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MINORITY SHAREHOLDER PROTECTION IN INDIA: ARE EXISTING REMEDIES UNDER THE COMPANIES ACT SUFFICIENT?

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ABSTRACT

The foundation of corporate governance is based on the principle of majority rule which enables companies to function through collective decision making. In India, promoter groups and majority shareholders exercise predominant control, which results in minority shareholders frequently to face exclusion from management and thereby the risk of oppression. In jurisdictions characterised by tight ownership structures, the unchecked majority power may often lead to the oppression of minority shareholders. Thus, it became an essential ingredient of corporate governance to create minority shareholder protection in the dominant corporate landscape. A safeguard to minority interests has been sought through the Companies Act, 2013 relating to oppression and mismanagement, class action suits, enhanced disclosure obligations and corporate governance reforms.

This article analyses the legal framework governing minority shareholder in India and critically examines the sufficiency of the remedies available under the Companies Act, 2013 to address contemporary corporate challenges. Although the Indian framework is comprehensive in theory but fails to deal with practical challenges such as enforcement, procedural delays, litigation costs, and concentrated ownership which therefore limits the effectiveness of minority protection mechanisms. The article evaluates wide discretionary powers and preventive governance norms. It also offers concrete recommendation for reform because meaningful minority protection is crucial for encouraging equitable corporate governance.

Keywords: Minority Shareholders, Corporate Governance, Oppression and Mismanagement, Class Action Suits, Companies Act, 2013, NCLT

INTRODUCTION

In India, the bedrock of corporate democracy rests on the majority rule principle, at the expense of minority shareholders who lack control of day -to-day affairs. Although the principle of majority through which decisions approved by the majority of shareholders bind the company and all its members Therefore, minority shareholders more often lack the voting power necessary to shape corporate decisions may expose minority shareholders to the risk of oppression and unfair treatment and render susceptible to abuses by controlling shareholders.

In India, most of the companies are promoter controlled which gives rise to the significant issue of majority shareholders often exercising substantial influence over management, board appointments and strategic decision- making. Therefore, resulting into compulsory effective legal safeguards as disputes between majority and minority shareholders are common.

Through remedies against oppression and mismanagement, class action litigation, and reinforced corporate governance requirements, a comprehensive framework intended to protect minority shareholders was introduced by the Companies Act, 2013. Nevertheless, such protections are effective enough remains a subject of debate. Therefore, the article evaluates the adequacy of existing remedies and examines whether they provide meaningful protection to minority investors.

HISTORICAL EVOLUTION: FROM FOSS V. HARBOTTLE TO STATUTORY INTERVENTION

Tracing back to the English decision in *Foss v. Harbottle* which reinforced majority control and limited judicial interference in corporate affairs was the origin of minority shareholder protection. The rule established that the proper plaintiff to seek redressal is the company itself, in the case where wrong is committed against the company[1].

Nevertheless, courts developed exceptions because strict compliance of majority rule often left minority shareholders without remedies where wrongdoers themselves controlled the company. Minority action was permitted in cases relating to fraud on the minority, ultra vires, infringement of personal rights and acts requiring a special majority.

[1] *Foss v. Harbottle*, (1843) 2 Hare 461, 67 Eng. Rep. 189 (Ch.).

These principles established the framework for modern statutory remedies against oppression and mismanagement in the Indian company law.

STATUTORY FRAMEWORK OF REMEDIES UNDER THE COMPANIES ACT, 2013

i) **Oppression and Mismanagement**

Section 241(1) permits any member to approach the NCLT if the company's affairs are being conducted in a manner (a) oppressive to any member(s), or (b) prejudicial to the company's interests, public interest, or a class of members. The concept of "Oppression" implies conduct that is burdensome, harsh, and lacking in probity or fair dealing, typically involving a continuing course of action affecting proprietary rights as a shareholder. Examples include exclusion from management, diversion of corporate assets, unfair allotment of shares, and abuse of voting power[2].

In *Shanti Prasad Jain v. Kalinga Tubes Ltd.*, the Supreme Court observed that oppression involves a continuous course of conduct that departs from standards of fair dealing expected in corporate affairs[3].

