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Legal Framework and Emerging Trends of Shareholder Activism in India

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ABSTRACT

“This article delves into the intricate landscape of shareholder activism within the Indian context, examining its legal framework and the evolving patterns that have surfaced. Amidst the dynamic economic and corporate climate of India, shareholder activism has gained momentum, reshaping the traditional dynamics of corporate governance. The piece meticulously scrutinizes the legal infrastructure governing shareholder activism in India, analyzing statutes, regulatory frameworks, and judicial precedents that set the stage for shareholder engagement. Furthermore, it dissects the emerging trends within this sphere, exploring the shifting tactics, motivations, and strategies adopted by shareholders to wield influence and catalyze change within corporations. Through a comprehensive review of case studies and recent developments, the article aims to provide a nuanced understanding of the multifaceted nature of shareholder activism in India, shedding light on its impact, challenges, and potential implications for corporate governance and the broader business landscape.”

Keywords: *Shareholder activism, corporate governance, minority shareholders, Shareholder – directors dispute, company law.*

I. INTRODUCTION

Shareholders’ active involvement and responsible actions play a key role in order to effectively maintaining competitive control and promoting an accountable business culture.² In academic circles, numerous scholars concur that safeguarding the interests of shareholders stands as a key method to encourage robust corporate governance.³ As a result of strong corporate governance principles, the idea of said concept has emerged as a prominent topic in the corporate sphere. Ongoing discussions & debates persist regarding this matter within the corporate world.

Scholars refer to shareholder activism as "the new corporate governance norm" since it is a sophisticated and significant driver of corporate transformation.⁴ and executives to contemplate

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² Sarina Othmana and William G. Borges, *Shareholder Activism in Malaysia: Is It Effective?* 172 SOCIAL AND BEHAVIOUR SCIENCE 427, 427 (2015).

³ M Becht, M., J. Franks et. al. *Returns to Shareholder Activism: Evidence from a Clinical Study of the Hermes UK Focus Fund* 22(8) REVIEW OF FINANCIAL STUDIES, 3093–3129 (2008).

⁴ L.M. Fairfax, *From apathy to activism: The emergence, impact, and future of shareholder activism as the new*

whether they should become their “own activists”⁵ The actions taken by shareholders to influence corporations' practices, priorities, and operations are referred to as shareholder activism.⁶

In the opinion of Stuart Gillan and Laura T. Starks, “Shareholder activism is the steps made by the shareholder(s) to change the business model, policy, working culture, actions, or decisions of the corporate enterprises without transforming the existing control with respect to shareholders' benefits or ideology.”⁷

Mary Ann Cloyd defines “shareholder activism” as “*a range of activities by one or more of a publicly traded corporation's shareholders that are intended to result in some change in the corporation.*”⁸

II. LEGAL FRAMEWORK IN INDIA

Although shareholder activism is a well-developed phenomenon in the US, UK, and Continental Europe, it is still in its early stages of development in India. India has embraced English legal concepts as it was formerly a British colony during the early stages of the Industrialization period. However, the realities of India's business environment are very different from those of other countries. The formation of activist shareholders in Indian enterprises is impeded by highly concentrated ownership and managerial authority.⁹ The dominant position of business families in family-owned businesses as well as the government's role in companies in the public sector, makes it more difficult for minority shareholders to stand up or challenge the current system. Despite India's image as a litigious nation, the evolution of judge-made legislation governing company conduct, such as consequential cases, has been sluggish.¹⁰

In India, shareholder activism has developed in response to a number of difficult problems, including successions, high borrowing levels, and board nominations. This activity has revealed

corporate governance norm 99 BUL Rev.1301–1345, (2019).

⁵ M. Dill, *The change agent: Johnson Controls' CEO undertakes dramatic restructuring*, BizTimes - MILWAUKEE BUSINESS NEWS (Nov. 30, 2015), <https://biztimes.com/the-change-agent-johnson-controls-ceoundertakes-dramatic-restructuring/>.

⁶ M. R. Des Jardine and R. Durand, *Disentangling the effects of hedge fund activism on firm financial and social performance*, 41(6) STRATEGIC MANAGEMENT JOURNAL 1054–1082, (2020).

