

DERIVATIVE ACTION, CLASS ACTION AND REPRESENTATIVE SUITS

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ABSTRACT

The paper provides a critical overview of Derivative Action, Class Action, and Representative Suit. It focuses on Derivative Action, Class Action and Representative Suit, origin of all the three concepts, how do we get derivative action with the references to the UK law, how did we come to adopt class action and representative suit, case laws which will help to explain the concept of it, what is the locus standi and in what circumstances they can be invoked, extent of remedy and to whom the remedy.

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Derivative Action

Derivative action is a lawsuit which is brought by a shareholder on behalf of the company in enforcing a legal claim. Derivative action is also called the Stockholder's suit. It is brought against the insiders of the company which includes the directors, management, and key managerial person by the shareholders when there is mismanagement, fraud, and corruption with the affairs of the company.¹

Derivative action keeps a check on directors and the management. It has been acting as a device for corporate governance. The derivative action helps to place the interests of the managers of the company in deterring managerial misconduct. It is such an important component which helps in reducing the agency costs vested in the management of public companies.²

The concept is still very young in India. Derivative action was recently introduced in the Companies Act, 2013 under the heading '*Prevention of Oppression and Management*,' which was recommended by the J.J. Irani Committee in 2004. It provides protection for both major and minor stakeholders and shareholders of the company.³

2.1) Origin of the Derivative Action

¹ "Tanvi Kini, *The significance of Derivative Action in India: An Analysis of Section 245 of the Companies Act, 2013*, Volume 2 Issue 5, 1-9."

² *Ibid.*

³ *Ibid.*

Before the Companies Act 2006⁴, in England, the shareholders found it difficult to file derivative suits.⁵ It was necessary for the courts to adopt a procedure where a shareholder or a member of the company or association can complain about the wrongdoing of a company. If the procedure was not being adopted by the courts, it would have allowed the controllers in diverting the assets of the company for their own use, the matter would have gone without leaving a remedy.⁶ The famous common rule known as the ‘Rule in Foss Vs Harbottle’⁷ or the ‘Proper Plaintiff Rule’ in English law declared “*the basic right of the company through its organs to make the litigation decision in relation to a breach of an obligation owed to it.*”⁸

The Rule in Foss Vs Harbottle

The rule in *Foss Vs Harbottle*⁹, has been seen as a remarkable barrier to effective shareholder enforcement action especially in cases of wrongdoing by company’s own directors. A derivative action under common law was possible only if the applicant could invoke one of the ‘exceptions to the rule in Foss Vs Harbottle.’¹⁰

Sir James Wigram VC set the rule in *Foss Vs Harbottle*¹¹, expressed that with regard to the wrongs done in the company, “*the corporation should sue in its own name and in its corporate character, or in the name of someone whom the law has appointed to be its representative.*”¹²

Hence, the action cannot proceed if it does not have the support of the directors who has the power to bring proceedings on behalf of the company.¹³

⁴ The Companies Act 2006, UK.

⁵ *Supra* 1.

⁶ “Lynden Griggs, *The Statutory Derivative Action: Lessons That May be Learnt from its Past*, (30TH July, 2016), www.austlii.edu.au/Databases.”

⁷ [1843] 67 ER 189.

⁸ *Supra* 1.

⁹ *Supra* 7.

¹⁰ *Supra* 1.

¹¹ *Supra* 7.

¹² “Ezeanya Ann Ugonna, *Exceptions to the rule in Foss Vs Harbottle: Comparisons between Daniels Vs Daniels And Pavildes V Jensen*, (7th July, 2016), www.academia.edu/.../Exception_to_the_rule_in_Foss_V_Harbottle_Comparison_of_...”

