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One Person Company: An All-Encompassing View

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ABSTRACT

The human race is on the brink of a revolution. The advent of technology and various advancements in the field of business has motivated aspiring business enthusiasts and entrepreneurs to put their ideas on paper in the corporate sector. The Companies Act, 2013 had several amendments in order to keep up to date with modern advancements. However, one pivotal addition was the concept of the One Person Company. The authors in the present article have given a brief introduction to the understanding of this crucial concept in relevance with the Companies Act, 2013. Furthermore, an in-depth analysis of One Person Company has been explained in detail, mentioning its essential concepts. The seed of One Person Company was sown in Britain in the landmark Company law case of Salomon v. Salomon & Co Ltd. The Authors in the present paper have discussed the landmark case in brief along with the emergence of One Person Company in India via Dr. JJ Irani led Commission. The recommendations of the Commission were pivotal in the introduction of the concept of One Person Company in the Companies Act, 2013 amendment. Concluding the present research paper, the authors have described its advantages and disadvantages alongside a brief comparison with sole proprietorship and the advantage a One Person Company holds.

I. ONE PERSON COMPANY

It is a bold opinion of many that the term 'One Person Company 'is an oxymoron as in general parlance, a company is an enterprise comprising of minimum 2 members[3]. However, a legal analysis of the term strongly suggests otherwise.

The definition in the Companies Act, 2013[4] under Section 2 (20) states that a company means a company incorporated under this Act and the incorporation is given in Section 3 as:-

A company may be formed for any lawful purpose by —

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[3] Swati Shankar, Shubham Gautam, *One Person Company: A Revolutionary Idea or a Half Baked Concept?,* INDIA LAW JOURNAL
[4] The Companies Act, 2013, No, 18, Acts of Parliament 2013 (India)

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(a) seven or more persons, where the Company to be formed is to be a public company;

(b) two or more persons, where the Company to be formed is to be a private company; or

(c) one person, where the Company to be formed is to be One Person Company, that is to say, a private company.

Apart from this, it is well established that a company is 'a separate legal entity' or a 'legal person', an indication a singular persona negating the claim that one person company is an oxymoron. Unlike a private or public company where many individuals come together to be considered as a single legal entity, in a one person company, a single person drapes the veil of a separate legal entity. The main question that arises is why an individual would choose to incorporate a One Person Company (hereinafter termed as 'OPC') and not operate as a sole proprietorship? In simple terms, it can be said that a one person company is a concept that takes the best of both:-a private Company and a sole proprietorship. It is a blend of its positives with a view of benefiting and promoting entrepreneurship and businesses.

II. Analysis of one person company

The increase in the use of technology and various other developments created a pathway for new businesses and enterprises. To facilitate this growth of entrepreneurs in the business sector, strong support of the legal framework was required. The Companies Act 2013 introduced the concept of OPC. Its basic aim is to facilitate the setting up of microeconomic industries with a business structure of a company. The definitions highlighted that an OPC means a company incorporated by a single person. To clarify the meaning of the term 'person', Rule 2.1 of the Draft Rules under Companies Act, 2013[5] stated that the term "Person" as contemplated by the Act should be a natural person. Hence, any natural person who is not a minor and is an Indian citizen, whether a resident of India or not, shall be eligible to incorporate an OPC and appoint a nominee of an OPC.

(A) Features of One Person Company:

It can be said that a One person company is a corporatised sole proprietorship as it enjoys the benefits of a corporation while being as independent as a sole proprietor.

1. A company with a minimum and maximum one member only:

The uniqueness of a one person company is such that it provides a status of a company to a sole proprietor. Under the section stating incorporation of a company, it clearly states the

[5] Rules, The Companies Act, 2013, No, 18, Acts of Parliament 2013 (India)

incorporation by a single individual. The benefit of this is that it primarily promotes entrepreneurship and thus boosts economic growth. Decision making remains in the hands of the same individual, but risks are limited. Along with this, it's easier to harness the individual's goodwill into the business.

2. Separate legal entity:

A company has a separate legal entity as derived from the prominent case of the house of lords - Salomon v/s Salomon[6]. This is a feature of a private and public company that has been incorporated in an OPC. This boosts economic development as risk-taking for business benefits is given a push. Separation of the business from the individual incorporating it indicates that in the eyes of the law, there are two individuals - natural and legal.

