

The Dormant Fiduciary: Analyzing the Fiduciary Duties of the "Nominee" in an OPC

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Abstract: The introduction of One Person Company (OPC) in Indian corporate law is a landmark which recognizes micro enterprises and individual entrepreneurial ventures to be made formal in a legal and regulated manner. In the past, company law was mostly focused on the idea of association which meant at least two persons had to get together to form a one private limited company. This was the requirement for private limited companies only; for public limited companies, as many as seven persons had to be involved. These old conditions for incorporation often left a single entrepreneur with no option but to open a sole proprietorship, a business structure which is unprotected in many aspects like limited liability and going concern (perpetual succession). The alternatives were that entrepreneurs brought in the so-called shareholders - even family members with a very small portion of shares - to fulfill legal requirements for a minimum number of members, because of this producing a fake plurality while the entity was, in fact, a single-owner enterprise.

The Ministry of Corporate Affairs, acting on the advice of the Dr. J.J. Irani Expert Committee on Company Law constituted in 2005, after considering this issue, came up with the idea of OPC in the Companies Act, 2013. The purpose behind this legislative change was to enable proprietors to get into the organized corporate sector and Because of this they could avail benefits like institutional finance, top sector lending benefits as per the Reserve Bank of India, limited liability, and perpetual succession, all this even in the absence of bringing a second shareholder. That said, making a corporate entity whose whole ownership lies in one human being only, presents a structural paradox at a deep level.

Keywords: company, gender, dignity, protection, technology

I. INTRODUCTION

The cornerstone of corporate law is the principle of perpetual succession, the idea that the company continues to exist irrespective of the death, bankruptcy, or insanity of its members. How can an entity maintain perpetual succession when its existence is entirely tethered to the mortality and contractual capacity of one individual? To resolve this existential vulnerability, the legislature introduced a statutory bridge known as the "Nominee." Appointed at the very inception of the OPC, the nominee is a contingent successor designated to step into the operational shoes of the sole member in the event of their death or incapacitation.

While the administrative procedures for appointing an OPC nominee are clearly delineated in the governing statutes, the substantive legal position, specifically the fiduciary duties owed by the nominee both prior to and following the triggering event, requires rigorous jurisprudential analysis. The nominee occupies a unique, liminal space in corporate law. During the life of the sole member, the nominee is neither an active shareholder nor a conventional director; they exist as a "dormant fiduciary," bound by latent obligations that activate only upon the occurrence of unforeseen tragedy. This report provides an exhaustive analysis of the legal architecture governing the OPC nominee, the metamorphosis from a dormant placeholder to an active fiduciary, the complex intersection of corporate nomination and personal succession laws, and the intricate dual loyalties the nominee owes to both the corporate entity and the legal heirs of the deceased sole member.

II. SIGNIFICANCE

This study holds profound significance because it unmask the long-held assumption that corporate law and legal rules regulating the corporate form are value-neutral. By challenging the traditional, neoclassical economic setups of corporate law, this research introduces a critical gendered lens to the formation of capital, sharing of risk, and governance of modern corporations.

Macroeconomic Survival: Accelerating and formalizing women's entrepreneurship is shown to be a matter of macroeconomic survival, linked directly to uninterrupted innovation, employment generation, and systemic growth.

Unlocking Potential Global Wealth: It highlights the immense stakes involved, noting that if women participated in the global economy at the same rate as men, global GDP could increase by \$28 trillion (or 26 percent).

Weaponizing Patriarchal Tools: The study is highly significant as it demonstrates how a historically patriarchal legal mechanism, the doctrine of limited liability, can be weaponized as an "entrepreneurial shield" to protect female wealth and lower the gendered "fear of failure" that traditionally keeps women in the informal economy.

III. SCOPE OF THE STUDY

The scope of this paper is situated at the intersection of corporate jurisprudence, macroeconomic policy, and feminist legal theory.

Jurisdictional Focus: The study looks at global models but focuses heavily on India's corporate legal framework, specifically analyzing the operationalization of the One Person Company (OPC) structure under the Companies Act, 2013.

Target Demographic: It evaluates Micro, Small, and Medium Enterprises (MSMEs) spearheaded by solitary/solo women entrepreneurs.

