CORPORATE GOVERNANCE IN REFERENCE TO MINORITY SHAREHOLDERS' RIGHTS

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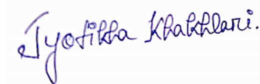
DECLARATION

I, JYOTIKHA KHAKHLARI, pursuing Master of Laws (LL.M) from National Law University and Judicial Academy, Assam, do hereby declare that the present dissertation titled "CORPORATE GOVERNANCE IN REFERENCE TO MINORITY SHAREHOLDERS' RIGHTS" is an original research work and has not been submitted, either in part or full anywhere else for any purpose, academic or otherwise, to the best of my knowledge.



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Third I would like to express my gratitude to the officials and staff members of National Law University and Judicial Academy, Assam who rendered there help during the period of my dissertation. I want to thank you for your excellent cooperation and for all of the opportunities I was given to conduct my research.

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I am greatly indebted to the various writers, jurists and all other authors from whose writings and literary works I have taken help to complete this dissertation.

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2013- Companies Act.

1956- Companies Act.

1956- Business Act.

1992- Securities and Exchange Board of India Act.

1956- Securities Contracts (Regulation) Act.

1908- Code of Civil Procedure.

2000- Insurance Regulations and Development Authority Act.

1999- Insurance Regulations and Development Authority Act.

2002- Competition Act.

TABLE OF ABBREVIATION

1.	CG	Corporate Governance
2.	OECD	Organisation for Economic Co-operation and Development
3.	BOD	Board of Directors
4.	G20	Group of Twenty
5.	CII	Confederation of Indian Industry
6.	SEBI	Securities and Exchange Board of India
7.	ICSI	Institute of Company Secretaries in India
8.	CEO	Chief Executive Officer
9.	TCE	Transaction Cost Economics
10.	RDT	Resource Dependency Theory
11.	CSR	Corporate Social Responsibility
12.	UK	United Kingdom
13.	US	United States
14.	ED	Executive Director
15.	GAAP	Generally Accepted Accounting Principles
16.	GDR	Global Depository Receipt
17.	DCA	Department of Company Affairs
18.	MFCA	Ministry of Finance and Company Affairs
19.	CFO	Chief Financial Officer
20.	MCA	Ministry of Company Affairs
21.	BCCI	Board of Control for Cricket in India
22.	EXCO	Executive Committee
23.	ROC	Registrar of Companies
24.	SC	Supreme Court
25.	HC	High Court
26.	SFIO	Serious Fraud Investigation Office
27.	CPC	Code of Civil Procedure
28.	FPC	Financial Reporting Council
29.	LSE	London Stock Exchange
30.	CBI	Confederation of British Industry
31.	DRR	Disaster Risk Management
32.	SEC	Securities and Exchange Commission
33.	NYSE	New York Stock Exchange

34.	NASD	National Association of Securities Dealers
35.	IHS	Integrated Holistic System
36.	CLB	Company Law Board
37.	NCLT	National Company Law Tribunal
39.	SSGA	State Street Global Advisors
40.	AIR	All India Report
41.	NCDRC	National Consumer Disputes Redressal Commission
42.	PAF	Proxy Advisory Firms
43.	RPT	Related Party Transactions
44.	PAC	Person Acting in Concert
45.	SHA	Shareholder Agreement
46.	SEC	Securities Exchange Commission
47.	IGRM	Investor Grievance and Redressal Mechanism

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CHAPTER 1

1.1 Introduction:

Governance means something which is govern on a particular thing. Governance is defined as the process by which a business is directed, controlled, and run through the exercise of authority entrusted to the persons who govern it.

Corporate governance is a series of processes, traditions, regulations, laws and institutions that influence the management, administering and regulating of a firm.

The link between various participants including principal players, such as shareholders, the Managing Directors and the Management Board, and other actors such as suppliers, consumers, banks, employees, environmental regulators and the society at large, refers to corporate governance.

"According to a 1998 report by the Organization for Economic Cooperation and Development (OECD)," "good corporate governance adheres to the values of fairness, transparency, accountability, and responsibility." Fairness in safeguarding shareholder rights and guaranteeing contract enforceability with resource providers. Transparency in timely disclosures regarding firm financial performance, governance, and ownership issues. Accountability in outlining the roles and responsibilities of executives and the broad, responsibility in adhering with laws, and management oversight.[1]

Shareholders are assured of their profits, creditors are assured of payment, firm stakeholders are assured of business continuity, and societal social and environmental concerns are addressed through corporate governance.

Shareholders and investors are feeling insecure and helpless as a result of numerous scams, scandals, and other unethical business practises not only in India but around the world. In the contemporary industrial and commercial age, the corporation has become one of the most important organisations in all business organizations. It has a significant impact on both the national and international economies. India is a developing country that requires a healthy corporate environment in order for both domestic and foreign firms to invest.

As we all know, money is the backbone that allows companies and the security market to function, thus any form of liquidity shortage forces companies to become sick, which eventually leads to their demise. This will have a significant impact on the country's economic progress.

[1] Barbara L'huillier, "What does "corporate governance" actually mean?" 14(3) 2014 ISSN <https:www.researchgate.net/publication265732867> accessed on 20 June, 2021.

Many businesses have been formed, and their numbers are growing by leaps and bounds today. Corporate governance has recently gained considerable attention and concern worldwide. Sound corporate governance regulations are critical for both rich and developing countries to achieve their economic goals.[2]

Quite possibly the main necessities of a decent corporate administration situation are that investors' privileges are effectively secured and they are allowed to partake in and impact corporate vital choices. Investors put their cash into a partnership, and in return, the organization gives them shares.

Shareholders have specific rights as a result of their ownership of shares. Despite the fact that they do not have direct influence over the company, they are considered the true proprietors.

As a result, it is critical to preserve the rights of minority shareholders, as they contribute to a company's capital. Protection is also important because the company is a structure that includes several categories of people and has more than one proprietor. In the case of legislation that accepts such assurance, a proficient security of investor privileges can be implemented. Consequently, there is lawful just like the genuine part of investor protection. The legal aspect, for example, of investor protection as provided for in law, determines investors' position in law and the norms and guiding principles for difference.

Minority shareholders is one of the part of the company.

Minority Shareholders additionally play an exceptionally vital in an organization and subsequently, their security is significant. It is constantly seen that in practically every one of the spaces larger part typically overwhelms the minority as is on account of the investors. The interests of minority investors are having a tendency to be dominated by the larger part investors or advertisers of the organization. Despite the fact that some rights are granted to minority investors under the legal framework, they remain a source of contention for the majority of investors and the organization.

In India, majority stockholders have a significant advantage over minority shareholders. In general, the majority of the company's decisions are made. And whatever decision the majority shareholders make, it will be binding on the minority stockholders. Somewhere, however, the rights of minority shareholders are violated.

The minority shareholder’s voices were not heard by the majority shareholders during the general meeting decision-making process. As a result, India's corporate governance should be

[2] Shafi Mohamad, “The Importance of Effective Corporate Governance” DOI: 10.2139/ssrn.617101, (2004) SSRN <https://www.researchgate.net/publication/228237979> accessed on 20 June, 2021.

required to adopt the actual procedures that would be applied for minority shareholders. Because minority shareholders are a key component of every organization. Minority shareholders are also highly important.

As a result, protecting minority shareholders is important.

1.2 STATEMENT OF PROBLEM:

The problem for this dissertation is related to the concept of Corporate Governance in reference to Minority Shareholders' Rights. The globalization of the economy, as well as several business scandals and high-profile corporate governance failures, has drawn the attention of researchers to corporate governance. In many research studies have been doing from the standpoint of boards and agencies problems as corporate governance tools, but very few studies have been done so far to determine minority shareholders' protection concerns, their activities in the company, their satisfaction, and participation in corporate governance in India and what role they play in a company. That is why not much literature has been generated on this concept that whether the corporate governance of India give protection to the minority shareholders actually. This research proposal studies are an attempt to fill this gap.

1.3 AIMS:

The study's goal is to learn about "corporate governance" and "minority shareholder rights" in order to investigate the protection of minority shareholders' rights.

1.4 OBJECTIVES:

Following are the research objectives:

1) To explore the concept and the need and value of corporate governance.
2) To research corporate governance developments in India.
3) Knowledge of corporate governance's global development.
4) To examine corporate governance principles and four pillars.
5) To investigate corporate governance concerns relating to protecting the rights of minority shareholders.
6) To study about the key players in corporate governance framework.
7) To know about the rights of minority shareholders.
8) To study about the role of minority shareholders in corporate governance.
9) To know about what are the laws and remedies on protection of minority shareholders right.

1.5 SCOPE AND LIMITATIONS:

The scope of this Dissertation is limited to the following subject-matter:

a. Understanding the corporate governance developments in India.

b. Understanding about the global development of good corporate governance.

c. The present study is focused on to the protection of minority shareholders.

d. Understanding the key challenges faced by minority shareholders when they want protection from the corporate governance.

e. Understanding the legal and regulatory framework and what are the remedies for protection of minority shareholders in India.

1.6 LITERATURE REVIEW:

The Dissertation will review the following literatures for understanding the topic properly under study:

- Dr. Prem Kumar Agarwal and CA Rohit Kumar Singh (2016) in their book "Company Law" Incorporating the Companies Act, 2013 as amended by the Act of 2015. In their book explains the Companies Act, 2013 as well as the important rules under this Act. This has been adopted in chapter 3 of this paper.
- Ruchi Kulkani and Balasundram Maniam (2014) in his article, "Corporate Governance- Indian Perspective" provides that corporate governance in India's point of view and it will analyse the barriers that an emerging economy like India has to face. And the author will also have explained why it is important for any country to follow good corporate governance practices. In the next section the author will also explained that how the corporate governance is inseparable part of an Indian economy. Next the author discussed about the ethics, internal governance and choice of auditor and audit committee for India. This has been adopted in chapter 3 of this paper.
- Mihaela Ungureanu (2012) in his article, "Models and Practices of Corporate Governance Worldwide" has provides that a comparative study between the main corporate governance models used globally and also analysed each models strengths and weaknesses and in the sense to determine which one is the best model. This has been adopted in chapter 2 of this dissertation.
- Naveen Srivastav and J.P. Singh (2012) in his article, "Corporate Governance in India: Case for Safeguarding Minority Shareholders Rights" has discussed about the corporate governance issues in India, focused on the safeguarding of minority shareholder rights and also explained about the protection given to them and what are the challenges faced by the minority shareholder. This has been adopted in chapter 5.
- Aparna Sharma (2012) in her article, "Legal Framework and Corporate Governance: An Indian Perspective" has discussed regarding the corporate governance mechanism in the context of the legal framework in India and the author also try to explained in detail how clause 49 of Listing

Agreement act as an opportunity for public listed companies to achieve IT governance. This has been adopted in chapter 3 of this paper.

- Fianna Jesover and Grant Kirkpatrick (2005) in their article, "THE REVISED OECD PRINCIPLES OF CORPORATE GOVERNANCE AND THEIR RELEVANCE TO NON-OECD COUNTRIES" has attempted to provide the 2004 revised OECD principles of corporate governance and their relevance to non-OECD countries. This has been adopted in chapter 3 of this dissertation.
- Iragavarapu Sridhar (2016) in their article, "Corporate Governance and Shareholder Activism in India- Theoretical Perspective" has analysed the methods and role envisaged for shareholders in corporate governance. The author explained about the powers of shareholders and board of directors. And also discussed in detailed about the shareholder's participation in corporate governance under the Companies Act, 2013. This has been adopted in chapter 4 of this paper.
- OECD Publishing, Paris (2015) in this book "G20/OECD Principles of Corporate Governance" has discussed in detailed about the principles and it presented in six different chapters 1) ensuring the basis for an effective corporate governance framework, 2) the rights and equitable treatment of shareholders and key ownership functions, 3) institutional investors, stock markets, and other intermediaries, 4) the role of stakeholders, 5) disclosure and transparency, and 6) the responsibilities of the board. This has been adopted in chapter 3 of this dissertation.
- Prof. Mamata Sawakar (2018) in her article, "CORPORATE GOVERNANCE IN INDIA-EVOLUTION AND CHALLENGES" has provided a detailed study about the various developments and some challenges in corporate governance in India. This has been adopted in chapter 3 of this paper.
- Barbara Li'huillier (2014) in her article, "What does "corporate governance" actually mean?" has try to explained about the meaning of what does corporate governance exactly mean? This has been adopted in chapter 2 of this paper.
- Babita (2015) in her thesis, "Shareholders perspective on corporate governance practices in India" has explained about the meaning of corporate governance, need of corporate governance and principles of corporate governance. And the author also described the evolution in global level as well as in Indian context. And also provides the essentials of good corporate governance.
- Arora, Seema (2014) in her thesis, "Corporate Governance standards disclosure practices and shareholder values in ranking and financial sector in India" has given detailed discussion on regarding Indian and international scenarios of corporate governance. The author also discussed about the concept of shareholder value in a company and its significance in the company. The author also analysed about the disclosure and stakeholder relationship. And the author also

attempts to analysed disclosure about corporate governance information to shareholder and shareholder's satisfaction on it.

- Nelson Maseko (2015) in his article, "Participation of Shareholders in Corporate Governance" has discussed about how the shareholders working in the company or shareholder's role in the company. The author also highlighted that good corporate governance practices requires active participation of shareholders in a corporation in the direct and indirect control of the company.
- Ayushi Verma (2021) in her article, "Protection of Rights of Minority Shareholders" has provides the meaning of minority shareholder. And the author also explained about the fiduciary duty of majority shareholder to the minority shareholders. The author also tries to described the various ways in which the interest of minority shareholders to be protected.
- Shikha Pokhriyal (2021) in her article, "The protection of minority shareholder's rights: remedies to unfair prejudice and premises for bringing proceedings" has discussed minority shareholders right, and the author also try to explained some problems faced by the minority shareholders right which is unfair prejudice and another is oppression and mismanagement. The author has also given the rights and what are those remedies for protection of the interest of minority shareholders.

1.7 RESEARCH QUESTIONS:

1) Whether the corporate governance will support the minority shareholders' protection?

2) What is the main issues of minority shareholders' protection in a company?

3) Is it true that a company's corporate governance actually protects the rights of minority shareholders?

4) Whether the statutory remedy is sufficient enough to protection of minority shareholder's right?

5) What is the gap in the desirability and availability of corporate governance norms, and how can it be remedied?

6) Is the persecution of minority shareholders the result of poor implementation of minority shareholder corporate governance?

1.8 RESEARCH METHODOLOGY:

The Legal Doctrinal Method is used in this dissertation to discover fact-situations and grounds linked to the issue of the subject. The approach used to prepare the research report is primarily based on secondary sources. The doctrinal approach was used for this report, with the researcher utilising various secondary sources such as books, journals, newspaper articles, web sites,

research articles, legislation, and so on that are available relevant to the concerned study. Analytical Methodology is used in the proposed research. The researcher will consult several statutory laws and Law Commission Reports of India in reference to the subject matter in order to reach a conclusion about the study.

1.9 CHAPTERISATION/ RESEARCH DESIGN:

This dissertation has divided into 7 chapters which are as explain in below: -

The Chapter 1 consists of brief introduction to the entire subject matter of the study. I tried to interpret the statement of problem, research aims and objectives, scope and limitation of the research work, research questions, research methodology, detailed literature review and the research design or chapterisation.

The Chapter 2 titled "Overview of Corporate Governance in India" will be focusing on the meaning, definition's, objectives and need of corporate governance. And this chapter will cover the key players, principles and includes the four pillars of corporate governance. It also deals with corporate governance and CSR and models of corporate governance.

The 3rd chapter titled "History of Corporate Governance in India" will be focusing on the ancient era of corporate governance. This chapter will concern about Indian and global perspective of corporate governance.

The 4th chapter titled "Historical background of Shareholding Structure around the World" will be focusing on all about shareholder's. This chapter deals with meaning of shareholder, types of shareholder's including majority shareholder, minority shareholder and small shareholder. This chapter also focusing on what are the role played by the minority shareholder? And shareholder activism. This chapter will further deal with rights of majority shareholder and rights of minority shareholder.

The chapter 5 titled "Laws and remedies for Protection of Minority Shareholder Rights" will be focusing on what are those laws which will provide the relief to minority shareholder rights. And this chapter also deals with some problems faced by minority shareholder from majority shareholder.

The chapter 6 titled "Issues of corporate governance and Importance and the role of minority shareholders in corporate governance." This chapter also discussed some important famous Case laws regarding violation of Minority Shareholder Rights. The various issues of corporate governance relating to minority shareholders. And also discussed about the role of minority shareholders and why they are important.

The chapter 7 is the concluding chapter based upon the entire research. It deals with the lacunas of corporate governance and for the protection of minority shareholders. Discussed why they are important for a company and why they are necessary to protect of their rights. Suggestions are built up based upon the lacunas that are form to exist during the course of study.

CHAPTER 2

OVERVIEW OF CORPORATE GOVERNANCE IN INDIA

2.1 INTRODUCTION:

India is a significant developing force on the global stage. The expansion of public and private sector firms in all sectors of the economy enables growth. The regulatory and legislative framework of governance is the path that India will take to become a global leader. Corporate India plays an important part in nation building. Corporate governance is an essential component of the country's overall governance. In the wake of the demise of top companies like Enron, WorldCom and the HH Insurance Group, effective corporate management practices have become a global concern. Everything scandalous in the world's headlines was linked to weak company governance.

The greatest scandal in Indian history, Satyam, Unit Trust of India, and Punjab National Bank, has called into question the country's corporate governance. India has greatest corporate governance rules in the world, but its poor implementation has hampered the adoption of corporate governance practices. A country's financial development is heavily reliant on investor protection, which can only be achieved through effective corporate governance procedures.

In order to safeguard the rights of minority stockholders, this study aims to explore corporate governance rules and how they apply within the firm. One of the finest methods for corporate governance is the correct protection of the rights of minority shareholders and the chance to participate in the decision-making process of the organization.[3]

Shareholders' put their money into a corporation, and in exchange, the company gives them shares. Shareholders have specific rights as a result of their ownership of shares. Despite the fact that they do not have direct influence over the company, they are considered the true proprietors. As a result, it is critical to preserve the interests of shareholders, as they are true contributors of a company's development.

Protection is especially important because a company is a corporate entity that contains a diverse group of people and has more than one owner. Shareholders play an essential role in a corporation, thus they must be protected. It is common knowledge that the majority usually

[3] Zulkarnain Muhamad Sori, ''An Overview of Corporate Governance" 10.2139/ssrn.1817091 SSRN, (2011) <https://www.researchgate.net/publication/228134164> accessed on 20 June, 2021.

dominates the minority in basically every situation, and this is also true in the case of shareholders.

Minority shareholders' interests are frequently overshadowed by the company's powerful majority shareholders or promoters.[4]

True, under corporate law, they have some legal rights that will be granted to them. As a result, it is not fair for the majority shareholders to dominate the minority stockholders. However, it is necessary to provide protection.

Let us first define corporate governance and outline this before examining in detail the rights of minority shareholders.

2.2 WHAT IS GOVERNANCE?

Governance means something which is govern on a particular thing. Governance ensures an optimal and efficient process via which each shareholder gains optimal value while no other stakeholder suffers value expropriation. Recently, there has been a growing conviction that governance should not be left entirely to corporate boards, but that some level of government and public involvement is required, and as a result, regulatory bodies and global legal requirements are exerting enormous influence on corporate governance systems.

Governance refers to the administration of any organization, including how it is governed, controlled, and directed, as well as the authority granted to those who govern it.

2.3 MEANING OF CORPORATE GOVERNANCE:

Corporate governance is a set of rules, regulations, and standards that regulate how a corporation is directed and how it operates.

It has many stakeholders, including the managing director, board of directors, shareholders, as well as consumers, suppliers, and employees, as well as regulators of the firm and society at large, all of whom have a relationship with one another.

It is a framework that ensures shareholders' profits, creditors' payments, company stakeholders' business continuity, and society's social and environmental needs are met.

An “Organization for Economic Cooperation and Development (OECD)” provided that

“Good Corporate Governance follows the concepts of fairness, transparency, accountability, and responsibility,” according to an OECD report from 1998. Fairness in preserving shareholder interests and maintaining the enforceability of contracts with resource providers. Transparency in timely disclosures regarding firm financial performance, governance, and

[4] Ibid.

ownership issues. Accountability in outlining the roles and responsibilities of executives and the broad, responsibility in adhering with laws, and management oversight.

2.4 DEFINITIONS OF CORPORATE GOVERNANCE:

There is no specific definition of “Corporate Governance” provided by any statutory statute. Different authors have developed several definitions that represent their areas of expertise.

