

## MINORITY SHAREHOLDER PROTECTION IN INDIA: A CRITICAL ANALYSIS OF OPPRESSION AND MISMANAGEMENT UNDER THE COMPANIES ACT, 2013

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### Abstract

The relationship between majority and minority shareholders in a company is inherently unequal. Majority shareholders control the board, dominate general meetings, and set the direction of the enterprise. Minority shareholders, by contrast, often lack the power to influence corporate decisions and may find themselves at the mercy of those who hold controlling stakes. The law of oppression and mismanagement exists to correct this imbalance—to ensure that majority power does not become a license for abuse. This article critically examines the framework for minority shareholder protection in India under the Companies Act, 2013, with particular emphasis on the provisions relating to oppression and mismanagement under Sections 241 to 246. The article traces the evolution of the law from the Companies Act, 1956, analyses the structural changes introduced in 2013, and critically evaluates judicial interpretations of key provisions—including the landmark Tata-Mistry litigation. It also examines complementary protections under corporate governance norms and securities law, identifies persistent weaknesses in the current framework, and offers concrete recommendations for reform. The article argues that while the 2013 Act has improved minority protection in meaningful ways, gaps remain in the effectiveness of remedies, the accessibility of proceedings before the NCLT, and the enforcement of shareholder rights in closely held and family-owned companies.

**Keywords:** Minority Shareholders, Oppression, Mismanagement, Companies Act 2013, NCLT, Class Action, Corporate Governance, Majority Rule, Shareholder Rights.

### I. Introduction

Corporate law has long grappled with a fundamental tension: on one hand, the principle of majority rule is essential to efficient corporate decision-making; on the other hand, unchecked majority power can lead to the exploitation of minority shareholders who have invested their money and trust in the company. The challenge for any corporate legal system is to strike the right balance—protecting minority rights without making every corporate decision vulnerable to challenge.<sup>1654</sup>

India's response to this challenge has evolved significantly over decades. The Companies Act,

1956 contained provisions dealing with oppression and mismanagement under Sections 397 and 398,<sup>1655</sup> allowing minority shareholders to approach the Company Law Board for relief. While these provisions were broadly effective, practical experience revealed several shortcomings: delays in proceedings, limited remedies, and inadequate protection against subtle forms of corporate abuse that fell short of outright fraud.

The Companies Act, 2013 was enacted against the backdrop of significant corporate governance failures and a growing recognition that India's corporate law needed comprehensive modernisation. The J.J. Irani

<sup>1654</sup>Companies Act, 2013 (Act 18 of 2013), Preamble.

<sup>1655</sup>Companies Act, 1956 (Act 1 of 1956), Sections 397–398.

Committee Report of 2005<sup>1656</sup> had recommended wide-ranging reforms, and the 2013 Act implemented many of them. In the area of minority protection, the Act introduced enhanced provisions on oppression and mismanagement (Sections 241–246), replaced the Company Law Board with the National Company Law Tribunal (NCLT), introduced class action suits for the first time in Indian law, and strengthened corporate governance requirements for listed companies.

This article critically examines these developments. Section II traces the historical evolution of minority protection law. Section III analyses the current framework for oppression and mismanagement under the 2013 Act. Section IV examines the class action remedy. Section V discusses complementary protections under securities law and corporate governance norms. Section VI critically evaluates the framework through the lens of key judicial decisions, including the Tata-Mistry case. Section VII identifies persistent gaps and challenges, and Section VIII offers recommendations for reform.

## II. Historical Evolution: From the 1956 Act to the 2013 Act

The roots of minority protection in Indian company law lie in the broader English legal tradition. The foundational challenge was always the rule in *Foss v. Harbottle*,<sup>1657</sup> which held that courts would not generally interfere in internal management disputes and that the proper plaintiff for a wrong done to a company was the company itself. While the rule served important purposes—preventing a flood of litigation and respecting majority decisions—it left minority shareholders with few remedies when the very majority that controlled the company was the source of the wrong.

