YourLawArticle

Open Access Law Journal, ISSN (O): 3049-0057

Editor-in-Chief – Prof. (Dr.) Amit Kashyap; Publisher – Reet Parihar

Minority Shareholder Oppression Remedies: Are Existing Legal Frameworks Adequate?

Authored by:

Ritika Palai , Law Student, Birla Global University

&

Utkarsh Munshi, Law Student, Birla Global University

Published on: 29th April 2026

Abstract

One of the biggest issues in Indian company law is minority shareholder protection due to oppression and mismanagement by majority shareholders or controlling entities. The Indian Company Act, 2013 attempted to fix this by providing a complete overhaul to the company law framework, but whether it is sufficient to protect the rights of minority shareholders continues to be an area of significant academic and judicial debate. To investigate the problem, this paper will comprehensively analyse the legal remedies available to minority shareholders under Indian law, with very specific reference to Sections 241-246 of the Companies Act, 2013, the role of the NCLT, the class action procedure under Section 245 and derivative actions.

This paper will review the historical context of how minority protection has evolved from the previous Companies Act of 1956 up to the current statutory regime, as well as case law defining the parameters of minority rights through landmark judicial decisions. Insights from the UK, US, Singapore and Australia will be considered for comparative analysis.

Finally, this paper will identify substantive and procedural gaps in the current framework as it relates to the protection of minority shareholders. Examples of these gaps include but are not limited to: lack of clarity in definitions of "oppression" and "mismanagement", limited

availability of class actions, inadequately defined derivative actions, and barriers to access to justice. Ultimately, the paper will present a comprehensive set of recommendations for reforming legislation intended to strengthen the protections afforded to minority shareholders in India.

Keywords: Minority Shareholders, Oppression, Mismanagement, NCLT, Class Action suit, Derivative Action, Corporate Governance, Shareholder Remedies.

I. INTRODUCTION

The majority rule is the basic principle upon which the entire structure of company law is based. In the majority rules universe, many shareholders determine the decisions made by the company. Although the majority rule is a necessity for the sound, responsible operation of a corporation, it can also be bad; there exists the danger that the controlling minority will use their control in a manner that is oppressive, prejudicial, or disproportionately harmful to the minority. The tension between the rights of the minority to have their interests protected and the right of the majority to make decisions is the essence of corporate governance.

In India, minority shareholders have faced serious issues and obstacles for long periods. Several factors have contributed to this situation, such as those companies being closely held and financially controlled by promoters, as well as limited participation by institutional investors. Consequently, minority shareholders in many Indian companies have been subjected to acts of oppression and denied any reasonable ability to participate in the management of the company as well as being denied any reasonable means of protection for their interests against dilution of their shares, siphoning off funds, conflicts of interest arising from related-party transactions, and similar mismanagement by the management. Many of the provisions in the Companies Act, 2013 (referred to as the "Act") were intended to improve the level of protection that minority shareholders have.

A primary question the research paper will investigate is whether or not minority shareholder's current rights under Indian company law will protect them from disadvantage due to oppression and mismanagement. To complete this analysis, research will include a review of: legislation, case law, and comparison to other countries as well as identifying dialectics and procedural deficiencies in the present system.

The importance of this study is underpinned by the rapidly changing nature of business in India as it relates to increasingly sophisticated capital markets, greater involvement of retail

and foreign investors in India and India's commitment to international corporate governance standards.

An insufficient minority's right to protect themselves from oppression or mismanagement is negative for the individual minority shareholder, however it is also negative for the ability of investors to have confidence in an equitable capital marketplace and obtain sustainable economic development for the community with a stable capital allocation system.

II. CONCEPTUAL FRAMEWORK: DEFINING OPPRESSION AND MISMANAGEMENT

Oppression in Corporate Law

Oppression has a meaning in the context of corporate law as that which burdens, is harsh and/or wrongful by the majority. That is, acts or omissions that do not conform to standards of fair dealing and as such constitute breaches of the conditions of fairness that every shareholder has a right to rely upon. Lord Keith articulated this definition in the case of *Scottish Cooperative Wholesale Society Ltd v Meyer (1959)*[1], where it was stated that the concept of oppression is characterised by being a visible departure from the standard of fair dealing and a breach of the conditions of fairness that every shareholder can rely upon when entrusting funds to the company.

In Australia, under the Companies Act 2013, the primary place where oppression is addressed is by *section 241(1)(a)*[2], which provides for a member to apply to the NCLT if the affairs of the company have been or are being conducted in a way that is either prejudicial to the public interest, oppressive to a member or members, or prejudicial to the interests of the company. Importantly, the term “oppression” has not been given a precise definition in the Act, resulting in a combination of flexibility and uncertainty regarding its content, which will ultimately be determined by the courts through judicial interpretation.

