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Critical Analysis of “Class-Action” Tort

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I. INTRODUCTION

“The name Tort is the French version of the word 'wrong' in English and the word 'delict' in Roman Law. It was accepted by a Norman jurist into English law. The word 'tort' is derived from the Latin word 'tortum,' which means distorted or tortuous conduct.”² The distinction between contract rules and tort is well-known. A contract is based on trust, A tort against or without permission is inflicted. Proceedings for violation of the contract include the privacy of the parties: privacy is required in order to torture the contract. Consequently, the violation must be distinguished from the sole infringement of the contract. Tort is an infringement of a right in rem, i.e. of a right bestowed on a single individual, either directly or as a member of the society, and open to the world at a considerably large level: while a breach of contract is an infringement of a right in personam, i.e. of a right available only to a specific person or entity, and in which the community is exceedingly colossal has no concern.”³.

Then comes “class-action suits”, first implemented in the United States was the idea of class action in 1938. “Class Action” is essentially a kind of litigation in which a large number of individuals, by a lawyer, put a claim together to the court. ‘A class action suit is typically brought in cases with the same or related injury to a group of persons. Many of the injuries sustained by the person was also relatively minor, so they could not seek legal remedy themselves’. Together, however, the additional value of the class claims leads to consolidating lawyers, facts, plaintiffs and certain other facets of the trial. The famous case of “Union Carbide Corporation vs Union Of India”⁴ the incident It happened at midnight, December 2, 1984, by the escape of toxic chemical fumes there was a major manufacturing tragedy in the appellant's factory and it took an urgent toil of 2600 human lives to leave. Thousands of innocent people physically living in Bhopal Affected in different forms. The infected and injured people put their claim together in the court and Union Carbide Corporation was held guilty.

The Indian Parliament drafted the Companies Bill 2009 and adopted clauses that would allow

¹ Author is a student at Symbiosis Law School Hyderabad, India

² RATANLAL & DHEERAJLAL, THE LAW OF TORTS 1 (28.ed.LexisNexis) (2019)

³ RATANLAL & DHEERAJLAL, THE LAW OF TORTS 1 (28.ed.LexisNexis) (2019)

⁴ Union Carbide Corporation vs Union Of India, 1990 AIR 273, 1989 SCC (2) 540

the shareholders concerned to send a “Class-Action Suit”. Section 245 and 246 of the Companies Act, 2013⁵ expressly deal with class-action suits. The clause encourage members and depositors (both terms and conditions as specified in the Act) to contact the National Company Law Tribunal (NCLT) where they feel that the operation of the company is carrying out in a way that is adverse to the interests of the company and its shareholders

A single wrongful case that brings harm to several different persons is a “Mass- Tort”. In a single mass tort case, these wounded individuals can come together to seek compensation for their different injuries against only one defendant (or maybe a few).

Literature Review

The researcher while researching the paper read the case of “Union Carbide Corporation vs Union Of India”⁶ where the researcher related the case along with “Class-Action Suits”, where thousands of people suffered from a single wrongdoer that was the “Union Carbide Corporation”, the gas leaked from the factory killed nearly almost 30,000-40,000 people who lived around near the factory, the court settled the case with the fine of \$470 Millions to be paid by the Corporation. The researcher related the case with Class-Action Suits, because in these suits, many people file a suit together for the injury suffered from a single wrongdoer, In the case similar thing happened.

The researcher read about “Satyam Scandal”⁷ also known as “Indian Enron” where, The microcosm utilized by ‘Satyam Computers Accommodations Limited (SCSL) was responsible for its administrators, stock exchanges, regulators, investors and all other stakeholders to detect deceptive activities and misrepresent accounts’. ‘SCSL owners ineluctably struggled in seeking payments worth millions of millions due to the lack of a mutual action clause under the 1956 corporate statute’. On the other hand American investors were able through the civil proceedings against SCSL to authoritatively mandate a portion of the losses in American court.

In the article written by Karan Gulati and Renuka Sane titled “Why do we not see class-action suits in India? The case of consumer finance”⁸, they talked about the justification for the lack of 'Class-Action Suits' in India. They stated that “First, the substantive law is not

⁵ Companies Act 2013

⁶ Union Carbide Corporations vs Union Of India 1992 AIR 248, 1991 SCR Supl. (1) 251

⁷ Ashima Obhan, *India: Class-Actions Suits In India*, Mondaq, CLASS ACTION SUITS IN INDIA: Government Notifies Thresholds For Filing Class Action Suits - Litigation, Mediation & Arbitration - India (mondaq.com) (last visited Dec 23, 2020)

⁸ Karan Gulati & Renuka Sane, *Why do we not see class-action suits in India? The case of consumer finance*, Theleapjournal, The Leap Blog: Why do we not see class-action suits in India? The case of consumer finance (theleapjournal.org) (last visited Dec 23, 2020)

pellucid. This makes it arduous for class members to converge. Further, procedural issues limit the financing of such cases. The issues we raise are pertinent to all aspects of consumer auspice: from health to the environment.”

