OVERCOMING THE TYRANNY OF THE PRINCIPLE OF NON-INTERFERENCE: A CRITIQUE VIEW WITH REFERENCE TO VARIOUS CASES

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ABSTRACT

"Of all tyrannies a country can suffer the worst is the tyranny of the majority"- William Inge. The Act came into force on 12 September 2013 and altered and reshaped the spectrum of the contemporary company law regime entirely. It also filled the several cavities that bedevilled the Companies Act, 1956. Akin to most democracies, the corporate world is also subject to the majority rule. However, this shareholder democracy becomes a curse when it gets transformed into majority tyranny. Many a times, the views and interests of the minority shareholders are overlooked owing to the majority-influenced decision making. This paves way for the suppression of the minority and the "squeezing out" of the minority from the decision-making process and, ultimately, from the company. The Companies Act, 2013 can be perceived as a turning point in the majority-minority strife. A detailed evaluation of the provisions of the Act elucidates that the legislative intent behind this enactment is to safeguard the minority interests thoroughly and exhaustively. These provisions have given rise to the "minority rule" that overcomes the historical tyranny of the "majority rule" and the "principle of non-interference". This research paper cruises through various statutory provisions and judicial pronouncements and finally culminates in the conclusive analysis of how the introduction of minority rule is a promising move in the direction of establishing a corporate governance framework that guarantees equal and fair treatment of all the shareholders.

Keywords: Company Act, Majority Rule, Minority Interest, Shareholders, Principle of non-Interference.

INTRODUCTION

The paradigm of '*unity in diversity*' perfectly applies to the Indian democracy. In the context of democracy, the words of Mr. Mani Shankar Aiyar, an Indian politician, assumes a lot of significance- "*democracy is only a necessary condition of good governance; it is not a sufficient condition of good governance. But if you don't have democracy you cannot have good governance*" (Talib & Raza, 2015). The same paradigm also fits in the case of companies because most of the resolutions in a company reach finality after being passed by the majority shareholders and therefore, it is an institution that follows a democratic process in most of its operations. However, due to excessive centralization of control in the hands of the majority shareholders, the minority shareholders suffer in terms of oppression and mismanagement or getting "*squeezed out*"/ "*freezed out*" (Bhasin, 2011). The minority shareholders of a private

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company or a close corporation end up in an especially disadvantageous and vulnerable position as they do not possess an exit option through which they can sell their securities in the open market in case they are discontented with the functioning and management of the company (Bhasin, 2011).

Thus, we see that the hallmark of majority rule equally applies to corporate democracy and owing to this the corporate world remains susceptible to abuse and pitfalls. In fact, the corporate democracy is more prone to abuse and misuse because here, the domination is assumed by the majority in terms of the number of shares and not in terms of the number of individuals. Under the rule of majority, once a resolution is passed either by a simple or a special majority, it has a binding effect on all the members. As an ensuant outcome of the "*principle of non-intervention*", courts do not normally intervene in the internal affairs of the company to protect the minority interest. However, under the Companies Act, 2013 [hereinafter, "*the Act*"], there are exceptions to the majority rule and the principle of non-intervention. Prevention of oppression and mismanagement is one such important exception and is dealt under Chapter VI of the Act.

The Act bestows upon the minority shareholders the protection of their rights. The minority interest is safeguarded against the oppression exercised by the majority by virtue of the provisions of the Act. The principle of supreme will of the majority, that is embedded in the company regulation philosophy, gives rise to an important concern that the interests and rights of both the minority and majority shareholders should be properly balanced (Talib & Raza, 2015). Natural justice as well as various jurisprudential theories, including the Poundian theory, requires that a company should not prejudice the rights of the minority. The corporate governance framework must safeguard minority rights and bring about a balance between minority and majority interests (Sahu, 2015).

Through the course of this research paper, the authors would firstly deal with the concept of minority shareholders as well as examine the rights of the minority shareholders under the Act. Secondly, the authors would delve into the judicial approach to the construction of the term "*oppression*". Thirdly, the authors would analyze the judicial approach in protecting the rights and interest of the minority shareholders. Finally, the paper culminates into an explanation as to how the rule of minority is a favorable outcome.