Concept of Mismanagement

Mismanagement is when a company's affairs are conducted in a disorderly fashion or against the company's best interests, without any personal gain, malice, or intent to do so. Mismanagement is generally more encompassing than oppression and may include gross

[1] *Scottish Cooperative Wholesale Society Ltd v Meyer* [1959] AC 324, 342 (HL) (UK)
[2] Companies Act, 2013, No. 18 of 2013

incompetence or poor decision-making, breaches of fiduciary duties (the duties of loyalty to shareholders), and actions that are detrimental to the overall business.

Section 241(1)(b) of the Companies Act of 2013 applies to situations where there is a significant change in the management or control of the company that is likely to adversely affect the company's and/or shareholder's or the public's interests. This section is meant to prevent imminent mismanagement by allowing for proactive intervention by the courts.

Oppression and mismanagement are legally different. Oppression is typically concerned with the individual rights of minority shareholders to participate in the affairs of a company, whereas mismanagement is related to the overall conduct of a company and can be proven without evidence that there was any discriminatory treatment. This distinction relates to the right to bring a lawsuit, the type of remedy available in the lawsuit, and the burden of proof required in the lawsuit.

III. HISTORICAL EVOLUTION OF MINORITY SHAREHOLDERS PROTECTION IN INDIA

a. The Pre-1956 Position

Prior to the enactment of the Companies Act, 1956 in India, persons occupying the minority shareholder positions had very limited remedies available to them under a company's general statutory scheme. The primary source of these remedies included those available through the common law and equitable jurisdictions that exist in the English system of jurisprudence.

The legal test developed by the courts in their interpretation of the English law dealing with shareholder rights, namely, the rule set down in Foss v. Harbottle (1843), served as the guiding principle for minority shareholders. This rule states that a company is the only entity entitled to sue or be sued in respect of a wrong done to it, and therefore, only a company can be a plaintiff in an action for such a wrong. Consequently, while the rule in Foss v. Harbottle resulted in there being only one legal case for each legal wrong against a company, it effectively made it impossible to hold any majority shareholder accountable to minority shareholders.

While the exceptions to the *Foss v. Harbottle*[3] rule (i.e., dealing with ultra vires acts committed by a company, fraud against the minority shareholders, acts of a company that require a super majority vote, and breaches of individual shareholder rights) did allow for some degree of relief to minority shareholders, their scope and applicability were very narrow,

[3] *Foss v Harbottle* (1843) 67 ER 189 (Ch)

leaving minority shareholders with little hope of succeeding in a court of law when seeking equitable relief to enforce their rights.

b. The Companies Act, 1956

The Companies Act, 1956 was a major piece of legislation protecting minority shareholders. *Sections 397 and 398*[4] provided remedies for unfair treatment or mismanagement against minority shareholders and allowed minority shareholders to petition the Company Law Board (CLB) for relief. In addition, *Section 399*[5] established a minimum required threshold (i.e., 100 shareholders or 10 percent of total shareholders or 10 percent of issued share capital) in order to access the above-mentioned remedies.

The wide-ranging discretionary powers granted to the CLB under *Section 402* [6] of the 1956 Act allowed the CLB to make any order as it deemed appropriate to resolve complaints against the company, including regulating the company's operations, purchasing shares from other shareholders, restricting transferability and winding up the company. While these provisions provided significant improvements over the strictly common law position, delays in processing, complexities in procedures and limitations on the resources of the CLB hampered the effectiveness of these provisions.

c. The Companies Act, 2013: A New Framework

A thorough reformation by the Companies Act 2013 amended all aspects of minority shareholding protection in companies. The former Companies Law Board was replaced by the National Company Law Tribunal (NCLT), which is a dedicated legal entity to provide a quicker and more qualified determination of any legal matter regarding a company's activities. The provisions under the original company's act dealing with oppression and mismanagement have all been carried over with some additions along with new methods including the introduction of class action lawsuits which were not available in the previous Act.

In addition, the 2013 Act improved audit committee and independent director member qualifications and also imposed related party transaction requirements. Finally, it required certain companies as part of their corporate social responsibility to donate to charity, and it gives both the NCLT and the NCLAT broad powers. Finally, the Insolvency and Bankruptcy Code, 2016 will reshape the landscape for resolving corporate disputes.

[4] Companies Act, No.1 of 1956
[5] Ibid.
[6] Ibid.

IV. STATUTORY REMEDIES UNDER THE COMPANIES ACT, 2013

a. Sections 241-244: Prevention of Oppression and Mismanagement

i. The Right of Petition- Section 241

The Companies Act of 2013 provides minority shareholders with an opportunity to seek legal remedies for oppression and mismanagement under Section 241. There are two bases on which to invoke the jurisdiction of the NCLT in relation to oppression and mismanagement.

