

One Person Company in India: A Critical Analysis

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Abstract: The concept of a One Person Company (OPC) represents one of the most transformative reforms in post-independence Indian corporate law. Introduced under Section 2(62) of the Companies Act, 2013, and operationalized through the Companies (Incorporation) Rules, 2014, the OPC enables a single natural person to incorporate, own, and manage a private limited company with full limited liability protection. This paper critically examines the historical origins, statutory framework, comparative global dimensions, jurisprudential underpinnings, advantages, and limitations of the OPC model in India. Particular attention is given to landmark case law including *Salomon v A Salomon & Co Ltd* AC 22, *Lee v Lee's Air Farming Ltd* AC 12, and *Macaura v Northern Assurance Co Ltd* AC 619 that together form the doctrinal foundation upon which the OPC concept rests. The paper concludes that while the OPC is a commendable legislative innovation, several structural deficiencies including tax neutrality, compliance burden, conversion rigidity, and misuse potential render it an incomplete solution for India's vast community of small and micro entrepreneurs.

Keywords: One Person Company (OPC), Companies Act, 2013, Separate Legal Personality, Corporate Veil, Limited Liability, Sole Proprietorship, JJ Irani Committee, Entrepreneurship

INTRODUCTION

The history of corporate law in India has long revolved around the presumption that a "company" necessarily presupposes an association of *persons*, a plurality of shareholders united by common commercial purpose. The Companies Act, 1956 codified this assumption by mandating a minimum of two shareholders and two directors for the incorporation of a private limited company. This legislative floor proved to be a substantial barrier for individual entrepreneurs who desired the institutional protections of the corporate form -namely, limited liability, separate legal personality, and perpetual succession, but could not or did not wish to admit a second partner merely to satisfy a statutory minimum.

The introduction of the One Person Company (OPC) through the Companies Act, 2013 marks a decisive rupture from this tradition. For the first time in Indian corporate history, a solitary natural person may constitute a company in his or her own name, functioning simultaneously as its sole member, sole director, and sole decision-maker. The legal pedigree of this concept is, however, far older than the 2013 Act; its intellectual ancestry stretches back to the celebrated English case of *Salomon v A Salomon & Co Ltd* decided by the House of Lords in

1897, in which the court upheld the distinct legal personality of what was, in commercial substance, a one-man enterprise.

This paper proceeds as follows: Part II traces the historical and comparative origins of the OPC concept. Part III analyses the statutory framework under the Companies Act, 2013 and the Companies (Incorporation) Rules, 2014. Part IV undertakes a detailed examination of landmark case law that provides the jurisprudential foundation of the OPC. Part V critically evaluates the advantages and disadvantages of the OPC model. Part VI offers conclusions and recommendations.

HISTORICAL AND COMPARATIVE ORIGINS

The Irani Committee and the Indian Legislative Genesis

The formal recommendation for recognising a one-person economic entity in India was first articulated by the Expert Committee on Company Law, constituted by the Government of India on 2 December 2004 under the chairmanship of Dr Jamshed J Irani. The Committee, which submitted its Report on 31 May 2005, observed in Clause 6 of Chapter III:

‘With increasing use of information technology and computers, emergence of the service sector, it is time that the entrepreneurial capabilities of the people are given an outlet for participation in economic activity. Such economic activity may take place through the creation of an economic person in the form of a company. Yet it would not be reasonable to expect that every entrepreneur who is capable of developing his ideas and participating in the market place should do it through an association of persons. To facilitate this, the Committee recommends that the law should recognise the formation of a single person economic entity in the form of “One Person Company”.’

The Committee further recommended that OPCs be provided with a simpler regulatory regime through exemptions, ‘so that the single entrepreneur is not compelled to fritter away his time, energy and resources on procedural matters’. These recommendations were accepted in principle and incorporated into the Companies Bill, 2009, which was introduced in the Lok Sabha on 3 August 2009. The Bill eventually became the Companies Act, 2013, which received Presidential assent on 29 August 2013, and the OPC provisions were operationalised through the Companies (Incorporation) Rules, 2014, brought into force on 1 April 2014.