The Companies Act, 1956 addressed this problem through Sections 397 and 398. Section

397 allowed any member to petition the Company Law Board where the affairs of the company were being conducted in a manner oppressive to some part of the members. Section 398 covered prejudicial conduct more broadly, extending to situations where the company's affairs were being conducted in a manner prejudicial to public interest or to the interests of the company. The Supreme Court's decision in *Shanti Prasad Jain v. Kalinga Tubes Ltd.*<sup>1658</sup> was an early landmark in interpreting these provisions, holding that 'oppression' required a visible departure from the standards of fair dealing and a violation of the conditions of fair play on which every shareholder who entrusts his money to a company is entitled to rely.

Over the decades, the case law under the 1956 Act developed an increasingly sophisticated understanding of oppression and mismanagement. The Supreme Court in *Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd.*<sup>1659</sup> clarified that oppression could include conduct that was technically within the powers of the majority but was exercised in a manner that was unfair to the minority. In *Dale and Carrington Invt. (P) Ltd. v. P.K. Prathapan*,<sup>1660</sup> the Court affirmed that directors and controlling shareholders owe fiduciary duties that go beyond technical compliance with statutory powers.

However, the 1956 framework had significant limitations. The Company Law Board, which heard oppression petitions, lacked the infrastructure, judicial manpower, and procedural efficiency to resolve disputes promptly. Cases lingered for years. Remedies were limited, and the class action concept—familiar in American and other common law jurisdictions—was entirely absent from Indian law. The 2013 Act sought to address all these deficiencies systematically.

<sup>1656</sup>J. Irani Committee Report on Company Law, 2005, Ministry of Company Affairs, Government of India.

<sup>1657</sup>*Foss v. Harbottle*, (1843) 2 Hare 461 — the rule that the proper plaintiff for a corporate wrong is the company itself.

<sup>1658</sup>*Shanti Prasad Jain v. Kalinga Tubes Ltd.*, AIR 1965 SC 1535.

<sup>1659</sup>*Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd.*, (1981) 3 SCC 333.

<sup>1660</sup>*Dale and Carrington Invt. (P) Ltd. v. P.K. Prathapan*, (2005) 1 SCC 212.

### III. The Framework Under the Companies Act, 2013: Sections 241–246

#### 3.1 The Substantive Ground: Section 241

Section 241 of the Companies Act, 2013 is the primary provision enabling minority shareholders to seek relief against oppression and mismanagement.<sup>1661</sup> It allows any member to apply to the NCLT where: (a) the affairs of the company have been or are being conducted in a manner prejudicial or oppressive to any member or members or prejudicial to public interest or to the interests of the company,<sup>1662</sup> or (b) the material change in management or control has taken place or is likely to take place that is prejudicial to the interests of the company or its members.<sup>1663</sup>

The use of the phrase 'prejudicial or oppressive' in Section 241 is deliberate and meaningful. 'Oppression' connotes conduct that bears down on or burdens minority shareholders in a harsh and wrongful manner—it has a qualitative element requiring something more than mere unfairness. 'Prejudice,' by contrast, is a broader concept that captures conduct injurious to the interests of members even without the element of deliberate wrongdoing. This dual formulation represents a significant expansion over the 1956 Act, which used 'oppressive' in Section 397 and 'prejudicial' in Section 398 without combining them.

A crucial qualification in Section 241 is the requirement that mere change in management or ownership structure should not by itself be treated as sufficient ground. Courts have emphasised that not every business decision that disadvantages minority shareholders constitutes oppression—there must be a pattern or course of conduct, and commercial decisions made in good faith, even if ultimately mistaken, generally fall outside the scope of the section.

<sup>1661</sup>Companies Act, 2013, Section 241(1).

<sup>1662</sup>Companies Act, 2013, Section 241(1)(a).

<sup>1663</sup>Companies Act, 2013, Section 241(1)(b).

#### 3.2 Standing Requirements: Section 244

Section 244 of the 2013 Act prescribes who can file a petition under Section 241.<sup>1664</sup> In the case of a company having a share capital, the petition can be filed by not less than one hundred members or one-tenth of total number of members, whichever is less; or by any member holding not less than one-tenth of the issued share capital of the company, subject to the proviso that the applicant has paid all calls and other sums due on their shares.<sup>1665</sup>

The Central Government also has the power to apply to the NCLT under Section 241(2) in cases where the affairs of a company are being conducted in a manner prejudicial to public interest,<sup>1666</sup> providing an additional safeguard beyond individual member-initiated proceedings.

