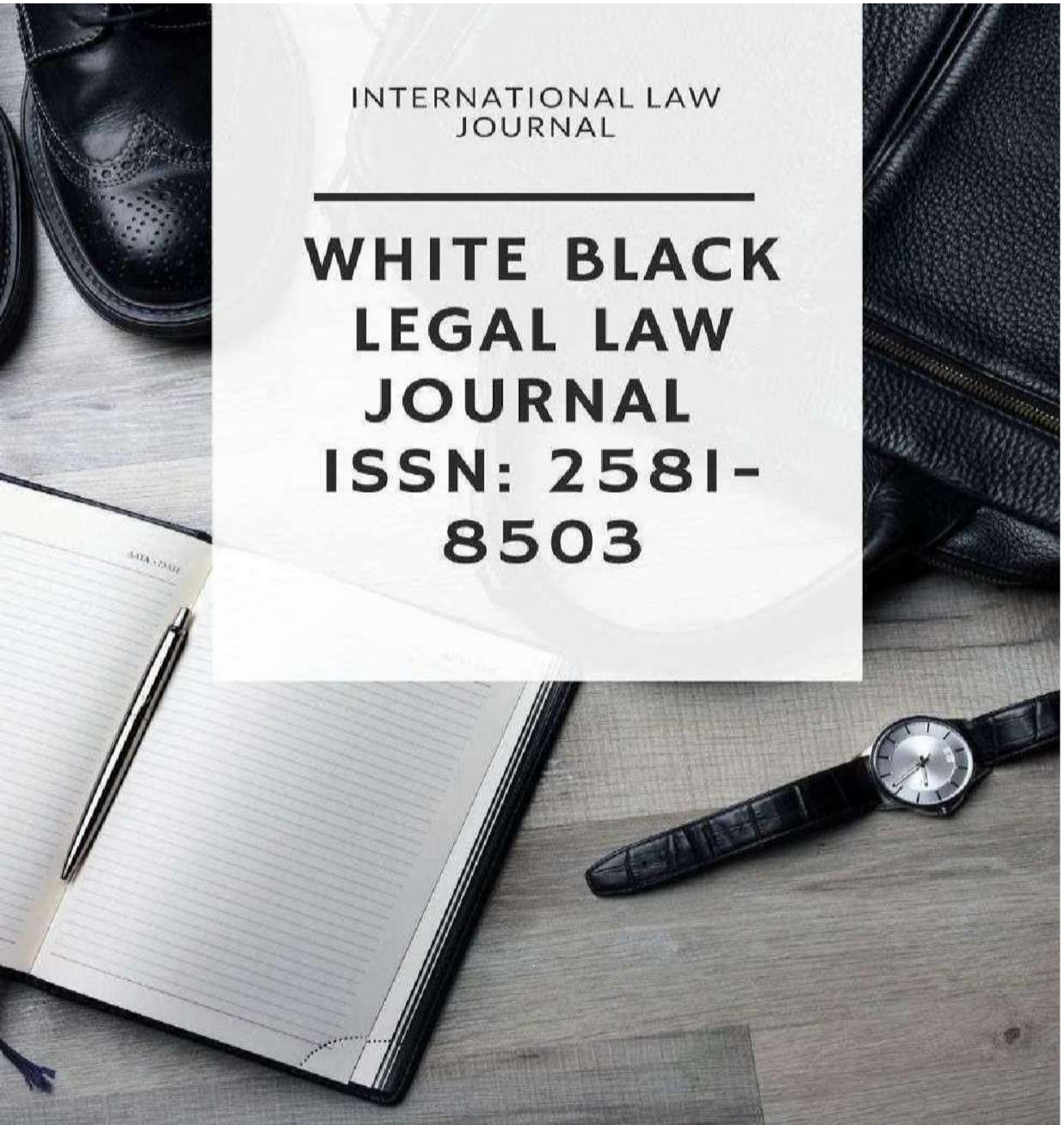

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WHITE BLACK LEGAL is an open access, peer-reviewed and
refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

AN OVERVIEW OF ONE PERSON COMPANY IN INDIAN CONTEXT

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ABSTRACT

With the advent of the Companies Act, 2013, a new type of company was introduced known as one person company. It came as a boon for the Indian corporate system as it enabled sole proprietorships to explore new opportunities with a structured form of business. By introducing the concept of one person company, the Companies Act, 2013 gave a chance to small scale industries and proprietors to avail benefits of two kinds of organizational forms – the Joint Stock Company and Sole Proprietorship. This paper seeks to analyze the structure of the one-person company and the various advantages it has brought to the Indian legal and corporate framework.