1) “Corporate Governance" (Sternberg, 1998) "describes methods of ensuring that corporate actions, assets, and agents are oriented at attaining the corporate objectives stated by the corporation's shareholders.”

According to the above definition corporate governance means, it is a method of action, capital of the company, the various agents are working in the company for its objectives to the best interest of the shareholder.

2) “Corporate Governance is the system by which companies are directed and controlled provided by Cadbury Committee of 1992.”

According to the definition says that corporate governance is system through which the company is directed and controlled.

3) “Corporate Governance deals with the laws, procedures, practices and implicit rules that determine a company's ability to take informed managerial decisions vis-a-vis its claimants- in particular its shareholders, creditors, customers and employees. There is global consensus about the objective of 'good' corporate governance: Maximizing long term Shareholders Value. The CII Code (1998).”

According to this above definition that corporate governance ensures the laws, procedures, practices informed by managerial decision to all the stakeholders its shareholders, creditors, customers and employees of the company.

4) According to SEBI “Corporate Governance is all about recognition by Management about their role as corporate trustees and immutable rights of shareholders as they are the real owner of the company. It is all about dedication to carry out good business performance through proper ethics and values by differentiating corporate and personal resources in the process of company management.”

According to the above SEBI definition corporate governance is all recognition by management of the company where they are working for the shareholders’ best interest as because shareholders are known as real owner of the company. It also provided that to follow the proper ethics for the long term benefit of the company.

5) According to "Institute of Company Secretaries of India" provided that - "Corporate Governance is the application of best management practices, compliance of Law in true letter and spirit and adherence to ethical standards for effective management and distribution of wealth and discharge of social responsibility for sustainable development of all Stakeholders."[5]

According to the above definition corporate governance is the good management practices, proper business ethics to be a good corporate governance practices and distribution of wealth and follow the social responsibility and working for all the stakeholders of the company.

6) "Corporate Governance is the acceptance by Management of the inalienable rights of the Shareholders as the true owners of the corporation and of their own role as trustees on behalf of the Shareholders. It is about commitment values, about ethical business conduct and about making a distinction between personal and corporate funds in the management of the company" Narayana Murthy Committee, of 2003.

According to the definition that corporate governance is the acceptance by management of the inalienable rights of the shareholders and it is all about best following of business ethics.

7) Corporate governance in accordance with the OECD, "a collection of interactions involving a company's management, board of directors, shareholders, and other stakeholders. Corporate Governance also offers the framework within which the company's objectives are established, as well as the mechanisms for achieving those objectives and monitoring performance. Good corporate governance should create appropriate incentives for the board and management to pursue objectives that are in the best interests of the company and its shareholders, as well as permit effective monitoring, encouraging enterprises to use resources efficiently."

Corporate governance, according to the above definition, is the relationship between management and the organization's internal and external stakeholders. It identifies the company's objectives as well as the ways of reaching those objectives. It stresses incentives as a key form of motivation that encourages managers to reach pre-determined goals. It also discusses the importance of establishing an effective monitoring system in order to keep effective control over all of the organization's operations.

8) Sir Adrian Cadbury, ('Global Corporate Governance Forum', World Bank, 2000) has defined Corporate Governance as: "Corporate Governance is concerned with holding the balance between economic and social goals and between individual and communal goals. The corporate governance framework is there to encourage the efficient use of resources and equally to require

[5] Kudzai Dalton Chibarinya, "Corporate Governance notes" 10.13140/2.1.1496.0647 (2014) <https://www.researchgate.net/publication/> accessed on 13 May, 2021.

accountability for the stewardship of those resources. The aim is to align as nearly as possible, the interests of individuals, corporations and society"

The above definition emphasizes on the well-organized use of monetary resources and also lays stress on accountability to those who provide these resources. It also talks about striking the right balance between economic, social and individual goals in order to provide attention to all equally.

9) J. Wolfensohn, President, World Bank defines Corporate Governance as: "Corporate Governance is about promoting corporate fairness, transparency and accountability"

This definition encompasses the modern elements of Corporate Governance which are Transparency and Accountability. It talks about promoting corporate fairness and accountability in the organizations, which will ultimately lead to transparent functioning of the organization.

2.5 CORPORATE GOVERNANCE OBJECTIVES:

A primary goal of corporate governance is to help organizations' grow and develop by promoting healthy practices and self-sufficiency in a competitive business environment, resolving conflicts, and instilling trust in the minds of shareholders and stakeholders.

Following are the objectives of good corporate governance:

I. Improved company performance increases shareholder value and protects the interests of other stakeholders.

II. To have an efficient, fair, and transparent administration, along with financial disclosures, so that information can be transferred effectively from the internal to the external environment.

III. To rationalize the management and monitoring of risk that the company encounters on a worldwide scale, or to ensure the integrity of financial reporting.

IV. To keep balance of authority so that there is no considerable power for a single person.

V. To raise awareness of the company's environmental and socioeconomic challenges in the community in which it operates. This will boost the company's reputation.

2.6 CORPORATE GOVERNANCE NEEDS AND IMPORTANCE:

Because of a number of important rules, corporate governance needs are felt. There are reasons for its needs:

- In the globalized world of business today, an organization needs to be fair and transparent with all its stakeholders to reach international capital pools, attract and retain the best human capital

in the world, collaborate as a team with vendors to create great partnerships and live in harmony with the community. [N. R Narayana Murthy Committee, of 2003].

- Companies must acknowledge that their progress necessitates the cooperation of all stakeholders, which can be generated by implementing effective corporate governance standards. With this hold, the management must act as trustees for the shareholders, putting an end to the asymmetry of rewards between different types of shareholders, particularly between executive owners and the rest of the shareholders.
- Good corporate governance is a key component to enhancing the economic competence of a company and ensuring that companies take the interests of a large number of communities and the community in which they operate into consideration. Corporate governance assists in balancing the interests of all stakeholders, ensuring the corporation's long-term survival and growth [N. R Narayana Murthy Committee, of 2003].[6]
- Beyond administrative issues, corporate governance compliance is required to avoid the high costs that might result from a failure to execute effective governance. It is true that a lack of corporate governance processes may expose the organization to risk in areas that would have an impact on the public markets. [N. R Narayana Murthy Committee, of 2003].
- Good corporate governance encourages more stable sources of financing since it helps to keep investors – both international and domestic – buoyant, attracting more capital and, in turn, lowering the cost of capital.
- Corporate governance promotes ethical behaviour in business. Ethical and fair leadership is beneficial to business since the corporation is expected to execute its operations in accordance with the expectations of all stakeholders [N. R Narayana Murthy Committee, of 2003].
- A solid and efficient corporate governance structure is important for the operational success of a company as it encourages strategic thinking at the top line by introducing independent directors who contribute a wealth of skills and experience and a wide array of new ideas. Better governance rationalizes management and monitors the risks that a firm face on a worldwide scale, as well as ensuring the dependability of financial disclosures.
- Corporate governance is important because it improves company performance and aids in the development of capital markets. Furthermore, a good corporate governance structure decreases risk, adds value to investments, and helps investors improve their brand. Given the strong link between excellent corporate governance and long-term economic success, implementing

[6] Zoran Vukčević, "Importance of Corporate Governance'' 2(5) 2014 <https://www.journals.elsevier.com> accessed on 20 May, 2021.

stronger corporate governance practices has become an important component of business development.[7]

2.7 KEY PLAYERS IN CORPORATE GOVERNANCE FRAMEWORK:

Management, boards of directors, shareholders, auditors, and all of the other stakeholders, including employees, company creditors, customers and the general public, regulate corporate governance.

The shareholders will delegate decision-making authority to management. And management works for the benefit of the shareholders. Management must have an impact on the company's progress.

The management of the board of directors is largely accountable. It is responsible for ensuring the effective implementation of the strategy and direction of the Board throughout the business. Management is responsible for the company's everyday operations. As a result of the separation of ownership and control, shareholders lose effective control of the company.

The shareholders of the firm are responsible for selecting the managers and auditors of the company. In addition, the organization should implement a proper governance mechanism. The board of directors' function in a corporation is to establish strategic goals and objectives for the firm, provide guidance on how those goals should be implemented, oversee the company's management, and report to shareholders on their stewardship. Furthermore, the actions of the board are scrutinized by laws, norms, and shareholders. The job of auditors, on the other hand, is to provide shareholders with an independent, external, and objective examination of the director's financial statements, which serve as the foundation of that reporting structure. [Cadbury Committee, of 1991].

The board of directors' primary tasks are to provide strategic guidance and effective oversight to management, to defend minority interests and rights, to ensure fair treatment of all stakeholders, and to provide superior transparency and timely disclosure. Directors are accountable in the CG framework for determining whether executive officers are doing their jobs appropriately and contributing to enhanced business value.

In terms of stakeholders, corporate governance is concerned about developing strategies to assist various stakeholders in the corporation to embark on efficient and optimal levels of human and physical capital investment based on firm-specific requirements. A corporation's competitive spirit and ultimate success are the consequence of the team's collaborative efforts,

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[7] Babita, 'Shareholders' Perspective on Corporate Governance Practices in India' (DPhil thesis, Guru Jambheshwar University of Science and Technology 2015)

which states contributions from a variety of different sources, including shareholders', creditors, workers and vendors.

Companies should be states that the contributions of stakeholders are a valuable resource for developing, competitive and profitable businesses for company [OECD, of 2004]. The most recent advancement in this context is the expectation that various stakeholders should also contribute to governance on their own. Furthermore, they should participate in significant strategic and profit-sharing choices with owners, as well as supervise managerial decisions.[8]

2.8 PRINCIPLES OF CORPORATE GOVERNANCE:

Some of the most widely acknowledged principles of corporate governance are described below:

The primary notion of corporate governance is to establish an effective and successful corporate governance framework. A transparent, efficient market should be promoted and complied with the applicable norms and regulations in corporate governance structure. Furthermore, it should express clearly the distribution of responsibility among various supervisory, administrative, and enforcement entities [OECD, of 2004]. The term "efficiency" refers to the reduction of transaction costs, whereas "effectiveness" must be defined in terms of achieving the desired aim.

Therefore, processes and associations need to provide results that match the company's needs and make the most use of available resources in order to become effective. Rationally, this implies the responsible use of natural resources as well as environmental conservation.

The second concept is about being honest and ethical. Ethical and ethical administration is crucial for public relations, as well as risk management and dispute resolution. Corporations should have an ethical and responsible conduct and practices code of conduct for their executives and directors.

In this context, it is essential to understand that a corporation is bound to fail in its reliability and integrity. This will reduce the chance of a corporation crossing ethics and legal limits by many enterprises implementing compliance and ethical programs.

The second corporate governance principle is the preservation of shareholders rights. The Corporate governance system should protect and enable shareholder rights to be exercised [OECD, 2004]. Corporations should respect and assist shareholders' rights. They can help

[8] Babita, 'Shareholders' Perspective on Corporate Governance Practices in India' (DPhil thesis, Guru Jambheshwar University of Science and Technology 2015).

shareholders to exercise their rights through understandable and accessible presentation of information and encouragement to meetings in general.

An important principle of corporate governance is equality of treatment of shareholders. The corporate governance system should ensure that all shareholders are fairly treated and have an option for effective remedies if they have a complaint or have infringed their rights [OECD, 2004]. The scope of this principle is enlarged in today's corporate governance concept to encompass all of the company's stakeholders.

This notion is centred on ensuring that all segments of society believe they have a stake in the outcome and are not excluded from the majority. This principle is primarily concerned with ensuring that minorities' perspectives are considered and the voices of society's weaker members are heard when making decisions that affect the society as a whole or in part.

This necessitates a framework that ensures that all stakeholder groups have the opportunity to enhance and sustain their well-being. Corporations must understand that all genuine stakeholders have legal and additional responsibilities.

The fifth principle addresses the role of stakeholders in corporate governance. The corporate governance system has to determine the rights of all legal or reciprocal stakeholders. It must foster aggressive cooperation between firms and stakeholders in order to create prosperity, jobs, and the long-term viability of financially strong enterprises. [OECD, of 2004] Even if participation by all stakeholders is certainly desirable, it is not a necessary principle of effective governance. However, the ability of all to actively participate if wanted is a critical principle.

Participation, of course, includes the freedom of involvement and the terms that go with it. Participation can be direct or through lawful intermediary institutions or the legislature, as in the case of government, depending on the size and organisation of the firm.

The following corporate governance guideline is concerned with the company's transparency and disclosure. The governance system must ensure that the company is communicated in due course and correctly on all essential issues, such as financial health, performance, ownership and governance structure. [OECD, of 2004].

To provide shareholders with a sense of responsibility, corporations should clearly identify and publicize the roles, duties, and obligations of the board and management. They should also put in place adequate processes for independent verification and assuring the financial reporting integrity of a corporation.

Companies are obligated to provide timely and accurate disclosure of key information about their businesses and to guarantee that all investors have access to clear and real data.

The Board's obligations are the fourth, but also crucial, principle of corporate governance. The Board of Directors of a corporation shall provide the management with suitable strategic advice as well as supervision and assurance of management. The corporate governance framework should offer the corporation and its shareholders with strategic direction and accountability of the board. [OECD, of 2004].

To be proficient in dealing with a variety of business concerns and to be able to review and it must be the right size and structure, as well as have the right level of fealty, to carry out its duties and responsibilities. The question of proper board size and structure has long been debated, and there are concerns about the appropriate mix of different sorts of directors, including executive, non-executive, and independent directors. Criticise management performance, the board requires a wide range of skills and understanding.[9]

2.9 THEORETICAL FRAMEWORK FOR CORPORATE GOVERNANCE:

There are numerous theories that might help us learn about corporate governance and grasp what it means. Which theories do we need to read about? The theories are explained below.

Several ideas contend in the context of the corporate governance framework in the theoretical setting.

1) Agency Theory:

Adam Smith was the first to write on managerial laxity and extreme misbehaviour in joint stock enterprises. The agency expenses involved with the organization's operation formed the basis of this idea. Agency costs are defined as the costs imposed by a conflict of objectives between the organization's shareholders and its management. The contemporary corporation is distinguished by the separation of ownership and control. Agency costs occur as a result of a conflict of interest between the owners and the managers. The agency expenses are the sum of bonding, monitoring, and residual loss.

According to this viewpoint, the board's primary responsibility is to monitor and control management.

According to agency theory, independent non-executive members of a supervisory board should predominate so that management may be more effectively overseen. Furthermore, different people should hold the positions of CEO and board chair in order to divide operational and control tasks.

2) Transaction Cost Economics:

[9] Babita, 'Shareholders' Perspective on Corporate Governance Practices in India' (DPhil thesis, Guru Jambheshwar University of Science and Technology 2015).

The assumptions of limited rationality and self-interest, which are assumed to be firmly established in human nature, are shared by Transaction Cost Economics and agency theory. The foundations of the theories are fundamentally different; agency theory is concerned with the agency problem, whereas former is concerned with the broader issue of transaction cost efficiency.

The purpose of economic organizations, including the governance structure, according to TCE, is to lower transaction costs while simultaneously limiting the impact of informational asymmetries where parties have made firm-specific investments. The idea focused on the company's costs, specifically on the most efficient methods of collecting and allocating resources.

According to this theory, the board's job is to protect assets made by people who make firm-specific investments that cannot be adequately protected by other means.

3) Resource Dependency Theory:

The RDT recognized the Board as a tool for representing key external entities that rely on the enterprise. One strategy is to bring on board people from significant suppliers, competitors, or customers.

The principal tasks of the Board of Directors are to maintain healthy and harmonious relations with important external actors to secure the flow of resources to and from the company and to help the organization in responding to external events.

4) Stewardship Theory:

In accordance with stewardship theory, an internal supervision committee should be inspected by members to provide effective opinions, as insiders know the company better than external directors. Its philosophy placed a premium on intrinsic rewards that are difficult to quantify, such as development, achievement, and obligation. Stewardship idea is not without limitations. As scandals demonstrate, organizations' must have some form of defense against the sporadic occurrences of fraudulent and self-serving management.

5) Stakeholder Theory:

According to stakeholder theory, firms must be guided by the well-being of their stakeholders, which include investors, employees, consumers, and communities. In addition, the company's directors have the duty to make use of a balanced judgement in order to explain and lead their conduct according to the principle of stakeholder enabling.

It is believed that firms will more likely be oriented toward higher social purposes than the narrow interests of a single corporation, by incorporating a diverse variety of participants on corporate boards. This involves an arbitrator for boards to negotiate and resolve potentially competing stakeholders' interests to set the objectives of the company and to decide policies and programs.

6) Managerial Hegemony Theory:

According to the theories of managerial hegemony, the board is just a rubber stamp for the decision of the management. Its main duty is to give managers legitimacy. Idea of hegemony refers to the concept of dominant power. Where management authority exists, the board's judgements and monitoring of the corporation's performance are entirely contingent on what the CEO chooses to divulge. Unless there is an emergency, the hypothesis indicates that boards will make little attempts to influence authoritative execution.

2.10 FOUR PILLARS OF CORPORATE GOVERNANCE:

I. Transparency:

The separation of management and ownership can lead to conflicts if managers violate trust, either purposefully for self-interest or ineptitude, or by omitting essential details due to neglect in reporting. This can be prevented if entities embrace a transparent working style and are accountable to all. Transparency is defined as full disclosure of a company's financial and non-financial information [OECD, of 2004].

Transparency is defined as making the truth available for everyone to view whenever and wherever they desire. This is a measure of how good administration is in making critical data, such as audit data, general reports, and press releases, available in a genuine, accurate, and timely manner.

II. Fairness:

Fairness refers to treating all stakeholders fairly, which involves giving everyone what they deserve.

Fairness in the context of corporate governance is more than equity, as it is not equality, but the dynamics that encourage collaboration among stakeholders with competing interests and defend against power consolidation and misuse.

The corporation should respect the opinions of everyone who has a legitimate stake in the company. Fairness must be practiced in order to maintain a sense of balance in the organization.

Whatever protection and respect is provided to majority owners, it is also vital to provide equal protection and respect to minority shareholders.

III. An Accountability and Responsibility:

An accountability and responsibility are critical components for corporate governance. Accountability refers to the obligation and accountability to explain and justify the company's activities and performance.

Accountability boosts shareholder confidence and is achieved by authenticity in numerous elements of corporate governance, including reporting. The many rules and laws to improve accountability also promote the efficacy and veracity of reporting.

The only goal of corporate governance standards and change is no longer accountability to shareholders.

Accountability to all stakeholders and social responsibility are now regarded as critical components for corporate success in both the practitioner and academic sectors, as well as critical components for improving social welfare.

Corporate management not only concerns shareholders of the company but also personal and reciprocal accountability and other stakeholders. In terms of management, responsibility is assigned to conduct that allows for corrective action and penalization of wrongdoing. Responsible management determines what is required to steer the organization in the right direction. At the same time, the board is accountable to the corporation and must respond to all stakeholders of the organization with a feeling of responsibility. The distinction between accountability and responsibility is that when one is accountable, one is required to present an explanation, whereas when one is responsible, one may be called to account. According to corporate governance lexicon, if one is a director, one is legally obligated to the firm, and if accepted as relevant to the corporation, one is obligated to the shareholders.

IV. Independence:

It is vital during the corporate governance procedure for various reasons. The internal auditors should be independent of the auditing colleagues, while the external auditors should be independent of their customers. Furthermore, non-executive directors are not bound by the same rules as their executive counterparts on the board.

The question now is, what do we mean by "independence"? Individuals can become independent, a crucial factor of professional and the specialist perspective. It refers to the fact that a stake in the company does not unduly influence it and that it does not have any limits that

would impede the correct course of action. It is a way to 'separate' the ability to take the most unbiased decisions on a specific subject from unsuitable pressures and managerial limits.

How much a framework has been developed to forestall or stay away from likely irreconcilable circumstances, like strength by a solid CEO or critical Shareowner, is alluded to as freedom. This incorporates techniques, for example, board organization, arrangements to different board councils, and outer gatherings like reviewers. Inside courses set and choices made ought to be level-headed and liberated from excessive impact.[10]

2.11 CORPORATE SOCIAL RESPONSIBILITY AND CORPORATE GOVERNANCE:

Corporate social obligation is an idea wherein firms think about cultural interests by assuming liability for the effect of their activities on the climate, clients, providers, workers, and networks. This commitment reaches out past basically following a bunch of rules and includes firms wilfully finding a way extra ways to improve the expectations for everyday comforts of their representatives, just as the nearby open and society on the loose. Corporate administration in the current time frame involves rising mindfulness that organizations' reeling sheet ecological and social issues can have critical monetary implications. This experience has started a conversation on the sum and kind of intermingling between corporate administration and corporate social obligation. CSR issues are dynamically advancing into the meeting room, regardless of whether as far as to hazard or morals, and this pattern is relied upon to proceed.