“What is Class-Action Law Suits”⁹ article written by Marianne Bonner talks about 'What are Class-Action Rule Fittings? 'And 'How Class –Action Law Works', Marianne stated “A class action lawsuit is a legal action brought against a single defendant by more than one party. It is intended for cases in which, as a consequence of the conduct of a criminal, many individuals have sustained similar injuries. Public action suits are appropriate if the damages alleged by each complainant, the person alleging fraud, are too insufficient to be deemed deserving of individual claims," Bonner further stated that "a party or class of plaintiffs represents one or more "lead" plaintiffs. The injuries sustained and the charges claimed by the lead plaintiffs must be identical to those of the other members of the class. Before the class action case can commence, the class must be approved by a judge. A lead plaintiff must prove that the plaintiffs have a legitimate argument against the defendant and that there are homogeneous claims from all class members. In addition, the lead claimant must prove that the suit can sufficiently serve all party members, all of which, of course, with the assistance of licit counsel. The plaintiffs are notified by mail or other designates after the class has been certified. ‘All are automatically included in the lawsuit unless they opt out’.

In the academic journal article laboriously written by Dr. Gyanendra Kumar Sahu titled “ The Class-Action Suits: A Challenge for Protection Of Interest of Investor”¹⁰ talks about the key advantage of ‘Class-Action Suits’, the article talked about the advantages, first “aggregation can increase the efficiency of the legal process and lower the cost of litigation, another advantage, a class action may overcome “The problem of minor recoveries does not provide an opportunity to any person to follow a particular proceeding in search of his or her interest..”¹¹

II. SCENARIO OF CLASS-ACTION IN INDIA

“In law, an action in which a representative complainant sues or a representative plaintiff sues the defendant's agent is sued on behalf of a class of claimants or defendants with the same intrigues in the as their agent, lawsuit and what obligations or liability as a group, it can be calculated better than in a sequence of separate suits. 'Class Action,' as is known as class

⁹ Marianne Bonner, *What is Class-Action Law Suits*, Thebalancesmb, Class Action Lawsuits: What Are They? (thebalancesmb.com)

¹⁰ Dr.Gyanendra Kumar Sahu, *The Class-Action Suits:A Challenge for Protection of Interest Of Investor*, Vol 2, International Journal of Law, pg no. 12-18, March 2016

¹¹ Mace vs Van Ru Credit Corp, 1997, 109 F3d 388

action, 'Representative Action' is truly a type of lawsuit in which a party of astronomically enormous persons jointly carry a petition to the court via an official.”¹²

“The decisions of the Indian Supreme Court in the 1980s loosened rigid requirements to sanction the filing of lawsuits on behalf of public-minded interests in deprived parts of society. Although not a "class action" rigorously Lawsuit of public interest, as it is known in American law, Litigation arose from the large powers of judicial review conferred on the Supreme Court of India and the various High Courts of India, in compliance with Articles 32 and 226 of the Indian Constitution.”¹³ “The scarce remedies demanded by the courts in Litigation of public concern transcends simple award of harm for all affected groups and often they have (controversially)included in the Court's monitoring of the application of In the lack of regulations and also the framing of directives Parliamentary law”¹⁴. In India, class action lawsuits can be compared to Public Interest Litigations (PILs) permitted under the Civil Procedure Rule, where an individual or a group of individuals is allowed to file a civil suit. Such disputes are primarily used in consumer grievances and increasing environmental and cultural concerns; are usually restricted to the defence of constitutional rights and are intended to protect the public interest.

III. TYPES OF CLASS-ACTION ALLOWED IN INDIA

a) The Code Of Civil Procedure, 1908

CPC¹⁵ Rule of Order I of the code specifies representational suits. “It notes that a group of parties will come together and file a lawsuit when a shared complaint or interest is present. In behalf of the different parties involved in the case, a suit can be brought. They should look for a similar relief in addition to a shared interest or similar grievance. Those suits are the same as all other suits. Due to many circumstances explained in the paper, their usage has been rare.”

“A complaint can be filed on behalf of people who have the same interest in the suit”. Apart from a mundane interest or a homogeneous grievance, homogeneous mitigation should be investigated. These kinds of suits are being handled like every other suit. Their usage was infrequent due to the bleaching circumstances set out later in the paper.

