliness of such claims, however, reveals that it has not been sufficiently investigated, much to the astonishment of the legal community. There are a number of potential causes for this lack of interest in CAS, including:

1. Lack of knowledge: the presence of the cure is generally not well known. This might be due to the extremely low number of orders and the lack of precedent under the remedy, which forces the shareholders to look for remedies under other legal rules;
2. Class formation difficulty: compared to other common law nations, the requirement for class formation is stringent and challenging to fulfill, making it impracticable for a variety of shareholders to pursue a lawsuit in which they may have conflicting interests in claims resulting from the same action;
3. Settlement agreements: It's a regular occurrence for larger organizations to prefer to settle the expenses and remedies out of court rather than pursue legal action. According to a recent report, the US CAS Regime paid a record \$4.4 billion in settlements in 2023 ⁸.

4. Availability of additional remedies: A shareholder may apply for a securities class action, liquidation, fraud against the firm, or O&M, among other shareholder remedies, under the Companies Act.

Section 245 interpretation

Despite the Act's section 245 being notified in 2016, no class action lawsuit has been filed under the Act as of yet, for apparent reasons. In *Cyrus Investments Private Limited & Anr., v. TATA Sons Limited & Ors.*, [2017 SCC OnLine NCLAT 261], the Hon'ble National Company Law Appellate Tribunal ("NCLAT") recognized in its Order dated September 21, 2017, that the court must first determine whether the thresholds under sections 241 and 245 are met before determining whether any conduct is detrimental to the interests of a class of members or depositors, as applicable. Additionally, "issued share capital" encompasses both equity and preference share capital and immediately translates to "issued and subscribed share capital" in the context of the sections.

In an order in *Shanta Prasad Chakravarty & Ors., v. M/s. Bochapathar Tea Estate Private Limited & Ors.*, [2017 SCC OnLine NCLAT 335], the NCLAT noted that although a petition under sections 241, 242, and 244 of the Act may only be filed against the company, its board of directors, shareholders, or its members, under section 245 one may also file a petition against the statutory auditors and/or advisors.

Since the term "class action" originated in the United States, it may be helpful to look at the process outlined in the Federal Rules of Civil Procedure ("FRCP"), specifically Rule 23. This process covers class action and includes the following steps: (a) a plaintiff files a complaint on behalf of a putative (or proposed) class; (b) the court certifies the class; (c) class representatives and counsel are appointed to represent the class; (d) all members of the class are given public notice with the option to opt out; and (e) the final judgment from a trial or settlement will be binding on all class members who have not chosen to opt out of the class action.

The following are some recent interpretations of Rule 23 of the FRCP: (a) *California Public Employees Retirement Systems v. ANZ Securities, Inc.* [137 S Ct 2042 (2017)] states that filing a class action suit does not extend the statutory limitation time for filing the suit; (b) an appeal may be preferred against a wrongful class certification; and (c) evidence for such class action suits must be taken on an individual basis rather than common evidence for all members of the class [*Tyson Foods, Inc v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016)].

As a result, the United States has established jurisprudence concerning class action lawsuits. However, the case laws listed above only apply to class actions in India.


Suggestions and future directions:

Despite the statutory objective, CAS has not been actively investigated by Indian shareholders, raising concerns that the legislature should consider the necessity of both updating the process and reshaping it into an active remedy going forward. In the US, representative actions are fairly common. As Indian shareholder activism grows and

⁶ Rule 23(a) of Federal Rules of Civil Procedure, 2023.

⁷ Rule 85 of the National Company Law Tribunal Rules, 2016.

⁸ <https://woodrufflawyer.com/insights/securities-class-action-year-end/#heading-0>



recognizes the significance of governance issues beyond profitability, we think CAS will be a useful tool to strengthen shareholder pressure for improved governance structures, which will improve the internal operations and management of Indian companies.

It will be fascinating to see how the rise in CAS lawsuits in India is influenced by ESG advocacy. The shareholders of these companies, who bear responsibility for any harm resulting from their management and actions to the internal and external environment in which the company operates, are increasingly initiating shareholder activism in ESG-related litigations through CAS on a regular basis in response to global trends.

According to a new survey report, due to the presence of in-house litigators and general counsels, the number of disputes pertaining to ESG increased by over one-third in 2022 and by an additional 24% in 2023. Due to a lack of precedent, it is also uncertain when CAS proceedings will actually conclude. It has to be seen how a rise in shareholder activism in India would influence and advance judicial interpretations of the remedy and be applied to the implementation of good governance in major corporations ⁹.

In addition to requiring the companies in violation to provide adequate compensation through settlements for gross governance violations and incorrect practices, CAS has been used as a litigation method in cases involving greenhouse gas emissions with climatic impacts by the company, false and misleading advertisements with climatic impacts, workplace misconduct and violations of whistleblower protection rules, and representations in various statements of investments with incorrect ESG quality review. Class actions appear to be the path for firms to amend their improper practices, and climate litigations are on the rise ¹⁰.

The following recommendations must be taken into consideration by the legislators in order to facilitate shareholder activism through CAS and keep up with the global litigation trends:

- Lowering the minimum number of people needed to file a CAS from 100 to a more manageable 10–20 upon application, in line with clauses found in Section 244 of the Companies Act of 2013.
- Extend the reach of ESG claims to include good governance activities by people who are not the company's members or depositors. For instance, people who are not shareholders and who are impacted in the area by other secretarial issues, employees, etc., may be included appropriately when a company's operations are carried out improperly.
- Section 245 of the Companies Act should include a settlement agreement as a distinct section with sufficient penalties for false claims. By advertising for claims similarly in the United States, the process can be accepted as an offer from the negligent directors or firm, or any other accountable individual for mismanagement of affairs. The management of fraudulent claims by imposing penalties will have to be considered given the rise in fraudulent CAS Claims in the US.
- Since shareholders have hardly looked into the current structure, a Special Committee has been appointed to analyze these provisions.
- Heightened accountability and sanctions or punitive measures for the benefit of class bringing the action.

Prospects for the Future

Class action lawsuits in India seem to have a bright future, however this will depend on a number of factors:

- Enhanced Awareness: It is probable that more class actions will be started as more people learn about their rights and the channels for taking collective action.
- Judicial Capacity: It will be essential for courts to be able to manage intricate class action matters effectively. This entails educating judges and strengthening institutional capability to efficiently handle such cases.
- Legislative Advancements: Laws regulating class actions may benefit from ongoing revisions and clarifications to make procedures more efficient and to encourage more people to seek redress collectively.

Conclusion

In India, class action lawsuits are a developing legal field that seeks to improve corporate responsibility and consumer protection. These lawsuits may become a more crucial instrument for collective redress across a range of industries as awareness rises and legal frameworks continue to evolve. In recent years, class action lawsuits have been increasingly popular in India, mostly as a result of changes in the legislation and increased investor and consumer awareness. The basis for such lawsuits has been codified with the implementation of provisions under the Companies Act, 2013 and the Consumer Protection Act, 2019, which enable organizations with shared grievances to pursue collective legal remedy.

⁹ <https://www.nortonrosefulbright.com/-/media/files/nrf/nrfweb/knowledge-pdfs/2023-litigation-trends-survey.pdf>

¹⁰ <https://plasticslitigationtracker.org/page/3>



ARTICLE II

Class Action Lawsuits in India: An Overview

Introduction

Investors, workers, and consumers who want to hold firms accountable have long found that class action lawsuits are an effective weapon. These lawsuits are changing and modifying the corporate litigation landscape in response to recent developments in legal frameworks, business behavior patterns, and technological breakthroughs. The present situation of class action litigation, their effects on businesses, and potential future developments are examined in this article.

Two significant applications for bringing class action lawsuits have entered the National Company Law Tribunal's ("NCLT") rooms more than ten years after the Companies Act, 2013 ("Companies Act" or "the Act") introduced provisions pertaining to such lawsuits.

More than 100 minority shareholders of a listed securities broker applied to start a class action lawsuit against the company in April 2024 before the NCLT's New Delhi bench¹¹. The minority owners of a well-known polyester and polypropylene film manufacturer filed a similar class action lawsuit before the NCLT's New Delhi bench¹². If handled properly, class action lawsuits, which are filed under the guise of preventing injustice and mismanagement, are a potent tool granted to stakeholders.

