

Legal Framework of Single Member Company in UK vis-à-vis One Person Company in India: A Conceptual Analysis

*Dr. Bharat*¹
*Priya Gupta*²

Abstract

One of the ideal vehicles for a start-up venture can be a company formed by single person with the benefit of limited liability. In this article, an attempt has been made to trace the journey of this vehicle in United Kingdom and India. In this paper the researcher intends to undertake a conceptual study of One Person Company in India and United Kingdom. In United Kingdom, it exists by the nomenclature of Single Member Company. The researchers by virtue of this paper attempts to trace the existing legal framework in both the countries and finally intends to conclude by suggesting the changes required in One Person Company in India as its necessary legal structure is still in nascent stage in India.

Keywords: Corporate, India, One Person Company, Single Member Company, United Kingdom.

I. Introduction

Indian Company law has much in common with United Kingdom (*hereinafter* referred to as the UK) law as it owes its basic *progeny* from British law, it being a colonial state for almost a century. The Company law of UK has acted as a foundation for the Indian Company law for a long time. On analysing the history of 1850's, it becomes amply clear that the Indian company law was enacted with an endorsement of the Companies Act of UK, 1844 on it. Even the later amendments to the Indian Company's Act, 1913 were made in consequence of the changes brought to the UK Companies Act, 1908.³ It is pertinent to note here

¹ Assistant Professor of Law, University Institute of Legal Studies, Panjab University, Chandigarh (*Email: bharat@pu.ac.in*).

² Research Scholar, Department of Laws, Panjab University, Chandigarh.

³ L.C.B. Gower, *The English Private Company*, 18 LAW CONTEMP PROBL J, 535-545 (1953).

that as a sequence of this amendment only the concept of Private companies was brought in India for the first time.

Though after independence, things changed as India became a sovereign country and started reengineering of its corporate regulatory framework to meet up and stay updated with the changing pace of national and international economic environment. But attitude of proneness towards the British nevertheless continued as can be testified from the report of the Bhabha committee⁴ (leading to the Companies Act, 1956) which included the recommendations of the Cohen committee to a large extent which was set up in UK to amend the UK's Company law.⁵

Now after 57 years the new Companies Act of 2013 (*hereinafter* referred to as the Act of 2013) is made applicable in India bringing new business techniques committed to harness its entrepreneurial and economic resources effectively. But how be it, the colonial meekness still reflects. A close scrutiny of it seems to be a mimeograph in some sense as it recognizes certain analogues of the UK Company law like Single Member Company (*hereinafter* referred to as the SMC) by the nomenclature of One Person Company (*hereinafter* referred to as the OPC). So, in this paper the researchers intend to undertake a conceptual study of this model of OPC in India vis-à-vis UK. The researcher attempts to trace its meaning, origin, existing legal framework in both the countries and finally intends to suggest the changes required in OPC as its necessary legal structure is still in nascent stage in India. For the purpose of convenience this research paper is prorated into three parts. First part is concerned with the law as applicable to UK, second part deals with Indian law and last part deals with the epilogue.

II. Concept of Single Member Company in United Kingdom

Prior to the passing of Brexit deal, UK had a primary place amidst the 28th Member states of the European Union (*hereinafter* referred to as the EU) and was

⁴ Report: *Bhabha Committee Report on Company Law Committee* 1952, Ministry of Law.

⁵ LAW TEACHER, (last visited on Jan 21, 2021), <https://www.lawteacher.net/free-law-essays/business-law/uk-companies-act-2006-an-appropriatemodel-businesslaw-essay.php>.

subject to EU laws.⁶ The EU⁷ made laws for UK by two methods *i.e.*, by passing regulations (*hereinafter* referred to as the EU Regulations) and directives (*hereinafter* referred to as the EU Directives). These EU Directives were like the Directive Principles of State Policy in India as they just set out the aims for a member state to achieve, they don't specify the method of achieving it, so they require specific implementation by UK Parliament to take effect while EU Regulations enjoyed a superior status as they apply directly without the need for any legislative mandate from UK Parliament. Apart from it, the decisions of the EU nodal agency *i.e.*, the Court of Justice equivalently applied to UK, the subject matter of which only pertains to the interpretation of EU Laws.⁸

On analyzing the official data from the House of Commons Library, one can find that approximately 62% laws in UK are of EU. This figure is not exactly quantitative keeping in view of the fact that the House of Common itself explicitly states that there doesn't exist any appropriate way to make these calculations.⁹ But since the end of withdrawal agreement transition period only the companies

⁶ The United Kingdom joined the European Economic Community on Jan. 1, 1973 with Denmark and Ireland. For details see: *UK IN CHANGING EUROPE*, <http://ukandeu.ac.uk/fact-figures/when-did-britain-decideto-join-the-european-union/> (last visited on Jan. 10, 2021).

⁷ European Union began after World War II to foster economic co-operation, with the idea that countries which trade together were more likely to avoid going to war with each other. It has since grown to become a "single market" allowing goods and people to move around, basically as if the member states were one country. It has its own currency, the euro, its own parliament and it now sets rules in a wide range of areas - including on the environment, transport, consumer rights and even things such as mobile phone charges. For details see: BBC NEWS, (last visited on Feb. 12, 2021), <https://www.bbc.com/news/uk-politics-32810887>.

⁸ *NORTON ROSE FULBRIGHT*, (last visited on Mar. 10, 2021), <http://www.nortonrosefulbright.com/knowledge/publications/136975/brexit-uk-and-eulegal-framework>.

