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Oppression and Mismanagement the Notion of Rule of Majority

Arif Hussain[1] and Fatima Khatoon[2]

[1]*Institute of Law Nirma University, Ahmedabad, Gujrat, India*
[2]*Jamnalal Bajaj Centre of Law Banasthali Vidyapeeth, Jaipur, Rajasthan, India*

Abstract

The Prevention of Oppression and Mismanagement[1] is a fundamental clause in the Companies Act that seeks to protect the interests of minority shareholders and prohibits firm management from abusing authority. However, although being a major clause of the Companies Act[2], oppression and mismanagement[3] are not defined. Because the meaning of mismanagement or oppression prevention might be broad, these phrases must be construed based on the facts of each instance. However, if we try to define Mismanagement, it relates to practises that violate the Memorandum of Association, Articles of Association, or other legislative rules, resulting in mismanagement inside the organisation. This provision empowers shareholders to sue the company's management or majority owners in court if they think their rights are being violated or the business is being mishandled. The purpose of this article is to examine the portions of the Companies Act's Prevention of Oppression and Mismanagement Act[4], which is found in Chapter XVI of the Companies Act5, and contains its purposes, scope, and implementation as found in sections 241 to 246. It discusses the many behaviours that may constitute oppression and mismanagement, as well as how minority shareholders can seek redress through the legal system. The study also highlights the role of the Company Law Board and the National Company Law Tribunal[6] in resolving oppression and mismanagement issues, as well as other particular directives such as A member's shares or interest are purchased by another member, resulting in a capital decrease. Transfer/allotment of shares is restricted. Contracts between the company and the MD, or any other director or administration, may be cancelled or set aside as the tribunal thinks necessary. Any further agreements between the firm and anyone other than those stated above shall be dissolved. Only with proper notification and the approval of the affected party may the agreement be cancelled. Putting aside any transfer/delivery/payment/execution or other act pertaining to property made by or against the corporation during a period of three months of the date of the request under this section, which would be constituted fraudulent preference if done by or against the individual.[7] Overall, this paper provides a thorough examination of the Companies Act's Prevention of Oppression and Mismanagement provision and its significance in protecting minority shareholders' interests and encouraging effective corporate governance.

1 The companies act, S.241-246.
2 The Companies Act, 2013.
3 Ibid
4 Ibid
5 Ibid
6 The companies act, s. 408.
7 Ibid

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Correspondence:
arifhussain84874@gmail.com
Institute of Law Nirma University, Ahmedabad, Gujrat, India

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Research questions

- what are the key factors that contribute to oppression and mismanagement in organizations, and how can they be prevented?
- What are the most effective strategies for promoting a culture of transparency and accountability in organizations, and how do these strategies help prevent oppression and mismanagement?
- How can organizations effectively communicate their policies and procedures to employees to prevent oppression and mismanagement?
- What are the legal and regulatory frameworks that govern prevention of oppression and mismanagement in organizations, and how effective are they in practice.
- What role do leadership and management practices play in preventing oppression and mismanagement in organizations, and what are the most effective leadership and management strategies for achieving this goal?
- How can organizations foster a culture of inclusivity and diversity to prevent oppression and mismanagement, and what specific policies and practices are most effective for achieving this goal?

Introduction

The sections 241-246 of the Companies Act of 2013 outline how to address workplace fraud and misuse.[1] When a corporation is described as repressed or poorly managed, it implies that minority shareholders or other company members are treated unjustly as a result of how the company is run. The Companies Act of 1956[2] and its accompanying regulations, as well as the Companies Act of 2013 and its accompanying laws, were enacted to safeguard their interests and end tyranny and incompetent management.

