

## “SHAREHOLDER’S RIGHTS AND REMEDIES UNDER THE COMPANIES ACT, 2013”

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### **ABSTRACT**

The Companies Act, 2013 represents a transformative milestone in the evolution of corporate governance in India, making a decisive departure from the comparatively managerial-centric framework under the Companies Act, 1956. Designed to enhance transparency, accountability, and shareholder empowerment, the 2013 Act introduces a more comprehensive, rights-based scheme for company members. Its legislative architecture explicitly recognizes shareholders not merely as contributors of capital but as indispensable stakeholders whose participation, scrutiny and oversight are central to the integrity of the corporate form. This expanded statutory consciousness is reflected in strengthened voting rights, enhanced access to information, increased participation in meetings and procedural innovations such as postal ballots, e-voting and electronic dissemination of documents. However, conflicts often arise between majority and minority shareholders, necessitating statutory safeguards and legal remedies. This study seeks to examine the scope and effectiveness of shareholders rights and remedies as provided under the Companies Act, 2013, with special reference to the protection of minority interests. Shareholders are not interested in their active interest in the work and management of the company.

In India, there are several remedies available for shareholders which protect their rights, these includes derivative action, fraudulent activities, false statement and documents, etc. protection and evaluation of shareholders is important in and necessary for creating fair, transparent and responsible corporate world. The research primarily aims to identify whether the rights granted to shareholders, such as voting rights, dividend rights, right to information, and participation in meetings are adequate and effectively enforced in practice. It further investigates whether the statutory remedies available under section: 241-246 (oppression and mismanagement) and section: 245 class action suits) provide sufficient protection against managerial abuse and corporate misconduct.

**Keywords:** Shareholders Rights, Minority Protection, Oppression and Mismanagement, Corporate governance.

### **INTRODUCTION**

Shareholders occupy a unique position within the corporate structure. Although they are the ultimate owners of the company, they do not participate in daily management; this authority is delegated to the board of directors. This separation of ownership and control creates an inherent tension that necessitates a robust legal

framework to regulate corporate power and ensure a balance between managerial discretion and shareholder oversight. The Companies Act, 2013 attempts to recalibrate this dynamic by strengthening both individual and collective rights of shareholders. A **shareholder** is any individual, institution, or entity that owns at least one share of a company’s stock. Shareholders, also known as

stockholders, are essentially owners of the company. Their ownership stake is proportional to the number of shares they hold in relation to the company's total outstanding shares. While shareholders are entitled to a share of the company's profits and assets, they are not typically involved in the company's day-to-day operations. Instead, they exercise control through voting rights, participation in meetings, and other legal mechanisms.

The emergence of India as a major investment destination has reinforced the importance of transparent corporate governance practices. The economic liberalization of the 1990s, the expansion of the securities market, and the increasing presence of institutional and foreign investors have transformed the Indian corporate ecosystem. Against this backdrop, the inadequacies of the Companies Act, 1956—particularly its weak enforcement mechanisms, limited shareholder remedies, and outdated governance norms—became increasingly evident. The 2013 Act was therefore enacted to modernize corporate regulation, promote investor confidence, and align Indian law with global governance standards.

The Act conceptualizes shareholders rights through a dual lens: (a) Participatory rights enabling shareholders to influence corporate decision-making, and (b) Protective rights empowering them to safeguard their interests against managerial misconduct or majority oppression. The statutory scheme is thus not merely procedural but reflects broader governance objectives—transparency, accountability, fairness, and stakeholder protection.

The National Company Law Tribunal (NCLT), established as the principal forum for shareholder disputes, plays a crucial role in shaping the remedial landscape. Challenges such as backlog, procedural delays, inconsistent interpretations, and varying standards of proof can dilute the effectiveness of statutory rights. Moreover, the threshold requirements for remedies like class actions

may restrict accessibility, particularly for smaller investors. These practical realities necessitate a balanced evaluation of the 2013 Act—one that recognizes its substantial contributions while acknowledging structural and systemic limitations.

