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Shareholder Activism: Comparative Analysis in India and UK

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ABSTRACT

Shareholder Activism encapsulates a new dimension in the area of corporate governance. Decision-making power of the shareholders play an integral role in corporate meetings. The activism culminates as an important right for the shareholders who takes decision and thereby influencing the company's policies as a whole. The amendments in the company's policies will thereby increase the shareholder's value and will enable the shareholders to actively participate in the company meetings. When the shareholder feels that certain amendments should be done in these policies then the concept of shareholder activism came into limelight. The minority shareholder on the other hand faces oppression due to mismanagement of the company's affairs. Due to oppression and mismanagement of the company's affairs, the rights of minority shareholders are at stake and they are usually in an disadvantageous situations with limited voting rights. This activism will provide an ample opportunity for them such as active participation of the shareholders, better management strategies of the organisation and equal voting rights to both majority as well as minority shareholders. This will ensure the transparency and fairness in the organisation. This foremost step will outshine the rights of the minority shareholders who are less considered while decision-making is conducted in an organization. Through my research paper, I have highlighted as to how there has been an immense rise of activism in United Kingdom but on the other hand, Indian Government are still working on this concept which will protect the rights of the shareholders in the near future. Therefore, Shareholder Activism acts as a beam of light for the minority shareholders which will prove to be a great contribution towards the growth of corporate governance.

I. INTRODUCTION

Shareholder Activism within the corporate law encapsulates the evolving role of the shareholders in influencing corporate governance, strategy and decision-making within the companies. It denotes the proactive involvement of shareholders in advocating for changes within a company. Shareholder Activists leverage their stakes to voice concerns or drive strategic shifts within corporations. It prompts companies to be more responsive to

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shareholder's concerns, fostering greater accountability and transparency. India has over 5,000 listed companies that are traded actively on stock exchanges. There are over 4.8 crore registered investors in India. The Finance Ministry has proposed to increase the Minimum Public Shareholding (MPS) to 35% from the current level of 25%. In 2019, India is ranked 13th in global ranking on protecting the minority shareholder's parameter.[2]

A. Shareholder Activism

Shareholder Activism refers to a range of measures performed by the investors to assert their rights, express concerns and bring about the changes within the companies. The main objective is to increase the shareholder's value and encourage the adoption of sustainable business practices. It is considered to be a set of proactive efforts on the part of the shareholders to change the firm behavior or governance rules. Bernand Black in 1990 defines Shareholder Activism as a formal or informal monitoring of the corporate management. Though wealth maximization is seen as the goal of the shareholder activists, an activist can have socially motivated goals alongwith financially motivated goals.

Shareholder Activist is any shareholder who leverages the rights to affect the conduct of the company and they use defensive (negotiations) and offensive (litigation) tactics to address the matter.

The purpose of Shareholder Activism is to help address the shareholder's concerns and authorises them to question the company's management for its incompetence. It gives the shareholders a sense of ownership and ensures the accountability of the management. Besides financial issues, they can express their disapproval on environmental, social and governance (ESG) matters.

B. Benefits of Shareholder Activism

The benefits of Shareholder Activism are as follows

1. **Improved Corporate Governance** Shareholder activism encourages good corporate governance practices by advocating for transparency, accountability, and ethical behavior by the management and the board of directors.

2. **Increased Accountability** Shareholder activism holds the management accountable for their actions by highlighting issues of interest to shareholders and demanding improved performance and greater shareholder representation.

[2] Divya Kant Sahu, Decoding Shareholder Activism An Indian Perspective, www.jlrs.com/wp-content/uploads/2024/02/40

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3. **Enhanced Shareholder Value** Activism can lead to a better alignment of interests between shareholders and management, ultimately leading to better financial performance, higher shareholder returns, and increased shareholder confidence.

4. **Preventing Corporate Scandals** Shareholder activism can help prevent corporate scandals by raising concerns about unethical or financially risky behavior by the management.[3]

C. Limitations of Shareholder Activism

The limitations of Shareholder Activism are as follows

1. **Short Term Focus** Activist shareholders may focus on short-term gains, which can harm the long-term health and growth prospects of the company.
2. **Costly and Time-Consuming** Activism can be costly and time-consuming for the company and the activist shareholder, leading to disruptions in the company's operations and profitability.
3. **Distracting** Activism can be distracting for the management and board, as they may have to spend valuable time and resources responding to shareholder demands.
4. **Narrow Interests** Some forms of activism may be focused on the narrow interests of a specific group of shareholders, rather than the interests of all shareholders and other stakeholders.

D. Types of Shareholder Activism

The types of Shareholder Activism are as follows

1. Proxy Contests

It occurs when an activist shareholder nominates their candidates for a position on board of directors to replace the incumbent board members. The purpose of Proxy Contests is to gain the control of the company or to pressure the board and the management to change their policies or strategies.[4]

2. Shareholder's Resolutions

Shareholder's Resolutions are the proposals submitted by the shareholders at a shareholder meeting. These resolutions can cover various issues such as appointment of independent directors, executive pay, environment and social issues and other corporate matters.