Socio-Legal and Financial Boundaries: The paper limits its analysis to structural impediments (access to venture capital, compliance burdens, trade regulations), procedural legal exemptions (AGM and board meeting relaxations under Indian law), statutory vulnerabilities (the nominee director requirement), and state-sponsored fiscal schemes (Stand-Up India and Startup India).

IV. AIMS AND OBJECTIVES

Aims

The primary aim of this research report is to critically analyze and evaluate the actual success and efficacy of the One Person Company (OPC) as a sustainable vehicle for women's prolonged economic equality, entrepreneurial emancipation, and market access.

Specific Objectives

- To deconstruct the alleged "neutrality" of corporate law using feminist legal frameworks.
- To examine the systemic macroeconomic and socioeconomic frictions (such as unequal labor force participation, venture capital gender biases, and fear of failure) that burden female founders.
- To assess how the application of limited liability to solo founders via the OPC mitigates risk and protects the personal and familial wealth of women entrepreneurs.
- To evaluate the procedural enablements, technological advancements (e.g., SPICe+ web forms), and statutory compliance exemptions provided to OPCs under Indian law.
- To investigate whether the mandatory statutory requirement of appointing a "nominee director" introduces camouflaged patriarchal gatekeeping and shadow control over women-owned OPCs.
- To analyze the synergy between the OPC legal structure and state-subsidized financial schemes like Stand-Up India.

V. HYPOTHESIS

Based on the critical inquiries raised in the text, the paper operates on a dual, tension-based hypothesis:

Primary Hypothesis: The One Person Company (OPC) framework successfully acts as an emancipatory vehicle for female entrepreneurs by offering absolute managerial control, slashing bureaucratic compliance costs, providing a corporate legal identity, and extending a robust protective shield of limited liability that actively lowers the gendered fear of financial failure.

Alternative/Counter-Hypothesis: The emancipatory potential of the OPC is structurally compromised or bottlenecked by deep-seated patriarchal realities; specifically, the statutory prerequisite to designate a "nominee director" forces reliance on male family members, which inadvertently facilitates intra-household gatekeeping, tax evasion practices, and shadow male management.

VI. RESEARCH METHODOLOGY

The study employs a mixed qualitative and quantitative doctrinal approach:

Feminist Legal Theory: Applies Liberal, Dominance, Relational, and Vulnerability theories to analyze institutional corporate power balances.

Doctrinal Jurisprudence: Evaluates statutory laws (Companies Act, 2013), corporate rule amendments, and judicial precedents regarding limited liability and corporate veils (Salomon, Amrit Pal Singh, and Endemol).

Empirical Data Triangulation: Integrates and analyzes secondary quantitative data from global and national bodies, including the Global Entrepreneurship Monitor (GEM), McKinsey Global Institute, the Ministry of Corporate Affairs (MCA), MoSPI, and the Udyam Registration Portal.

The Statutory Architecture and Regulatory Mechanics

The legal framework governing the appointment, eligibility, and procedural requirements of the OPC nominee is primarily enshrined in Section 3(1)(c) of the Companies Act, 2013, read in conjunction with Rules 3 and 4 of the Companies (Incorporation) Rules, 2014.

Unlike traditional corporate structures where succession planning is left to the discretion of the shareholders through private agreements or testamentary wills, the OPC mandates statutory succession planning at the time of incorporation. The sole subscriber to the memorandum of association must nominate an individual to assume control of the company's affairs in the event of the subscriber's death or contractual incapacity. This nomination is not a unilateral declaration; it requires the prior written consent of the nominee in a prescribed format, specifically Form INC-3. This consent, along with the nominee's identity and address proofs, must be filed with the Registrar of Companies (RoC) alongside the primary incorporation documents via the SPICe+ portal.

To ensure that the nominee is legally capable of assuming the regulatory responsibilities of managing an Indian corporate entity, the Ministry of Corporate Affairs established stringent eligibility criteria. The regulations mandate that only a natural person, a living human being, who is an Indian citizen can be appointed as a nominee. Consequently, artificial legal entities, such as trusts, private limited companies, or limited liability partnerships, are strictly barred from acting as nominees. Furthermore, the nominee must possess the full legal capacity to contract; a minor is explicitly prohibited from becoming a member or a nominee of an OPC, nor can a minor hold shares with a beneficial interest.

