One Person Companies

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In an era of startups, gig economy and Atmanirbharta, entrepreneurial ventures sound like a great idea. Besides, with Covid shocks shrinking businesses and leaving people jobless, it has become all the more compelling to start a venture based on one's own ideas.While starting a small business sounds simple, it can give considerable stress to a person doing it all alone. The recent changes made to One Person Company set up are geared towards this problem.

In news: Budget 2021: Govt to incentivise incorporation of One Person Companies
Placing it in syllabus: Economy
Dimensions

- One Person Companies, Sole Proprietorship and Private Companies
- History of OPCs
- New Measures Under the Budget and their Importance

Content:

One Person Companies, Sole Proprietorship and Private Companies:

Sole Proprietorship

- A sole proprietorship is an **unregistered business** with a **sole owner** who pays personal income tax on profits earned from the business.
- It is the **easiest form of business with very less government regulation**.
- Forming sole proprietorships is popular among individuals, self-contractors consultants, small business owners, etc.

- The word ‘sole’ stands for single and ‘proprietorship’ signifies ownership.
- A sole proprietorship is accepted as one of the most common simplest and oldest forms of business entity.
- It is **controlled and owned by one person only** and the person running it is known by the name of ‘sole proprietor’ or a ‘sole trader’.
- A sole proprietorship has no difference between the business entity and its owner, i.e., the owner of the business is also known as a sole proprietor.
- It is therefore very different from limited partnerships and corporations, as there is **no creation of a separate legal entity.**
- As a result, the owner of a **sole proprietorship has unlimited liability** acquired by the entity. For instance, the creditors of the sole proprietorship are also the creditors of the owner.
- However, sole proprietorship has an added advantage too, that is all profits flow directly to the owner of a sole proprietorship.

Private Companies

- A Private Limited Company in India is governed by Companies Act, 2013
- The private limited company is a company where shares of the company are owned privately and not offered for sale to the public.
- Its **liability is limited to the extent of their shares**.
- It is **a separate legal entity which** has its own assets and liability, it can be sued or can sue, dispose of property of the company.
- Shareholders either can manage the company on their own or hire directors to do the same. The limit on maximum no. of shareholders is 200.
- As there cannot be public trading of shares there is restricted trade of shares. It lowers down the risk of

hostile takeover.

- It has a lower tax burden and rates under the income tax act 1961.
- Board and general meetings to be conducted.
- It has to file Annual Accounts and Annual return with the Registrar of the company every year and also, income tax return has to be filed for it.

One Person Company (OPC)

- One Person Company is a mixture of Sole-Proprietorship and Private Company form of business.
- OPC is a company that can be formed by just one person as a shareholder.
- These companies can be contrasted with private companies, which require a minimum of two members to get going.
- However, for all practical purposes, these are like private companies.
- The Companies Act, 2013 introduced the new concept of One Person Company.
- It enables a person who is carrying on the business in the Sole-Proprietorship firm to enter into a corporate outline with concessional requirements under the Act.
- In the former Companies Act, 1956 a minimum of two shareholders and directors were required to form a private limited company.
- However, with the Companies Act 2013, as per Section 2(62), a company can be formed with just 1 Director and 1 member.
- OPC is a form of a company where the compliance requirements are lesser than that of a private company.
- The concept brought in absurd prospects for sole proprietors and individual entrepreneurs who can take the advantages of Limited liability and corporation.