[3] Ajaz Ul Islam, The Unfolding Of Shareholder Activism In India An Exploratory Study, www.emerald.com/insight/content/doi/10.1108/IJ LMA-07-2023-0167/full/html
[4] Shareholder Activism In India, www.barandbench.com/law-firms/view-point/shareholder-activism-in-india

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3. Litigation

Shareholders can take legal action against the company or its management over issues such as violations of securities law or breaches of fiduciary duties.

4. Engagement with Management

Shareholders can engage with the management of the company through letters, meetings or other types of communication to express their concerns or suggestions.

5. Media Campaigns

Activist shareholders can use the media to publicize their concerns and issues or to put pressure on the management and board to take action.

II. RIGHTS OF SHAREHOLDER ACTIVISM IN INDIA

A. Individual Rights

Some of the individual rights available to shareholders are as follows:

(i) Right to receive information This includes a right to receive copies of the audited financial statement, including the balance sheet and profit and loss account, report of the Cost Auditor upon a direction given by the government, copies of the contracts regarding the appointment of managing director or manager of the company and disclosure of interest by directors and copies of the notices of general meetings of the company and documents annexed with such notice.[5]

(ii) Inspection rights These include a right to inspect statutory registers such as the register of charges, register of members and debenture holders, shareholders' minutes book, and register of directors among others.

(iii) Right to vote, attend general meetings and other allied rights Shareholders enjoy a right to receive notice of general meetings, a right to participate in such meetings, as well as to vote at them personally or by proxy . Equity shareholders have voting rights in proportion to their paid-up shares; they also have a right to receive share certificates and dividend as and when declared.They are entitled to have a share in the company's surplus assets in the event of its winding up.

(iv) Right to transfer shares The Act and the company's articles of association allow shareholders a right to transfer their shares. They may, however, contain certain conditions to

[5] Ashish Rukhaiyar and Krishna Gopalan, Shareholder Activism in India, www.businesstoday.in/interactive/congread/bt500-the rise-of shareholder-activism-61-18-11-2021

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be met by the shareholders before the transfer takes place.

B. Collective or Corporate membership rights of shareholders

Certain rights can be exercised collectively by a company's members via a democratic process. Each member has agreed that a majority vote governs these rights at the general meetings. These rights are also referred to as 'corporate membership rights.' Some of the corporate membership rights enjoyed by shareholders are as follows

(i) Decision Rights Although the company's board of directors is primarily responsible for decision-making, the Act allows for restrictions to be imposed on the board's powers and permits the shareholders to decide in case of specific vital matters related to the company. Their approval can be attained either through passing an ordinary resolution or a special resolution in accordance with the Act.These include amending the company's charter documents – the memorandum and articles of association, appointment and removal of directors, obtaining loans and sale of undertakings exceeding certain thresholds. The company's statutory auditors are also required to be appointed by the shareholders in the annual general meeting (*hereinafter* "AGM") among those recommended by the board or the company's audit committee. Similarly, the shareholders' approval by an ordinary resolution is required when the company desires to enter into related party transactions exceeding certain financial limits. Such provisions ensure the participation of shareholders in matters that are significant to the company.[6]

(ii) Right to file a case for oppression and mismanagement In case of oppression and mismanagement, Section 244 of the Act confers a right to not less than one hundred members of a company or not less than one-tenth of the total number of members, whichever is less, or members holding not less than one-tenth of the issued share capital of the company to apply to the National Company Law Tribunal (*hereinafter* "NCLT") under Section 241 of the Act for claiming relief. In case the rights of any of the members are infringed, or the conduct of the management is prejudicial to the interest of the company or the members themselves, a class action may be instituted by the members against the company meeting certain thresholds against the company, its directors, and third-party advisors.

(iii) Right to requisition an extraordinary general meeting Section 100 of the Act confers a right on members holding not less than $1/10^{th}$ of the company's paid-up share capital to requisition an extraordinary general meeting of the company.

[6] Harshvardhan Korada, Rising Shareholder Activism In India, thehindubusinessline.com/business-laws/rising-shareholder-activism-in-India/article 64910251.ece

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(iv) Right to make an application to the Central Government Members also have a right which may be collectively exercised in respect of making an application to the Central Government for carrying out an investigation into the company's affairs and for the appointment of government-nominated directors. The government, on receiving such a request, can order the Serious Fraud Investigation Office to intervene.

(v) Right to file complaints In order to address security holders' concerns, every listed company that has over 1,000 shareholders, debenture holders, deposit holders and any other security holders during the course of a financial year must establish a Stakeholders Relationship Committee. Listed companies are also required to register themselves on the SCORES portal, which comes under the direct supervision of SEBI. Investors can use this platform to file complaints and track the progress of the complaint.