3. Perpetual succession:

The individual incorporating the OPC nominates another person. The business does not meet its end when the owner of the business passes away or becomes incapable of running the business. The nominated person takes over, and the business functions continue to be carried out. It is mandatory for an OPC to mention one person as a 'Nominee' in the event of death or incapacity of the owner. This Nominee becomes a member of OPC and becomes entitled to all shares of the one person company, and also is liable to bear all necessary liabilities. However, written consent of such a Nominee to act as a nominee is mandatory to be obtained at the time of incorporation. A Nominee has the power to withdraw his consent by giving a notice in writing to the person to nominate him. Along with this, he must nominate another member within 15 days of receipt of such notice.

4. A minimum of one Director and a maximum of 15 directors:

As per Section 152(1) of the Companies Act 2013[7], an individual who incorporates the OPC is deemed to be the 1st Director of the OPC until the other directors are duly appointed. One individual can be a member of only one OPC at a time.

5. Minimum paid-up capital of 1,00,000/- :

Another advantage that one person companies offer the entrepreneurs is a minimum paid-up capital requirement of one lakh. The low limit benefits small entrepreneurs as they can start their Company and carry out their desired business without policy hurdles.

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[6] [1897] AC 22

[7] *Section 152. Appointment of Directors,* The Companies Act, 2013, No, 18, Acts of Parliament 2013 (India)

6. Types of One person company:

There are 5 types of OPC's that can be incorporated under the Companies Act,2013[8]:

1. OPC Limited by Shares
2. OPC Limited by Guarantee with Share Capital
3. OPC Limited by Guarantee without Share Capital
4. Unlimited OPC with Share Capital,
5. Unlimited OPC with Share Capital.

This becomes a very empowering choice given to the entrepreneurs to identify the best type of Company that suits their business.

7. The liability of shareholder and/or Director is limited:

President Eliot of Harvard gave utmost importance to limited liability, recognising it as the "corporation's most precious characteristic" and "by far the most effective legal invention made in the nineteenth century."

As the Company is a separate legal entity, there is a distinction between the Company's liabilities and the director's/owner's liabilities. The liability of the entrepreneur is to the extent of the paid subscription money. This feature encourages the entrepreneur to take the risks necessary for the business to flourish.

8. Not necessary to hold Annual General Meetings:

One Person Companies are not burdened with various procedural formalities such as Annual General Meeting, General Meeting or Extraordinary General Meeting, etc. The objective of this exemption from these formalities is to make the operation of OPC convenient and hassle-free.

9. Comes under the 30% tax slab:

The Income-tax Act,1961[9] does not recognise OPC as a separate entity in itself. An OPC is recognised as a Private company by the Income Tax Act,1961. This is the only negative aspect of an OPC as it is in the same tax slab of a private limited company. As per Income Tax Act, 1961, the tax rate for Private companies and OPC is 30%.

(B) Landmark cases:

[8] Khushboo Patodi, *Company Law Articles* , Tax Guru (Complete Tax Solution) (28 May 2021) https://taxguru.in/company-law/person-company.html

[9] Income Tax Act, 1961, No. 43, Acts of Parliament 1961 (India)

Recognition of personal rights in England was the pivotal point in the foundation of Common Law in England. England gives utmost importance to the recognition of these Personal rights. Merging these personal rights with the provisions for forming a company lays the mark for a crucial question in layman's mind, i.e. Whether an Individual alone can incorporate a Company without breaching the provisions of the Company Law.

To further understand the concept of OPC in detail, it is hence crucial to refer to the landmark case in the field of Company Law of Saloman vs Saloman & Co Ltd., which laid the foundation for the concept of One man Company. The Landmark Judgment in UK company law introduced the principle of the corporate veil. Aaron Salomon, the appellant in the present case, acquired 200,001 of the Company's shares in exchange for the payment of his old business. However, due to unforeseen circumstances, the Company's business failed, resulting in a debt of £7,773 to the unsecured creditors. The liquidators held Aron Salomon guilty and held him personally liable for the debts of the Company. The pivotal issue at hand in the present case was whether a shareholder could be imposed with unlimited liabilities and hence be personally charged for the same. The House of Lords, reversing the judgment of the Court of Appeal, laid down the principle of Corporate veil in existence for more than 200 years go, and thus upheld the doctrine that a Company is a separate personality in its entirety, thus squashing off the unlimited liabilities imposed on shareholders on account of insolvency of the Company. However, the landmark case also gave recognition to the concept of "One Man Company". Lord MacNAghten[10] held that unless the shares are entirely paid up, it is of secondary importance whether the power to control the Company is within the hands of only one person, and therefore the present conclusion was not contradictory to the public policy vis a vis the true intention of the company act. Therefore it can be concluded that the seed of OPC was sown in Britain a long time ago.[11]

(C) The emergence of One Person Company in India[12]:

The Companies Act, 2013 gave legal recognition to the concept of One Person OPC in India; however, there have been various events that led to its recognition.[13] By the end of the 20th century, India had experienced significant development in the economic and industrial sector

[10] Salomon v. Salomon & Co Ltd.at p. 53

[11] *Aditya Thejus Krishnan*, School of Legal Studies, CUSAT, *One Person Company*, Lawctopus (14 February 2015) https://www.lawctopus.com/academike/%EF%BB%BFone-person-company/

[12] Ashwin Mathew and Arunadhari Iyer, *One Person Company*, Evolution and Efficacy, SCC ONLINE (March 27 2021) https://www.scconline.com/blog/post/2021/03/27/one-person-company/.