- **Needle Industries (India) Ltd. V. Needle Industries Newey (India) Holding Ltd., (1981)**

Protection of minority shareholders

Recognition that company law must balance majority rule with fairness

It laid the conceptual foundation for the modern legislative approach that eventually influenced the Companies Act, 2013—its emphasis on oppression and mismanagement remedies.

- **Shanti Prasad Jain V. Kalinga Tubes Ltd., AIR 1965 SC 1535**

The nature of majority rule in corporate law

Its limits when used oppressively

The need for statutory protection of minority shareholders.

This case is pivotal in showing that judicial recognition of shareholder vulnerability predates the 2013 Act and necessitated stronger statutory protections.

### **Statutory Rights of Shareholders under the Companies Act, 2013**

Shareholders under Indian law enjoy a wide range of statutory rights intended to safeguard their economic interests, enhance their participatory role, and ensure that directors remain accountable as fiduciaries. The Companies Act, 2013 substantially expands and codifies these rights, departing from the earlier approach under the 1956 Act, which often treated shareholder protection as secondary to corporate autonomy. The 2013 Act reframes shareholder rights as integral components of corporate governance and recognizes the necessity of empowering shareholders in an environment dominated by promoter-controlled companies.

This section examines the statutory rights of shareholders in five categories:

- (a) economic rights, (b) participatory and voting rights, (c) informational rights, (d) supervisory rights, and (e) structural rights concerning major corporate changes.

#### A. Economic Rights

Economic rights form the core of shareholder entitlements. These rights reflect the financial interest that shareholders hold in the corporation and include:

1. Right to Dividends  
Shareholders have the right to receive declared dividends in proportion to their shareholding. While dividend declaration remains a board prerogative, regulated by Section 123, the Act imposes safeguards to prevent arbitrary decisions. Once a dividend is declared by the company in a general meeting, shareholders acquire a vested right to receive payment within 30 days. Failure to pay triggers penal consequences, except in limited circumstances such as disputes regarding entitlement.
1. Right to Share in Assets upon Winding Up  
Section 272 and subsequent winding-up provisions guarantee shareholders a residual claim on the company's assets after all liabilities are satisfied. Although residual, this right is critical because it ensures that ownership interests are protected even at the end stage of corporate existence.
2. Pre-emptive Rights and Bonus Shares  
Section 62(1)(a) codifies pre-emptive rights by mandating that any further issue of shares must first be offered to existing shareholders in proportion to their holdings. This prevents dilution of ownership. The issuance of bonus shares, governed by Section 63, also ensures equitable distribution of capitalized profits.
3. Transfer and Transmission of Shares  
Section 56 protects the right of shareholders to freely transfer shares, subject to

restrictions in private companies. The law imposes procedural safeguards to prevent unjustified refusal by the company.

*Collectively, these economic rights guarantee that shareholders retain their proportionate stake and benefit from the company's financial performance.*

#### B. Participatory and Voting Rights

Participatory rights enable shareholders to influence corporate decisions. Sections 47 and 108 significantly expand these rights.

1. Right to Vote  
Section 47 establishes that every member holding equity shares has a right to vote on every resolution. Voting rights are proportionate to share capital, ensuring equitable representation.
  2. E-Voting and Postal Ballots  
The introduction of e-voting and postal ballots has been one of the most transformative reforms of the 2013 Act. Section 108 and related rules mandate e-voting for listed companies and many public companies. This removes geographical and logistical barriers, enabling higher participation and reducing promoter dominance in general meetings.
  3. Right to Requisition and Participate in Meetings  
Section 100 empowers shareholders holding at least 10% of paid-up share capital to requisition an extraordinary general meeting. This tool is crucial for shareholders confronting managerial misconduct or seeking urgent deliberation on critical matters.
  4. Right to Appoint Proxies  
Section 105 enables shareholders to appoint proxies, ensuring participation even when attendance is not possible.
- These provisions strengthen corporate democracy by making shareholder participation more meaningful and accessible.*

### C. Informational Rights

The right to information forms the backbone of shareholder empowerment. The Act embeds an extensive disclosure regime.