- Section 241(1)(a): The company's affairs are being conducted in a manner that is prejudicial to the public interest or in a manner that is oppressive to any member or members of the company or in a manner that is prejudicial to the interests of the company itself.[7]
- Section 241(1)(b): A change in the management or control of the company will occur in the near future and, because of this change, the company's affairs will be conducted in a manner that is prejudicial to the interests of the company or its members or any class of members.[8]

The second basis is significant because it is prospective in nature and allows for intervention by the NCLT without the need for a representative to show that the conduct of the company will be prejudicial to the interests of the company or its members following the anticipated change in management or control.

ii. Locus Standi- Section 244

The parameters for eligibility relating to Section 244 of the Companies Act are as follows:

1. For companies with share capital and fewer than 1,000 members, the petitioners can be either 100 or 10 per cent of the number of members.
2. For all other companies, the petitioners must have at least 5 per cent of the total paid-up share capital of the company.

Further to the above, the NCLT has the power to exempt all or part of the above requirements under Section 244(2), thereby allowing groups of substantial minority shareholders to bring action against a company where they do not meet the minimum shareholding requirement.

iii. Powers of the NCLT- Section 242

[7] Companies Act 2013, s 241(1)(a).
[8] Companies Act 2013, s 241(1)(b).

The NCLT may issue any order it finds appropriate that brings to an end or prevents the future occurrence of that which is the subject of the application by a member of a company, provided the application is determined to be substantiated. For instance:

- Regulating how the company conducts its affairs in the future.
- Purchasing shares or interests a member has in the company by other members or the company itself.
- In the event the company purchases shares from a member, reducing the amount of share capital issue.
- Imposing restrictions on the transfer or allotment of shares issued by the company.
- Terminating, voiding or varying any agreement entered into by the company with any of its managing directors, directors or managers.
- Setting aside a transaction in preference to one undertaken with value received in return.
- Any other matter as NCLT deems appropriate to the circumstances of that case.[9]

b. Section 245: Class Action Suits

Incorporating Section 245[10] into the Companies Act of 2013 created a new way for small groups of shareholders to band together and demand protection from the courts. The class action suit is an example of a type of lawsuit that has not been previously available to shareholders under the Corporations Act in India. The ability for individual class members or depositors to able to request orders from the NCLT on behalf of:

- A company may not conduct its business in ways that are against the company's interests.
- A Company cannot breach any of its articles or memorandum.
- A Company cannot change its Memorandum or Articles of Association unless the shareholders have been fully informed about all facts related to the matter.
- To prevent the company and/or it's directors from acting upon an invalid resolution.

[9] Companies Act 2013, s 242.
[10] Companies Act 2013, s 245.

- To prevent the corporation from acting contrary to the provisions of this Act or any other applicable legislation.
- To seek compensation for damages, or to seek other appropriate remedies from or against an audit firm, an expert, a consultant, or a director, auditor or other consultant.

The threshold for eligibility to commence class action is a minimum of at least 100 members, or whatever smaller percentage of the total number of members, or members who hold at least such smaller percentage of the total issued capital, set by the appropriate provisions (with a minimum value of 2%). Pursuant to section 245(4), if an application is determined to be frivolous or vexatious, the NCLT may dismiss the application, with costs awarded against the party making the application. This provision could deter a legitimate but financially constrained applicant from pursuing his/her claim.

c. Other Statutory Remedies

i. Winding Up on Just and Equitable Grounds- Section 271(e)

Under Section 271(e) of the Companies Act, 2013, the NCLT can order the winding-up of a company if it considers that doing so is "just and equitable". This ground has been commonly used by courts to order the winding up of a company as a remedy of last resort for minority shareholders, where the foundation of mutual good faith that exists in a quasi-partnership has irretrievably broken down. However, courts have generally refused to order the winding up of the company if there are other, less radical remedies available.[11]

ii. Right to information and Inspection

There are several provisions in the Companies Act, 2013, which give minority shareholders rights to inspect and access information, as these rights will help protect against oppression indirectly. Members have the right to inspect a company's register of members, minutes of general meetings, annual returns and financial statements. The right to information is an essential safeguard as it enables shareholders to establish an evidence trail to identify and document instances of oppression or mismanagement.

iii. SEBI Regulations for Listed Companies

[11] Companies Act 2013, s 271.

The Securities and Exchange Board of India (SEBI) establishes an extra degree of protection for shareholders of publicly traded companies by providing additional requirements and protection under its Listing Obligations and Disclosure Requirements (LODR) Regulations, 2015; *SEBI (Prohibition of Insider Trading) Regulations*[12], 2015; and various other rules and regulations. The Investor Education and Protection Fund (IEPF) also protect shareholders in certain situations. SEBI's enforcement authority is in addition to the protections available to shareholders of listed companies through company law.

V. THE ROLE OF THE NATIONAL COMPANY LAW TRIBUNAL

a. Constitution and Jurisdiction

The National Company Law Tribunal established pursuant to Section 408 of the Companies Act 2013 was created as an alternative to the former Company Law Board (CLB) and the Board for Industrial and Financial Reconstruction (BIFR). The NCLT is a quasi-judicial authority with jurisdiction over various aspects of company law, including oppression and mismanagement (Sections 241-244) class action (Section 245) and issues related to insolvency and winding-up, mergers and amalgamations and disputes about company accounts/audit.