⁹ As per the records available between 1993 and 2014, the Parliament of UK passed 945 Acts of which 231 implemented EU obligations of some sort. It also passed 33,160 statutory instruments out of which 4,283 Implemented EU obligations." These figures only reveal the status of EU directives. But as far as the status of EU regulations is concerned, they get implemented directly. So, as per the data available (1993-2014) in the House of Commons library about 62% of laws of EU applies in UK. For details see: Report: *Report on how much of legislation come from Europe*, House of Lords, 2014.

registered in UK itself will continue others will automatically become overseas registered companies and will be dealt accordingly. Similarly, the companies registered in UK will become third country companies for UK.¹⁰

III. Legal framework as to Single Member Companies in United Kingdom

The United Kingdom Companies Act, 2006 deal with the legal framework of SMC's. This Act is the lengthiest law by the British Parliament comprising of 1300 sections and 16 schedules. It has replaced the Companies Act of 1985 and 1989. It is based on the policy of '*think small company first*' so it became an impetus to provide flexible structure for small companies. It is to be noted that in whole Europe, UK is amongst the easiest country for incorporation of and smooth running of a company pre-eminently, a Limited Liability Company of a single member. Online incorporation prevails, dividends are simple to declare, capital

¹⁰ Under EU law, the legal personality and limited liability status of "third country companies" are not automatically recognised by EU Member States and will need to be carefully considered under any relevant national law or international law treaties. Certain EU jurisdictions (including Germany and Austria) apply a 'seat'-based regime, which will mean that UK-incorporated companies and LLPs which have their central administration or principal place of business in those jurisdictions may find that their separate legal personality is no longer recognised there and that the limited liability of their shareholders is lost. This may mean that consideration needs to be given to incorporating a local entity and transferring the business to that entity or taking other steps to restructure or to localise their operations in such jurisdictions. UK companies with branches in EEA Member States may also now face additional filing and disclosure requirements in relation to those branches in those EEA Member States and local advice should be taken to confirm the position. For details see: LEXOLOGY, (last visited on Jul. 16, 2021), <https://www.lexology.com/library/detail.aspx?g=f094652e-ad34-4eaf-bc38-1649763d4e1f>.

stipulations are slashed and other rules are relaxed too.¹¹ The legal provisions as to SMC's are contained as under:

a) Meaning: SMCs are the companies who have a sole member. These companies can either originally be incorporated as SMC or later become so when all their shares converge into the hands of a single person.¹² In UK, a SMC is generally formed as a single-member private limited company or as a single-member public limited company.¹³ Before 2009 only private companies were allowed to form such companies but by the coming of the UK Companies Act, 2006 and from its effective date of implementation *i.e.*, from October 1, 2009 public companies incorporation by single member also started.

In the Company law statute of UK, the term private limited company is not elucidated properly. It is just mentioned that a company who by its nature is not a public company will be considered as a private company. As to what is meant by a public limited company, the law states, it is a company consisting of a share capital (£ 50,000 allotted share capital)¹⁴ and also its certificate of incorporation must mention that it is a public company".¹⁵ Thereby the elementary distinction between these two entities in UK is that a public company is allowed to make its shares and debentures available to be purchased by the general public. But the rules as applicable to private companies generally delimit the sale of the company's shares.¹⁶ In it the riders as to the offering are that it must be either offered for purchase to the members of the same company or the persons whom the directors of the companies permit. Despite this restraint if the private company

¹¹ELEMENTAL COSEC, (last visited on Mar. 20, 2021), <https://www.elementalcosec.com/2013/06/07/harmonisation-of-eu-single-member-companies>.

¹²The United Kingdom Companies Act, 2006, § 7 No. 46, The Act of Parliament, 2006 (United Kingdom).

¹³*Report: Commission staff working document impact assessment report accompanying the document proposal for a directive of the European Parliament and of the council on Single-Member Private Limited Liability Companies*, 2014 (European Parliament).

¹⁴The United Kingdom Companies Act, 2006, § 763 No. 46, The Act of Parliament, 2006 (United Kingdom).

¹⁵The United Kingdom Companies Act, 2006, § 4 No. 46, the Act of Parliament, 2006 (United Kingdom).

¹⁶The United Kingdom Companies Act, 2006, § 763 No. 46, the Act of Parliament, 2006 (United Kingdom).

still offers its shares to the public, the law considers it as a serious contravention and punish it with criminal consequences.¹⁷

b) Incorporation: SMC can be formed in UK for lawful purposes only by one person by subscription of his nomenclature to the Memorandum of Association (*hereinafter* referred to as the MoA)¹⁸ in addition to the compliance of all other necessary requirements as to its registration.¹⁹ The public as well as the private limited companies by a single member can be incorporated in UK.²⁰ However, it is mandatory for a public limited company to have a capital of £50,000. Out of this at least 25% (£12,500) of capital is to be paid to the Registrar of Companies (*hereinafter* referred to as the RoC) and from him a certificate of commencement of trading²¹ must be obtained before the company starts working.²² As regards Private Company, there is no need of even any minimum share capital. Just the relevant documents have to be delivered to the RoC and a certificate of incorporation thereon must be obtained.

Further, a proper company name has to be verified with the Company House in UK. The chosen name cannot be an existing registered company's name or an existing trade mark. Further, a registered office address must be selected. It

¹⁷ PEARSON, (last visited on Jan. 22, 2018), http://catalogue.pearsoned.co.uk/assets/hip/gb/hip_gb_pearsonhighered/samplechapter/Macintyre%20ess_C10_1.