INTRODUCTION

The J.J Irani Committee was of the opinion that the legal infrastructure recognizes the need for diversity in the forms of companies and instead of looking to restrict specific aspects of each form, seek to set principles that accelerate wealth creation on the basis of concise and widely-accepted principles. The intent of the committee was to make an entity which would be given an easier regime by means of exemptions so that the entrepreneur's time and energy would not be wasted on procedural compliances.[1]

The Companies Act, 2013 defines the 'One Person Company under Section 2(62) as 'a company which has only one person as a member of that company'. All the liabilities with relation to the company are limited to the company and not to its members. As per the act, only a natural person who is a resident in India and also a citizen of India can form an OPC. Just as private limited companies are required to use Private or Pvt. in their name, the One Person Company will need to include One Person Company within brackets, wherever the company name is affixed or printed.[2]

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[1] JJ Irani Report, *available at* www.primedirectors.com/pdf/jj%20irani%20report-mca.pdf

[2] Aqa Raza & Ranjan Kumar, 'One Person Company' Under the Companies Act, 2013 – Journey from 'Minimum Two Person' to 'Only One Person: A Critical Reappraisal' *available at*

With the introduction of the concept of One Person Company, the requirement of two or more persons is not necessary to form a company. At present, a person who wishes to incorporate a company can do so individually without the involvement or share of any other person.

Unlike a Sole Proprietorship, in a one-person company, the liability of the members is limited to the value of shares held by such person in the Company. The One Person type of company enables entrepreneurial persons to take on risk of carrying on business without the trouble of litigation and the liability getting attached to personal assets.

The concept of the One Person Company was covered under the Companies Act, 2013 with the following characteristics: -

- It is a type of company having only one person as its member
- It enjoys all the characteristics of a private limited company unless specifically mentioned in the Act[3]
- Has a minimum paid up share capital of Rupees one lakh or such higher paid-up share capital as may be prescribed
- An OPC is exempted from holding Boards Meeting and AGMs if the company has only one director
- It is compulsory to appoint a nominee
- One person cannot start more than a single One Person Company or become a nominee in more than one OPC
- OPC cannot convert into any other kind of company unless and until 2 years have passed from the date of incorporation, except in the situation where the turnover threshold has reached[4]

COMPARISON BETWEEN OPC AND SOLE PROPRIETORSHIP

In order to analyze the benefits of the OPC over sole proprietorship, it is necessary compare the two forms of business and come to a verifiable conclusion. The following can be summarized as the distinction between both types of business: -

https://www.researchgate.net/publication/324262769_%27One_Person_Company%27_Under_the_Companies_Act_2013-Journey_from_%27Minimum_Two_Person%27_to_%27Only_One_Person%27_A_Critical_Reappraisal

[3] Shubham Gautam & Swati Shanker, One Person Company: A Revolutionary Idea or Half-Baked Concept? *available at* https://www.indialawjournal.org/archives/volume7/issue-1/article7.html

[4] ibid

Succession: - Sole proprietorship is a form of business whose survival depends upon the life of the proprietor and in the scenario of a death, may lead to the dissolution of the business. On the other hand, the existence of the OPC is not dependent on the members and the passing of a member has no effect on the perpetuity of the company.

Limited Liability: - In the case of Sole Proprietorship, the liability of the member is unlimited to the extent of personal property etc. In the event of failure to discharge debt, the personal property of the member can be attached. In One Person Company, the liability of the shareholder is limited. The member of this kind of company is not liable for the debt of the company and is only liable to the extent of his share in the business.[5]

Tax Burden: - One feature of the OPC which can be viewed as a drawback is the tax burden on it. A One Person Company falls under a similar tax slab as private companies which is 30% and is quite high.

Separate Legal Identity: - OPC has separate legal personality from its members which means that the company and its shareholders are two different identities for all intents and purposes. On the other hand, a sole proprietorship does not have a separate legal identity from its members.