III. INSTANCES WHERE THE INTERVENTION OF THE ACTIVISTS HAVE IMPACTED THE COURSE OF THE COMPANY'S DECISION

A. Appointments or reappointments

In July 2018, 22.64 per cent of HDFC Ltd.'s shareholders opposed the reappointment of Mr Deepak Parekh as a director. Similarly, in October 2018, Mr Kumar Mangalam Birla's reappointment to the board of Hindalco Industries was opposed by 18.63 per cent of the shareholders. Although both reappointments were scrapped through ultimately, such a showdown concerning corporate India's eminent figures was not only unprecedented but noteworthy too.[7]

B. Related party transactions

There have been several cases in the last few years when shareholders questioned and blocked related party transactions when seen as adverse to the interests of the shareholders.

In 2018, the shareholders opposed the board resolution for a related party transaction of Tata Sponge Iron Ltd. and could not get cleared in the first instance. It was only during a second ballot that the resolution got approved. In the same way, when in June 2017, the board of Raymond Ltd. moved a related party transaction involving a sale of an apartment owned by the company, allegedly at much less than the market price, the resolution was rejected by 70.6 per cent of the voting shareholders, which included only non-promoters.

[7] Heer Kamdar, Shareholder Activism In IndiaAnalysis of Shareholder's Exercise of their corporate franchise in General Meetings, www. https//papers.ssrn.com/sol3/papers.cfm?abstract_id=4378593

C. Proxy advisory firms driven actions

Proxy advisory firms have been instrumental in developing a grounds well against company actions or resolutions purportedly aimed against the interests of the shareholders. Be it recommending voting against the executive remuneration resolution of Tata Motors in 2014, or the stand taken by them vis-a-vis the leave absence issue of the then CEO of ICICI Bank or recently in 2019 taking on the management of Sterling Wilson and exposing it for not using its IPO proceeds to repay its debts, the advisory firms made an impact in aiding the shareholder action.

D. Action against fundraising or proposed investments

A proposal submitted by the board of Suzlon Energy, a renewable energy solutions provider, to raise INR 2900 crore via the issue of equity shares and debentures was rejected by its shareholders in July 2018. The resolution could muster only 65.12 per cent votes against the special resolution requirement of 75 per cent.Similarly, Sun Pharma, India's biggest pharma company, faced tremendous resistance from its shareholders in its November 2015 bid for a potential $225 million investment plan in the wind energy sector in the United States. The company had to shelve its plans.[8]

The shareholder movement in India also has some unique milestones to its credit apart from conventional activism. In late 2016 and 2017, Infosys, the bellwether of the Indian IT landscape, with a formidable reputation in corporate governance, saw its founder shareholders raising issues against the alleged impropriety shown by the company in extending the severance payments to certain departing executives. Although the management team was exonerated by a subsequent investigation carried out by an international law firm, the fissures resulting from the spat led to the exit of the CEO of the company. We have witnessed some stray incidents also which give promising signals about the emerging possibilities in shareholder activism. Block investments by 'outside' investors into Jio, an arm of Reliance Industries Limited, the biggest listed company in India, is a very positive move. Jio being an unlisted company at present, if these investors cultivate their engagement with the management over time, it will set the stage for active 'outside' shareholders to influence a company's corporate strategy, ushering in a new era for shareholder activism.The media has also emerged as a significant player in developing public opinion about corporate affairs and has significantly fueled the growth of shareholder activism in India. The face-off Mr Narayan Murthy had with the Infosys board was well covered by the media and generated tremendous public curiosity.

[8] LR Dua And Sanjeev Kaul, Shareholder's Rights and Shareholder Activism, 2003, www.chambers.com/downloads/gpg/737/010-india.pdf

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IV. LEGAL PROVISIONS UNDER THE COMPANY'S ACT

Section 241 of the Companies Act, 2013 states that if the company affairs are being conducted in an oppressive and prejudice manner then the shareholder can file an application before the tribunal court. However the government can itself file for an application, if he thinks that the affairs of the company are prejudicial to the public interest.

Section 108 of Companies Act, 2013 prescribes a manner in which a member of the company can cast his vote through electronic means. Additionally it is suggested to the company to conduct meeting by providing video conferencing connectivity in at least 5 different locations.Usually general meetings are conducted at the registered office which makes it difficult for small shareholder to travel to these locations. So these shareholders should be allowed to cast their vote electronically i.e. E-voting.

In July 2012, SEBI mandate the listed companies to start the facility of E-voting. Currently the top 500 listed companies of BSE & NSE provides the facility of e-voting to their shareholders. However it is now extended to all the listed companies.

- Proxy advisory firms are the research organizations which evaluate the pros and cons of the matters such as acquisitions, merger, CEO appointments, CEO pay, etc. These firms do a deep analysis and produce a detailed report to advice shareholders on how they should work to safeguard their interest.
- Since 2010, India has a burst in the industry of proxy advisory firms. Within a short period of time, 3PFA have been published in India and they have published hundreds of recommendation to the shareholders like appointment of directors and auditors, major transactions and mergers.
  Now with the recommendation of PFA, the companies can now no longer exploit the small shareholders and can take part in corporate decision making.
- Section 188 of Companies Act 2013 states that if a company want to enter into contract with related party then it has to take the consent of the directors and the report with the justification for entering into such a contract should be sent to the shareholders.If the contract is entered without the approval of the board and if it has not been ratifies by the shareholders within 3 months then the contract will be voidable at the option of the board and the directors will be responsible for the loss, if any occurred.
- According to Section 151 of the Companies Act 2013, at least one director must be elected by small shareholders in accordance with the Central government's terms and

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procedures.