[13]Govindan Dr.P, *A Study on Growth and Impacts of One Person Companies (OPCs) In India-A Innovative Business Vehicle for Small and Medium Scale Entrepreneurs,* PRATIDHWANI THE ECHO,Volume VII Issue - II, 155, 155-167 (2018)

by becoming a hub to various multinational conglomerates. The corporate sector was on the rise, and with the advent of technology and computers, the entrepreneurship abilities of people were coming into play with the increase in Business startups as time passed by. The Companies Act, 1956, was the Act regulating the structure and functioning of companies. Keeping in view the changing economic environment and the promising future of the growing economic and industrial sector, The Central government decided to repeal the present Act and introduce new legislation in order to accelerate the economic progress[14]. An Expert Committee under the chairmanship of Dr.J.J. Irani, Director Tata Sons Ltd, was set up in order to submit a report on a new, dynamic and flexible company law. Amongst the various recommendation sought by the Committee, the concept of OPC was one such finding which paved the way for its introduction in the Companies Act, 2013. The Expert Committee opined that a concept of a single person economic entity in the form of a 'One Person Company' must be recognised by the law. The main motive behind its introduction was to encourage entrepreneurial activity in the digital age and thus accelerate the growth of the economy and the industrial sector. The hurdles an individual faces in the procedural matters relating to the incorporation of a company must be relaxed and hence must be given an individual platform in developing his ideas and entrepreneurial abilities[15]. The Companies Act, 2013 was notified in the Gazette of India on August 30, 2013, on receiving the consent of the Honourable President of India. A bright future that lies ahead, India is a hub to a significant amount of 18,153 OPC's registered as of 2018[16].

(D) Budget 2021:

The Finance Minister Ms Nirmala Sitharam, in her budget speech in 2021, proposed certain relaxations to further make an OPC a preferred and convenient vehicle for aspiring entrepreneurs to enter the business field. Pursuant to her speech, The Companies(Incorporation) Second Amendment Rules, 2012 came into force. The following introductions were made:

- An OPC did not need minimum share capital for its incorporation.
- An Indian Resident as well a non-resident Indian, has the power to incorporate an OPC.
- An OPC can be converted into a Private/Public company at any time as there is no threshold for its conversion.
- An owner is liable only towards his investment in the business.

[14] Afra Afsharipour, *Redefining Corporate Purpose: An International Perspective*, SEATTLE UNIVERSITY LAW REVIEW, Vol. 40:465,466, 466-496 (2017)
[15] Para 3.2 and Para 6, Dr J.J. Irani Committee Report, 2005.
[16] Monthly Information Bulletin on Corporate Sector, June,2018, Ministry of Corporate Affairs, pp1-24

III. OPC VS SOLE PROPRIETORSHIP[17]

The Indian Company Act, 2013 does not provide a straightforward definition for an OPC; however, Section 2(62) states the minimum requirement of 1 director and a member respectively for the incorporation of a company. Therefore, an OPC limited by shares comprises of 1 person, whereas a sole proprietorship in a brief outlook is an entity of just one individual termed as a sole proprietor where the distinction between the business and the owner is not made. In order to clear the confusion surrounding an OPC and one of the old forms of business in India(sole proprietorship), a detailed distinction between the two is as follows:

Registration: An OPC can be registered under the Ministry of Corporate Affairs and the Companies Act,2013; however, it is not mandatory to register a sole proprietorship in India

Liability: The concept of 'Liability' is a crucial point of difference between an OPC and a sole proprietorship. The way in which liability is treated under OPC is different from a sole proprietorship. OPC falls within the purview of a company under the Company Act, 2013, as mentioned above and thus is a separate entity in itself. The liability of the shareholder will be limited to the unpaid subscription money in his name, whereas a sole proprietary is himself liable for all the claims thus made against the business.

Members: Under a Sole proprietorship, there can only be one member at the time of the functioning, whereas under a One Person Company, a minimum of 1(Director & shareholder) and a maximum of 2 members are permitted.