MINORITY SHAREHOLDERS AND THEIR RIGHTS

Understanding the Term '*Minority*'

The term '*minority shareholder*' is not defined anywhere under the Act. What can be culled out from a literal understanding of the term is that minority shareholders are those shareholders who possess lesser amount of shares than the controlling or majority shareholders (Cambridge Dictionary). The legal definition of '*minority shareholders*', in the absence of a proper statutory definition, can be traced from the Bhabha Committee on the Examination of the Companies Act, 1913, that had recommended that a legal framework could be established by inserting specific provisions in the new Act to define the term '*minority*' (Talib & Raza, 2015; Sahu, 2015) Although '*minority interest*' or '*minority shareholder*' is not defined under any law, the Act reflects the minority interest by stipulating a criteria of "*not less than 100 members*" or "*not less than one tenth of the total number of its members*", whichever is less, or "*holding not less than one tenth of the issued share capital of the company*", in case of companies having share capital and a criteria of "*not less than one-fifth of the total number of its members*" in case of other companies not having share capital (§ 244, The Act).

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Upon a cursory reading and understanding of the Indian company law provisions, one may jump at the conclusion that the enormous potency of a company lies in the hands of the majority shareholders while the minority shareholders remain absolutely powerless. The minority shareholders may not possess equal degree of potency as the majority shareholders possess, however, it cannot be said that they are absolutely powerless (Talib & Raza, 2015) Sometimes, when a law or a legislation does not provide necessary rights to a particular class, it fills this cavity by curbing the rights of the advantageous or the privileged class in order to grant power to the persons belonging to that class for which rights are not clearly prescribed within the statute; this is the case with the Act (Talib & Raza, 2015).

Rights of Minority Shareholders

The Act of 1956 was enacted by the Bhabha Committee and similarly, the Act came into being on the recommendations of the J.J. Irani Committee. The J.J. Irani Committee had delved into the idea of protection of the rights of minority shareholders in 2005 and had introduced it as a concept on 31 May 2005. The Act provides numerous rights to the minority shareholders for the protection of their interests in their companies. The Act of 2013 is a sizeable and substantial improvement over the Act of 1956. It effectively tackles the critical situations wherein the majority shareholders takeover the control of the company and indulge in abuse of their powers. The new Act has not only bestowed upon the minority shareholders a blanket protection against the abuse exercised by the majority but has also introduced new provisions that confer upon the minority shareholders various benefits that were absent in the Act of 1956.

Protection against Oppression and Mismanagement-Chapter XVI of the Act

Sections 241 to 246 of the Act lay down the framework for extending protection against oppression and mismanagement to the minority shareholders (Pandey, 2013). The term "*oppression*" has not been defined anywhere in the Act and the judicial interpretation and construction with respect to this term will be discussed in the next section of the paper. The grounds for filing an application against oppression and mismanagement can be found under Section 241 of the Act. Any member of a company who has the legitimate right to apply under Section 244 of the Act can apply to Tribunal if any of the following conditions are met:

1. The affairs of the company have been or are being conducted in a manner prejudicial to public interest (§ 241(1)(a), The Act).
2. The affairs of the company have been or are being conducted in a manner prejudicial or oppressive to the complainant or any other member or members (§ 241(1)(a), The Act).
3. The affairs of the company have been or are being conducted in a manner prejudicial to the interests of the company (§ 241(1)(a), The Act).
4. A material change (that is not a change brought about by or for the benefit of any creditors/debenture holders or any class of shareholders) has taken place in the management or control of the company in any manner and as a consequence of such change, it is possible that the corporate affairs will be carried out in a manner that is prejudicial to the interests of the company, its members or any class of members (§ 241(1)(b), The Act).

The Central Government can also apply to the National Company Law Tribunal [hereinafter. "*the Tribunal*"]. Subsection 2 of Section 241 provides that if the Central Government forms an opinion that the company affairs are being carried out in a manner that is

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prejudicial to public interest, it can itself apply to the Tribunal for an order (Section 241(2), The Act). The Central Government can apply to the Tribunal in the following cases:

1. Found guilty of fraud,
2. Misfeasance: Wrongful exercise of power, misapplication or misappropriation of money or other property of the company.
3. Persistent negligence and default in conducting the affairs of the company.
4. Affairs of the company are being conducted not in accordance with sound business principles.
5. Negative effect on the interests of business or creditors, etc.