The notion of rule of majority

Businesses are governed by the majority rule. The majority rule stipulates that in the administration of a company's activities, the will of the majority of its members takes precedence. As a result, any issue impacting the firm's management is settled by a resolution passed by a business meeting with a requisite majority. A proposal is adopted if it receives a simple majority of votes cast by members or a special majority of votes cast by members, as stipulated by the Companies Act. When a proposition becomes law, every member of the firm must follow it, regardless of whether he votes for or against it or abstains from voting.[3]

It should be noted that every shareholder in a corporation limited by shares has the right to vote on any motion put forth to the board. However, his voting rights will be proportional to his paid-up share of the company's stock capital.[4] Every member can vote for or against the proposal, or they can abstain entirely. A resolution is regarded to have passed when it receives a large number of votes in support. Even if some members voted against the motion, any decision made following the adoption of a valid resolution is binding on all members of the organisation[5] (Bhagwati Developers Pvt. Ltd. v. Peerless General Finance and Investment Ltd). As a result, the majority of the company's members have the authority to carry out its corporate functions.[6] As a result, it is general knowledge that the consensus rule applies in organisations.

Minority shareholders are completely controlled by the majority shareholders. One of the most difficult challenges to address in such a scenario is how to protect the interests of minority shareholders who engage in operations. It is never simple to strike a balance between the organization's effective administration and the interests of minority owners. "However, maintaining a healthy balance between the rights of the majority and the rights of minority shareholders is critical for successful and efficient

1 Niyati Trivedi, An Analysis of Oppression and Mismanagement in Company Petitions, 3 Jus Corpus L.J. 763 (2022).

2 The Companies Act, 1956

3 G. Brahmakrit Rao & Saumya Tripathi, Analysis of Mismanagement and Oppression under Companies Act with Special Reference to Family centred Companies, 10 NIRMA U. L.J. 53 (2021).

4 Dr. G.K. Kapoor & Dr. Sanjay Dhamija, Company Law and Practice (23' ed. 2018).

5 Bhagwati Developers Pvt. Ltd. v. Peerless General Finance and Investment Ltd., 2013 SCC OnLine Cal 10000

6 Ibid

business administration.[7]" Numerous aspects of modern company legislation protect the interests of all owners in a business, including minority shareholders[8] (Shah Pulp and Paper Mills Ltd. v. Pravinchandra Hirji Shah).

The majority rule is applied when managing the affairs of corporations

A vote with the necessary majority is required to determine almost all internal business matters i.e., DOCTRINE OF INDOOR MANAGEMENT[9] (Enness Capitals Pvt. Ltd. v. Hyderabad Securities and Enterprieses Ltd).

The following statements are implied by the rule of consensus or supremacy of majority:

- When someone joins a business, it is assumed that they are aware that the majority's will governs the organisation. As a result, a member is taken to have consented to yield to the majority's will.
- The mass of the shareholders have a right to determine everything linked with the administration of matters of the business.
- Any decision made by a motion passing with the required majority at a meeting that has been properly called and called to order is binding on all members of the organization, including minority members and members who did not participate in the vote.
- The minority typically cannot complain if the majority members harm the business in any way. Individual shareholders cannot file a lawsuit on behalf of the business; only the company may do so.
- In general, courts will not get involved in how a company's directors handle its internal affairs if they are abiding by the authority granted these individuals through the company's bylaws.
- Typically, the courts stay out of disputes to shield minority stockholders from the effects of resolutions adopted by the required consensus.
- In general, an individual person or even a minority shareholder cannot file a lawsuit toward the organization's executives. However, if an executive violates a duty they owe to a specific member directly, that member may bring legal action against the board of directors. If a member's right to vote or receive dividends is denied, for example, he may challenge the board of directors regardless of whether the decision was made by the majority of the members.

According to section 241 of the Act, it is any unfair misuse of power on the part of the individual(s) in responsible for the organization's administration.

Although it may qualify as mishandling under section 241, a careless and ineffective management does not constitute tyranny.