The more these basic principles will be explained, consistent and included in the organization, the better the CSR results, practices such as risk management, information disclosures, independence and remuneration can be regarded as empowering the impact of corporate responsibility.[11]

2.12 MODELS OF CORPORATE GOVERNANCE:

Corporate Governance Systems differ from one country to the next. This could be due to shareholder relationships, formal board structure and board practice, or corporate social responsibility.

There is no globally acceptable model, but it is based on country-wide elements. As a result, governance models may vary depending on the social and economic systems in which they are entrenched.

1) Anglo-American Model:

This model, also known as a "Anglo-Saxon model" – Shareholders' Model, serves as the cornerstone of corporate governance in the United States, the United Kingdom, Canada,

[10] Ibid 3
[11] Ibid 4

Australia, and a few other countries. Management, directors, and shareholders are the three primary stakeholders in the Anglo-US Arrangement, and they usually have a single-tiered BOD model.

This model was created at the time as a free market economy, which indicates that the bulk of publicly traded enterprises' ownership and controls will be distinct. Investors transfer their legal duty to management, appointing them as their agents and paying them to run the operations of the companies. Such a payment to management is regarded as an agency expense. On the boards of most companies that follow the Anglo-US Model, there are both "insiders" (executive directors) and "outsiders" (non-executive directors or independent directors). The fiduciary obligation of directors is to protect the interests of shareholders.

This Model is based on effective communication of decisions made by shareholders, boards, and management after receiving shareholder approval (by voting) on all important subjects. The firm's performance is evaluated based on its market value. As a result, the firm's directors must guarantee that the corporation will act to defend the interests of its shareholders. As a result, the primary goal of this approach is to maximize Shareholder Wealth.

2) The German Model:

It is used in nations such as Germany, Holland, and France. It is sometimes referred to as the Stakeholders Model. It is known as a two-tier board model because there are two boards: The Supervisory Board, which is made up of insiders such as executives, and the Management Board, which is made up of employee and shareholder representatives. Law requires the size of the supervisory board and is not subject to shares. The great majority of stockholders are banks and financial institutions. The strategy includes representation on the Board for both shareholders and stakeholders. According to a federal regulatory agency, German corporate governance is impacted by both federal and state law. The fundamental accounting distinction in Germany is that firms are allowed to accumulate significant reserves, which are not permitted under US GAAP. The concept was that corporations are socially responsible institutions that should be run in the public interest.

3) The Japanese Model:

Because the majority of shareholders come from banks, as well as financial institutions as family shareholders and cross-shareholding corporations, this Japanese model is also known as the business network model. In the Japanese model, the four primary stakeholders are: the main bank, a significant inside shareholder, an affiliated firm or keiretsu, a substantial inside shareholder, management, and the government.

Independent directors, or directors who represent shareholders other than the board of directors, are difficult to find. A supervisory board, which includes the company's directors and the president, is appointed jointly by the shareholders and the banks. Boards in Japan are frequently larger than boards in the United Kingdom, the United States, and Germany. A typical Japanese board comprises 50 members.

The President was fundamental and administered both the Supervisory Board and the leader of the executives. Revelations about the organization's ten biggest investors were made, instead of the US necessity to unveil all investors holding too much capital; and huge contrasts between Japanese bookkeeping guidelines and the US Generally Accepted Accounting Principles were noted.

4) Indian Model:

Since there are three kinds of partnerships in India: private areas, public areas, and public area endeavours like legal firms, government organizations, banks, and monetary establishments, the corporate administration model in India are half and half of the Anglo-American and German models. Every one of these enterprises has a different shareholding design. On account of privately owned businesses, the advertiser and his family have full oversight over the business. They are less dependent on external value capital.

As a result, in the private sector, the German model of corporate governance is applied, whereas in the public sector, the Anglo-American model is adopted. The Central or State governments, or their representatives, serves on the Board of Directors of most public-sector firms, and the Board of Directors is nominated by the Ministries in charge of the enterprise's administrative wing.[12]

[12] Mihaela Ungureanu, 'Models and Practices of Corporate Governance Worldwide' (CESWP Alexandru Ioan Cuza University of Iasi, Romania, 2012).

CHAPTER 3

CORPORATE GOVERNANCE IN INDIA: A HISTORICAL PERSPECTIVE

3.1 INTRODUCTION:

Corporate governance is one of the most important differentiators for companies because it states that the company's profits and development, as well as the company's sustainable development, are important. This is a multilayer process that extracts the essence of an organization's culture, policies, values, ethics, and stakeholder behaviour. Value creation is not merely a success metric, but also an ethical practice that contributes to long-term sustainability and good governance. Compliance should be carried out not just in letter but also in spirit. In this chapter, we must also consider minority shareholders and relation of corporate governance in India.

3.1.1 CORPORATE GOVERNANCE IN ANCIENT ERA:

Indians are not unfamiliar with the concept of good governance or corporate governance. Our ancient epics, including as the Ramayana, Mahabharata, and Bhagavad Gita, as well as Kautilya's Arthashastra, place a high value on good regulation of trade and commerce in the countryside.

As a foundation text for managers, Arthashastra is well-thought-out. Arthashastra utilized current concepts like authority and power to warn managers not to abuse power and authority at any cost.

Kautilya advised leaders to defend the weak and warned that unjust or incorrect use of power could result in an uprising against the king. In modern management, the same strategies of cooperation, collaboration, and control of people can be used.

According to Arthashastra, the welfare of the king appears to be the welfare of the people, and the welfare of the people is to be viewed as the welfare of the king. The same notion can be extended to modern management, which states that superiors should not be guided by their own self-interest. To subordinates, his behaviour should be guided by the 'What is dearer' principle.

According to Kautilya, a leader's decision should be based on logic as well as sufficient previous practical experience. Modern managers should apply the same logic while making reasonable decisions.

The Bhagavad Gita can also be seen as a business theory relevant to the present business world, portraying "Value addition with value addition." It implies that the concept of value addition

should be consistent with the sacrocivic vision of society, implying that the extent to which modern corporate organisations create value addition is worth investigating.

During Vedic times, rulers had ministers and had ethics, values, principles, and rules to govern their kingdom. Today, it takes the shape of Corporate Governance, which includes the same rules, laws, ethics, values, and morals, among other things, and aids in the efficient operation of corporate bodies.[13]

3.1.2 INDIAN PERSPECTIVE:

India was one of the weakest economies in the world during independence. From 1947 until 1991, the Indian government vigorously pursued the process by nationalizing majority of the banks and became the major provider of equity and private sector companies' loan capital. Private companies were rated based on capital investment rather than return on investment. Due to the lengthy delay in judicial proceedings, even capital sources encountered major difficulties in debt recovery. In addition, public undertakings have restricted conformity by the 1956 old Companies Act, Listing Agreement and ICAI Accounting Standards, with the standards of governance and disclosure.

Corporate governance was never on the forefront of Indian companies till the early 1990s. Following the 1991 financial crisis, the concept of corporate governance gained traction. The crisis prompted a flurry of changes aimed at liberalising the formerly closed economy.

Some reforms, such as reducing state-aided finance and privatising firms, were implemented. Furthermore, greater competitiveness with the global market has encouraged Indian enterprises to seek resources from the global market. This increased interaction with the global market resulted in corporate governance improvements. In the early 1990s the government worked to strengthen its governance atmosphere in India, and key corporate governance actions were started.[14]

3.1.3 LEGAL FRAMEWORK IN INDIA.

3.1.4 The CII Code of (1998):

The Confederation of Indian Industries, India's largest industrial and commercial organization, recommended a Code. The first draught of the code was finished in April 1997 and made public in April 1998.

[13] Prof. Mamata Sawakar, 'Corporate Governance in India- Evolution and Challenges' (2018) 6(2) IJCRT <www.ijcrt.org> accessed on 12 January 2020.

[14] Aparna Sharma, 'Legal Framework and Corporate Governance: An Indian Perspective' (2012) 15(1) IJCEM <www.ijcem.org> accessed on 12 January 2020.

This code was optional, featured extensive regulations, and was aimed at private sector, public sector, and corporate entities banks and financial institutions. The code had considerably covered the Anglo-Saxen Model's primary inputs.

The code requires the following disclosures:

a. To offer information about the issuance of a Global Depository Receipt.

b. To offer information on how the Generally Accepted Accounting Principles are being followed with a transparent accounting system.

c. For the reporting year, details about monthly average share prices at all stock exchanges where the firms are listed are provided.

d. Total income is disclosed in the value added statement.

e. The total cost of all inputs and administrative charges.

f. Details on the cost of debt performance interest, The current state of receivables, as well as the risks and vulnerability to foreign exchange.

3.1.5 The Kumar Mangalam Birla Committee Report and Clause 49 of (1999):
Since only a few progressive companies have embraced the CII code, it was considered that, for crucial corporate governance reporting criteria at the very least, a legislative code is more purposeful and meaningful rather than a voluntary code, in Indian contexts.

As a result, the Kumar Mangalam Birla Committee was formed by the SEBI.

The suggestions of the Birla Committee resulted in the insertion of clause 49 in listing agreements.

Birla Committee proposals examined corporate governance from the perspectives of Stakeholders, Shareholders, and Investors. They also suggested that the Annual Report of Companies include a separate section on corporate governance. The committee recognizes three basic corporate governance components which is the accountability, openness and equitable treatment of all stakeholders of the company.

This committee made both mandated and voluntary recommendations. According to the listing agreement with the Stock Exchange, listed businesses are required to follow mandatory recommendations.

Mandatory guidelines include holding at least four board meetings every year, having half of the board should be non-executive, having the audit committee chairperson be non-executive, and having three members form a quorum in audit committee sessions.

Furthermore, ancillary disclosures such as subsidiary consolidated accounts, segment reporting, related party transactions, Environmental and Social Reporting, and the formation of an investor grievances committee are made.

3.1.6 The God Bole Committee of (2001):

Former Union Home Secretary Madhav Godbole established a group in 2001 to offer the government with guidelines on good administration. The Godbole of (2013) committee made 190 recommendations, including mandating the retirement of government employees and establishing legislation on economic responsibility and budget management.

3.1.7 The Naresh Chandra Committee of (2002):

The Naresh Chandra Committee was established in August 2002 by the Department of Company Affairs (DCA) of the Ministry of Finance and Company Affairs to investigate various aspects of corporate governance. The report of the committee was due in December 2002.

The committee made both required and non-mandatory suggestions, which resulted in the modification of clause 49 of the listing agreement.

The recommendations were made as follows:

a. CEO and CFO certification.

b. Installation of the internal control system.

c. Independent Directors' Roles, Remuneration, and Training.

3.1.8 Narayan Murthy Committee Report of (2004) implementation delayed up to 2006:

The Committee was established to investigate clause 4 and recommend corporate governance norms in order to be stronger, and was chaired by Mr. N. R. Narayan Murthy.

The council made the accompanying suggestions: Audit Committee, Audit Report, Audit Qualifications, Related Party Transactions, Risk Management, Code of Conduct. Chosen one Directors, Independent Directors, Non-Executive Director Compensation, Whistle-blower Policy, Subsidiary Companies, Board Performance Evaluation, Analyst Reports, and Points Covered by Naresh Chandra Committee.

The committee made strong obligatory recommendations that should be included in the SEBI listing agreement. It also made voluntary recommendations for corporations to implement in order to increase transparency and good governance.

3.1.9 J.J. Irani Committee of (2004):

The Ministry of Corporate Affairs has taken on the task of reviewing and redrafting the Businesses Act, of 1956, and on December 2, 2004, the government formed an expert group on company law, chaired by Dr. Irani, to provide input on a new companies Bill.

Based on the Irani committee's recommendations, the Indian government introduced the Companies Bill 2008 in the Indian Parliament. The Companies Bill, 2008, on the other hand, expired because of the dissolution of the fourteenth Lok Sabha.

Irani committee provided recommendations for a single framework of governance standards for all firms, additional categories for corporations than just public or private, tenure of Independent Directors, Related Party transactions, and many others.

3.1.10 Corporate Governance Voluntary Guidelines of (2009):

An important accounting controversy involving Satyam Scandal struck the Indian company community in January 2009. When the Satyam Scandal became public, the CII began examining the corporate governance issues highlighted, and in late 2009, the CII task group issued recommendations on corporate governance reform.

The MCA published a set of voluntary corporate governance guidelines in 2009. The board's independence, responsibilities, secretarial audits, and a framework to encourage and protect whistleblowing are all covered by these optional guidelines.

3.1.11 Companies Bill, of 2011:

The Companies Bill, of 2011 was presented in Lok Sabha on December 14, of 2011 and was removed by the public authority on December 22nd and returned for thought in light of the fact that the service has chosen to draft a bunch of intentional rules that won't just fill in as a benchmark for the corporate area however will likewise help them in accomplishing the best quality of corporate administration. Throughout the last decade, SEBI has been at the cutting edge of corporate administration measures in India. The MCA has taken the latest moves. This denotes a shift away from leaving corporate administration to the space of the posting arrangement and toward ordering it.

3.1.12 Companies Act, of 2013:

In terms of corporate governance changes, 2013 was a turning point in Indian business history. It was the year when a ground-breaking new companies Act was enacted into law. In 2013 initiatives were more than just aesthetic fixes; they represented a significant fundamental shift. However, the question is whether regulatory aim will be translated into effective and timely enforcement. We continue to hope for better practise and follow-up.

SEBI published a consultation document in January 2013 presenting their drawn-up proposal for improvements in governance criteria for the listed companies based on proposed legislative provisions in that Act and providing extra upgrades under certain conditions.

3.1.13 (Listing Obligations and Disclosure Requirements Regulations) of the Securities and Exchange Board of India (SEBI) of 2015:

Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulation 27(2), 2015, specifies that the format for each quarter, at the close of the financial year and within six months after the end of the fiscal year the corporate governance compliance reports.[15]

3.2 GLOBAL PERSPECTIVE OF CORPORATE GOVERNANCE:

The corporate governance process is as old as capitalism itself. The first corporate conflict was discovered in the Netherlands in 1622, while Adam Smith recognized the challenges for corporate governance in 1776. Berle and Means (1932) were the first to recognize scholarly work in the field of corporate governance, while Coase (1937) was the second to recognize a separation of power between executive management and shareholders. The term "corporate governance" was first used in the United States in the 1970s to describe the role, functions, and responsibilities of the board of directors and management.

Management of prominent firms, in collaboration with institutional investors and through interest groups, should pay close attention to self-regulation of corporate governance. As a result, each country has established its own set of regulations and rules to best suit its societal needs. It has provided the findings of the following corporate governance committees to emphasize in order to implement successful corporate governance practices in the world of companies.

i. Cadbury Committee of (1992)

ii. Greenbury Committee of (1995)

iii. Hampel Committee of (1998)

iv. LSE Combined code (1998)

v. OECD Principles for Corporate Governance (1999)

vi. Blue Ribbon Committee (1999.

[15] Aparna Sharma, 'Legal Framework and Corporate Governance: An Indian Perspective' (2012) 15(1) IJCEM <www.ijcem.org> accessed on 12 January 2020.

3.2.1 The Cadbury Committee Report of (1992):

A number of renowned businesses, including Maxwell, BCCI, Poly Pack EXCO and Coloroll, failed in the United Kingdom in the late 1980s and early 1990s, resulting in the founding in May of 1991 of the British Cadbury Committee.

The Financial Reporting Council, the London Stock Exchange, and the accounting profession joined forces to form a group chaired by Sir Adrian Cadbury to look into the financial aspects of company governance.

The Best Practice code consists of four parts.

i. Board of Directors' duties

ii. Non-Executive Directors' duties

iii. Executive Director and their remuneration

iv. Financial Reporting and Financial Control.

The following are some of the most essential recommendations:

i. Regular meetings of the Board of Directors.

ii. Senior management should be monitored by the Board.

iii. Board members' roles and responsibilities are clearly defined.

iv. The Board has a sufficient number of non-executive directors.

v. A formal agenda of topics to be discussed at the meeting in order to make efficient decisions.

vi. A mechanism has been agreed upon for the director to seek independent professional assistance.

vii. The company's directors are required to provide reports in order for the internal control system to function properly.

viii. Separation chairman's and CEO's offices.

ix. Non-executive directors are appointed through an organized and unbiased process that is independent of management.

x. Non-executive directors make independent decisions on company concerns.

xi. Directors should be appointed for a three-year term.

xii. An remuneration committee comprised of non-executive directors should suggest executive director salary in all forms.

xiii. The overall emoluments of directors and CEOs should be reported in the company's annual reports.

xiv. All publicly traded corporations must include a declaration of code compliance in their annual reports.

xv. The audit committee must be formed with a minimum of three non-executive directors and a well stated charter of terms of reference.

xvi. To encourage institutional investors to take an active role in board governance and to exercise their voting rights more frequently.

3.2.2 The Green bury Committee Report of (1995):

On July 17, 1995, the Confederation of British Industry (CBI) convened a committee chaired by Sir Richard Greenbury and issued a study titled Director's Remuneration Report of a Study Group Chaired by Sir Richard Greenbury.

The Best Practices Code is divided into four sections:

i. The Remuneration Committee is in charge of compensation.

ii. Provisions for Disclosure and Approval.

iii. Policy on Compensation.

iv. Compensation and service contract.

The following are important recommendations:

i. The company's executive remuneration policy and specific remuneration packages will be decided by the Remuneration Committee.

ii. Remuneration committee should be held directly accountable to the shareholders.

iii. Non-executive directors make up the whole Remuneration Committee.

iv. The Board should set the salary for members of the remuneration committee.

v. Professional advice should be available to the remuneration committee.

v. Remuneration committee reports should be provided as a separate component in the annual report.

vii. Shareholder approval should be required for any new long-term incentive programmes.

viii. Stock options should be awarded in instalments. Directors should be encouraged to hold significant amounts of shares.

ix. The tenure of directors should be made public.

x. The remuneration scheme should recruit, retain, and motivate high-quality directors.

xi. Executive compensation packages should be performance-based and align the interests of directors and shareholders.

3.2.3 The Hampel Committee on Corporate Governance of (1998):

The Cadbury and Greenbury recommendations were developed by this committee, which was formed to assess their progress.

The purpose of this committee was to promote excellent corporate governance standards in the interest of protecting shareholders and improving the standing of publicly traded companies.

The final report of recommendations is required to be divided into 7 parts:

i. Corporate Governance

ii. Corporate Governance Principles

iii. The Director's Role

iv. Remuneration for the Director

v. The Shareholders' Role

vi. Accountability and auditing

vii. Summary of findings and recommendations

Some of the key recommendations are as follows:

i. A narrative statement describing how the corporation has adopted broad corporate governance concepts.

ii. There should be a good balance of executive and non-executive directors on the board.

iii. The majority of non-executive directors should be independent.

iv. A review of the company's status by the board of directors. The future should be well-balanced and open to all.

v. The external auditor shall report to shareholders independently in accordance with legislative and professional obligations.

vi. There are two responsibility lines for the auditors: public reporting on statutory financial accounts to shareholders and private reporting on operational issues to directors.

vii. The need that directors submit a going concern statement in their annual report should be maintained.

3.2.4 LSE Combined Code of (1998):

The London Stock Exchange-appointed committee submitted its report in June 1998. As a result, the LSE imposed a two-part disclosure statement requirement on listed businesses. In the first section it is expected that the company will report on the implementation of the principles of the combined code. In the second section, the corporation must declare that it The following are the precise measures that were implemented:

i. At least half of the board, excluding the chairman, shall consider non-executive directors.

ii. Independent non-executive directors should serve on the Audit and Remuneration Committee.

iii. The nomination committee's chairman should also be the board's chairman.

iv. Non-executive directors' terms of office.

v. Senior independent directors should be allowed to attend meetings with management and shareholders.

vi. The chairman of the board should be independent at the time of appointment.

vii. The appointment of directors should be based on clear and transparent criteria.

viii. Companies should provide an induction programme for each board director.

ix. The yearly review of board performance, as well as the annual report, should clarify how such evaluation was carried out.

x. The chairman's performance should be evaluated by non-executive directors, led by the senior independent director.

3.2.5 Principles on Corporate Governance of the Organization for Economic Co-operation and Development (OECD) from 1999:

This is an inter-governmental organisation of the world's industrially developed nations, has issued a set of clearly defined principles that were announced in late 1999 and have been regarded as an international benchmark. The OECD principles are the first major worldwide effort to create basic features of strong corporate governance systems.