Tax bracket: A one Person company is liable to pay a tax of 30% on its total income and falls within the purview of an additional surcharge of 5% if the income exceeds 10 million with an addition to 3% of education cess according to the Income Tax Act 1961. On the other hand, a sole proprietor in India is liable to pay tax incurred on his business combined with his individual income subject to deduction of business expenses. Unlike a One Person Company, a sole proprietorship business is not a separate entity and hence is liable to be taxed along with the proprietor's individual expenses.

Succession on account of the death of the current member: A member must nominate a person who is a natural-born citizen of India and who resides in India. Such a person, in the event of the death of the member, becomes the member of the Company and will be responsible for the functioning of the same creating a perpetual succession. However, in the case of a sole proprietorship, the feature of a nominee is absent. An Execution of will is the only possibility

[17] Vinay Haswani, Dr. Krati Rajoria, *One Person Company: An Analytical Study*, AN INTERNATIONAL MULTIDISCIPLINARY RESEARCH JOURNAL, Vol.5, Iss-7 (2015) https://dx.doi.org/10.2139/ssrn.3806325

for passing over the business, which may or may not be challenged in a court of law.

Compliances: A One person Company is at par with A private and public company according to the Company Act, 2013 and therefore needs to get its accounts audited alongside filing the annual returns just like a normal company.

One Person Company: Advantages and Disadvantages:

Advantages:[18]

1. Section2(68) of the Companies Act, 2013 provides the Definition for a Private Limited Company, which also includes a One Person Company within its ambit. However, an OPC has been provided with several exemptions resulting in a less compliance burden compared to a Private Limited Company.
2. An OPC provides the advantage of Limited liability to its shareholders. In case of the business suffering a loss, the shareholder's liability is limited to its shareholding and shall not impact his wealth, personal savings or assets. A Sole proprietor shall be liable for his personal assets on account of his business suffering a loss. Therefore one can safely say an individual can take risks without the consequence of losing his/her personal assets under an OPC.
3. An OPC, in most cases, is able to attract Banks and Financial Institutions, Angel brokers, venture capitals for loans and other financial help.
4. The most crucial advantage of an OPC is the elimination of middlemen. An OPC benefits the aspiring entrepreneurs and the shareholders in a way that the entrepreneurs may start their venture by allowing the shareholders to access and avail of all the facilities without sharing their profits with middlemen. This provides a less stringent path for both parties in the functioning of the OPC.
5. The OPC has a distinctive feature of perpetual succession, which safeguards its functioning on account of the death of the member or any future unforeseen circumstance. A nominee member who is appointed by the member at the time of incorporation takes his seat on account of his death.

Disadvantages:

1. OPC, though it is a suitable vehicle for aspiring entrepreneurs, it is limited to a certain limit in terms of its growth. An OPC can have a maximum paid-up capital of Rs. 50 lakh or a turnover of Rs.2 crore. The Company, on crossing the prescribed threshold, has to convert

[18] Mary T. L, *Relevance of One Person Company,* INTERNATIONAL JOURNAL OF TREND IN SCIENTIFIC RESEARCH AND DEVELOPMENT (IJTSRD), ISSN: 2456-6470, Volume-2 Issue-1,1312, 1312-1321 (2017)

itself into a private limited company.

2. The sole member is involved in the management of the Company and thus creates an ambiguity surrounding ownership and management of the Company.
3. Section 8 of the Companies Act, 2013[19] , which talks about non-profit organisations, is not applicable to an OPC. Therefore, an OPC cannot be incorporated into a company under Section 8 of the Companies Act, 2013.
4. An entrepreneur is ineligible to incorporate more than one OPC or become a nominee in any other. This creates a major setback for the aspiring entrepreneurs who choose to have multiple startup options, thus enhancing their growth in the business field.
5. An OPC is not eligible to carry out any non-banking financial activities and also invest in any other corporate.

IV. Conclusion

Therefore, the concept of OPC is one such pivotal addition to the Companies Act, 2013, which has proved to be beneficial for each and every entrepreneur aspiring to start his corporate business on a small scale. OPC has proved to be a significant contributor to the country's economic development. In spite of the challenges and setbacks it faces, one cannot ignore the benefits it provides in the corporate sector. The authors in the present paper conclude, stating that the corporate sector is a playground that is developing with each passing day, and India is a hub not only to several multinational conglomerates but also to various homegrown startups, One Person Company, along with the smooth functioning and governing as prescribed in the Companies Act,2013 is a boon for the emerging entrepreneurs in India.

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[19] *Section 8. Formulation of companies with charitable objects, etc,* The Companies Act, 2013, No, 18, Acts of Parliament 2013 (India)