Class Action Suits' Transformation in India

The Indian setting is not wholly unfamiliar with the idea of class action lawsuits. The idea of class action lawsuits, also referred to as representative suits, was first established in India by the Code of Civil Procedure, 1908 ("CPC"). Among other things, Order I, Rule 8 of the CPC states that if multiple people share an interest, one or more of them may file a lawsuit, be sued, or defend a lawsuit on behalf of everyone involved.

The Indian Companies (Amendment) Ordinance, 1951, established remedies against tyranny and mismanagement under the purview of Indian companies law. These were reinforced with the passage of the Companies Act, 1956, also known as "the 1956 Act."

Despite the fact that class action lawsuits brought by shareholders were recognized by the courts, the 1956 Act contained no provisions that specifically addressed the matter.

The JJ Irani Committee, which was established to amend the previous Companies Act, 1956, suggested adding class action and derivative suits to the new companies law after realizing that the courts had permitted derivative actions by shareholders in cases of fraud on the minority or other non-ratifiable decisions of the company.

Consequently, the regulations concerning class action lawsuits against all firms save banking institutions were incorporated in the firms Act. However, because the thresholds and procedural features were unclear, the same remained in limbo until 2019.

In 2019, thresholds for determining what qualifies as a "class" action under Section 245 were finally announced. Class action lawsuits are permitted under the Consumer Protection Act of 2019 in addition to the Companies Act and the CPC. When one or more consumers share an interest, a complaint in representative capacity may be preferred under Section 35(1)(c) of the Consumer Protection Act, 2019. The complaint should be made on behalf of or

¹¹ The National Company Law Tribunal, New Delhi, CP No. 92/245/PB/2024

¹² The National Company Law Tribunal, New Delhi, CP No. 58/245/PB/2024

for the benefit of all customers, if the District Commissioner permits it. Additionally, Order I, Rule 8 of the CPC will apply mutatis mutandis to complaints lodged in a representative role, according to Section 38(11) of the Consumer Protection Act, 2019 among other things.

The Competition Act of 2002 and the Insolvency and Bankruptcy Code of 2016 both contain provisions pertaining to the filing of class action lawsuits in India.

Comprehending Class Action Lawsuits

A class action lawsuit enables a number of people with related complaints to bring a collective lawsuit against a defendant. In addition to expediting the litigation process, this legal mechanism gives people with minor claims a way to organize against bigger organizations. Class action lawsuits frequently focus on securities fraud, employment discrimination, consumer fraud, and environmental damage.

Current Developments in Class Action Litigations

- **Enhanced Corporate Responsibility:** Class action lawsuits against corporations have increased noticeably in recent years, especially in industries like technology and finance. The need for more corporate accountability has been brought to light by high-profile instances, which frequently involve data breaches or unfair economic practices.
- **Technological Influence:** More class action lawsuits have been filed as a result of the ease with which people can now interact and exchange experiences thanks to social media and technology. Potential litigants can quickly organize, compile evidence, and mobilize resources through online platforms.
- **Regulatory Changes:** People now have the ability to file class action lawsuits thanks to changes in the legislation, such as the implementation of new consumer protection regulations. These shifts frequently mirror public perceptions of consumer rights and business accountability.
- **Globalization:** Class actions are increasingly spanning national boundaries as a result of firms' global operations. Multinational firms must contend with legal issues in several jurisdictions, which makes defending themselves more difficult and creates new legal opportunities.

Implications for Corporations

For corporations, the increase in class action litigation presents both opportunities and hazards. On the one hand, they may result in significant financial obligations, harm to one's reputation, and expensive settlements. However, businesses that take proactive measures to resolve problems and cultivate an open culture may reduce risks and increase customer confidence.

- **Financial Impact:** In situations where there has been extensive harm, class action settlements may total millions or even billions of dollars. Businesses need to be ready for the financial fallout from these legal issues.
- **Reputation Management:** A company's reputation may be negatively impacted by the public nature of class action lawsuits. A decline in consumer loyalty and trust may result from unfavorable media publicity.
- **Compliance and Risk Mitigation:** In order to stay out of legal trouble, businesses are spending more money on compliance initiatives and risk management techniques. Potential class actions can be avoided by taking

proactive steps like implementing strong consumer feedback channels and ethical corporate practices.

Case Studies:

In India, class action lawsuits have become an important way for workers, customers, and other stakeholders to collectively resolve complaints. They offer a way to pursue justice and hold people and organizations responsible for extensive harm. This article examines noteworthy case studies that show how class action lawsuits have changed and affected the Indian judicial system.

A. Jindal Poly Films

Notable legal issues in the corporate and financial sectors have involved Jindal Poly Films and ICICI Securities.

Jindal Poly Films

A significant participant in the packaging sector, Jindal Poly Films, has been the target of class action lawsuits mostly concerning corporate governance, shareholder rights, and regulatory compliance. The lawsuits frequently stem from issues with market practices, business actions that affect shareholder value, or financial disclosures.

ICICI Securities

The well-known financial services provider ICICI Securities has also been a party to class action lawsuits, which are frequently focused on claims of deception, fiduciary responsibility violations, or service failures that could have resulted in losses for investors. Usually, these proceedings entail allegations made by shareholders or clients seeking damages for alleged.

One of the biggest producers of flexible packaging films in India, Jindal Poly Films Limited, was the target of class action lawsuits mainly pertaining to investor complaints about stock market performance and purported poor management.

Background: Jindal Poly Films was established in 1974 and specializes in the production of BOPP (Biaxially Oriented Polypropylene) and PET (Polyethylene Terephthalate) films for a range of markets, including textiles and packaging.

Problems: Serious stock price declines, financial performance misrepresentations, and a lack of openness about corporate operations raised concerns.

The plaintiffs in the class action: a group of shareholders and investors who claimed that the business had caused significant financial losses by giving false information about its financial situation and prospects.

Claims: According to the investors, they were not given enough information about important choices that had an impact on their investments and the company's performance.

Court Involvement: The company's headquarters is located in a relevant jurisdiction where the complaint was filed. In order to collectively represent all impacted stockholders, the plaintiffs requested class action status.

Arguments: According to the plaintiffs, there was negligence in the reporting and disclosure procedures and a breach of fiduciary duty by the management.

Outcome Settlement: Jindal Poly Films agreed to a compensation package for the impacted investors as part of an out-of-court settlement. The business pledged to enhance governance and transparency procedures.

Impact: This case highlighted the significance of accountability and corporate governance in India, especially for publicly traded firms.

B. The 1984 Bhopal Gas Tragedy

A historic class action lawsuit against Union Carbide Corporation (UCC) resulted from the Bhopal gas tragedy, one of the most notorious industrial catastrophes in history. Survivors and impacted parties sought compensation after the gas leak caused thousands of lives and long-term health problems for the locals. The case cleared the path for legislative changes in India's environmental and disaster management regulations and emphasized the importance of corporate accountability.

C. The 2001 Nike India Case

A class action complaint was brought in 2001 by a group of employees from Nike's subcontracted factories in India, who claimed that their labor rights had been violated by unfair salaries and unfavorable working conditions. Concerns about labor rights and corporate social responsibility in international supply chains were brought to light by this case. Nike reviewed its labor policies and implemented stricter monitoring of working conditions in its plants as a result of the legal pressure.

D. The Case of Gitanjali Gems (2018)

Following Gitanjali Gems' alleged financial fraud, a group of investors filed a class action lawsuit to recover damages brought on by false financial statements and poor corporate governance. This case highlighted the significance of financial reporting openness and the responsibility of business executives to shareholders. The conclusion strengthened India's corporate governance legislative framework.

Key Concerns

- **Shareholder grievances:** Concerns have been voiced by investors regarding management choices that they feel have a negative impact on shareholder value, particularly those pertaining to financial performance and strategic direction.
- **Regulatory Compliance:** A major topic has been the allegations of insufficient disclosures and possible violations of regulatory standards. Clarity on how corporate operations conform to compliance rules is frequently sought for by shareholders.
- **Corporate Governance:** The cases usually raise questions about whether the board's choices, CEO pay, and general governance procedures are in the best interests of shareholders.

Implications

- **Investor Confidence:** The market's reputation and investor confidence may be greatly impacted by such situations.
- **Regulatory Scrutiny:** The company may be subject to stricter compliance obligations as a result of regulatory agencies paying more attention.