The regulatory landscape regarding residency has evolved to accommodate global mobility. Initially, the rules required the nominee to be a "resident in India," defined as having stayed in the country for at least 182 days in the preceding financial year. However, recognizing the potential for foreign investment and the needs of the diaspora, the Companies (Incorporation) Second Amendment Rules, 2021, significantly relaxed these provisions. Non-Resident Indians (NRIs) are now permitted to incorporate OPCs and act as nominees, with the residency threshold reduced to a mere 120 days. The 2021 amendments also removed previous restrictions that forced an OPC to convert into a private limited company if its paid-up capital exceeded fifty lakh rupees or its average annual turnover exceeded two crore rupees, thereby allowing OPCs to scale indefinitely without losing their single-member structure.

To prevent the proliferation of single-individual monopolies operating through multiple opaque entities, the rules impose a strict anti-concentration framework. A natural person cannot be a member of more than one OPC, nor can they serve as a nominee in more than one OPC at any given time. If a nominee inadvertently becomes a member of a second OPC by operation of law, for example, due to the death of the primary member, they are granted a statutory grace period of 180 days to rectify the dual membership and withdraw from one of the entities.

The legislative design also incorporates procedural flexibility, recognizing that relationships and personal circumstances change. A nominee retains the right to withdraw their consent at any time by issuing a written notice to the sole member and the OPC. Upon receiving this withdrawal, the sole member is legally obligated

to nominate a replacement within fifteen days. The company must then file a notice of this change with the RoC using Form INC-4, accompanied by the new nominee's written consent in Form INC-3, within thirty days of the original withdrawal notice. Similarly, the sole member possesses the unfettered right to revoke the nomination and appoint a new nominee at their discretion, following the same procedural filings.

The Anatomy of a Dormant Fiduciary

To accurately analyze the fiduciary duties of an OPC nominee, it is intellectually critical to bifurcate their tenure into two distinct phases: the "dormant phase," which spans the active life and contractual capacity of the sole member, and the "active phase," which begins immediately upon a triggering event.

During the dormant phase, the nominee functions essentially as a contingent successor. Until the triggering event occurs, the nominee possesses absolutely no ownership rights, no management responsibilities, no voting power, and no entitlement to corporate dividends. In traditional corporate law jurisprudence, a fiduciary duty generally arises from a relationship of trust, confidence, and the exercise of active control over the assets or affairs of another entity. Because the dormant OPC nominee wields zero control over the company's day-to-day operations or strategic direction, the traditional directorial fiduciary duties of care, skill, diligence, and loyalty, as codified under Section 166 of the Companies Act, 2013, do not formally attach to them in this phase.

However, the concept of a "dormant fiduciary" is recognized within broader equitable principles and common law. By executing Form INC-3, the nominee expressly consents to assume a position of profound trust should an emergency arise. This anticipatory acceptance implies a latent, negative obligation: the duty not to act in a manner that would actively sabotage the corporate entity they are legally slated to protect. For instance, if a nominee were to exploit highly confidential trade secrets regarding the OPC to build a competing business while waiting for the sole member to pass away, equitable principles surrounding the breach of confidence and the doctrine of corporate opportunity could arguably be invoked against them. As articulated in international jurisprudence, such as *Foster Bryant Surveying Ltd v. Bryant*, the doctrine of corporate opportunity restricts fiduciaries from diverting business for personal gain, and a dormant nominee leveraging insider knowledge would violate the fundamental spirit of their contingent appointment.

Thus, during the dormant phase, the nominee acts as a passive custodian of a future promise. Their primary legal obligations are procedural and negative: to notify the sole member immediately if they wish to withdraw their consent or if they lose their statutory eligibility, such as by renouncing their Indian citizenship, and to abstain from prejudicing the company's interests.

The Trigger Event and the Metamorphosis of Control

The metamorphosis of the nominee from a dormant placeholder to an active fiduciary is triggered instantaneously by operation of law upon the death or contractual incapacitation of the sole member.