¹⁸ The United Kingdom Companies Act, 2006, § 8 No. 46, the Act of Parliament, 2006 (United Kingdom).

¹⁹ The United Kingdom Companies Act, 2006, § 7-13 No. 46, The Act of Parliament, 2006 (United Kingdom).

²⁰ In England, Section 7 Sub Paragraph 1 of the Companies Act, 2006 indicates that a company is formed under this Act by one or more persons. Hence, both a private and public companies can be established by a single founder. Another area of law permitting the formation of these forms of companies is the Single Member Private Limited Companies Regulation of 1992. According to Section 1(3A), "...one person may, for a lawful purpose, by subscribing his name to a MoA and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company being a private company limited by shares or guarantee. For details see: DOCPLAYER, (last visited on December 21, 2018), <https://docplayer.net/65466919-Concept-of-single-member-companies-in-the-light-of-eu-harmonization-comparative-analysis-of-serbia-germany-united-kingdom>.

²¹ The United Kingdom Companies Act, 2006, § 763 No. 46, The Act of Parliament, 2006 (United Kingdom).

²² FORMACOMPANY, <https://www.formacompany.com/en/uk/public-limited-company.php> (last visited on Apr. 11, 2021).

can be a home address also but it has to be a physical one. It will be the place where all the official communications can be sent. It must be in same country where the company is registered *i.e.*, a company registered in England can have a registered office address only in England.²³

As regards director, a minimum of one director is required by a private limited company as opposed to public limited which requires two directors.

An application for the registration of the company, MoA and having a statement of compliance, Article of Association (*hereinafter* referred to as the AoA) is to be submitted to the Companies House.²⁴ In UK, there also exists a new format of MoA what is currently known as the ‘association clause’ – where the subscribers declare their will to incorporate a company and consent to take the stated number of shares.²⁵

It is to be noted that there exist three different methods such as electronic software filing with standard fee of £13, paper filing in the IN01 form with the standard fee of £40 or web incorporation service through Companies House’s online portal where the standard fee is £15.²⁶

When the whole of the paper work is final and conclusive, a certificate of new company’s incorporation will be issued. It will depict the nomenclature of the newly incorporated company, its registration number and date of incorporation.²⁷

c) Entry into register: Limited companies with only one member must make an entry in the concerned register thereby.²⁸ The law mandates that details as to the nomenclature and registered address including a declaration that it is an SMC

²³ GOV.UK, (last visited on Apr. 12, 2021), <https://www.gov.uk/limited-company-formation/company-address>

²⁴ GOV.UK, (last visited on Apr. 29, 2021), <https://www.gov.uk/limited-company-formation/memorandum-and-articles-of-association>

²⁵ The United Kingdom Companies Act, 2006, § 8 No. 46, the Act of Parliament, 2006 (United Kingdom).

²⁶ Rajesh Kumar Aggarwal, *A Comparative study of U.K Companies Act, 2006 and Indian Companies Act, 2013*, 4 *IERJ*, 33-36 (2015).

²⁷ GLAZERS.CO., (last visited on Apr. 30, 2021), <https://www.glazers.co.uk/docs/setting-up-a-uk-company.pdf>

²⁸ The United Kingdom Companies Act, 2006, § 8 No. 46, the Act of Parliament, 2006 (United Kingdom).

must be entered into the register whenever a SMC is incorporated by virtue of the Companies Act, 2006. This entry is also to be made in case a company gets converted to a SMC. It can happen when the membership of limited company abates or in case an unlimited company having a single member converts to a limited company on its re-registration. This entry is mandatory and its non-compliance is viewed seriously.²⁹ The ethos of such stringency and compulsory disclosure for both public and private limited liability companies can be traced back to the Twelfth Directive's publicity requirement and the First Council Directive.³⁰

d) Eligibility of a member: Only one shareholder is required. The sole shareholder may manage the company himself or delegate his power whatever is in the best interest of the company. In case of SMC's, the quorum requisite is presence of one member in person or by proxy.³¹

e) Director: In UK, at least one director can form a private company and as regards the public companies, the requisite number is atleast two directors.³² One director must be a natural person, irrespective of the type of the company.³³ Rest

²⁹ Any contravention as to this entry makes one liable for summary conviction to a fine not exceeding level 3 on the standard scale and for continued contravention a daily default fine not exceeding one-tenth of level 3 on the standard scale. For details see: *The United Kingdom Companies Act, 2006*, § 123 No. 46, The Act of Parliament, 2006 (United Kingdom).

³⁰ They state that, the basic documents of the company should be disclosed in order that the third parties may be able to ascertain their contents and other information concerning the company, especially particulars of the persons who are authorized to bind the company. For details see: DOCPLAYER, (last visited on May 10, 2021), <https://docplayer.net/65466919-Concept-of-single-member-companies-in-the-light-of-eu-harmonization-comparative-analysis-of-serbia-germany-united-kingdom.html>.

³¹ Turning on to the Twelfth Directive, Article 4 states that "the sole member shall exercise the powers of the general meeting of the company and all the decisions taken by the sole member shall be recorded in minutes or drawn up in writing. For details see: *The United Kingdom Companies Act, 1985*, § 370 No. 6, The Act of Parliament, 1985 (United Kingdom).

³² *The United Kingdom Companies Act, 2006*, § 154 No. 46, the Act of Parliament, 2006 (United Kingdom).