The five key areas covered by the OECD Corporate Governance guidelines are as follows:

i. Shareholder Rights - Dealing with

a) the Takeover Market and

b) The role of the institutional investor.

ii. Equitable treatment of shareholders in dealing with

a) Custodian voting

b) Voting hassles

c) Insider trading

d) Disclosure by directors.

iii. Stakeholders' Role

iv. Disclosures and transparency in relation to

a) Financial soundness

b) Goals of the business

c) Ownership and voting rights to a large percentage of the company's stock; and

d) Risk considerations

e) Financial Reporting Quality

V. Board Responsibility.

The OECD's Corporate Governance Principles and Recommendations are given here:

i. Independent members make up the majority of the board.

ii. Independent directors are recognized as trustees for the protection of common shareholders, Stakeholders, and others' interests.

iii. The Board must declare any material interests in transactions or matters affecting the corporation.

iv. The board should examine and advise on corporate strategy, risk management, business plans and budgets, and so forth.

v. The board of directors should oversee the accounting and financial reporting operations of the company.

vi. The board should be in charge of overseeing the disclosure and communication process.

vii. Board committees such as the audit, compensation, and nominating committees should be given specific areas to monitor and direct.

viii. Board members should have access to designated key executives of the organization in order to get accurate, relevant, and timely information.

ix. All equity owners should have the same rights, and voting power should be proportional to shareholding.

x. The rights of shareholders should be mentioned and protected.

xi. Institutional investors should use their influence to appoint qualified independent directors on corporate boards.

xii. Accounting, financial, and non-financial disclosures should be made in compliance with high standards.

xiii. The Corporate Governance Framework should provide timely and proper disclosure for every substantive subject including the financial position of the organization, ownership and governance.

xiv. To avoid unnecessary litigation on 'insider trading instances,' more regular, timely, and comprehensive disclosures should be made.

xv. Material information about the company's financial and operating results, as well as material anticipated risk factors, are included in the disclosure.

xvi. Declare policies about business ethics, the environment, and other Public Policy Commitments.

3.2.6 The Blue Ribbon Committee Report of (1999):

The Securities and Exchange Commission (SEC), the New York Stock Exchange (NYSE), and the National Association of Securities Dealers (NASD) formed the Blue Ribbon Committee to enhance audit committees and make financial reporting more transparent and reliable. The committee's suggestions are broken down into six sections:

i. The audit committee's independence.

ii. Members of the audit committee's financial literacy.

iii. The audit committee's structure and procedures.

iv. The audit committee's relationships with the company's management, internal auditors, and external auditors.

v. The audit committee's and the outside auditor's communication.

vi. Report of Audit Committee.

The Blue Ribbon Committee's suggestions are as follows:

a) Auditing Committee members who have expertise of accounting and financial management should be financially educated.

b) The audit committee should approve and analyse a previous written charter and revenue on a yearly basis.

c) The audit committee should have complete authority to conduct discussions with the auditors.

d) An audit committee's letter should be included in its annual report by all reporting companies.

3.3 THE BENEFITS OF CORPORATE GOVERNANCE:

The Corporate governance is influenced by economic and business environment produced by public governance. If there is poor public governance, good corporate governance is impossible. This adds to corporate efficiency as well as the growth and success of a country's economy. In today's globalised environment, firms must have access to global pools of capital as well as attract and retain the best human capital from all over the world.

Transparency, integrity, and managerial dedication to the organisation are required for this.

This is necessary to society for the given reasons in below:

i. It establishes a foundation for long-term trust among businesses and stakeholders.

ii. Involving independent members on the board of directors gives a variety of knowledge.

iii. It ensures information confidentiality by requiring an insider trading policy.

iv. It is beneficial in terms of Integrated Reporting and Communication.

v. It instils trust in the minds of investors by using honest company processes.

vi. Minority shareholders' interests are protected by strong corporate governance.

vii. It helps to shape the shaky market system.

viii. Shareholder duties are reduced by clearly clarifying the decision-making process.

ix. It has a long-term impact on the reputation of key stakeholders.

3.4 LIMITATIONS OF CORPORATE GOVERNANCE IMPLEMENTATION IN INDIA:

Despite having a legislative framework for excellent governance and compliance procedures, Indian industry has faced difficulties such as lack of transparency, mismanagement, and a non-competitive environment for more than seven decades.

India should approach the issue of corporate governance from the standpoint of the entire network of multiple rules and regulations that impact business, rather than just the SEBI guidelines or codes and recommendations of the committee concerned, in order to develop an Integrated Holistic System.

The restrictions were primarily concerned with incorrect or improper implementations. It could take any of the following forms:

a) If board members are family members or have a significant stake in the business, their performance will suffer, and independent judgement cannot be exercised.

b) The contribution of independent directors to critical board decisions is minimal. Furthermore, because of formal training or rules, they are sometimes unaware of their rights and responsibilities.

c) Members of the audit committee and independent directors rely on information collected from the board. Excessive dependence on board information is indicative of company ownership control and poses a challenge to corporate governance.

d) In the absence of precise reporting on related party transactions, subsidiary firms, segment reporting, and integrated reporting, the corporate's genuine situation is misrepresented.

e) The management group limits the independence of auditors. As a result, it can be difficult to determine if the auditors were complacent or were pressured by internal business members.

f) There is no legal obligation in India for corporations to receive a credit rating agency's report on corporate governance. The main issue in India is the effective application of corporate governance principles. The current SEBI Listing Regulations, of 2015 have attempted to eliminate most of the implementation difficulties by including it into obligatory compliance and would provide maximum disclosure on all critical components of the corporate system.

3.5 Minority Shareholders' and Corporate Governance in India:

Under company law, the term "minority shareholders" is not defined. The members with the most shares are referred to as majority shareholders.

Members who possess a small number of shares, on the other hand, are known as minority shareholders and have no authority over the corporation. In Indian corporate governance, the essential steps should be made to resolve the majority rule that prevails in the company's controls. And use corporate governance to safeguard minority shareholders.

The company's management is actually done by majority rule. Discuss the majority rule; we need to know where the majority rule comes from. The principle of majority rule states that the will of the majority should triumph and bind the minority.

The Foss v. Harbottle Rule is another name for this. This is a landmark case in English company law. This norm is also maintained in India, where it was derived from common law.

This rule has some exceptions and is not adequately applied in Indian corporate governance. So now is the important time to examine this rule and ensure that it is properly applied to protect minority shareholders.

3.5.1 The Foss v. Harbottle Case and (Majority Rule in India):

The Foss v. Harbottle case gave rise to majority rule in India. According to the facts of the case, two Victoria Park Co. stockholders filed a complaint against the five directors. They claimed the company's assets had been mismanaged and squandered.

They also ruled that the defendants should be held accountable for the firm and requested that a receiver be appointed. However, it was determined that the plaintiffs were incompetent to institute such procedures, and that the exclusive power to do so belonged to the firm or its representatives.[16]

It was also decided that the minority shareholders are bound by the majority shareholders' actions. The majority rule was used in these cases.[17]

The principle states that, "the proper plaintiff in an action in respect of a wrong alleged to have been done to a company or organisation of persons is prima facie the company or association itself."[18] It logically followed from the legal treatment of the company as a 'person,' separated from the members of whom it was made up, and it was clearly established that 'individual members in the society are so distinct as any other subject of his majesty from the metaphysical body called the 'corporation'.

As a result, only the corporation's injuries, not those of its members, must be compensated. Again, this should be done by the corporation rather than the members.[19] The rationale behind this particular law is that the majority stockholders must be protected at all costs. When a person

[16] S. Sadhana and M. Kannappan, 'A Study on the Oppression of the Minority Shareholders in India with Reference to the Majority Rule' 119(17) 2018, ISSN <http://www.acadpubl.eu/hub/> accessed on 20th June, 2021.

[17] Ibid 10.

[18] Jenkins L. J in Edwards v. Haliwell, [1950] 2 All E. R 1064, 1066.

[19] K. W. Wedderburn, Shareholders' Rights and the Rule in Foss v. Harbottle, The Cambridge Law Journal, 1957, 15(2), pp. 194-215.

becomes a member of a corporation, it is often assumed that he implicitly lends his approval to accept the majority decision in the corporation's general meeting.

Exceptions:

A few significant exceptions have also been created. The exceptions guarantee minorities' rights regardless of the majority's vote since they are also a tool to protect the minority's interests. The following exceptions to the rule in Foss v. Harbottle are recognized by Palmer's Company Law:
a) if an ultra vires act occurs;

b) where a special majority is necessary;

c) where personal rights are violated; and

d) where fraud has been perpetrated by those in authority.

Another tool for redress is the derivative action. In reality, this is recognized as the lone genuine exception to the rule. This rule should be regarded as a starting point for minority shareholder remedies. This means that a minority shareholder could launch a derivative claim on the corporation's behalf. This was done to ensure that a Redressal system for misconduct was in place. This action was filed instead of one in the firm's name. The shareholders had no such entitlement, and if their own personal rights were violated, they might launch a class action.

The Foss v. Harbottle rule prevented minority action where the alleged misdeed is legally rectifiable, regardless of whether there was any fair likelihood of an impartial majority examining the case.[20]

Many people have criticized the rule that is in place in England. Professor Sealy also made a comparison to other types of litigants. He claims that even if a person approaches the Court seeking judicial review, he will be granted significantly more favourable judicial acceptance than a minority stakeholder. A major public company's shareholders are unlikely to have enough knowledge to make an informed decision about their own or the company's interests. After thorough consideration, it is evident that the Foss v. Harbottle rule is a combination of substance and process.[21]

The tight special cases likewise made two significant issues: the first was cleared insensibility a series of cases, including "Davidson v. Tulloch"[22], which held that a little class of cheats and

[20] S. Sadhana and M. Kannappan, 'A Study on the Oppression of the Minority Shareholders in India with Reference to the Majority Rule' 119(17) 2018, ISSN <http://www.acadpubl.eu/hub/> accessed in 20th June, 2021.
[21] In respect of the application of conflicts of laws concepts to the Foss v. Harbottle rule. European Business Law Journal, 2000, pp.1–9
[22] (1860) 3 Me. 783, 796 (H.L.Sc.).

duplicities were unequipped for "affirmation at the choice of the enterprise," and the second was that its slenderness is contradictory with the more extensive special cases liked by different appointed authorities.

The scenario in India was somewhat comparable to that of England because our company legislation has a common law basis. Between Sections 397 and 409 of the old Act of 1956, there were few Redressal mechanisms for minority shareholders. It protects minority owners from abusive action on the part of majority stockholders.[23]

In enterprises with share capital, minority shareholders are defined as those holding 10% of the shares or 100 shareholders, whichever is less, and 1/5th of the total number of members in firms without share capital, according to Sections 395 and 399.

Certain clauses of the Act dealt with instances in which the interests of Minority Shareholders could be threatened.

They are classified into two categories:

In sections 397 and 398, the former seeks redress from the Company Law Board in cases of oppression, while the latter seeks relief from the Company Law Board in cases of mismanagement.[24]

In the event of oppression or mismanagement, Section 399 of the previous Act of 1956 gives you the right to file an application with the Company Law Board. The numerical restriction has been referred to as a ten percent shareholding restriction, a hundred members limit, or a one-fifth members limit, depending on the circumstances. The Central Government, on the other hand, has the authority to waive this requirement.[25]

The Sections 241-246 of the new Act give redress in cases of oppression and mismanagement, allowing the affected party to approach the National Company Law Tribunal (NCLT). The same numerical threshold is mentioned in the Section 244(1) as in the parent Act. The NCLT, on the other hand, has the authority to waive the barrier. The new Act also includes the concept of class actions. Both the corporation and its auditors might be sued in a class action case.[26]

To remedy for these flaws, Section 235 allows the majority to purchase the shares of owners who oppose the majority opinion plans for not less than 9/10 of their value.

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[23] S. Sadhana and M. Kannappan, ‘A Study on the Oppression of the Minority Shareholders in India with Reference to the Majority Rule’ 119(17) 2018, ISSN <http://www.acadpubl.eu/hub/> accessed in 20th June, 2021.
[24] Ibid 17.
[25] Ibid 18.
[26] Ibid 19.

The corporation may give notice to the disgruntled shareholders that it plans to buy his stock. The intention of the shareholders to purchase the remaining equity shares must be communicated to the corporation. It is also stipulated that the shares be purchased at market value.[27]

Minority shareholders also have anything to say in the decision-making process as well. Small shareholders in publicly traded corporations are required by the Section 151 to choose a director. This clause is expanded upon in the Draft Companies Rules, which state that a listed company may choose a small shareholder.[28] The Company Rules of 2013 state explicitly that the small shareholder director will not be rotated out of office and will serve for another three years. This, however, means that he will be ineligible for reappointment.

As a result, it is clear that the Companies Act of 2013 aimed to strengthen minority small shareholder rights and ensure their participation in the company's decision-making and management processes.

As we can see, the Indian Corporate governance laws, which the company legislation of two of these followed the England majority rule over the minority shareholders. However, the new Company Law Act provides some protections in section that safeguard minority shareholders. The clause will be explored in detail in a subsequent chapter about how the new Act provides rights for the protection of minority shareholder rights.

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[27] Ibid 20.

[28] Akshat Sulalit, 'Companies Act, 2013: Rise of the Minority Shareholder', India Law Journal, 6(2)(5) <http://www.indialawjournal.org/archives/volume6/issue-2/article5.html> accessed in 20th June, 2021.

CHAPTER 4

HISTORICAL BACKGROUND OF MINORITY SHAREHOLDERS'

4.1 INTRODUCTION:

Minority shareholder protection is an essential principle of corporate law. Although corporate democracy operates upon the pragmatic concept of "majority rule," legal laws all around the globe expressly safeguard minority shareholders from the conduct of either management or controlling shareholders. There is a lot of literature that claims that the level of legal protection granted to minority shareholders in a given jurisdiction corresponds to the ability of that country's businesses to raise money on favourable terms.

To begin, a minority shareholder is someone who owns less than 50% of a corporation.

Because this shareholder owns less than half of the voting stock, he or she lacks de jure control. Control extends beyond a mere quantitative determination and into the qualitative world as well.

A minority shareholder is one who does not have de facto control over the company. Finally, minority owners do not have the legal or practical authority to appoint or change board members, which is a significant indicator of control.

When evaluating minority shareholder rights, it is vital to ascertain the identification of the minority and its changing nature, which is characterised by the rapid ascent of institutional investors.

4.2 HISTORICAL BACKGROUND OF MINORITY SHAREHOLDING STRUCTURES AROUND THE WORLD:

The Berle and Means model of scattered shareholding is widely followed in the United States and the United Kingdom, but corporations with concentrated shareholding abound throughout the rest of the world. As a result, scholars and regulators have tried to build corporate governance systems that address the agency problem that is specific to the type of shareholding. (dispersion versus concentration). However, such polarisation has recently been strained on the ground, and such polarisation no longer holds well.

While the debate over scattered versus concentrated shareholdings rages on, one undeniable reality is that institutional investors have taken major positions in corporations all over the world. The development of such institutional investors has significantly disrupted the old corporate governance paradigm. In the United States, for example, institutional ownership in

publicly traded corporations climbed from 6.1 percent in 1950 to 70 percent in 2016. As a result, retail shareholding has declined from over 80% in the 1960s to around 20% now. In other parts of the UK, institutional shareholding is claimed to be in excess of 80%, with individual shareholding falling from 54% in 1963 to 10.7% in 2012.

Index funds have recently caught great attention in terms of the type of institutional investors due to their amazing growth and the size they command in the securities markets. For example, the "Big Three" index funds—BlackRock, State street Global Advisors (SSGA), and Vanguard— "vote around 25% of the shares in all S&P 500 companies, and each owns a position of 5% or more in a large number of companies." Their domination is only going to increase in the near future.

In such a case, the identification of minority stockholders has plainly changed. One is no longer able to conjure up images of unfortunate individual shareholders who have invested their life savings in company ownership. Instead, institutional investors are minority shareholders in corporations, owing to the fact that ordinary investors prefer to invest in the stock market through intermediaries such as institutional investors rather than directly. As a result, institutional investors benefit from the rights and remedies afforded to minority shareholders by law.

Without a doubt, the growth in institutional investor holdings has (re-)introduced capital market concentration. Consider significant institutional investors such as the Big Three to "use techniques of supervision and control over the conduct of office holders in the firm that are similar to those of controlling shareholders in a concentrated ownership structure." While the connection between institutional investors and controlling shareholders is correct in some cases, it is generally inappropriate for a variety of reasons.

First, whereas traditional controlling shareholders seek and achieve control on purpose, institutional investors expressly disclaim control over their investee firms in order to remain focused on the financial returns they obtain from their investments. Second, while institutional investor shareholding appears important when aggregated, individual institutional shareholder holdings is often insufficient to give control rights.

Although there have been instances of institutional investors banding together to engage with or even aggressively act against managements or controlling shareholders, collective action issues as well as legal restrictions in certain jurisdictions discourage institutional investors from banding together. They are neither in charge of companies, nor are they puppeteers of

management. Given their qualities and attitude, it is more reasonable to classify them as non-controlling minority shareholders with significant corporate impact.[29]

4.3 WHO ARE SHAREHOLDER?

The Companies Act of 2013 does not define the term "shareholder." Any member of the company, defined as any individual participating in the company and holding shares of the company whose name is on the depositors' records as a benefited owner, is a benefited owner, according to Section 2(55) (iii).

As a result of the preceding section, we may conclude that the term shareholder refers to a person who holds business shares and is thus considered a member of the firm.

4.4 TYPES OF SHAREHOLDERS:

4.4.1 Majority Shareholder:

A majority shareholder is someone who owns the majority of a corporation's stock. It usually amounts to more than half of a company's stock. They have considerable power and influence over the company's decision-making process as compared to other shareholders.

4.4.2 Minority Shareholder:

The phrase "minority shareholders" is not defined in the new Act of 2013. Minority shareholders, on the other hand, have fewer shares than other shareholders. And they don't have the power to operate the company and aren't allowed to participate in the decision-making process. They are, nonetheless, a significant part of the business.

According to “Black's Law Dictionary” states that, a “minority shareholder” is a "Equity holder with less than 50% ownership of the firm's equity capital and no vote in the firm's control."

4.4.3 Small Shareholder:

The term "Small Shareholders" is defined in section 151(3) of the new Act of 2013 as a shareholder who possesses shares with a “nominal value of not more than 20,000 rupees” or such other quantity as may be stipulated.

Another worry that has emerged is whether little and minority investors are exactly the same thing and regardless of whether these marks can be utilized reciprocally. One potential reaction to the above question is that little investors vary from minority investors since little investors are characterized by their individual shareholding, which as per the segment ought to be not as much as Rs 20,000. Minority shareholding, then again, is resolved mutually and is viewed as having a non-controlling situation in the organization. Little investors, then again, perhaps

[29] Umakanth Varottil, ‘Minority Shareholders’ Rights, Powers and Duties: The Market for Corporate Influence’ (2020) DOI: 10.2139/ssrn.3543246 <https://www.researchgate.net/publication/339491093> accessed on 20th April, 2021.

named minority investors because of the modest number of offers they have, bringing about a non-controlling revenue in the organization.

There is no mention of the word majority shareholder, nor is there mention of the term minority shareholder. Where both of their abilities differ in the company and are divided into two groups.[30]

4.5 MINORITY SHAREHOLDERS' RIGHTS UNDER THE NEW COMPANIES ACT, OF 2013:

1) Right to appoint a Director of the Small Shareholders:

A Publicly Traded Company has the authority to designate a shareholder of its choice to the board and such shareholder can be called "the Director of Small Shareholders" in accordance with Article 151 of the new Act of 2013.

On the application of at least 1 000 small shareholders or one tenth of the total number of such shareholders, a small shareholder director may be appointed by the company concerned. On its own initiative, the publicly traded corporation may appoint a director. If a director nominated under this provision meets the requirements of Section 149(6) of the new Companies Act of 2013, he is deemed an independent director. Such a director is ineligible for reappointment once his term expires.