The NCLT has the power under the proviso to Section 244 to waive the minimum membership requirement if it is satisfied that members are unable to make a joint application and the circumstances of the case so warrant. This waiver power is an important safety valve that prevents the locus standi requirement from becoming an insurmountable barrier for individual minority shareholders who have genuine grievances but cannot organise collective action.

#### 3.3 Remedies: Section 242

If the NCLT finds that the petition is justified, Section 242 equips it with a wide range of remedies.<sup>1667</sup> These include: regulation of the company's affairs by an order; purchase of shares of any member by other members or by the company; restriction on the transfer of shares; termination, setting aside, or modification of any agreement between the

<sup>1664</sup>Companies Act, 2013, Section 244 — prescribing minimum shareholding thresholds for filing under Section 241.

<sup>1665</sup>Companies Act, 2013, Section 244(1)(a): not less than 100 members or one-tenth of total members, whichever is less; or (b) any member holding not less than one-tenth of issued share capital.

<sup>1666</sup>Companies Act, 2013, Section 241(2) — Central Government's power to apply to NCLT where affairs are being conducted in a manner prejudicial to public interest.

<sup>1667</sup>Companies Act, 2013, Section 242(2) — powers of NCLT on finding of oppression or mismanagement.

company and a managing director, managing agent, secretaries and treasurers, or any other officer; setting aside any fraudulent preference; removal of the managing director, manager, or any director from office; recovery of undue gains made by a director or managing director; and winding up the company, though this is expressly treated as a last resort.<sup>1668</sup>

The breadth of NCLT's remedial powers under Section 242 represents a significant improvement over the 1956 Act. The explicit recognition of share buy-out as a remedy<sup>1669</sup> is particularly important for minority shareholders in closely held companies, where an exit through market sale is often not possible due to the absence of a market for unlisted shares. A court-ordered buy-out allows minority shareholders to recover fair value and exit an oppressive situation without being compelled to remain locked in.

Importantly, Section 242(2)(k) treats winding up as the last resort among available remedies. This reflects a broader legislative policy that the dissolution of a going concern should be avoided wherever possible and that targeted relief—change of management, buy-out, or restructuring—is preferable. In *Sangramsinh P. Gaekwad v. Shantadevi P. Gaekwad*,<sup>1670</sup> the Supreme Court affirmed that ordering winding up solely because of oppression, without exhausting other remedies, would be an inappropriate exercise of judicial discretion.

### 3.4 The NCLT: A New Forum

The replacement of the Company Law Board with the National Company Law Tribunal was one of the most structurally significant changes in the 2013 Act.<sup>1671</sup> The NCLT was designed as a specialised quasi-judicial body with expertise in corporate law matters, capable of resolving

disputes more efficiently than the general civil courts or the Company Law Board.

The constitutional validity of the NCLT was the subject of protracted litigation. In *Madras Bar Association v. Union of India*,<sup>1672</sup> the Supreme Court upheld the constitutional validity of the NCLT and NCLAT but struck down several provisions relating to the technical members' qualifications and service conditions as unconstitutional, requiring amendments before the bodies could be operationalised. The NCLT was finally operationalised in 2016.

In practice, the NCLT has been a mixed success. Its specialised jurisdiction has allowed for more informed adjudication in complex corporate matters, and the 2013 Act's consolidation of jurisdiction—bringing insolvency, oppression, class actions, and mergers under a single tribunal—has eliminated the fragmentation that previously existed across forums. However, infrastructure limitations, judicial vacancies, and the sheer volume of cases (especially post-insolvency code) have caused delays that somewhat undermine the original efficiency objectives.

### IV. Class Action: A New Weapon for Minority Shareholders

One of the most significant innovations of the Companies Act, 2013 is the introduction of class action suits under Section 245.<sup>1673</sup> This provision, entirely absent from the 1956 Act, allows a group of members or depositors to file a suit in the NCLT against the company, its directors, auditors, and even third parties such as investment bankers and consultants.