Compliances: - A One Person Company must file annual returns just like other private companies and get its account audited in a similar manner. A sole proprietorship would only need to get its accounts audited if its turnover crosses a certain threshold as per Section 44 AB of the IT Act, 1961.[6]

Incorporation: - The incorporation procedure of a One Person Company requires several cumbersome formalities to be followed whereas a Sole Proprietorship does not need to go through such a rigorous and tedious process to start the business.

[5] Vinay Haswani & Krati Rajoria, ONE PERSON COMPANY: AN ANALYTICAL STUDY *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3806325
[6] ibid

ONE PERSON COMPANY AND INCORPORATION PROCESS

Starting a Company as a OPC has increased in popularity among entrepreneurs as they look for simplified processes and the advantages it provides. Up until 2021, about 34, 446 OPCs had been incorporated in India as per statistics, whereas 7600 OPCs were incorporated in the year prior. Increased adoption of OPC as a business model has led to some amendments in the law relating to OPC, which include decreasing compliances and streamlining limitations. The following is the simplified procedure to register an OPC for Start Ups: -

Digital Signature Certificate – The business owner's first step in the registration process is to obtain a Digital Signature Certificate. A Digital Signature Certificate is an electronic signature which verifies the authenticity of documents filed online. A Digital Signature Certificate can be obtained from authorised agencies. It is mandatory for submission of several documents in the course of registration.

Director Identification Number – The entrepreneur needs to obtain a Director Identification Number from the MCA before starting with OPC registration. The Director Identification Number acts as a unique identifying value for the business owner as the director of the company. It can be obtained by completing the requisite steps and filing the necessary paperwork.

Company Name – The entrepreneur needs to reserve a distinctive name for the OPC. The name which is reserved should follow the criteria laid down by the ROC. The intended name should not already be in use or violative of any existing trademarks. The business owner can check the availability of the name on the MCA portal.

Incorporation Documents – After the reservation of name, the business owner needs to prepare the incorporation documents. These include a clear and concisely drafted MOA and AOA. The Memorandum outlines the OPC's commercial aims and operations, whereas the Articles of Association outlines the internal rules and regulations and management structure. These documents can be prepared with the aid of a professional.[7]

Filing Incorporation Documents – The business owner needs to file the documents of

[7] Aishwarya Agrawal, One Person Company Registration for Startups: Simplified Procedures, *available at* https://www.startupfino.com/blogs/one-person-company-registration-for-startup-simplified-procedure/

incorporation with the Registrar of Companies once they are in order. The requisite forms must be submitted along with the fees and supporting documents. The filing can be done electronically through the MCA portal.

Certificate of Incorporation – After a successful review and verification of the incorporation documents, the Registrar of Companies issues a Certificate of Incorporation. The Certificate is legal proof of the existence of the company.[8]

The Effect of One Person Company on the Indian Business Landscape

Even though the concept of One Person Company is in its nascent stage and relatively new to the Indian Business Landscape, it will come to be adopted as one of the more successful business models with the passage of time due to its many advantages. Firstly, the incorporation of a OPC requires less time and effort in comparison to other business forms. Secondly, it is a viable option for small entrepreneurs like traders and artisans. One has the option to form a company with just one member without any extra shareholders; and if by chance the member is wanting to add shareholders, all that is required to be done is modify the Memorandum of Association and file it with the Registrar of Companies. Foreign Investments are bound to get easier as well due to the fact that the foreign companies wishing to invest in India through merger or joint venture would just have to deal with the one member of the OPC and the venture would likely start sooner and more efficiently. The Foreign Investors would not have to go through dealing with a plethora of shareholders which might involve difference in opinion and cumbersome procedure. Instead, in order to establish corporate relationship, they would just have to deal with one member of the OPC. Thus, it can be said that the impact OPC's are going to have on Indian Entrepreneurship looks promising. There are likely going to be good foreign investments and joint ventures in the future.[9]

PRIVILEGES AVAILABLE TO OPC

- One Person Company would give the persons wanting to launch a startup new business idea.
- It would provide for an outlet for entrepreneurial spirit among the professionals.