The minority shareholders of Alembic Limited were the first to put the provisions of this section into effect. Application to appoint the vice-chairman to be the small shareholder's director has been made by Unifi Capital, a 3 percent minority shareholder of Alembic. The Board of Directors, however, rejected it, and it was not discussed at the company's Annual General Meeting.[31]

Although it is essential to safeguard small shareholders, this requirement needs to be maintained that the small investors who can act on the promoters' whims are not used to their advantage. Small shareholders may become pawns in major company differences, where adequate checks and balance sheets are not in place between major shareholder groups such as the huge institutional investor and the promoters. This will damage the interests of the passive shareholders rather than the interests of them. That is why the small shareholder director was first selected.[32]

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[30] Arohi Badsha, 'Legal and Regulatory Framework for Protection of Minority Shareholders in India' (2018) 4(3) JLSR <www.jlsr.thelawbridge.com> accessed on 20 May 2021.

[31] P.B. Jayakumar, A Board Seat, BUSINESS TODAY, (dated 10th Sep., 2017) <https://www.businesstoday.in/magazine/focus/a-board-seat/story/258715.html> accessed on 20 May 2021.

[32] Umakanth Varottil, 'Activism through Directors Elected by Small Shareholders,' INDIACORPLAW, (dated 25th July, 2017), <https://indiacorplaw.in/2017/07/activism-through-directors-elected-by.html> accessed on 20th April, 2021.

The legislation does not provide for every shareholder, according to legal experts, to automatically select a director on the board on the basis of special shareholder needs. In contrast, Section 151 of the new Act allows a publicly traded firm to elect one director from among its small investors. The customary resolution of a general meeting is to choose such a director for a three-year term.[33]

(2) Right to file a complaint to the NCLT about Oppression and Mismanagement:

A corporation usually functions by means of its Board of Directors which are obliged to act for its shareholders' best interests and maximize the value of the shareholder. In most corporations, stockholders of the same class have equal voting rights.

As a result, it has become a fundamental rule that the majority owners have more authority than the minority shareholders and are better positioned to monitor the company's activities. Minority shareholders would be obligated by majority choices that are totally within the confines of the law and do not violate the company's articles.

However, it is possible that decisions made by the majority will not always be in the minority's best interests. In some circumstances, the majority may choose a course of action that benefits the majority over the minority. In such instances, minorities shareholders may file a complaint with the tribunal in accordance with the new Companies Act of 2013. The remedies available to minority shareholders in circumstances of oppression and mismanagement are outlined in Chapter XIV of the Act. The Sections 241, 242, and 244 relating to oppression and mismanagement went into force on June 1, of 2016.

Section 241 of the new Act of, 2013 establishes the conditions under which any member of a firm may seek restitution from the tribunal in cases of oppression and mismanagement. Any of the grounds stated in the section may be used to support a member's claims.

Various case laws have also discussed the concept of ‘any member of a company.'

In “S.V.T. Spg. Mills (P.) Ltd. v. M. Palanisami[34],” the court found that the term "member" under section 2(27) of the old Act of 1956 (equivalent to section 2(55) of the new Act of 2013) must be defined broadly, implying that people other than bearers of share warrants will be regarded as members. Sections 397 and 398, which are comparable to sections 241, 242, and 244 of the new Act of 2013, are an equitable jurisdiction designed to safeguard minority members of a firm from persecution and mismanagement by the majority.

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[33] Sudipto Dey, ‘when can a small shareholder appoint a director on the board,’ BUSINESS STANDARD, (dated 25th July, 2017) <http://www.business-standard.com/article/companies/when-can-a-small-shareholder-appoint-a-director-on-the-board-117072400789_1.html> accessed on 20th May, 2021.

[34] [2009] 95 S.C.L. 112 (Mad.).

In “Amalgamations Limited (Now Amalgamations (P) Ltd) & Others v. Shankar Sundaram & Others[35],” the Madras High Court decided whether a member of a holding company can file a petition in the affairs of a subsidiary company. The Madras High Court concurred with the Company Law Board's ruling, stating that joining subsidiaries in the company application would be incorrect and illegal based on the evidence and facts of the case.

It was argued that if a person is not a member of a corporation, he does not have the authority to allege oppression and utilize Section 397 of the old Act of 1956 against that firm.

As a result, a shareholder of a holding company cannot file a complaint against a subsidiary of which he is not a member because there is no legal relationship between them. A request to the tribunal may also be made by the Central government.[36]

Complaint brought under Section 241 may be kept:

Section 244 distinguishes those who are eligible to apply under Section 241. As indicated by the segment's arrangements, an organization with an offer capital should have something like 100 individuals or one-10th of its absolute number of individuals, whichever is less, or any part of individuals holding at least one-10th of the organization's given offer capital, subject to the condition that the candidate or candidates has or have paid all calls. What're more, extra wholes owed on their offers, just as somewhere around one-fifth of the complete number of individuals on account of an enterprise without share capital.

However, the eligibility criteria outlined in this section may be waived if the tribunal grants an application in this regard. This is permissible under the section's proviso.

The well-known case of "Cyrus Investments Pvt. Ltd. v. Tata Sons Ltd.[37]" was decided by the National Company Law Appellate Tribunal. It is a recent example of suitability under section 241 and waiver of the requirements set out in section 244. The appeal arose from the NCLT's refusal, in opposition to a 10% minimum requirement as set out in Section 244 of the 2013 Act of the companies, of the Mistry Group's request alleging oppression and mismanagement of TATA sons on the basis of their ownership of only 2.17 percent of their total share capital of TATA sons.

The question was broken into two parts by the appeal panel. The first point is whether the petition filed by the Mistry group is maintainable under sections 241, 242, and 244 of the new Act of, 2013. If not, has the petitioner requested a waiver under Section 244's proviso?

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[35] C.D.J. [2011] M.H.C. 4938.

[36] Section 241(2) of the Companies Act, 2013.

[37] Company Appeals (AT) No.133 and 139 of 2017.

The NCLAT reasoned that, despite the fact that the petitioner didn't meet as far as possibly indicated in section 244, the request could in any case be kept up with by forgoing the limitation. In its judgement, the appellate tribunal established some parameters that would be examined while determining an application waiver under this clause. It went on to say that these characteristics are not exhaustive, and that additional aspects may also be taken into account.[38]

The court chose in "Shanti Prasad Jain v. Kalinga Tubes Ltd[39]" that there should be persistent follows up on the piece of the larger part investors, proceeding up to the date of the request, showing that the organization's exercises were directed in a severe way to sure of the individuals. The direction should be harsh, serious, and treacherous, and a basic absence of trust between the larger part and minority investors won't do the trick except if the absence of trust comes from mistreatment of a minority by a larger part.

It should include basically some absence of honour or reasonable managing the part with respect to his exclusive rights as an investor.

3) The ability to bring a class action lawsuit:

It's a different type of minority shareholder safeguard.

A class action suit is commonly defined as a legal action in which a lot of people in the company having a same interest or common intention can go to NCLT if they believe the business's affairs are being managed in a way that is damaging the companies interest, its members, or depositors.

The J.J. Irani Committee Report is attributed to bringing forth the idea of legal claims in India. According to the investigation, subsidiary operations in reference to such erroneous non-rectifiable choices have been allowed by courts in cases of minority misrepresentation by transgressors in control who prevent the genuine organization from documenting activity in its own name. Such subsidiary claims are started by investors for the benefit of the partnership, as opposed to in their own ability, in light of bad behaviour submitted by the organization.

Similarly, courts have approved the concept of a shareholder filing suit on behalf of one or more other shareholders of the same kind based on persons having the same locus standi. Despite the fact that courts have upheld these notions on a few occasions, they do not appear to be addressed

[38] Umakanth Varottil, NCLAT Ruling on Maintainability in the Tata Sons Case, <https://indiacorplaw.in/2017/09/nclat-ruling-maintainability-tata-sons-case.html/amp> accessed on 20th April, 2021.

[39] A.I.R. [1965] S.C. 1535.

in law at the moment. The advisory group underlined the significance of this rule and the requirement for it to be revered in enactment.[40]

The goal of including this concept into the new Act was to protect small investors by establishing more prominent reviewer duty and guarantee against the possibility of corporate cheating and scams. The motivation of the "Ministry of Corporate Affairs" to include this arrangement was to ensure that in regions like administrative remuneration the investor is "like a lord.[41]

The Satyam fraud case accentuated the basic requirement for such a class activity cycle to be executed in India. There were no arrangements relating to investor remuneration, regardless of how the advertisers, members of the board, and key administrative staff were charged under the SEBI (Prohibition of Fraud and Unfair Trade Practices) Regulations of 2003 and the SEBI (Prohibition of Insider Trading) Regulations of 1992.[42] While trying to recover the deficiency of shareholding esteem, numerous financial backers moved toward the National Consumer Disputes Redressal Commission and the Supreme Court, yet their cases were denied because of the absence of a current resolution that takes into account the recuperation of shareholding esteem in such conditions.

According to the above consumer disputes commission, we do not have the infrastructure to deal with such a petition. On appeal, the “Supreme Court” also dismissed the case.

The absence of a class action settlement led to the suffering of Indian investors and financial backers, who were unable to recover their losses due to a lack of investor esteem, despite the fact that shareholders in the United States were able to recover their losses through settlements of $125 million and $25.5 million from Satyam and PwC, respectively. The disparity in the treatment of security holders in India and the United States prompted the "Ministry of Corporate Affairs" to examine class action cases, which eventually found a home under Section 245 of the new Act of 2013[43], in the end. Individuals and investors have the choice to sue the organization, its directors, auditors, or any guide or master if they submit any inappropriate, unlawful, or false demonstration, exclusion, or activity involving the organization under Section 245.

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[40] Arohi Badsha, ‘Legal and Regulatory Framework for Protection of Minority Shareholders in India’ (2018) 4(3) JLSR <www.jlsr.lawbrigade.com> accessed on 20 May 2021.

[41] Class Action Suits to Ensure Shareholder Democracy, THE HINDU, (dated 8th Nov, 2009), <http://www.thehindu.com/todays-paper/tp-business/class-action-suits-to-ensure-shareholderdemocracy/article134987.ece> accessed on 20th May, 2021.

[42] Arohi Badsha, ‘Legal and Regulatory Framework for Protection of Minority Shareholders in India’ (2018) 4(3) JLSR <www.jlsr.lawbrigade.com> accessed on 20 May 2021.

[43] Ibid 36.

i. Conditions for Eligibility:

Provision 245(3) sets up the absolute minimum for bringing a legal claim. The least prerequisites are given by organizations that capital of share. Somewhere around 100 individuals or the recommended 10% 23, everything being equal, whichever is less, or members claiming basically 10% capital of share. Feature, notwithstanding, that such individuals are more likely paid all approaches of calls their shares and depositors.

At least 100 depositors or 10% of the aggregate depositor(s) or a depositor to whom the Company owes 10% of the total deposit(s). Companies without a share capital are required to furnish at least one-fifth of the entire membership.

ii. Benefits to Minority Shareholders:

In general, minority stockholders do not have significant rights on their own and are frequently crushed. Section 245 authorises them to join together and launch a lawsuit, allowing them to seek restitution from the corporation, its directors, auditors, experts, and consultants. In contrast to a class action suit, such a benefit may not be accessible to a shareholder who goes to the tribunal in his or her individual capacity.[44]

Sections 241 to 245 provide much-needed protection for minority shareholders. It is a useful tool in the hands of shareholders, who can utilise it to hold negligent officers accountable for their actions. The implementation of such provisions will open the eyes of corporate entities and their officers, making them more cautious in carrying out their obligations and making critical policy decisions.[45]

4) Right to Reconstruction and Company Amalgamation:

There are fears that minority shareholder interests will be suppressed in merger, amalgamation, and reconstruction projects. To address these issues, Sections 235 and 236 of the revised Company Act of 2013 protect the interests of minority shareholders.

The management usually makes decisions about mergers and amalgamations in consultation with the majority of shareholders, suggesting that small shareholders have little say in the process.

After acquiring 90 percent or more of the issued equity share capital, Sections 236 (1) and (2) require the acquirer to make an offer to the minority shareholders for the purchase of equity

[44] Arjya Majumdar, 'Class Action Suits – Genesis, Analysis and Comparison,' (dated 12th Dec., 2016), <https://ssrn.com/abstract=2883976> accessed on 20th May, 2021.

[45] Ashish Rukhaiyar, 'Class action suits ripe for review?' THE HINDU, (dated 27th Aug., 2017), <http://www.thehindu.com/business/Industry/class-action-suits-ripe-for-review/article19570982.ece> accessed on 20th May, 2021.

shares at the determined value; Section 236 (3) allows the minority shareholders to make an offer to the majority shareholders to purchase their shares. Furthermore, Section 236 (5) states that the transferor firm would function as a transfer agent for payments to minority shareholders.

5) An Implementation of a Fair Valuation Mechanism:

The corporation should utilize an unbiased valuation mechanism to evaluate the worth of its shares, which will preserve minority interests. The audit committee must designate the independent value, and the committee must ensure that shareholders have the right to file a complaint with NCLT if the procedure appears to be unfair. These share valuation criteria could potentially be applied to delisted corporations having 1000 or more shareholders.

6) E-voting Procedure:

Section 108 of the new Act mandates some companies to provide shareholders with e-voting tools in order for them to vote on shareholder meetings. This provision permits minority shareholders who live in or outside of the country to vote without physically attending the meeting. As a result, minority shareholders are more likely to attend meetings and have a say on crucial issues concerning their companies.

7) The Majority of the Minority:

Companies must only embark into related party transactions with the agreement of a majority of non-interested parties, according to Section 188 of the new Act of 2013. Because promoter's/majority stockholders are often the ones who are interested, minorities are naturally seen as disinterested. As a result, minority shareholders approve such transactions.

The new Act seeks to protect the interests of minority owners; however, more awareness is required so that shareholders are aware of their rights and can use them whenever they see fit.

4.6 A SUMMARY OF SHAREHOLDERS' ACTIVITIES IN INDIA:

Shareholder activism refers to shareholders' efforts to bring about a desired change in business operations or to influence management in the operation of the firm in order to protect the shareholders' interests in the corporation.

The Companies Act of 2013 is the main source of legislation governing shareholder activism in India. The Securities and Exchange Board of India (SEBI) regulations provide for the rights and remedies of the listed company shareholders, in addition to the Act. The Companies Act and later amendments have modified the legislation to make shareholder activism even easier.

Certain transactions required that the approval of shareholders are necessary guidelines under the new Act. Shareholders have the opportunity to sue the company, its directors, and third-party counsel in a class action lawsuit. They have the right to suit for tyranny and mismanagement against any member who violates the rules, as well as the right to leave under certain conditions.[46]

The SEBI statutes provide listed company shareholders with a plethora of additional rights and remedies, including the opportunity to express their opinions and actively defend their interests. A stakeholders' relationship committee must be established by publicly traded corporations to provide a platform for resolving shareholder issues and electronic voting procedures.

Proxy Advisory Firms (PAFs), which have made significant contributions to shareholder activism, are governed by the Securities and Exchange Board of India Regulations 2014. A proxy advisor assists a firm's institutional investor or shareholder on how to exercise their ownership rights in the company (including recommendations on a public offer or voting recommendations on agenda items). Shareholder voting patterns have been proven to be significantly influenced by PAF recommendations.

In Indian law, recent improvements led to greater corporate governance standards, establishment of new remedies for shareholders and improved shareholder rights. Because shareholder rights are easy to exercise and enforce, shareholders are more willing to express their opinions today, which will lead to increasing shareholder activism.

The regulatory laws governing shareholder activism are outlined below:

Under Indian law, the following rights are significant to shareholder activism.

1) The right of information to be received. Shareholders have the right to acquire data and documents such as copies and auditors of the yearly return, financial information and statutory records maintained by the company, such as membership registrations, debenture holders, managers and key managers.[47]
2) The authority to grant permission. However, the new Act of 2013 limits the board's power to a certain extent, and many major actions require shareholder approval. Their approval can be achieved by a simple majority or a special majority, as stated in the new Act.
   This includes amending the association or statutory memorandum of the firm, appointing and withdrawing directors, acquiring funding and selling companies by certain criteria.

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[46] Sakate Khaitan, Sangeeta Jhunjhunwala and Aditi Chandak, ‘Shareholder Activism in India: overview’ October 1, (2020) <https://uk.practicallaw.thomsonreuters.com> accessed on 20th June, 2021.
[47] Ibid 40.

Shareholders have exercised this voting ability to destroy proposals they disagreement therewith.

The shareholder approval requirement ensures the active participation of shareholders in important concerns for companies. In public companies, special majority shares are responsible for approving matters or transactions such as the sale or lease of a corporation's entire or substantially entire undertaking; the compensation investment obtained as a result of a merger or amalgamation; and the sale or lease of a corporation's entire or substantially entire undertaking; and the sale or leasing of a whole of or substantially all of the undertakings of a company. In addition to participating in transactions by related parties (RPT) over the defined level.

Minority stockholders may have a strong position in some instances. A publicly traded enterprise offered three RPTs to shareholders at its Annual General Meeting in 2018. Because interested public corporate shareholders are not authorized to vote on RPT resolutions, all resolutions have been defeated with a minimum percentage of the total shareholding that they are against.

The Securities and Exchange Board of India (Listing Obligations and Disclosure Regulations) Regulations of 2015 need the necessary shareholder approvals, and a related party can decide whether the firm is a related party to the specific transaction.

3) The authority to nominate and remove board of directors. A corporation's directors are chosen by the company's shareholders. Before being nominated, independent directors appointed by listed corporations and specific public businesses must be approved by shareholders in a general meeting.

Small shareholders with less than INR20,000 in shares can also suggest the appointment of a director to a listed company's board of directors, subject to certain restrictions. Small shareholders can seek board representation in this manner.[48]

A long-standing pharmaceutical company received a request from over 1,000 small owners led by a portfolio manager in August 2017. They desired to select a small shareholder director. Nonetheless, due to a conflict of interest, the board successfully fought the director's appointment.

A simple majority of shareholders can terminate a director before the end of his or her tenure under the new Act of 2013. However, if the director was nominated by the National Business

[48] Sakate Khaitan, Sangeeta Jhunjhunwala and Aditi Chandak, 'Shareholder Activism in India: overview' October 1, (2020) <https://uk.practicallaw.thomsonreuters.com> accessed on 20th June, 2021.

Law Tribunal or if the firm chooses to appoint directors by proportional vote, this right is not available.

4) Furthermore, the corporation can only dismiss an independent director who has been re-appointed for a second term by a resolution passed after giving him or her a sufficient opportunity to be heard.

A well-known healthcare company's shareholders decisively voted to remove the company's director in May 2018.

5) The power to appoint an auditor. On the recommendations of the board or the audit committee, the auditor is appointed by the shareholders at an annual general meeting. This is a contract position with a five-year duration.

6) The ability to request a meeting. Shareholders have the ability to request an extraordinary general meeting of the board of directors to debate corporate matters and express their opinions. The requisitionist shareholders may call an extraordinary general meeting if the board of directors fails to do so. The minimum condition for organizing such a meeting is 10% of the company's voting shareholders.

7) The ability to vote by electronic means. Shareholders have benefited from electronic voting because every publicly traded company or firm with at least 1,000 members is mandated to adopt electronic voting at general meetings. Electronic voting has improved shareholder engagement while also making the voting process more simple.

Shareholders who have been harmed can seek redress through the services listed below:

I. Mechanisms for resolving grievances:

The establishment of a Stakeholders Relationship Committee is required for a publicly traded company or corporation with more than 1,000 shareholders, debenture holders, deposit holders and other security holders to settle the problems of security owners at any moment during the financial year. Companies that are publicly traded must also join the SCORES network (operated by the Securities and Exchange Board of India).

Investors can use SCORES to file grievances and watch their progress or resolution. This is an example of a shareholder's entitlement to have his or her grievances and concerns addressed.

In case of the proceedings of oppression and mismanagement legal action will be taken.

On the basis that the affairs of a company are being handled in a way that is detrimental to the company's or its members' interests, a minimum of 100 or 10%, or a member or a member

holding a minimum of 10%, of the total number of individuals (whichever is less) may approach the Court to initiate an oppressive and/or mismanagement procedure.[49]

II. Suits filed as a class action:

If any of the members' rights are violated, or the management's conduct is detrimental to the company's or its shareholders' interests, the following can file a class action lawsuit against the company, its directors, and third-party advisers:

A minimum of 100 members, or 5% of the total number of members (whichever is less); or any member or members owning at least 5% of an unregistered corporation's issued share capital, or at least 2% of such a public firm's issued shares.

Other people's actions. Regardless of corporate shareholding, a single shareholder can file a derivative dispute on behalf of the company to seek a Board resolution if it is harmful to the corporation's corporate interests.

On the other hand, the stockholder has "clean hands" to appear in court. In the Code of Civil Procedure of 1908 the method for derivative actions is described.