The affected shareholders can approach the Tribunal to obtain proper relief in case of oppression and mismanagement under Section 244(1) which extends the right to apply to the Tribunal to the members with a prescribed minority limit (as elaborated upon earlier- footnote no. 9) (Pandey, 2013). Similar was the limit under the Act of 1956. However, the Act of 2013 provides certain discretionary powers to the Tribunal in this regard. These discretionary powers are prescribed under the proviso to Section 244 which provides that the members, who do not fit into the aforesaid criteria, can make an application to the Tribunal and the Tribunal has the power to waive all or any of the requirements that are specified under clauses (a) and (b) so as to enable them to apply under section 241. A waiver, pursuant to this proviso, was given in the case of Agarwal (2017) Crystal Thermotech Ltd., wherein the petition of the applicant was allowed despite the shareholding being below 1/10th of the total shareholding.

Right to File a Class Action Suit

Section 245 of the Act encompasses the new concept of class action. This concept was absent in the Act of 1956. According to Section 245 of the Act, a certain number of members or depositors or any class of them can file an application before the Tribunal if they are of the opinion that the management or conduct of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors. Section 245 is a comprehensive provision that comprises ten sub-clauses that detail down the procedure as well as the reliefs which can be sought. A combined reading of sub-section 3 of Section 245 and the NCLT Rules, 2016 (after the amendment that took place on 8 May 2019) provide the threshold limits for filing such class action suits.

A class action suit can be filed against the company and its director or directors, auditors, the audit firm, experts, advisors, or consultants. This particular fact draws a line of distinction between Section 241 and Section 245. Section 245 thereby, circumvents the principle of "*privity of contract*" by permitting members or depositors to initiate action against third parties on account of any fraudulent conduct on their part (Tantravahi, 2019). This particular distinction was also laid down in a National Company Law Appellate Tribunal [hereinafter, "*NCLAT*"] order wherein it was observed that while an application under Section 244 can be filed only against the company, board of directors, shareholders or its members, under section 245, an application can be filed against the statutory auditors and/ or advisors as well Shanta Prasad Bochapathar, (2017) Tea Estate Private Limited & Ors) Table 1.

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Table 1 NEW CONCEPT OF CLASS ACTION			
	No. of Required Members/ Depositors	**Percentage of total Members/ Depositors**	**Percentage of shareholding/deposits owned**
	Whichever is less.		
Members (In the case of a company having a share capital)	100	5%	In the case of a listed company 2% In the case of an unlisted company-5%
Depositors	100	5%	5%

The NCLAT has emphasized that in a class action suit, before assessing whether a particular conduct is prejudicial to the interests of members or depositors or a class of them, courts must first examine whether the minimum threshold as prescribed under Section 245 is met (Cyrus Investments Private Limited & Anr. v. TATA Sons Limited & Ors.). It has also been acknowledged by the NCLAT that "*issued share capital" under Section 245 includes both equity and preference share capital and means "issued and subscribed share capital*" (Id.). Courts and tribunals have elaborated upon the provision of Section 245; however, class action suits rarely get initiated under the Act.

Protection against "*Squeezing Out*"

Reduction of Share Capital (Section 66): A company is allowed to undertake reduction of share capital, subject to the condition that it is approved by the shareholders by passing a special resolution and upon confirmation by the NCLT on an application by the company. Many a times, this particular provision of the Act is used by the majority shareholders as an instrument to squeeze out the shareholding of the minority shareholders by the way of cancelling their shares and subsequently, altering the memorandum of association of the company (Parikh & Toshniwala, 2020) It is a common method opted by the majority shareholders or promoters to oust the non-promoter minority (Chetan et al., 2010) Rockwool (India) Ltd. As per the stipulation of Section 66, the Tribunal sanctions an application for reduction of share capital only if, among other things, the company has not defaulted in repaying any of the deposits accepted by it or any interest payable on the deposits. Such a reduction is approved only once the Tribunal is satisfied it is just and reasonable and, on such terms and conditions as it may deem fit.

The minority shareholders have the right to challenge the procedure of selective reduction of capital; however, one can observe a judicial trend of upholding such a reduction of capital. The Bombay High Court, in the case of Cadbury India Ltd. v. Samant Group, had held that in order to ascertain that a selective reduction of share capital is just and equitable, courts examine the reason behind the selective reduction, determine if the reason is bona fide, ensure that the scheme is not against "*public interest*", and see to it that a fair valuation of shares has taken place. The court also laid down the following guideline:

"*A court called upon to sanction such a scheme is not bound by the ipse dixit of a majority. It must weigh the scheme and look at it from all angles. It must see whether the scheme is fair, just and reasonable, not unconscionable and is not contrary to any provisions of law and*

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it does not violate any public policy. But it must also balance the commercial wisdom of the shareholders expressed at a properly convened meeting against the desires and fancies of the few. The court will take into account, but not be bound by, the views of the majority. In particular, the court will see what the views are of most of the non-promoter (minority) shareholders at the meeting. If the bulk of them have voted in favour, the court will not lightly disregard this expression of an informed view, one that lies in the domain of corporate strategy and commercial wisdom."