- A small shareholder is the one who hold the maximum share value of Rs. 20,000 or any other sum as may be prescribed.

V. THE METHODS OF PARTICIPATION IN SHAREHOLDER ACTIVISM IN INDIA

There are several mechanisms utilised by shareholders to become more proactively involved in the management of the company they have invested in. These are

- **The purchase of shares with voting rights** If a person or group of persons hold a greater number of such shares, they would have a more influential vote within the meetings of the company.

- **Interaction with the Board of Directors** By frequent interaction with the Board of Directors ('Board') of the company, shareholders can have their voices heard and concerns taken in on a consistent basis. This allows the Board to be more aware of the issues and worries of the shareholders and it develops a rapport and friendliness amongst the shareholders and the members of the Board, which also aids in any dispute resolution where parties may have conflicting ideas on how the company should manage its affairs.

- **Utilising Stakeholders Relationship Committee** A Stakeholders Relationship Committee must be in place for the purpose of resolving security holder grievances at any company that is publicly traded or that has more than 1,000 shareholders, debenture holders, deposit holders, or holders of any other security at any given time within a fiscal year. If such a committee exists in a Company, the shareholders get a forum to have their grievances and concerns heard.

- **Making public announcements** In situations where certain concerns and issues are not able to be resolved behind closed doors, whether due to the Board or other members not being co-operative, or there being a fundamental difference in perspectives on how the company should be run, shareholders can voice their grievances in the public forum, which may lead to more pressure being applied for changes to be made within the company.

- **Requisitioning directors to convene a meeting** An extraordinary general meeting can be held by shareholders requisitioning the directors to convene such meeting, in order to discuss business issues and express their opinions. The requisitionist shareholders have the right to call a meeting on their own if the directors do not hold an extraordinary general meeting. 10% of the company's shareholders with voting rights must be present in order to call the meeting.

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- **Approaching the National Company Law Tribunal** Any member or members holding at least 10% of the issued share capital of the company or a minimum of 100 members, may file a claim with the National Company Law Tribunal ('NCLT') for oppression and/or mismanagement on the grounds that the company's affairs are being managed in a way that is harmful to the interests of the company or its members.

- **Initiation of a Class action suit** If there exists a class of shareholders that feel their rights have been infringed upon, or that the company is being run in a manner that would be prejudicial to the interests of the company or its shareholders, then such class of shareholders may initiate a class action lawsuit against the company, the directors of such company, and any third-party advisors. For a group of shareholders to be established as a class, there must be any member or members having at least 5% of the issued share capital in an unlisted company or at least 2% of the issued share capital in a listed company; or a minimum of 100 members or at least 5% of the total number of members (whichever is less).

- **Shareholder derivative suits** If a board resolution was harmful to the company's interests, a single shareholder, regardless of their shareholding in the firm, may also file a shareholder derivative lawsuit on the company's behalf. There is a pre-requisite condition for such an action, which is that the shareholder approaching the court must do so with "clean hands". The Code of Civil Procedure,1908 specifies the procedure for shareholder derivative suits.

- **Making an application to the Serious Fraud Investigation Office** If the shareholders feel that the affairs of the company are being seriously mismanaged, even to the degree of fraud possibly occurring within the company, the shareholders may notify the Central Government that the company needs to be investigated, and such notification is done through the passing of a special resolution. On receipt of such notification, the Central Government can order the Serious Fraud Investigation Office to look into the company and its affairs.

VI. JUDICIAL PRONOUNCEMENTS IN INDIA

In the case of *HDFC Life-Max Merger*, In August 2017, HDFC Standard Life Insurance Co. Ltd. and Max Life Insurance Co. Ltd., two leading life insurance companies in India, announced that they had called off their proposed merger, for which deliberations were being carried on for many months. If successful, the merger would have led to an insurance giant with INR 1.1 trillion in assets and a market presence second only to Life Insurance Corporation of India, the leading player.Though principally the merger could not secure the

approval of the relevant authorities as the structure of the alliance was found to be violative of Rs.35 of the Insurance Act, 1938, the case had a peculiar side linked to another concern raised by the shareholders. The deal also envisaged a pay-out of INR 850 crore to the Max Life group as non-compete fees. While the payment of 'non-compete fees' as a structure has been ubiquitous in merger and acquisition dealings in private companies, in the case of public companies, this has been a contentious issue given the concerns about minority shareholder protection. The proposed payment was opposed tooth and nail by the proxy advisory firms and the mutual fund body, and their significant arguments were that the payment should have been factored in the open-offer price for the shareholders and that there cannot be a separate set of protection norms for minority shareholders in case of a takeover deal and a merger deal, like the instant case.