Within the first five months of the OPC's operationalisation (April to August 2014), 478 companies had been registered as OPCs, collectively commanding an authorised capital of INR 11.95 crore. The first ever OPC incorporated in India was *Vijay Corporate Solutions OPC Private Limited*, registered at Delhi on 28 April 2014, with Mr Vijay Kumar Sharma as its sole director and shareholder.

International Comparators

The OPC is by no means an Indian innovation in isolation. Several major economies had already enshrined single-person company forms in their corporate statutes prior to India's adoption of the model.

- **United Kingdom:** The conceptual foundation was laid by the House of Lords in *Salomon v A Salomon & Co Ltd AC 22*, which recognised the distinct corporate identity of what was essentially a one-man business. The UK's Companies Act 2006 subsequently provides explicitly for single-member private companies.
- **Singapore:** The Companies (Amendment) Act 2004 introduced the single-member company.
- **China:** The Company Law of China (amended in 2005) recognises the limited liability company with a sole shareholder.
- **Pakistan:** Pakistan Companies Ordinance 1984, as amended in 2003, contains similar provisions.
- **Turkey:** Article 338 of the Turkish Commercial Code (new TCC 2012) permits a joint stock company and a limited liability company to be formed by a single shareholder.

In the United States, the closely related concept of the Single-Member LLC (Limited Liability Company) has long been recognised, providing limited liability to a sole entrepreneur without the strict requirements of a traditional corporation. The comparative experience universally demonstrates that the motivation for recognising single-person entities is consistent across jurisdictions: to encourage entrepreneurship, reduce the barriers to formalisation of micro and small businesses, and channel individual economic activity through accountable, regulated corporate structures.

THE STATUTORY FRAMEWORK

Definition and Foundational Provision

Section 2(62) of the Companies Act, 2013, which came into force on 1 April 2014 pursuant to Enforcement Notification S.O. 902(E) dated 26 March 2014, defines an OPC as:

“One Person Company” means a company which has only one person as a member.

Section 3(1)(c) of the Act provides that a company may be formed for any lawful purpose by one person, constituting an OPC as defined in clause (62) of Section 2. Critically, the proviso to Section 3 requires that the subscriber to the Memorandum of Association of an OPC must nominate another person as the nominee member, who shall, in the event of the subscriber’s death or incapacity to contract, become the member of the OPC. This nominee requirement distinguishes OPC from a pure sole proprietorship and is crucial for the perpetual succession that defines the corporate form.

Eligibility Criteria under the Incorporation Rules, 2014

Rule 3 of the Companies (Incorporation) Rules, 2014, prescribes the following eligibility criteria:

1. Only a **natural person** who is an Indian citizen and **resident in India** is eligible to incorporate an OPC or to act as its nominee. The term ‘resident in India’ means a person who has stayed in India for a period of not less than **182 days** during the immediately preceding one calendar year.
2. A natural person can be a **member of only one OPC at any given time**, and can likewise be a nominee of only one OPC at a time.
3. No minor can be a member or nominee of an OPC, nor can a minor hold shares with beneficial interest.
4. Non-Resident Indians (NRIs) and foreign citizens are **ineligible** to incorporate an OPC, a restriction that drew academic criticism for discouraging Indian diaspora investment.
5. An OPC **cannot be incorporated or converted** into a company under Section 8 (not-for-profit company) of the Companies Act, 2013.

6. An OPC **cannot carry out** Non-Banking Financial Investment activities, including investment in securities of any body corporate.

Management and Corporate Governance

Under Section 122 of the Companies Act, 2013, an OPC is exempted from the requirement of holding Annual General Meetings (AGMs). If an OPC has only one director, it is exempted from holding board meetings, it suffices for resolutions to be passed and entered into the minutes book. Where more than one director is present, at least one board meeting must be held in each half of the calendar year, with a minimum gap of ninety days between consecutive meetings.

The financial statements of an OPC are required to be signed by only one director. Pursuant to Section 137(1) of the Act, these statements must be filed within 180 days from 31 March of every year with the Registrar of Companies, as opposed to 60 days for other classes of companies which is a notable relaxation reflecting the reduced compliance burden intended for OPCs. The Cash Flow Statement is also not a mandatory component of an OPC's financial statements.