¹³ *Id.*

This rule has certain exceptions for the protection of the rights of the minority, they are-¹⁴

- 1) Ultra Vires and Illegality Exception-Action can be taken against the directors or majority shareholders if they act beyond their powers (ultra vires) and for illegal activities also derivative suits are filed. The shareholder has the right to action because he has the right to have the company to perform in accordance with law.¹⁵ The principle was applied in *Smith Vs Croft*¹⁶ and *Cockburn Vs Newbridge Sanitary Steam Laundry Co.*¹⁷
- 2) Special Majority Exception-Only by a special majority or special resolution, the act or conduct of a company can be done. This principle has no applications in such situations.¹⁸
- 3) Action by Shareholders Exception-Shareholders by their individual action can enforce some right belonging to him personally.¹⁹
- 4) Fraud on Minority Action-When minority shareholders recognize fraud in action of the directors or the majority shareholders, they can bring an action against the directors or the majority shareholders.²⁰ In the case *Cooks Vs Deeks*²¹, an action can be brought against the director for diverting to themselves a contractual opportunity which, in equity, belonged to the company.²²

Many recognized the rule in *Foss Vs Harbottle*²³ as very complex, unclear and restrictive.

In the English Companies Act 2006²⁴, shareholder can bring a derivative suit. The derivative suit is brought when there is breach of duty, negligence, and breach of trust on the part of the director. Under the Common Rule, it was not there. The Fraud prerequisite to the '*fraud on minority*' exception has been removed. So, under the Companies Act 2006²⁵, it increases the liability of the

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ [1986] 1 WLR 580

¹⁷ [1915] 1 IR 237.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ 1 AC 554,,UKPC 10.

²² *Id.*

²³ *Supra* 7.

²⁴ *Supra* 4.

²⁵ *Id.*

directors for the breaches of the duty of care.²⁶ The English Companies Act 2006²⁷, does not exactly remove the rule in *Foss Vs Harbottle*.²⁸

2.2) Derivative Action India

Derivative Action is a new concept in India and was introduced under the Companies Act 2013²⁹ under Prevention of Oppression and Management, Chapter XVI. Section 245³⁰ of the Companies Act 2013 deals with derivative action. The fraud on the minority by the wrongdoers, who control and prevent the company from bringing an action in its own name, derivative action in such cases has been allowed by the courts. Such action can be brought by the shareholders not in his personal capacity but on the behalf of the company with respect to the wrong done to the company. An application can be filed before the National Company Law Tribunal for bringing a derivative action.³¹

Under Section 245 (4) of the Companies Act 2013³², before accepting an application, NCLT will take into account if the shareholders are acting in good faith.

2.3) Significance of Derivative Action

The current legal system had brought notable changes:³³

Protects Minority Right-Minority shareholders are being protected under section 245 against managerial misconduct. Minority shareholders are not being able to vote or oppose or proposal made in the company. They might feel that it is pointless in letting out frustrations on decisions taken by the directors, hoping that institutional investors will take actions on their behalf.³⁴ In the case *Darius Rutton Kavasmaneck Vs Gharda Chemicals Limited and others*,³⁵ the Bombay High Court said that, minority shareholders can take action against the wrongdoers of the company for

²⁶Supra 1.

²⁷Supra 4.

²⁸ Supra7.

²⁹ "The Companies Act, 2013."

³⁰ "Section 245 of the Companies Act."

³¹ Supra 1.

³² Section 245 (4) of the Companies Act.

³³ Supra 1.

³⁴ Ibid.

³⁵ "Suit No. 2932 of 2011, Decided on December 12, 2014."

the benefit of the company if the majority shareholders are the ones who are doing wrong to the company and preventing the company from taking such action.³⁶

In large companies, managers have wide powers and discretion to run the business. They have such broad discretion that rather than acting in the interests of the shareholders, they act in their own interests. Derivative action serves as an important element for tackling the abuse of power by management and controlling shareholders.³⁷