When management makes actions that go against the desires and interests of the majority of shareholders and drags the company into costly legal fights, management is considered to be working against the best interests of the company.[10] Mismanagement or harm to the public interest: Section 241[11] can be employed in one of two situations:

- where the company's affairs are being managed in a way that harms or tends to harm the firm's or the public's interests[12] (Reliance Industries Limited v. Securities and Exchange Board of India). That, as a result of a "substantial change" in the company's management or control, it is possible that the company's operations will be controlled in a way that the company's: Management or board of directors or majority shareholders, or involvement in the business if it has no share capital or if it changes in any other way (other than because of or to benefit creditors, debt holders, or a particular group of shareholders).[13]

7 Dugar M., Minority Shareholders Buying Out Majority Shareholders, Manupatra, 1o6, 2010.

8 Shah Pulp and Paper Mills Ltd. v. Pravinchandra Hirji Shah, 2013 SCC OnLine Bom 1817

9 Enness Capitals Pvt. Ltd. v. Hyderabad Securities and Enterprieses Ltd., 2019 SCC OnLine NCLT 8131

10 Reliance Industries Limited v. Securities and Exchange Board of India, 2020 SCC OnLine SAT 532

11 Ibid

12 Ibid

13 Himanshu Kaswa & Shreya Pandey, 'A Recurrent Quest for Corporate Governance in India: Revisiting the Imbalanced Scales of Shareholders' Protection in Tata - Mistry Case' (2021) 4.2 JCLG 121

"Any shareholder who believes that the corporation's business is being conducted in a manner adverse to the public interest may bring an action under Section 241 or in a way that is injurious or authoritarian against him, or any substantial change that is being helped bring sequence in order, or in the preferences of any debt holders, which include debenture holders, any class shareholders of the company, and so on, that would significantly influence the company's leader, The central government may also seek rulings from the tribunal if it determines the company's actions are harmful to the public interest.[14]"

"The Tribunal may order the following under Section 242[15] of the Act: restrictions on the transfer of shares, restrictions on the purchase of shares, the cancellation, alteration, or disregarding of any contract, the cancellation of any transmission, delivery of goods, disbursement, implementation, or other act relating to property, the withdrawal of the managing director, supervisor, or any of the company's directors, and the recovery of unjustified benefits.[16]"

"The registrar must have a certified copy of the order from the tribunal no later than 30 days after it is issued. Any breach of the rules in this chapter shall result in a fine of not less than 10 lakh rupees and not less than 25 lakh rupees. Each officer of the company who violates the law will also face a six-month jail term and a fine of not less than 25,000 rupees and not less than one lakh rupees.[17]"

Section 243 of the Act requires that any ongoing agreement that is set aside, modified, or terminated by a tribunal decision not give rise to any claims for damages or other compensation against any director or employee of the firm. Any director, managing director, or other executive who has been removed of their duties in accordance with the tribunal's orders is not entitled to regain their post for five years after the tribunal's order.[18]

"According to Section 244 of the Act, the following parties may request commands from the tribunal.[19]

- Any representative or members holding not less than one-tenth of the issued share capital of the company, provided that the applicant or applicants has or have paid all calls (Manish Kumar v. Union of India); in the case of a corporation without a share capital, one-fifth of all members; in the case of a corporation with a share capital, not less than one hundred members of the company or not less than one-tenth of the total number of its representatives, whichever is less.[20]"

Before deciding whether to grant the request, the tribunal must consider the following issues

- "The request must be made in good faith, and whether it was presented by someone other than the company's directors or officers will be considered by the tribunal.
- Whether or whether the members or depositors could pursue the matter on their own.
- Any evidence of the viewpoints of members who have no direct or indirect financial investment in the issues.
- If the cause of action is still to occur, the firm should be able to accept or ratify it before it occurs, and if the cause of action has already occurred, it should be available for confirmation.[21]"

The following details are important to consider after the application is accepted:

- A public notice must be served on the class's participants and deposits.
- The leading applicant will be chosen by the class members/depositors from all applications that are like one another. The Tribunal will choose the main candidate if a final determination their appointment cannot be made.
- There can be only one application for a certain cause of action.
- The business or the person in charge of the oppressive behaviour is required to pay the costs.
- The tribunal's decisions are all legally binding.
- Banking Companies are exempt from the class action provisions of this section.

