
PROTECTING THE INTEREST OF MINORITY SHAREHOLDERS IN SQUEEZE OUTS: COMPARATIVE ANALYSIS

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INTRODUCTION

A company is an organisation that functions through a democratic procedure, in which the majority shareholders wield substantial influence in the decision-making and implementation of its activities¹. Hence, it is crucial to maintain a balanced and harmonious state of affairs between effective corporate governance and the safeguarding of the rights and interests of minority shareholders, with the aim of upholding the core values of shareholder democracy inside the organisation. In a corporate setting, those who possess the largest proportion of shares are sometimes referred to as majority shareholders². The word "minority shareholder" is not explicitly defined in the Company Law. In general, it is well recognised that individuals who possess a lesser proportion of shares are commonly referred to as minority shareholders. Minority shareholders may be defined as individuals or entities who possess a quantity of shares that is not sufficient to bestow upon them the ability to exercise influence over the firm³.

The controversy around the concept of Majority rule and Minority rights has been a central topic of discussion for an extended period of time. The prevailing legal stance is that the rule of majority should be upheld, provided it aligns with the conditions outlined in company law. The legal precedent for this case may be found in the landmark decision of *Foss v. Harbottle*⁴. Hence, it is the prevailing majority of shareholders who possess the authority to govern the board of directors, hence leading to the establishment of companies that are predominantly owned and controlled by such majority. In many instances, the dominant group prioritised the

¹ N. A Bastin, "Minority Protection in Company Law" (1968) JBL 320

² Ronald J. Gilson & Jeffrey N. Gordon, 'Controlling Shareholders', (2003) 152 University of Pennsylvania Law Review 785

³ Dr. Ashok Sharma, Company Law and Secretarial Practice, V. K. Enterprises (India), New Delhi, 2010.

⁴ (1843) 67 ER 189

preservation of their own rights while disregarding the concerns and interests of the minority. Consequently, this disregard often led to the infringement of the rights belonging to the minority group.

In order to reconcile these divergent viewpoints, several corporate and securities regulations have been enacted in various nations, specifically in relation to transactions involving the forced acquisition of minority shareholders' interests, sometimes referred to as "squeeze-out" deals. "Squeeze-outs" are one such methods that paradoxically created a rift between the majority rule and minority rights and also these squeeze-outs help in increasing the value of a company. The present paper establishes the fundamental basis for the subsequent discussion by providing a clear explanation of the squeeze out concept and addressing the concerns it poses for minority owners, while also admitting its potential benefits. This introductory statement sets the stage for the central theme of regulating squeeze-outs in a manner that promotes desirable results while mitigating undesirable ones. The subsequent section of the paper explores the existing legal and regulatory framework governing squeeze-outs in India. Moreover, this research provides a comprehensive analysis of the many methods employed for Squeeze Outs in the Indian context.

The paper also examines the protective measures concerning minority shareholders in India and the persisting challenges following recent reforms. Subsequently, it conducts a comparative evaluation of the legislative framework governing squeeze-outs across the significant jurisdiction of the United Kingdom. The research then focuses on the examination of proposed changes that are more appropriate for the institutional setting of India. These suggestions have the objective of protecting the rights and interests of minority shareholders in situations of squeeze-outs. It is imperative that these proposals undergo thorough analysis and deliberation.

UNDERSTANDING "SQUEEZE-OUTS"

The phrase "squeeze out" is commonly employed within the realms of corporate finance and securities law to denote a scenario when the majority owners of a corporation compel the minority shareholders to give up their shares at a prearranged price⁵. This phenomenon commonly arises as a result of a corporate transaction, such as a merger or acquisition⁶, when

⁵ William T. Allen, Reinier Kraakman & Guhan Subramanian, *Commentaries and Cases on the Law of Business Organization* (4th edn, 2012) 496-497.

⁶ Dale Oesterle, *The Law of Mergers and Acquisitions* (2005) 74.

the majority shareholders exercise their voting authority to dissolve the equity stake held by the minority shareholders in the organisation.

