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Oppression and Mismanagement Under Sections 241–242 of the Companies Act, 2013: Re-Examining the Adequacy of Minority Shareholder Remedies

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ABSTRACT

The remedy against oppression and mismanagement under Sections 241 and 242 of the Companies Act, 2013 is often presented as the principal statutory safeguard available to minority shareholders in Indian companies. This paper examines whether the remedy, as it currently operates, is adequate to protect the interests of minority shareholders in closely held and widely held companies alike. Adopting a doctrinal methodology, it traces the statutory framework governing oppression and mismanagement, analyses the judicial evolution of the "just and equitable" standard and the quasi-partnership doctrine, and examines the Supreme Court's decision in Tata Consultancy Services Ltd. v. Cyrus Investments (P) Ltd. *as a turning point in the interpretation of directorial removal and corporate democracy. The paper argues that while the statutory right to seek relief is reasonably well defined, its practical adequacy is significantly compromised by the restrictive eligibility threshold under Section 244, by chronic delay before the National Company Law Tribunal, by the absence of a settled definition of "oppression" and of conduct "prejudicial to public interest," and by the disproportionate litigation costs borne by minority shareholders relative to controlling shareholders. Drawing a limited comparison with the unfair prejudice remedy under Section 994 of the Companies Act 2006 (UK), the paper contends that the Indian framework would benefit from a lower or discretionary eligibility threshold, time-bound disposal norms, and clearer statutory or judicial guidance on the content of oppression. It concludes that Sections 241–242 represent a necessary but insufficient response to minority shareholder vulnerability, and that meaningful reform must address the procedural and institutional obstacles that currently stand between the statutory right and an effective remedy.*

Keywords: *Oppression and Mismanagement, Minority Shareholders, Companies Act 2013, National Company Law Tribunal, Sections 241–242, Corporate Governance, Quasi-Partnership, Unfair Prejudice*

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I. Introduction

The Companies Act, 2013 recognises that shareholders holding minority stakes in a company are structurally vulnerable to the will of the majority, and provides a mechanism through Sections 241 and 242 for such shareholders to seek relief where the affairs of the company are conducted in a manner oppressive to them or prejudicial to the interests of the company or the public.[1] This remedy, inherited with modification from Sections 397 and 398 of the Companies Act, 1956,[2] is frequently described in company law literature as the primary statutory safeguard against majority abuse in Indian corporate governance.

However, the existence of a statutory right does not, by itself, guarantee an effective remedy. A right that cannot practically be invoked, or that is invoked only after years of delay and at disproportionate cost, offers little real protection to the shareholder for whose benefit it was designed. This paper interrogates precisely this gap: whether the oppression and mismanagement framework under Sections 241–242, as interpreted and applied by the National Company Law Tribunal ("NCLT") and the superior courts, provides minority shareholders with an adequate remedy, or whether the statutory design and its practical administration undermine the very protection it purports to offer.

The question has acquired renewed significance following the protracted litigation between Cyrus Mistry and Tata Sons Limited, which travelled from the NCLT to the National Company Law Appellate Tribunal ("NCLAT") and ultimately to the Supreme Court of India.[3] The case exposed underlying doctrinal uncertainty regarding the scope of "oppression," the relevance of the quasi-partnership doctrine to large companies, and the standard of proof expected of a minority shareholder alleging oppression at the board level. It also drew attention, somewhat incidentally, to the sheer duration of such proceedings and to the resources required to sustain them, both of which a purely doctrinal reading of Sections 241 and 242 tends to overlook.

This paper proceeds in five further parts. Part II sets out the statutory framework governing oppression and mismanagement, including the eligibility threshold under Section 244. Part III traces the judicial interpretation of the relevant standards, from the foundational reasoning in *Needle Industries* through to the Supreme Court's decision in the Tata litigation. Part IV undertakes a critical analysis of the adequacy of the remedy, identifying procedural, institutional, and substantive gaps, and offers a brief comparative reference to the unfair prejudice remedy under English law. Part V sets out recommendations, and Part VI concludes.