As long as the intention behind the selective reduction of capital is just and reasonable and a fair value is being paid to the minority shareholders for their shares, the scheme for such a capital reduction is typically approved by the Tribunal (Parikh & Toshniwala, 2020; Sandvik, 2009).

Support and cooperation of the company is needed if the majority shareholders intend to squeeze out the minority shareholders (Id.). As per the provision of Section 66, the onus is placed on the company proposing the squeeze out to;

1. Apply to the Tribunal for the reduction of share capital.
2. Satisfy the Tribunal that it is not in arrears in the repayment of any deposits accepted by it or the interest payable these deposits.
3. Satisfy the Tribunal that the claims or debts of each and every creditor have been secured, discharged, or determined.
4. Satisfy the Tribunal that the consent of the persons concerned is obtained
5. Publish the order where under the Tribunal has approved the capital reduction.
6. To prove that the scheme of capital reduction is fair, just, and reasonable.

Scheme of Arrangement (Sections 230-234)

There exist There exist concerns regarding certain schemes of reconstruction, mergers, amalgamations, etc. that put the interests of the minority shareholders in jeopardy. To address this issue, the Act affords protection to the minority interests through various provisions that fall under Chapter XV of the Act. Before approving a scheme of merger or amalgamation, a notice inviting objections or suggestions is issued by the transferor and the transferee companies to the Registrar, Official Liquidators and persons affected by the scheme(§ 233(1)(a), The Act). If any objection or suggestion is raised by the Registrar or Official Liquidator, the same is communicated in writing to the Central Government within a period of thirty days (§ 233(4), The Act). After receiving the objections or suggestions or for any other reason, if the Central Government opines that the scheme is not in public interest or in the interest of the creditors, it may file an application before the Tribunal stating its objections and requesting the reconsideration of the scheme under Section 232 by the Tribunal (§ 233(5), The Act). NCLAT had propounded that a scheme of arrangement can be rejected if it is not in "*public interest*" (Wiki Kids Ltd, 2017; Gabs Investments Pvt. 2018).

Acquisition of Minority Shareholding (Section 235)

Section 235, that corresponds to Section 395 of the Act of 1956, lays down that any scheme of transfer of shares or any class of shares must be approved by at least 9/10th the number of holders of the shares whose transfer is involved, within four months of making the offer by the transferee company. It further provides that the transferee company may, at any time

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within two months after the expiry of the said four months, give notice regarding its desire to acquire the shares to any dissenting shareholder.

Purchase of Minority Shareholding (Section 236)

Section 236 provides that in case an acquirer, or a person acting in concert with such acquirer, becomes a registered holder of 90% or more of the issued equity share capital, or in case any person or group of persons assume 90% majority or hold 90% of the issued equity share capital, by virtue of a scheme of amalgamation, conversion of securities, share exchange, or for any other reason, it is mandatory for such acquirer, person or group of persons to notify the company of their intention of buying the remaining equity shares. It further provides that in order to purchase the equity shares of the minority shareholders, the acquirer, person or group of persons shall offer such a price to them that is determined on the basis of valuation by a registered valuer in accordance with the prescribed rules. It also provides that the minority shareholders of the company can themselves make an offer to the majority shareholders to purchase their shareholding at a price determined according to the rules prescribed under Section 236(2). For the purpose of making payments to the minority shareholders, the transferor company must act as a transfer agent.

Right to Vote

The right to vote is provided by the Act under Section 47. However, this right is subject to Sections 43, 50(2) and 188(1). The provision of Section 47 maintains that "*every member of a company limited by shares and holding equity share capital therein shall have a right to vote on every resolution placed before the company*" and, the voting rights of the members on a poll must be proportional to their share in the paid-up equity share capital of the company. Therefore, the Act confers the right to vote equally upon the minority as well as the majority shareholders. Furthermore, Section 108 of the Act requires certain prescribed class or classes of companies to provide e-voting facilities to shareholders. This provision has resulted in an increase in the participation of minority shareholders in decision making and other important matters as it has empowered the minority shareholders who reside in or out of the country to exercise their voting rights without having to attend the meeting in person (Ingovern, 2020).