Class Action Lawsuits' Future

Class action lawsuits' future will probably be influenced by a number of things as the legal landscape changes further:

- **Innovation in Legal Practice:** The effectiveness of class action lawsuits may be improved by the incorporation of data analytics and artificial intelligence into legal practice. Large databases can be analyzed by firms to find wrongful tendencies and expedite the litigation process.
- **Legislative Developments:** The class action landscape will be impacted by ongoing discussions regarding tort

reform and access to justice. Potential legal modifications could either broaden or narrow the purview of class actions.

- **Public Sentiment:** Businesses may come under more pressure to implement moral business practices as consumer activism and awareness rise. More class actions may result from this change as customers demand accountability.
- **Global Trends:** A more coordinated approach to class actions will be required as a result of the globalization of commerce, which may result in the creation of international legal frameworks for collective redress.

Conclusion

Class action cases have its roots in US jurisprudence, where one of the first class action lawsuits was tried in 1820 under the ruling of *West v. Randall*. Since then, class action cases have proliferated in US courts due to its lenient stance on class action initiation. As a result, a sophisticated and established system for class actions has been created, complete with specialized courts and extensive statutes. This, among other things, is what led to the US becoming a litigious society.

However, in order to take legal action against a corporation in India, shareholders had to rely on the additional rules included in Chapter XVI, which is known as the Prevention of Oppression and Mismanagement of the Companies Act. These clauses do not explicitly state whether depositors have the right to file a lawsuit or whether they can file a lawsuit against auditors and/or consultants.

The NCLT's stance on these two applications will determine whether the floodgates for class action under corporate laws have finally opened or if they will remain a piece of toothless legislation, despite the fact that class action suits are a powerful tool available to a class of stakeholders to hold the company accountable for its affairs and prevent actions that are detrimental to their interests.

In a world that is becoming more linked and sophisticated, class action lawsuits are an essential tool for holding companies responsible. Both plaintiffs and companies must negotiate the changing legal environment as it develops. To reduce risks and preserve customer confidence, businesses must comprehend and adjust to these developments. Class actions continue to be an essential tool for citizens looking for justice and changing business practices. The relationship between class action lawsuits and corporate conduct will surely continue to influence the litigation landscape as we move forward.

"The decision whether or not to sue is not always easy, but the option must remain open for those who seek justice."



Supreme Court Justice Ruth Bader Ginsburg

This reflects the essential role of lawsuits, including class actions, in seeking justice for groups.

Snippets



1. Consumer Protection

In accordance with the 2019 Consumer Protection Act, customers may file complaints against producers or service providers collectively.

Class action lawsuits are a potent tool for consumer protection because they enable people to collectively address complaints about businesses or other organizations that negatively impact their interests. This legal structure is becoming more widely accepted in a number of places, such as the US and India, where it makes it easier for sizable groups of impacted customers to seek justice.

Important Characteristics of Class Action Lawsuits

- a. Similarities: Every student in the class must have a similar grievance or interest against the defendant.
- b. Representative Plaintiff: To streamline court proceedings, one plaintiff or a small group of plaintiffs represents the entire class.
- c. Courts may mandate that all prospective class members receive sufficient notice about the case and their rights.
- d. Financial Authority: To guarantee proper jurisdictional authority, the total sum of the claims must satisfy specific requirements before a court can hear the case.

2. Public Interest Litigation (PIL)

Class actions and public interest litigation (PIL) frequently overlap. PILs give anyone the opportunity to file on behalf of the public interest, particularly on behalf of underrepresented groups.

In India, Public Interest Litigation (PIL) is an important legal tool for resolving public concerns, especially for underprivileged and marginalized communities. It encourages social justice and accountability by enabling people or groups to petition the court on behalf of those unable to pursue justice on their own.

3. Class Action

A lawsuit in which one or more plaintiffs bring similar claims against the same defendant or defendants on

behalf of a larger group (the class) is known as a class action. Instead of requiring each claimant to file separately, this legal framework enables the effective adjudication of multiple similar claims in a single hearing.

The greatest way for customers to hold companies responsible for widespread wrongdoing is through class action lawsuits. The only way to level the playing field in litigation is through class-action lawsuits. Individual claimants lack the resources and time necessary to hold companies responsible. Individual claims are combined into a single, sizable claim in class-action litigation, which can match the resources of the majority of defendants.

4. Adequacy of Representation

This phrase refers to the class representative's ability to sufficiently safeguard each member's interests. Courts evaluate the skill of class counsel and possible conflicts between representation and class members.

5. Hearing on Fairness

Following a class's certification, a fairness hearing is held where all participants are informed about the action and given the opportunity to comment on any suggested settlement or legal costs.

6. Clear Sailing Agreements

In class action settlements, clear sailing agreements are clauses wherein the defendant consents to not challenge the class counsel's demand for legal fees. These agreements may result in settlements that do not sufficiently benefit the class members, which may give rise to suspicions of possible collusion between the parties.

Legal Scrutiny

Courts must exercise "heightened scrutiny" when examining settlements that contain both kicker clauses and clear sailing, the Tenth Circuit has stressed. Because these clauses raise the possibility that class members aren't getting all of the settlement's reasonable benefits, a closer examination is required.

The following are the duties of the court: The settlement must be "fair, reasonable, and adequate" in accordance with Rule 23. Class members' compensation is based on their actual losses and their chances of winning at trials.

7. Numerosity:

The class must be so big that it would be impossible to include every member in a single lawsuit. Classes with dozens or hundreds of participants are typically eligible. Although courts have often found that classes of less than twenty members are insufficiently numerous, the numerosity criterion does not focus on the precise number of people in a class.

Instead, the courts determine whether it would be impracticable for those impacted to join a traditional litigation. Otherwise, there is no need to pursue a class action. The case ought to be filed like any other civil action. The difficulty of identifying the class members, the scope and intricacy of the individual claims, the capacity of the impacted plaintiffs to each initiate a separate action, and the kinds of claims and remedy sought are some of the factors that judges take into account when making this determination.

8. Commonality:

Every member of the class must be impacted by at least one common legal or factual issue. While it's not necessary for every question to be the same, there should be a noticeable overlap in the topics covered. The class members' claims must touch on common legal or factual issues. The existence of minor factual disparities among class members does not always negate commonality, and courts do not need that all legal or factual issues be shared by the class. Rather, a representative of the class must show that there is at least one legal or factual issue that the class as a whole has in common.





MAXIM DOSE

Litigation funding under class action lawsuit

In recent years, litigation funding has become increasingly popular, especially when it comes to class action lawsuits. Through this financial structure, plaintiffs or their lawyers can receive funds from third-party investors in exchange for a share of any settlement or judgment that is reached. Particularly for class actions, which sometimes include sizable groups of plaintiffs seeking restitution against influential defendants, the emergence of litigation funding has changed the landscape of legal financing.

What is Litigation Funding?

Third-Party Litigation Funding (TPLF) refers to the practice where external funders finance legal actions by covering the costs associated with litigation. In return, these funders receive a share of the proceeds if the case is successful. This arrangement is particularly beneficial for plaintiffs who may lack the financial resources to pursue lengthy and costly legal battles. TPLF is typically categorized into two main types:

- **Consumer Litigation Funding:** This involves individuals seeking funds primarily for personal injury or tort claims.
- **Commercial Litigation Funding:** This is more common in class actions and large-scale commercial disputes, where funders invest in multiple cases or portfolios to spread risk and increase potential returns

The Function of Funding for Litigation in Class Actions

Class action lawsuits are intricate court cases that enable a number of people with related complaints to bring a collective lawsuit against a defendant. There are various ramifications when lawsuit funders get involved in these cases:

- **Enhanced Accessibility:** Funders level the playing field by allowing plaintiffs who might not otherwise be able to afford legal counsel to file claims against larger organizations.
- **Financial Incentives:** Because class actions have the potential for large profits, funders are interested in them. Class actions are appealing investments because they can result in significant settlements. For example, assets for UK litigation funders have increased dramatically; sources suggest that funding has doubled in recent years.
- **Strategic Influence:** While funders provide essential financial backing, their involvement can lead to concerns about influence over litigation strategies. Funders often seek to maintain some control over key decisions within the case, which can create conflicts between their interests and those of the plaintiffs.
- **Ethical Considerations:** The lack of mandatory disclosure requirements regarding funding agreements raises ethical questions about transparency and fairness in litigation. Courts in some jurisdictions have begun implementing rules that require disclosure of funder identities and agreements to mitigate potential abuses



Class Action Lawsuits: A New Prospect For Corporate Litigation

QUICK GUIDE

ARTICLE I

Introduction

Following what is reportedly the largest breach of Personally Identifiable Information (PII) to date, which involved more than 200 gigabytes of data containing nearly 3 billion records containing sensitive information like Social Security numbers and criminal records, several class action lawsuits were recently filed against National Public Data, a data brokerage firm based in Florida. An undetermined number of people from the US, Canada, and the UK are impacted by the incident¹⁴.