In the Indian context, controllers hold the ability to select from a range of transaction forms in order to effectively carry out a squeeze-out. The mechanisms that fall under consideration include the forced acquisition mechanism, a scheme of arrangement, and reduction of capital⁷. Not unexpectedly, the prevailing approach employed by controllers frequently involves the implementation of capital reduction, a strategy that offers no safeguards for minority owners. Few of the methods of squeeze outs have been elaborated below-

□ **Reduction of Capital-**

Capital reduction refers to the deliberate decrease of a company's share capital, encompassing both equity and preferential share capital, achieved through termination and repurchase of shares⁸. Companies engage in reducing their capital for a variety of reasons, such as enhancing shareholder value and optimising the way they manage capital to achieve greater efficiency. Following a capital reduction, the quantity of shares held by the firm is going to be reduced by the corresponding amount of the reduction. The process for the reduction of capital generally requires the approval of the company's shareholders and can therefore lead to a "squeeze-out" method.

□ **Scheme of Arrangements-**

In accordance with state legislation, individuals who own a designated percentage of shares in a corporation are often granted the authority to enact significant alterations to the organisation's structure. These changes may include revisions to the corporate charter, mergers, consolidations, dissolution, and the sale of a large portion of the firm's assets. Within the framework of these legislation, there exists a significant degree of discretion for majority shareholders to exploit the minority in an unjust manner.

⁷ Varottil, Umakanth. "Corporate Governance in M&A Transactions." *National Law School of India Review*, vol. 24, no. 2, 2013, pp. 50–61. JSTOR, <http://www.jstor.org/stable/44283761>. Accessed 22 Oct. 2023.

⁸ Yarrow, G. K. "Shareholder Protection, Compulsory Acquisition and the Efficiency of the Takeover Process." *The Journal of Industrial Economics*, vol. 34, no. 1, 1985, pp. 3–16. JSTOR, <https://doi.org/10.2307/2098478>. Accessed 22 Oct. 2023.

CONCERNS REGARDING SQUEEZE-OUTS

Regardless of their specific manifestation, squeeze-outs present corporate law with certain concerns due to the ability of the controlling party to dictate the time frame and financial terms of the squeeze-out, even in opposition to the desires of minority shareholders⁹. This is primarily attributed to the fact that, in many jurisdictions, the approval of a squeeze-out typically necessitates a majority vote, a threshold that the controlling party can typically secure. This presents the possibility of the controller engaging in exploitative conduct towards minority groups. Many squeeze-outs happen because fraudulent men are greedy and take advantage of partners who are trusted or not very good at what they do. Still, squeeze-outs aren't always caused by people just wanting power or money as much. Most cases of squeeze out involve basic conflicts of interest, long-lasting policy differences or other forms of disagreement, or people who are being squeezed out being unable to take on an adequate portion of the responsibility and work that comes with conducting a business.

If controllers were given the freedom to engage in such behaviour without facing consequences, it is reasonable to anticipate that minority investors would feel hesitant about being minorities in controlled firms. They may also demand additional safeguards, whether legal or business-related, before agreeing to become minority investors. Additionally, they might reduce the price they are willing to pay for shares to reflect the possibility of being opportunistically forced out¹⁰. The apprehension around such conduct might potentially provide challenges in securing funding from minority investors who are geographically scattered and likely to adopt a passive role. Consequently, this may hinder the process of capital accumulation.

When contemplating the possible challenges that may result from squeeze-outs, it may appear rational to impose a complete prohibition on them. Nevertheless, it is crucial to uphold an equitable perspective, as there exist situations in which squeeze-outs might yield favourable consequences. In some circumstances, a dominant entity might choose to engage in a transaction that increases value alone provided it is not obligated to distribute the resulting

⁹ Lucian Arye Bebchuk & Marcel Kahan, 'The "Lemons Effect" in Corporate Freeze-Outs' (1999) 2 (Nat'l Bureau of Econ. Research, Working Paper No. 6938, Feb. 1999) <http://ssrn.com/abstract=226397> accessed 21 October 2023

¹⁰ A.C. Pritchard, 'Tender Offers by Controlling Shareholders: The Specter of Coercion and Fair Price' (2004) 1 Berkeley Bus. L.J. 83, 84-85.

benefits among minority entities. This strategy would enable the entity with the power to fully realise the advantages of the transaction.

Hence, it is quite conceivable that squeeze-outs may be seen favourable under certain circumstances and unfavourable under others. This approach would involve implementing regulatory measures to mitigate the occurrence of bad squeeze-outs, while preserving the majority of positive squeeze-outs.