Section 245(1) permits members meeting prescribed thresholds to seek orders restraining the company from committing an act contrary to the Act's provisions or the company's memorandum or articles, declaring any resolution as void, restraining the company from acting on such resolutions, and claiming

<sup>1668</sup>Companies Act, 2013, Section 242(2)(k) — winding up as last resort remedy.

<sup>1669</sup>Companies Act, 2013, Section 242(2)(c) — power to order purchase of shares by the company or other members.

<sup>1670</sup>*Sangramsinh P. Gaekwad v. Shantadevi P. Gaekwad*, (2005) 11 SCC 314.

<sup>1671</sup>National Company Law Appellate Tribunal (NCLAT), New Delhi — the appellate body above NCLT under the Companies Act, 2013.

<sup>1672</sup>*Madras Bar Association v. Union of India*, (2015) 8 SCC 583 — on constitutionality of NCLT/NCLAT.

<sup>1673</sup>Companies Act, 2013, Section 245 — class action suits by members and depositors.

damages or compensation from the company or its directors for any fraudulent, unlawful, or wrongful act.<sup>1674</sup> The availability of compensation claims against auditors and expert advisers is a particularly notable feature, as it creates accountability beyond the immediate corporate actors.

The class action remedy was directly inspired by high-profile corporate scandals, most notably the Satyam Computer Services fraud of 2009, where thousands of investors suffered massive losses due to falsified accounts. Under the pre-2013 law, individual investors had no effective mechanism to pursue collective claims against auditors and management. Section 245 was designed to fill this gap.

However, the class action remedy under Section 245 does not apply to banking companies,<sup>1675</sup> an exclusion that is difficult to justify given that bank depositors are among the most vulnerable classes of investor and are often the primary victims of financial fraud in the banking sector.

In practice, the class action remedy under Section 245 has been underused since its enactment. Several procedural and practical barriers have contributed to this: the threshold requirements for locus standi, the unfamiliarity of the NCLT with collective action procedures, the absence of a developed legal market for class action litigation (including contingency fee arrangements), and the perception among minority shareholders that individual litigation is less risky and uncertain than collective proceedings. A robust class action culture requires not just statutory authorisation but also supporting institutional infrastructure—including funding mechanisms for litigation, clear rules for class certification, and efficient distribution of any recovery among class members.

## V. Complementary Protections: Securities Law and Corporate Governance

Minority shareholder protection in India does not rest on the Companies Act alone. A complementary framework of securities regulation and corporate governance requirements—largely administered by the Securities and Exchange Board of India (SEBI)—provides additional layers of protection for shareholders in listed companies.

### 5.1 Takeover Regulations and the Open Offer Mechanism

The SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (Takeover Code)<sup>1676</sup> protect minority shareholders by requiring acquirers who cross specified shareholding thresholds to make an open offer to all public shareholders.<sup>1677</sup> This ensures that minority shareholders have an exit opportunity at a fair price when control of the company changes. The open offer obligation is one of the most powerful minority protection mechanisms for listed companies, preventing controlling shareholders from consolidating their grip on the company without offering an exit to others.

### 5.2 LODR Regulations and Related Party Transactions

The SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR Regulations)<sup>1678</sup> impose extensive disclosure, governance, and shareholder approval requirements on listed companies. Related party transactions—a major vehicle for the diversion of corporate wealth from minority to majority shareholders—require prior approval by the audit committee and, in cases exceeding specified thresholds, by a special resolution of shareholders in which the related party is not permitted to vote.<sup>1679</sup> This is a direct and

<sup>1674</sup>Companies Act, 2013, Section 245(1) — conditions for filing class action.

<sup>1675</sup>The class action remedy under Section 245 does not apply to banking companies: Section 245(9).

<sup>1676</sup>SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, Regulation 3.

<sup>1677</sup>SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, Regulation 7 — open offer threshold.

<sup>1678</sup>SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR Regulations).

<sup>1679</sup>SEBI, Circular on Voting by Institutional Investors on Related Party Transactions, 2021.

effective protection against a historically common form of minority shareholder oppression.

The Companies Act, 2013 also independently regulates related party transactions under Section 188.<sup>1680</sup> The overlapping regulation by both the Act and the SEBI regime ensures that related party transactions in listed companies are subject to multiple layers of scrutiny—though the duplication also creates compliance complexity.