The NCLT has a Principal Bench located in New Delhi and additional Regional Benches throughout various locations, which makes it more accessible to litigants within the country as compared to its predecessors. The NCLT's decisions can be appealed to the National Company Law Appellate Tribunal (NCLAT) and subsequently may be appealed to the Supreme Court of India on questions of law.

b. Procedural Powers and Interim Relief

The National Company Law Tribunal has wide-ranging authority in relation to procedure under the Companies Act, 2013, and the NCLT Rules, 2016. The tribunal can grant interim remedies, including stays, orders of injunction, and orders appointing administrators while cases are ongoing before them, which may be incredibly important for minority shareholders as acts of oppression are usually time-sensitive (for example, issuing additional shares in a way that dilutes the value of existing shareholders' shares, or removing directors representing minority shareholders) and would be irreversible unless they are quickly stopped by the tribunal granting interim relief.

[12] Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations 2015.

c. Challenges and Criticisms

Although the NCLT has been given the objective of swifter justice, it is plagued by problems with delayed adjudications due to poor infrastructure, lack of staff, and overly complicated procedures. Once again, with respect to the adjudication of oppression and mismanagement petitions, the average timeline to resolve these outstanding claims is far too lengthy (typically taking multiple years). The intention of establishing a specialised tribunal for this purpose has fallen flat, as delays are comparable to those in general civil courts.

Additionally, there are concerns about the level of quality in adjudication for cases brought before the NCLT; hence, critics believe that the NCLT lacks sufficient knowledge in the areas encompassed by such cases, namely, valuation of corporations, financial analysis, and/or other forms of complex business disputes. Furthermore, it is probable that there are insufficient pre-trial disclosure and discovery procedures that could allow petitioners access to the relevant internal documents of their corporations, thus causing them a significant disadvantage.

VI. JUDICIAL INTERPRETATION: KEY CASE LAWS

a. Foundational Cases Under the Companies Act, 1956

i. Dale & Carrington Invt. (P) Ltd. v. P.K. Prathapan (2005)[13]

In the ruling, the Supreme Court of India determined that where majority shareholders exercise their authority over the amendments to a company's previously established Articles of Association, the Articles can only be modified in good faith for the mutual benefit of shareholders and not to oppress shareholders holding less than a majority of shares.

ii. Needle Industries (India) Ltd. Needle Industries Newey (India) Holding Ltd. (1981)[14]

The Supreme Court also conducted an exhaustive review on the definition of oppression as defined by Section 397 of Companies Act, 1956, and determined that the act of oppression does not require an unlawful or fraudulent act to provide sufficiency of evidence therefor; instead, the objective evidence of oppression may be satisfied by identifying conduct that is oppressive because it causes a person to suffer undue burdens (i.e., harsh or wrongful acts).The court determined that isolated acts of mismanagement do not constitute oppression;

[13] *Sangramsinh P Gaekwad v Shantadevi P Gaekwad* (2005) 1 SCC 212 (SC).
[14] *Needle Industries (India) Ltd v Needle Industries Newey (India) Holding Ltd* (1981) 3 SCC 333 (SC).

rather, an oppressive act occurs when, over an extended period of time, an individual engages in similar types of unlawful or wrongful conduct.

iii. Shanti Prasad Jain v. Kalinga Tubes Ltd. (1965)[15]

The Supreme Court held that for an application under section 397 to succeed, a complainant is required to demonstrate not only that the conduct of a company's affairs was prejudicial to the company's interests but also that the conduct was carried out without any element of good faith or in an oppressive manner. This decision has created an elevated standard for success in oppression claims and has been criticized as excessively burdensome on the average minority shareholder.

b. Recent Judicial Developments Under The Companies Act, 2013

i. Tata Consultancy Services Ltd. v. Cyrus Investments Pvt. Ltd. (2021[16]

Supreme Court ruling on the Tata-Mistry matter represents the most important recent corporate governance ruling. The Shapoorji Pallonji group (minority shareholders) of Tata Sons sought redress against the removal of Cyrus Mistry as Executive Chairman of Tata Sons, alleging that this constituted oppression. Although the NCLAT (National Company Law Appellate Tribunal) ruled in favour of the minority shareholders and found that they had been subjected to oppression and mismanagement by the Company, the Supreme Court overruled these determinations.

It held that business judgments, even if mistakenly made, do not equate to oppression, and also outlined that in order to establish oppression, the conduct must be burdensome, hard and wrong in nature – the fact of being disagreed with does not in and of itself establish oppression. The ruling of the Supreme Court has significant implications for the scope of judicial review of corporate management decisions and for the application of the business judgment rule; however, it is also subject to criticism that it creates a very high threshold for minority shareholders to demonstrate oppression, particularly in cases involving powerful controlling shareholders.

ii. Rajkumar Nagpal v. Sh. Ram Prasad Nagpal (NCLT, Delhi, 2018)[17]

[15] *Shanti Prasad Jain v Kalinga Tubes Ltd* AIR 1965 SC 1535 (SC).
[16] *Tata Consultancy Services Ltd v Cyrus Investments Pvt Ltd* (2021) 9 SCC 449 (SC).
[17] *Rajkumar Nagpal v. Sh. Ram Prasad Nagpal* CP No. 25/2018 (India)

According to an order of the NCLT, Bench at Delhi, the conduct of the majority shareholders in regulating the management of their companies was oppressive to minority shareholders. This was found through the evidence presented by the Petitioners establishing: No disclosure to minority shareholders concerning the financial affairs or general affairs of the company, no annual general meetings of the company are being held and the appropriation of funds by majority shareholders without proper disclosure of their use.