#### 1. Access to Registers, Records, and Financial Statements

Shareholders are entitled to inspect key company registers, including the register of members (Section 94), register of charges (Section 85), and register of contracts and arrangements (Section 189). Section 136 further requires every company to provide financial statements, including consolidated statements, auditors' reports, and board reports.

#### 2. Enhanced Disclosure Requirements

The 2013 Act mandates disclosures regarding:

Related-party transactions (Section 188 and Rule 15)

Loans, guarantees, and investments (Section 186)

Managerial remuneration (Section 197)

Corporate social responsibility spending (Section 135)

Internal financial controls and risk management.

This transparency enables shareholders to identify conflicts of interest and scrutinize the conduct of directors.

#### 3. Beneficial Ownership Disclosure

Sections 89 and 90 introduce significant provisions on beneficial ownership. Shareholders must declare beneficial interests, and companies must maintain registers of significant beneficial owners. This protects against hidden control, complex corporate layering, and money laundering risks.

*The expansion of informational rights signals a policy commitment toward transparency and accountability.*

### D. Supervisory Rights

Supervisory rights allow shareholders to oversee management and challenge misconduct.

#### 1. Appointment and Removal of Directors

Section 152 empowers shareholders to appoint directors, while Section 169 gives them the right to remove directors by an ordinary resolution. This ensures that directors remain accountable.

#### 2. Approval of Key Transactions

Shareholders must approve:

Related-party transactions (if material)

Selling substantial assets (Section 180)

Major borrowings beyond limits

Appointment and remuneration of key managerial personnel (indirectly through board oversight requirements)

#### 3. Right to Seek Investigation

Under Section 213, shareholders holding prescribed thresholds may approach the NCLT seeking investigation into company affairs in cases of fraud, oppression, or misconduct.

Supervisory rights reinforce the fiduciary obligations of directors and protect against managerial abuse.

### E. Structural Rights in Fundamental Corporate Changes

Major corporate decisions require shareholder consent.

#### 1. Alteration of Memorandum or Articles

Any amendment to the company's constitutional documents requires a special resolution under Sections 13 and 14.

#### 2. Mergers, Amalgamations, and Arrangements

Sections 230–232 require shareholder approval by a majority representing 75% in value. These provisions ensure that restructuring decisions cannot bypass shareholder interests.

### 3. Takeover and Exit Rights

While SEBI's Takeover Regulations govern listed companies, the Companies Act influences:

Exit rights in cases of oppression

Exit during variation of terms of contract (Section 27)

Exit during change in object clause for companies that raised money through a prospectus (Section 13(8))

These rights mitigate unfair prejudice during transformative corporate actions.

#### **Minority Shareholder Protection under the Companies Act, 2013**

Minority shareholders are inherently vulnerable in India because control is typically concentrated in the hands of promoters or controlling shareholders. This asymmetry creates opportunities for:

Transfer pricing abuses

Related-party self-dealing

Expropriation of corporate opportunities

Manipulation of voting outcomes

Suppression of dissent

Recognizing these risks, the Companies Act, 2013 institutionalizes a range of protective mechanisms.

#### **A. Oppression and Mismanagement (Sections 241–244)**

The primary statutory remedy for minority shareholders is the right to seek relief against oppression and mismanagement.

##### 1. Grounds

Oppression includes conduct that is burdensome, harsh, or wrongful, while mismanagement refers to conduct likely to cause financial prejudice or harm the company's affairs. These broad categories allow flexibility to address varied forms of misconduct including diversion of funds, breach of fiduciary duties, unfair allotment of shares, and abuse of position.

### 2. Eligibility Thresholds

Section 244 prescribes quantitative thresholds for bringing a petition:

10% of issued share capital, or

100 members, or

10% of total members, whichever is lower.

However, the NCLT may waive these thresholds, significantly widening access.

### 3. Powers of NCLT

The Tribunal has broad powers:

Regulating conduct of affairs

Cancelling or modifying transactions

Setting aside share allotments

Removing or appointing directors

Ordering share purchase of minority by majority

The reliefs available are equitable, flexible, and aimed at restoring corporate fairness.