Shareholder Activism-It is a powerful action which is a mixture of corporate investment, socially responsible investment and shareholder capitalism taken by a person or an owner interested in a company. The most advantageous effect of shareholder activism is the promotion of good corporate governance. One of the most beneficial effects of shareholder activism is the promotion of good corporate governance.³⁸ Combating corruption, improving sustainability, and raising the number of women holding seats in boards, is a positive outcome of the social aspects of the corporation.³⁹

Corporate Governance and Good Practice- The *Satyam Scam*⁴⁰ in 2009 also called the “*Indian Enron*” exhibited the ambiguity and inadequacy of the Companies Act, 1956.⁴¹ The birth of derivative action will result in good corporate governance.⁴²

Monitoring any person or entity associated with the Company- Section 245 says that damages can be claimed from any person associated with the company for fraudulent matters. Section 245 (6)⁴³ states that any order passed by the tribunal is binding on the respective audit firm, auditors, experts, advisors, consultants or any person associated with the company. These clauses have left no room for negligent acts of the company.⁴⁴

³⁶ *Supra* 1.

³⁷ *Ibid.*

³⁹ *Id.*

⁴⁰ The Satyam Scam, 2009.

⁴¹ *Supra* 1.

⁴² *Id.*

⁴³ Section 245 (6) of the Companies Act.

⁴⁴ *Supra* 1.

Cost effective-In *Wallersteiner Vs Moir*⁴⁵, Lord Denning stated that the shareholder who files a derivative action, all costs should be incurred by the company in bringing the action because if the case succeeds, it will ultimately benefit the company. Under the Companies Act, 2013⁴⁶, the application made by members or depositors to NCLT is accepted, the costs of the litigation shall be covered by the company or the person responsible for the wrongdoing of the company and when the application is not accepted, the costs shall be borne by the applicants.

Class Action

3.1 ORIGIN

Class suits were introduced in England in the 13th century and were known as group litigation. These cases were filed when some kind of action occurred in villages, towns, parishes and guild and affected a large group of people. It was because of this, individual cases were difficult to handle and group litigation was a norm.⁴⁷

Group litigation was steadily replaced by individual litigation prior to the 18th century. Parliament became conscious of the situation and it passed several laws to deal with the issues which would arise later. Group Litigation became non-existent in England in after 1850.⁴⁸

Even though group litigation died in England, it survived in the US because of the efforts of Joseph Storey, an associate justice of the U.S. Supreme Court in the early 1800's. Nevertheless, he felt that group litigation had no place in the modern society.⁴⁹

When a several number of similar individual cases were being filed, Equity Rule 48⁵⁰ was enacted in 1833 that paved the way for group litigation also known as representative litigation.⁵¹

⁴⁵ [1974] 1WLR 991.

⁴⁶ The Companies Act, 2013.

⁴⁷ Classic Action Law Suits Centre, History of Class Action Law Suits, (31st July, 2016), classactionlawsuitcenter.com/history-of-class-actionlawsuits/.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Equity Rule 48 of 1833.

⁵¹ *Supra* 46.

Equity rule 48⁵² was replaced by Equity Rule 38 in the early 20th century. The new Rule was changed into Rule 23⁵³ of the Federal Rules of Civil Procedure (FRCP). Rule 23 is the foundation of class actions today.⁵⁴

The Concept of Class Action was introduced for the first time under the Companies Act, India in 2013. The Concept of Class Action is not new but it got statutory recognition under Companies Act 2013.⁵⁵

In 2009 when the Satyam Scam first came out, class action got the limelight. It was introduced under Section 245 of the Companies Act, 2013.⁵⁶

Class action suit is a suit where members of a large group having a common interest can sue or be sued.⁵⁷

The Satyam Scam

The founder of Satyam mis-stated the revenues and accounts of Satyam Computer Services Ltd. leading to the breakdown of the company's stock. The revenues were being overstated based on the false invoices of millions of dollars. The fraudulent scheme involved forged interest income, hidden debts, forged bank accounts, false invoices, fake employees.⁵⁸

The Indian shareholders were unable to claim compensation because of absence of class action in India and US shareholders were able to claim \$125 million dollars from the company.⁵⁹

Inviting Class Action under the Companies Act

⁵² *Supra* 49.