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[1] The Companies Act, No. 18 of 2013, India Code (2013), § 241.
[2] The Companies Act, No. 1 of 1956, India Code (1956), §§ 397–398 (repealed).
[3] *Tata Consultancy Services Ltd. v. Cyrus Investments (P) Ltd.*, (2021) 9 SCC 449.

II. Statutory framework governing oppression and mismanagement

A. Section 241: the right to apply

Section 241(1)(a) of the Companies Act, 2013 entitles any member of a company who complains that the affairs of the company have been or are being conducted in a manner prejudicial to public interest, or in a manner prejudicial or oppressive to him or to any other member or members, or in a manner prejudicial to the interests of the company, to apply to the Tribunal for an order under Chapter XVI, provided that the member has a right to apply under Section 244.[4] Section 241(1)(b) additionally allows a member to complain that a material change has taken place in the management or control of the company which is likely to prejudice its interests.[5] Section 241(2) empowers the Central Government to apply to the Tribunal where it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest.[6]

Neither "oppression" nor "mismanagement" is defined in the Act. The terms have instead been left to judicial construction, largely carried forward from the jurisprudence developed under the analogous provisions of the 1956 Act.[7] This legislative silence is not, in itself, unusual, since comparable open-textured standards exist in company law statutes elsewhere, but it places a disproportionate interpretive burden on the Tribunal and, as this paper argues in Part IV, generates inconsistency that a minority shareholder seeking relief must navigate at considerable cost.

B. Section 242: powers of the Tribunal

Section 242 confers wide remedial powers on the Tribunal, exercisable where it is of the opinion both that the company's affairs have been or are being conducted in a manner prejudicial or oppressive within the meaning of Section 241, and that to wind up the company would unfairly prejudice the complaining members although the facts would otherwise justify a winding-up order on the ground that it is just and equitable that the company should be wound up.[8] The Tribunal may then, with a view to bringing to an end the matters complained of, make an order regulating the conduct of the company's affairs, directing the purchase of the shares of one member by another or by the company, restricting the transfer or allotment of shares, terminating or modifying agreements with managing or other directors, setting aside certain

[4] The Companies Act, No. 18 of 2013, INDIA CODE (2013), § 241(1)(a).
[5] *Id.* § 241(1)(b).
[6] *Id.* § 241(2).
[7] See The Companies Act, No. 1 of 1956, INDIA CODE (1956), §§ 397–398 (repealed); *Shanti Prasad Jain v. Kalinga Tubes Ltd.*, AIR 1965 SC 1535.
[8] The Companies Act, No. 18 of 2013, INDIA CODE (2013), § 242(1).

transactions amounting to a fraudulent preference, or removing the managing director, manager or any of the directors of the company.[9] Sections 242(5) and 242(6) make explicit that an alteration in the company's memorandum or articles effected by an order under the section has the same effect as if it had been duly made by the company itself, and that the company may not thereafter make any alteration inconsistent with the order without the leave of the Tribunal.[10]

The breadth of these powers is significant: they extend well beyond a monetary remedy and permit a genuinely structural intervention in the company's governance. In principle, this makes Section 242 a potent tool for minority protection.

C. Section 244: the eligibility threshold

Access to this remedy, however, is conditioned by Section 244, which restricts the class of members entitled to apply. In the case of a company having share capital, the application must be made by not less than one hundred members of the company, or not less than one-tenth of the total number of members, whichever is less, or by any member or members holding not less than one-tenth of the issued share capital of the company, subject to the condition that the applicant or applicants have paid all calls and other sums due on their shares.[11] The Tribunal may, on application, waive all or any of these requirements, but this is a discretionary power exercised only in limited circumstances.[12]

This threshold, intended presumably to filter out frivolous or vexatious petitions, operates as a significant gatekeeping mechanism. A shareholder holding a small stake in a widely held company, acting alone, may be unable to meet either the numerical or the shareholding threshold, and would need to secure the concurrence of other similarly placed shareholders before the substantive merits of an oppression claim are even considered. This is discussed further in Part IV.