³³ *The United Kingdom Companies Act, 2006*, § 155 No. 46, the Act of Parliament, 2006 (United Kingdom).

can be individuals or corporate bodies.³⁴ That means in SMC's if there is only a single corporate director, he must be a natural person only (*i.e.*, a human being and must be at least 16 years old)³⁵ and in case of more than one, they can be other corporate bodies such as companies and Limited Liability Partnership (*hereinafter* referred to as the LLP). In case of contravention by a company of any of these rules, the Secretary of State is entitled to instruct the company in this regard.³⁶ Further, there is no restriction on the number of directors which can be appointed in UK.³⁷ Veritably, UK also has the concept of Shadow Directors *i.e.*, a director as per whose directions the other directors are accustomed to act.³⁸ In England directors are duty bound to make reports for every financial year which must indicate to the shareholders an impartial view of the assets and an elucidation of the main hazards and hassles of the company. Besides this, the report has to indicate the principal activities of the company, business review and other relevant issues. If the sole shareholder is a manager, it is advisable that he prepares all these reports for any eventualities. But if he is not a manager and wants to supervise the affairs of his company, the management has to prepare and submit all these documents to him so that the sole shareholder sees the whole review of the company's business activities.³⁹

³⁴ *OFFICE MAKING BUSINESS SIMPLE*, (last visited on June 20, 2021), <https://1office.co/blog/company-registration-non-uk-resident>.

³⁵ The minimum age of Director in UK is 16 years. The Secretary of State may make provision by regulations for cases in which a person who has not attained the age of 16 years may be appointed a director of a company. For details see: The United Kingdom Companies Act, 2006, § 157-158 No. 46, The Act of Parliament, 2006 (United Kingdom).

³⁶ Default in following the directions of the Secretary makes one liable for summary conviction to a fine not exceeding level 5 on the standard scale and for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale. For details see: The United Kingdom Companies Act, 2006, § 156 No. 46, The Act of Parliament, 2006 (United Kingdom).

³⁷ *Supra note 5*.

³⁸ The United Kingdom Companies Act, 2006, § 251 No. 46, the Act of Parliament, 2006 (United Kingdom).

³⁹ The United Kingdom Companies Act, 2006, § 415,416-419 No. 46, the Act of Parliament, 2006 (United Kingdom).

f) Board Meetings: In SMC's only one qualifying person is enough to pass a resolution.⁴⁰ So, a single member present either in person or by proxy can constitute a quorum. If he holds any meeting, he must record it in the minutes. If as a sole member he takes a decision, except by written resolution of the company, he must give a written record of the decision to the company. This is to ensure continuity of records and transparency.⁴¹ Further, as per the Companies Act, 2006 private companies are no longer required to hold annual general meetings. Under the old law, it was possible for a private company to dispense with some of the formalities such as holding annual general meetings or laying accounts only if all the shareholders agreed to this effect.⁴² As regards public companies they are still required to hold an annual general meeting.⁴³

g) Contract by a sole member: A SMC is allowed to make a contract with the one-person member/director of the company by three methods *i.e.*, written contract, terms of contract already entered in the MoA, terms of contract entered in the minute. Any neglect on his part makes him liable for penalty.⁴⁴ Any direct

⁴⁰ The United Kingdom Companies Act, 2006, § 318 No. 46, The Act of Parliament, 2006 (United Kingdom).

⁴¹ *THE NATIONAL ARCHIVES*, (last visited on Apr. 21, 2021), <https://webarchive.nationalarchives.gov.uk/20090607085536/pdf>.

⁴² ASSOCIATION OF PUBLISHERS OF ONLINE LEGAL DOCUMENTS, (last visited on Mar. 10, 2021), <http://www.apod.org.uk/articles/the-real-implications-of-the-companies-act-2006-on-small-businesses>.

⁴³ Public Companies must do hold annual general meeting within seven months of the end of the financial year. This period will be shortened to six months after a transitional period. The notice period for an annual general meeting of a public company will continue to be 21 clear days. For details see: K & L GATES, (last visited on May 12, 2021), <http://www.klgates.com/the-companies-act-2006---resolutions-and-meetings-09-18-2007/>

⁴⁴ Failure to do this makes one liable for summary conviction to a fine not exceeding level 5 on the standard scale. For details see: The United Kingdom Companies Act, 2006, § 231 No. 46, The Act of Parliament, 2006 (United Kingdom).

or indirect interest in the transaction must also be declared⁴⁵ in writing or by way of minutes⁴⁶ by the director to other director.

h) Requirement of a Company Secretary: A private company in UK is not required to have a Company Secretary. This exemption has made it cheap and easy for small entrepreneurs to do their businesses. Under the old law also, private companies were able to have a sole director as company secretaries since 1992.

i) Dissolution of Companies: In England, the dissolution of a company can be either voluntary or compulsory. A company may be dissolved on the application of the company or any of its directors.⁴⁷ The RoC can also dissolve the company provided a reasonable ground exists to believe that a SMC is either not carrying on business *i.e.*, it has become dormant or is not in operation properly.⁴⁸

j) Piercing the corporate veil: SMCs in essence are also enclosed with certain unavoidable issues. It may be that the shareholder may not maintain a clear-cut separation of the financial identity of the company assets from his personal asset or it may fail to have honest and accurate accounts of the company. It may also include the circumstances under which a corporate capital may be used for private purposes and the company may be established to defraud creditors. In such situations, the single shareholder must remember that he has certain duties when he does business with this form of a company. Of all the duties, the pre-eminent is that he has to respect the separate nature of the business and thereby the integrity of these companies and is duly prohibited from engaging in business whose main objectives are to defraud third parties. It is the conviction of the law maker that 'the shareholder must respect the law as it is and in the event that he transgresses the law, the UK law immediately declares it as an abuse of the

⁴⁵ If the director of a company is in any way, directly or indirectly interested in a transaction or arrangement that has been entered into by the company he must declare the nature and extent of the interest to the other directors. For details see: The United Kingdom Companies Act, 2006, § 182 No. 46, The Act of Parliament, 2006 (United Kingdom).