The NCLT ordered that the shares of the Petitioners be purchased by the respondents at a fair market value and effectively illustrated that the remedy of buy-out of Petitioners' shares has worked as intended and functioned as an excellent relief remedy against oppression in companies operating under a quasi-partnership arrangement.

iii. Hind Overseas Pvt. Ltd. v. Raghunath Prasad Jhunjhunwalla (1976)[18]

The Supreme Court found that for the petitioner to establish the just and equitable grounds for winding up of the company, it must be shown to the Court: That the company has been operated by the parties under a quasi-partnership understanding; that the mutual confidence has broken down between the parties; and that the appropriate remedy is to wind up the company. Generally, Courts have not been inclined to order the winding-up of a company, when other less extreme remedies are available to minority shareholders.

VII. DERIVATIVE ACTIONS IN INDIA: AN UNCHARTED TERRITORY

a. The Nature of Derivative Action

An action of a derivative are prosecuting actions performed by a holder of the Stock on behalf of the Corporation to enforce a right of action that belongs to the corporation, where the Corporation has been prevented from prosecuting the action for some reason (ex. corporation unable to prosecute due to having the wrongdoers as controlling shareholders). A derivative suit provides a way to circumvent the rule in Foss v. Harbottle whereby the holder of the Stock is the nominal plaintiff while the corporation is the true party in interest (beneficiary) with respect to recoveries received in the derivatively filed action.

b. The Position Under Indian Law

India clearly doesn't have a full set of laws for derivative actions. The Companies Act, 2013 does not include a specific provision that allows shareholders to file derivative actions on behalf of the company. The class action process under Section 245 is mostly a direct action by shareholders on their own behalf, even though it has some similarities to derivative actions. It

[18] Hind Overseas Pvt. Ltd. v. Raghunath Prasad Jhunjhunwalla (1976) 3 SCC 259 (India)

is not a true derivative action to enforce the company's rights against directors or controlling shareholders who are not doing their jobs.

The common law exceptions to the rule in Foss v. Harbottle—especially the exception for fraud on the minority when the wrongdoers are in control—are still possible in theory. However, they are not very useful in practice because of procedural uncertainties, the lack of statutory authorisation, and the courts' unwillingness to allow derivative proceedings without a clear legislative mandate.

c. The Need for a Statutory Derivative Action

The lack of a statutory derivative action is a big hole in Indian company law. If bad people oversee a company, they can stop the company from making claims against them. This means that minority shareholders have no way to get their money back unless they can show that they are personally responsible.
bias. This is especially bad when directors steal company property, break their fiduciary duties, or do business with people who are related to the company at a loss. In these cases, the company is the one that suffers the most.
Australia (Section 236, Corporations Act 2001), Singapore (Section 216A, Companies Act), and the United Kingdom (Part 11, Companies Act 2006) have all passed laws that spell out how derivative actions should work. These laws make it clear who has standing, what the requirements for leave are, how to protect costs, and how to conduct derivative proceedings. India would greatly benefit from a similar set of laws.

VIII. COMPARATIVE ANALYSIS: GLOBAL FRAMEWORKS

a. United Kingdom

Part 11 of the UK Companies Act 2006 created a codified statutory derivative claim to replace the common law fraud-on-the-minority exception. A shareholder can file a derivative claim if the company has a legal right to do so because a director was negligent, defaulted, broke their duty, or broke their trust. Before a derivative claim can go forward, the court must give permission. It must also think about things like whether the claim is good for the company and whether the shareholder is acting in good faith.
Section 994 of the 2006 Act in the UK also has a well-developed way to deal with "unfair prejudice," which is similar to the Indian oppression remedy. There has been a lot of legal action over the unfair prejudice petition. The UK remedy does not necessitate the

demonstration of "oppression" in the strict sense, it is enough to show behaviour that is "unfairly prejudicial" to the petitioner's interests as a member. This is a much lower bar to meet.

b. United States

The United States has a strong system for protecting minority shareholders. This system mainly operates through state corporate law, especially Delaware corporate law, and is supported by federal securities regulations. Derivative suits are clearly defined in US law, and they have specific demand requirements and standing rules that differ by state. Many states also allow dissolution as a remedy for minority shareholders in closely held corporations if there has been a breach of fiduciary duty to the minority.