III. JUDICIAL INTERPRETATION OF OPPRESSION AND MISMANAGEMENT

A. The "just and equitable" standard: *Needle Industries*

The Supreme Court's decision in *Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd.* remains the foundational authority on the scope of the oppression remedy

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[9] *Id.* § 242(2).
[10] *Id.* §§ 242(5)–(6).
[11] The Companies Act, No. 18 of 2013, INDIA CODE (2013), § 244(1)(a). For a company not having a share capital, § 244(1)(b) prescribes a threshold of not less than one-fifth of the total number of its members.
[12] *Id.* § 244(1), proviso.

in India.[13] The Court held that conduct amounting to oppression must be shown to be burdensome, harsh, and wrongful, involving at least an element of lack of probity or fair dealing in the conduct of the company's affairs to the prejudice of some shareholders.[14] Isolated acts that are unfair or inequitable, without more, may not suffice; what is required is a continuous course of oppressive conduct up to the date of the petition, such that the court, exercising its discretion, would be justified in winding up the company on the just and equitable ground, but considers that winding up would unfairly prejudice the very shareholders seeking relief.[15]

This linkage between the oppression remedy and the just and equitable ground for winding up, carried over from the English case law under which the remedy was originally conceived, has had a lasting influence on Indian jurisprudence. It sets a comparatively high threshold: a petitioner must, in effect, demonstrate conduct serious enough to justify the company's dissolution, while asking the Tribunal to grant a lesser remedy instead. Later decisions have granted relief without requiring a petitioner to establish that winding up would in fact be the appropriate course,[16] but the linkage is not merely historical. Section 242(1)(b) preserves it as a statutory pre-condition, and the Supreme Court applied it in the Tata litigation, holding that the NCLAT's conclusion that the facts otherwise justified winding up Tata Sons could not be sustained.[17]

B. The quasi-partnership doctrine and *Ebrahimi*

A closely related strand of jurisprudence concerns companies that, although incorporated, function in substance as partnerships between a small number of participants who have a mutual understanding regarding participation in management. The House of Lords' decision in *Ebrahimi v. Westbourne Galleries Ltd.* articulated the principle that in such "quasi-partnership" companies, equitable considerations may render it unjust for the majority to rely strictly on their legal power under the articles to exclude a member from management, where the association was formed on a personal relationship involving mutual confidence and an understanding that the members would participate in the conduct of the business.[18]

[13] *Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd.*, (1981) 3 SCC 333.
[14] *Id.* at 365. The formulation is taken from *Shanti Prasad Jain v. Kalinga Tubes Ltd.*, AIR 1965 SC 1535, which drew in turn on *Scottish Co-operative Wholesale Society Ltd. v. Meyer*, [1959] AC 324, and *Elder v. Elder & Watson Ltd.*, 1952 SC 49.
[15] *Needle Industries*, *supra* note 13, at 367; see also *Shanti Prasad Jain v. Kalinga Tubes Ltd.*, AIR 1965 SC 1535, 1544.
[16] See *Dale & Carrington Invt. (P) Ltd. v. P.K. Prathapan*, (2005) 1 SCC 212, 224.
[17] *Tata Consultancy Services*, *supra* note 3.
[18] *Ebrahimi v. Westbourne Galleries Ltd.*, [1973] AC 360 (HL) 379 (Lord Wilberforce).