Maintenance of Transparency and the Right to be informed through Accurate Disclosures

Transparency in the operations of the company and correct disclosures are necessary for protecting minority interests and in order to ameliorate the risk of the investors. There must not only be a clear and proper indication with respect to the rights of all the members of the company and not only this but there also must be a system in place wherein the members must have access to all the information to which they are entitled (Talib & Raza, 2015). The information that is made available to the shareholders must be in a simplified form so that it can be understood by any person of reasonable intelligence and ordinary prudence (Id.). In this way, a company can fortify and enhance its credibleness. While making information available to the members through various means it must also be ensured that appropriate punishments and penalties must be imposed in case of wrong or mala fide disclosure of information.

Approval by the Majority of the Minority

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As per the Securities and Exchange Board of India (2013) (Listing Obligations and Disclosure Requirements) 2015 [Last Amended On April 17, 2020], all material related party transactions shall be approved by the shareholders through a resolution and no related party is allowed to vote for the approval of such resolutions whether the said entity is a related party to the particular transaction in question or not (SEBI LODR Regulations, 2015). This essentially means that in order to ensure that the business decisions taken by the majority shareholders or promoters do not put the interests of the small shareholders, all material related party transactions, with certain exemptions, have to be approved by a majority of minority shareholders (Cadbury India Ltd, 2014).

Other Rights

1. Variation of Shareholders' Rights (§ 48 of the Act).
2. Right of Small Shareholders to Appoint a Director (§ 151 of the Act).
3. Principle of Proportional Representation (§ 163 of the Act).
4. Right to Obtain Information.

Securities and Exchange Board of India

In February 2013, SEBI had issued a circular which was a welcome step in the area of protection of minority shareholders (Jain, 2013). It had revised the scheme of arrangement for stock exchanges and listed companies and had articulated a renewed procedure for arrangements, mergers and demergers (SEBI LODR Regulations, 2015). The circular was issued when the Companies Act, 1956 [hereinafter, "*the Act of 1956*"] was in operation in India and the stipulations under the circular were applicable to the corporate endeavours of all the companies that were listed under Sections 391 to 394 of the Act of 1956. In light of the concerns with respect to increase in the number of applications containing inadequate disclosures, convoluted schemes of arrangement, exaggerated valuations, etc., the then existing requirements regarding the listing of equity shares after merger/de-merger/amalgamation etc. were revised so that minority interest does not get impacted negatively (Id.). Pursuant to the provisions of the circular, if any forthcoming proposal seems detrimental to the interests of the company to the minority shareholders, they can proceed to block the proposal in good faith (Rajaram, 2020). For instance, if 35% of the shareholders forming minority think that a business proposal is not profitable or is mala fide, they can block the said proposal (Jain, 2013).

Recently, in March 2019, the board of SEBI, in order to protect the interests of the minority shareholders, decided to discontinue automatic exemption in respect of persons other than lenders, from making an open offer for acquisitions under debt restructuring schemes (Singh, 2019).

Judicial Construction of the Term "*Oppression*"

The term '*oppression*' has not been defined anywhere in the Act. It has to be understood through judicial pronouncements. It was held in the Scottish case of Elder v. Elder & Watson Ltd. that the member who complains about oppression must show that he has suffered oppression in not any other capacity but in his capacity as a member. Lord Cooper explained the essential meaning of the term '*oppression*' in the following words:

"*The essence of the matter seems to be that the conduct complained of should at the lowest involve a visible departure from the standard of fair dealing, and a violation of the*

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conditions of fair play on which every shareholder who entrust his money to the company is entitled to rely."

Therefore, what can be understood is that there is a standard lay down that is visibly departed from or there is violation of fair play. The ratio laid down in the case of Elder v. Elder & Watson Ltd. was reiterated in the Indian case of Shanti Prasad Jain v. Kalinga Tubes.

Countermanding or countervailing decisions of the board by those who have control over majority voting power with the ulterior motive of retaining control over the company and not allowing the board to perform its functions amounts to oppression (Harmer, 1959; Kumar Exporters, 1986). Not calling a general meeting or a board meeting and keeping the shareholders in the dark amounts to oppressive conduct (In Re: Hindustan Co-Operative Insurance Society Ltd.). Not maintaining proper statutory records and conducting affairs of the company in violation of the provision of the Companies Act may amount to oppression (Bajirao, 1984).