Conversion

Under Rule 6 of the Companies (Incorporation) Rules, 2014, an OPC was mandatorily required to convert itself into a private limited company or a public company within a period of six months in either of the following situations:

1. When the **paid-up share capital** exceeded Rs 50 lakh (Rs 5 million); or
2. When the **average annual turnover** exceeded Rs 2 crore (Rs 20 million) during the immediately preceding three consecutive financial years.

Voluntary conversion was permissible, but not before the expiry of **two years** from the date of incorporation of the OPC. This two-year lock-in was widely criticised as an impediment to organic growth, compelling a successful OPC to incur the compliance and structural costs of conversion at precisely the stage when its resources were most needed for business expansion.

LANDMARK CASE LAW: THE JURISPRUDENTIAL FOUNDATIONS OF THE OPC

The OPC concept does not exist in a doctrinal vacuum. It draws its legal legitimacy from a body of landmark common law and Indian judicial precedent that collectively establishes the doctrines of separate corporate personality, limited liability, and the conditions for ‘lifting the corporate veil’. An examination of these cases is essential to understanding both the theoretical justifications and the inherent tensions within the OPC framework.

Salomon v A Salomon & Co Ltd AC 22 (House of Lords)

This is unquestionably the most foundational case in the jurisprudence of corporate law and the most direct judicial precursor of the OPC concept. Aron Salomon was a prosperous boot and leather merchant who, in 1892, incorporated his sole proprietorship into a limited liability company - *A Salomon & Co Ltd*, under the Companies Act 1862. The company was structured to satisfy the then-statutory minimum of seven members, with Salomon himself holding 20,001 shares and his wife and five children holding one share each. In commercial substance, Salomon was the company.

When the company went into insolvency, the liquidator sought to hold Salomon personally liable for the company’s debts, arguing that the nominal shareholders were mere dummies and the company was, in substance, Salomon himself. The Court of Appeal agreed with this view, holding the arrangement to be ‘contrary to the true intent and meaning of the Companies Act’.

The House of Lords unanimously reversed. Lord Macnaghten stated with celebrated clarity:

“The company is at law a different person altogether from the subscribers to the memorandum; and, though it may be that after incorporation the business is precisely the same as it was before, and the same persons are managers, and the same hands receive the profits, the company is not in law the agent of the subscribers or trustee for them. Nor are the subscribers as members liable, in any shape or form, except to the extent and in the manner provided by the Act.”

The significance of *Salomon* for the OPC cannot be overstated. The case established that the law recognises the separate personality of a company even when one person effectively controls all its shares and runs it as a personal enterprise. The OPC provisions of the Companies Act, 2013 are, in a very real sense, the statutory codification and modernisation of the Solomonic principle, the formal recognition that a single person may legitimately wear

two hats simultaneously: as both the beneficial owner and the directing intelligence of a distinct legal entity.

Macaura v Northern Assurance Co Ltd AC 619 (House of Lords)

This case further illustrates the strict separation between a sole shareholder and the company he controls. Mr. Macaura sold timber from his estate to Irish Canadian Sawmills Ltd, a company of which he was effectively the sole beneficial owner. He insured the timber against fire in his own name, rather than in the company's name. When fire destroyed the timber, the insurer refused to pay, and the House of Lords upheld the refusal.

Lord Wrenbury articulated the controlling principle: *"The corporator even if he holds all the shares is not the corporation ... neither he nor any creditor of the company has any property legal or equitable in the assets of the corporation."*

The relevance of *Macaura* to OPC analysis is twofold. First, it reinforces that the assets of an OPC belong to the company, not to the sole member, a consequence that can produce unexpected results for entrepreneurs who conflate their personal and corporate estates. Second, it demonstrates the limitations of the corporate form: an OPC's sole member must meticulously ensure that contracts, insurance, and other legal instruments are executed in the company's name, not in the member's personal capacity. The practical likelihood of such conflation, given that the OPC is, by design, controlled entirely by one individual presents a structural governance risk that the legislation did not adequately address.

Lee v Lee's Air Farming Ltd AC 12 (Privy Council)

This New Zealand Privy Council case extended and reinforced the *Salomon* principle into the domain of employment law and remains one of the most vivid judicial illustrations of the real-world implications of the separate legal entity doctrine for a one-person controlled company. Mr Lee incorporated Lee's Air Farming Ltd to carry out aerial top-dressing of farmland. He held 2,999 of the company's 3,000 shares, was its sole governing director, and was simultaneously employed as the company's chief pilot.