#### **B. Derivative and Class Actions**

The Act introduces two significant remedies:

##### 1. Class Actions (Section 245)

This provision enables shareholders to file class action suits against:

The company

Directors

Auditors

Advisors

They may seek damages, restraining orders, or declarations. This remedy reflects global best practices and addresses collective harm.

##### 2. Derivative Actions

Though not explicitly codified, Section 245 and judicial precedents now support derivative suits where shareholders sue on behalf of the company for wrongs committed against it.

These remedies enhance accountability and deter managerial abuse.

### C. Safeguards against Related-Party Transactions

RPTs are a common avenue for prejudicial conduct in promoter-driven firms.

Mechanisms include:

Mandatory board and shareholder approval

Exclusion of related parties from voting

Strict disclosures in board reports and financial statements

Audit committee scrutiny

These safeguards protect minority shareholders from tunneling and self-dealing.

### D. Exit Rights and Fair Treatment

Minority shareholders receive protection during significant changes:

Exit rights where object clause changes affect project utilization

Protection during variations of shareholder rights under Section 48

Right to dissent during mergers to object before the NCLT

Fair valuation of shares in cases of buy-backs or reduction of capital

These rights ensure that minority shareholders are not compelled to accept materially adverse changes.

### E. Role of Independent Directors & Audit Committees

The 2013 Act strengthens the governance environment through independent directors and audit committees. Independent directors provide oversight against prejudicial transactions, while audit committees monitor financial integrity. Together, they serve as institutional safeguards for minority shareholders.

### Remedies Available to Shareholders under the Companies Act, 2013

The Companies Act, 2013 offers a robust set of remedies to protect shareholders from

misconduct, managerial abuse, and prejudicial corporate decisions. Remedies operate on both preventive and corrective levels, expanding significantly from the previous legislative regime. These remedies seek not only to resolve disputes but also to maintain fair standards of corporate governance.

### A. Oppression and Mismanagement (Sections 241–244)

The remedy for oppression and mismanagement remains the cornerstone of shareholder protection in India. Historically derived from English minority protection doctrines, the provisions have been recalibrated under the 2013 Act to align with Indian corporate patterns where promoter dominance is substantial.

#### 1. Nature of Oppression

Oppression signifies conduct that is burdensome, harsh, wrongful, or inequitable. Indian courts have held that:

Oppression must involve a continuous course of conduct, not isolated incidents.

The conduct must infringe the legitimate expectations of minority shareholders.

Standards of fairness and probity govern director actions.

Oppressive actions typically include:

Manipulative share allotments to dilute minority holding

Diversion of funds

Unauthorized remuneration

Exclusion from management in quasi-partnership companies

Abuse of majority voting power

#### 2. Nature of Mismanagement

Mismanagement is broader and focuses on:

Financial misconduct

Misuse of corporate assets

Significant procedural breaches

Conduct jeopardizing the company's financial stability

This remedy protects not only minority shareholders but also the corporate entity itself.

### 3. Locus and Threshold Waivers

Eligibility thresholds under Section 244 ensure that trivial or vexatious claims do not burden the Tribunal. However, crucially, the NCLT retains discretionary power to waive thresholds in genuine cases, a development that dramatically expands minority access to justice.

### 4. Reliefs Available

The NCLT may order:

Regulation of future corporate conduct

Setting aside of improper transactions

Purchase of shares by majority or company

Removal or appointment of directors

Termination of agreements detrimental to the company

The broad discretion reflects the equitable nature of the remedy, enabling flexible solutions based on context.

## B. Class Actions (Section 245)

Section 245 is one of the most progressive features of the 2013 Act. It introduces the ability of shareholders and depositors to file class action suits against:

The company

Directors

Auditors and audit firms

Advisors, consultants, and experts

### 1. Grounds for Class Action

Class actions may be initiated to:

Restrain ultra vires or illegal acts

Prevent breach of articles or memorandum

Challenge misleading statements

Seek damages for fraudulent or wrongful conduct

This aligns Indian law with global trends in investor protection.