With the cases of Jindal Poly Films and ICICI Securities demonstrating the increasing use of class action actions to confront corporate malfeasance and protect minority shareholders, class action lawsuits have finally taken off even in India. Minority shareholders holding a 4.99% interest in Jindal Poly Films claim financial mismanagement caused losses of Rs 2,500 crore and are requesting judicial intervention to look into suspicious transactions. In the meantime, a class of 100 investors in the ICICI Securities case, headed by portfolio manager Manu Rishi Guptha, allege that I-Sec was purposefully undervalued to benefit the parent business, ICICI Bank¹⁵.

A class-action lawsuit: What is it?

When at least one person or organization acts as a representative of a group of persons or corporate entities that have all incurred common harms as a result of the defendants' actions, the lawsuit is known as a class-action lawsuit. The issues in dispute are shared by all class members, even though the issues of a class action can differ.

All of the group's interests are represented by the lead plaintiff, which allows those with minor claims to combine their cases into one larger action. When individual damages are too little to warrant a separate legal case, this is especially helpful.

Historical Background

The Federal Rules of Civil Procedure, Rule 23, were amended in 1966 with the intention of facilitating collective remedy for civil rights violations and consumer protection issues

Benefits of Class Action Lawsuits

Why combine all the actions into a single class-action lawsuit when any litigant may file their

¹⁴ <https://www.biometricupdate.com/202408/data-breach-exposes-3-billion-pii-records-class-action-suits-filed>

¹⁵ <https://www.moneylife.in/article/class-action-lawsuits-make-a-beginning-after-11-years-but-significant-reforms-still-needed/74202.html>

own? The argument is that it is frequently more practical for the defendants, the plaintiff, and the court to combine their separate actions into a single case.

- For the plaintiffs, class actions are realistic. One set of witnesses, one set of experts, one set of documents, and one set of issues are all involved in class actions. Because of this efficiency, handling a single case by one law firm is easier and less expensive than having one or more law firms try several cases.
- Cost-effectiveness: By combining several claims into a single case, class actions save plaintiffs money on the recurring legal fees connected with individual cases.
- Access to Justice: By imposing hefty financial penalties that discourage future misconduct, class actions can force corporations to change harmful practices.
- Deterrence and Accountability: They allow individuals with limited resources to pursue claims that might otherwise be disregarded due to the high costs of litigation.
- Uniformity in Judgments: They help prevent inconsistent rulings across different jurisdictions regarding similar claims against a defendant, promoting fairness and predictability in legal outcomes.
- A single recovery also ensures that the damages are distributed fairly to all of the victims. When there are numerous lawsuits, the first few plaintiffs to prevail may receive all of the defendant's assets or insurance payouts, leaving those who win their claims later with little to no money.
- Because one lawsuit is less expensive for the courts than several lawsuits, class actions are advantageous for the legal system. There is only one judge and one courtroom for a single lawsuit. Additionally, a single class-action lawsuit eliminates the need for numerous lawsuits to fill the court calendar.

Class Actions in India

Although Section 245 was first introduced in India in the CA 2013, the idea of a suit is not new to the Indian legal system; it has long existed under various laws and has been a successful remedy for people other than shareholders who have a claim arising out of:

- Code of Civil Procedure, 1908: Under Order 1 Rule 8 of the Code, one or more people—that is, any number of harmed parties with a comparable interest in the case—may file a representative suit. Liabilities resulting from a criminal action cannot be subject to this civil remedy.
- Competition Act, 2002: Under Section 52(N), a group of harmed parties in the relevant market may petition the NCLAT for anti-competitive practices.
- Consumer Protection Act, 2019: Under Section 35(1)(c) of the Consumer Protection Act, 2014, a "joint complaint" may be filed by one or more consumers acting in a representative capacity on behalf of other similarly situated consumers, that is, people who have purchased goods or services from a business and are liable for the liability resulting from that purchase.

Why File a Class Action Under the 2013 Companies Act?

Only a sizable proportion of a company's members or depositors may invoke the shareholder-specific remedy under Section 245. A company's shareholders actively

participate in decision-making and serve as watchful guardians against any misconduct in the business's operations. One such instrument that shareholders might use to demand appropriate action, seek compensation, or claim damages is a class action lawsuit ("CAS") against:

- The business or its executives for any dishonest, illegal, or improper action, inaction, or behavior on their part;
- The auditor, as well as the audit company (and all participating partners' liabilities) for any inaccurate or deceptive statements of facts in the audit report or for engaging in dishonest, illegal, or improper behavior; and
- Any expert, advisor, or consultant who has made a false or deceptive statement to the company, or who has engaged in any fraudulent, illegal, or wrongdoing, or who is likely to engage in any of these actions¹⁶.

Class Action Suits with relation to the United States and other jurisdictions:

The Satyam scandal, which is sometimes called India's Enron moment, brought to light how Indian law prevents Indian shareholders from pursuing class action lawsuits. American investors were able to launch a class action lawsuit and obtained a sizable payment, but Indian shareholders were left with no legal options. The US Class Action Suit, also known as the "Representative Suit," which has been around since 1983 and is frequently utilized by people or small groups who are upset about the wrongdoings of larger companies, served as the model for the CAS under the CA 2013.

While class action lawsuits are popular in other common law nations, the Indian CAS was mostly influenced by US class action law. A CAS can be filed in the United States in accordance with Rule 23 of the Federal Rules of Civil Procedure, which allows one or more individuals to sue or be sued against a major corporation as represented parties on behalf of all class members in a direct suit. Although there is no minimum number of students that must be in a class, the requirements for determining whether or not a class is formed are identical to those of the Indian CAS¹⁷.

This differs from CAS in India in that it permits the creation of subclasses within a single class, which may include of people who are or are not company shareholders. However, the courts will have to evaluate whether or not the group of people filing such a claim constitutes a class using the same criteria that the Indian CAS has borrowed. According to Rule 23(a), the Numerosity, Commonality, Typicality, and Adequacy of Representation tests must all be passed. Certification is not possible if any one of the four requirements is not met¹⁸.

According to Section 245, a class must include the following in order to file a CAS:

- If a corporation has stock, it must have (a) at least 100 members or 5% of all members, whichever is smaller; or (b) members who own 5% of the issued share capital if the company is not listed, or 2% of the issued share capital if the company is listed.
- In the event that a business lacks share capital, at least one-fifth of its members must own shares.

¹⁶ Section 245(1) of the Companies Act, 2013

¹⁷ Rule 23 of Federal Rules of Civil Procedure, 2023

¹⁸ Rule 23(a) of Federal Rules of Civil Procedure, 2023.

Additionally, in order to determine the admissibility of the CAS, the NCLT will consider whether or not the members submitting the application belong to a class based on the following factors:

- whether a class action is desired because there are so many people in the class that it would be impracticable to join them individually;
- whether the class has any common legal or factual questions;
- whether the representative parties' assertions or defenses are reflective of the class's assertions or defenses;
- whether the class's interests will be appropriately and equitably protected by the representative parties.

Despite their apparent similarities, the two parts differ significantly, with the US provisions being more expansive¹⁹.

Class Actions in India

Class action lawsuits have also increased in India since the Companies Act of 2013 was implemented. Minority shareholders' recent applications demonstrate how effective these lawsuits may be as instruments for corporate governance and accountability. Stakeholders can contest management actions that might be harmful to their interests under the Indian legal system.

CAS is a valuable weapon in the shareholders' hands from a governance standpoint. The absence of precedent to assess the viability and timeliness of such claims, however, reveals that it has not been sufficiently investigated, much to the astonishment of the legal community.