14 Avatar Singh, Company Law (16m ed. EWC Webstore 2016).
15 Ibid
16 Ibid
17 The Companies Act, 2013 (18 of 2013).
18 Ibid
19 Manish Kumar v. Union of India, (2021) 5 SCC 1
20 Ibid
21 The Companies Act, Ministry of Corporate Affairs-Government of India, (2013).

Any person who claims that

- "It is alleged that the company's operations have been, or are being conducted, in a way prejudicial to the public interest, prejudicial to the individual(s), or prejudicial to the interests of the corporation.
- The resource change occurred in the company's planning or management, such as a change in the Board of Directors or supervisor, or in the ownership of the company's shares, or if it doesn't have shares, in its affiliation, or in any other way; it was not initiated by or in the interests of any debt holders, such as debt holders or any class of shareholders of the company; and it was not in the best interests of the company's creditors.[22]

Section 242 discusses the tribunal's powers, which have been analysed and clarified for your consideration.[23] For disputes falling under the purview of the Companies Act, this specialized adjudicatory body was established to ensure that appropriate remedies are provided in a timely manner.

The power to issue commands is its initial legal authority. Such an order may be issued if it deems that the firm's operations have been or are being conducted in an unsatisfactory manner. It has been said that the firm would not be shut down abruptly; rather, the purpose is to stop the dictatorship and incompetent management.[24]

The same clause also grants the tribunal authority to rule on three matters involving

Company, others, and company are stockholders. A tribunal may order that share of members be acquired by other members or by the firm about shareholders. A tribunal may order a decrease in share capital or even transfer restrictions if they determine that oppression or poor management has resulted from a disproportionate number of shares being held by one or a small number of shareholders.[25] Agreements between the company and management or the company and any other person about the management of the business are subject to review and modification by a court.[26]

In terms of firm management, the tribunal has the jurisdiction to replace the incumbent managing director, manager, and director, as well as collect any ill-gotten gains.

In rare cases, the tribunal may appoint someone to notify it about management's oppressive activities and inadequate management practises in order to prevent further oppression.

Literature Review

Analysis of mismanagement and oppression under companies act with special reference to family centred companies[27]

"The Author has mainly focused on establishing that: the majority rule serves as the foundation for a company's administration, this does not allow for the minority interests to be ignored. Here, minority and majority refer to the degree of voting on the board rather than a numerical value. This is seen as clarifying the fact that scenarios may arise in which a handful of shareholders control the vast majority of the stock while the rest of the stockholders possess only a negligible percentage.[28] The article tries to establish that if the majority gains control, they will be able to act whichever their whims and fancy please, and even if their prejudiced decisions are called into question, they will still come out on top because of the tremendous voting power they will possess. The writers of this paper include

22 Ibid

23 Ibid

24 Ashutosh Misra, An Analysis of Mismanagement and Oppression under the Companies Act 2013, The Law Brigade (Publishing) Group 21, 2018.

25 Umakanth Varottil, 'The Evolution of Corporate Law in Post-Colonial India: From Transplant to Autochthony' (2016) 31 Am U Int'l L Rev 253.

26 Ibid

27 G. Brahmakrit Rao & Saumya Tripathi, Analysis of Mismanagement and Oppression under Companies Act with Special Reference to Family Cantered Companies, 10 NIRMA U. L.J. 53 (2021).

