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## An Analysis of Oppression and Mismanagement in Company Petitions

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*When it comes to decision-making in any company, firm, or organisation, there are always two sides; majority and minority. This minority or majority is present in the Board of Directors as well as the shareholders; The majority and minority in the Board of Directors and the same in shareholders are two completely different things. At times some decisions made by the majority might end up disregarding the concerns and opinions of the minority. The majority will prevail under the corporate governance framework, which can result in instances of oppression and poor management in a company. The reason for a distinction arising between the minority and the majority is that collective decision-making is put above individual interests. In India, the Companies Act of 2013 established the law that must be adhered to in order to prevent oppression and mismanagement, and the same is under Section 241-246. The main question that arises in light of the above statements is – “what exactly is oppression and mismanagement?” The Companies Act of 2013 does not define “oppression” or “mismanagement”, but over time, the courts have interpreted their meanings. Lord Keith has defined “oppression” as something that “lacks morality and fairness in the company’s dealing, which could be prejudicial to some members.” While there is no straightforward definition for mismanagement, it can be understood as something that prevents the Directors or the Board of Directors from functioning properly, violation of the statutory provisions, misuse of funds of the company, etc.*

**Keywords:** *oppression, mismanagement, company.*

## INTRODUCTION

The Board of Directors, the Independent Directors, and shareholders are the main people involved in any type of decision-making in a company. The shareholders make decisions as the owners of the company, and the directors do so as managers of the company, both being equally important roles. A shareholder might also be a director of the company and vice-versa. Before getting into the process of decision-making, we first need to understand the meaning of these three terms. As provided under Section 2(55)(iii)<sup>1</sup> of the Companies Act of 2013, a person is regarded as a member of a company if they possess shares of that company and their name appears as a beneficial owner in the records of a depository<sup>2</sup>. The shareholders of a company to hold many responsibilities when it comes to matters such as appointing a Director and the Board of directors, making amendments to the company's Articles of Association, etc. Likewise, the said shareholders can also take action to remove the Director or the Board of Directors.

Section 149<sup>3</sup> of the Companies Act 2013 provides the appointment and qualification of a Director and Board of Directors. According to the provision, every company must have a board of directors made up of individual directors. The Section also provides a clause for an "independent director". In *Shailesh Chawla & Ors. v Vinod Kumar Mahajan & Ors.*<sup>4</sup> the meaning and scope of independent directors were discussed. "Independent Directors" are part of the "Board of Directors" and are subject to similar duties and obligations as the other directors, but an independent director is not an executive officer or employee of the firm and ideally should not have any connections or relationships that would prevent them from exercising their independent judgement while performing their duties as a director.

Usually, the process to be followed while making decisions for a company is laid down in the Articles of Association of the company. This is extremely necessary for the smooth running of a company. According to Section 2(5)<sup>5</sup> of the Companies Act 2013, "articles" are the articles of

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<sup>1</sup> Companies Act 2013, s 2(55)(iii)

<sup>2</sup> *Ibid*

<sup>3</sup> Companies Act 2013, s 149

<sup>4</sup> *Shailesh Chawla & Ors v Vinod Kumar Mahajan & Ors* Company Appeal (AT)(Insolvency) No 571 of 2020

<sup>5</sup> Companies Act 2013, s 2(5)

association that are documents that are created or periodically modified or applied in accordance with any prior company law of the Companies Act 2013.

The Board of Directors of an Indian company is usually concerned with the general supervision of the company's business. The shareholders are involved in more significant decision-making of the company, such as amendment of the articles of association, removal or appointment of directors, etc. In a company, most operations and decision-making are carried out by following a democratic process. Every member of a company has voting rights, and then the decisions are made in accordance with the majority. In a Board meeting, most decisions are made by a simple majority, or as required by the company's articles of association, either by unanimity or a qualified majority<sup>6</sup>. The chairman of the board has a casting vote if there is equality in the number of votes.<sup>7</sup> Just like a country's democracy, the problem here too arises when the voices of the people in the majority prevail over the voice of the people in the minority.