Section 245 interpretation

Despite the Act's section 245 being notified in 2016, no class action lawsuit has been filed under the Act as of yet, for apparent reasons. In *Cyrus Investments Private Limited & Anr., v. TATA Sons Limited & Ors.*, [2017 SCC OnLine NCLAT 261], the Hon'ble National Company Law Appellate Tribunal ("NCLAT") recognized in its Order dated September 21, 2017, that the court must first determine whether the thresholds under sections 241 and 245 are met before determining whether any conduct is detrimental to the interests of a class of members or depositors, as applicable. Additionally, "issued share capital" encompasses both equity and preference share capital and immediately translates to "issued and subscribed share capital" in the context of the sections.

In an order in *Shanta Prasad Chakravarty & Ors., v. M/s. Bochapathar Tea Estate Private Limited & Ors.*, [2017 SCC OnLine NCLAT 335], the NCLAT noted that although a petition under sections 241, 242, and 244 of the Act may only be filed against the company, its board of directors, shareholders, or its members, under section 245 one may also file a petition against the statutory auditors and/or advisors.

Since the term "class action" originated in the United States, it may be helpful to look at the process outlined in the Federal Rules of Civil Procedure ("FRCP"), specifically Rule 23. This process covers class action and includes the following steps: (a) a plaintiff files a complaint on behalf of a putative (or proposed) class; (b) the court certifies the class; (c) class representatives and counsel are appointed to represent the class; (d) all members of the class are given public notice with the option to opt out; and (e) the final judgment from a trial or settlement will be binding on all class members who have not chosen to opt out of the class action.

Suggestions and future directions:

Despite the statutory objective, CAS has not been actively investigated by Indian shareholders, raising concerns that the legislature should consider the necessity of both updating the process and reshaping it into an active remedy going forward. In the US, representative actions are fairly common. As Indian shareholder activism grows and recognizes the significance of governance issues beyond profitability, we think CAS will be a useful tool to strengthen shareholder pressure for improved governance structures, which will improve the internal operations and management of Indian companies.

It will be fascinating to see how the rise in CAS lawsuits in India is influenced by ESG advocacy. The shareholders of these companies, who bear responsibility for any harm resulting from their management and actions to the internal and external environment in which the company operates, are increasingly initiating shareholder activism in ESG-related litigations through CAS on a regular basis in response to global trends.

According to a new survey report, due to the presence of in-house litigators and general counsels, the number of disputes pertaining to ESG increased by over one-third in 2022 and by an additional 24% in 2023. Due to a lack of precedent, it is also uncertain when CAS proceedings will actually conclude. It has to be seen how a rise in shareholder activism in India would influence and advance judicial interpretations of the remedy and be applied to the implementation of good governance in major corporations²⁰.

In addition to requiring the companies in violation to provide adequate compensation through settlements for gross governance violations and incorrect practices, CAS has been used as a litigation method in cases involving greenhouse gas emissions with climatic impacts by the company, false and misleading advertisements with climatic impacts, workplace misconduct and violations of whistleblower protection rules, and representations in various statements of investments with incorrect ESG quality review. Class actions appear to be the path for firms to amend their improper practices, and climate litigations are on the rise²¹.

Prospects for the Future

Class action lawsuits in India seem to have a bright future, however this will depend on a number of factors:

- Enhanced Awareness
- Judicial Capacity.
- Legislative Advancements

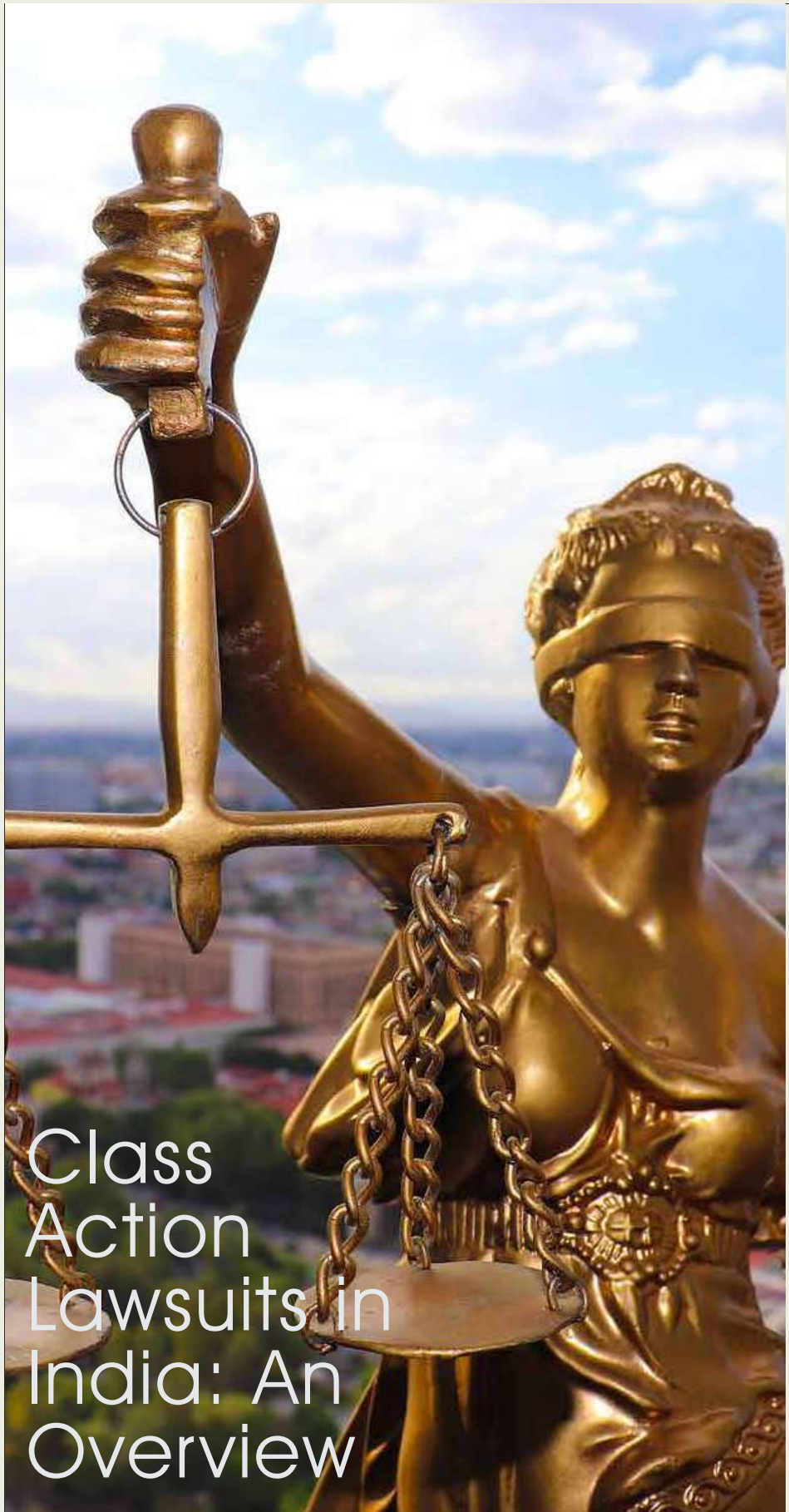
Conclusion

In India, class action lawsuits are a developing legal field that seeks to improve corporate responsibility and consumer protection. These lawsuits may become a more crucial instrument for collective redress across a range of industries as awareness rises and legal frameworks continue to evolve. In recent years, class action lawsuits have been increasingly popular in India, mostly as a result of changes in the legislation and increased investor and consumer awareness.

¹⁹ Rule 85 of the National Company Law Tribunal Rules, 2016.

²⁰ <https://www.nortonrosefulbright.com/-/media/files/nrf/nrfweb/knowledge-pdfs/2023-litigation-trends-survey.pdf>

²¹ <https://plasticslitigationtracker.org/page/3>



Class Action Lawsuits in India: An Overview

QUICK GUIDE

ARTICLE II

Introduction

Investors, workers, and consumers who want to hold firms accountable have long found that class action lawsuits are an effective weapon. These lawsuits are changing and modifying the corporate litigation landscape in response to recent developments in legal frameworks, business behavior patterns, and technological breakthroughs. The present situation of class action litigation, their effects on businesses, and potential future developments are examined in this article.