### 5.3 Independent Directors and Board-Level Accountability

The 2013 Act introduced a mandatory independent director requirement for prescribed categories of companies.<sup>1681</sup> Independent directors—who by definition have no financial or personal relationship with the promoter or management group—are expected to serve as internal watchdogs protecting the interests of minority shareholders and the company as a whole. The Act requires that certain board committees, including the Audit Committee and the Nomination and Remuneration Committee,<sup>1682</sup> be chaired and populated by independent directors.

In theory, independent directors provide a structural check on majority shareholder dominance. In practice, the effectiveness of this mechanism depends critically on the genuine independence of the individuals appointed. Critics have noted that in many Indian companies—particularly family-promoted businesses—-independent directors are effectively chosen by the promoter group and are unlikely to resist decisions that serve promoter interests at the expense of minority shareholders.

### 5.4 Voting Rights: E-Voting and Postal Ballot

The 2013 Act significantly expanded minority shareholders' ability to exercise their voting rights by mandating e-voting for prescribed classes of companies<sup>1683</sup> and providing for postal ballot as an alternative to physical attendance at general meetings.<sup>1684</sup> These mechanisms lower the practical barriers to voting participation for retail and institutional investors, making it harder for controlling shareholders to pass resolutions at sparsely attended general meetings.

The Act also introduced the concept of small shareholder directors under Section 151,<sup>1685</sup> allowing minority shareholders to elect a representative on the board of listed companies. While this provision has symbolic importance, its practical impact has been limited due to low awareness and participation among retail investors.

## VI. Judicial Interpretation: Critical Analysis through Key Cases

### 6.1 The Tata-Mistry Litigation: A Landmark in Oppression Law

The most significant judicial examination of the oppression and mismanagement provisions of the 2013 Act occurred in the protracted litigation between Cyrus Mistry (and the Shapoorji Pallonji Group) and Tata Sons Private Limited. The case arose from the abrupt removal of Cyrus Mistry as Chairman of Tata Sons in October 2016 and as director of several Tata Group companies shortly thereafter.

The NCLT, Mumbai Bench dismissed the petition filed by the Mistry interests, finding no oppression or mismanagement. The NCLAT reversed this in a sweeping judgment that reinstated Mistry as Chairman and found that the removal was oppressive and contrary to the principles of good corporate governance. The Supreme Court in *Cyrus Investments Pvt. Ltd. v.*

<sup>1680</sup>Companies Act, 2013, Section 188 — related party transactions requiring board/shareholder approval.

<sup>1681</sup>Companies Act, 2013, Section 149(6) — definition of independent director.

<sup>1682</sup>Companies Act, 2013, Section 177 — Audit Committee; Section 178 — Nomination and Remuneration Committee.

<sup>1683</sup>Companies Act, 2013, Section 108 — voting through electronic means (e-voting).

<sup>1684</sup>Companies Act, 2013, Section 110 — postal ballot.

<sup>1685</sup>Companies Act, 2013, Section 151 — right of small shareholders to elect a director on the board of listed companies.

Tata Sons Pvt. Ltd.<sup>1686</sup> overturned the NCLAT and restored the NCLT's order.

The Supreme Court's judgment is significant on several doctrinal fronts.<sup>1687</sup> First, the Court affirmed that not every act that displeases or disadvantages minority shareholders constitutes oppression—the concept requires a course of oppressive conduct that is harsh, burdensome, or unfair. Second, the Court held that legitimate business decisions by the board, including the decision to remove a director or chairman, fall within the domain of corporate governance and do not ordinarily give rise to oppression claims unless attended by mala fides or procedural impropriety. Third, the Court drew a clear distinction between a petition under Section 241 (oppression) and a challenge to the validity of corporate acts under other provisions of the Act.

In a subsequent phase of the litigation concerning the conversion of Tata Sons from a public to a private company,<sup>1688</sup> the Supreme Court again upheld the legality of the conversion, finding that it was within the powers of the company and had followed the required procedures. The judgment effectively limited the scope of judicial review of corporate structural decisions, deferring to the business judgment of the board and majority shareholders where procedural requirements had been satisfied.