The transition of corporate control in an OPC bypasses the traditional frictions associated with standard private limited companies. In a standard company, the transfer of shares upon death requires the execution of a share transfer deed (Form SH-4), the payment of appropriate stamp duty, and formal registration by the board of directors. Conversely, in an OPC, the process is one of transmission rather than transfer. The nominee automatically steps into the shoes of the deceased, becoming the sole member of the OPC and assuming all the attendant rights, liabilities, and responsibilities of corporate ownership. This automatic vesting mechanism is designed to prevent the corporate entity from being paralyzed by legal delays, ensuring that the company

remains operational without the immediate necessity of procuring lengthy probate orders or succession certificates from civil courts.

Upon assuming this control, the newly minted member is thrust into an active fiduciary role accompanied by immediate statutory deadlines. The law mandates that within fifteen days of becoming a member, they must designate a new nominee to ensure the unbroken chain of perpetual succession. The OPC must then file an intimation of the cessation of the former member and the appointment of the new nominee with the Registrar using Form INC-4, accompanied by the new nominee's consent in Form INC-3, within thirty days of the change.

At this juncture, the nominee is responsible for handling all secretarial work, approving legal and court documents, ensuring ongoing commercial contracts are honored, and protecting the interests of the company's creditors and employees. If the deceased member was also the sole director, which is the standard practice, the active nominee typically appoints themselves or another qualified individual as the director to manage the daily operations, thereby fully activating their fiduciary duties.

In scenarios where the nominee wishes to protect the company's assets but does not intend to actively run the business, perhaps while awaiting the legal heirs to resolve a succession dispute, the nominee can strategically leverage Section 455 of the Companies Act, 2013. By filing Form MSC-1, the nominee can transition the OPC into a "Dormant Company". This status allows the entity to remain legally incorporated to protect intellectual property, brand names, or real estate assets without the heavy burden of annual financial filings and audits, pending a final resolution of ownership.

The Intersection of Corporate Nomination and Succession Law

The most legally complex and highly litigated dimension of the OPC nominee's active phase is determining the ultimate beneficial ownership of the company's shares. When the nominee steps in and assumes operational control, do they become the absolute owner of the corporate wealth, effectively disinheriting the deceased member's spouse, children, or legal heirs?

This critical question lies at the contentious intersection of corporate statutory nomination mechanisms and the personal laws of succession. For decades, Indian courts grappled with whether a statutory nomination under the Companies Act acts as a "statutory testament" that overrides a Will or the laws of intestate succession. The confusion historically stemmed from the aggressive language of Section 109A of the Companies Act, 1956, which was later re-enacted as Section 72 of the Companies Act, 2013. The statute stated that a nominee "shall be the owner of the instrument in the event of death of the holder" and contained a non-obstante clause that seemingly overrode other laws in force.

This legislative ambiguity led to a stark division in judicial interpretation, characterized by the conflict between the Kokate and Salgaonkar judgments. In the 2010 case of Harsha Nitin Kokate v. The Saraswat Co-operative Bank Limited, the Bombay High Court interpreted the provision literally, concluding that a valid corporate nomination completely overrides the laws of succession, thereby vesting absolute beneficial ownership of the shares in the nominee to the exclusion of any legal heirs. However, five years later in Jayanand Jayant Salgaonkar v. Jayshree Jayant Salgaonkar, a different bench of the Bombay High Court declared the Kokate judgment per incuriam, decided without proper reference to binding statutory authority, and ruled that a nominee is merely a trustee holding the shares for the rightful legal heirs.

The debate was definitively and authoritatively settled by the Supreme Court of India in the landmark 2023/2024 judgment of Shakti Yezdani & Anr. v. Jayanand Jayant Salgaonkar & Ors.. The apex court upheld the Salgaonkar view, establishing an irrefutable legal paradigm that fundamentally defines the fiduciary duty of any corporate nominee, including an OPC nominee.

The appellants in Shakti Yezdani argued that a corporate nomination created a "third line of succession" or a "statutory testament" that bypassed traditional estate planning. The Supreme Court dismantled this argument by referencing established jurisprudence, specifically the ruling in Sarbati Devi v. Usha Devi, which established that life insurance nominees are merely agents to collect the money on behalf of the estate. The Court observed that a corporate nomination entirely lacks the stringent evidentiary formalities and safeguards required for the execution of a valid Will, and therefore cannot be used as a backdoor mechanism to circumvent succession laws.