Two significant applications for bringing class action lawsuits have entered the National Company Law Tribunal's ("NCLT") rooms more than ten years after the Companies Act, 2013 ("Companies Act" or "the Act") introduced provisions pertaining to such lawsuits.

Class Action Suits' Transformation in India

The Indian setting is not wholly unfamiliar with the idea of class action lawsuits. The idea of class action lawsuits, also referred to as representative suits, was first established in India by the Code of Civil Procedure, 1908 ("CPC"). Among other things, Order I, Rule 8 of the CPC states that if multiple people share an interest, one or more of them may file a lawsuit, be sued, or defend a lawsuit on behalf of everyone involved.

The Indian Companies (Amendment) Ordinance, 1951, established remedies against tyranny and mismanagement under the purview of Indian companies law. These were reinforced with the passage of the Companies Act, 1956, also known as "the 1956 Act."

Despite the fact that class action lawsuits brought by shareholders were recognized by the courts, the 1956 Act contained no provisions that specifically addressed the matter.

The JJ Irani Committee, which was established to amend the previous Companies Act, 1956, suggested adding class action and derivative suits to the new companies law after realizing that the courts had permitted derivative actions by shareholders in cases of fraud on the minority or other non-ratifiable decisions of the company.

Consequently, the regulations concerning class action lawsuits against all firms save banking institutions were incorporated in the firms Act. However, because the thresholds and procedural features were unclear, the same remained in limbo until 2019.

In 2019, thresholds for determining what

qualifies as a "class" action under Section 245 were finally announced. Class action lawsuits are permitted under the Consumer Protection Act of 2019 in addition to the Companies Act and the CPC. When one or more consumers share an interest, a complaint in representative capacity may be preferred under Section 35(1)(c) of the Consumer Protection Act, 2019. The complaint should be made on behalf of or for the benefit of all customers, if the District Commissioner permits it.

Comprehending Class Action Lawsuits

A class action lawsuit enables a number of people with related complaints to bring a collective lawsuit against a defendant. In addition to expediting the litigation process, this legal mechanism gives people with minor claims a way to organize against bigger organizations. Class action lawsuits frequently focus on securities fraud, employment discrimination, consumer fraud, and environmental damage.

Current Developments in Class Action Litigations

- **Enhanced Corporate Responsibility:** Class action lawsuits against corporations have increased noticeably in recent years, especially in industries like technology and finance. The need for more corporate accountability has been brought to light by high-profile instances, which frequently involve data breaches or unfair economic practices.
- **Technological Influence:** More class action lawsuits have been filed as a result of the ease with which people can now interact and exchange experiences thanks to social media and technology. Potential litigants can quickly organize, compile evidence, and mobilize resources through online platforms.
- **Regulatory Changes:** People now have the ability to file class action lawsuits thanks to changes in the legislation, such as the implementation of new consumer protection regulations. These shifts frequently mirror public perceptions of consumer rights and business accountability.
- **Globalization:** Class actions are increasingly spanning national boundaries as a result of firms' global operations. Multinational firms must contend with legal issues in several jurisdictions, which makes defending themselves more difficult and creates new legal opportunities.

Implications for Corporations

For corporations, the increase in class action litigation presents both opportunities and hazards. On the one hand, they may result in significant financial obligations, harm to one's reputation, and expensive settlements. However, businesses that take proactive measures to resolve problems and cultivate an open culture may reduce risks and increase customer confidence.

- **Financial Impact:** In situations where there has been extensive harm, class action settlements may total millions or even billions of dollars. Businesses need to be ready for the financial fallout from these legal issues.
- **Reputation Management:** A company's reputation may be negatively impacted by the public nature of class action lawsuits. A decline in consumer loyalty and trust may result from unfavorable media publicity.
- **Compliance and Risk Mitigation:** In order to stay out of

legal trouble, businesses are spending more money on compliance initiatives and risk management techniques. Potential class actions can be avoided by taking proactive steps like implementing strong consumer feedback channels and ethical corporate practices.

Case Studies:

A. Jindal Poly Films

Notable legal issues in the corporate and financial sectors have involved Jindal Poly Films and ICI Securities.

Jindal Poly Films

A significant participant in the packaging sector, Jindal Poly Films, has been the target of class action lawsuits mostly concerning corporate governance, shareholder rights, and regulatory compliance. The lawsuits frequently stem from issues with market practices, business actions that affect shareholder value, or financial disclosures.

B. The 1984 Bhopal Gas Tragedy

A historic class action lawsuit against Union Carbide Corporation (UCC) resulted from the Bhopal gas tragedy, one of the most notorious industrial catastrophes in history. Survivors and impacted parties sought compensation after the gas leak caused thousands of lives and long-term health problems for the locals.

C. The 2001 Nike India Case

A class action complaint was brought in 2001 by a group of employees from Nike's subcontracted factories in India, who claimed that their labor rights had been violated by unfair salaries and unfavorable

D. The Case of Gitanjali Gems (2018)

Following Gitanjali Gems' alleged financial fraud, a group of investors filed a class action lawsuit to recover damages brought on by false financial statements and poor corporate governance.

Key Concerns

- **Shareholder grievances:** Concerns have been voiced by investors regarding management choices that they feel have a negative impact on shareholder value, particularly those pertaining to financial performance and strategic direction.
- **Regulatory Compliance:** A major topic has been the allegations of insufficient disclosures and possible violations of regulatory standards. Clarity on how corporate operations conform to compliance rules is frequently sought for by shareholders.
- **Corporate Governance:** The cases usually raise questions about whether the board's choices, CEO pay, and general governance procedures are in the best interests of shareholders.

Implications

- **Investor Confidence:** The market's reputation and investor confidence may be greatly impacted by such situations.
- **Regulatory Scrutiny:** The company may be subject to stricter compliance obligations as a result of regulatory agencies paying more attention.

Class Action Lawsuits' Future

Class action lawsuits' future will probably be influenced by a

number of things as the legal landscape changes further:

- **Innovation in Legal Practice:** The effectiveness of class action lawsuits may be improved by the incorporation of data analytics and artificial intelligence into legal practice. Large databases can be analyzed by firms to find wrongful tendencies and expedite the litigation process.
- **Legislative Developments:** The class action landscape will be impacted by ongoing discussions regarding tort reform and access to justice. Potential legal modifications could either broaden or narrow the purview of class actions.
- **Public Sentiment:** Businesses may come under more pressure to implement moral business practices as consumer activism and awareness rise. More class actions may result from this change as customers demand accountability.
- **Global Trends:** A more coordinated approach to class actions will be required as a result of the globalization of commerce, which may result in the creation of international legal frameworks for collective redress.

Conclusion

Class action cases have its roots in US jurisprudence, where one of the first class action lawsuits was tried in 1820 under the ruling of *West v. Randall*²². Since then, class action cases have proliferated in US courts due to its lenient stance on class action initiation. As a result, a sophisticated and established system for class actions has been created, complete with specialized courts and extensive statutes. This, among other things, is what led to the US becoming a litigious society.

²² 29 F. Cas. 718, 2 Mason C.C. 181





LEGAL STALKER

1. Commercial Laws

a. NCLT Must Evaluate Factual Issues To Determine The Substance Of Rectification Applications Under Section 59 Of The Companies Act

The Supreme Court of India in the case of, *Chalasan Udaya Shankar v. Lexus Technologies Private Limited*, (2024 INSC 671), has held that if an open-and-shut case of fraud is made out in favour of the person seeking rectification of the register of members of a company, the National Company Law Tribunal ("NCLT") would be entitled to exercise its power to direct such rectification, under Section 59 of the Companies Act, 2013 ("Act"). Section 59 of the Act read with Rule 70(5) of the National Company Law Tribunal Rules, 2016, deals with rectification of register of members. The analogous provision in the Companies Act, 1956 was Section 155, which has been interpreted in various decisions, some of which were referred to in this Supreme Court judgement.

b. Foreign Exchange Compounding Proceedings

Keeping up with the advancements in the digital payments industry and the Indian government's initiative to promote ease of doing business, the Ministry of Finance, in consultation with the Reserve Bank of India ("RBI"), notified the Foreign Exchange (Compounding Proceedings) Rules, 2024 ("Compounding Rules"), on September 12, 2024, in supersession of the erstwhile Foreign Exchange (Compounding Proceedings) Rules, 2000 ("Erstwhile Compounding Rules"). The

Compounding Rules were followed by Direction on Compounding of Contravention under the Foreign Exchange Management Act, 1999 ("FEMA"), which was notified by the RBI on October 01, 2024 ("Compounding Directions").

c. Share transfer restrictions under SHA: The need to revisit Section 58(2) of CA 2013

A fundamental trait that distinguishes a private company from a public company is the concept of 'transferability of shares,' such that while the former may restrict transferability of shares, the shares of the latter, are generally considered to be 'freely transferable'.