⁵³ Rule 23 of FRCP.

⁵⁴ *Id.*

⁵⁵ CAclubindia, Class Action Suits under Companies Act,2013, 5.07.2016, 3 PM, www.caclubindia.com> Articles> Corporate Law.

⁵⁶ *Ibid.*

⁵⁷ *Id.*

⁵⁸ Manan Dua, Class Action Suit in the Companies Act, 2013: The Investor Activism, (7th July, 2016), (2014) 49 *taxmann.com*558.

⁵⁹ *Id.*

The Irani Committee wasn't sure if it was introducing a class action or derivative action under the companies report.⁶⁰

3.1 *Class Action under Bill 2009*

Clause 216⁶¹ under the heading class action neither dealt with derivative action or class action under the bill 2009. Clause 216 was very wide and clause 216 (1) (e)⁶² included any violation of any law of the country while other clauses dealt with preventing the company to act ultra vires, against resolutions or resolutions passed on suppression of material facts. If clause 216 read with clause 243, the violation of any law by a country was to be resolved by the tribunal which would give exclusive jurisdiction to the tribunal and civil courts would have been completely expelled.⁶³

The clause wasn't drafted properly and the funding of the litigations was not mentioned under the companies bill. It didn't even mention the conditions required for members or creditors in representing a class not it mentioned that the benefits would go to the class. Under the clause, the right of the shareholder or the creditor for agitating the matters did not fit properly. The requirements of the company were only one share, liability of one rupee by the company to a creditor. On the question of allowing derivative claims, UK dealt carefully. On the making of the report on Shareholders Remedies explaining about derivative actions, The UK Law Commission spent a great deal of time. Section 261 of the Companies Act 2006⁶⁴, the shareholder can only bring a suit with the explicit permission of the court.⁶⁵

A different step has been taken by shareholder activism in India. Many shareholders use the sections for their own personal benefit.⁶⁶

3.2 *Class Action under Bill 2012*

Class action rights were given to creditors and shareholders under the Bill 2009 but under the bill 2012, class action rights are given to shareholders and depositors. Since the creditors had

⁶⁰ "Vinod Kothari and Nidhi Ladha, *Class Action under Companies Bill 2012: Wide ranging injunctive and punitive powers against Companies*, (7th July, 2016), www.india-financing.com/component/content/article/281.html."

⁶¹ "Clause 216 of the Companies Bill, 2009."

⁶² "Clause 216 (1) (e) of the Companies Bill, 2009."

⁶³ *Supra* 51.

⁶⁴ Section 261 of the Companies Act, 2006.

⁶⁵ *Supra* 51.

⁶⁶ *Id.*.

contractual rights, the committee decided that statutory right many not be given to the creditors. The depositors did not have any contractual rights, they were proposed to be give the power to file class action before NCLT. There were recommendations by the Standing Committee for including derivative actions for the empowerment of the shareholders to go against the wrongdoings of the companies and at the expenses of such companies. But, it was being accepted by the Ministry.⁶⁷

Clause 125⁶⁸ of the 2012 companies bill says that legal expenses for the class action suits shall be compensated from the funds of Investor Education and Protection Fund (IEFP). Hence, there was a gap filled up in the companies bill 2012. Tribunals have been given the power whether to accept the class applications or not and there in penalty for frivolous applications.⁶⁹

3.3) *Who can file class action suits?*

Section 245 (1)⁷⁰ read with Section 245 (3)⁷¹:

- 1) It should not be less than 100 members or not less than 10 percent of the total members, whichever is less in case of a company having share capital. Member or members holding at least 10 percent of the shared capital and it is subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares.⁷²
- 2) More than 1/5th of the total members in case of a company not having share capital.⁷³

Depositors

More than 100 depositors or not less than 10 percent of its depositors, whichever is less. Depositor or depositors holding 10 percent of the total deposits of the company.