In the case of *Vikram Bakshi v. Connaught Plaza Restaurants Limited*[9] also hailed as the triumph of the Indian visionaries over blue-blooded investors, drew much attention as the brand McDonald's had developed the fancy of the millennials over the years. Mr Vikram Bakshi approached the NCLT on the grounds of oppression by McDonald's. The petition by Mr Bakshi was filed under Section 397-402 of the Companies Act, 1956. The case also saw the transition of the law from Companies Act, 1956 to Companies Act, 2013 and hence the applicability of Section 241-245 of the Act and also of the NCLT replacing the Company Law Board.In a meeting held on 5th August 2013, Mr Vikram Bakshi was ousted by the resolution passed by McDonald's India by the vote of their nominee directors. It was alleged that Mr Bakshi failed to discharge his duties competently and that he had also violated the material terms of his joint venture agreement with McDonald's India. The NCLT, in a path-breaking order, which found Mr Bakshi's removal bad in law, recognized the sincere efforts of Mr Bakshi in building the joint venture business in India and also that in the last 16 years while the joint venture business was being consolidated across India, McDonald's India never raised any grievance against Mr Bakshi. Instead, there were instances of Mr Bakshi being appreciated for his efforts. NCLT observed that McDonald's India has earlier approached Mr Bakshi to sell his shares to them, which Mr Bakshi rejected. The NCLT broadened the scope of application of the provisions on oppression in two ways – (a) It allowed individuals to seek relief on oppression grounds other than as shareholders or members, as long as they can demonstrate that ultimately their shareholding or membership has been impacted. In the instant case, Mr Bakshi claimed that the fact that he was not elected as MD of the company amounted to oppression, despite not directly affecting him as a shareholder. Thus, the position taken by the

[9] (2017) 140 CLA 142

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NCLT was a novel one. (b) The NCLT order outlined a method or an approach for petitioners to base their claim of oppression on the provisions of independent contracts. It cleared the path for the future petitioners to raise the breach of an agreement condition which forms a part of the Article of Association, as a ground sufficient for raising an allegation of oppression.

In the case of *Tata Consultancy Services Ltd. Vs Cyrus Investment Pvt. Ltd.* [10], The instant battle involved Tata Sons Private Limited and its former executive chairman, Mr Cyrus Mistry..The genesis of the Tata-Mistry case lies in the allegations of oppression and mismanagement raised by the Shapoorji Pallonji (*hereinafter* "SP") Group, the minority shareholders in the Tata Group's holding company, Tata Sons, through Mr Mistry. In an unexpected move, the Tata Sons' board passed a resolution on 24th October 2016 and removed Mr Mistry from the company's executive chairman position. He was, however, retained as a director of the company. A few Tata Group companies followed suit and removed Mr Mistry from the directorship in the next few days. Sensing what the future held for him, Mr Mistry resigned from the remaining Tata Group companies.The SP Group, in which Mr Mistry holds a controlling stake, felt aggrieved by the above board decision. Consequently, its two group companies, Cyrus Investments Private Limited and Sterling Investment Corporation Private Limited, approached the NCLT. In their petition, they raised allegations of unfair prejudice, oppression, and mismanagement, under Section 241 and 242, read with Section 244 of the Act. The NCLT dismissed the SP Group petition in March 2017 and decided the case in favour of the Tata Group on all the points, factual and legal.

The SP Group filed an appeal before the National Company Law Appellate Tribunal (*hereinafter "*NCLAT"). The NCLAT ruled in favour of the SP Group on all the above issues. The matter finally reached the Supreme Court, setting aside the NCLAT ruling in a comprehensive judgement on 26th March 2021.The Supreme court pointed out that the invocation of the just and equitable clause as envisioned in Section 241 and 242 of the Act needs the following two circumstances for justifying a winding up of a company- a functional deadlock which affects the working of the company at the board or shareholder level and where the company is a corporate quasi-partnership, and an irretrievable breakdown in trust has taken place between the participating members.

The court opined that in their pleadings, the SP Group has neither raised nor proved any instances of a deadlock in the working of the company. Regarding the existence of any corporate quasi-partnership at Tata Sons, the court held that although the SP Group enjoyed a

[10] (2021) AIR SC 179

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long-standing relationship with the Tata Group, there was no such element of a corporate quasi-partnership. In becoming a director, then deputy executive chairman, and finally executive chairman of Tata Sons, Mr Mistry did not cede to any entrenched rights to representation and management. His removal, by the board, from the leadership position as executive chairman was purely in the company's interest, and his subsequent removal as director resulted from his unprofessional conduct, and such actions cannot be termed as oppressive or prejudicial. Moreover, the company's promoters being charitable trusts, winding up of the company shall negatively impact their philanthropic acts. Thus, the Supreme Court overturned the NCLAT's affirmation that the company's affairs have been or are being conducted in a manner prejudicial or oppressive to some members and that Mr Mistry's removal was in furtherance of the same.