The Tata-Mistry cases have been both praised and criticised. Proponents argue that the Supreme Court's restrained approach correctly preserves managerial autonomy and prevents oppression law from becoming a tool for shareholders who disagree with legitimate corporate decisions. Critics, however, contend that the judgment sets the threshold for establishing oppression so high that it may insulate genuinely abusive majority conduct from judicial scrutiny, particularly in the context

of closely held companies where power imbalances are most acute.

## 6.2 The Meaning of Oppression: Settled and Unsettled Questions

While the Tata-Mistry litigation was decided on its specific facts, it illuminated several unsettled questions about the scope of oppression and mismanagement provisions. What exactly must a petitioner prove to establish oppression? How continuous or systematic must the conduct be? Can a single act, however serious, constitute oppression?

Earlier decisions had established that oppression involves a visible departure from standards of fair dealing that a shareholder is entitled to expect. In *K.K. Modi v. K.N. Modi*,<sup>1689</sup> the Supreme Court had held that a petition under the oppression provisions must be a petition for relief from oppression of minority shareholders as members and not for general mismanagement or grievances that are corporate rather than personal in nature. This distinction between personal wrongs to shareholders and wrongs to the company as such—a residual influence of the *Foss v. Harbottle* rule—continues to be relevant.

In *Rajiv Saumitra v. Neetu Singh*,<sup>1690</sup> the Court reaffirmed that the oppression provisions are intended to protect minority shareholders in their capacity as members, not to provide a remedy for every commercial disagreement. This somewhat narrow interpretation has been criticised as leaving gaps in protection, particularly in situations where the corporate wrong and the shareholder wrong are difficult to disentangle.

## 6.3 Shareholder Agreements and Articles of Association

An important area of minority protection in closely held companies involves the enforceability of shareholders' agreements—

<sup>1686</sup>*Cyrus Investments Pvt. Ltd. v. Tata Sons Pvt. Ltd.*, (2021) 4 SCC 97 (Supreme Court).

<sup>1687</sup>*Ibid.*, paras. 167–172 (discussing the distinction between oppression and legitimate board action).

<sup>1688</sup>*Tata Consultancy Services Ltd. v. Cyrus Investments Pvt. Ltd.*, (2022) 3 SCC 495 (Supreme Court).

<sup>1689</sup>*K.K. Modi v. K.N. Modi*, (1998) 3 SCC 573 — on the distinction between personal rights and corporate claims in oppression petitions.

<sup>1690</sup>*Rajiv Saumitra v. Neetu Singh*, (2015) 3 SCC 330 — on the correct characterisation of remedy under Section 241.

contractual arrangements between shareholders that typically contain protections such as pre-emption rights, drag-along and tag-along clauses, anti-dilution protections, and reserved matter veto rights for minority shareholders.

The Supreme Court's decision in *V.B. Rangaraj v. V.B. Gopalakrishnan*<sup>1691</sup> had held that shareholders' agreements that restricted or regulated the transfer of shares in a manner contrary to the articles of association were void and unenforceable. This position, though subsequently qualified, created significant uncertainty about the utility of shareholders' agreements as a minority protection tool.

The Companies Act, 2013 addressed this in part through Section 58(2),<sup>1692</sup> which explicitly recognises that securities of private companies are subject to the contractual restrictions and conditions contained in the articles of association, and that contracts or agreements binding on such companies or their members are enforceable as contracts. Read alongside the judicial evolution on shareholders' agreements in investment contexts,<sup>1693</sup> this provision has improved the enforceability of minority protection provisions in private company agreements.

## VII. Persistent Gaps and Challenges

### 7.1 Delay in NCLT Proceedings

Despite the establishment of the NCLT as a specialised tribunal, delay remains a serious problem in oppression and mismanagement proceedings. Minority shareholders who file petitions often wait years for final adjudication, during which the oppressive conduct may continue or be compounded. The problem is partly structural: the NCLT benches across the country are understaffed and overloaded, with the added pressure of a massive increase in

insolvency proceedings following the Insolvency and Bankruptcy Code, 2016.