Mr Lee died in a flying accident, and his widow claimed workers' compensation under the New Zealand Workmen's Compensation Act, 1923, on the basis that her husband had been employed by the company. The New Zealand Court of Appeal dismissed the claim on the

ground that Lee could not be both the employer and the employee, the two offices were, in its view, legally incompatible.

The Privy Council reversed this decision, holding that the company was a separate legal entity and was perfectly capable of entering into an employment contract with its own governing director. The fact that Lee controlled the company did not collapse the distinction between him and it. Lord Morris stated that *'the separateness of the two personalities was the very raison d'être of the private company'*.

For OPC jurisprudence, *Lee* is particularly instructive. It validates the possibility and also the legality of an OPC's sole member being simultaneously the company's employee, thereby accessing employee benefits and social security protections. It also underscores that the veil of incorporation remains intact even in a single-person company, absent fraud or abuse. This case is routinely cited by Indian scholars and practitioners as providing the essential common law authority for the employability and contractual capacity of OPC owners vis-à-vis their own companies.

Tata Engineering and Locomotive Co Ltd v State of Bihar AIR 1965 SC 40

This Supreme Court of India judgment is significant for confirming the separate legal personality of a company within the Indian constitutional and statutory framework. The court held that the entity of a company is entirely distinct from its members; the company has its own name and seal, its assets are separate from those of its members, and the liability of shareholders is limited to the amount of capital invested by them.

The judgment is relevant to OPC analysis because it establishes, within the Indian constitutional framework, that a company even one dominated and controlled by a single person retains a legal identity entirely separate from that of its human controller. Any attempt by an OPC's sole member to invoke constitutional protections (such as Fundamental Rights) on behalf of the company, or to conflate corporate and personal assets, must be assessed in light of this principle.

The Doctrine of Lifting the Corporate Veil and Its Implications for OPCs

The principle of separate legal personality is not absolute. Courts both in England and in India have developed the doctrine of 'lifting' or 'piercing' the corporate veil, disregarding corporate

personality in limited circumstances to hold the real person behind the corporate facade accountable.

The statutory bases for lifting the veil in India, as available under the Companies Act, 2013, include:

- **Section 7(7):** Where incorporation is obtained through fraudulent means, the company may be wound up and persons who were guilty may be held personally liable.
- **Section 251:** Liability for fraudulent trading where a person who is knowingly party to carrying on a business with intent to defraud creditors may be held personally liable.

The judicial bases, as articulated in *LIC v Escorts Ltd* AIR 1986 SC 1370 which is one of the most comprehensive Indian Supreme Court pronouncements on the doctrine, include fraud, improper conduct, evasion of tax, acting as an agent for shareholders, and situations where public interest so requires.

The OPC presents a heightened susceptibility to veil-lifting for tax evasion, a concern identified by several academic commentators. Since the sole member and sole director of an OPC are the same person, the structural fusion of managerial and proprietary roles creates conditions in which the classical ‘Insubordinated Agency Rule’ which asks whether the company is merely acting as the agent of its sole shareholder may more readily be triggered against an OPC than against multi-member companies. This doctrinal tension remains a structurally unresolved challenge in the Indian OPC framework.

CRITICAL ANALYSIS: ADVANTAGES AND DISADVANTAGES

Advantages

- **Limited Liability**

The most compelling advantage of the OPC is the conferral of limited liability upon a sole entrepreneur, a benefit previously accessible only to those who could form a company with at least two members. Under sole proprietorship, the proprietor’s personal assets were at perpetual risk for any business liability. The OPC guarantees that the sole member’s financial exposure is capped at the capital invested in the company.

- **Separate Legal Entity and Perpetual Succession**

As confirmed by *Salomon* and *Tata Locomotive*, the OPC possesses a legal identity entirely independent of its sole member. It may own property, enter into contracts, sue and be sued, and continue in existence notwithstanding the death, incapacity, or change of membership of its human controllers. The nominee mechanism under Rule 4 of the Incorporation Rules, 2014, ensures business continuity, a feature entirely absent from sole proprietorship, which dissolves upon the proprietor's death.