Indian courts and tribunals have drawn on this reasoning in cases involving small, closely held companies, particularly family-run businesses, where exclusion from management or removal as a director is treated as a paradigmatic instance of oppression notwithstanding formal compliance with the articles.[19] The doctrine's utility, however, diminishes sharply as the size and shareholding base of a company grows. In a large company with a dispersed shareholding, a professional board, and formal governance structures, the notion of a "legitimate expectation" of continued board participation sits uneasily with the underlying premise of corporate democracy, namely that directors serve at the pleasure of the general body of shareholders, subject to compliance with statutory removal procedures.[20] This tension is precisely what the Tata litigation brought into sharp relief.

C. *Tata Consultancy Services v. Cyrus Investments*: a turning point

In *Tata Consultancy Services Ltd. v. Cyrus Investments (P) Ltd.*, the Supreme Court was called upon to consider, among other questions, whether the removal of Cyrus Mistry as Executive Chairman of Tata Sons Limited, and subsequently as a director, amounted to oppression and mismanagement of the affairs of the company.[21] The NCLAT had earlier allowed the appeal of the two Mistry-group shareholders, holding the removal illegal, restoring Mistry as Executive Chairman for the remainder of his term and setting aside the company's conversion into a private company.[22] The Supreme Court set that order aside. It held that a company does not become a quasi-partnership merely by reason of the history of its shareholding, that no relationship in the nature of a quasi-partnership between the Tata group and the Shapoorji Pallonji group had been pleaded or established, and that the removal, having followed the procedure prescribed by the Act and the company's articles, did not without more amount to oppression; it also held that the NCLAT's conclusion that the facts otherwise justified a winding up of Tata Sons on the just and equitable ground could not be sustained.[23]

The judgment is significant for present purposes because it reasserts a narrower, more procedurally oriented conception of oppression for large companies, one that affords considerable deference to board and shareholder decisions taken in accordance with law, even where those decisions are commercially or personally consequential for the individual affected. For minority shareholders, as distinct from ousted executive directors who are also significant shareholders, the practical takeaway is that formal compliance with procedure by the majority

[19] See *Sangramsinh P. Gaekwad v. Shantadevi P. Gaekwad*, (2005) 11 SCC 314, 359–61.
[20] See The Companies Act, No. 18 of 2013, INDIA CODE (2013), § 169 (removal of directors by ordinary resolution).
[21] *Tata Consultancy Services*, *supra* note 3, at 470.
[22] *Cyrus Investments (P) Ltd. v. Tata Sons Ltd.*, 2019 SCC OnLine NCLAT 858 (decided 18 December 2019).
[23] *Tata Consultancy Services*, *supra* note 3, at 512–15.

will generally be difficult to characterise as oppressive, however commercially harsh the outcome, unless accompanied by an independent showing of lack of probity, discrimination, or misuse of fiduciary power.

IV. Critical analysis: adequacy gaps

A. Procedural barriers: the Section 244 threshold

The eligibility threshold under Section 244 operates as the first and, in numerical terms, probably the most consequential barrier to relief. A shareholder holding a small percentage of a widely held company's shares, who is individually and directly affected by oppressive conduct (by being denied information to which they are entitled, for instance, or by having their shareholding diluted through a related-party allotment), may nonetheless fail to meet either the one-tenth membership threshold or the one-tenth shareholding threshold, and may be unable, practically, to organise the requisite number of similarly affected members, particularly where shareholding is dispersed and shareholders are not in contact with one another.[24]

The Tribunal's discretionary power to waive this requirement provides a safety valve, but it is used sparingly, and its exercise involves a further preliminary application and hearing before the underlying merits are even reached, adding a further procedural burden and further cost before the petitioner obtains any substantive consideration of the oppression complained of.[25] The effect is that Section 244 filters out precisely the individual, low-stake shareholders whom the remedy might most usefully protect, while leaving the remedy fully accessible to well-resourced minority blocks capable of aggregating the requisite shareholding, a class of shareholder generally better placed to protect its own interests by other means, including negotiated exit or board representation.