⁷ Stuart Gillan & Laura T. Starks, *The Evolution of Shareholder Activism in the United States*, SSRN available at <http://ssrn.com/abstract=959670>. (Last visited Oct., 30, 2023).

⁸ Mary Ann Cloyd, *Shareholder Activism: Who, What, When, and How?*, HARVARD LAW SCHOOL FORUM ON CORPORATE GOVERNANCE (April 7, 2015), <https://corpgov.law.harvard.edu/2015/04/07/shareholder-activism-who-what-when-and-how/>.

⁹ Neeraj Grover, *Shareholder activism: Will the Indian landscape change?*, DECCAN HERALD (2020), <https://www.deccanherald.com/opinion/panorama/shareholder-activism-will-the-indian-landscape-change850413.html> (last visited October 14, 2023).

¹⁰ Vikramaditya Khanna & Umakanth Varottil, *The rarity of derivative actions in India: reasons and consequences*, DERIV. ASIA A COMP. FUNCT. APPROACH 369–397, 378 (2012).

administrative issues in well-known listed companies which have been worsened by corporate scams such as the Satyam Scam and the demise of Kingfisher Airlines. The actions of corporate boards were scrutinised in these cases. A strong shareholder movement is required not only to address India's falling corporate governance standards, but also to boost the country's appeal as an investment destination.

Despite enduring systemic and institutional vulnerabilities hindering shareholder activism in India for an extended period, recent positive developments have surfaced, particularly some specific investors. This has led to heightened engagement with company promoters.¹¹ Over the past two decades, significant legal and regulatory measures have been introduced to bolster the protection of shareholder interests. Key enactments include the Companies Act, 2013¹², and subsequent amendments¹³, as well as guidelines from the Securities and Exchange Board of India (SEBI), notably through the SEBI Act, 1992¹⁴, SEBI Regulation, 2015¹⁵, SEBI Regulation, 2018¹⁶ alongside circulars for listed companies.¹⁷ The implementation of recommendations from the Kotak Committee¹⁸ and guidelines from the Insurance Regulatory and Development Authority of India¹⁹ regarding stewardship and the expansion of proxy advisory firms have further marked pivotal milestones in fostering shareholder activism within the Indian legal framework.

SEBI's improved regulatory structure, particularly Clause 49 of the old Listing Agreement and the subsequent introduction of the SEBI ICDR Regulations, has raised corporate governance standards among Indian listed companies. Furthermore, the establishment and regulation of proxy advice firms under SEBI's supervision, as defined by the SEBI (Research Analysts) Regulations, 2014, is a significant development. These businesses now provide professional

¹¹ Nikhil Narayanan, *In review: recent trends in shareholder activism in India*, LEXOLOGY (2020), <https://www.lexology.com/library/detail.aspx?g=f065b47c-b5cc-416c-a1b4-06c36998f508> (last visited October 14, 2023).

¹² Companies Act 2013 (Act No. 18 of 2013).

¹³ See India Code Available at https://www.indiacode.nic.in/handle/123456789/2114?view_type=browse&sa_m_handle=123456789/1362 Last Seen on October 14, 2023).

¹⁴ Security Exchange Board of India Act, 1992 (Act No. 15 of 1992).

¹⁵ Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulation, 2015. Available at <https://www.sebi.gov.in/legal/regulations/> (Last seen on October 20, 2023).

¹⁶ Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulation, 2018 (No. SEBI/LAD-NRO/GN/2018/31). Available at https://www.sebi.gov.in/legal/regulations/jan-2020/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-regulations-2018-last-amended-on-january-01-2020-_41542.html (Last seen on October 20, 2023).

¹⁷ See India Code Available at https://www.indiacode.nic.in/handle/123456789/1891?view_type=browse&sa_m_handle=123456789/1362 (Last Seen on October 13, 2023).

¹⁸ SEBI, Report of the Committee on Corporate Governance (2017), https://www.sebi.gov.in/reports/reports/oct2017/report-of-the-committee-on-corporate-governance_36177.html.