¹² Dr.Gyanendra Kumar Sahu, *The Class-Action Suits:A Challenge for Protection of Interest Of Investor*, Vol 2, International Journal of Law, pg no. 12-18, March 2016

¹³ INDIAN CONSTITUTION Art. 32

¹⁴ *Khatri v. State of Bihar II* [(1981) 1 SCC 635]

¹⁵ Code Of Criminal Procedure, 1908

b) The Companies Act, 2013

The Satyam debacle¹⁶, “often visually perceived as India's Enron Moment, it pointed out that shareholders did not have access to class action lawsuits under Indian law. The Indian shareholders had no remedy under any Indian statute, while the American investors had filed a class action and secured a significant lawsuit for themselves. Therefore, the changes were made to the cards”

Class action cases are dealt with thoroughly by Section 245¹⁷, which was notified on 1 June 2016, and by the now amended National Company Law Tribunal (NCLT) of the 2016 Rules of Procedure. “The procedure and reliefs given in Section 245 are comprehensive reading. “Interests of the company” can include a broad variety of topics and the judges interpret what can be used in this Description of these cases”.

c) The Competition Act, 2002

In compliance with “Section 53(N) of Competition Law”¹⁸, “a group of persons injured as a result of violation of oral law may apply before the National Law Appellate Tribunal of Business (now dealing at the appellant level with the competition concerns) for emolument.

Under Section 53 (N) “A class can claim in compliance with the country's competition law about the adverse effects on the market. Think of a merchants' group who feels it has a detrimental impact or a player is in a leading position and heads to arbitration. It could be a strong weapon.

d) The Consumer Protection Act, 1986

Any customer may file a lawsuit with the Consumer Dispute Redressal Committee against all concerned customers under the Consumer Protection Act, 1986.

India has since moved on to revamp its entire market regulations. Recently, the Consumer Rights Act, 2019 has come into effect. Section 17 of this 2019 Act applies “to where, on behalf of customers, the Central Consumer Protection Body now has the right to bring class action suits.”

e) PIL

‘Public Interest Litigation, the innovation of the Indian judiciary to grant mitigation, specifically for the oppressed population, which has seen massive prominence in the last 40

¹⁶ Sumeet Chaterjee, *Accounting Scandal at Satyam could be India's Enron*, Reuters, Accounting scandal at Satyam could be India's Enron | Reuters (last visited Dec 24, 2020)

¹⁷ Companies Act 2013 §245

¹⁸ Competition Law 2003 § 53 (N)

years, provides a potential forum for class action.’

‘Over the years, the court has extended the scope of the PIL which now covers protections related to edification; discrimination; abandoned children or dependent parents; non-payment of wages; police actions; abuse against women; harassment; the environment; riot victims; and family pensions.’

IV. ADVANTAGES OF “CLASS-ACTION” SUITS

“Class-Action” cases may be brought to purposely change behavior of a class of which the defendant is a member. In the case of *Landeros v. Flood*¹⁹, “it was a landmark case that was used intentionally to change the actions of physicians, and allow them to submit child neglect offenders”. Or else, they will face a challenge from the civil suit for negligence resulting in tort subsequently arising from the reluctance of the alleged injuries to record them. Formerly, many, many medicos were hesitant to disclose incidents of ostensible child violence, notwithstanding the current laws requiring it.

“Class-Action specifies in "constrained fund" situations that all mitigation is earned from complainants and early-filing complainants are not raid the fund with all its funds until other assets (i.e., the defendant) complainants can be reimbursed”²⁰, A class action in such a situation centralizes all claims into one venue where a court can equitably divide the assets amongst all the plaintiffs if they win the case”. Class-Action eliminates the situation where there are multiple types of different rulings of the court could produce "incompatible standards" to be pursued by the defendant.

“A case should be certified by a court for class therapy where a number of individual holders of bonds sue to assess if their bonds can be transferred to the prevailing stock Reluctance in one tribulation to litigate the case could lead to various findings and inconsistently erratic standards of behavior for the corporation, the defendant. Therefore, courts will normally sanction in such a case, class action”²¹

In the case of *Castano v. Am. Tobacco Co*²² ruled that Mass Torts also includes elevated individual damage awards; thus, there would be no impediment to the lack of class care the right to seek equity from individual claimants.

¹⁹ *Landeros vs Flood*, Cal. 3d 399, 551 P.2d 389 97 ALR 3d 324

²⁰ *Ortiz v. Fibreboard Corp.*, 527 U.S. 815 (1999)

²¹ *Van Gemert v. Boeing Co.*, 259 F. Supp. 125 (S.D.N.Y.1966).

²² *Castano v. Am. Tobacco Co* 84 F.3d 734 (5th Cir. 1996)

V. CASES RELATED TO CLASS-ACTION SUITS IN INDIA

MC Mehta and Anr v Union of India and ors²³ In the case, “The Supreme Court of India has visually explored the fact that Article 32 of the Indian Constitution does not simply grant on the Supreme Court the authority to issue directions, directives or orders for the protection of constitutional rights. Instead, it puts a constitutional obligation on the court to uphold people's civil rights.”