[8] ibid
[9] Supra note 5

- The most important reason for shareholders to incorporate the ‘one person company’ is the benefit of limited liability.
- As the One Person Companies are not proprietorship concerns, they provide for a dual entity for the company as well as the individual and the protect the individual against any burden of liability.
- OPCS need not be so bothered about compliances which is not the case with a private limited company or public limited company.[10]
- A business currently functioning as a proprietorship could get converted to OPC without any difficulty.
- OPCs need minimal capital to begin the business with. As they are a recognized corporate, they could raise capital from others such as venture capital financial institutions etc.
- Compulsory rotation of auditory after expiration of maximum term is not applicable to OPCs.
- Sections 98 and 100 to 111 with regard to holding of general meeting do not apply to a One Person Company.
- A One Person Company is required to have a minimum of one director. The maximum number of directors can go up to 15 which can be increased by passing a special resolution.
- The financial statements of OPC need only be signed by one director alone. Cash Flow Statements are not a compulsory part of the financial statements of an OPC.
- For the purposes of having Board Meetings, in cases of an OPC who has only one director, it shall be enough if all the resolutions needed to be passed at a Board Meeting, are included in the minutes book, signed and dated by the one member, and this date shall be known to be the date of the Board Meeting for all intents and purposes under the Act.[11]

EXEMPTIONS AVAILABLE TO OPC

- A One Person Company requires one director to start the company as opposed to private company which requires at least two directors to register the company.

[10] ICSI, One Person Company *available at* https://www.icsi.edu/media/website/One%20Person%20Company.pdf
[11] ibid

- According to Section 96(1) of the CA, 2013, a OPC is not required to conduct the Annual General Meeting of the company as OPC only has one member which is the reason it is not compulsory to hold the AGM.
- Annual returns of the company may be signed by the Company Secretary and in case there is no Company Secretary, then by the director of the company.
- The Annual Financial Statements and the Board's Report may be signed by the director himself/herself as OPC can be registered by only one director.[12]
- A OPC is not compulsorily required to maintain a Cash Flow Statement.
- OPC need not file an Audit Report on internal financial controls with respect to financial statements. Companies (Auditor's Report) Order, 2016 is also not applicable to OPC.
- Section 139(2) of the CA, 2013 which provides for compulsory rotation of auditors every five years in case of individuals and every ten years in case of firm is not applicable to OPC.
- Rule 8 of Companies (Account) Rules, 2014 where matters to be included in Board's Report are mentioned is also not applicable to OPC.
- A One Person Company needs only one director to be formed, so it exempted from the applicability of the provisions of the Secretarial Standards SS-1 and SS-2, In case the OPC has more than 1 director, SS-1 shall be applicable.
- According to Section 173(5) of the CA, 2013, a OPC is required to hold at least one board meeting in every half of the calendar year. Sections 173 and 174 which provide for quorum of the meeting shall not apply to OPC.[13]

SUCCESS STORIES OF OPC's IN INDIA

Fashtoons Apparel Opc Pvt Ltd – This is an OPC and is incorporated with the ROC, Jaipur in the name of the Owner and Director, Pritham Maratha on 30th May, 2015. The authorised share capital is Rs. 100,000 and paid-up capital is Rs. 1 lac. The company is engaged with the production of wearing apparel except for fur apparel made in the same unit. It has been running for over a year now.[14]

[12] ibid
[13] OPC Annual Compliance and Exemption *available at* https://www.compliancecalendar.in/learn/opc-annual-compliance-and-exemption?srsltid=AfmBOooYlbZL1hmLI4jFj0xteNt2cE4KjtlP-vOsTID1HdKH7AtHOikQ
[14] Aniket Chaudhry, One Person Company: A Success Story available at https://blog.ipleaders.in/one-person-company-success-story/

MyCFO India – This is a finance and consultancy firm which was founded by Deepak Narayanan in the year 2007. In 2013, the company was converted to an OPC which aided in streamlining operations. At present, MyCFO India employs a team of 200 professionals and is catering to over 500 clients across India.

Forthright Group – This is a real estate company that was incorporated as an OPC by Vipul Shah. The company's focus was to deliver quality projects for their clients. At present, Forthright Group has completed more than ten projects and established a name for itself in the real estate industry.

