



## Public interest litigation and corporate investors

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### Abstract

In this research paper the Area we have discussed the Indian corporate Legal system for the Protection of Corporate Investors and examines how the system has both supported and held back country's legal system provides some of the best investor protection in the world. In India the Investors are most unsecure investors as compare to the Developed countries of the World like U.S.A., U.K. enforcement is a major Problem with slow, over-burdened courts and significant financial scam. The paper also focuses on the comparison between English Law and Indian Law regarding the Public Interest Litigation with analyzing the Case Law. It also concludes that there is need to be some regulatory changes for the protection of Corporate Investors.

**Keywords:** *corporate*, class action, public interest

### Introduction

Corporate Investors plays an extremely important role in promoting and sustaining the growth of an economy. A corporate investor means who intends to take over a company by buying a controlling interest in its stock and installing new management. It is an important and efficient conduit to channel and mobilize funds to enterprises, and provide an effective source of investment in the economy. It plays a critical role in mobilizing savings for investment in productive assets, with a view to enhancing a country's long-term growth prospects, and thus acts as a major catalyst in transforming the economy into a more efficient, innovative and competitive marketplace within the global arena.

Corporate world has emerged as a powerful tool of socio-economic growth and It has attracted the investors towards the Corporate sector in the post globalised world. Historically, the ups and downs in the Capital Market has always played a significant role in shaping the life and economy of the nation. Thus, investors' confidence in the capital market which is ought to be based on a sound financial system of transparency and efficient system of protection and justice has assumed an important role for any developed / developing country. To strengthen the corporate sector, Capital market and to gain investors' confidence, the past decade witnessed wide ranging legislative interventions. So as to protect investors ' interest, promote, development and regulate the Corporate sector Public Interest Litigation as a convenient mode of realization of Investor protection. But the Public interest litigation system is fail to protect the Indian Investors as compare to Class action law suits in western countries like USA and UK. It is imperative that India shapes its legal framework to make class action suit a reality for securing the interest of Indian investors.

### Public Interest Litigation Scenario in India

Generally it is observed that when a Company's management plays fraud or take erroneous policies with malafide intensions and consequently, the share prices falls or the Company becomes bankrupt; the worst hit class of people are its shareholders who losses and to recover such losses they collectively file PIL. In India PIL broadly means a legal action

initiated in a court of law for the enforcement of public interest or general interest in which the rights of the general public or a section of the community are affected. A Public Interest Litigation can be filed only against a State Central Government, Municipal Authorities, and *not* any private party. However a "Private party" can be included in the Public Interest Litigation as a "Respondent", after making the concerned State authority a party. However, a PIL cannot be filed against the private party alone; the concerned State Government, and State authority has to be made a party.

The Decisions of the Indian Supreme Court in the 1980s loosened *strict standi* requirements to permit the filing of suits on behalf of rights of deprived sections of society by public minded individuals or bodies. Although not strictly "class action litigation" as it is understood in American law, Public Interest Litigation arose out of the wide powers of judicial review granted to the Supreme Court of India and the various High Courts under Articles 32 and 226 of the Constitution of India respectively <sup>[1]</sup>. The sort of remedies sought from courts in Public Interest Litigation go beyond mere award of damages to all affected groups and have sometimes (controversially) gone on to include Court monitoring of the implementation of legislation and even the framing of guidelines in the absence of Parliamentary legislation <sup>[2]</sup>.

However, this innovative jurisprudence did not help the victims of the Bhopal Gas Tragedy who were unable to fully prosecute a class action litigation (as understood in the American sense) against Union Carbide company due to procedural rules that would make such litigation impossible to conclude and unwieldy to carry out. Instead, the Government of India exercised its right of *parents patria* to appropriate all the claims of the victims and proceeded to litigate on their behalf, first in the New York courts and later, in the Indian courts. Ultimately, the matter was settled between the Union of India and Union Carbide (in a settlement overseen by the Supreme Court of India) for a sum of Rs. 760 crores (about 400 million dollars) as a complete settlement of all claims of all victims for all time to come. The Bhopal gas tragedy gave rise to a number of litigation concerning issue on environmental erosion, criminal negligence and liability etc. The case which was

negotiated and settled is reopened again on various legal issues, mostly concerning the payment of compensation and damage.