B. Delay and the institutional capacity of the NCLT

A second, and arguably more fundamental, adequacy gap concerns the institutional capacity of the NCLT. The Tribunal is burdened with jurisdiction over insolvency proceedings under the Insolvency and Bankruptcy Code, 2016, in addition to company law matters, and oppression and mismanagement petitions, being fact-intensive and often involving voluminous documentary evidence and extended cross-examination, are frequently protracted.[26] Multi-year pendency is not unusual, and appeals to the NCLAT and further appeals to the Supreme Court,

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[24] See The Companies Act, No. 18 of 2013, INDIA CODE (2013), § 244(1).
[25] *Id.* § 244(1), proviso; see also *Cyrus Investments (P) Ltd. v. Tata Sons Ltd.*, 2017 SCC OnLine NCLAT 261 (granting a waiver of the Section 244 threshold before the merits were reached).
[26] Cf. MINISTRY OF CORPORATE AFFAIRS, REPORT OF THE COMPANY LAW COMMITTEE (2022) (observing that the Tribunal hears matters under both the Companies Act, 2013 and the Insolvency and Bankruptcy Code, 2016 and is reported to be overburdened).

as the Tata litigation itself demonstrates, can extend the overall timeline of a single oppression dispute well beyond four years: the company petitions in that matter were filed in December 2016 and were finally decided by the Supreme Court in March 2021.[27]

For a minority shareholder, this delay is not a neutral inconvenience. Value in the underlying company may be eroded, diluted, or dissipated during the pendency of proceedings; the oppressive conduct complained of may continue or be repeated; and the shareholder's own resources, both financial and, in the case of individual petitioners, personal, for sustaining protracted litigation against a well-resourced controlling group are finite. A remedy that is doctrinally available but takes years to obtain, during which the underlying harm may become irreversible, cannot be regarded as fully adequate in a practical sense, however sound its theoretical design.

C. Substantive ambiguity in "oppression" and "prejudicial to public interest"

The absence of statutory definitions for "oppression," "mismanagement," and conduct "prejudicial to public interest" has already been noted. While judicial elaboration through cases such as *Needle Industries* and the Tata litigation provides some guidance, the standard remains highly fact-sensitive and, in application, inconsistent across cases and benches. What one bench treats as an isolated commercial disagreement, another may treat as evidence of a sustained course of oppressive conduct.[28] The reliance on doctrines imported from English and Scottish case law, the just and equitable linkage applied in *Needle Industries* and the quasi-partnership doctrine drawn from *Ebrahimi*, compounds this uncertainty, since their application to Indian corporate structures, which vary enormously from small family companies to complex holding structures such as Tata Sons, has not been reduced to any settled framework of factors or thresholds.

This ambiguity has a direct bearing on adequacy: a minority shareholder contemplating a Section 241 petition cannot easily predict, *ex ante*, whether the conduct complained of will be found to cross the threshold of oppression, which in turn affects the shareholder's ability to assess the costs and risks of litigation, to negotiate a settlement from a position of relative strength, or to seek alternative remedies such as a civil suit or a complaint to the securities regulator where applicable.

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[27] See *Tata Consultancy Services*, *supra* note 3 (company petitions filed before the NCLT in December 2016 and finally decided by the Supreme Court on 26 March 2021).

[28] Compare *Sangramsinh P. Gaekwad v. Shantadevi P. Gaekwad*, (2005) 11 SCC 314, with *Dale & Carrington Invt. (P) Ltd. v. P.K. Prathapan*, (2005) 1 SCC 212.