Bandhua Mukti Morcha v Union of India & Ors²⁴,the court said “The Supreme Court of India, while adjudicating on a petition filed by an organization dedicated to the relinquishment of bonded workers in the country, was of the opinion that, where an individual or class of persons to whom a licit injury is caused as a result of infringement of a fundamental right is not in a position to bring a judicial remedy on account of penury, incapacitation or a gregarious or economically disadvantaged role, any member of the public acting in good faith may claim redress from the court for infringements of its fundamental rights.”

The State of Uttaranchal v Balwant Singh Chauhal and Ors²⁵ it was seen that “ litigation of public interest is an astronomically consequential authority held by the Supreme Court and the High Courts. In a number of cases, the courts have issued high-level directions and passed orders that have led to positive transmutations in the region. This court, while exercising its jurisdiction of judicial review, realized that a prodigiously and appreciably large section of society, owing to severe penury, lack of education, injustice and illiteracy, had gained equity over time and, in fact, had no access to equity. Predominantly, in order to provide access to equity to poor, needy, vulnerable, discriminated and marginalized parts of society, this court has introduced, facilitated and propelled public interest litigation”.

VI. CONCLUSION

“There are some critiques of Class Action Lawsuits, such as well. One of them is the exceedingly colossal attorney fees that Conditional / contingency payments are mundanely paid, which is proportionate (mundanely a higher percentage of emolument /award) leaving behind an minutely minuscule component of maxima with members of the class and the second being the time required for a last decision, which may take years. It is, at the start, It is important to deal with the confusion that class actions are not in India possible. That isn't

²³ *MC Mehta and Anr v Union of India and Ors AIR 1987 SC 108*

²⁴ *Bandhua Mukti Morcha v Union of India & Ors AIR 1984 SC 802*

²⁵ *State of Uttaranchal v Balwant Singh Chauhal and Ors 2010 3 SCC 402*

valid at all. The Civilian Procedure law punishes the accumulation of suits relating to the same cause of action, and it may also be probable claimants to bring homogeneous suits for class actions in the U.S.”²⁶

²⁶ Dr.Gyanendra Kumar Sahu, *The Class-Action Suits:A Challenge for Protection of Interest Of Investor*, Vol 2, International Journal of Law, pg no. 12-18, March 2016

VII. REFERENCES

Case Laws

- Union Carbide Corporation vs. Union Of India, 1990 AIR 273, 1989 SCC (2) 540
- Jenkins vs. Raymark Indus. Inc, 1986; 782(2)
- Mace vs. Van Ru Credit Corp, 1997, 109 F3d 388
- Khatri vs. State of Bihar II [(1981) 1 SCC 635]
- Landeros vs. Flood, Cal. 3d 399, 551 P.2d 389 97 ALR 3d 324
- Ortiz vs. Fibreboard Corp., 527 U.S. 815 (1999)
- Van Gemert vs. Boeing Co., 259 F. Supp. 125 (S.D.N.Y.1966).
- Castano vs. Am. Tobacco Co 84 F.3d 734 (5th Cir. 1996)
- *Bandhua Mukti Morcha vs. Union of India & Ors AIR 1984 SC 802*
- *State of Uttaranchal vs. Balwant Singh Chauhal and Ors 2010 3 SCC 402*
- Union Carbide Corporations vs Union Of India 1992 AIR 248, 1991 SCR Supl. (1) 251

Internet Sources

- Sumeet Chaterjee, *Accounting Scandal at Satyam could be India's Enron*, Reuters, Accounting scandal at Satyam could be India's Enron | Reuters (last visited Dec 24, 2020)
- Marianne Bonner, *What is Class-Action Law Suits*. Thebalancesmb, Class Action Lawsuits: What Are They? (thebalancesmb.com)
- Ashima Obhan, *India: Class-Actions Suits In India*. Mondaq. CLASS ACTION SUITS IN INDIA : Government Notifies Thresholds For Filing Class Action Suits - Litigation, Mediation & Arbitration - India (mondaq.com) (last visited Dec 23, 2020)
- Karan Gulati & Renuka Sane, *Why do we not see class-action suits in India? The case of consumer finance*, Theleapjournal. The Leap Blog: Why do we not see class-action suits in India? The case of consumer finance (theleapjournal.org) (last visited Dec 23, 2020)

Books

- RATANLAL & DHEERAJLAL, THE LAW OF TORTS 1 (28.ed.LexisNexis) (2019)

Statute

- Companies Act 2013
- Competition Law 2003
- Code Of Criminal Procedure, 1908