28 Himanshu Kaswa & Shreya Pandey, 'A Recurrent Quest for Corporate Governance in India: Revisiting the Imbalanced Scales of Shareholders' Protection in Tata - Mistry Case' (2021) 4.2 JCLG 121.

numerous clauses of the Companies Act of 1956 and the Companies Act of 2013 to help the reader comprehend what and how mismanagement is caused. It is also discussed how to file a complaint under the Companies Act, including the steps involved, as well as the jurisdiction and authority of the courts. There will also be discussions of several significant cases, including the McDonald's India Case, the Satyam Case, which involves a "class action" lawsuit, and the in-depth case study of the Cyrus Mistry Case, which involves decisions made by the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT). To defend the interests of stakeholders, primarily the minority shareholders, the authors provide proposals and remedies to limit the practice of mismanagement in businesses.[29]"

An analysis of oppression and mismanagement in company petitions[30]

"In an effort to prove that there are always two sides to every decision made in every organization, this article focuses on the majority and the minority. Both the board of directors and the shareholders can have a minority or a majority, but there are important distinctions between these two groups.[31] The opinions and views of the minority may occasionally be disregarded in choices taken by the majority. Under the system of corporate governance, the majority will triumph, which may lead to episodes of oppression and subpar management in a corporation. The paper gives a hind that a divide between the minority and the majority develops when group decision-making is prioritized over individual interests but the law in India that must be followed to stop tyranny and poor management is laid out in Sections 241-246 of the Companies Act of 2013. The terms "oppression" and "mismanagement" are not defined in the Companies Act of 2013, but over years, the courts have determined what they mean. While the term "administration" lacks a precise meaning, it can be thought of as anything that prevents the Board of Directors or the Directors from carrying out their responsibilities as intended. This could include, for example, illegal activity, the misuse of business finances, etc.[32]"

Conclusion

Sections 241 and 242 of the Companies Act 2013 provide shareholders with their present remedies. These remedies are the result of various changes to Indian Company Law in the middle of the twentieth century. The amendments to the 2013 Act have the combined effect of enhancing and restricting shareholder remedies. India routinely copied British legislation and drew inspiration from their Acts and clauses. Prior to the 1948 change to the English Companies Act, Company 2013 was the sole remedy for settling issues between shareholders and the company or between shareholders themselves.[33]

Due to the inefficiency and unintended consequences of winding up a company, the Cohen Committee in England proposed including a substitute in the form of a remedy in Section 210 of the English Companies Act, which took the form of oppression, applied to Indian Company law as well.

The English Companies Act served as an inspiration for some provisions of the Indian Companies Act. Section 210 of the English Companies Act, 1948 was incorporated into Indian Company Law, and as a result, Section 153-C of the Indian Companies Act, 1913 was enacted. Company Act of 1956 sections 397 and 398 were revised to include oppression. The oppression remedy was first introduced under Section 397 Companies Act of the 1956, Act 19, which defined it as carrying out the company's activities "in an oppressive manner to any member or members." Section 397 Companies Act of 1956 has been the foundation of shareholder remedies in India for over

29 Tata Consultancy Services Ltd v Cyrus Investments Pvt Ltd (2021) 9 SCC 449.

30 Niyati Trivedi, An Analysis of Oppression and Mismanagement in Company Petitions, 3 Jus Corpus L.J. 763 (2022).

31 Javaid Talib and Aqa Raza, 'Right of Minority Shareholders Under the Companies Act, 2013: A Jurisprudential Analysis' (2015-16) 23 ALJ 30.

32 Umakanth Varottil, 'Unpacking the Scope of Oppression And Mismanagement, Prejudice and Mismanagement Under the Companies Act, 2013' (2020) 6 SCC J-1

33 Umakanth Varottil, 'The Evolution of Corporate Law in Post-Colonial India: From Transplant to Autochthony' (2016) 31 Am U Int'l L Rev 253.

a decade. Courts frequently draw parallels between the oppression remedy's legislative counterpart, section 210 of the English Companies Act of 1948, and English law on the subject. These sections were updated in Sections 994 and 996 of the English Act of 2006 and Sections 241 and 242 of the Companies Act 2013, respectively, which were based on Sections 459 and 461 of the English Companies Act, 1985.