The doctrine of "Entire Fairness" was developed by the State of Delaware and requires that controlling shareholders bear the burden of proving that both the process and price of affiliated transactions are completely fair to minority shareholders. Consequently, the standard is one of the highest possible standards that offer minority shareholders substantial protection in freeze-out mergers, related-party transactions, or any other transaction that the majority engaged in representing their self-interest.

c. Singapore

In Singapore, the Companies Act offers both a statutory derivative action (Section 216A) and a personal action for oppression (Section 216). Through case law, Singaporean courts have crafted a delicate balance between majority rule and minority protection, and minority shareholders have been effectively using the derivative action regime to protect the companies' rights against wayward directors and controlling shareholders. Singapore's system is considered by many as the most advanced one in Asia and can serve as a model for reform in India.

d. Australia

The Australian Corporations Act 2001 lays out quite detailed regulations regarding statutory derivative actions (Section 236), oppression remedies (Section 232), and class actions. The Australian oppression remedy is very wide-reaching since it also covers actions that are "contrary to the interests of the members as a whole" or "oppressive to, unfairly prejudicial to, or unfairly discriminatory against" a member. The courts are also authorized to make various

types of orders including the purchase of shares at a fair value, the appointment of a receiver, and the winding up of the company.

IX. CRITICAL EVALUATION: ADEQUACY OF THE EXISTING FRAMEWORK

a. Definitional and Interpretive Ambiguities

A major shortcoming of the Indian framework is that it does not have a legal definition for "oppression" and "mismanagement" Even though courts have interpreted these terms to some extent, not having a law defining them has been causing the courts' decision-making to be uncertain and inconsistent. The very high standard of "burdensome, harsh, and wrongful" conduct set in Needle Industries and confirmed in the Tata-Mistry case may, in effect, almost exclude the instances of unfair but not oppressive conduct from the scope of Section 241 contract. On the other hand, the UK's "unfairly prejudicial" standard is much more favorable towards minority interests and offers a more easily attainable solution.[19]

b. The Underutilization of Class Action Suits

Even though class action suits under Section 245 were introduced almost ten years ago, in fact class action suits under Section 245 have not been the most commonly used or most popular tool till now. This can be explained by the following factors, among others: a) there being a high number of members who must come together to file an application, b) the absence of a class of specialized attorneys (often called plaintiffs' bar) c) lack of a culture of contingent fees (where lawyers get paid only if the case is won) in d) India, the d) risk of an adverse cost order (i.e. the losing party pays the other party's legal costs) Under Section 245(4), e) and the general information asymmetry between minority shareholders and company management[20].

An addition to this is that Section 245 does not allow for representative actions in which a single member or a small group can bring an action on behalf of all similarly situated members a very important feature of the US class action system which significantly improves the access to collective justice for dispersed shareholders.

c. The Absence of Statutory Derivative Action

[19] Umakanth Varottil, 'Evolution and Effectiveness of Independent Directors in Indian Corporate Governance' (2010) 6 *Hastings Business Law Journal* 281.

[20] Mihir Naniwadekar, 'The Oppression and Mismanagement Provisions in the Companies Act 2013: Continuity and Change' (2014) 6 *NUJS Law Review* 135.

As I mentioned earlier, the lack of a statutory derivative suit is a very serious shortcoming of the Indian legal framework. Minority shareholders, who see the company being defrauded or mismanaged by the controlling persons, are unable to take any effective steps for enforcing corporation's rights unless they are able to prove personal oppression. This shortcoming is even more serious in view of increased discussions on corporate tunnels, misappropriation of company assets and promoter/director self-dealing transactions.

d. Delays and Access-to-Justice Concerns

Delays seriously reduce the actual power of the NCLT to help minorities. Minority shareholders who are in need of urgent interim relief often discover that by the time the NCLT makes its move, the damaging oppressive treatment has already done its work beyond repair. The absence of a proper system for quick trials of urgent corporate disputes is a glaring weakness of the present institutional set-up.

The hurdles in access-to-justice are further aggravated by the high expenses of legal proceedings before the NCLT, the technical intricacies of corporate law and financial valuation issues, as well as the scarce availability of pro bono or public interest litigation in the corporate law area. Retail investors and small shareholders suffer the most from these barriers.

e. Limited Enforcement Coordination

There is still a big lack of synchronization between SEBI's means of enforcing its decisions and NCLT's power to deal with cases of oppression and mismanagement. When the companies concerned are listed ones, the minority shareholders may find themselves having to approach both SEBI and the NCLT separately, thus replicating efforts, jurisdictional disputes and possibly contradictory decisions, a scenario that leads to unwarranted expenses and unpredictability for the wronged shareholders.

f. Inadequacy of Remedies for Small Shareholders

The current system fits more the needs of institutional minority shareholders who have the necessary resources, information, and legal capability to use the formal procedures than the huge majority of small investors who are shareholders of publicly listed companies only. In case majority shareholders/directors have acted unfairly or prejudicially, the buy-out option as

a last resort in Section 242 may end up worthless for small shareholders if the valuation method is not up to the mark or can be easily manipulated. It's obvious that there should be a mechanism that is easy to use, low in cost and simple to the extent of being almost administration-free for giving protection to small shareholders.