3.4) *Action can be brought against whom?*

-Against the company or its directors for fraudulent, unlawful or wrongful act or omission.

⁶⁷ *Id.*

⁶⁸ Clause 125 of the Companies Bill.

⁶⁹ *Id.*

⁷⁰ "Section 245 (1) of the Companies Act."

⁷¹ "Section 245 (3) of the Companies Act"

⁷² Vijay Sirohiwal and Rahul Pandey, India: Class Action Suits Vis-a-Vis Indian Laws, (6th August, 2016), www.mondaq.com/india/.../The+Insolvency+And+Bankruptcy+Code+2016+Key+Hig...

⁷³ *Id.*

-Against the auditors for any misleading statement made in the audit report or for wrongful acts.

-Against the expert or advisor or consultant for misleading statement made against the company.

3.5) *Reliefs*

A class action suit may be filed before the National Company Law Tribunal (NCLT) by any member or depositor-⁷⁴

-if the company acts ultra vires the articles or memorandum of the company⁷⁵

-if the company commits breach of any provision of the company's memorandum or articles⁷⁶

-against a resolution if it alters the memorandum or articles of the company as void if there was suppression of material facts or was obtained by mis-statement to the members or depositors.

-preventing the company from acting on such resolution.

-preventing the company from doing an act which is against the provisions of the Act

-preventing the company to act against any resolutions passed by the members.

-claiming damages or compensation

Against the company, directors, auditors, experts, advisors or consultants for any fraudulent or unlawful activities.

In *the Children's Investment Fund (TCI) Vs Coal India Ltd (CIL)*⁷⁷, First class action suit in India was filed by TCI against Coal India Ltd not long ago. Two percent of the Coal India's share is being hold by TCI, took legal action to engage with CIL and the Government had failed. One of

⁷⁴*Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷

the partners of TCI said that they have powerful activism in many countries and it does not mean that as it has not started in India, it is not going to work.⁷⁸

Involvement of the Government in pricing of the coal (coal is being sold by CIL under the fuel agreements at 70 percent discount to market rates) in violation of two international agreements for the promotion and protection of investment, CIL failed in protecting the interests of the minority of the shareholders leading to the breach of duties. These are the charges that TCI has leveled. The partner even said that if India wants to have a company, they have to treat the minority shareholders with respect otherwise it will be harmful for India. These statements had such an impact that the Ministry of Coal had to suspend the signing of RTA which was about to happen in March.⁷⁹

3.6) *Whether class action suits are effective in India?*

According to legal experts, class actions are not very effective in India till now. After the Satyam scam, many suits were being filed by the shareholders and it is one of these reasons, class actions were introduced under the Companies Act, 2013 on the recommendation of the JJ Irani Committee.⁸⁰

Class action suits are very successful in the United States because contingency fees are paid to the lawyers. A lawyer gets contingency fee if the order is in the favour of the plaintiff. The compensation and the damages that are being awarded to plaintiff, the lawyers gets paid from the compensation and the damages.⁸¹

Legal experts say that every case is taken based on the merits before being dismissed. In another forum, if the same class action is filed, earlier failure will have a bearing on the suit.⁸²

⁷⁸ Advait Gohil and Mohit Kalwatia, Shareholder Class Action in India: An Introduction to Companies Act, 2013, (26th July, 2016), [2014] 44taxmann.com71

⁷⁹ *Id.*

⁸⁰ Sudipto Dey, Class action law suit explained, (July 5, 2016), www.business-standard.com/.../class-action-lawsuit-explained--115081600603-1.html

⁸¹ *Id.*

⁸² *Id.*

REPRESENTATIVE SUIT

4.1) *ORIGIN*

The Origin of the Representative suit and Class action are same. Class Action expands to whole of Civil Procedures and is not only limited to Company Law.