### **PIL (Mass action) Vs. Class Action**

Interestingly, though both Class Action lawsuits and Public Interest Litigations allow a large number of plaintiffs to bring collective suits that relate to same cause of action by way of representations opposed to conventional lawsuit wherein the plaintiff represent himself only;

‘Class Action’, which is also known as ‘Representative Action’, is actually a form of lawsuit where a large group of people collectively bring a claim to the court through a representative. In law, an action in which a representative plaintiff sues or a representative defendant is sued on behalf of a class of plaintiffs or defendants who have the same interests in the litigation as their representative and whose rights or liabilities can be better determined as a group than in a series of individual suits.

### **Still these both differ from each other like**

1. In Class Action lawsuits the plaintiff’s attorney charges contingency fees; which means no fees in case of failure and in case of success it is directly related to the amount of compensation / award (whether awarded in a judgment or received through settlement) and hence the risk of success or anxiety to succeed gets shifted from plaintiff to his Attorney, which is not so in Public Interest Litigations.
2. Another difference is in Class Action lawsuits, US Law requires each party to bear its own cost of litigation irrespective of the result of the lawsuit and hence even if plaintiff loses, he is not required to pay the defendant his cost of litigation. However, as per PIL in Indian law the courts may ask payment of such cost by the losing party.
3. Further, PILs can only be filed against public bodies / regulatory bodies / state in High Court or Supreme Court under Article 226 or 32 of the Constitution respectively however; the Class Action lawsuits can be filed even against the private bodies.
4. For establishment of Class Action litigation there must be a legal injury to the plaintiff however in PIL such injury / damage is not necessary.
5. The main benefit of class action law suits is that individual complainants who may not have the resources to initiate individual proceedings may join together as a larger class. In addition, class action law suits may serve to increase the efficiency of the judicial system due to the avoidance of repetition of witnesses and arguments.
6. Aggregation can increase the efficiency of the legal process, and lower the costs of litigation<sup>[3]</sup>. As compare to the PIL.

### **Judicial Approach**

#### **Satyam Computer services Ltd Vs Investor’s Grievances Forum**

Satyam scam has been the greatest scam in the history of corporate world of the India. Satyam is the fourth largest IT Company in India. The CEO of the company Ramlinga Raju has made a scam of around 13000 Crore. There has been a lot of controversy regarding the misuse of the post by the CEO of the company. The fake number of jobs which was shown by the CEO was an abuse of power and it was a clear violation of the prevailing laws in India. This gives the impression that in

India the power and position is what matters and the people in the top position make a clear violation of the rights provided to them. This scam has seriously affected to the Innocent Investors and corporate bodies in India. The role of an incorporated company is to satisfy desires of investors, and to channelize their investment. But most of the time entrepreneur’s play with money of the investors. There are laws to safeguards investors’ interest but the Satyam scam has raised the question on the fundamental role of the government and corporate governance.

### **Brief Facts**

On 16th December, 2008 Satyam board got the approval for acquisition of Mayta’s Infrastructure and Mayta’s Properties (companies owned by his relatives). However the company couldn’t go on with the investment plan due to resistance by the investors. Between 25th and 28th December, 2008, 3 independent directors of Satyam board resigned and later on Mr. Raju confessed to fraud in the form of misappropriation in the balance sheet of the company. Further Mr. Raju as a promoter and a director, whether Memorandum of Association and Article of Association authorized the Satyam to purchase an infrastructure company. An effort will also be made to analyze the Satyam case in the context of other developed countries law. On January 14, 2009 A public interest litigation (PIL) has been filed in the Supreme Court seeking a direction to market regulator Sebi and the Bombay Stock Exchange to cancel all share transactions in Satyam Computers. It has sought cancellation of all the transactions between January 6 and 7 on the ground that innocent investors were lured by these companies on buyback declarations and fraud was played on them. On January 6, media had widely reported about Satyam adopting proposal to buy back its shares and its decision to take up the issue in the board meeting. According to him, before the decision was taken by the board, IL&FS had sold about 246.6 lakh (24.66 million) shares in the market at Rs 176 per share. However, the Satyam shares crashed to close at Rs 6 after Satyam chairman Ramlingam Raju resigned from the board and confessed to Rs 13000 crore fraud, he added.