Submission of a request to the Serious Fraud Investigation Office (SFIO). The shareholders might notify the Central Government of the need of a special resolution to investigate the operations of the corporation.

If a request is received by the central government, it is entitled to instruct SFIO to examine the operations of the corporation.

i. Shareholder Activism's Objectives:

Where shareholder activism is utilized, the true focus of the activist shareholder is profit oriented.

Activist shareholders utilize the shareholder rights to increase and increase profit. Shareholder activists use this strategy to try to build value by acting as a physical health in the company's growth.

When a listed arm of a major firm proposed selling one of its business units to another company owned by its parent, shareholder activists produced value. The plan required a special majority of the parent and subsidiary shareholders because it was a linked party transaction. However, the concept was rejected due to its low merit. The offer improved the shareholders' benefit.

[49] Sakate Khaitan, Sangeeta Jhunjhunwala and Aditi Chandak, 'Shareholder Activism in India: overview' October 1, (2020) <https://uk.practicallaw.thomsonreuters.com> accessed on 20th June, 2021.

A shareholder can hold company stock for many years in order to ensure a long-term return on investment. This can be accomplished by ensuring that management's major focus is on balancing and optimizing long-term returns on such shareholders' investments. In order to maximize profit, activist shareholders attempt to improve the company's performance. This also promotes successful implementation, which raises the organization's long-term worth.

Activist shareholders promote cost-cutting strategies to increase profit through the prudent and sensible use of corporate resources.[50]

Shareholders express their ideas and concerns more and more. A quarter of customer ship stockholders voted in favour of retention of the president, for example. A proxy consultancy firm recommended to investors that their non-executive chairman be reappointed and that they be also members of eight other corporations.

When multiple shareholders voiced worry over the company's acquisition of automobiles from a linked party, shareholder activism arose at a well-known automobile manufacturer in India. Due to strong resistance from activist shareholders, the corporation was obliged to change the terms of the contract in order to gain approval.

Furthermore, in 2014, a plan to pay special benefits to top executives of a publicly traded Indian automobile industry was rejected by a majority of shareholders, compelling the company to stick to its previous remuneration structure and reduce costs.

In the case of non-financial issues, activist shareholders permit a high level of shareholder engagement in organizational decision-making and direct shareholder interaction with management. This supports corporate governance by having a favourable impact on the company's corporate decisions' performance.

Activist shareholders work to improve the company's strategic and operational decisions in order to improve business operations and align corporate policies with market policies."

ii. Activist Shareholders' Strategies:

The following techniques are used by activist shareholders:

To influence management decisions and ensure the active participation in the operations of the firm, shareholders purchase shares with vote in the company as provided by the Companies Act of 2013.

The shareholders have on a frequent basis a policy to communicate with the board and to make strategic suggestions to the board in the interests of the company and its members. Consistent

[50] Ibid 43.

board engagement raises shareholder awareness and allows the board to make well-informed actions.

Shareholders actively participate in Stakeholders Relationship Committees in companies that are mandated to have one in order to voice their issues and criticisms.

If corporations do not handle shareholder issues in a proactive manner, shareholders make public declarations to express their views.

Shareholders might request that the board of directors call a meeting to discuss corporate matters and make a specific change.

Initiating actions for oppression and mismanagement with the National Company Law Tribunal on the grounds that the company's activities are being conducted in a way that is harmful to the company's or its members' interests.

iii. Suits filed as a class action:

Filing an application with the Serious Fraud Investigation Office (SFIO).

The Securities and Exchange Board of India (SEBI) can take action on its own or in response to a complaint from a disgruntled shareholder if the SEBI's governance guidelines for listed firms are broken.

iv. Disclosures by Shareholders:

As indicated by the new Act of 2013, if an individual's name is entered in the register of individuals from an organization as the investor in that organization, however, that individual doesn't hold the advantageous premium in those offers, that individual is needed to proclaim certain data to the organization, determining the name and specifics of the individual who holds the gainful premium in those offers.

Furthermore, any individual who holds or receives a beneficial interest in a portion of an organization from the company is required to make an assertion to the organization confirming that the concept of his/her advantage and the specifics of the individual in whose name the offers are enlisted in the organization's books.

In case of an adjustment of the advantageous interest in such offers, the people referenced above are needed to make certain presentations to the organization within a time of 30 days.

Following such statements, the organization is needed to observe in its register and document a get back with the Registrar of Companies (ROC). The new Act and the principles made under that Act accommodate announcing by critical valuable proprietors to the Registrar of

Companies (ROC). This is notwithstanding the previously mentioned prerequisites. The shareholding of the organization documented with the ROC is accessible on the site of the Ministry of Corporate Affairs.

v. The Punishments for non-compliance:

If a person fails to make the above-mentioned mandatory declarations without justification, he or she may face a fine of up to INR50,000. If the failure continues, the individual may face an additional fine of INR200 per day that the failure continues, up to a maximum of INR50,000.

vi. Regulatory Measures at the Activist Shareholders' Discretion:

The legal and regulatory methods outlined below can be used by shareholder activists. In summary, they are as follows:

a) The right to be informed.

b) The authority to provide permission.

c) The authority to appoint and dismiss directors.

c) The power to appoint and remove directors.

d) The power to designate an auditor.

e) The authority to request a meeting.

f) The ability to vote by electronic means. This is only possible in publicly traded companies or those with over 1,000 shareholders.

g) Mechanisms for grievance resolution: A Stakeholders Relationship Committee is required at any moment in the fiscal year for publicly traded corporations or companies with more than 1,000 shareholders. Additionally, public firms must be registered by the Securities and Exchange Board of India's on SCORES. Both of them give ways for shareholders to resolve their grievances.

h) In case of oppression and mismanagement proceedings:

If at least 100 members, or 10% of the total number of members (whichever is less), or members owning at least 10% of the company's issued share capital, file a complaint with the National Company Law Tribunal.

i) Suits filed as a class action.

j) Actions that are derived from others.

k) Submission of an application to the Serious Fraud Investigation Office.

Shareholder activists typically attack firms when a flaw in the company's management or financial affairs is discovered. The following are practical steps that a company can take to reduce the danger of being targeted by activist shareholders:

i. Achieving a balance between statutory compliance, business strategy, and policymaking is a challenge for the board of directors. Clarity about the operations of the board and its members aids in the maintenance of a constructive connection between management and shareholders, which enhances shareholder trust.

ii. The board must conduct regular audits of its own and individual directors' work, and it should consider correcting any issues that arise. Shareholder activism can be reduced by having an excellent track record of governance.

iii. Using market share analysis to identify the top 20-25 shareholders so that management can anticipate, analyse, and address their attitudes and potential problems.

iv. Keeping in touch with shareholders through efficient engagement and interaction.

v. Encourage shareholders to submit feedback on regular financial and long-term objective updates from the company.

vi. Keep a long-term strategic plan in place and be able to articulate its advantages.

vii. Make thorough information and reasoning for key firm transactions available to shareholders.

viii. Resolve shareholder issues directly and promptly.

ix. On a regular basis, assess the company's valuation, performance, and policies.

The following terms can be placed into the articles of association to reduce the danger of being attacked by activist shareholders:

i. Incorporating contractual rights into the company's articles of formation.

ii. Including non-statutory corporate governance norms in the articles of incorporation to increase shareholder trust in the business.

When confronted with Shareholder Activism, the Corporation takes the following steps:

In the event of responding prior to a general meeting:

When confronted with shareholder activism, a company can take the following steps before replying in a general meeting:

a) Dealing with the shareholder activist's complaints in a proactive and forthright manner.

b) Make sure that management takes the problems expressed seriously by the shareholder activist.

c) Taking an objective look at the shareholder activist's claims.

d) Evaluating and explaining the risk considerations associated with the shareholder activist's proposal.

e) Develop a strategy which is consistent with the shareholders' interests and the issues of the company.

The company can take the following actions during a general meeting:

a) Extending on the proposed plan for implementation.

b) Convincing shareholder activists that the proposed approach is in the best interests of the company and its members in the long run.

Following a general meeting, the firm may take the following actions:

a) The company's governance policies and the plan that has been executed are being reviewed on a regular basis.

b) Participating in engaging interactions with the shareholders in question.

The Benefits and Risks of Corporate Reactions to Shareholder Activism:

Responding quickly to activist shareholders' concerns allows directors to embrace stakeholder interests while supporting the company's governance profile and long-term strategic objective. A strategic plan, in addition to focusing on the company's financial performance, will aid the board of directors in ensuring that it has adequate policy space to implement the plan and earn shareholder support.

Taking a proactive approach to the problem helps management and the board of directors acquire the trust of a larger number of shareholders, even if the firm may fail to resolve all of the concerns highlighted by activists despite its best efforts. Ineffective communication, on the other hand, might raise a slew of concerns among activist shareholders.

4.7 Current Shareholder Activism Trends and Company Developments in India:

Companies in India must maintain strong corporate governance regulations and achieve a high level of stakeholder participation in light of the rise of shareholder activism. Greater participation of shareholder in enterprises, together with the application of organizations' best practices, will help retain the credibility of shareholders.

Shareholder protection has strengthened as a result of legal and regulatory changes. The Securities and Exchange Board of India's (SEBI) guidelines and regulations, as well as the new Act of 2013, have protected the rights of shareholders, particularly minority shareholders.

According to recent events in India, proxy consulting businesses appear to have played a critical role in the Indian market. Proxy advice firms make recommendations to shareholders on a variety of matters, including the appointment of directors, particularly independent directors of corporations, corporate transactions, auditor hiring, and so on.

Other authorities, in addition to SEBI, are promoting expanded shareholder participation. This is demonstrated by the terms of the Insurance Regulatory and Development Authority of India's stewardship code for insurers. Rule demands that the insurers implement a policy controlling their behaviour at general meetings and associated disclosures of the companies they have invested in.

This attempts to increase insurers' commitment to management, bolstering governance and informed party decision-making while also boosting insurers' return on investment.

The SEBI established a corporate administration committee to look into corporate governance concerns in greater depth. Many corporate governance suggestions made by the Kotak Committee have been followed. The following are among the recommendations:

The Board of Directors: no person shall be able to hold offices in more than seven publicly traded enterprises by 1 April 2020; the corporate management report shall contain the competence or Board of Directors' matrix;

By 1 April 2020, the top 2,000 listed entities must have at least six female independent directors, and the top 1,000 listed entities must have at least one female independent director.

Increasing safeguards and disclosures for related party transactions, the use of funds from a QIP/preferential issue in the relevant fiscal year until they are fully utilized, and combined quarter profits.

Investor concerns about voting and participation in general meetings were addressed. A one-way live webcast of the annual general meeting proceedings is necessary for the top 100 publicly traded businesses by market capitalization.

Each meeting of the directors of the top 2000 listed institutions shall have one third of its total workforce or three directors, whichever is higher, including at least one independent director, beginning of April 1, 2020.

Latest innovations in corporate governance, the companies in India must adapt to shifting policies and engage in more shareholder participation.

CHAPTER 5

LAWS AND REMEDIES FOR PROTECTION OF MINORITY SHAREHOLDERS' RIGHTS

5.1 INTRODUCTION:

Minority shareholders may turn to the law for assistance if they are prejudiced, which may constitute an infringement of their rights. The Companies Act, derivative action, common law, and others, such as Securities legislation, are some of the statutory provisions to which victims might go for redress.

5.2 Rights of Minority shareholders' protection under the Companies Act of 2013:

Minority shareholders can bring a statutory derivative action if they believe their rights have been violated under the new Act of 2013. They must be utilized with prudence, however, to guarantee that the law protects the legal enterprise while not condemning uneven and illegal behaviour, that majority decision-making is supported, and that the minority is not unfairly and unduly considered.

Democratic decisions are made by a majority vote, and the same rule applies to corporate concerns. According to the previous Act of 1956, the company is run by the shareholders who own the majority of the shares. Foss vs. Harbottle, a fundamental case, recognizes this majority concept (1843). Minority stockholders were bound by the majority shareholders' decision. The new Act of 2013 has changed this premise, and minority shareholders now have more authority.

Some provisions are intended to safeguard minority shareholders while also ensuring that all shareholders in a firm are treated equitably.

Sections 241-246 of the new Companies Act provide remedies in cases of oppression and mismanagement, allowing injured parties to file a complaint with the National Company Law Tribunal (NCLT). In circumstances of oppression and mismanagement, Chapter XIV of the Act lays out the options for minority shareholders.

i. Individual Rights in Relation to Minority Shareholder Protection:

It is critical to understand how the Act protects the interests of individual shareholders. When an individual shareholder's right is safeguarded, the minority interest is likewise protected. There is no doubt that some individual owners have a greater say in the management of the firm, which is why, in real practicality, not every right could be equally allocated to all shareholders of the organisation.

However, looking at it as a whole will reveal how much protection has been provided to minority shareholders. Every shareholder has some fundamental rights, such as the right to participate in company management, the right to file a complaint with a tribunal for oppression and mismanagement, the right to wind up the company, and certain other rights.[51]

As a result, a few of the sections that protect individual shareholders and operate as a bridge for the protection of minority shareholders are as follows:

a) Each shareholder is entitled to a dividend.[52] The most essential point is that the dividend can only be paid through the channels specified in the Act.[53]

It is important in the case of India, where there are few shareholders holding more shares, so the dividend they will receive will be higher, even if the company is losing money, which will be harmful to the company and, in turn, will hamper the interest of the minority shareholder, as the majority shareholders will be able to withdraw their money in a very discreet manner through this procedure. As a result, this ensures that minority stockholders are protected.

b) Another point worth mentioning here is the right to attend an annual general meeting[54] or to call one if the corporation has failed to do so.[55]

ii. Minority Shareholder Protection in the face of Oppression and Mismanagement:

The circumstances under which any member of an enterprise may seek remedy from NCLT in the event of oppression and mismanagement are provided for in section 241 of the Companies Act. Any of the grounds stated in the section may be used to support a member's claims.

Various case laws have also discussed the concept of 'any member of company.' In one such case, the court declared in "S.V.T. Spg. Mills (P.) Ltd. v. M. Palanisami[56]" that the term "member" in section 2(27) of the old Act (equivalent to section 2(55) of the 2013 Act) must be read widely. The application of sections 397 and 398 (equivalent to sections 241, 242, and 244 of the 2013 Act) is an equitable jurisdiction aimed at protecting minority members of a corporation from persecution and mismanagement by the corporation's majority members. It suggests that everyone who is not a holder of share warrants is a member.

Central Government may also file an application with the NCLT, according to Section 241(2) of the new Act. Section 244 specifies which members are eligible to apply under Section 241.

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[51] Life Insurance Cooperation of India V. Escorts Ltd. & others [1986] AIR 1370.
[52] Companies Act 2013, s 127.
[53] Companies Act 2013, s 123(1).
[54] India Flings, 'Guide to Annual General Meeting' (2015) < http://www.indiafilings.com/learn/guide-to-annual-general-meeting/> accessed on 6th April 2021.
[55] Companies Act 2013, s 97.
[56] [2009] 95 S.C.L. 112 (Mad.)

Under Section 245, members and depositors have the right to sue the company, its directors, auditors, or any advisor or expert if they commit any improper, unlawful, or fraudulent act, omission, or behaviour involving the company. Another form of minority shareholder protection is the ability to bring a class action lawsuit.

A class action suit is a legal proceeding in which a group of people with a common interest can file a complaint with NCLT if they believe the firm's affairs are being managed in a way that is harmful to the firm's, members', or depositors' interests.

Courts have authorized derivative lawsuits in respect of such erroneous non-rectifiable decisions in cases of fraud on the minority by wrongdoers in control, but have banned the firm itself from launching an action in its own name.

As a result of the company's misbehaviour, such derivative measures are filed on behalf of the company by shareholders instead of individually. In the same vein the courts authorized one shareholder on behalf of one or more common shareholders on the basis of persons with the same locus standi to accept the notion of Class / Representative Action.

This idea in the new law of 2013 was mostly aimed at protecting small shareholders by ensuring that auditors were more responsibly held accountable and corporate frauds and crime protected.

Section 245(3) specifies the bare minimum for bringing a class action lawsuit. Member(s) possessing at least 10% share capital or a company with at least 100 members or the requisite 10% of total members, whichever is smaller. It's important to note, however, that such members must have paid all calls on their shares.

Depositors A depositor who owes the corporation 10% of total deposits or a depositor to whom the corporation owes 100 percent of total deposits, whichever is less. At least one-fifth of the total number of members is required for a non-share capital business.

iii. Approval of a Class Action Suit:

The Tribunal will evaluate rule 85 of the National Company Law Tribunal Rules, 2016, which establishes the prerequisites for admitting a class action, in addition to the grounds listed in section 245(4) of the Act. The following elements will be taken into account: -

a) Whether or not the member or depositor who submitted the application is operating in good faith;

b) Any information proving the involvement of anybody other than the company's directors or officers in the matters described in sections 245(1)(a)-(g);

(c) the cause of the act is that it is possible to pursue the Member's individual capacity or the individual capacity of the depositor instead of following the procedure outlined above;

(d) any opinions of members or depositors that demonstrate that the subject matter is not directly or indirectly of personal concern;

(e) because there has not been an action but that it is likely to develop,

(f) Because the class affected are so many, it would be prohibitively expensive to include them individually and make class action desirable;

(g) That the claims asserted or defences offered by the parties are representative of that specific class;

(h) That there are factual or legal issues that are common to that specific class.

iv. Oppression and Mismanagement vs. Class Action:

The addition of class actions pursuant to section 245 was raised when the members of a corporation can bring a suit pursuant to Section 241 (oppression and mismanagement) if they consider the company's business is performed in a form that is detrimental to the interest of the company. There are a few quirks, though, that make it (section 245) remarkable. Depositors who are not covered by section 241, for example, may make an application under section 245. Orders forcing any member to purchase shares, limits on transfer or allotment, cancellation or modification of an agreement, removal or nomination of a director, and other remedies are all available under section 241. In terms of determining damages and compensation, however, Section 245 is significantly more permissive.

An order obtained under Section 245 is in rem and also applies to members or depositors who are not parties to the action contrary to an order of opposition and maladministration, which is solely binding on the parties to the application. While a class action can be filed in response to any act that is harmful to the members', depositors', or corporation's interests, the public interest is also taken into account in cases of oppression and management.[57]

Sections 241–245 give minority stockholders much-needed protection. It is an effective instrument in the hands of shareholders who can use it to hold negligent officers accountable for their conduct. Introduction of such provisions will open corporate entities' and officers' eyes,

[57] Varun Munjal, 'India: Class Action Suits: Notified Yet Ambiguous,' (dated 30th Nov., 2016) <http://www.mondaq.com/india/x/548850/Class+Actions/httpwwwmondaqcomcontentprarticleaspprid20550productid> accessed in 20th May, 2021.

making them more cautious in carrying out their commitments and making key policy decisions.[58]

v. Minority Squeeze Out and Mergers & Acquisitions:

Section 236 of the Companies Act specifies the circumstances under which the majority can purchase the minority shares.

The management, in conjunction with the majority of shareholders, normally takes decisions for mergers and amalgamations, meaning that minor shareholders have no say in the subject. If a shareholder does not like the deal, the resolution should be voted against. However, the problem occurs since there are not many votes. The interest of minority shareholders can be compromised if the majority shareholders choose to sell a firm in the family-run business at a cheap price, or when a reverse merger is occurring (a combination of a healthy company with a relatively sick one). It is moreover a challenge to determine a fair price as, once the consequences of merging have been identified, an originally unfair price can out to be a really fair price (purchase of JLR by TATA Motors).[59]

Squeezing out has gained in popularity in recent years, making it vital to regulate it. It is used to exploit minorities, which is even more essential as the majority of companies own family's regulations.[60]

The process of acquiring minority shareholders' shares in exchange for compensation is known as squeezing out. It demonstrates the tremendous power that majority investors can exert in order to force out minority stockholders. It illustrates the dominant stockholders' significant control over the company. Squeezing out minority owners may benefit the company, but it may undermine minority shareholders' interests. Despite fact that it is done legally, it poses a threat to the company's minorities.[61] According to the new Act of 2013, there are four ways to squeeze out a company. The following are the primary methods for getting a squeeze out:

(1) the share capital consolidation pursuant to Section 61 of the new Act of 2013,

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[58] Ashish Rukhaiyar, 'Class action suits ripe for review?' THE HINDU, (dated 27th Aug., 2017), <http://www.thehindu.com/business/Industry/class-action-suits-ripe-for-review/article19570982.ece> accessed on 20th May, 2021.