### 2. Importance

Class actions are valuable because:

They pool the claims of multiple shareholders

They reduce litigation costs

They enhance deterrence

They allow minority shareholders to challenge large corporations

### 3. Challenges

Despite its promise, class actions remain underused due to:

Strict admissibility conditions

Limited awareness

Tribunal backlog

Uncertainty in judicial interpretation

However, the remedy is expected to evolve as jurisprudence develops.

## C. Derivative Actions

Derivative actions, though not explicitly codified, are judicially recognized under the Indian corporate law framework. In such actions, shareholders sue on behalf of the company when wrongs are committed against the corporation and the board refuses to act due to conflict of interest or collusion.

Typical grounds include:

Breach of fiduciary duty

Misappropriation of corporate opportunities

Related-party tunneling

Fraudulent transactions

Derivative actions complement oppression and mismanagement petitions and allow minority shareholders to protect corporate assets rather than individual rights.

## D. Right to Seek Investigation (Section 213)

Under Section 213, shareholders holding prescribed thresholds may petition the NCLT to

order an investigation. Investigations may be ordered where:

Business is conducted fraudulently

Persons involved are guilty of misconduct

Information is deliberately withheld

Affairs are conducted in a manner oppressive or unfair

Investigations serve as a powerful deterrent, particularly in cases involving:

Large-scale fraud

Financial irregularities

Concealment of beneficial ownership

Corporate layering to obscure transactions

The Serious Fraud Investigation Office (SFIO) may be directed to investigate, giving the remedy significant weight.

### **E. Remedies During Takeovers, Mergers, and Restructuring**

Corporate restructuring can materially affect shareholder interests. The 2013 Act incorporates several safeguards.

#### **1. Scheme of Arrangements (Sections 230–232)**

Shareholders have the right to:

Approve schemes by majority in number representing 75% in value

Object before the Tribunal

Receive notice with full disclosure

Demand fair valuation

The NCLT ensures schemes are not designed to prejudice minority shareholders.

#### **2. Exit Rights in Alteration of Objects (Section 13(8))**

When companies that have raised public money change their object clause, dissenting shareholders must be given an exit opportunity through SEBI-regulated mechanisms.

This remedy protects retail investors from post-fundraising shifts.

### **F. Remedies against Fraud and Misrepresentation**

The Act recognizes fraud as a criminal offence (Section 447), and shareholders may pursue both:

Civil remedies (damages, injunctions)

Criminal liability (imprisonment, fines)

Auditors involved in fraud face stringent penalties under Section 140(5). These measures deter manipulation of financial statements and disclosures.

### **Enforcement Challenges Under the Indian Corporate Framework**

Despite comprehensive statutory safeguards, shareholders continue to face practical obstacles in enforcing rights.

#### **A. NCLT Backlog and Procedural Delays**

The National Company Law Tribunal, while central to corporate dispute resolution, faces:

Heavy caseload

Limited members

Administrative delays

Prolonged hearings

These issues reduce the effectiveness of time-sensitive remedies such as interim injunctions, oppression petitions, and class actions.

#### **B. Evidentiary Complexities**

Shareholders often struggle to:

Obtain internal documents proving misconduct

Access boardroom-level information

Establish causal links between decisions and prejudice

Directors may shield decisions under the “business judgment rule,” complicating challenges.

#### **C. Promoter Dominance and Power Asymmetry**

Indian companies typically exhibit:

High promoter shareholding

Boardroom influence of controlling shareholders

Familial management structures

Minority shareholders often face resistance even when rights are formally available.

#### D. Limited Use of Class Actions

Reasons for underutilization include:

Lack of procedural clarity

Absence of past precedents

Difficulty coordinating dispersed shareholders

Cost considerations

Until jurisprudence matures, class actions will face structural limitations.

#### E. Weaknesses in Enforcement of Related-Party Regulations

Although the Act prescribes strict rules, enforcement gaps persist:

Independent directors may lack true independence

Audit committees may not scrutinize deeply

Related-party approvals may pass due to promoter dominance

This remains a significant vulnerability for minority shareholders.