In the case of *Tata Consultancy Services Limited v Cyrus Investments Pvt Ltd*,<sup>8</sup> the Supreme Court through various resolutions adopted by the company addressed the legality and legitimacy of Cyrus Mistry's ousted as Tata Sons Limited's Chairman. The viability of corporate governance standards was called into doubt by the legal dispute between Tata and Mistry.<sup>9</sup> This raised severe concerns about the effectiveness of the board, the power of the majority of shareholders, the process for removing the chairman, organisational culture, and general company management.<sup>10</sup>

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<sup>6</sup> Sameer Sah, 'Different Modes of Decision-Making by the Board of Directors of a Company' (July 2011) PL (CL) S-6

<sup>7</sup> Javaid Talib and Aqa Raza, 'Right of Minority Shareholders Under the Companies Act, 2013: A Jurisprudential Analysis' (2015-16) 23 ALJ 30

<sup>8</sup> *Tata Consultancy Services Ltd v Cyrus Investments Pvt Ltd* (2021) 9 SCC 449

<sup>9</sup> Umakanth Varottil, 'Unpacking The Scope of Oppression And Mismanagement, Prejudice and Mismanagement Under the Companies Act, 2013' (2020) 6 SCC J-1

<sup>10</sup> Himanshu Kaswa & Shreya Pandey, 'A Recurrent Quest for Corporate Governance in India: Revisiting the Imbalanced Scales of Shareholders' Protection in Tata - Mistry Case' (2021) 4.2 JCLG 121

## EVOLUTION OF LAWS ON OPPRESSION AND MISMANAGEMENT

Since the mid-20th century, Indian Company Law has made several changes and included various forms of shareholder remedies in the Companies Act 2013; the present remedies are found in sections 241<sup>11</sup> and 242<sup>12</sup> of the Companies Act 2013. The shareholder remedies are contracted as well as expanded as an effect of the changes in the 2013 Act. India has borrowed a wide range of laws from the UK and time and has been inspired by their Acts and provisions time and again. Before the 1948 amendment of the English Companies Act, the sole solution was winding up the company<sup>13</sup> when there were unresolved conflicts between shareholders and the company or between the shareholder themselves. Since winding up a company is very inefficient and leads to more problems than solutions, the Cohen Committee in England advised the inclusion of an alternative in the form of a remedy, which took the shape of oppression in Section 210<sup>14</sup> of the English Companies Act, which applied to the Indian Company law too.<sup>15</sup>

The English Companies Act served as the model for several of the concepts used in the Indian Companies Act. In terms of Indian Company Law, Section 153-C of the Indian Companies Act 1913 was inserted as a result of the incorporation of Section 210 of the English Companies Act, 1948. Following additional adjustments, Sections 397<sup>16</sup> and 398<sup>17</sup> of the Companies Act 1956 were incorporated to include oppression. Section 397<sup>18</sup> of the 1956 Act<sup>19</sup>, which came into effect after the oppression remedy gained notice, described it as the conduct of the company's operations "*in a manner oppressive to any member or members*<sup>20</sup>". Section 397<sup>21</sup> of the 1956 Act has formed the cornerstone of shareholder remedies in India for more than a decade. Courts frequently cross-reference the English courts' jurisprudence on the oppression remedy with

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<sup>11</sup> Companies Act 2013, s 241

<sup>12</sup> Companies Act 2013, s 242

<sup>13</sup> Report of the Committee on Company Law Amendment

<sup>14</sup> English Companies Act 1948, s 210

<sup>15</sup> Umakanth Varottil, 'The Evolution of Corporate Law in Post-Colonial India: From Transplant to Autochthony' (2016) 31 Am U Int'l L Rev 253