- **Ease of Management and Decision-Making**

The OPC's single-member governance structure eliminates the internal friction inherent in multi-director companies, board disagreements, voting deadlocks, and shareholder disputes. The sole member may pass resolutions by written entry in the minutes book, without convening formal meetings. This 'monopoly in management', as one commentator described it, enables rapid and responsive decision-making that is structurally impossible in conventional companies.

- **Reduced Compliance Burden**

The Companies Act, 2013 and the Incorporation Rules, 2014 exempt OPCs from several compliance requirements applicable to private limited companies notably, the requirement to hold AGMs, the obligation to prepare a Cash Flow Statement, and the extension of time for filing financial statements. These relaxations align with the JJ Irani Committee's recommendation that OPCs should be given a 'simpler regime through exemptions'.

- **Enhanced Business Credibility and Access to Finance**

Unlike sole proprietorships, OPCs are registered entities subject to the Registrar of Companies. This institutional recognition confers a degree of credibility that facilitates access to bank loans and institutional credit, financial institutions being more willing to lend to a corporate entity than to an unregistered proprietorship.

Disadvantages and Critical Limitations

- **Tax Inefficiency**

This is perhaps the most structurally significant deficiency of the Indian OPC regime. Contrary to the expectation of micro-entrepreneurs, OPCs are taxed as **private limited companies** at a flat rate of **30% on net profits**, plus applicable surcharge and cess. No recognition of the OPC as a distinct taxable category was made under the Income Tax Act, 1961, meaning that OPCs derive no tax advantage over the more expensive private limited company structure.

In sharp contrast, a sole proprietorship is taxed at the individual's slab rate under the Income Tax Act, which, for lower-income entrepreneurs, yields a substantially lighter tax burden. Additionally, the dividend distributed by an OPC is subject to Dividend Distribution Tax (DDT), and the sole member receiving the dividend is taxed further, producing an effective combined tax rate that can exceed 60%. This double taxation structure is a serious disincentive to the use of OPCs by small entrepreneurs — ironically, the very constituency the concept was designed to benefit.

- **High Compliance and Incorporation Cost**

While OPCs enjoy certain exemptions, they must nonetheless comply with annual audit requirements, ROC filings (Forms AOC-4 and MGT-7), and board meeting minutes, obligations that require the engagement of Chartered Accountants, Company Secretaries, and legal professionals at considerable expense. The estimated annual compliance costs for an OPC is a minimum of Rs 10,000–15,000 per annum, comparable to, and in some respects exceeding, those applicable to a private limited company. For micro-entrepreneurs with modest turnovers, these costs represent a disproportionate drain on resources.

- **Conversion Rigidity**

The mandatory conversion threshold -paid-up capital exceeding Rs 50 lakh or turnover exceeding Rs 2 crore, as a 'growth ceiling' on the OPC form. A commercially successful OPC was compelled to transform into a private limited company within six months of exceeding these thresholds, regardless of whether the entrepreneur was prepared for the attendant administrative and governance changes. Simultaneously, the two-year lock-in on voluntary conversion prevented an ambitious OPC founder from upgrading to a private limited structure

until his enterprise was at least two years old, a restriction that impeded venture capital investment and equity financing during the critical early growth phase.

- **Restrictions on Foreign Direct Investment**

Under the rules, OPCs could not be incorporated by Non-Resident Indians, foreign nationals, or foreign companies. This restriction foreclosed the possibility of using the OPC as a subsidiary vehicle for foreign enterprises and prevented the Indian diaspora from investing in India through this structure. Several academic commentators argued that this restriction was inconsistent with India's professed commitment to Foreign Direct Investment (FDI) liberalisation under the *Make in India* initiative launched in September 2014.

- **Prohibition on Non-Banking Financial Activities**

OPCs are statutorily prohibited from undertaking non-banking financial investment activities, including investment in the securities of any corporate body. This restriction significantly narrows the range of business activities available to the OPC form and renders it unsuitable for entrepreneurs engaged in financial services, investment advisory, or portfolio management, precisely the sectors in which knowledge-intensive solo practitioners might most benefit from the limited liability protection of the OPC structure.