It was held in the case of Mohanlal (1962) that an attempt to deprive a member of his ordinary membership rights, such as depriving a member of his right to dividend, right to vote, right to call meetings, etc. may amount to oppression.

However, it must be fathomed that not every case of non-payment of dividend will amount to oppression and mismanagement. The company should have declared the dividend and there must be an apparent or a grave departure on part of the company as a result of which dividends are not paid (Pound, 1999).

The Punjab Haryana High Court had held in unequivocal terms that transfer of shares to a selective section of shareholders in a clandestine manner, that is to say otherwise than by making an offer to all is a case of oppression (Col. Kuldip, 1986). Further, in another case it was held that the issue and allotment of shares by the directors of a company in a manner by which the existing majority shareholders are reduced to a minority and the existing balance of power in the company is disturbed amounts to oppression unless it is proved beyond reasonable doubt that such an allotment was inevitable and absolutely unavoidable and was resorted to as an extremely urgent measure with an object of pivotal importance, such as saving the existence of the company.

It was held in the case of (Ramashankar, 1966). That the majority shareholders can also claim relief under the provisions of oppression and mismanagement. In another case the Madras High Court opined that when both the group are equally strong, there may arise a situation of deadlock, however it will not be a case of oppression (Gnanasambandam, 1971).

Judicial Approach towards Protecting Minority Rights

Initially, the majority rule had completely overshadowed the rights of minority shareholders. This was concretised in the case of Foss v. Harbottle by establishing the principle of non-interference, according to which the will of the majority is upheld, and the Courts abstain from interfering in the internal matters of the company. However, as a result of increasing concerns regarding majority tyranny and to ensure equality amongst all shareholders, certain exceptions to the majority rule were recognized under common law;

1. When the alleged act is ultra vires or illegal.
2. Fraud on minority or acts done at the expense of the minority by the majority (Menier, 1874; Estmanco, 1982).
3. When the act or resolution in question requires special majority but is sanctioned by simple majority (Edwards, 1950).

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4. When the alleged act has resulted in invasion of the personal and individual rights of the claimant in his capacity as a member (Nagappa Chettiar & Anr, 1949).
5. When the wrongdoer is in control of the company (Birch & Sullivan, 1957).

The rights of the minority shareholders as discussed in the previous section have thrived in the form of exceptions to the principle of non-interference. The Indian Judicial System has strived to maintain a balanced view so as to safeguard the minority interest (Talib & Raza, 2015). The following observation is an example of how courts undertake a balanced view-

"*The broad rule [is] that in all matters of internal management of a company, the company itself is the best judge of its affairs and the court should not interfere. But the application of the assets of the company is not a matter of mere internal management. It is alleged that the directors are acting ultra vires in their application of the funds of the company. Under these circumstances a single member can maintain a suit for declaration as to the true construction of the article in question' (Bharat Insurance, 1935)*".

While maintaining a balanced view, it must also be ensured that minority activism does not take away the essential democratic rights of the majority shareholders (Talib & Raza, 2015). The Court had clarified in the case of Shanti Prasad Jain v. Kalinga Tubes Ltd. that a claim of oppression and mismanagement is maintainable only if there exist potent facts to support the claim. The Courts also ensure that where the scheme passed by a company is just, fair, and equitable and no minority interest is jeopardized then any individual personal interest of minority shareholders is of no concern unless it affects the interest of a class of equity shareholders (Talib & Raza, 2015).

Evolution of Minority Rights amidst the Tata-Mistry Scuffle

The petition in the case of Cyrus Investments (2017) was filed before the Tribunal under Section 241 of the Act, wherein several actions of Tata Sons Ltd. were alleged as oppressive and prejudicial to the interests of the petitioner as well as the company, including removal of Mr Cyrus Mistry from the post of Chairman and Director, indulging in doing personal favours, converting the company into a private company, carrying on the loss-making Nano project, etc (Cyrus Investments Pvt. Ltd. v. Tata Sons Ltd, 2018). The Tribunal decided that none of the actions in question amounted to oppression (Pound, 1967).