<sup>16</sup> Companies Act 1956, s 397

<sup>17</sup> Companies Act 1956, s 398

<sup>18</sup> Companies Act 1956, s 397

<sup>19</sup> Government of India, Report of the Company Law Committee (1952)

<sup>20</sup> Companies Act 1956, s 397(1)

<sup>21</sup> Companies Act 1956, s 397

section 210<sup>22</sup> of the English Companies Act, 1948, which serves as the remedy's legislative counterpart. These provisions were further improvised, and Sections 241<sup>23</sup> and 242<sup>24</sup> were their revised versions in the Companies Act 2013, which were modelled after Sections 459<sup>25</sup> to 461<sup>26</sup> of the English Companies Act, 1985 and Sections 994<sup>27</sup> and 996<sup>28</sup> of the English Act of 2006.

## **SUMMARY AND ANALYSIS OF THE LAWS RELATING TO OPPRESSION AND MISMANAGEMENT IN INDIA AND THE UK**

The three key turning points in the English legislative history regarding protection against oppression, mismanagement, and prejudice can be summarized as follows:

- The “*just and equitable clause*” for winding up the company was introduced in 1862, and whenever a transfer or sale took place during winding-up proceedings, the member opposing the majority or not in the majority was provided with the conferment of a limited right<sup>29</sup>.
- In the year 1948, a provision as an alternative remedy to winding up the whole company was incorporated as winding up the whole company was more inefficient<sup>30</sup>.
- In 1980/1985, the meaning and ratio of oppression shifted to “*unfair prejudice*”<sup>31</sup>. In simpler words, the passage was from “*winding up on just and equitable clause*” to “*unfair prejudice*”<sup>32</sup>.

The Key changes brought about in India's legislation over a period of time can be summarized as followed:

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<sup>22</sup> English Companies Act 1948, s 210

<sup>23</sup> Companies Act 2013, s 241

<sup>24</sup> Companies Act 2013, s 242

<sup>25</sup> English Companies Act 1985, s 459

<sup>26</sup> English Companies Act 1985, s 461

<sup>27</sup> English Companies Act 2006, s 994

<sup>28</sup> English Companies Act 2006, s 996

<sup>29</sup> *Tata Consultancy Services Ltd v Cyrus Investments Pvt Ltd* (2021) 9 SCC 449

<sup>30</sup> *Ibid*

<sup>31</sup> Anamika Singh, 'Scope of Term "Unfairly Prejudice" in the Oppression and Mismanagement' (2021) 4 Int'l JL Mgmt & Human 2256

<sup>32</sup> *Tata Consultancy Services Ltd* (n 29)

- The change of words “are being” in the 1913 and 1956 Act to “have been or are being” in the 2013 Act implies that in the 1913 and 1956 Act the interference of the company’s conduct was “present and continuing” while in the 2013 Act it can be “past or present and continuous<sup>33</sup>”.
- Under the 1956 Act, prejudice to the public interest was included under both oppression and mismanagement, whereas the limitations established by the 1913 Act did not include prejudice to the public interest or to the interests of any member or member. Prejudice to interest was only included in the section on mismanagement. But the 2013 Act adds oppression to conduct that is prejudicial to any member, prejudicial to the public interest, or prejudicial to the company's interests.<sup>34</sup>
- In accordance with the 1913 Act, the court should be pleased, that the interests of the company or any portion of its members will not only be “unfairly prejudiced” but also be “also materially prejudiced” if the just and equitable provision is invoked and the business is wound up. However, it is important to note that the words “and materially” do not follow the words “unfairly” in either the 1956 Act or the 2013 Act. Furthermore, the only thing that needs to be determined under the 2013 Act and the 1956 Act is whether the winding up will unfairly prejudice “such member or members,” indicating that the focus was on the members who had complained or were otherwise impacted<sup>35</sup>.