¹⁹ Insurance Regulatory and Development Authority of India, Guidelines for Stewardship Code for Insurers in India, Ref No. IRDA/F&A/GDL/CMP/059/03/2017 (Issued on March 23, 2017).

counsel to shareholders, allowing them to make better informed and reasoned decisions. While their impact may not match that in the United States, their significance as a critical market participant cannot be overstated. Regarding shareholder grievances, the current mechanism allows various forms of shareholder activism.

Form of Shareholder activism

In the nineteenth century, the core issue of contention was whether shareholders or the board of directors were the ultimate owners of the corporation. In this regard, it is a well-established principle that investors are the corporation's owners, while directors are responsible for running the business's everyday affairs and decision-making authority. Thus, it is evident that stockholders have no say in the day-to-day operations of the corporation. Provided that shareholders are empowered under company law to exert control over the Board of Directors' decisions, policies, or activities by various forms of activism. A few important forms of shareholder activism are the following: –

(I) Resolution:

The use of resolutions as tools for shareholder activism has been seen in many cases where resolutions were proposed regarding governance reforms, executive compensation, or environmental sustainability by activist shareholders during meetings. Ss. 100 to 107 of the Companies Act, 2013, specially deals with the mechanisms for shareholders to propose and pass resolutions at the time of the company's general meetings²⁰, including extraordinary²¹ and special resolutions.²² These provisions empower shareholders to raise their concerns, influence decision-making, and to make changes in administrations by introducing resolutions on various matters like alterations to the company's constitution²³, appointments²⁴, removal of directors²⁵, or changes in capital structure²⁶.

Notably, rule 20²⁷, deals with the procedural aspects governing the submission and circulation of resolutions proposed by shareholders. This rule delineates the requisite procedures for lodging resolutions, mandating statutory notice periods and abide by with formalities for their circulation among shareholders prior to meetings.

²⁰ *Supra* Note 11 at S. 96.

²¹ *Supra* Note 11 at S. 100.

²² *Supra* Note 11 at S. 114.

²³ *Supra* Note 11 at Ss. 13 – 14

²⁴ *Supra* Note 11 at S. 152.

²⁵ *Supra* Note 11 at S. 169.

²⁶ *Supra* Note 11 at S. 61.

²⁷ The Companies (Management and Administration) Rules, 2014, R. 20.

In the landmark case of *Hindustan Lever vs. Alimenta S.A. and Others*²⁸, Supreme court emphasized the sanctity of shareholder resolutions, highlighting the need for fairness, transparency, and compliance with statutory provisions in their passing. Additionally, Apex court in the case of *Bhagwati Developers Pvt. Ltd. v. Peerless General Finance and Investment Co. Ltd.*²⁹, decided that the significance of resolutions passed at properly convened meetings, affirming their binding nature on all shareholders.

In the case of minority shareholders, Section 241 enables minority shareholders to approach the National Company Law Tribunal (NCLT) if they believe the company's affairs are being conducted in a manner oppressive to any member or prejudicial to the public interest.³⁰

In short, shareholder resolutions, as stipulated under specific sections and rules of the Companies Act, 2013, are fundamental instruments of shareholder activism in India. Judicial decisions have reinforced their important role in effecting corporate change, underscoring the importance of following to statutory procedures and ensuring fairness and transparency in their passage.

(II) Proxy Voting Strategies: –

Proxy voting strategies serve as an important tools in the realm of shareholder activism, wielding influence within Indian corporate law. Section 105³¹ says about the concept of proxy voting, allowing shareholders to empower one as proxies to participate & cast votes at general meetings. S. 110 of the act, mandates the provision of electronic voting facilities or any other technological way of voting for certain resolutions for enhancing shareholder participation and engagement. Apart from that, SEBI's regulations, particularly the SEBI (Listing Obligations and Disclosure Requirements), 2015, and the SEBI (Research Analysts) Regulations, 2014, deals with the operations of proxy advisory firms, shaping their role and impact within the shareholder activism landscape. Additionally, judicial precedents in (*Satyam Computer Services Ltd. v. Price Waterhouse Coopers*) have underscored the significance of proxy voting in safeguarding shareholder interests and ensuring corporate governance.