Delay is not merely an inconvenience—it is a substantive denial of justice in the corporate context, where the value of a company can be severely damaged during the pendency of proceedings. The NCLT Rules provide for interim orders,<sup>1694</sup> but obtaining effective interim relief is itself a slow and unpredictable process.

### 7.2 Valuation of Shares in Buy-Out Orders

Where the NCLT orders a buy-out of minority shares as a remedy for oppression, the valuation of shares presents a recurring and difficult challenge. Minority shareholders typically argue for a valuation that reflects the fair value of the company without any minority discount, on the theory that they were forced to exit due to oppressive conduct and should not bear a financial penalty for their minority position. Majority shareholders, by contrast, argue for a market-based or discounted value.

The 2013 Act does not provide statutory guidance on the principles applicable to share valuation in oppression proceedings. Courts have adopted varying approaches, creating inconsistency that weakens the predictability and deterrent effect of the remedy. A legislative provision or NCLT practice direction specifying that valuation in oppression proceedings should generally proceed on a fair value basis—without minority discount—would bring clarity and better protect minority interests.

### 7.3 Family-Owned Companies and Informal Arrangements

A large proportion of Indian companies—particularly in the small and medium enterprise sector—are family-owned or closely held entities where governance is informal and formal legal protections are rarely invoked. In these companies, minority shareholders are often family members who participate in the business on the basis of informal understandings rather than formal agreements.

<sup>1691</sup>*V.B. Rangaraj v. V.B. Gopalakrishnan*, (1992) 1 SCC 160 — the Supreme Court's early approach to shareholder agreements and the articles of association.

<sup>1692</sup>Companies Act, 2013, Section 58(2) — enforceability of shareholder agreements to the extent not contrary to the Act.

<sup>1693</sup>*World Sport Group (Mauritius) Ltd. v. MSM Satellite (Singapore) Pte. Ltd.*, (2014) 11 SCC 639.

<sup>1694</sup>National Company Law Tribunal Rules, 2016, Rule 84.

When relationships break down, the formal legal framework for oppression and mismanagement may be inadequate to address the complexity of family dynamics and informal expectations.

In *Hanuman Prasad Bagri v. Bagress Cereals Pvt. Ltd.*,<sup>1695</sup> the Supreme Court had to grapple with exactly this situation—a family company where shares were held according to informal family arrangements and the formal articles did not reflect the actual understanding between the parties. While the Court crafted a workable solution, the case illustrated the difficulty of applying a formal legal framework to informal corporate arrangements.

#### 7.4 The Underuse of Class Action

As noted above, the class action remedy under Section 245 has been largely unused since its introduction. This is a significant failure, given that the provision was specifically designed to empower groups of shareholders who individually lack the resources or standing to pursue claims. The reasons for underuse are multiple—procedural complexity, lack of collective action infrastructure, and the absence of incentive structures such as contingency fee arrangements—but the result is that one of the most potentially powerful tools for minority protection remains dormant.

#### 7.5 Auditor and Third-Party Accountability

Section 245's inclusion of auditors and expert advisers as potential defendants in class action proceedings was a significant step toward accountability. However, the practical enforcement of these provisions against large auditing firms and financial institutions remains largely untested. The Satyam fraud—which was the catalyst for these provisions—resulted in criminal proceedings and regulatory action but not in successful civil class actions by shareholders under Section 245.

### VIII. Comparative Perspectives

A comparative perspective illuminates both the achievements and limitations of India's minority protection framework.

In the United Kingdom, the Companies Act, 2006 provides for 'unfair prejudice' petitions under Section 994, which have been interpreted broadly by English courts to cover conduct that is inequitable in a commercial sense, even if not technically oppressive. The English approach is generally more claimant-friendly than India's, with courts willing to find unfair prejudice on the basis of a breach of legitimate expectations—including informal understandings and mutual assurances between shareholders in quasi-partnership companies. The concept of 'legitimate expectations' developed in English cases like *O'Neill v. Phillips* [1999] 1 WLR 1092 goes significantly beyond what Indian courts have been willing to recognise.

The United States relies on a combination of state corporate law and federal securities law to protect minority shareholders. The fiduciary duty framework in states like Delaware requires controlling shareholders to demonstrate the entire fairness of transactions that benefit them at the expense of minority shareholders, placing the burden on the majority rather than the minority. The availability of appraisal rights in mergers and acquisitions provides minority shareholders with a judicially enforced exit mechanism at fair value.