Furthermore, the Court clarified the true legislative intent behind the phrase "vesting" and the inclusion of the non-obstante clause. These provisions were not designed to confer absolute title upon the nominee. Rather, their purpose is highly restricted and operational: to grant the company a "legally valid quittance". In the context of an OPC, this means the law allows the corporate entity to immediately recognize the nominee as the member so that vital operations, such as bank transactions, contract executions, and regulatory compliances, do not grind to a halt while surviving family members spend years in civil courts arguing over probate. The nomination mechanism is a protective shield for the company's continuity, not an instrument for the nominee's personal enrichment.

In a profound constitutional analysis, the Supreme Court also highlighted the strict division of legislative powers. The Companies Act is enacted under Entries 43 and 44 of List I (the Union List), which focus on the regulation of corporate entities. Conversely, matters concerning Wills, intestacy, and succession are governed by Entry 5 of List III (the Concurrent List). Consequently, the Companies Act cannot constitutionally override or rewrite the fundamental laws of succession. Interpreting a nomination as equating to absolute ownership would improperly infringe upon the legislative domain of succession law.

Applying the Shakti Yezdani ratio directly to the OPC structure, the legal position is unambiguous: the active OPC nominee is a temporary custodian and a fiduciary trustee. Upon the death of the sole member, the nominee steps into the operational shoes of the owner, but the economic and beneficial ownership of the shares immediately forms part of the deceased's estate, devolving upon the legal heirs under the applicable personal laws of succession.

Fiduciary Duties in the Active Phase: A Dual Loyalty

Once the active phase commences, the nominee is thrust into a highly complex web of dual fiduciary obligations. They owe simultaneous, and potentially conflicting, duties to both the corporate entity itself and to the legal heirs of the deceased member

Fiduciary Duties Owed to the Corporate Entity

As the interim controller of the OPC, the nominee acts as its primary legal representative. Assuming the role of the director to manage operations, they are strictly bound by the statutory duties outlined in Section 166 of the Companies Act, 2013, supported by common law principles regarding corporate altruism. Jurisprudence from cases such as Peoples v Wise and Pente Investment Management Ltd. v. Schneider Corp emphasizes that a director owes a fiduciary duty to the corporation as a complete entity, not merely to individual stakeholders. The nominee must exercise independent judgment and act in the absolute best interests of the company, its employees, and its creditors. This requires maintaining the OPC as a going concern, executing pending contracts, managing payroll, and fulfilling simplified but mandatory compliance relaxations afforded to OPCs and small companies, such as filing the abridged annual return (Form MGT-7A) and financial statements (Form AOC-4). The nominee is also strictly prohibited from utilizing their temporary control to siphon corporate opportunities, divert established clients, or engage in self-dealing.

Fiduciary Duties Owed to the Legal Heirs

Because the nominee holds the shares as a trustee, they are bound by the stringent principles of trust and equity regarding the deceased's estate. Their paramount duties to the beneficial owners include the duty of preservation. The nominee must safeguard the intrinsic value of the shares and the underlying assets of the OPC; they cannot recklessly liquidate assets or incur unnecessary debt that would diminish the financial value of the inheritance. Crucially, as a mere custodian, the nominee possesses absolutely no legal authority to sell, transfer, pledge, or dispose of the OPC shares for their own benefit. Any attempt to monetize the shares without the explicit, documented consent of the legal heirs or a valid court order constitutes a severe criminal breach of trust and fraudulent misrepresentation. The ultimate duty of the active nominee is to facilitate their own exit by identifying the rightful legal heirs, assisting in the formal transmission of shares once a succession certificate or probated Will is produced, and relinquishing control to the rightful owners.

Distinguishing the OPC Nominee in Corporate Governance

To fully appreciate the unique constraints of an OPC nominee, it is instructive to distinguish this specialized role from other similarly named or functionally adjacent positions in corporate governance.

The term "Nominee Director," for instance, is explicitly defined under Section 149(7) of the Companies Act, 2013. A Nominee Director is typically appointed to a corporate board by a financial institution, a major investor, or a government body to represent and protect the specific interests of the appointing entity. A Nominee Director faces a continuous, well-documented tension between acting in the best interest of the overall company and protecting the specific financial interests of their appointer, such as ensuring a massive bank loan is repaid. Furthermore, a Nominee Director is active immediately upon appointment. Conversely, an OPC Nominee is completely dormant until the sole member's death, and upon activation, they do not just become a director; they become the sole shareholder of the company by operation of law.