Proxy voting strategies, facilitated by statutory provisions and regulatory frameworks, stand as instrumental mechanisms empowering shareholders to exercise their rights, influence decision-making, and hold corporations accountable within the Indian corporate landscape.

²⁸ *Hindustan Lever & Anr. v. State of Maharashtra & Anr*, Supreme Court of India (Civil Appeal 8232 of 1996) Judgement on November 11, 2003.

²⁹ *Bhagwati Developers Pvt. Ltd. v. Peerless General Finance and Investment Co. Ltd.*, Supreme Court of India (Civil Appeal 7445 of 2004) Judgement on July 15, 2013

³⁰ *Supra* Note 11 at S. 241. (*Application to Tribunal for relief in cases of oppression, etc.*)

³¹ *Supra* Note 11 at S. 105. (*Proxies*)

III. EMERGING TRENDS OF SHAREHOLDER ACTIVISM

Shareholder activism is not a new notion in business. Shareholder activism is developing in India, but it has developed in the Western world, notably in England and the United States of America. One of the oldest and more renowned incidents of shareholder activism worldwide is often ascribed to Benjamin Graham, an American businessman and shareholder activist, in the beginning of the 1920s. Graham was a pioneer in campaigning for shareholder rights and fair treatment, notably via his engagement with Northern Pipeline Company. Graham launched a campaign in 1926 by challenging Northern Pipeline corporation management and their desire to reorganise the corporation in a way that he saw as unjust to minority owners. Graham's activism and attempts to preserve shareholder interests in this case established some fundamental concepts for shareholder activism that have impacted later shareholder actions throughout the world.³²

The Bombay Burmah Trading Corporation Case in 1956 was the first instance of shareholder agitation in India. In this case, a group of minority shareholders opposed the action of the company's management and the majority owners. The conflict emerged as a result of the issuing of bonus shares, which the minority shareholders feared would diminish the value of their shares. This case is sometimes recognized as a watershed moment in Indian corporate history, showing minority shareholders' rights and their power to dispute decisions hurting their interests.

Although recent patterns of shareholder activism within India show promising signs, the achievements thus far by the shareholder movement remain insignificant. The continuation of concentrated shareholding remains a significant element, restricting dissident shareholders' efficacy to situations involving flagrant breaches of corporate governance principles. Notably, the study "The India Proxy Season 2017,"³³ published by the shareholder consulting firm In Govern Research Services, provides useful information. According to the report, 45 of the 100 companies that comprise the Nifty 100 index experienced at least one instance where a resolution presented during the Annual General Meeting (AGM) faced opposition from a minimum of 20% of shareholders involved in the process.

Concerning the specific areas in which the Indian shareholder movement has made strides, one noticeable tendency is the steady increase of formal activism, as seen by loud involvement at Annual General Meetings (AGMs) and other business venues. Informal activism, on the other

³² Walter Frick, "The Case for Activist Investors by Walter Frick", HARVARD BUSINESS REVIEW (March 2016) <https://hbr.org/2016/03/the-case-for-activist-investors> (Last Seen on November 12, 2023).

³³ INGOVERN, India Proxy Season 2017: An Analysis (2017).

hand, is still relatively undeveloped, often taking place behind closed doors and away from public scrutiny. Let's make case-study of a few well-settled cases related to shareholder activism in India to conclude the method and direction of shareholder activism in India.

I. Tata Motor Limited Case (2014):

In 2014, Tata Motors Ltd faced a pivotal juncture when a proposal popped up with respect to the remuneration for its earlier managing director, Karl Slym, who unexpectedly passed away in January of that year. The plan also included remuneration for two additional directors. The payments to full-time directors that surpass 5% of the net profit of the organization are required by law to be approved by minority shareholders. Despite this, the proposal was faced with opposition from Tata Motors Ltd's minority shareholders, resulting in the firm failing to get the required 75% of minority shareholder votes for clearance. This was a noteworthy case in which India's biggest carmaker confronted shareholder disagreement on a critical pay issue.³⁴