Basis	Sole Proprietorship	One Person Company
Registration	Not Compulsory	Compulsory
Liability	Unlimited Liability	Limited Liability to the extend of paid up capital
Compliance	It only needs to file annual return	OPC needs to have their books audited, annual filings and inform the RoC in case of any changes in its structure
Legality	Not considered as a separate legal entity	Separate legal entity
Perpetual Succession	Comes to end on death or retirement of the member	OPC continues to exist, even after death or incapacity of member
Taxation	Taxed as an individual	Taxed as Pvt. Ltd. Company
Easy Set up	It is easily set up without any legal formalities	It requires all formalities to be done
Separate Property	Property of owner is the property of business	Property of company is not the property of owner

History of OPCs:

- In India, the concept was introduced in the **Companies Act of 2013**.
- Its introduction was based on the suggestions of the **J.J. Irani Committee Report** on Company Law, which submitted its recommendations in 2005.
- The committee pointed out that there was a need for a framework for small enterprises.
- It also observed that small companies would contribute significantly to the Indian economy.
- However, because of their size, they could not be burdened with the same level of compliance requirements as large public-listed companies.
- It recommended **one-person companies as a solution for these problems.**
- The committee also said OPCs may be provided with a simpler regime through exemptions so that the single entrepreneur is not compelled to fritter away his time, energy and resources on procedural matters.
- The law on one-person companies thus exempted such companies from many procedural requirements, and, in some cases, provided relaxations.
- For instance, such a company does not need to conduct an annual general meeting, which is a requirement for other

companies.

- A one-person company also does not require signatures of both its company secretary and director on its annual returns. One is enough.
- There was, however, criticism that some rules governing a one-person company were restrictive in nature.
- Union Budget 2021 has dealt with some of these concerns.

How many OPCs does India have?

- According to data compiled by the Monthly Information Bulletin on the Corporate Sector, there were 34,235 one-person companies out of a total number of about 1.3 million active companies in India, as on December 31, 2020.
- The number of OPCs was 2,238 (out of a total of about 1 million companies) as on March 31, 2015.
- Data also shows that more than half of the OPCs are in business services.

New Measures Under the Budget:

Removal of restrictions on paid-up capital and turnover:

- Currently, to form such a company, a minimum paid-up capital of Rs 1 lakh is required
- According to the Ministry of Corporate Affairs (MCA) 2014 rule stated that a one-person company would cease to have that status once its paid-up share capital exceeds ₹50 lakh or its average turnover for the preceding three years exceeds ₹2 crore
- These restrictions have been lifted.

Easier conversion of OPCs into other companies:

- Rules regulating the formation of OPCs expressly restrict the conversion of OPCs into Section 8 companies, i.e. companies that have charitable objectives.

- Also, OPCs cannot voluntarily convert into other kinds of companies until the expiry of two years from the date of their incorporation.
- This basically means that when an OPC is incorporated, the conversion into a Private Limited Company cannot happen before two years.
- Now the government has announced that this cap will be removed and that the OPCs will be able to convert into any other type of company at any time.

Overhauling residency limits:

- MCA also defines that to become an eligible member of an OPC, only an Indian citizen, and resident in India is eligible to become a member and nominee of an OPC.
- A resident in India is currently referred to a person who has lived in India for not less than 182 days during the immediately preceding one financial year.
- The budget announcement reduced the residency limit for an Indian citizen to set up an OPC from 182 days to 120 days. This allows NRIs to incorporate OPCs in India

Importance of these changes:

- Simplified regime for one person company will encourage startups and entrepreneurs to do business under a corporate structure in an organised and structured manner that can help them to scale and grow
- Reducing residency limits will incentivize investments from NRIs in startups in India
- the provision on setting up OPCs without the limit of paid-up capital and turnover will add a much-needed boost to the 'Make in India' initiative
- This will also reduce the compliance burden on Start Ups while enabling them to achieve the desired legal status
- this would also boost the gig economy culture across small towns as more women entrepreneurs and homepreneurs will be empowered by this

Mould your thought: What are the differences among Sole Proprietorship, Private Company and One Person Company? List the recent changes made to One Person Companies and indicate their importance.

Approach to the answer:

- Introduction
- Write the differences of Sole Proprietorship, Pvt Company and OPC
- Mention the changes announced in the Budget
- Discuss the impact of these changes on startups and entrepreneurship in India
- Conclusion