Section 242 grants extensive powers to the NCLT, including regulation of company affairs, removal of directors, restriction of share transfers, and purchase of shares belonging to minority shareholders[4]

ii) **Eligibility Requirements**

Section 244 prescribes threshold requirements for filing oppression and mismanagement petitions. Applicants must generally represent at least one hundred members or hold not less than one-tenth of the company's share capital[5].

However, these thresholds seek to prevent frivolous litigation but they may also create hindrance for minority shareholders. Consequently, the NCLT possesses discretion to waive these requirements where justice demands intervention.

iii) **Class Action Suits**

One of the most significant innovations introduced by the Companies Act, 2013 is **Section 245,** which provides for class action suits[6]. This innovative provision allows a class of members, depositors, or others to seek remedies for misleading statements,

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[2] Companies Act, 2013, No. 18 of 2013, § 241, INDIA CODE (2013).
[3] *Shanti Prasad Jain v. Kalinga Tubes Ltd.*, AIR 1965 SC 1535.
[4] Companies Act, No. 18 of 2013, § 242, INDIA CODE (2013).
[5] Companies Act, 2013, No. 18 of 2013, § 244, INDIA CODE (2013).
[6] Companies Act, 2013, No. 18 of 2013, § 245, INDIA CODE (2013).

fraudulent acts, or violations causing harm. It aims to democratize access to justice by pooling resources, subject to numerical and shareholding thresholds.

iv) Complementary Mechanisms

These include rights to inspect records (Section 94), scrutiny of related-party transactions (Section 188), and exit options in schemes of arrangement or squeeze-outs (Sections 230-236), where valuation fairness is paramount.

JUDICIAL INTERPRETATION: LANDMARK PRECEDENTS

Judicial decisions and precedents have played a dynamically critical role in defining the scope of minority shareholder protection by balancing minority protection with commercial pragmatism.

In Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd., the Supreme Court held that conduct may be oppressive even if technically lawful. The Court emphasized that fairness and equitable treatment are essential components of corporate governance[7].

Similarly, in Dale & Carrington Investment (P) Ltd. v. P.K. Prathapan, the Supreme Court reaffirmed that directors owe fiduciary duties to the company and cannot exercise their powers for personal gain. The Court invalidated a share allotment designed to dilute minority holdings and strengthen managerial control[8].

In Sangramsinh P. Gaekwad v. Shantadevi P. Gaekwad, the Court clarified that isolated acts do not ordinarily constitute oppression unless they form part of a continuing pattern of unfair conduct[9].

More recently, Tata Consultancy Services Ltd. v. Cyrus Investments Pvt. Ltd. highlighted the limits of judicial intervention in corporate affairs. While reaffirming the importance of minority protection, the Supreme Court emphasized that commercial disagreements alone do not amount to oppression[10].

[7] *Needle Indus. (India) Ltd. v. Needle Indus. Newey (India) Holding Ltd.*, (1981) 3 SCC 333
[8] *Dale & Carrington Invs. (P) Ltd. v. P.K. Prathapan*, (2005) 1 SCC 212.
[9] *Sangramsinh P. Gaekwad v. Shantadevi P. Gaekwad*, (2005) 11 SCC 314.
[10] *Tata Consultancy Servs. Ltd. v. Cyrus Invs. Pvt. Ltd.*, (2021) 9 SCC 449.

The judiciary's attempt to balance majority rule with principles of fairness and accountability was substantiated by these decisions.

COMPARATIVE PERSPECTIVE

A valuable overview of minority shareholder protection is provided by the experiences of the United Kingdom and the United States.

In the United Kingdom, Section 994 of the Companies Act 2006 permits shareholders to seek relief where company affairs are conducted in a manner that is unfairly prejudicial to their interests[11]. The remedy is comprehensive and accessible than India's oppression and mismanagement provisions as it does not impose particular shareholding thresholds.

The decision in *O'Neill v. Phillips* recognized that minority shareholders may possess legitimate expectations extending beyond formal legal rights[12]. Hence, greater flexibility is provided in protecting minority interest under this approach.

However, in the United States, a different model based on derivative actions, fiduciary duties, and securities regulation is adopted. Shareholders may initiate derivative suits on behalf of the corporation and pursue remedies for securities fraud under federal law[13].

Compared to these jurisdictions, India possesses a comprehensive statutory framework but continues to face challenges in enforcement, accessibility, and convergence with evolving global governance practices[14]. Hence it is regarded that effective protection depends not merely upon the substantive rights but also upon efficient enforcement mechanisms.