The filing of the aforesaid petition was an immediate result of the removal of Mr Cyrus Mistry from his position in the company and it is important to note that an application under the provisions of oppression and mismanagement must not cater to settling private grudges (Mohapatra, 1994). However, there were several other actions that threatened the minority interests as well as the interests of the company, however, the Tribunal was inclined towards the concept of corporate democracy while upholding that corporate democracy is a genesis and corporate governance is the species (Parakh, 2019). To some extent, the Tribunal drifted away from the fact that the remedies in cases of oppression and mismanagement must be based on equity and justness and instead, adhered to a mechanical understanding of the case by completing brushing aside the applicability of the principles of quasi-partnership in this particular case (Talib & Raza, 2015).

Mr Cyrus Mistry was removed from his position without the formation of a Selection Committee. Such a formation would have ensured a proper and fair inspection of the allegations

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against Mr Cyrus before his removal, however, the said formation was strategically avoided and the Tribunal failed to see that the real actor behind the decision making was an outsider and not the board of directors (Id.) The petition of Mr Cyrus was dismissed on the ground that provisions related to oppression and mismanagement cannot be used to agitate complaints regarding loss of office or directorship (Cyrus Investments Pvt. Ltd. v. Tata Sons Ltd. 2018).

Mr Cyrus appealed before the NCLAT. A per the NCLAT Verdict of December 2019, Mr Cyrus was reinstated as the Chairperson of the company for his remaining term, and the appointment of TCS CEO Mr Natarajan Chandrasekaran as the executive chairperson of the company was declared illegal (Cyrus Investments Pvt. Ltd. v. Tata Sons Ltd. and Ors, 2019).

A three-judge bench comprising Chief Justice S.A. Bobde and Justices B.R. Gavai and Surya Kant stayed the order of reinstatement of Mr Cyrus while hearing an appeal filed by Tata Sons Ltd. on 10 January 2020 while stating that that there were certain lacunae in the orders passed by the NCLAT (Rajagopal, 2020). The Tata-Mistry Scuffle continues till date and a final judgement in this matter is still pending. The end of this scuffle might culminate into bringing substantial reforms and developments in the concept of minority protection as well as modern corporate governance.

CONCLUSION

There has a been a massive legislative as well as jurisprudential development in the area of protection of minority rights and it is safe to conclude that the introduction of rule of minority to mitigate the principle of non-intervention is a welcome move in the direction of effective corporate governance. There are judicial precedents which ensure that the rule of minority does not become detrimental to the interests of the company or the majority shareholders including the cases of Shanti Prasad Jain v. Kalinga Tubes Ltd. and Ramashankar Prosad and Ors. v. Sindri Iron Foundry (P) Ltd. However, despite this development, even today it is mainly the majority shareholders who have a final say in decision making, owing to the dominance of corporate democracy. The rights of minority shareholders are not only protected by statutory instruments but also by the principles of natural justice. One must not apply the Benthamite theory of utilitarianism in this context as it would ensure maximum pleasure of the majority while leaving the minority with the other '*P*' that is pain. It would be more judicious to employ the Poundian theory of "*social engineering*" which propagates a societal or legal structure that ensures "*the satisfaction of maximum wants with the minimum of friction and waste*," which further ensures balancing of interests. In the words of Roscoe Pound:

"*I am content to think of law as a social institution to satisfy social wants- the claims and demands involved in the existence of civilized society- by giving effect to as much as we may with the least sacrifice, so far as such wants may be satisfied or such claims given effect by an ordering of human conduct through politically organized society. For present purpose I am content to see in legal history the record of a continually wider recognizing and satisfying of human wants or claims or desires through social control; a more embracing and more effective securing of social interest; a continually more complete and effective elimination of waste and precluding of friction in human enjoyment of the goods of existence- in short, a continually more efficacious social engineering*".

The end of company law must be to strike a balance between the '*effective control of the company*' and the '*minority interest*' in order to give a concrete form to the conception of 'of all, for all and by all' alive in the company. Through the course of this paper, it is realized that additional efforts need to be made towards the endeavor of minority protection. The enactment

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of the Act was a major improvement in this area; however several statutory cavities continue to exist that need to be filled via cogent efforts on part of the Legislature. These statutory cavities give rise to ambiguities and uncertainties and eventually, unproductive litigation. There is also a need for the Judiciary and all other adjudicatory bodies to assume greater responsibility and ensure that they do not fall prey to unjust inclinations or biasness which can jeopardize the minority interest involved and the entire foundation of modern corporate governance.

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