4.2) *Representative Suits in India*

Order 1 Rule 8⁸³ of CPC deals with Representative suits. When some persons represent another other persons in filing a suit is called representative suit. When several persons are interested in a dispute, it can be unsettled in a court of law by way of representative suit. It is an exception to the general rule that only those people interested should be a party to the suit.⁸⁴

When several persons are interested in a suit, one or more persons may sue or be sued on behalf all persons interested in a suit under Rule 1 Order 8.⁸⁵

4.3) *when can court grant the permission to file a representative suit?*

There will be difficulty in filing a separate suit under the ordinary procedure where there are several number of people have the common right or interest. To avoid such contingency, Order 1 Rule 8 was passed. The court will grant permission when it finds that there are several number of people involved having the common interest. The Court will also look that the said provision is not being misused by unscrupulous people and no harm is inflicted on others. The Court has to be satisfied that the subject matter of suit involves the interest of numerous persons.⁸⁶

Conditions required under Order 1 Rule 8⁸⁷ of CPC are⁸⁸

- 1) There must be several number of persons
- 2) The interests of all the persons must be the same

⁸³ Order 1 Rule 8 of CPC.

⁸⁴ Sense of Law , Representative suits-Essentials-CPC, (1st August, 2016), senseflow.blogspot.com>CivilProcedureCode> Law-Notes-CPC.

⁸⁵ *Id.*

⁸⁶ Law Web: When can court grant permission to file representative suit, (2nd August, 2016), www.lawweb.in/2014/03/when-person-can-file-suit-for.html.

⁸⁷ *Suprs* 92.

⁸⁸ *Supra* 93.

- 3) Permission should be given by the court
- 4) To the proposed parties a notice must be issued

In *Tamil Nadu Board Housing Vs Ganapathy*⁸⁹, The Tamil Nadu Housing Board under the Housing Scheme allotted plots acquired over the land under the Land Acquisition Act to different groups of people of low income in 1963. Fresh demands were being made by the allottees after ten years of the allotment in 1975. When the board objected, the respondent filed a suit for himself and on behalf of the allottees of the low income group for permanent injunction restraining the Board for enforcing the demand.⁹⁰

The suit filed in representative capacity was questioned by the defendant-Board and pleaded that it was authorized to finalize the correct prices after taking into account the final ward for compensation. The trial court dismissed the suit on merits. A decree was passed by the first appellate court. The finding on merits was being reversed by the High Court on second appeal. The High Court stated that the Board can determine what portion of demand included the excess on account of compensation awarded by the courts for acquisition of the land within a reasonable time after serving the fresh demand notices. Injunction was granted because the questionable demand included both the excess amount of compensation and extra additional charges. The appeal was dismissed and High Court stated that to avoid multiplicity of litigation, Order 1 Rule 8 was being introduced in the code in public interest. It also stated that the parties must have a common interest and grievance must be the same.⁹¹

The decision in the case *Ramasseshayya Vs M Ramayya*⁹², explains the scope of Order 1 Rule 8. It said that it is not a representative one when the suit is filed for the vindication of a private right or to prevent an infringement of such right and it is considerably one with respect of a wrong done to the plaintiff. Order 1 Rule 8 can be invoked only when the members of the group have a common interest and grievance and are beneficial to all the members of the group.⁹³

⁸⁹ 1990 AIR 642 1990 SCR (1) 272 1990 SCC.

⁹⁰ L. Sharma, Chairman Tamil Nadu Housing Vs TN Ganapathy, (5th August, 2016), <https://indiankanoon.org/doc/1505113/>.

⁹¹ *Id.*

⁹² AIR 1957 AP 964

⁹³ Representative Suit in Civil Procedure Code, Legalsutra, (5th August, 2016), legalsutra.com/4515/representative-suit-in-civil-procedure-code/.