[59] Yogita Khatri, 'how corporate mergers and acquisitions impact small investors,' THE ECONOMIC TIMES, (dated 17th July., 2017), <https://economictimes.indiatimes.com/wealth/invest/are-mergers-and-takeovers-wealth-creation-opportunities-for-investors/articleshow/59606562.cms> accessed on 20th June 2021.

[60] Sachin Mehta, 'Minority Shareholders and the Threat of Squeeze Outs,' LIVEMINT (Sep. 1, 2008), <https://www.livemint.com/Money/dfzhNnJ17ARJB5lcAmTMEI/Minority-shareholders-and-the-threat-of-squeezeouts.html> accessed on 20th June, 2021.

[61] Tanvi Kini, 'An Overview of Squeezing out of Minority under the Companies Act, 2013 Vis -À-Vis the Position in International Jurisdictions,' (dated 2nd Aug., 2016) <https://www.legalindia.com/overview-squeezing-minority-companies-act-2013-vis-vis-position-international-jurisdictions> accessed on 20th June, 2021.

(2) the decrease in share capital relation to Section 66 of the new Companies Act,

(3) the acquisition of shares pursuant to Section 235 of the Act and

(4) the method of agreement.

The scenarios under which a majority can buy minority shares are described in Section236 of the revised Act of 2013. If an acquirer or a person acting on his behalf acquires at least 90% of the company's shareholding (issued) capital in connection with a merger, exchange of shares, or conversion of securities, that person has the right to notify the minority shareholders (i.e., the remaining 10%) of his intention to purchase the shareholdings. A registered valuer must set the price for such an acquisition. Section 236 subsection (3) also permits minority shareholders to sell their interests to the majority stockholders.

In numerous occasions, courts in India have interpreted the legal position of squeezing out.

In "Sandvik Asia Limited versus Bharat Kumar Padamsi[62]", the court was asked if an irrational and unjustified decision was taken against minority shareholders in return for a price. The court stated in its conclusion that "after it is shown that non-promoter shareholders are being paid fair value for their shares, they never even argue that the amount that is being paid is in any way less and the fact that an overwhelming majority of non-promoter shareholders voted in favour of the resolution demonstrates that the Court will not be justified in refusing to sanction it.

The High Court of Bombay set certain standards and defined the term prejudice in the case of Cadbury India Limited.[63] According to the court, it is its responsibility to ensure that "the scheme is not against the public interest, is fair and just, and not unreasonable, does not unfairly discriminate against or prejudice a class of shareholders, and draws a balance between the commercial wisdom of the shareholders expressed at properly convened meetings."

The term "prejudice," when it comes to valuing a scheme, would not only result in less than a shareholder expects; it would indicate "a systematic attempt to coerce a class of shareholders to rid themselves of their interests at a rate substantially below what is reasonable, fair, and just.

In a separate case, in re Elpro International Limited[64], the Bombay Stock Exchange questioned the pressure of minority shareholders' share capital reductions based on the fact that minority shareholders' silence had been viewed as supporting plans. Bombay Stock Exchange Although the courts did not invalidate and accept the scheme, if they consider that securities legislation has been infringed, the stock exchanges were authorized to take action under the listing

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[62] [2009] 4th April.
[63] [1976] 1 W.L.R. 123.
[64] [2009] 149 Comp. Cas. 646 (Bom).

agreements. The company was compelled to abandon its plan for a retreat of the minority shareholders since the stock market resisted the squeezing. This is a classic example of how exchanges are built up in order to defend, where necessary, the interests of minority shareholders.

The difficulty is that SEBI's role is still confined to regulating listed businesses. Unlisted companies are not subject to SEBI's remit. Companies frequently attempt to drop off, in order to keep SEBI out of the transaction, followed by a suggestion to squeeze out, which leads to less supervision of the regulations and makes even more susceptible minority shareholders of such businesses.

vi. Transactions involving related parties:

In recent years, there has been an increase in complaints about related party transactions being abused in Asian countries, particularly India. The issue originates from the ownership structure of Indian firms. There is a high concentration of ownership, putting control in the hands of a single family or individual, or the same promotional group may own multiple enterprises. Although transactions of associated parties are not forbidden and may be good for the enterprise, there is a potential to misappropriate the value of corporations by controlling shareholders. Related party transactions frequently have negative consequences for minority shareholders. Certain corporate frauds have been facilitated by such deals.[65]

On the other hand, Section 188 of the new Law of 2013 seeks instead of prohibiting linked transactions. Any firm with a minimum paid-up share capital of Rs. 10 crore or more, or that plans to engage in specified transactions, must pass a resolution to that effect, according to the first proviso. Furthermore, under the second proviso, any member who is a related party is prohibited from voting on the aforementioned motion. This frequently results in minority shareholders being empowered to authorize a related party transaction, which is especially crucial in India, where the majority shareholders are related parties. A comparable restriction is imposed under Regulation 23(4) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations of 2015.

On the other hand, the ministry of corporate affairs stressed that in the context of the agreement or arrangement for which resolution is approved, the expression 'related party' in the previous framework relates exclusively to a related party.

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[65] A. Galani & N. Rehn, 'Related Party Transactions: Empowering Boards and Minority Shareholders to Prevent Abuses', N.L.S.I.R., (2010), <http://www.nlsblr.com/uploads/3/7/6/7/37673841/03.pdf> accessed on 29th April 2021.

vii. Minority shareholders who resist a related party transaction include[66]:

(a) the PTL Enterprise case where its proposed hospital holdings were to be sold. Because of the poor valuation, stockholders were opposed. In addition, KSIDC, a minority shareholder in PTL, was successful in preventing the proposal from being accepted. As a result, the company's strategy had to be abandoned.

b) In 2014, Siemens India's management recommended selling the business's metal technology division to Siemens AG, its parent company. In comparison to its previous transfer to Siemens India, the expected valuation was fairly low. Because it was a related party transaction, it required shareholder approval, which was later denied.

Many lawyers have raised worry about legitimate shareholder harassment of promoters, despite the fact that such revisions in the new Act of 2013 and its related rules have been supported by many in the legal community.[67]

The Disclosure of Information:

The notion of corporate governance can be summed up in one word: transparency. Transparency allows all shareholders to make informed decisions, which is a step toward ensuring that minority interests are taken into account. When an individual invests a large sum of money, he will ensure and obtain all facts about how the money works. However, because these small investors rely only on information made available to the public, inaccuracy in the prospectus is something that has been addressed under both the old and current Acts. The 1956 Act and the 2013 Act both provided for civil and criminal culpability for misstatement, as well as the people who would be liable for such misstatement. It has been declared that shareholders received a dividend from the earnings of the preceding fiscal year, but that, in fact, the firm was lost and the dividend was paid by other funds. As a result, a misstatement could mislead an investor into investing in the shares, which would not have been the case if the right information had been included in the prospectus.[68] As a result, a deposit should be collected through prospectus advertising; this assures that the correct information is communicated to all shareholders.

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[66] Jyotindra Dubey, ‘Battling the giants: How minority shareholders are making the right noises’, THE HINDUSTAN TIMES, (dated 4th Mar., 2016), <https://www.hindustantimes.com/business/battling-the-giants-how-minority-shareholders-are-making-the-right-noises/story-Chtl2NHrWE6SA2ofQwSBbI.html> accessed in 29th April., 2021).
[67] Rajesh Bhayani, ‘Minority shareholders can block related-party deals’, BUSINESS STANDARD, (dated 14th April, 2014), <http://www.business-standard.com/article/companies/minority-shareholders-can-block-related-party-deals-1140413000> accessed on 30th April, 2021.
[68] Rex. v. Lord Kylsant [1932] 1KB 442.

5.3 In the event of a Takeover, the SEBI will provide an overview:

We would look at the SEBI regulation regarding takeovers, because these arrangements only result in the squeezing of minority shareholders. There are other regulations that see such arrangements, such as those under competition law; nevertheless, that is not something that will be considered.[69]

i. Fair Pricing and Regulatory Oversight:

As previously noted, disclosure is one of the first steps toward protecting minority shareholders. SEBI guidelines require disclosure for two reasons: first, it is critical to notify public shareholders that the business's management is about to change, so that they can make an educated decision about whether or not to stay with the company.[70] Another reason is that it aids in the determination of the reasonable price of an open offer.[71] The obligations are spelled forth in Chapter V of the takeover code. As a result, if the acquirer and the person acting in concert (PAC) own more than 5% of the acquired company, the information must be disclosed within the timeframe specified by the regulations. As a result, extensive disclosure is provided under the new SEBI code.

The system has been simplified, and under the current regime, disclosure is not required at every stage; however, there is some ambiguity, such as if the purchaser with PAC acquires shares worth less than 2%, it may go unreported until the sum exceeds 5%.[72]

Another move taken in the 2011 legislation is that the aggregate of the acquirer's and PAC's shareholdings are visible together, which ensures more openness and decreases the possibility of fraud against minority shareholders.[73]

Other rules provide that when an acquisition is to be made, an open offer must be made. The regulation established comprehensive guidelines for the fair pricing and open offer. The concept that needs to be grasped here is that the pricing offer is competitive.

That is why the regulation includes provisions such as competitive offers. Its specifications will be the same as those specified in the case of an open offer. There is an exception to this open offer requirement if the acquisition is made by more than one individual during a fiscal year.

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[69] Competition Act 2002, s 5.

[70] Nikhi Bansali, 'Public M&As in India: Takeover Code Dissected SEBI takeover code' Legal and Tax Counselling (2012) < http://www.nishithdesai.com/information/navigation/navigation2/ma-lab/ma-lab/article/public-mas-in-india-takeover-code-dissected.html > accessed on 7 April 2021.

[71] Ibid.

[72] Nikhi n (59).

[73] RadheyshyamTulsian v. SEBI (SAT Order dated April 26, 2006) cited in Nikhi (n 59).

Concerning the reduction of share capital, the SEBI amended the listing agreement to make it essential for the firm to declare any scheme of arrangement before the stock exchange a month before filing it before the court or tribunal. In recent decades, the regulatory regime has been strengthened in relation to the scheme of capital reduction and arrangement.

As a result, it appears that some laws apply to listed corporations in order to protect minority shareholders.

5.4 COMPARISON OF MINORITY SHAREHOLDERS' RIGHTS UNDER THE COMPANIES ACT OF 1956 AND THE COMPANIES ACT OF 2013:

Provisions for remedies from both oppression and mismanagement:

Some of the most important changes of the oppression and mismanagement clauses are as follows:

a) The new company Act includes provisions about the redress of tyranny and mismanagement of minority shareholders from “oppression and mismanagement.”

Section 241 including the both concepts. Previous statute included two separate provisions, 397 and 398, which dealt with the ideas of oppression and mismanagement, respectively.

b) The NCLT is the authorised body under the New Companies Act, and an application must be presented before the tribunal. Under the previous statute, the Company Law Board was designated as the authorised entity to receive applications.

c) As previously stated in this chapter, in the event of a Waiver of Eligibility Requirements under the New Companies Act, the tribunal has the authority to waive the eligibility criteria in certain cases.

The Central Government was entitled, under the old Act, to eliminate the limitations on eligibility.

Aside from the aforementioned changes, the tribunal's authority has been increased, giving it greater power than the Company Law Board. Limits on the transfer or allotment of company shares, as well as the firing of the firm's managing director or any other director, are among them. Legislators' objective is to reinforce an existing procedure that required particular changes that have now been integrated into the requirements of the new Act of 2013.[74]

[74] Rebecca Furtado, ‘Oppression in the Corporate Sector- The Indian Perspective’, (dated 1st July, 2016), <https://blog.ipleaders.in/oppression-corporate-sector-indian-perspective/> accessed on 30th April., 2021.

CHAPTER 6

SOME CORPORATE GOVERNANCE ISSUES AND THE IMPORTANCE OF MINORITY SHAREHOLDERS ROLE IN CORPORATE GOVERNANCE IN INDIA

6.1 INTRODUCTION:

In India's Companies Act there are some issues regarding the corporate governance and protection of minority shareholders' rights.

We all know that corporate governance means working of the company. There are numerous stakeholders in the organization. One of the company's stakeholders is the shareholders. The rights and obligations of the company's management, management, executive board, shareholders, and other players are described in corporate governance.

Minority shareholder is a key player in the firm who invests their money to ensure the company's success. In some cases, corporate governance does not place a high value on minority shareholders. Minority shareholders' rights are curtailed.

6.2 ISSUES OF CORPORATE GOVERNANCE RELATING TO MINORITY SHAREHOLDERS' RIGHTS:

Also in this chapter study about the recent minority shareholders' activism in India. The following are some corporate governance challenges for the protection of minority shareholders:

1)Preferred shareholders are given a lot of value:

Preferred shareholders have a stronger claim to asset or dividend distributions than non-preferred shareholders.

2) Controlling management decisions by the majority shareholder:

Because the majority shareholders retain control of the Company's management, minority shareholders may be unable to obtain sufficient evidence, such as information, accounts, or records, to substantiate their charge of misconduct. Although the new Companies Act of 2013 provides for remedies, they have yet to be implemented. Furthermore, traditional litigation-based remedies have been time-consuming and costly in the past. The costs must be met by the shareholder who files the claim, and if the claim is successful, the shareholder receives only a proportionate indirect gain.

3) FII (Foreign Institutional Investor):

The availability of foreign funds reduces the cost of capital. Foreign investors are uninterested in the idea of strong corporate governance. Foreign institutional investors will prioritise themselves, which means they will prioritise their dividend.

Foreign lenders must therefore be cautious in ensuring excellent corporate governance. Theoretical interest in corporate governance is a relatively new phenomenon in India. During the 1993-1994 stock market bubble, obscure businesses swiftly emerged on exchanges, only to disappear after syphoning off public funds and leaving private investors with illiquid stock.

Prior to the advent of liberalization, the Indian organized sector, which was controlled by both public and private businesses, did not meet the necessary governance regulations and standards.

Furthermore, as international investment in Indian industry has increased, accountability to foreign shareholders has become increasingly important.[75]

4) Checks and Balance:

Because the corporate finance structure in India is heavily reliant on banks' financial resources, some authors argue that the legal structure should be designed so that banks are free of excessive portfolio restrictions, and governance mechanisms should be designed so that bank representation on boards becomes a reality.

This would allow banks to keep effective checks and balances in place to prevent managers from stealing shareholder value.

5) Follow the rules of Corporate Governance:

If Indian firms were to access local and foreign capital at competitive rates, they needed to follow best practises in corporate governance.

6) Focus on Transparency and Disclosure Norms:

With growing exposure to global markets, firms must focus on transparency and complete disclosure methods, in addition to continually directing themselves toward improving shareholder value. Initially, the code was focused on publicly traded firms.

7) The promoters, who are normally the controlling shareholders, provide venture capital and private equity investors particular contractual rights when they make a minority investment in a company. The shareholder agreement, in which the shareholders are usually allowed to

[75] Ishwaree Rajiah-Bennett, ‘Corporate Governance Practices in India: Issues and Challenges’ 8(11) IJARESM (2020) <www.ijaresm.com> accessed on 7th June, 2021.

represent the proportional board, to veto specific matters and to have access to information and inspection, outlines these contractual rights.

Although these rights are important in safeguarding the interests of minority investors, management remains in the hands of developers, and minority investors have limited chance of challenging poor management decisions.

8) Promoter's ability to designate majority directors effectively eliminates the right to board representation. Minority investors can utilise veto rights as a reactive authority to prevent certain corporate acts, but they do not necessarily provide any positive right to steer management.

Furthermore, the SHA's information and inspection rights are typically limited to materials such as statutory records, periodic filings, and books of accounts, and the investor may not have access to underlying documentation that is necessary to reveal fraudulent conduct.

9) Minority stockholders are also given exit rights under the SHA. The SHA is rarely observed in practice, and minority investors' exit rights are only on paper. The promoter's desire and financial capability to withdraw is contingent on the Company's willingness and financial capability, with a long dispute resolution process serving as the sole remedy for the promoter's non-compliance with its responsibilities under the SHA. If the promoter and minority investors are at odds, the promoter may make it impossible for the investors to leave.

Finding a third-party buyer may be difficult if the company's corporate governance is bad. A minority investor may see the Company's value decline as a silent observer in a variety of conditions.

Finding a third-party buyer may be difficult if the company's corporate governance is bad. A minority investor may see the Company's value decline as a silent observer in a variety of conditions.

Majority rule is not identical with shareholder democracy. Furthermore, minority owners' investments cannot be completely ignored. Judicial precedents show that, as enunciated in Foss vs Harbottle, the absolute rule of the majority cannot be automatically followed in India, and that a breach of fiduciary responsibility by dominant owners entitles minority shareholders to seek remedy from the controlling shareholders.

Although in the current legislative framework the fiduciary responsibility of controlling shareholders has not been explicitly identified, legal precedents have shown that controllers must not profit from the Company secretly, make full disclosures of all the relevant facts and use their position appropriately in the interests of the Company.

The Securities and Exchange Board of India (SEBI) recognized the controlling shareholder's fiduciary duty to the minority shareholder in a consultative paper on Corporate Governance Norms in India (2012) and advocated that dominant shareholders of publicly traded corporations enter into relationship agreements with the listed company and minority shareholders outlining their rights and responsibilities. Controlling shareholders' fiduciary responsibility to minority shareholders has long been acknowledged by governments with sophisticated financial markets.

Minority shareholders' rights may be truly protected only if the dominant shareholders recognize their legal responsibilities to all owners and consult with them during the decision-making process.

Minority shareholders should be given time to resolve their complaints by controlling owners. Rather than just responding to the interests of the controlling stakeholders, the board righteous endeavour is to safeguard the company's beliefs.

As a result, the new Companies Act of 2013 has made significant steps to protect minority shareholders' rights. However, there are still loopholes, and awareness of the aforementioned Act is limited to a few groups. It is in both the controlling and minority stakeholders' best interests to get acquainted with the provisions of this Act so that they can seek judicial redress at any moment.

As a result, only when minority stakeholders' rights are protected will the minority rights ensuring adequate corporate exercise be fulfilled.

Corporate governance of the corporation only protects minority shareholders' interests when they provide the minority shareholders the same position as the other stakeholders.

Because minority shareholders own a stake in the company. They play a vital function in the organization. Minority shareholders are extremely important to the organization. Though their share volume is less than that of other shareholders, whatever contributions minority shareholders make to the company's operations should be given due consideration by corporate governance.

6.3 Recent Minority Shareholder Activism Trends in India:

Shareholder activism refers to the efforts of the shareholders to achieve a desired change in the operations of the company or the management of the company to safeguard the interests of the shareholders. The new Act of 2013 is the primary source of law in India that governs shareholder activism. The Securities and Exchange Board of India (SEBI) regulations, in addition to the Act, provide rights and remedies to shareholders of listed companies. The

Companies Act and later amendments have modified the legislation to make shareholder activism even easier.

i. The class action lawsuit in the United States and India:

In the United States, the first class action lawsuits were brought in 1842, when Equity Rule 48 provided individuals the power to pursue such claims. It finally took its current form in 1966, after numerous adjustments and revisions.[76] This option has since been used countless times in the United States. Even in 2006, many Enron shareholders in the United States lost money after purchasing Enron stock.

They were awarded a total of $7.2 billion after an investigation found that firm leaders had lied to investors and concealed losses before declaring bankruptcy. As a result, it is rather obvious that class action lawsuits are fairly prevalent in the United States and are one of the most commonly used Redressal techniques.

Prior to the new Act's enactment, citizens in India filed class lawsuits under the guise of Public Interest Litigation. The class action complaint brought under Section 245 of the new Act of 2013 arose solely as a result of the Satyam Computer Services Scam, commonly referred to as the Satyam Scam, which occurred in 2009. Founder Ramalinga Raju admitted publicly that he faked and altered Satyam Computer Services Ltd.'s financial accounts. Despite this, the investors in India received no compensation, although Ramalinga Raju agreed to pay $125 million in the United States to settle shareholder lawsuits. A large number of members were affected, but there was no way to help them. Investors in India had no legal remedy, whereas their equivalents in the United States brought a class action suit against the corporation and received compensation. The class action suit is a mechanism used to deal with the "Collective Action" problem in which the claims of smaller parties are not cost-effective and hence can never be submitted.

The point that arose here was why there was a need for a distinct provision under Section 245, despite the fact that remedies for tyranny and mismanagement were already available. It can be observed that Section 245 of the Act also applies to depositors, and the court generally issues restraining orders to the corporation under Section 245. Another advantage is that when a class action is filed, the National Company Law Tribunal normally releases a public notice.

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[76] Ashish Rukhaiyar, 'Class action suits ripe for review?' The Hindu, (2017) <http://www.thehindu.com/business/Industry/class action-suits-ripe-for-review/article19570982.ece> accessed on 20th June, 2021.