⁴⁶ The United Kingdom Companies Act, 2006, § 186 No. 46, the Act of Parliament, 2006 (United Kingdom).

⁴⁷ The United Kingdom Companies Act, 2006, § 1003 No. 46, the Act of Parliament, 2006 (United Kingdom).

⁴⁸ The United Kingdom Companies Act, 2006, § 1000 No. 46, the Act of Parliament, 2006(United Kingdom).

existing corporate law and impose liability regime, civil and criminal, that can effectively deter such abusive behaviours of sole shareholders. As regards civil liability, the highest civil liability is piercing the corporate veil.⁴⁹

k) Taxation: Every Limited Liability Company must register for Corporation tax with Her Majesty's Revenue and Customs (HMRC). Since April 1, 2016 the Corporate Tax for Profits is 19%. Besides the Corporation Tax, there are Value Added Tax and Capital Tax for Gains.⁵⁰

III. Data

As far as the quantitative data regarding the total number of SMC's is concerned, it is problematic to get its exact figures in UK since SMC's are not distinct companies for data collection and thereby are not autonomously recorded in the Business Registers of UK. These SMCs usually belong to Small and Medium Sized Enterprises (*hereinafter* referred to as the SMEs). These SMEs fall into three categories in UK *i.e.*, "Micro having 0-9 employees, Small having 10-49 employees and Medium having 50-249 employees. The last available record on SMC's is at the commencement of 2020 when there were 5.94 million small businesses (with 0 to 49 employees), 99.3% of the total business. SMEs account for 99.9% of the business population (6.0 million businesses). SMEs account for three-fifths of the employment and around half of turnover in the UK private sector. The UK private sector business population is made up of 3.5 million sole proprietorships (59% of the total), 2.0 million actively trading companies (34%) and 414,000 ordinary partnerships (7%) in 2020". Thereby, the private sector of UK seems to be essentially subjugated by small employers and non-employing businesses.⁵¹

⁴⁹ SSRN, (last visited on June 20, 2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2193070.

⁵⁰ UK Corporation Tax Rate 2018-2019. For details see: GOV.UK, (last visited on June 21, 2021), <https://www.gov.uk/government/publications/rates-and-allowances-corporation-tax/rates-and-allowances-corporation-tax#corporation-tax-rate>

⁵¹ *Report: Report on Business Population Estimates for UK and the region*, 2018 (UK's Department for Business, Energy and Industry Strategy).

IV. Legal Framework of One Person Company in India

The legal framework of OPC in India is contained in the Act of 2013 and various rules appended with it. So, for proper synchronization a study of diverse rules combined with the new law is undertaken herewith and the relevant legal framework is explained below:

a) Meaning: As per section 2(62) of the Act of 2013 an OPC refers to a company having only single person as a member. It will be a private limited company having no limit on minimum paid up share capital.⁵² So, it is a company where a single shareholder holds 100% shareholding. It is also specified that OPC can be a company limited by shares or guarantee or unlimited company.⁵³ A company by its nature is called limited by guarantee when the liability of its members is fixed and limited by the MoA to only that amount which the members bound themselves to contribute to the assets of the company in the event of its being wound up.⁵⁴ Similarly, a company limited by shares also limits the liability of its members by the MoA to an amount which is unpaid on the shares respectively held by them.⁵⁵

b) Incorporation of One Person Company: The Act of 2013 and the Companies (Incorporation) Rules, 2014 includes provisions for formation of OPC's in India. OPC can be incorporated by an Indian citizen for lawful purposes but not for charitable purpose.⁵⁶ It can only be a private company. The process of incorporating OPC is simpler if correlated to private and public limited companies. There are many relaxations in terms of legal complexities involved in incorporation of OPC under the Act of 2013.⁵⁷ An application in Form No. INC.2 for incorporation shall be filed complying with the requirements of the Act of

⁵² The words of 'one lakh rupees or such higher paid-up share capital' omitted by Act 21 of 2015, S. 2 (*w.e.f.* May 29, 2015). For details see: The Indian Companies Act, 2013, § 2(68) No. 18, The Act of Parliament, 2013 (India).

⁵³ The Indian Companies Act, 2013, § 3(2) No. 18, the Act of Parliament, 2013 (India).

⁵⁴ The Indian Companies Act, 2013, § 2(21) No. 18, the Act of Parliament, 2013 (India).

⁵⁵ The Indian Companies Act, 2013, § 2(22) No. 18, the Act of Parliament, 2013 (India).

⁵⁶ The Companies (Incorporation) Rules, 2014, Rule 3, Central Government, 2014 (India).

⁵⁷ Neha Yati and Krusch. P. A, *One Person Company in India*, 2INT. J. LAW LEG., 4-38 (2015).