Again On January 14<sup>th</sup>, 2008 another PIL filed on multi-crore Satyam scam. by the Investor’s Grievances Forum, headed by former member of Parliament Kirit Somaiya. Besides, state and the Union Governments, SEBI, the National Stock Exchange (NSE) and the Bombay Stock Exchange (BSE), The Satyam Computer Services Ltd, its former Chairman B Ramalinga Raju, seven (former) directors and audit firm Price Waterhouse Coopers (PWC) have been made respondents to the PIL. Mr Somaiya in the petition has sought appointment of a committee to make regulatory process more effective and protect small investors in the aftermath of the Satyam scam. The PIL said ‘despite existence of market regulator Securities and Exchange Board of India (SEBI) and a plethora of laws, rules and regulations, efforts to safeguard the interests of investors in Corporate sectors and securities have not been successful. Satyam’s board and auditors are guilty of negligence, breach of duty, breach of trust and fraud to the investors. since 2008 the hearing is pending, and in the year of 2011 the Supreme Court refused to give urgent hearing to a Public Interest Litigation (PIL) seeking protection for investors of Satyam Computer Services Ltd.

On the month of January 2008 12 class action suits have been filed so far (and more were expected to be filed) against

Satyam, the Chairman, Ramalinga Raju, and the Managing Director, Rama Raju by several law firms on behalf of purchasers of Satyam's American Depository Shares ('ADS'). Vianale & Vianale LLP first filed a class action suit on behalf of Aekta Ben Patel and anyone else who has also bought ADS of Satyam between January 6, 2004 and January 6, 2009 in the federal district court of the Southern District of New York. The plaintiffs have alleged that by defrauding the purchasers of Satyam's ADS, the defendants have violated provisions of the US Securities Exchange Act, 1934 and therefore the plaintiffs should be awarded unspecified compensatory damages. and the above Class Action suit was awarded in favor of investors to compensate the damages of American Investors and the same has agreed by the Satyam Computer Services Ltd to give the compensation. But in Indian PIL till now the decision is pending in supreme court. So analyzing the above case the PIL law is totally fail for the protection of investors as compare to the Class Action suit law of western country. The PIL said the last couple of decades have seen a number of big and small scams, the biggest being Harshad Mehta in 1991-92 and Ketan Parikh in 2001 but till now no investors get any compensation by this PIL.

### **Pitfalls**

In India, the need to codify class action litigation in Indian law had been recommended by J J Irani Committee which submitted its report to Ministry of Company Affairs on May 31, 2005. One may find that after the Satyam Fiasco, the greater need to encourage class action litigations has been felt in India. The provisions contained for representative suits in Section 397 and 398 in the existing Companies Act, 1956<sup>[4]</sup> for oppression and mismanagement may be termed alike US Class Action. However, there is no specific provision for class action litigations under existing Indian Companies Act.1956 Interestingly the proposed Companies Bill 2009 however contains few provisions for class action lawsuits. Clause 32 of the Bill states that "A suit may be filed or any other action may be taken under Section 30 or Section 31 by any person, group of persons or any association of persons affected by any misleading statement or the inclusion or omission of any matter in the prospectus."

### **References**

1. Article 32 of the Indian constitution: The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed. Article 226 power of high courts to issue certain rights.
2. Khatri v. State of Bihar II [(1981) 1 SCC 635] (the Bhagalpur Blinding case).
3. In cases with common questions of law and fact, aggregation of claims into a class action may avoid the necessity of repeating "days of the same witnesses, exhibits and issues from trial to trial." Jenkins v. Raymark Indus. Inc., 782 F.2d 468, 473 (5th Cir.) (Granting certification of a class action involving asbestos) 1986.
4. Any member of a company who complain that the affairs of the company [are being conducted in a manner prejudicial to public interest or] in a manner oppressive to any member or members (including any one or more of themselves) may apply to the [Tribunal] for an order under this section.