X. RECOMMENDATIONS FOR REFORM

a. Statutory Definition of Oppression and Mismanagement

The Companies Act, 2013 must be revised to include a legislative definition of "oppression" which goes for a wide standard of "unfairly prejudicial" instead of the tight one of "burdensome, harsh, and wrongful". This would harmonise Indian law with the UK and Australia and allow minority shareholders who in reality are the victims of prejudice to have access to the remedy even if their dealings are not that of the traditional oppression. Besides, a precise legislative definition would help to lessen the interpretive uncertainty and facilitate uniform judgment.[21]

b. Introduction of a Statutory Derivative Action

The Companies Act, 2013 should be amended to include a full statutory derivative action on the lines of Singapore or Australian models. The new provision should stipulate: (i) Standing rules for the commencement of the derivative suit; (ii) leave to be granted with clear standards as to the decision to grant it, (iii) expense protection for the derivative plaintiff, (iv) right to intervention for the company and (v) the division of recovery between the company and the derivative plaintiff. The insertion of this provision would help bridge one of the most significant gaps in the Indian minority protection regime.

c. Strengthening the Class Action Framework

There should be reform of the class action regime in section 245. First, the threshold for bringing a class action application should be reduced. Second, a representative action procedure should be created so that a lead plaintiff may be appointed in each action and may appear on behalf of the class members. Third, provisions should be made for the sharing of costs among the class members, and the lead plaintiff should be indemnified for cost orders in all non-frivolous cases. There is a need to create a class action certification role for the NCLT with appropriate case management orders, as permitted under US federal procedures.

d. Capacity Building and Procedural Reform

[21] Companies Law Committee (J J Irani Committee), *Report of the Expert Committee on Company Law* (Ministry of Corporate Affairs, Government of India 2005).

The capacity and delay issues at the NCLT need to be dealt with swiftly. The same needs to comprise of the following steps: appointment of more benches and members with expert knowledge in corporate finance and valuation; introduction of stricter time limits for the disposal of oppression and mismanagement petitions; development of a fast-track mechanism for urgent interim relief applications; pre-trial disclosure and discovery mechanisms to provide minority petitioners with access to internal company documents; and improved use of digital technology in managing cases and for virtual hearings.

e. Enhanced Coordination Between SEBI and the NCLT

The regulatory mechanism should include provisions for formal coordination and information sharing between SEBI and NCLT, especially for cases where listed companies are involved. The establishment of a joint investigative mechanism for cases where both market misconduct and corporate oppression are involved will eliminate the redundancy and inconsistencies, facilitate effective and coordinated enforcement against minority oppressor.

f. Investor Education and Shareholder Activism

The Government of India, SEBI, and the Ministry of Corporate Affairs should allocate resources to efficient investor education mechanisms so as to bring to the notice of minority shareholders the various rights they possess and the remedies, they can utilise. Increased institutional shareholder activism, enhanced services of proxy advisors and well-established shareholder associations that are willing to coordinate to take action against oppressive behaviour will supplement formal remedies and aid in their practical enforcement.

g. Fair Valuation Mechanism for Buy-Out Orders

A need exists to reform the Companies Act to ensure there is a clear, predictable and just process for the valuation of shares on buy-out orders under s.242. The introduction of a legal provision requiring a court appointed and managed fair value assessment according to internationally recognized accounting standards, would increase certainty for minority shareholders and narrow the scope of conflict regarding valuation methodology.

XI. CONCLUSION

The analysis undertaken in this paper indicates that even though the Companies Act, 2013 have introduced comprehensive changes in the framework for minority shareholders' protection compared to the Companies Act, 1956, the current legal framework fails to address a few significant areas of minority protection. The lack of clear definitions regarding the scope and applicability of the concepts of oppression and mismanagement, ineffective usage of class action suits, no existence of a statutory derivative suit, barriers to access-to-justice,

long delay in litigations at the NCLT and the lack of synergy among the regulatory authorities affect the efficacy of the minority protection mechanisms in India to a great extent.

In essence, the task before India is to translate the legal rights provided to the minority shareholders in the law into meaningful access to remedies for the myriad class of minority shareholders in India-ranging from sophisticated institutional investors to the small retail investors in listed companies. This translation can be achieved through not only legislative modifications but also through enhanced capacity building of the institutions involved, coordination among various regulatory authorities, effective legal aid and investors' education and above all, through change of corporate culture towards a more accountable and transparent corporate governance regime. India stands at the cusp of an opportunity in terms of corporate governance.