II. Eicher Motor Ltd. (Royal Enfield) Case (2021):

On the 17th of August 2021, Eicher Motors Ltd., the parent company of the renowned motorcycle brand Royal Enfield, made a proposal at its 39th Annual General Meeting (AGM). The proposal centered around the re-election of Siddhartha Lal as managing director of Royal Enfield, extending his tenure for next five-year period. Intriguingly, the proposal also sought approval for remunerating Lal with 3% of the company's profits.³⁵

However, the situation of this corporate narrative took an unexpected turn when the company's shareholders convened to deliberate on the proposal. Astonishingly, the majority of the members expressed their disagreement by rejecting the proposal to increase Lal's remuneration. The intricacies of the voting process unveiled a precarious balance, as the proposal required a substantial 75% approval to pass muster. Regrettably, for Eicher Motors, only 73% of the votes favored Lal's re-appointment with the proposed remuneration, leaving 27% in opposition.³⁶

As a result, in the aftermath of this pivotal AGM, Eicher Motors Ltd., found itself compelled to recalibrate its approach. A strategic decision emerged as the company opted to repropose the appointment of Siddhartha Lal, this time with a modified remuneration structure of 1% of profits. This adjustment proved to be the pivotal shift, ultimately garnering the necessary

³⁴ Anirudh Laskar, *Tata Motors shareholders reject proposals executive pay*, THE MINT (July 04, 2014) <https://www.livemint.com/Companies/r2bfqMfLmzHLPQzOsJXQwJ/Tata-Motors-shareholders-reject-remuneration-proposals-for-t.html> (Last Seen on October 25, 2023).

³⁵ Aparna Banerjee, *Eicher Motors reappoints Siddhartha Lal as MD, board clarifies on remuneration*, THE MINT (August 23, 2021) <https://www.livemint.com/companies/news/eicher-motors-reappoints-siddhartha-lal-as-md-11629722642250.html> (Last seen October 25, 2023).

³⁶ *Ibid.*

support from the shareholders, and thereby securing the successful re-appointment of Siddhartha Lal as the managing director of Eicher Motors Ltd.³⁷

III. Tata-Mistry Case (2016):

The enthralling saga between Tata Sons Private Limited and its former executive chairman, Mr. Cyrus Mistry, stands as one of India's most fervent corporate battles in recent memory. A pivotal ruling by the Supreme Court of India in the case of *Tata Consultancy Services Limited v Cyrus Investments Private Limited*³⁸ unraveled a myriad of critical issues encompassing oppression, mismanagement, directors' fiduciary duties, and the jurisdictional scope and powers of the National Company Law Tribunal (NCLT).

The Tata-Mistry controversy started from allegations of oppression and mismanagement made by the Shapoorji Pallonji (SP) Group, minority shareholders in Tata Sons, through Mr. Mistry. Following that, numerous Tata Group entities followed the lawsuit, relieving Mr. Mistry of his directing responsibilities. Recognizing what to expect, Mr. Mistry willingly left from the remaining Tata Group corporations.³⁹

The SP Group, where Mr. Mistry wielded significant control, felt aggrieved by these actions. Consequently, two SP Group companies, Cyrus Investments Private Limited and Sterling Investment Corporation Private Limited, approached the NCLT, alleging unfair prejudice, oppression, and mismanagement under sections 241 and 242, in conjunction with section 244 of the Companies Act. However, the NCLT ruled in favor of the Tata Group in March 2017, dismissing the SP Group's petition on all factual and legal grounds. Unfazed, the SP Group appealed before the National Company Law Appellate Tribunal (NCLAT), which in a sweeping verdict in December 2019, ruled in favor of the SP Group on all contested issues. The case eventually ascended to the Supreme Court, culminating in a comprehensive judgment on March 26, 2021.⁴⁰

The Supreme Court outlined the requirements for using the "just and equitable" phrase under sections 241 and 242 to justify the winding-up of a firm. It required two things: a functional standstill affecting the company's operations at the board or shareholder level, and the establishment of a corporate quasi-partnership typified by an irreversible breakdown of trust among participating members. Critically, the court observed the absence of proof offered by the

³⁷ *Ibid.*

³⁸ *Tata Consultancy Services Limited v. Cyrus Investments Private Limited and Ors.* Supreme Court of India (Civil Appeal Nos. 440-441, 13-14, 442-443, 19-20, 444-445, 448-449, 263-264 and 1802 of 2020).