However, incoming investors often prefer placing restrictions on transferability of shares, on either the promoters or other shareholder groups, by way of additional clauses in the shareholders' agreement, or any other consensual arrangements that they may enter into. These clauses allow incoming investors to protect their own interests, primarily by allowing them to ensure they do not get diluted and limit unknown third-party shareholders from being involved in the company. Common contractual provisions imposing restrictions/ conditions on share transferability are in the form of lock-in, prior consent for transfer, right of first refusal/right of first offer, drag-along rights, tag-along rights, restrictions on inter-se transfer to affiliates, put/ call options (which are typically triggered upon occurrence of EOD events), etc.

d. Penalty for not maintaining Average Monthly Minimum Balance

For many consumers, the subject of penalties for not keeping an average monthly minimum balance (AMB) in savings accounts has been a major source of anxiety. This page discusses the specifics of these fees, the standards that public sector banks employ in determining them, and the government's position toward their rationalization. We examine the details of these fines and the reasonableness standards used in their enforcement, based on the Lok Sabha Unstarred Question No. 1098, which was answered on July 29, 2024.

The Reserve Bank of India (RBI) has issued circulars outlining the guidelines for penal charges on non-maintenance of minimum balances. Banks are allowed to set their charges based on their Board Approved Policy, ensuring that the penal charges are a fixed percentage of the difference between the actual balance and the required minimum balance. The guidelines also stipulate:

- **Customer Notification:** Banks must inform customers about the minimum balance requirement at the time of account opening and any subsequent changes.
- **Notification of Penal Charges:** If the minimum balance is not maintained, banks must notify customers of the penal charges and give them a month to replenish the balance.
- **Prevention of Negative Balance:** Savings accounts should not turn negative solely due to the imposition of penal charges

e. Stay on NCLT Kolkata relocation to Rajarhat, rejected; Advocates' inconvenience not sufficient to halt policy decision

A petition was filed by NCLT Advocates Bar Association, Kolkata challenging the Ministry of Corporate Affairs' decision to shift the National Company Law Tribunal (NCLT), Kolkata, from its current location at Esplanade Row (East) to a new facility in Rajarhat. Shampa Sarkar, J., held that it would not be proper to stay the notification by which the proposal to shift the NCLT, Kolkata to the new building at Rajarhat has been made because interference with such policy decision would not be prudent.

2. Corporate Laws

a. Securities Exchange Board of India (Alternative Investment Funds) (Fourth Amendment) Regulations, 2024

Securities Exchange Board of India ("SEBI") vide a notification dated August 5, 2024, notified SEBI (Alternative Investment Funds) (Fourth Amendment) Regulations, 2024 (the "Amendment Regulations"), whereby it amended SEBI (Alternative Investment Funds) Regulations, 2012 (the "Principal Regulations"). The Amendment Regulations came into effect on August 6, 2024. Pursuant to the Amendment Regulations, SEBI has also issued Guidelines for Borrowing by Category I and II Alternative Investment Funds ("Category I and II AIFs") and Maximum Permissible Limit for Extension of Tenure by Large Value Fund ("LVFs") on August 19, 2024 ("SEBI Guidelines"), in line with the Amendment Regulations.

With the Amendment Regulations, SEBI has provided operational flexibility to category I and category II AIFs with regulatory supervision, which shall augment liquidity by allowing AIFs to meet the investment timelines. SEBI Guidelines have further clarified the purpose of which the borrowing can be done category I and category II AIFs along with some mandatory conditions.

b. Companies (Accounts) Amendment Rules, 2024

Form CSR-2 should be filed separately on or before 31st December, 2024 after filing Form No. AOC-4 or Form No. AOC-4-NBFC (Ind AS), or Form No. AOC-4 XBRL for the financial year 2023-2024.

c. Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2024

RBI approval should be obtained in case the transferor foreign company incorporated outside India being a holding company and the transferee Indian company being a wholly owned subsidiary company incorporated in India, enters into merger or amalgamation.

d. Amendment to FEMA (Non-Debt Instruments) Rules, 2019

Department of Economic Affairs, Ministry of Finance vide its notification dated August 16, 2024, notified the Foreign Exchange Management (Non-Debt Instruments) (Fourth Amendment) Rules, 2024 ("NDI Amendment Rules"), amending the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 ("NDI Rules"), which governs the foreign investment in India. Summary of the key changes introduced through the NDI Amendment Rules.

- Changes in Definition of "Control" and "Startup"
- Government Approval for Transfer of Equity Instruments of an Indian Company by or to a Person Resident Outside India NDI Amendment Rules amended the Rule 9 (1)(i) of NDI Rules to state that 'prior Government approval shall be obtained for transfer in all cases wherever Government approval is applicable'.
- Swap of Equity Instruments and Equity Capital

e. SEBI Specifies Due Diligence To Be Carried Out By AIFs, Managers Of AIFs And Their Key Managerial Personnel

The Securities and Exchange Board of India ("SEBI"), vide notification dated April 25, 2024, inter alia amended the SEBI (Alternative Investment Funds) Regulations, 2012.

The Securities and Exchange Board of India ("SEBI"), vide notification dated April 25, 2024, inter alia amended the SEBI (Alternative Investment Funds) Regulations, 2012, to insert a new sub-regulation (20) in Regulation 20 requiring Alternative Investment Fund ("AIFs"), managers of AIFs ("Managers") and their Key Management Personnel ("KMPs"), to exercise specific due diligence with respect to their investors and investments to prevent facilitation of circumvention of such laws as may be specified by SEBI from time to time.

SEBI has now, vide circular dated October 8, 2024 ("Circular"), issued guidelines on the

specific due diligence as mentioned above. Following is a brief overview of the key provisions of the Circular:

- Investors availing benefits designated for Qualified Institutional Buyers ("QIBs")/ Qualified Buyers ("QBs") through AIFs
- RBI regulated lenders/ entities ever-greening their stressed loans/ assets through AIFs

f. SEBI (FOREIGN VENTURE CAPITAL INVESTOR) REGULATIONS, 2000 – AMENDED

Securities and Exchange Board of India ("SEBI"), vide its notification dated September 4, 2024, has notified the SEBI (Foreign Venture Capital Investors) (Amendment) Regulations, 2024 ("FVCI Amendment Regulations"), thereby amending the SEBI (Foreign Venture Capital Investors) Regulations, 2000 ("FVCI Regulations").

g. Stamp Duty Rate Changes in Maharashtra from 14.10.2024

Maharashtra government has enacted an ordinance on October 14, 2024, introducing significant changes to the state's stamp duty structure. The minimum stamp duty has been raised to Rs 500, affecting various instruments. Key changes include increased stamp duties for Affidavits, Agreements (not otherwise specified), Appraisements or Valuations, and Partnership Deeds, with each now requiring Rs 500 instead of the previous Rs 100. Additionally, the stamp duty on Articles of Association has been adjusted from 0.2% (capped at Rs 50 lakhs) to 0.3% (capped at Rs 1 crore). The duty on Arbitral Awards has also been revised, particularly for awards related to movable property, with rates now ranging from 0.75% to a maximum of Rs 2,62,500 for higher valuations. Other instruments affected include Divorce Deeds, Licenses, and Works Contracts, which have updated stamp duties according to new brackets. The ordinance reflects a broader effort to reform the state's taxation system by increasing revenue through higher stamp duties.

h. Interest cannot be termed as operational debt u/s. 5(21) of IBC: NCLAT Delhi

In the case of Khushbu Dye Chem Private Limited Vs Chemical Suppliers India Private Limited (NCLAT Delhi) NCLAT Delhi held that interest cannot be termed as operational debt as defined under section 5(21) of the Insolvency and Bankruptcy Code and hence interest cannot be included in the claims filed under section 9 of the Code.