2013 in respect of registration⁵⁸ with the Registrar within whose jurisdiction the registered office of the company proposed is situated along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014.⁵⁹ It must be noted that at the time of incorporation the availability of the proposed name for the company will be cross checked by the RoC. A Director Identification Number (DIN) will be assigned to each director and an application will also lie to obtain digital signature for each director. A properly drafted AoA accompanied with the MoA containing objectives of the OPC will be filed with the Registrar. A name of nominee supplemented with his written consent is to be filed with the Registrar. Once the paper work is complete, the Registrar within a time span of seven days of receiving of documents will grant a certificate of incorporation, after which the OPC can start the business.⁶⁰

c) Name of One Person Company: The law mandates that OPC shall paint or affix its name outside its registered office for clear identification and transparency. In case of the seal of the papers, bill-heads, other official publications and in all its notices, the name of company, its address, corporate identity number along with telephone number, e-mail must be mentioned. Wherever the name of OPC is required to be printed or engraved the words “One Person Company” shall be mentioned in brackets below the name of such company. It is a mandatory requirement with the sole objective to distinctly tell the other party that he/she is dealing with a single member private limited company.⁶¹

d) Eligibility of member: A natural person only (*i.e.*, artificial juristic personalities are excluded) who is an Indian citizen or otherwise and resident in India for 120 days in the immediately preceding calendar year can incorporate an OPC.⁶² Apart from that, a person is not permitted to incorporate more than one OPC's and be a member in more than one OPC. As regards the status of minor is

⁵⁸ The Indian Companies Act, 2013, § 3 No. 18, the Act of Parliament, 2013 (India).

⁵⁹ The Companies (Incorporation) Rules, 2014, Rule 12, Central Government, 2014 (India).

⁶⁰ RAJKUMAR AND RISHABH, ALL YOU WANT TO KNOW ABOUT ONE PERSON COMPANY, 155 (Bharat Law House Pvt. Ltd. 2014).

⁶¹ The Indian Companies Act, 2013, § 12 No. 18, the Act of Parliament, 2013 (India).

⁶² The Companies (Incorporation) Rules, 2014 *amended by* the Second Amendment, 2021, Rule 3, Central Government, 2014 (India).

concerned, he can neither incorporate nor become member of OPC. He is also barred from holding any beneficial interest in an OPC. In case of any violation of these rules by OPC or any officer of OPC, a fine extending to ten thousand rupees can be imposed on it. If the contravention still continues then further fine of one thousand rupees can be imposed on it for each day during which the contravention continues.⁶³

e) Requirement of a Nominee: To ensure the perpetual succession of OPC, the law has mandated the appointment of a nominee. Section 3 of the Act of 2013 read with Rule 4 of the Companies (Incorporation) Rules, 2014 mandates that a name of nominee with his previous consent in writing must be mentioned in MoA and Form No. INC.3 while filling for incorporation. A nominee must be a human being, Indian citizen, resident of India⁶⁴ and willing to work for the company in case of sole member's death or incapacity to contract. Withdrawal by nominee of his consent and change of nominee by the member is also possible. In both cases, a new nominee is to be appointed within fixed time and the change has to be notified to the Registrar. Further, in case of a sole member of OPC becomes nominee in another company then on first company's sole member death or incapacity to contract, the nominee become a new member so he has to elect to continue either as a member of new company or earlier company with 180 days. This must be done as the law mandates that a person to be a member in only one company at a particular moment. Herein also, in case of violation of any of these provisions by company or any officer of OPC, a fine extending to ten thousand rupees can be imposed on it. If the contravention still continues then further fine of one thousand rupees can be imposed on it for each day during which its contravention continues.⁶⁵

f) Appointment of Directors: The law as to the appointment of directors is covered under Chapter XI of the Act of 2013⁶⁶ and the Companies (Appointment and Qualification of Director) Rules, 2014. Every OPC should have at least one

⁶³ The Companies (Incorporation) Rules, 2014, Rule 5, Central Government, 2014 (India).

⁶⁴ The Companies (Incorporation) Rules, 2014, Rule 3, Central Government, 2014 (India).

⁶⁵ *Supra note 79.*

⁶⁶ The Indian Companies Act, 2013, § 149 - 172 No. 18, the Act of Parliament, 2013 (India).

director. It can have a maximum of fifteen directors. In case there is more than one director, at least one director must have resided in India for approximately one hundred and eighty-two days in the previous calendar year.⁶⁷ If there is no provision for appointment of the first director in the AoA of the company, the sole member by fiction of law will become its first director until the other directors are appointed.⁶⁸ The directors of OPC must satisfy the provisions relating to qualification. The duties of directors in an OPC are similar to any other company.

g) Board Meetings of One Person Company: Chapter XII of the Act of 2013⁶⁹ and the Companies (Meetings of its Board and its Powers) Rules, 2014 covers the meetings of Board and its powers. Generally, a company should have at least four meetings of Board of Directors. But in case of OPC, it is enough if at least one meeting is conducted in six months and the interval between the meetings must be of 90 days atleast. The provision with regard to meeting and quorum is not applicable in case there is only one director.⁷⁰ The quorum for a meeting of the Board of Directors of a company (in case there are more members) should be 1/3rd of sheer membership or two directors. The virtual presence of directors by video conferencing or by other audio visual is also allowed and constitute quorum.⁷¹ There is no provision for annual general meeting⁷² and extra ordinary general meeting⁷³ in an OPC.

h) Annual Return can be authenticated by the Director alone: Section 92 of the Act of 2013 states that all the companies incorporated under the law are required to prepare an annual return of income to be signed by the director and company secretary and in case, there is no permanent company secretary, by any practicing company secretary. However, exemption is given to OPC in this regard as there is no need of a company secretary in OPC and only director can sign the annual return. Thus, even the financial statement of an OPC can be signed only by single director and later be submitted to the auditor. With this, a report of Board

⁶⁷ The Indian Companies Act, 2013, § 149 No. 18, the Act of Parliament, 2013 (India).

⁶⁸ The Indian Companies Act, 2013, § 159 No. 18, the Act of Parliament, 2013 (India).