³⁹ *Ibid.*

⁴⁰ *Ibid.*

SP Group indicating a stalemate in Tata Sons' activities. Despite the historical association between the SP Group and the Tata Group, the court ruled that a corporate quasi-partnership did not exist. The court highlighted that Mr. Mistry's dismissal was in the best interests of the company and not suggestive of tyranny by emphasizing his elevation through senior ranks inside Tata Sons. Moreover, his subsequent dismissal as a director was attributed to unprofessional conduct, not prejudicial actions.⁴¹

Furthermore, the court emphasised the company's promoters' charity trust status, stating that the company's demise would have a negative influence on their humanitarian endeavours. As a result, the NCLAT's confirmation of detrimental behaviour in the company's affairs and Mr. Mistry's dismissal were overruled by the Supreme Court.

This landmark ruling by the Supreme Court in the Tata-Mistry case delineates the stringent criteria necessary for asserting oppression and mismanagement claims, underscoring the intricacies and stringent thresholds within corporate governance and shareholder activism in India's legal landscape.

IV. CONCLUSION AND SUGGESTIONS

Shareholder activism has shown to be an effective technique for keeping organisations responsible and promoting good reforms in corporate governance. The evolution of legal frameworks and legislative reforms has considerably increased the powers of shareholders, enabled transparency and supported long-term business growth. The trajectory of shareholder activism is placed at the crossroads of continuous legislative changes, regulatory adjustments, and the emerging panorama of ESG (Environmental, Social, and Governance) activism, indicating opportunities for future advancement in its efficacy.

Supporting and encouraging shareholder activism is beneficial on several levels. Companies stand to profit by publicly articulating their aims to institutional investors while securely tying management actions to the organization's broader objectives. Limiting the issuing of injunctions or restraining orders against requisitioned meetings should not become a common practice, ensuring shareholders continue to have adequate opportunity to consider and address significant business concerns. It is vital for courts to use caution and moderation when issuing injunctions, protecting shareholders' rights to resolve significant business challenges.

As a general rule, the judiciary should avoid interfering in the internal affairs of businesses. However, in cases when proposed decisions clearly violate statutory boundaries, the courts have

⁴¹ *Ibid.*

the jurisdiction to intervene, preventing the board from organizing meetings that violate existing statutory provisions.

In summary, the intersection of shareholder activism, corporate governance, and judicial monitoring needs a fine line. Facilitating shareholder engagement should not jeopardise a company's managerial autonomy, but rather act as a means to promote responsibility and smart decision-making. Courts must intervene sparingly, only where required to enforce legal compliance, safeguarding the integrity of the corporate structure while preserving shareholders' avenues for meaningful input.

A dynamic interaction of legislative frameworks, regulatory modifications, and growing corporate ethos centered on sustainability continues to define the evolving landscape of shareholder activism. Striking a healthy balance between shareholder rights, corporate governance, and judicial monitoring will be critical in defining a future in which shareholder activism is an effective and responsible tool for encouraging corporate responsibility and long-term success.

Expanding on the current study, future endeavors could focus on two pivotal areas. Firstly, there's a pressing necessity for extensive empirical research to comprehensively gauge the impact of shareholder activism within the Indian context. Such research would facilitate a deeper understanding of its desirability and consequential effects. Secondly, concerted efforts should be directed towards empowering minority shareholders who often operate under the overshadowing influence of controlling shareholders. This empowerment could be achieved through measures like implementing cumulative voting for the appointment of independent directors, restricting controller shareholders' voting rights in interested party transactions, among other similar initiatives. Establishing such an enabling regulatory environment would serve as a catalyst, incentivizing activist shareholders to drive improvements in corporate governance standards within listed companies where they hold investments. Moreover, it would contribute to an overarching elevation of governance norms throughout the country's corporate landscape.

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