It was held that 'interest' is specifically mentioned in the definition of financial debt but no such mention is available in the definition of operation. Thus, we can conclude that the Appellant's inclusion of interest in the claimed amount is untenable as interest cannot be termed as operational debt under the Code. Thus, held that we are in agreement with the submissions made by the Respondent that the interest in the present facts of case cannot be included in the claims filed under Section 9 of the Code. It is well settled that if the Corporate Debtor raises a plausible contention about a pre-existing dispute, which is not just a moonshine or feeble legal argument, it would

suffice for the Adjudicating Authority to reject the application filed under Section 9 of the Code, the Adjudicating Authority being precluded from determining as to whether the Corporate Debtor would be successful or not, with regard to the said dispute, at the time of decision making.

i. New Delisting Regime by SEBI

The Securities and Exchange Board of India ("SEBI") has amended the SEBI (Delisting of Equity Shares) Regulations, 2021 ("Amendment"). The new regime introduces fixed price delisting as an option for take-private transactions. In addition to the reverse book building ("RBB") route, existing promoters can now use this new route, depending on the viability based on case specific nuances to take their listed entity off the exchange.

3. Taxation Laws

a. Tax rules to resolve pending cases take effect on 1 October

The Ministry of Finance has released the Direct Tax Vivad se Vishwas Rules, 2024, which will come into effect on 1 October 2024. The tax resolution scheme was mentioned in the 2024-2025 union budget and detailed in the Finance Act, 2024.

The new rules aim to resolve the pending appeals on income tax disputes by allowing lower settlement amounts for new appellants. A new appellant is a declarant in a tax dispute appeal filed after 31 January 2020. The scheme also allows taxpayers to pay lower settlement amounts if they file their declaration before 31 December 2024.

Under the tax resolution scheme a declarant must file a declaration with the authorities using form 1. After the declaration is filed, any appeal on disputed income, interest, penalty, fee, or arrears must be withdrawn. Once the authorities receive the declaration, they will determine the amount payable within 15 days, after which the declarant will have another 15 days to pay. This will conclude the dispute and appeals are not allowed.

Filing a declaration, as well as undertaking and confirming the payment can be completed electronically through the official portal and website.

b. The government notified amendments to the Central Goods and Services Tax (CGST) Act, particularly concerning the Input Service Distributor (ISD) provisions, effective from April 1, 2025. This includes a new definition of ISD and requirements for registration and credit distribution.

The Finance Act of 2024 notifies the government of the changes to the GST law and their implementation date.

The Central Board of Indirect Taxes and Customs (CBIC) recently released a notification outlining the effective date of adjustments made to the Central Goods and Services Tax Act, 2017 (CGST Act), as per the Finance Act, 2024, in the interim budget. This Tax Alert highlights that notification.

According to the notification, changes to the CGST Act's definition of an input service distributor (ISD) in

Section 2(61) and the way in which ISD distributes credit in Section 20 will take effect on April 1, 2025.

Effective October 1, 2024, a penalty provision for manufacturers of pan masala, chewing tobacco, and other tobacco-related goods who fail to register their packing machinery would be in place.

c. Following Budget 2024, there will be new capital gains tax rates on equity, debt MFs, ETFs, and gold funds, as well as updated mutual fund tax regulations.

Following the Budget 2024, new taxation rates for short-term capital gains (STCG) and long-term capital gains (LTCG) on various assets have been introduced:

- Equity Mutual Funds: STCG rates increased from 15% to 20% for holdings up to 12 months, and LTCG rates adjusted from 10% to 12.5% for holdings over 12 months.
 - Debt Mutual Funds: Similar adjustments have been made, with significant changes in holding periods for tax calculations.
- d. Central govt. has released INR 1,39,750 crore installment for tax devolution to States totaling to INR 2,79,500 crore released to States (up to June 10, 2024) for FY 2024-25 vide Press Release dated June, 10 2024 including bifurcation of tax amount released to different States.

4. Arbitration Law

a. Courts need not set aside arbitral award only because reasoning is inadequate: Supreme Court

The Bench said courts can only set aside arbitral awards if the reasons contained in them are perverse and there is a difference between an arbitral award where reasons are perverse and one where reasons are inadequate.

The Supreme Court recently outlined the difference between an arbitral award where reasons are lacking, unintelligible or perverse, and one where reasons are there but appear inadequate or insufficient [OPG Power Generation Private Limited vs. Enexio Power Cooling Solutions India Private Limited and anr].

b. Govt seeks to amend law to bolster institutional arbitration

Proposed amendments to Arbitration and Conciliation Act make provisions for appellate arbitral tribunals, giving disputants the option to appeal arbitral awards without moving courts of law. This provision will only be available for arbitrations conducted under the aegis of arbitration institutions.

The Union law ministry has proposed to strengthen the process of institutional arbitration by making provisions for appellate arbitral tribunals, giving disputants the option to appeal arbitral awards without moving courts of law.

This provision would, however, only be available for arbitrations conducted under the aegis of arbitration institutions, as per the draft amendment to the Arbitration and Conciliation Act issued on Friday.

The Arbitration and Conciliation Act, passed originally in 1996, is the country's key legislation governing arbitrations in the country, and has been amended thrice before this in 2015, 2019, and 2021.

c. Section 34 Court cannot overturn the interpretation of contract rendered by the Arbitral Tribunal – National Highway Authority of India v. M/s Hindustan Construction Company Ltd [Civil Appeal No. 4702 OF 2023]

While deciding a civil appeal preferred by the National Highway Authority of India, the Supreme Court of India, recently affirmed the view taken by subordinate courts, that a court cannot overturn the interpretation of a contract rendered by the arbitral tribunal. The scope of the appeal was limited to two claims, first concerning the increase in royalty, sales tax etc. on account of subsequent legislations; and second for the balance amount for the construction of the embankment. In respect of the first claim, the Supreme Court distinguished between Clauses 70.1 – 70.7 and Clause 70.8.

The Supreme Court found that while Clauses 70.1 – 70.7 dealt with escalation premised on fluctuations in market value, Clause 70.8 concerned compensation for additional costs resulting from subsequent legislation. Accordingly, the Court concluded that the first claim is covered by Clause 70.8 and not Clauses 70.1 – 70.7. So far as the second claim was concerned, the Court noted that the arbitral tribunal had taken a particular view which was further approved by Section 34 & 37 Courts.

The Supreme Court also noted that NHAI had sought to make deductions after initially paying the amounts for the embankment. On the basis of the above, the Supreme Court did not find any perversity or illegality in the arbitral award and held that there is no reason for interference with the arbitral tribunal's interpretation of the contract.

INTERACTIVE SESSION

1. What is a class action lawsuit?

- A) A legal action taken by a single individual against a large corporation.
- B) A lawsuit filed by a group of individuals with similar claims against a common defendant.
- C) A type of criminal case in which multiple defendants are involved.
- D) A case that is decided by a jury without a judge.

2. Which of the following is NOT a requirement for class certification?

- A) Commonality
- B) Adequacy of representation
- C) Individual damages
- D) Typicality

3. What does "opt-out" mean in the context of a class action lawsuit?

- A) Class members must join the lawsuit actively.
- B) Class members can exclude themselves from the class.
- C) The class is automatically dissolved.
- D) The defendant can choose to leave the case.

4. Which U.S. law expands federal jurisdiction over class actions?

- A) Federal Rules of Civil Procedure
- B) Class Action Fairness Act (CAFA)
- C) Civil Rights Act
- D) Consumer Protection Act

5. What is a class representative?

- A) An attorney representing the class.
- B) A member of the class who advocates for the group's interests.
- C) A defendant in the case.
- D) A judge overseeing the class action.

6. In which scenario might a class action lawsuit be preferred over individual lawsuits?

- A) When the damages for each individual are too small to warrant individual lawsuits.
- B) When every plaintiff has a unique claim.
- C) When the defendant is a government entity.
- D) When there is a guaranteed win for the plaintiffs.

Answers: 1. B) A lawsuit filed by a group of individuals with similar claims against a common defendant; 2. C) Individual damages; 3. B) Class members can exclude themselves from the class; 4. B) Class Action Fairness Act (CAFA); 5. B) A member of the class who advocates for the group's interests; 6. A) When the damages for each individual are too small to warrant individual lawsuits.