In conclusion although not wholly insufficient, as the present legislation provide the base of the statute and specialized tribunal, the protection of minorities in India is factually and procedurally flawed and requires massive legislative and institutional reforms for honouring the guarantee of equal treatment to all the shareholders irrespective of the size, power and wealth. The goal of establishing India as a centre for investment and business, increasing integration of Indian companies into global markets and increasing investor sophistication in India all requires an adequate and effective minority shareholder protection framework. The reforms suggested in this paper if implemented would improve Indian minority shareholder protection significantly and take it a lot closer to the international best practice.

In sum, while not entirely inadequate as existing provisions offer the foundation of the statute and the specialised tribunal, Indian law for the protection of minorities is substantively and procedurally insufficient and badly in need of significant legislative and institutional reform to honor the guarantee of fair treatment to all shareholders, regardless of size, power or wealth.

XII. BIBLIOGRAPHY AND REFERENCES

A. Primary Sources: Legislation

1. Companies Act, 2013 (Act No. 18 of 2013), Ministry of Corporate Affairs, Government of India.

2. Companies Act, 1956 (Act No. 1 of 1956), Government of India.

3. Securities and Exchange Board of India Act, 1992.

4. Insolvency and Bankruptcy Code, 2016.

5. SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

6. SEBI (Prohibition of Insider Trading) Regulations, 2015.

7. National Company Law Tribunal Rules, 2016.

8. Companies Act 2006 (United Kingdom).

9. Corporations Act 2001 (Australia).

10. Companies Act (Singapore), Cap. 50.

B. Primary Sources: Case Laws

1. Tata Consultancy Services Ltd. V. Cyrus Investments Pvt. Ltd., (2021) 9 SCC 449 (Supreme Court of India).

2. Dale & Carrington Invt. (P) Ltd. V. P.K. Prathapan, (2005) 1 SCC 212 (Supreme Court of India).

3. Needle Industries (India) Ltd. V. Needle Industries Newey (India) Holding Ltd., (1981) 3 SCC 333 (Supreme Court of India).

4. Shanti Prasad Jain v. Kalinga Tubes Ltd., AIR 1965 SC 1535 (Supreme Court of India).

5. Hind Overseas Pvt. Ltd. V. Raghunath Prasad Jhunjhunwalla, (1976) 3 SCC 259 (Supreme Court of India).

6. Miheer H. Mafatlal v. Mafatlal Industries Ltd., (1997) 1 SCC 579 (Supreme Court of India).

7. Rajkumar Nagpal v. Sh. Ram Prasad Nagpal, NCLT Delhi Bench, CP No. 25/2018.

8. Foss v. Harbottle, (1843) 2 Hare 461 (Court of Chancery, England).

9. Scottish Cooperative Wholesale Society Ltd. V. Meyer, [1959] AC 324 (House of Lords, UK).

C. Secondary Sources: Books

1. Avtar Singh, Company Law (16th edn., Eastern Book Company, Lucknow, 2015).

2. A. Ramaiya, Guide to the Companies Act, 2013 (LexisNexis, New Delhi, 2015).

3. K.R. Chandratre, Company Law and Secretarial Practice (Bharat Law House, New Delhi, 2014).

4. Paul L. Davies & Sarah Worthington, Gower's Principles of Modern Company Law (10th edn., Sweet & Maxwell, London, 2016).

5. Brian R. Cheffins, Company Law: Theory, Structure and Operation (Oxford University Press, Oxford, 1997).

6. M.C. Bhandari, Guide to Company Law Procedures (22nd edn., LexisNexis, 2020)

D. Secondary Sources: Articles and Journals

1 Umakanth Varottil, Evolution and Effectiveness of Independent Directors in Indian Corporate Governance (2010) 6 Hastings Business Law Journal 281.

2 Mihir Naniwadekar, The Oppression and Mismanagement Provisions in the Companies Act 2013: Continuity and Change (2014) 6 NUJS Law Review 135.

3 Harpreet Dhariwal, Minority Shareholders' Remedies: A Comparative Analysis (2018) 12 Indian Journal of Corporate Law 45.

4 Akshay Sapre, Minority Shareholder Oppression: Reinterpreting Adequacy in Indian Corporate Law (2020) 62(1) Journal of Indian Law Institute 78.

5 Vikramaditya Khanna & Shaun J. Mathew, The Role of Independent Directors in Controlled Firms in India (2010) 34 Sankhya: Indian Journal of Statistics.

6 Umakanth Varottil, The Minority Shareholder in the Promoter-Dominated Company (2019) NUS Law Working Paper 2019/001.

E. Reports and Official Documents

1. Companies Law Committee (J.J. Irani Committee) Report, 2005, Ministry of Corporate Affairs, Government of India.

2. Corporate Governance Voluntary Guidelines, 2009, Ministry of Corporate Affairs, Government of India.

3. Committee on Corporate Governance (Uday Kotak committee), SEBI Report, 2017, Securities and Exchange Board of India.

4. Ministry of Corporate Affairs Annual Report 2022-23, Government of India.

5. 58th Report on Company Law, Law Commission of India, 1974.

6. 57th Report on the Companies Bill, 2011, Standing Committee on Finance, Lok Sabha Secretariat, New Delhi.