This provides an opportunity for any other impacted parties to participate, making this a representative action for them.[77]

Another question that emerges here is whether this mechanism is employed as frequently in India as it is in the United States, noting that it has been five years almost since adoption in India. The response is still the same. It has not been the most popular form of Redressal in India. The main difference between India and the United States is that in the United States, legal firms and lawyers operate as accelerators, encouraging impacted parties to file a suit. This is due to the fact that they receive a portion of the compensation while the aggrieved parties are not required to pay anything for the legal help needed. Again, this is feasible because in the United States, lawyers are able to charge conditional expenses, which means that the lawyer only gets paid if the case is won. Lawyers in India are not permitted to charge such fees. Relaxing this provision may encourage class action lawsuits because it benefits both lawyers and impacted parties.

Second, the "Investor Education and Protection Fund" will be used to reimburse any expenditures incurred by the affected parties in pursuing Sections 37 and 245 lawsuits. In practice, the government-controlled fund is incapable of managing class action lawsuits due to the significant risk of abuse.

ii. Minority Trying to purchase Majority:

A new initiative is designed to buy the majority for minority shareholders instead of being pressured. The foreign majority claimed oppression on the part of the Indian minority shareholders in Needle Industries (India) v. Needle Industries Newey (India) Holding Ltd.[78] Minority shareholders appointed new directors and issued additional shares as a result of this. The Supreme Court denied the oppression claim in this case and directed the minority Indian owners to purchase the shares held by the foreign majority shareholders in order to achieve substantial justice. This is regarded as a watershed moment in Indian history.[79]

In this situation, it is also worth noting that the main shareholders were not Indian. As a result, there is a strong chance that there was a prejudice in favours of the Indian minority shareholders. There has never been another case when such a judgement has been given.

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[77] S. Sadhana and M. Kannappan, 'A Study on the Oppression of the Minority Shareholders in India with Reference to the Majority Rule' 119(17) 2018, ISSN <http://www.acadpubl.eu/hub/> accessed on 20th June, 2021.

[78] AIR [1981] SC 1298.

[79] S. Sadhana and M. Kannappan, 'A Study on the Oppression of the Minority Shareholders in India with Reference to the Majority Rule' 119(17) 2018, ISSN <http://www.acadpubl.eu/hub/> accessed on 20th June, 2021.

Minority squeeze out is prevalent in general because the notion is that the corporation can still function without the minority shareholders and that majority is the cornerstone of democracies.

6.4 Minority Shareholders' Importance and Role in Corporate Governance in India:

Corporate Governance means working of the company. The phrase "minority shareholders" is not defined under company law. There is no legal definition of this phrase. However, we are all aware of the significance of this minority stakeholder. The company's ultimate owners are the shareholders, yet they are not directly involved in its operations. Minority shareholders are those shareholders who possess the smallest number of shares in the corporation, implying a lower volume of shares; thus, they are referred to as minority shareholders.

Minority shareholders are also very significant to the corporation. However, corporate governance in India has not placed a high value on the role of minority shareholders in a firm. So now is the time to consider how vital it is for minority shareholders in a firm to be given unique protection through corporate governance.

The general norm in any corporation is that the directors are the elected representatives of the company and thus directors have the authority to govern the company's activities and all. The members exercise the rights not granted to the directors in their general meeting. Typically, this decision of the company is made based on the majority of shareholders. As a result, the majority shareholder rule applies. The right of the majority shareholders to run and control the company this means that the majority gets the last say in the general assembly. Minority shareholders' rights are so limited in any firm, and their rights have been violated numerous times.

A minority shareholder is someone who owns less than 50% of a firm. Minority shareholders have no control over a corporation. Minority shareholders, on the other hand, are an important component of the firm because they contribute financially to its operations. Corporate governance in India should be required to safeguard them as well as to fulfil their responsibilities to the organization.

Investors have a financial stake in the company, allowing individuals with voting rights to select the CEOs. Investors usually have no rights officially to participate in the administration of organizations. Their involvement in organizational administration is frequently through the Board of Directors. Investors are unhappy with the executives' performance; they can terminate or refuse to nominate them again. Investors are the owners of the company. In stock offerings they are entitled to ownership rights.

However, the investor's role in the company is limited because they lack the privilege and dedication to cope with daily activities of the venture. Investor rights vary depending on the type of shares claimed and the applicable state law.

Shareholders have the right to access and examine corporate records and data pertaining to the element's administration and financial performance. In open organizations, a significant percentage of an enterprise's operational and financial data must be documented with the Securities Exchange Commission and made available to the general public.

Organizations will also make information transparently available to shareholders on widely dispersed announcement archives. Privately owned enterprises, on the other hand, do not openly report data.

Furthermore, there is no specific requirement to provide periodic disclosures to investors. State law recognizes investors' substantive and procedural rights to examine and inspect corporate records.

All partnerships must have at least one class of shares that demonstrate ownership enthusiasm for the organization. The required proprietorship portion is known as "ordinary stock" in some partnerships. The investor's voting rights are included in these deals.

Investors have the opportunity to select CEOs during the annual meeting. The governing body's corporate designating panel presents a slate of leaders and recommends the appointment of a single executive to each available board post. The designated executives' names are recorded on an intermediate proclamation, which is then circulated to investors. The investors can vote for or against the selected leader.

The straight vote technique allows a typical investor to cast one vote in the top management team for every common stock offer for each open seat.

When two chief executive jobs become available, she has the right to cast up to 100 votes to choose one of them.

The Cumulative Voting system awards a typical investor many votes proportional to the number of bids she submits multiplied by the number of chief seats available. She has the option of using her votes to support any or all of the open board positions.

Shareholders must approve the offer of "all or practically all" business resources in the case of an asset sale. The assumption is that the merger or closure of the company will be successful.

Shareholders must authorize the partnership's "disintegration" or closure.

Any changes to the articles of joining or punishment must be initiated by the Directors in the event of Charter Amendments. Once the proposal has been made, investors vote on whether to support or oppose it.

In the case of Bylaw Revisions, local legislation will coordinate the prerequisites and process of modification. In the absence of measures addressing this subject in the ordinances, state organization law will establish the default regulations. On issues raised at investor meetings, all investors have the right to vote.

In the subject of Meeting Rights, all state corporate statutes require businesses to host annual investor gatherings. During the meetings, the corporation will lead any necessary or preferred corporate administration actions, such as chiefs' selection. Small enterprises that overcome these obstacles by consistent written approval from investors may be exempt from the requirement to hold gatherings.

Executives and large groups of investors might put together great conferences for a variety of reasons. Surprisingly, one-of-a-kind events are acceptable when investors are required to vote on a fundamental change to the company.

Certain investors have the right to advise certain business moves to be made during corporate gatherings under the context of the “Right to Make Proposals.” This is frequently accomplished by including these parts of the plan into corporate intermediary explanations.

According to state law, an investor who owns 1% of the extraordinary offers or $2,000 in offers may request that a suggestion be included in the corporate intermediary material for investor vote.

In the case of Appropriate to Dissent, corporation law in several states recognizes "dissident rights." Protester rights are a subset of investor rights intended to reassure investors in companies that have not traded efficiently on the market.

Investors who disagree with major concerns of corporate management or administration might provide their proprietorship premium in a widely held, open organization. This is generally out of reach for investors in closely held and private companies. These investors can use protester rights to force the organization to repurchase their bids at a "fair value."

The corporation's management is at the control of the directors, not the investor.

Certain topics, are regarded so vital under the corporate statutes that they must be approved by the shareholders:

i. To bringing about certain mergers or reorganizations;

ii. Selling all or almost all the assets of the company;

iii. adding or eliminating constraints on the ability of the firm to conduct business;

iv. To change the corporation's and share capital;

vi. By-laws shall be confirmed; and,

vii. The transfer of share ownership shall be forbidden, as shall the addition or modification of the issue's constraints.

6.5 SOME CASE LAWS:

The son of the organization's proprietor was compelled to become a company partner in the case of “Salomon v. Salomon & Co. Ltd[80],” and organization later had debentures and was placed in insolvency. The dispute was whether the counter-guaranteed required Salomon's cash to be repaid and his debentures to be wiped out. The significance of separated acceptable element was highlighted and stressed in this terrible case.

Regardless of whether one individual owns all of the organization's shares, it has been established that a registered organization is a different entity from its members.

In the case of “Bates V. Standard Land Co.[81],” the court was asked if an organization is an individual. An organization was once supposed to be a self-created entity that operates through a senior management team chosen by investors and serves as the company's principal brains and brains. The bulk of the time, they are the only ones who can act on behalf of an organization.

“Kaye v. Croydon Tramways Co. ltd.[82]” established that when two organizations entered into a temporary arrangement for the offer of one organization's endeavour to the next, the notification convening the conference of investors to assess was required.

The endeavour that was available for purchase did not show that there was a provision in the agreement for the payment of remuneration to the executives. The court had to decide whether or not to take the notice seriously.

The Court concluded that the resolutions passed at the meeting were unconstitutional and ineffective because the notice did not offer a full and reasonable disclosure of all material information to be reviewed and voted on at the meeting.

The litigant, Mr. Macaura, had previously claimed a timber residence in Northern Ireland, so he sold the lumber to a Canadian Milling Concern, agreeing to receive instalments in the organization's offers in Macaura v. Northern Assurance Company.[83] The appellant was the sole shareholder after receiving 42,000 fully paid-up £1 shares. He was also a £19,000 unsecured

[80] [1897] AC 22.
[81] [1910] 2 Ch. 408 271.
[82] [1898] 1 Ch. 358: 91.
[83] [1925] AC 619.

loan boss. The appealing party had purchased a protection plan in his or her own name, and the fire caused significant damage in a matter of seconds. The petitioner attempted to recover the costs of such a defensive technique, but Northern Assurance Co. refused to pay because the wood had been claimed by the organization, which is a separate legal entity.

The family of Baluswamy Naidu and Guruviah Naidu, who are the sole investors, controlled the company in relation to "VB Rangaraj vs. VB Gopala Krishnan[84]," with the aim of appropriating bids among them. They were sole investors. They agreed to orally that each of the branches of the family would maintain the same number of offers, which would give individuals from that branch the first choice of procurement if some of the two branches wanted to offer their offers and that the offers would only be sold to others if the offer made was declined. The exchange of offers by method was restricted for a pre-emption privilege that was not explicitly stated in the agreement.

The boundaries are that the offers of the expired part in the latter instance should be allocated equally amongst the existing persons and the majority of existing persons should agree if they should be changed to any new part.

The preceding case laws demonstrate the significance of shareholders and the extent to which shareholders are vital to a firm. Shareholders are the essential foundation of a corporation and play a significant part in it. The protection of shareholders' rights is critical for the company's ability to raise capital. The standards of the Organization for Economic Cooperation and Development indicate that the availability of effective, low-cost remedies for shareholder rights violations is a key measure of how well shareholders are safeguarded. Shareholder confidence rises when the legal system permits them to file a lawsuit if their rights are violated.

Shareholder protections can be incorporated into the organization's charter and bylaws, which is critical in nations where statutory shareholder protection is inadequate. The fundamental key principle for running a successful Corporate Governance is to treat all holders of common shares fairly and equally.

Increase the protection of minority shareholders against directors exploiting company assets for personal benefit, shareholder rights, governance and corporate transparency rules that minimize the possibility of misuse.

Self-dealing is a serious issue in corporate governance since it involves the exploitation of corporate assets for personal advantage by company insiders. The most common example is related-party transactions.

[84] AIR 1992 SC 453.

Greater corporate governance and less formal business dealings can foster an ideal environment for such transactions, allowing controlling shareholders to profit at the expense of long-term solvency because corporate assets are sold at an abnormally low cost or capital is obtained at an unusually high price. Furthermore, the corporation makes loans to the controlling stockholders at much better terms than those accessible in the market.

Stronger self-dealing legislation is associated with higher equity investment and less concentration of ownership, according to empirical research. This conclusion is consistent with the view that enhanced legal safeguards give minority shareholders more confidence in their holdings, reducing the need for ownership concentration to eliminate corporate governance shortcomings.

Other aspects of corporate law are also essential in determining the extent of minority shareholder rights. According to the literature, specific good corporate governance principles, such as board composition and independence, firm transparency and disclosure norms, and shareholder rights in relation to the board of directors and management, are very important for an effective corporate administration of the corporation and for the overall economy of the country.

Sound corporate governance laws and regulations lessen the agency problem that exists between majority and minority shareholders, as well as between minority shareholders and the corporation's board of directors and management.

Investor protection is essential for companies to raise their capital to flourish, innovate, diversify, and compete. Investor security measures Without investor protections, equity markets would remain stagnant, and banks will become the principal source of capital. Investors are well protected in economies with active capital markets. In these economies, investors have access to reliable financial information, have a role in major corporate decisions, and directors are held accountable for their managerial actions. Investors may be hesitant to invest unless they become dominant owners if such safeguards are not provided by legislation."

Minority investor safeguards can have a substantial impact on corporation valuation. According to a study of 539 big corporations in 27 economies, firm valuation is higher in economies with strong investor safeguards than in those with weak investor safeguards. According to another study, the quality of the investor protection mechanism is positively related to company risk-taking and firm growth rates. Better procedures may incentivize corporations to make riskier but more valued investments.

According to one analysis of the effects of related-party transactions on corporations, transactions resulted in significant value losses for minority investors. As a result, the mere

announcement of a related-party transaction resulted in extraordinarily low share prices. Family-owned enterprises are more prone to use related-party transactions to expropriate minority shareholders on an opportunistic basis.

In another study, investments in companies are less susceptible to financial limitations, leading to better revenue and growth in profitability, in economies with greater investor protection. Managing conflicts of interest, according to research, is also essential for effectively empowering minority shareholders.

CHAPTER 7

SUGGESTIONS:

A voyage through the whole research study, which included secondary data analysis and a review of literature, has led us to make relevant solutions for corporate governance implementation and minority shareholder rights protection, which are listed below:

The previous essay unmistakably shows that India's single approach to corporate governance is to provide minority owners with suitable safeguards. A review of rights and protection of minority shareholders shows India's lack of effective protection for investors.

Minority shareholder protection legislation exist; however, they are insufficient. Likewise, there is a huge void in the Indian corporate governance statutory structure that necessitates the strictest safeguards for minority shareholder rights.

Policymakers may be able to do this by creating a favourable atmosphere and enacting legislation to preserve minority shareholder rights. The issue also has a huge influence on the Indian economy, which is trying to encourage its economic growth with more foreign finances and international investment. We propose several measures, which will without any doubt give minority shareholders greater security while helping to reinforce Indian corporate governance norms.

a) Appointment and Selection of Directors:

Current legislative arrangements provide for majority shareholder control over the process of director selection and appointment. In addition to their influence on management, this offers promoters enormous say and authority over the Board. We advocate representing minority shareholders in proportion to their shareholdings on the business Board. The nomination committee is only an option currently provided in Claus 49 of the Listing Agreement for companies to form. In our view, it should be compulsory to constitute a nominating committee.

b) Accountability of the Board and Independent Directors:

The Voluntary Directives require the Board to consider the impact of each decision on minority shareholders. This is an important clause that should be requested for minority owners. Any decision made at a board meeting must be disclosed in the corporate governance report, together with an explanation of the impact on minority shareholders. Independent managers are a key tool for resolving conflicts between dominant shareholders and minority shareholders.

Critical inspection is however required if independent managers are to remain apart from promoters/dominant shareholders. A comprehensive review is required of the responsibilities of independent managers for minority shareholders.

c) Transactions with Related Parties are monitored and approved:

More details required for the audit committee to monitor transactions of connected parties. The Commission should approve all transactions up to a specific threshold level. A 75 percent majority shareholder approval should be necessary over this threshold.

d) Audit Quality and Independence of the Auditor:

Independent auditors might be useful in tracing related parties and unlawful transactions. These transactions are exceedingly difficult to audit due to their inherent opacity as a result of the persistence of complex ownership structures. In defending the interests of the minority shareholders, auditors' independence and quality of the audits they do are vital.

Some ways to enhance corporate governance include external auditor rotation, the increased involvement of the audit committee / independent directorates, peer audit, the prohibition of non-audit services for auditors, the establishment of an audit board and the monitoring of auditor compensation.

e) An Enforcement:

Penalties for non-compliance with laws are extremely modest in India. In the event of noncompliance that seriously hampers minority shareholder rights, strong sanctions, including rigorous imprisonment, are needed.

Some General Recommendations:

1) Shareholders should be educated about Corporate Governance:

It is critical that all stakeholders, particularly minority shareholders, get enough and proper corporate governance education through training programmes, conferences, seminars, and workshops. When they are taught about their various domains and privileges, control and CG implementation will become more successful since it will increase shareholder activism and other stakeholders' participation in the control process. Companies should conduct these types of events in order to improve their company image. Furthermore, the ministry should demand that such sessions be held on a regular basis by firms.

2) Corporate Governance rule and regulation implementation:

In India, there should be a tight implementation system and method for Corporate Governance, with severe consequences for violations of these legal criteria. Furthermore, firms should voluntarily obey non-mandatory criteria in order to improve their corporate image and attract more capital.

3) Control System:

A solid control system for corporate governance should also be in place. To develop an effective control system, all parties must perform their obligations successfully and actively participate in the control process, including shareholders, the board of directors, management, the government, and other stakeholders.

By using the Internet also, the company can improve the adequacy of its disclosure practice. The use of websites is expanding, which is advantageous to investors. Electronic data is easier to update than printed versions, ensuring that investors get the most up-to-date information on the company. A suitable pay structure is a valuable tool for executing ownership control.

The purpose of the pay structure is to increase the board's, oversight's, and other administrators' commitment to furthering the organization's and its investors' objectives. Performance-related motivator plans, annuity plans, compensating as offers, and offer-related pay frameworks are all part of the remuneration framework, in addition to basic pay.

A controlling investor may have to make a decision which is in the best interests of the partnership but not always in the best interests of the organization. The correct answer to these types of questions is very dependent on the circumstances of each case.

CONCLUSION:

To be considered good corporate governance, all individuals who are directly or indirectly involved in the organization must exhibit transparency, responsibility, independence, and fairness.

The primary characters, which are independent directors, the company’s management, auditors, and shareholders, play a vital role that is assigned to them by the corporation that founded them. A corporation cannot be fully formed without one of them.

Finally, the objectives of corporate governance may not be realised as effectively if minority shareholders are not included in the wider scheme of things.

A stronger role for minority shareholders has been a positive change in the company's progress.

Minority shareholder protection is regarded as an essential determinant of the capital market's success. In circumstances of tyranny and mismanagement by dominant shareholders or

management, minority shareholders may seek redress from the "Company Law Board under Sections 397 and 398 of the Act of 1956. (CLB)." Furthermore, under Section 241 of the Act of 2013, the NCLT may provide minority shareholders protection from persecution and mismanagement.

Corporate management is a means to an aim, not an end in itself. In terms of advantages, productivity, welfares, and pleasant modern interaction at all levels it should be represented in the execution of the company. The ultimate goal of any organization is to achieve corporate excellence. Genuine comprehension, intentional endeavours, and genuine responsibility should be the cornerstones of corporate administration. Only long-term corporate management frameworks and practices will change the mechanical society and catapult India to the top of the created countries by 2021, if not sooner.

As a result, shareholder protection is necessary for strong corporate governance. Shareholder esteem refers to the confidence that shareholders have in the management's ability to develop transactions, profit, and free cash flow over time.

Shareholders value in organization focus on careful decisions made by the senior management, such as the capacity to produce wise investments and generate a solid profit on contributed cash. If this regard is created through time, the offer cost will rise and the organisation will be able to provide more money gains to investors. Successful business administration is linked to strong speculator assurance.

Speculators are afforded different rights, and they can seek redress through the Investors Grievance and Redressal Mechanism. The change in thinking and appearance of shareholders since speculating has progressed from energetic business owners to aloof financial specialists. As a result, investors today have little resources and little incentive to become involved in business administration. In any case, these are the forces envisioned by the Companies Act of 2013 as well as the organization's Constitution to restrain the Board of Directors' uncontrolled power. Aside from virtue, value investors are more like weak-willed allies than vociferous crusaders, making investor oversight difficult. If they are displeased with the administration, they have the ability to vote with their feet.

As a member of the speculator assurance organization, particle and intermediary warning firms play an important role in developing an investor's way of life. Investors buy a financial share in the company, which gives them voting rights to choose the CEOs. Normally, investors do not have the right to be significantly involved in the administration of a company.

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