#### Judicial Trends Shaping Shareholder Rights

Indian courts and Tribunals have played a transformative role in defining the contours of shareholder protection.

#### A. Expanded Interpretation of Oppression

Courts increasingly consider:

Legitimate expectations

Standards of fairness and probity

Breach of fiduciary duties

The jurisprudence acknowledges the unique character of Indian corporations, especially quasi-partnership companies.

#### B. Emphasis on Fair Valuation

Courts insist on:

Independent valuation

Transparent methodologies

Fair compensation during exits

This is critical in buy-backs, capital reductions, and mergers.

#### C. Heightened Scrutiny of Related-Party Transactions

Judicial review now often:

Examines substances

Investigates indirect benefits to promoters

Protects minority dissent

This aligns with global governance standards.

#### D. Recognition of Derivative Actions

Courts have clarified that shareholders may sue to protect the company where directors are conflicted. This judicial recognition fills a legislative gap.

- **Dale & Carrington Investment (P) Ltd. V. P.K. Prathapan, (2005) 1 SCC 212**

It is a landmark judgment in Indian corporate law concerning the **fiduciary duties of company directors** and the "**proper-purpose**" doctrine for allotting shares.

- **Miheer H. Mafatlal V. Mafatlal Industries Ltd., (1997) 1 SCC 579**

It is a significant **Supreme Court** judgment that defined the **limited scope of judicial review in company amalgamations** and schemes of arrangement. The court established key principles regarding the sanctioning of such schemes under the Companies Act, 1956.

#### Policy Recommendations for Strengthening Shareholder Protection

This final subsection of Segment 3 proposes key reforms.

**A. Strengthening NCLT Capacity**

Increase number of benches and members

Introduce specialized corporate benches

Implement strict timelines for minority-protection cases

This will speed up urgent reliefs.

**B. Enhancing Class Action Mechanisms**

Issue detailed procedural rules

Lower or rationalize thresholds

Strengthen collective representation models

Allow contingency-fee-based legal support under regulated frameworks

This will encourage more use of class actions.

**C. Curbing Promoter Dominance**

Strengthen rules on independent director independence

Create mandatory cooling-off periods

Enhance board evaluation transparency

Mandate shareholder approval of key related-party appointments

These steps will reduce undue influence.

**D. Improving Disclosure and Transparency**

Broaden mandatory disclosures for private companies above certain thresholds

Increase penalties for nondisclosure

Mandate real-time disclosures for key decisions in listed companies

Shareholders must be able to make informed choices.

**E. Facilitating Digital Participation**

Expand e-voting requirements to more companies

Create centralized digital platforms for annual reports

Enable virtual shareholder meetings with robust safeguards

Digital tools improve accessibility.

**F. Institutionalizing Minority Advisory Committees**

Large listed companies may be required to constitute advisory panels representing minority shareholders to:

Oversee governance

Provide feedback

Raise early warnings

This aligns with global best practices.

**G. Strengthening Auditor and Advisor Liability**

Expand scope of liability for gross negligence

Mandate enhanced disclosures for auditor resignations

Tighten oversight on valuation professionals

These reforms reduce governance failures.

**H. Clearer Statutory Guidance on Derivative Actions**

Codifying derivative actions will:

Provide certainty

Reduce litigation complexity

Harmonize with global standards

**Conclusion**

The Companies Act, 2013 represents a decisive transition in Indian corporate regulation—moving from a regime primarily oriented toward managerial discretion to one that seeks to balance managerial authority with an enforceable framework of shareholder rights. The statutory scheme unambiguously recognizes shareholders as the central constituency in corporate oversight. Mandatory disclosures, e-governance system, postal ballots, and voting by electronic means dismantle earlier structural barriers to participation.

Judicial interpretation has further supplemented these reforms. The decisions of the National Company Law Tribunal (NCLT), National Company Law Appellate Tribunal (NCLAT), and the Supreme Court reflecting a

growing attentiveness to minority rights. Courts have integrated equitable doctrines with statutory mandates, ensuring that the Acts remedial structure remains dynamic, flexible, and sensitive to nuances of corporate functioning.

#### Reference

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