⁶⁹ The Indian Companies Act, 2013, § 173-195 No. 18, the Act of Parliament, 2013 (India).

⁷⁰ The Indian Companies Act, 2013, § 173 No. 18, the Act of Parliament, 2013 (India).

⁷¹ The Indian Companies Act, 2013, § 174 No. 18, the Act of Parliament, 2013 (India).

⁷² The Indian Companies Act, 2013, § 96 No. 18, the Act of Parliament, 2013 (India).

⁷³ The Indian Companies Act, 2013, § 100 No. 18, the Act of Parliament, 2013 (India).

of Directors is also attached which is generally a report comprising explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report.⁷⁴ It is to be noted that OPC is also exempted from preparing cash flow statement *i.e.*, the financial statement of an OPC exclude cash flow statement.⁷⁵

i) Status as to business conducted during Annual General Meetings: OPC is dispensed with the holding of an annual general meeting, so any business which is the subject matter of such meeting can be transacted just by entry in the minute book and by signing it. The date mentioned in the minute book will be considered as the date of the meeting. There is no applicability of ordinary or special resolution in case of an OPC.⁷⁶ Maintaining a minute book is mandatory.⁷⁷

j) Conversion of or into One Person Company: As per section 3 of the Act of 2013 an OPC may be formed by one person and its legal status is that of a private company. Further, section 18 of the Act of 2013 facilitates conversion of a company of one class registered under this Act into a company of another class. Accordingly, a company which is not an OPC can be converted into an OPC and vice-versa.⁷⁸ OPC can be converted into private or public company just by raising the minimum number of members to two or seven and directors to three without any stringency as to paid-up share capital and average annual turnover during relevant period.⁷⁹

k) Contract by sole member with One Person Company: An OPC is allowed to make a contract with the one-person member/director of the company by three methods *i.e.*, written contract, terms of contract already entered in the MoA, terms of contract entered in the minutes. It is an incumbent duty of the company to

⁷⁴ The Indian Companies Act, 2013, § 134 No. 18, the Act of Parliament, 2013 (India).

⁷⁵ The Indian Companies Act, 2013, § 2(40) No. 18, the Act of Parliament, 2013 (India).

⁷⁶ The provisions of section 98 and sections 100 to 111 (both inclusive) shall not apply to a One Person Company. For details see: The Indian Companies Act, 2013, § 122 No. 18, The Act of Parliament, 2013 (India).

⁷⁷ The Indian Companies Act, 2013, § 118 No. 18, the Act of Parliament, 2013 (India).

⁷⁸ The Indian Companies Act, 2013, § 18 No. 18, the Act of Parliament, 2013 (India).

⁷⁹ The Companies (Incorporation) Rules, 2014, *amended by* the Second Amendment, 2021, Rule 6, Central Government, 2014 (India).

communicate to the Registrar as to such contract within fifteen days its approval by board.⁸⁰

I) Taxation: OPC being a Private Company is not given any kind of exemption under the Income Tax Act, 1961. So, for taxation, the normal slab rates apply *i.e.*, 25%. Additionally, Minimum Alternate Tax is also applicable as calculated 15% of the book profits of OPC.⁸¹

VII. Data

Since the commencement of OPC's in India, its popularity undoubtedly is increasing as revealed by the last available statistics *i.e.*, till July 31, 2021 in totality 39,672 OPC's got registered with the Union Ministry of Corporate Affairs. The further categorization makes it clear that OPC as a business model is highly preferred form in Business services followed by manufacturing and community, personal and service sector. However, the trading sector shows the least motivation to opt for this model of business.⁸²

VIII. Conceptual Analysis

The conceptual analysis of the SMC vis-à-vis OPC is discussed hereunder:

A. Similarities and Dissimilarities

As stated in the introductory part, the concept of OPC in India owe its progeny from UK law so the similarities are countless. Both in UK and India before this concept of SMC and OPC respectively were formally recognized, there in practice, existed many small businesses being managed by one person having dummy directors *i.e.*, certain 'non-effective' shareholders who use to lent their names without any active role being played by them in running the company. Similarly, after its legal recognition in both countries it is apparent that most of features are alike for instance in both the jurisdictions a solo individual can

⁸⁰ The Indian Companies Act, 2013, § 193 No. 18, the Act of Parliament, 2013 (India).

⁸¹ The Income-tax Act, 1961, § 115BAA No. 43, the Act of Parliament, 1961 (India).

⁸² Report: *Monthly Information Bulletin on Corporate Sector, July, 2021* (Ministry of Corporate Affairs, Government of India).

incorporate such companies and he will be laced with the protection of limited liability.

Analogues to India, a limited company in UK is one in which the pecuniary obligations of its members are fixed and limited by its constitution. It can be incorporated either as a company which is limited by shares or by guarantee.⁸³ In both the jurisdictions there is no minimum capital requirement. Even as regards resolution single qualifying person is enough to pass such resolution and alike India, directors in UK are accountable for proper running of the company and for ensuring the preparation of accounts and reports. There is no residency requirement for being a director in UK, the only being a registered office address in UK itself.⁸⁴ Unlike public limited companies, there is no need to appoint a Company Secretary in case of private limited companies.⁸⁵ Further, both in India and UK the contract between the company and the sole shareholder has to be in writing. This provision rules out any possibility to defraud creditors unaware of separate legal personality of the company.