Doshi Outsourcing – It is an accounting company which was started by Mitul Doshi in 2007. In the year 2013, the company was converted into an OPC and focused on delivering cost effective services to their clients. At present, the company employs over hundred professionals and has clients all across the world. [15]

LIMITATIONS OF ONE PERSON COMPANY

Solitary Ownership – The main drawback of a one-person company lies in its sole ownership. OPCs can only be owned by a single person whereas other companies have multiple shareholders. This limitation could hinder the OPC's ability to raise capital through equity and thereby restrict its growth potential.

Limited Capital – As there is only one owner, the capital brought to the table might be restricted to the individual's funds and bank loans. The lack of access to a larger pool of capital can restrict the company's expansion plans and hinder execution of large projects.

Requirement of Nominee Director – As per the CA, 2013, a OPC must appoint a nominee director who shall handle company's operation in case of the owner's death or incapacitation. This provision might lead to loss of control for the owner, as the nominee director would have to conduct the business in the company's best interest.

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[15] Instabizfilings, Success Stories of OPCs in India and their Growth Strategies *available at* https://instabizfilings.com/blog/success-stories-of-opcs-in-india-and-their-growth-strategies#:~:text=Boost%20in%20the%20Indian%20Startup,contribute%20to%20the%20economy's%20growth.

Limitation on Business Activities – a OPC cannot carry on certain business activities, such as Non-Banking Financial Investment activities, which require compulsory incorporation to a Private Limited Company. This restriction may have an effect on entrepreneurs who want to carry on business in specialised sectors.[16]

Restriction on Joint Ventures – A One Person Company would be unable to from joint ventures with another company as the OPC has only one owner. This might impede its ability to have access to technological advancements, resources and markets and might hinder its growth potential.

Conversion to Pvt Ltd Company – There is a threshold limit placed on the paid up capital and annual turnover of OPCs. Once the limit is crossed, the OPC must be converted to a Private Limited Company. This conversion procedure is time costuming and cumbersome.

Compliance Procedures - OPCs need to adhere to statutory compliances such as maintaining proper books of accounts, filing annual returns and having board meetings. They are obligated to adhere to certain compliances, the failure of which could lead to penalties and legal troubles.[17]

COMPARISON BETWEEN OPC AND PRIVATE LIMTED COMPANY

Minimum Number of Shareholders – Only one shareholder is needed to form an OPC. To start a private limited company, two members/shareholders are required.
Minimum number of Directors – One director is required to from an OPC. The sole member can also act as the director. Two directors are required in case of private limited company.

Nominee to be appointed – The sole member in the OPC needs to nominate a person who shall be known as the 'nominee' and this person should be an Indian citizen. There is no such requirement in case of private limited company.

Board Meeting – If there is only one director in the OPC, then there is no such requirement to

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[16] Govche, What are limitations of a One Person Company (OPC)? *available at* https://govche.com/blog/what-are-the-limitations-of-a-one-person-company-opc/#:~:text=The%20primary%20limitation%20of%20a,shares%2C%20limiting%20its%20growth%20potential
[17] ibid

hold a Board Meeting. In the case of private limited company, a board meeting should happen at least once in every calendar quarter and the time between meetings should not be more than 120 days.[18]

Annual General Meeting – In the situation where there is only one member of the OPC, conducting of the Annual General Meeting does not apply. A private limited company is required to hold an AGM within 180 days of the end of the financial year.

Perpetual Succession – In the event of the death of the sole member of the OPC, the nominee becomes the shareholder. In a private limited company, in the event of the death of one the two members, the shares get transmitted to the legal heir.

Number of memberships by shareholder – The sole member of the OPC can be the shareholder of only one OPC. In the case of private limited company, the shareholders can hold shares of other companies as well.

Legal Status of Shareholder – Only a natural person can be a shareholder of a One Person Company whereas a company can be one of the shareholders of a private company.

NRI as shareholder – The sole member/shareholder of the OPC should not be an Indian but also resident in India which means that he/she should be in India for 182 days during the immediately preceding calendar year. There is no such restriction on the shareholders of a private limited company.