D. Comparative perspective: the unfair prejudice remedy in English law

A brief comparative reference is instructive. Section 994 of the Companies Act 2006 permits a member of a UK company to petition on the ground that the company's affairs are being or have been conducted in a manner unfairly prejudicial to the interests of members generally or of some part of the members, including the petitioner.[29] Two features of the English provision are notable by contrast with the Indian framework. First, the English statute contains no counterpart to the pre-condition in Section 242(1)(b) that the facts otherwise justify a winding-up order, and it adopts "unfair prejudice" rather than "oppression" as its criterion; in *O'Neill v. Phillips* Lord Hoffmann explained that fairness is the standard by which the court decides whether to intervene, informed by, but not confined to, the equitable principles developed in the just and equitable winding-up jurisdiction.[30] Second, and perhaps more significantly for present purposes, English law imposes no numerical or shareholding threshold analogous to Section 244; any member may petition regardless of the size of their holding, subject of course to the ordinary costs risk of litigation.[31]

This is not to suggest that the English position is without its own difficulties. Cost remains a significant practical barrier there too, and unfair prejudice litigation is far from swift. But the absence of a numerical gatekeeping requirement removes one layer of procedural obstruction that the Indian framework retains, and suggests that the Section 244 threshold is a policy choice rather than an inevitable feature of an oppression-style remedy.

V. Recommendations

Three specific reforms would meaningfully improve the practical adequacy of the Section 241–242 remedy without disturbing its underlying doctrinal structure.

First, the Section 244 threshold should be relaxed, either by lowering the numerical and shareholding requirements or by converting the waiver power into a more readily available procedural entry point, assessed on a *prima facie* basis at the time of filing rather than through a separate contested application. This would preserve a filter against genuinely frivolous petitions while reducing the burden on individual shareholders with legitimate, if numerically small, grievances.

Second, time-bound disposal norms, analogous to those prescribed for certain categories of matters under the Insolvency and Bankruptcy Code, 2016, should be considered for oppression

[29] Companies Act 2006, c. 46, § 994 (UK).
[30] See *O'Neill v. Phillips*, [1999] 1 WLR 1092 (HL) 1098–99 (Lord Hoffmann).
[31] Companies Act 2006, c. 46, § 994(1) (UK); cf. The Companies Act, No. 18 of 2013, India Code (2013), § 244(1).

and mismanagement petitions, particularly given the NCLT's dual and increasingly insolvency-dominated docket. Even a non-binding target timeline, coupled with periodic reporting on pendency, would create institutional pressure to prioritise these matters.

Third, the Ministry of Corporate Affairs, or alternatively the Supreme Court through a suitably framed reference, should consider articulating clearer guiding factors, short of a rigid statutory definition, for assessing when conduct crosses the threshold of oppression, distinguishing more clearly between the standard applicable to closely held, quasi-partnership-style companies and that applicable to large, professionally governed companies of the kind considered in the Tata litigation. This would not eliminate judicial discretion, which is properly suited to fact-sensitive company law disputes, but would reduce the present degree of unpredictability that undermines shareholders' ability to assess their position before committing to years of litigation.

VI. Conclusion

Sections 241 and 242 of the Companies Act, 2013 provide minority shareholders with a doctrinally sound and remedially powerful mechanism to challenge oppressive and mismanaged conduct within a company. The Tribunal's powers under Section 242 are broad, and Indian courts, from *Needle Industries* onward, have developed a reasonably coherent, if imported, body of principles governing what constitutes oppression. The Supreme Court's decision in *Tata Consultancy Services v. Cyrus Investments* further clarified, even if it did not resolve every difficulty, the limits of the quasi-partnership doctrine in the context of large, professionally governed companies.

However, the adequacy of a remedy cannot be assessed by reference to its doctrinal architecture alone. This paper has argued that the practical value of the Section 241–242 remedy to the ordinary minority shareholder is significantly diminished by the restrictive eligibility threshold under Section 244, by chronic delay before the NCLT and the appellate fora, and by continuing ambiguity in the substantive standard of oppression. A comparison with the English unfair prejudice remedy suggests that at least the first of these barriers is a matter of policy choice rather than doctrinal necessity. Addressing these procedural and institutional gaps, through a relaxed eligibility threshold, time-bound disposal, and clearer guiding standards, would go a considerable distance toward converting Sections 241–242 from a right that exists on paper into a remedy that is genuinely available to the minority shareholders it was designed to protect.

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