VII. THE REFORMS ADOPTED TO PROTECT SHAREHOLDER'S RIGHTS

A. Voting Method

Shareholders' most important right by which they take part in the company is the voting right. The meetings of the company are generally conducted at places where the non- promoter or non-outsider controlling shareholder usually reside. This created a problem for retail shareholders scattered in the country or around the world to travel all along to cast their vote. This issue was addressed by the introduction of voting by postal ballots under Section 192 of The Companies Act 1956. The system of postal ballot permits shareholders to send in their votes by post instead of personally attending and voting at a meeting. Certain resolutions were to be mandatorily put to vote by postal ballots. This provision is incorporated in the Companies Act of 2013 as well, under Section 110. To further alleviate the voting process, voting by electronic means has been introduced. It is incorporated under section 108 of the Companies Act 2013 read with Regulation 44 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and Rule 20 of the Companies (Management and Administration) Rules, 2014. E-voting has been made mandatory for top 500 companies listed on the National Stock Exchange (NSE) and Bombay Stock Exchange (BSE). Now the shareholders have the option to vote from any place simply by accessing the internet or by any electronic means. This would do away with the cumbersome task of posting the votes. E-voting will also elicit greater participation of institutional shareholders and is also a cost and time-saving method. A step further, market regulator, SEBI is working on the development of a mobile app for E-voting by retail investors of listed companies to facilitate greater participation in management proposals as revealed by SEBI in its annual report for 2018-19. However, such a measure also requires transparency to be maintained to prevent the

unscrupulous managements to manipulate the votes.

B. Shareholder Meetings

For shareholders to make an informed decision in the management of the company, they need to attend the meetings of the company. It is only when they participate in discussions, a conscious decision in exercise of their voting right will be possible. Participating in the meetings would not only help in informed decision making but also will encourage them to put up their views and raise a voice. Mere participation in meetings is not enough but a thorough examination of the resolutions, companies' records and registers are also important. Advancement of technology has again played a significant role here. The regulators have recognized the impracticability of attending all the meetings physically by each shareholder. Provisions of electronic meetings through audio-visual means, video conferencing by companies have been introduced. Participation of shareholders in general meeting through video conferencing was introduced as a green initiative in corporate governance vide its General Circular dated 20th May 2011, under the Act of 1956. No such provision is incorporated in the 2013 Act, but it is still available as an option for the company. Appointment of proxies is yet again a step towards the encouragement of shareholders' participation. When it is not possible for a shareholder to attend a meeting physically and the option of meeting through video conferencing is also not exercised by the company, a proxy may be appointed. Any member of a company entitled to attend and vote at the meeting shall have the right to appoint a proxy to attend the meeting on his behalf under Section 105 of the Companies Act, 2013. A shareholder may appoint any person to attend the meeting as a proxy on his behalf. One person may be proxy for more than one member, provided that one proxy cannot represent more than fifty members or ten per cent of the total share capital of the company carrying voting rights as per Rule 19 of The Companies (Management and Administration) Rules, 2014. A proxy can vote when voting by-poll is demanded.

C. Inspection of Records

One of the key responsibilities of the shareholders is to install the governance mechanism of the company. There is a divorce of control from ownership so it becomes important to keep a check on how far the installed management is successful to run the company on behalf of its owners. This check can be effectively exercised by way of inspection rights given to the shareholders. A shareholder can inspect the minute books of meetings, register of contracts, register of shareholding of directors, key managerial personnel etc. They can also take copies of such records and registers. These records help the shareholders to be thorough with what is

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going on in the company and how the management is performing and accordingly further decisions is can be made by them.Although the right of inspection is given to the shareholders under the Companies Act, 2013 but the statute lacks regulations with respect to transparency and accountability in disclosure of information to the shareholders to exercise their rights in a more vigilant manner.

D. Role of Intermediaries

Shareholders may have shares in more than one company. It is not possible for them to exercise their corporate rights in each of the cases. Lack of proper information and professional understanding of the corporate sector for such retail shareholders also act as impediments towards shareholder activism. This issue has been addressed by the introduction of corporate intermediaries who are independent research analysts. They are also called proxy advisors. Proxy advisory firms have gained prominence when although the shareholders became active towards their right but are not able to exercise them. It is very difficult for the institutional investors and shareholder to analyze at their own every policy agenda thoroughly and realize its legal and managerial consequences.To effectively use their powerful vote and for proper engagement with the company these institutional investors and shareholder outsource their voting decision to proxy advisory firms. They provide advisory services to the investors recommending them the effect of their vote in their shareholding and other corporate decisions. A proxy advisory firm basically protects the shareholders right which leads to good corporate governance. This concept has helped those shareholders who were not able to make informed decisions, gain professionalism in exercising their rights in a more observant manner. The SEBI (Research Analysts) Regulations, 2014 gives statutory recognition and regulates the Indian proxy advisory firms. The first proxy advisory firm in India was In Govern Research Services. The recent instance of proxy advisory services is when Housing Development Finance Corporation Ltd. Chairman Deepak Parekh narrowly retained his position as a non-executive director as two U.S. proxy advisory firms ISS and Glass Lewis recommended that institutional investors vote against the resolution for extension of his appointment beyond October 2019. While ISS' concern was that he was on more than six public company boards and hence a busy director prone to "over-boarding", Glass Lewis felt that HDFC's board is not independent enough. While these independent intermediaries do play an important role in shareholder activism but various concerns have been raised in other jurisdictions and India needs to take a lesson from these experiences to further regulate them and take full advantage out of them.

