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**The protection of minority shareholder's right: Remedies of unfair prejudice  
& promises for bringing proceedings**

**Richa Goyal**

*“I think shareholders are the greatest evil of this modern world”*

- **Chris Martin**

## **INTRODUCTION**

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*Shareholders, as the name suggests are those who have a share in the stock of the company. One of the most important aspects of the shareholding is the fact that the shareholders make a financial investment in the corporation and they have the authority which no one possesses. They could elect the directors of the company. But with great powers great come great responsibilities. They are the financial supporters; hence, they exercise the ultimate control over the company in which they have their shares. One of the main duties of the shareholders is to pass the resolutions at general meetings held in the company from time to time. They exercise their voting powers in the shareholder capacity.*

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## LEGAL PERSPECTIVE

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Even though one would say that there is no such requirement to have an agreement with the shareholders that is the shareholding agreement, however, the companies having more than one shareholder would be required to enter into the same. This agreement is very important as it is in conjunction with the articles of association of the company. Also, this agreement gives way more powers to the shareholders than the articles alone give. However, misuse of the powers has become one of the most common problems of the shareholders who own the larger part of the share of the company. In order to protect the interests of those shareholders who have a minor stake in the stock of the company from the actions of those shareholders which are oppressive and control the articles of the company. In the case of *Sidhartha Gupta and Ors v. Getit Infoservice Private Limited and Ors*<sup>1</sup> court has consider that oppression or mismanagement to not limited to the violation of rules and articles of the company .The Companies Act 2013 of India had taken it into consideration for the purpose of rendering equitable and just rights to the minority shareholder. These remedies are also rooted in the common law.<sup>2</sup>

The concept of majority prevails over minority is not a new. In the matter of dispute, the majority rule is followed. Similarly, in the corporate world this rule is consider to be just and equitable suppressing the powers and rights of the minority shareholders.

Shareholder's disputes could be said to be one of the major reasons due to which the destruction of corporate enterprise was initiated. Protection of the shareholders that possess a minor share is basic for the existence of a corporate entity. One of the remedies is the petition which is filed on the ground of the unfair prejudice. This is one of the most important remedies which states helps in the equipment of the minority shareholder to fight for their rights against the majority shareholders. Section 242 of the Companies Act, 2013 grants this right to the shareholders. If the conduct of the majority is unfairly prejudicial to the interests of those who are minor, then the minority would have a remedy against it. This action would be taken against those who have the authority to act on their behalf and not only a single person who is acting in his own personal capacity.<sup>3</sup>

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<sup>1</sup> CA. No. 128/C-II of 2014 & CP. No. 64(ND) of 2014

<sup>2</sup> In Brief, 2018. The roles and duties of shareholders. [Online] Available at: <https://www.inbrief.co.uk/company-law/shareholder-roles-duties/> [Accessed 2018].

<sup>3</sup> Pandey Anubhav, 2017 Rights of minority shareholders under Companies Act, 2013 [Online] <https://blog.ipleaders.in/rights-minority-shareholders-companies-act-2013/> [Accessed 2020].



However, elements of good faith must be shown the minority while filing a petition against the majority. In the case, *Killick Nixon Ltd v. Bank of India*,<sup>4</sup> wherein the court had rejected the petition stating that personal prejudice shall not be the contention of the application. The petition was not allowed on the ground that the conflict did not relate to the conduct of the affairs of the company.

As against the principle of unfair prejudice, there is the derivative claim principle which finds its roots in the Part 11 of the Companies Act, 2006 of the United Kingdom. The concept of unfair prejudice was adopted from the United Kingdom. This principle of common law originated from the case *Foss vs. Harbottle*<sup>5</sup>. This case gave birth to two principles. One principle was that- if any matter affects the company in a negative manner, then only the company can commence any action against it and the other principle said that only the simple majority of the members could bring a claim against the company.<sup>6</sup> The rule of majority was the governing principle established under this case.

The derivative principles could be said to be in contrast with the unfair prejudice remedy.<sup>7</sup> If the shareholder files a petition against the majority shareholders instead of going for a derivative action, then that shareholder would be told by the judge to bring a derivative action. In order to institute the derivative action, a lot of complexities are faced. It is due to the fact that the court is burdened with the duty of screening a lot of cases that may be frivolous in nature. This may then hinder its daily operations. In the case of *Barett vs. Duckett*,<sup>8</sup> the Lords held that only derivative action was not the sole and most effective method of resolving the disputes of shareholders, there could be a more favorable method for the same.

This concept simply recognizes in India by the Bombay High Court in the case *Nirad Amilal Mehta v. Genelec Limited and Ors*<sup>9</sup> but failed to define it in the Indian context. It has also not set a parameter for the Shareholders to file such application.

In respect to Indian law minority shareholders' rights were recognized in company law before also but there were no such remedies available. With new Act in 2013 gave the power to minority shareholders to knock the doors of tribunal if there is oppression or mismanagement as available

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<sup>4</sup> 1983 (2) BomCR 631

<sup>5</sup> 1843) 67 ER 189

<sup>6</sup> T., Julia, 2018. Shareholder Remedies: Demise of the Derivative Claim?. UCL Journal of Law and Jurisprudence, Volume 1.

<sup>7</sup> Fawcett, 2018. Shareholder Disputes. [Online]

Available at: <https://www.luptonfawcett.com/services-for-business/corporate/limited-liability-partnerships-llps/shareholder-disputes/> [Accessed 2018].

<sup>8</sup> [1995] 1 BCLC 243

<sup>9</sup> 1 Comp LJ 361 (BOM)

under section 242-246 of the Act 2013. This remedy is available with the new concept introduced in this Act as Class Action. Under Class Action, a group of people with common interest can approach Tribunal for a dispute which is generally, under this case, against Company or its board or management.

Another shareholder remedy was the statutory remedy which was in form of the winding up order that was given on a just and equitable ground in accordance with the provisions enshrined in the Companies Act, 2013. The aim of the petition under this remedy was to oblige the company to seek a validation order by putting a pressure on the company if the petition pertaining to the unfair prejudice has also been brought at the same time.

After learning the provisions of the Companies Act, 2013 it could be stated that this Act has filled the void that was existent in the common law and which common law could not address in an adequate manner. Oppression and mismanagement is there in the root of company law. This can only be prevented but cannot be stopped. So to prevent this, the different provisions of the Company Act, 2013 helped in the protection of the minority shareholders. The Legislature has tried their level best to safeguard the rights of minority shareholders by providing remedies under the New Act in the year 2013. But this concept required spreading awareness so that minority shareholder can stand for their rights against the Company.