Singapore's approach, reflected in Section 216 of the Companies Act, 1967 (as amended), covers conduct that is 'oppressive, unfairly discriminatory or otherwise prejudicial,' incorporating both oppression and broader fairness concepts. Singapore courts have developed a nuanced body of case law that balances minority protection with commercial pragmatism.

The common thread in these jurisdictions is that effective minority protection requires not just statutory provisions but a judiciary that is willing to look beyond legal form to the economic

<sup>1695</sup>*Hanuman Prasad Bagri v. Bagress Cereals Pvt. Ltd.*, (2001) 4 SCC 420.

substance of corporate arrangements—and is equipped with the time, resources, and tools to do so effectively.

### IX. Recommendations

Based on the preceding analysis, this article makes the following recommendations for strengthening minority shareholder protection in India:

First, the NCLT's capacity must be urgently expanded. The government should create dedicated benches for oppression and mismanagement petitions, separate from the insolvency benches, and appoint sufficient judicial members with corporate law expertise. Fast-track procedures should be prescribed for cases involving ongoing oppression, with mandatory time limits for interim relief applications.

Second, the Companies Act should be amended to include a statutory definition of 'legitimate expectations' of shareholders in closely held companies, allowing courts to grant relief where informal understandings between shareholders have been violated even if no formal agreement exists. This would bring Indian law closer to the English unfair prejudice model and provide better protection for minority shareholders in family companies.

Third, the Act should provide statutory guidance on share valuation in buy-out proceedings, specifying that valuation should proceed on a fair value basis without minority or liquidity discounts in cases where the buy-out is ordered as a result of established oppression.

Fourth, the class action mechanism under Section 245 should be made more accessible through a combination of measures: reducing the threshold requirements for locus standi, creating a dedicated class action cell within the NCLT, and introducing a legal aid mechanism to support meritorious class action petitions by small shareholders who lack resources.

Fifth, the exclusion of banking companies from the class action remedy under Section 245 should be removed. Bank depositors are among

the most vulnerable and least sophisticated investors, and the justification for excluding them from collective action relief is not convincing in the light of recent banking frauds.

Sixth, the independent director framework should be strengthened by requiring that independent directors in companies with promoter shareholding above a specified threshold be selected through a process that is genuinely independent of the promoter group—for instance, through a panel maintained by the NCLT or a statutory governance body—rather than being nominated by the promoter and approved by minority shareholders in a process that is effectively dominated by the majority.

### X. Conclusion

Minority shareholder protection is not merely a technical legal question—it goes to the heart of the credibility and fairness of the corporate form as an institution. If investors—particularly retail and small investors—cannot rely on the law to protect them from the abuse of majority power, confidence in the equity markets and in private corporate enterprise itself is undermined.

The Companies Act, 2013 has moved India's minority protection framework meaningfully forward. The consolidation of oppression and prejudice concepts in Section 241, the expansion of NCLT remedies under Section 242, the introduction of class action suits under Section 245, and the strengthening of corporate governance requirements through independent directors, audit committees, and related party transaction safeguards represent a substantial improvement over the 1956 regime.

Yet the analysis in this article shows that challenges remain. The NCLT is overburdened and under-resourced. Class action suits have not been used. Minority shareholders in closely held and family-owned companies often cannot access effective remedies. Judicial interpretation has set the threshold for establishing oppression at a level that may leave some genuine victims without relief. And

the broader culture of minority shareholder activism—necessary to make legal rights real—is still developing.

The Tata-Mistry litigation demonstrated both the sophistication of India's corporate courts and the limits of litigation as a tool for minority protection. The ultimate lesson may be that law alone cannot protect minority shareholders—it must be accompanied by a strong culture of corporate governance, informed and active shareholders, and institutions capable of resolving disputes with both expertise and speed.

India's aspiration to be a globally competitive business destination requires that it offer robust minority shareholder protection. With the right reforms—including greater NCLT capacity, more accessible remedies, and stronger governance norms—India can build a minority protection framework worthy of its economic ambitions.

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