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E. Role of Tribunal

A weapon in the form of litigation strategy has been evolved in favour of the minority shareholders. The concept of 'Majority rules Minority' has been overruled and remedies have been brought up to protect the interests of minorities. The remedies include- relief against the act of oppression and mismanagement, class action suit and exit policy. While the last one is the option most conveniently adopted by the controlling shareholders, giving the dissenting ones to exit the company, the former two are counter-actions on the part of minorities.An act of oppression arises when the affairs of the company are carried out in a way which is prejudicial to the interests of the company, members or public. Act of mismanagement is a material change, not brought in the interests of creditors, which is likely to cause the affairs of the company to be conducted in a way prejudicial to its interests or its members (Section 241 of Companies Act, 2013). In such cases, members or shareholders of a company may apply to the National Company Law Tribunal to a seek remedy. Although there is a prescribed quorum that would give locus standi to the members to apply to the tribunal but the insertion of the waiver clause gives the power to the tribunal to relax the locus standi when there is no prescribed quorum and move ahead with the petition under Section 244 of the Companies Act, 2013.This waiver clause has been added after the Satyam Scam. Class action suit under section 245 of the Act provides another way by which a class of members may apply to the tribunal for remedy. The tribunal is also invested with vast powers under Section 242 to protect the minority shareholders.

There are some of the suggestions used for effective and smooth shareholder activism in Indian corporate governance

- Advocate for clearer and more comprehensive disclosures from companies on financial matters, executive compensation, board structures, and decision-making processes. Push for regular and detailed reporting that enables shareholders to make informed decisions.
- Encourage a shift away from short-term gains towards sustainable, long-term value creation. Promote strategies that prioritize environmental sustainability, ethical practices, and social responsibility, ensuring the company's viability in the long run.
- Emphasize the importance of constructive engagement between shareholders and company management. Encourage regular communication channels that allow for meaningful discussions on strategic direction, performance metrics, and governance practices.

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- Encourage responsible use of voting rights by shareholders. Advocate for informed voting on key issues, resolutions, and appointments during shareholder meetings to reflect shareholder concerns accurately.

VIII. POSITION OF SHAREHOLDER ACTIVISM IN UK

According to research by Alvarez and Marsal (A&M), Shareholder Activism in 2018 saw a double digit rise in U.K over preceding 12 months. The activist shareholder campaigns are now a serious threat to companies, targeting all the business sectors and increasingly companies of all sizes. The modus operandi of Shareholder Activism is to agitate for change often involving campaigns to convince other shareholder to support proposals to change the composition of the board and the company's strategy. According to UK Law, a shareholder activist in its capacity as a shareholder can attack the board and its strategy in the press and in discussions with other shareholders who are free from the constraints of corporate law duties. In UK, the main sources of legal and regulatory provisions that govern and restrict shareholder activism are CA06, The Listing Rules, The DTRs, The MAR and the Takeover Code . The UK Governance Code also requires the company to actively engage with the shareholders. [11]

IX. COMMON AREAS OF FOCUS FOR ACTIVISTS

Transnational Opportunity: Shareholders may seek to influence the corporate activity such as calling for the company to enter into M&A transaction or to dispose of a non-core part of the business in order to maximise value.

Strategy: Shareholders may feel that the strategy of the company does not align with long-term goals and the company purpose or they may feel that the company is heading in the wrong direction strategically.

Business Performance: Shareholders may perceive that there is a problem with company's performance**.**

Share Capital: Shareholders may be unhappy with the company's capital structure and so may be looking for a return of capital or share buy back.

Governance: Shareholders may take issue with the remuneration policy or leadership and ultimately may seek to appoint and remove directors. They are increasingly targeting company's approach to environmental and social issues, most notably around climate

[11] Shareholder Activism In UK, www.activistinsight.com/research/shareholderactivismuk.pdf

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change.[12]

X. LEGAL AND REGULATORY ISSUES

Disclosure Obligations

Shareholders in a listed company are required to notify the company if their interests reach, exceed or fall below specified thresholds. The relevant thresholds are 3% (5% for fund managers) and then every 1% change thereafter (DTR 5.1.2). This will be relevant for shareholders seeking to build their stake in the company.

Removing And Appointing Directors to the Board

The Companies Act, 2006 contains additional requirements as regards notice and information when a shareholder is looking to remove a director from a board and/or have someone appointed as director.If an activist does not comply with these requirements, a company may look to reject the requisition as defective.

National Security And Investment Act

If the target company operates in one of the 17 sectors specified in the National Security and Investment Act, or the acquisition of a stake in the company may otherwise raise national security concerns, the acquisition of the stake may have to be notified and approval for the transaction obtained. It is possible the acquisition of a stake of 15% may trigger the regime.