All three of the Indian enactments – the 1913 Act, the 1956 Act, and the 2013 Act – ordain the court to pass such orders with the goal of resolving the issues raised and bring an end to the matters complained of. The 1913 Act’s Section 153C (4)<sup>36</sup> contains this clause. Sections 397(2)<sup>37</sup> and 398(2)<sup>38</sup> of the 1956 Act as well as Section 242 (1)<sup>39</sup> of the 2013 Act both contain it. The statutory requirements outlined in the English Acts of 1948, 1985, and 2006 share this as a common theme. Therefore, when deciding whether to provide relief in a case brought under

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<sup>33</sup> *Ibid*

<sup>34</sup> *Ibid*

<sup>35</sup> *Ibid*

<sup>36</sup> Indian Companies Act 1913, s 153C (4)

<sup>37</sup> Companies Act 1956, s 397 (2)

<sup>38</sup> Companies Act 1956, s 398 (2)

<sup>39</sup> Companies Act 2013, s 242 (1)

these provisions, the Court should ask itself whether the order that will be issued will end the matters that are complained of.

## REMEDIES FOR THE SAME

As discussed above, any aggrieved person can approach the NCLAT to get a remedy for oppression and mismanagement under Section 241<sup>40</sup> of the Companies Act 2013. Section 242<sup>41</sup> of the Companies Act 2013 provides for the powers of the tribunal in case a complaint is filed under Section 241 of the Act.

While it is observed that the remedies provided against oppression and mismanagement are in a broad sense only provided to the minority, it is to be noted that the majority shareholders are free to bring a suit against the minority in accordance with the Act. According to Section 244<sup>42</sup> of the Act, the applicant must either (a) own not less than 1/10th of the issued share capital of the firm (all calls/sums due on shares held must be paid); or (b) have not less than 100 members, or 1/10th of the total number of members, whichever is smaller, in order to qualify to file a suit. The applicants must represent at least 1/5 of the total members of the company if it lacks share capital.<sup>43</sup>

Radically, the goal for which the Tribunal may issue an order under Section 242(1) of the 2013 Act is identical to the goal set forth in the 1956 Act. The phrase “*the Tribunal may issue such order as it deems appropriate with a view to putting a stop to the problems complained of*” is used in all three enactments namely the 1913 Act, the 1956 Act, and the 2013 Act. The English Companies Act of 1948’s Section 210<sup>44</sup> stated the same thing: “*The Court may, with a view to bringing the matters complained of to a conclusion, make such order as it thinks appropriate.*” The English Companies Act of 1985 also saw a movement in the legislation, but what is noteworthy is that it was always a

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<sup>40</sup> Companies Act 2013, s 241

<sup>41</sup> Companies Act 2013, s 242

<sup>42</sup> Companies Act 2013, s 244

<sup>43</sup> Companies Act 2013, s 244

<sup>44</sup> English Companies Act 1948, s 210

shift in the right direction (the shift was from oppressive behaviour to unfairly prejudicial conduct). The goal remained the same notwithstanding changes made to the Act.

## **ANALYSIS AND CONCLUSION**

The goal of the tribunal while handling cases involving oppression and mismanagement has remained constant over the years, despite the fact that the law has undergone numerous changes. The tribunal's goal has been to resolve the issues raised by the complaints; it would be a matter of concern if the goal shifts to offering a remedy that is worse than the matter complained of. English Law and Indian Law both demand that complaints be settled by providing a solution, regardless of whether the regime is one of oppressive conduct, unfairly prejudicial conduct, or merely prejudicial conduct. It was accurately analysed that closing down a company due to shareholder disagreements is excessive, needless, and ineffective. It should also be highlighted that throughout the early phases of the provision's development, the relief from oppression and poor management was seen as a shareholder's arsenal of weapons and thus often misused.

There have been major changes in laws relating to oppression and mismanagement throughout the years. It is to be noted that the law has been made inclusive of both the minority and majority to keep in mind the harmony of each and every member of the company. Corporate governance is still slow in making in India but enthusiastic steps are being taken in order to make the corporate working sector more friendly and safe for its members.