- **Potential for Misuse**

The OPC's structural characteristics — a single member who simultaneously controls all corporate decision-making, signing authority, and beneficial ownership — create unique opportunities for misuse, including:

- **Tax evasion:** The incorporation of an OPC in the name of a family member, while the actual control remains with another person, to shelter income from personal taxation.
- **Benami transactions:** The use of OPCs as opaque vehicles for holding assets or conducting transactions that a natural person might wish to disguise from regulatory scrutiny.
- **Fraudulent trading:** Given the single-member governance structure, there is no internal check against a sole director's fraudulent conduct vis-à-vis creditors or the public.

The scholars recognised that the fusion of managerial and proprietary roles in the OPC, while efficient, eliminates the mutual oversight that multi-member structures provide, creating conditions for corporate governance failures of a qualitatively different order than those present in conventional companies.

- **Lack of Employee Stock Options and Equity Incentives**

OPCs are structurally incapable of offering Employee Stock Options (ESOPs) or sweat equity shares, since they are limited to a single shareholder. This restriction significantly reduces the OPC’s ability to attract and retain talent through equity-based compensation, a critical disadvantage in India’s emerging startup ecosystem where human capital is the primary driver of value creation.

ONE PERSON COMPANY IN CONTEXT: A COMPARATIVE EVALUATION

A comparative analysis of the OPC against the two most proximate business forms in India- Sole Proprietorship and Private Limited Company reveals the following:

Parameter	Sole Proprietorship	OPC	Private Limited Company
Legal Status	Not a separate entity	Separate legal entity	Separate legal entity
Liability	Unlimited	Limited to capital invested	Limited to capital invested
Minimum Members	1	1 (+ nominee)	2
Minimum Directors	None required	1 (max 15)	2 (max 15)
Annual Compliance	Income Tax return only	ROC filings, audit required	ROC filings, audit required
Taxation	Individual slab rate	Corporate flat rate (30%)	Corporate flat rate (25–30%)
Foreign Ownership	Not permitted	Not permitted	Permitted (FEMA routes)
AGM Required	No	No (exempted)	Yes
Nominee Required	No	Yes (mandatory)	No

Perpetual Succession	No	Yes	Yes
ESOPs	Not possible	Not possible	Possible

This analysis reflects that the OPC occupies a genuine but narrow middle ground between the two forms. Its advantages over sole proprietorship are real, particularly in terms of limited liability, legal personality, and access to finance. However, its advantages over a private limited company are largely procedural rather than substantive: the compliance savings do not offset the tax inefficiency, and the conversion thresholds impose a growth ceiling that a private limited company does not face.

CONCLUSION AND SUGGESTIONS

The One Person Company is an innovative and conceptually sound addition to India's corporate law architecture. Its introduction through the Companies Act, 2013 represents a belated but welcome alignment of Indian law with the global trend of recognising single-person economic entities. The jurisprudential foundation provided by *Salomon, Lee*, and *Macaura* gives the OPC an intellectually robust basis rooted in over a century of common law development.

However, a critical analysis of the legal framework reveals that the OPC as constituted in 2013–2017 fell short of fulfilling its transformative potential. The principal deficiencies are as follows:

- The OPC should be recognised as a distinct taxable category under the Income Tax Act, 1961, with taxation at rates more favourable than the private limited company rate, to incentivise transition from informal sole proprietorship.
- The restriction on NRI and foreign incorporation of OPCs, should be lifted to align the OPC with India's FDI policy goals.
- The rigid paid-up capital and turnover thresholds for compulsory conversion, and the two-year lock-in on voluntary conversion, should be relaxed or eliminated to allow OPC entrepreneurs to chart their own growth trajectories.

- Given the structural vulnerabilities of single-person control, the legislature should consider mandatory external auditor appointment requirements and strengthened creditor protection provisions to reduce the misuse potential of the OPC form.

There is a limited penetration of the OPC concept among India's vast community of small and micro entrepreneurs. Only 478 registrations in the first five months of operation suggests that awareness, outreach, and simplified registration procedures are essential complements to legislative reform.

In its essence, the One Person Company is, as *Salomon* taught us more than a century ago, a company in the fullest legal sense possessed of personality, purpose, and perpetuity that transcend the individual behind it. India's task, is to ensure that the legal shell is filled with the economic substance that its architects intended.

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