Mandatory conversion – In case the paid-up capital goes over Rs. 50 lakh or average annual turnover in the preceding three consecutive financial years goes over Rs. 2 crores, the One Person Company will compulsorily get converted to a private limited company.[19]

Types of Business Which Should opt for One Person Company

1. A manufacturing unit or small-scale industry which is looking for an opportunity at legal recognition, which is not possible if you are a sole proprietorship. OPC provides

[18] CS Kruti, IS ONE PERSON COMPANY AN OPTION FOR A STARTUP? *available at* https://cskruti.com/is-one-person-company-an-option-for-a-startup/
[19] ibid

an opportunity for them to get legal recognition and to grow as the liability incurred by a proprietor will not instil the same fear in them in the event of inability to repay financial debts as OPCs have limited liability.

2. Small scale entrepreneurs who don't hold good credit worthiness in front of the creditors in the market can take financial assistance from a OPC model of business, as OPC has a separate identity from the subscribers, members and directors of the company and their personal credit status does affect that of the OPC.
3. If a person is instilled with confidence and self-assured that he has the requisite knowledge of the different aspects of the business like financial, social, technical etc. then he can form an OPC all by himself/herself. That would mean he would be competent to cater to all the requirements of the business.[20]
4. If a person wishes to carry on certain business activity but is not able to convince another person to subscribe to the memorandum and invest the capital in the business, or devote his time to the functioning of the company, the that person can go about forming a one-person company by becoming a sole director or member. Sole ownership also has the advantage of quick decision making as there is no compulsion of taking consultation from any other members. A person can go for this option when he has a unique idea which might not be accepted or welcomed by others.
5. The entrepreneurs who know that their business is viable and profitable but only for a limited period of time (for e.g. Manufacturing a certain electronic good which has big chances of getting outdated with time) should opt for One Person Company. The advantage is of less legal compliances as compared to private limited company, limited liability, and better chances of getting credit. Small entrepreneurs such as weavers, artisan etc. can enjoy status and privileges offered to Joint Stock Company by opting for a One Person Company.[21]

CONCLUSION

The concept of One Person Company can be compared with that of a One-Man Army. One of the biggest benefits of the OPC is that the compliance burden is quite less and the liability of the members is limited. OPC is primarily expected to benefit people who are into self-employment and any small sector entrepreneurs. It is a remarkable addition in the Companies

[20] Ishita Chelawat, "One Person Company –A Critical Analysis" *available at* https://docs.manupatra.in/newsline/articles/Upload/99295495-2070-4FBF-B072-3D74B3A05E98.pdf'
[21] ibid

Act but there are still some limitations which can be observed such as a person cannot incorporate more than one OPC or become a nominee in more than a single One Person Company. There is also the point of OPCs not being able to carry on Non-Banking Financial Investment activities which serves as a disadvantage. Despite the drawbacks, there are several relaxations provided to OPCs as compared to the existing private and public companies which should encourage entrepreneurs to register themselves as OPCs. The introduction of the concept of the One Person Company in the Indian business sector will encourage corporatization of micro businesses and provide entrepreneurship with a simpler legal regime so that small businessmen are not required to devote considerable time and resources on complex legal compliances and burdens. In this manner, individual capabilities will contribute to economic growth and generate more employment opportunities.[22]

Dr. J.J Irani and his committee were responsible for presenting the concept of OPC in 2005. It was brought in India after seeing the success of this business model in other countries. The taxing policy can be witnessed as a highlighted drawback as it makes the entrepreneurs rethink their decision about starting an OPC. The tax to be paid by a sole proprietor is only one which is the Income Tax but OPC has to pay three types of tax after which the profit which remains might be negligible. To promote this new model of business, the government should plan on giving some tax benefits so that more people are attracted to form a One Person Company.[23] It is still too early to associate problems and raise disputes with the concept. The development of the concept has to be seen once cases involving OPC come to courts and the adjudication are given in this regard. In conclusion, it can be said with some confidence that the OPC model has seen success in India and is gaining popularity among solo entrepreneurs and startups.[24]

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[22] Supra note 2

[23] CS S Raja Babu, ONE PERSON COMPANY (OPC) – A NEW FORM OF CORPORATE ENTITY INTRODUCED IN INDIA *available at* https://www.ijcrt.org/papers/IJPUB1704021.pdf

[24] Supra note 15