Limitation of Section 245 ⁹⁴under the Companies Act, 2013

Even though the section has brought many positive changes, it has been criticized for the following reasons-⁹⁵

- 1) Essential number of members and depositors-The section specifies the minimum number of members or depositors it should have while filing a suit which is for a company having the share of not less than 100, not less than 1/5th if the company doesn't have a share capital and not less than 100 depositors. The Tribunal doesn't have any discretionary power in accepting applications from a group of members or depositors who are not able to comply with the minimum number.⁹⁶
- 2) Burden on Shareholders-Before accepting the applications, the NCLT will take into consideration whether the group of members or depositors is acting in good faith, whether alternate remedy is available or not, and whether the action can be ratified or not. So, there is a burden on the shareholders to justify their claim. NCLT will reject the application if it is not in accordance with the clauses of the act.⁹⁷
- 3) Loser pays all-If the NCLT rejects the application, the shareholders and the depositors have to pay the expenses of the litigation. If the application is found to be frivolous, the shareholders and the members have to pay not less than 1 lakh rupees. ⁹⁸
- 4) Excludes the Stakeholders-The section only empowers the shareholders or the depositors and does not include the stakeholders such as creditors,, debenture holders, suppliers and other persons holding the interest of the company to proceed under derivative action. A wrongdoing by the director will not only affect the shareholders and the depositors but the whole company. Hence, stakeholders should also be given the right to file suits for class action against the mismanagement of the company.⁹⁹

So the minimum required number of members or depositors to make an application should be reduced, the penalty on the shareholders of paying 1 lakh rupees should be removed,

⁹⁴ *Supra* 29.

⁹⁵ *Supra* 1.

⁹⁶ *Supra* 1.

⁹⁷ *Supra* 1.

⁹⁸ *Supra* 1.

⁹⁹ *Supra* 1.

discretionary power should be given to the NCLT and the section should also include other stakeholders.¹⁰⁰

Conclusion

JJ Irani Committee report did not properly differentiate between class action and derivative action under companies bill 2012. In its report it said that-

Derivative action is allowed by the courts when the wrongdoers of a company commit fraud who are in control and prevent the company from bringing an action in its own name. Shareholders file derivative action on behalf of the company and not in their personal capacity. Class/Representative action has been allowed by courts where the suit is filed by one shareholder on behalf of one or more shareholders of the same kind and having the same locus standi.

Hence we have three different remedies now-

- 1) Shareholder bringing a suit for his personal remedies.
- 2) Shareholder bringing a derivative suit on behalf of the company against the wrongdoers.
- 3) Shareholder bringing a class action on behalf of all the shareholders having a common interest and grievance.

Class action expands to the whole of Civil Procedures and is not only limited to company law. Section 245 can likely breach the power of the civil courts and it goes beyond the powers of the National Company Law Tribunal. Order 1 Rule 8 of CPC says that when some persons represent another other persons in filing a suit is called representative suit. When several persons are interested in a dispute, it can be unsettled in a court of law by way of representative suit. It is an exception to the general rule that only those people interested should be a party to the suit.

¹⁰⁰ *Supra* 1.

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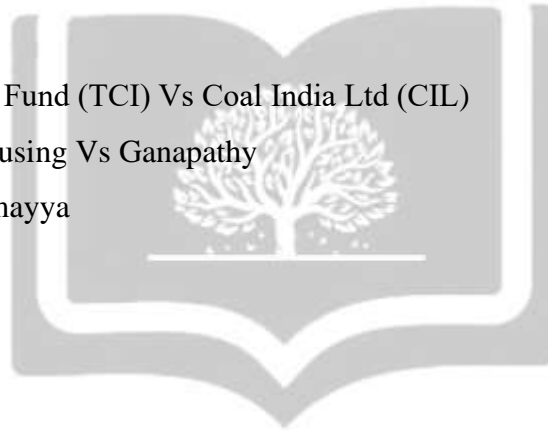
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