Related Party And Controlling Shareholder Rules (LR 11)

Where a shareholder has a stake of 10% or more, it is deemed to be a related party of the company.Transactions between a listed company and the shareholder will then have to be disclosed, and shareholder approval may be required for transactions.If a shareholder has 30% or more of a premium listed company, a relationship agreement must be put in place.[13]

The Takeover Code

The Takeover Code may be engaged if shareholders are seeking to implement a "board-control seeking" proposal.The Takeover Code also imposes disclosure obligations on shareholders with a 1%+ stake in a company that is in an offer period.

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[12] Shareholder Activism in UK Types of Activists, Forms of Activists, www.link.springer.com/article/10.1007/s10997-013-9266-5

[13] Samantha Trevan, Shareholder's Rights And Shareholder Activism 2021, www.chambers.com/downloads/gpg/694/016.uk.pdf

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XI. INTERNATIONAL JUDICIAL PRONOUNCEMENTS

In the case of *Stobart Group v Tinkler*[14], a Guernsey company listed and Tinkler is a former CEO of Stobart was both a significant shareholder and a director of Stobart.Tinkler claimed that he had become frustrated with Stobart's strategy and a battle for control arose between Tinkler and Stobart's board. They ultimately proposed a resolution at a shareholder meeting of Stobart to remove the Chairman.Stobart alleged that Tinkler had breached his duties as a director in "*briefing against the Board*" in his discussions with certain Stobart shareholders. Stobart alleged in particular that Tinkler had breached his duties as a director by failing to put before the board the matters relating to board composition and strategy on which he disagreed and undermining the board by taking those matters directly to certain major shareholders of Stobart.Tinkler claimed in response that he had an obligation, by virtue of his duty as a director of Stobart to exercise independent judgement, to reach his own independent decision on matters arising for the board's consideration and was entitled in discussions with Stobart's major shareholders to disclose his views particularly if those views were directly solicited by shareholders.

The High Court however held that Tinkler had committed serious breaches of his directors' duties, in particular a breach of the core duty of loyalty to Stobart by

- speaking to certain of Stobart's significant shareholders and, when doing so, criticizing the board's management and agitating for the removal of the Chairman of Stobart. Tinkler did this without having raised his concerns and criticisms with the board before speaking to those shareholders
- emailing certain of Stobart's major shareholders and employees without prior approval of the board. It appears that the High Court would have accepted that, in his capacity as a shareholder, Tinkler was entitled to write to the other shareholders. However, the emails were written in his capacity as "*Executive Director and Shareholder of Stobart Group Limited*" and they referred to matters which could only have been based upon knowledge acquired by him in his capacity as a director.

In the case of *ClientEarth*[15] - In February 2023, ClientEarth, an environmental NGO and minority shareholder of Shell, sought permission to bring the Claim as a derivative action against the Board in their personal capacity. ClientEarth had standing to do so through its holding of 27 shares in Shell. The action was reportedly supported by institutional investor

[14] (2019) EWHC 258
[15] (2023) EWHC 1897 (Ch)

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groups. Client Earth's application was brought in the wider context of NGOs increasingly looking to the courts to put pressure on corporates and seeking to influence their ESG policies. A derivative action allows a shareholder (such as ClientEarth) to "step into the shoes" of the company in order to bring a claim on its behalf against its directors. The claim can only proceed if the English court consents, and this generally requires a claimant to demonstrate a prima facia case of wrongdoing by the directors that is not being pursued due to the directors' control of the company. ClientEarth has said it was seeking a judgment to "compel Shell's Board to strengthen its climate transition plans, in the best interests of the company in the long-term." The Claim was to be brought under Section 172 of the Companies Act 2006, which requires company directors to act in a manner that they consider would "promote the success of the company for the benefit of its members as a whole," having regard to factors, including the impact of the company's operations on the community and the environment. The High Court judgment, confirmed Justice Trower's earlier assessment of the application had been decisively against ClientEarth, finding that ClientEarth "did not disclose a prima facie case for giving permission to continue the claim." The Claim was contrary to "the well-established principle that it is for directors themselves to determine (acting in good faith) how best to promote the success of a company for the benefit of its members as a whole." The High Court further noted that ClientEarth's negligible stake in Shell, with the NGO holding only 27 shares, gave "rise to a very clear inference that its real interest is not in how best to promote the success of Shell for the benefit of its members as a whole." On July 24, 2023, the High Court dismissed ClientEarth's application for permission to bring a shareholder derivative claim against Shell's directors (the "Board") for breach of directors' duties under the UK Companies Act 2006 (the "Claim").It also casts doubt over the viability of actions brought by non-governmental organizations ("NGOs") that have purchased minor stakes in order to bring derivative claims as a form of shareholder activism.

XII. Conclusion

Shareholder Activism plays a vital role by addressing their concerns and besides the issues pertaining financially, they can express their disapproval on Environmental, Social and Governance (ESG) matters. Through my research paper, I have cited some of the reforms adopted in order to protect the rights of the shareholders. Not only at National Level but at International Level i.e. in U.K, the activist’s campaigns have proven a serious threat to the companies and thereby the shareholder come forward in order to protect their interests.

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