CRITICAL ANALYSIS: ARE EXISTING REMEDIES SUFFICIENT?

The Companies Act, 2013 provides a sophisticated framework for minority shareholder protection, reflecting the broader evolution of corporate governance reforms in India[15]. Although the remedies in relation to oppression and mismanagement, class action litigation,

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[11] Companies Act 2006, c. 46, § 994 (U.K.).
[12] *O'Neill v. Phillips* [1999] 1 W.L.R. 1092 (HL).
[13] *Kamen v. Kemper Fin. Servs., Inc.*, 500 U.S. 90 (1991).
[14] Afra Afsharipour, *Corporate Governance Convergence: Lessons from the Indian Experience*, 29 Nw. J. Int'l L. & Bus. 335 (2009).
[15] Umakanth Varottil, *The Evolution of Corporate Governance in India*, 2 Indian J. L. & Econ. 1 (2011).

and corporate governance reforms collectively provide robust statutory provisions & judicial safeguards. But their effectiveness is continued to be undermined by the practical challenges.

Evidentiary and Substantive Hurdles: Often isolated acts of oppressive conduct such as unfair dividends or board exclusions become difficult to challenge as courts require "continuing course" of such conduct. However, insiders hold a monopoly on company data therefore leaving outsiders to gather evidence which means burden of proving wrongdoing becomes unfairly heavy.

Institutional Challenges: Corporate disputes may take years to resolve, reducing the practical value of available remedies because of the existent of backlogs which cause delays.

Procedural and Access Barriers: Under Section 244 of the act, the ten percent (10%) threshold excludes many small investors, and waivers are granted sparingly.

High litigation costs: Even after existence of legal rights, their enforcement may be economically unviable because of the prohibitively high litigation costs for many minority shareholders.

Underutilization of class action litigation: The development of class action litigation is restricted by procedural uncertainty and limited awareness, despite its potential to strengthen shareholder protection.

Such challenges indicates even though the statutory framework is largely adequate but its practical implementation remains imperfect.

RECOMMENDATIONS FOR REFORM:

Several reforms may bridge the gap to strengthen and reinforce minority shareholder protection in India.

Lower Thresholds and Simplify Access: The shareholding requirement under Section 244 should be amended to reduce it to 5% or introduce a good faith discretionary waiver as the norm. Standard procedures should be introduced to facilitate easier close action certification.

Institutional Strengthening: A time- bound disposal of oppression petitions (e.g., 6-12 months) should be mandated or a dedicated fast-track benches should be established within the

NCLT. The NCLT benches should be increased by enhancing training on corporate law as well as establish specialised minority shareholder benches.

Introduce Statutory Derivative Action: A provision similar to Section 260 of the UK Companies Act 2006, should be enacted to allow minorities to sue on behalf of the companies for breaches of fiduciary duties, subject to court approval which would be helpful to address harms where direct oppression is hard to prove.

Improve Transparency: Disclosure obligations relating to related-party transactions and promoter shareholdings should be enhanced to improve transparency, consistent with internationally recognized corporate governance standards[16].

Valuation and Preventive Mechanisms: Compulsory independent valuation guidelines using standardized methods (e.g., DCF, market multiples) should be introduced for buy-outs and exits. Preventive governance should be strengthened through stricter independent director requirements, whistleblower protections and mandatory shareholder agreements in private companies.

Awareness and capacity Building: Regulatory campaigns should be launched to educate retail investors. Law firms and bar associations should be encouraged to provide pro-bono support for deserving cases.

India's regime would be more closely aligned with international best practices by these reforms, while suiting its economic context.

CONCLUSION

A commendable effort has been represented by the remedies under the Companies Act, 2013, to empower minority shareholders. It is further fortified by insightful judicial precedent in 'Needle Industries and Tata Sons'. However, the sufficiency or effectiveness may be undermined particularly for small investors in promoter-driven companies because of procedural rigidity, delays, high proof standards, litigation costs and institutional limitations. The meaningful reforms such as lower barriers, derivative actions, and better enforcement, are required to fulfil the promise of equitable corporate governance. As India aspires to global

[16] OECD, G20/OECD Principles of Corporate Governance (2023).

economic leadership, it is a necessity to strengthen minority protection not merely because of a legal imperative but for attracting sustainable investment and building trust in Indian markets.