Regarding the dissimilarities, the foremost is regarding origin. The EU introduced certain regulations in 1992 which applied directly to UK and allowed a single member to form a private limited company.⁸⁶ Then UK passed the Companies Act, 2006 which extended the horizons of SMC's. Before 2006, only private limited companies could form SMC. But now both public and private companies can be formed by a single member.⁸⁷ It is to be noted that this inclusion of private

⁸³ As regards companies which stand limited by shares, "it means that in the event of liquidation of the company a member's liability is limited to paying off any amount unpaid on his or her shares". In case of Companies limited by guarantee, "the liability of members of companies limited by guarantee is restricted to paying an amount which they have agreed to pay in the event of the company going into liquidation". For details see: *The United Kingdom Companies Act, 2006, § 7 No. 46, The Act of Parliament, 2006 (United Kingdom).*

⁸⁴ *GOV.UK*, (last visited on June 30, 2021), <https://www.gov.uk/limited-company-formation/shareholders>

⁸⁵ *GOV.UK*, (last visited on June 28, 2021), <https://www.gov.uk/limited-company-formation/appoint-directors-and-company-secretaries>

⁸⁶ The Companies (Single Member Private Limited Companies) Regulations, 1992, No. 1699, the European Communities Act, 1972, 1992 (United Kingdom).

⁸⁷ The United Kingdom Companies Act, 1985, § 7 No. 6, the Act of Parliament, 1985 (United Kingdom).

companies headed by single man was made possible by an amendment made in section 1 of the 1985 Act. These amendments were strongly backed by the Companies (Single Member Private Limited Companies) Regulations 1992, which itself was an aftermath of the European Directive 89/667.⁸⁸ And, as regards India this concept was technically introduced in policy making by Dr. J.J Irani Committee report in May, 2005 and later formally recognized by the Act of 2013. So, its origin in India is quite recent in comparison to UK. Apart from it was observed that in UK, the minimum age of director is 16 years⁸⁹ as opposed to India where it stands as 18 years.⁹⁰ Unlike India, there is no nationality or residence requirement for a Director in UK. Technically, the major difference that exists is not regarding the incorporation and functioning of OPC but the tax structure. Undoubtedly, the Government of India has tried its best to incentivize the OPC's in India and has been quite liberal in its formation and carrying but tax structure in both the countries is quite dissimilar as in UK its pro-people.

B. Single Member Companies are in better position than One Person Company

An analysis of UK and Indian structure highlights that private limited companies are more preferred and successful in UK than India because taxation structure of UK is quite cost effective than India. In UK, the tax structure has been crafted in such a way that the tax rates for an individual (as a sole trader or partnership) are high but for a company they are less. So, it is wise, not weak, to admit that OPC as a model is lagging much behind in India as compared to UK. Its potential is

⁸⁸ David Ricardo Sotomonte Mujica, Partnerships and Companies: A Comparative Approach To UK Business Organisations, 3 REVIST E – MERCATORIA J, 1-14 (2004).

⁸⁹ JORDANS.CO.UK, (last visited on July 21, 2021), <https://www.jordans.co.uk/company-formations/private-limited-company>.

⁹⁰ A minor is not competent to contract. According to Palmer's Company Law, "Directors are, in the eye of law, agents of the company for which they act, and the general principles of law of principal and agent regulate in many respects the relationship of the company and its directors". Under section 184 of the Indian Contract Act, 1872, a person who is not the age of majority cannot become an agent. In consequence a minor cannot be appointed to an office of director of a company. For details see: *CACLUBINDIA*, (last visited on July 21, 2021), <https://www.caclubindia.com/forum/age-limit-for-directors-pvt-ltd-107314.asp>.

still unexplored and existence among small entrepreneurs is latent. To enhance its effectiveness, it must be brought to the mainstream in India and indeed the foremost change by the legislature must be done in the taxation structure. The meager tax slab rates for OPC must be introduced which will encourage the sole proprietors to convert their business into OPC and let them enjoy the benefit of limited liability. The large number of newly incorporated OPC's among the smallest businessman will attract attention of rest of the population. It will become an example for others to follow. A new dawn of corporatization in India will emerge with new actors trying their luck, hard work, leadership skills thereby creating employment and balancing wealth. This will in turn help in realization of the true notions of economic equality and democracy in India. So, it's the high time that OPC's should be laced with more subsidies and taxations benefits so that it can uplift small entrepreneurs in entirety and organize the unorganized sector.

IX. Conclusion

It is thereby concluded that by virtue of this paper a successful attempt is made to trace the trajectory of OPC in India and its counterpart SMC in UK. A thorough analysis of both of these models which aim to uplift the smallest entrepreneur in the economy shows both these models in their own territorial jurisdiction are not only iron clad weapons but effective steel frameworks for the small businesses bringing them out from the stage of phoenix. Streamlining the entrepreneurs by the concerned governments actually will act as a great motivation for the individuals also making them able to work hard using their highest potential. Now they will step into the shoes of 'job-creators' instead of 'job-seekers'. This transition will bring out a whole new vibrating and radiant era where not only the individual will flourish but his family and also the families of those employed by him. Competition will increase too and businesses will no longer remain big companies' dominion and labour will also be treated fairly. Mutual trust and fiduciary relationship will reach its zenith, in turn causing an absolute shift in societal structure. If we talk about UK, we may say UK has already reached such stage as revealed by data mentioned beforehand which highlights the fact that 'UK economy in large share consist of flourishing small businesses'. So, as regards India we have just started and trying hard to incentivize OPC's. Thus, we can say India is on the way right now and destination is yet to be reached. Once

reached, India will see a new dawn of corporatisation and economic justice will be reality of that time and no more only an aspiration of Constitution makers!