Similarly, an alternate director is appointed under Section 161(2) to act as a temporary agent on behalf of a regular director during their absence from the country. The alternate director must relinquish the role the moment the original director returns. The OPC Nominee, upon activation due to death, represents a permanent succession of ownership status, subject only to the final transmission to legal heirs. Finally, unlike shadow or de facto directors who exercise undocumented influence over a board and carry the full weight of fiduciary liabilities, the dormant OPC nominee exercises zero influence and is entirely absolved of directorial liabilities during the dormant phase.

Compliance, Penalties, and Risk Mitigation

The legal realities surrounding the OPC nominee necessitate highly strategic corporate governance and estate planning by the sole member. Failing to adhere to the legal provisions concerning an OPC nominee carries serious statutory consequences. The regulatory framework imposes monetary penalties ranging from Rs. 10,000 to Rs. 10 lakh for the company, and Rs. 5,000 to Rs. 5 lakh for every officer in default. Late filing of critical documents such as Form INC-3 or INC-4 attracts additional fees of Rs. 100 per day of delay without a maximum cap, and extreme delays exceeding 270 days require highly expensive and time-consuming condonation petitions before the National Company Law Tribunal (NCLT). In severe scenarios involving deliberate fraud or willful default, directors can face imprisonment of up to three years.

Beyond statutory penalties, the incoming nominee inherits significant operational risks, primarily the danger of asset commingling. One of the primary vulnerabilities of single-member entities globally is the tendency of the owner to blur the lines between personal and corporate finances. While an OPC offers limited liability, courts routinely pierce the corporate veil if there is evidence that company funds were used for personal expenses without distinct financial records. If a sole member dies leaving behind commingled assets, the

incoming nominee faces a legal minefield. The burden of proving that the company's assets were kept independent falls squarely upon the current management. The nominee must painstakingly disentangle these assets to accurately report the company's financial position and protect the entity from aggressive creditor lawsuits.

To mitigate these risks and ensure a seamless transition, the Supreme Court's ruling in Shakti Yezdani underscores the absolute necessity of parallel estate planning. Because the nominee acts merely as a trustee holding the OPC shares for the legal heirs, relying solely on the nomination process guarantees that the shares will devolve according to the general laws of intestate succession if no Will exists. This could result in the fragmentation of the OPC's ownership among multiple warring heirs, paralyzing the business. To ensure the business continues under the control of a capable successor, the sole member must execute a legally valid Will explicitly bequeathing the beneficial ownership of the OPC shares. Ideally, the individual named as the OPC Nominee in Form INC-3 should be the exact same individual named as the beneficiary of the shares in the Will, thereby seamlessly merging the roles of the statutory custodian and the absolute beneficial owner into a single person.

Synthesis and Conclusion

The One Person Company represents a highly sophisticated legislative attempt to marry the commercial agility of a sole proprietorship with the durability, financing capabilities, and limited liability protection of a corporate entity. At the absolute center of this structural architecture lies the nominee, a unique statutory creation engineered to prevent the corporate death of the entity upon the biological demise of its human operator.

An exhaustive analysis of the statutory framework, regulatory amendments, and recent jurisprudential developments reveals that the OPC nominee exists in two fundamentally distinct legal states. During the dormant phase, they are contingent placeholders, completely devoid of active commercial rights or directorial liabilities, yet bound by a latent, equitable duty to abstain from harming the company and remain ready to assume control. Upon the triggering event of death or incapacity, they transition into an active phase, where they are burdened with profound and dual fiduciary obligations.

The Supreme Court's definitive intervention in Shakti Yezdani has provided essential, long-awaited clarity regarding these active duties. The ruling decisively bifurcates operational control from beneficial ownership. The nominee is vested with the operational power necessary to maintain the OPC as a going concern, fulfilling statutory duties of care, skill, and compliance to the corporate entity. Simultaneously, they are bound by the strict fiduciary duties of a trustee toward the deceased's legal heirs, mandated to preserve the economic value of the shares and barred from alienating them for personal gain. Ultimately, the OPC nominee is a caretaker of a commercial legacy, ensuring that the legal fiction of perpetual corporate succession survives the biological reality of human mortality.

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