PROVISIONS IMPLEMENTING THE PRINCIPLE OF SQUEEZING OUT

The principle of squeezing out or the majority rule was first introduced by the case *Foss v Harbottle* involving Victoria Park Co. In this case, two shareholders accused five directors of mishandling the company's assets and sought to hold them accountable by appointing a receiver. However, the court ruled that only the company or its representatives had the authority to bring such claims, and individual shareholders could not do so. This decision established the principle that minority shareholders are bound by the decisions of the majority, particularly decisions made by the company's governing body, typically at special general meetings, which are empowered by the company's incorporation documents.

The fundamental principle behind this was that when a company or an association of individuals experiences harm or wrongdoing, it's the company itself that should generally be the one to pursue legal action. This principle stems from the legal concept that a corporation is a separate "person" distinct from its individual members. In other words, the company is treated as a legal entity on its own. As a result, any harm suffered by the company as a whole, rather than by its individual members, should be addressed through corporate procedures and not individual legal actions.

This rule is designed to protect the interests of majority shareholders because it is commonly understood that when someone becomes a member of a company, they implicitly agree to abide by the decisions made by the majority during general meetings. In essence, it prevents minority shareholders from frequently challenging company decisions in court, ensuring that corporate matters are generally handled internally and collectively, in accordance with the company's established processes and regulations.

However, the dilemma with this rule is that it is as important to protect a company's separate

legal personality as it is to make sure that the shareholder's democracy is not always at a compromise. But unfortunately When we see from the Indian context, the regulations governing the process of squeeze-outs are primarily outlined by the delisting regulations of the Securities and Exchange Board of India (SEBI) and the statutory provisions within the Companies Act. Under the prior Companies Act of 1956, there were no explicit rules pertaining to the squeeze-out of minority shareholders. The only relevant section was Section 395, which described an acquisition transaction as a method of minority squeeze-out. This section stipulated that the transfer of shares from one company to another required the approval of shareholders holding at least ninety percent of the shares' value involved, within four months of the transferee company's offer. Following a two-month period, the transferee company was required to notify the dissenting shareholders (constituting the remaining 10% of shareholders) to acquire their shares, effectively eliminating the minority from the company. However, instead of relying on Section 395, Section 100 of the Act was often used to remove the minority. Section 100 allowed the reduction of a company's capital through a special resolution, with the assent of 75% of the shareholders present and voting, subject to court approval. This approach often overlooked the interests of minority shareholders. It's worth noting that capital reduction was another method of executing a minority squeeze-out.

However, the case of *AIG (Mauritius) LLC v. Tata Tele Ventures* made an effort to interpret Section 395 of the Companies Act, 1956, which is similar to Section 235 under the current Act. This interpretation aimed to uphold the concept of shareholder democracy in India. The court ruled that the 90% requirement would only be satisfied if it involved "different and distinct persons." This condition was introduced to justify prioritizing the interests of the minority shareholders. But despite trying to protect the rights of the minority shareholder, this condition is still inadequate as it presents unique challenges, particularly in the context of "closely-held private and unlisted companies." Such companies often have their shares held by a small number of individuals with significant shareholdings, making it difficult for them to meet this threshold.

Other regulations governing squeeze-outs in India include Section 230(11) and (12) of the Act, which have been recently notified by the Ministry of Corporate Affairs. Additionally, the Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2020, and the Takeover Notifications have been enacted. These regulations permit shareholders of an unlisted company, holding at least 75% of the securities with voting rights, to compulsorily

acquire the shares of minority shareholders following a court-approved compromise. Another method for initiating a minority squeeze-out is through the reduction of share capital, as stipulated in Section 66 of the Act. In this approach, a company repurchases certain issued shares and cancels them, potentially resulting in the exit of a shareholder. In the case of *Sandvik Asia Limited v. Bharat Kumar Padamsi and Ors.*, it was determined that a reduction of share capital could be employed to squeeze out minority shareholders, provided they were offered fair compensation, and the actions were in accordance with the relevant Act.

Additionally, another method for executing a minority squeeze-out is through the consolidation of shares. This process allows the company to consolidate the nominal value of shares, which reduces the number of shares while increasing the nominal value of each share. A reverse stock split is commonly undertaken when the share price decreases, either to attract investors or to prevent delisting. Provisions governing the consolidation of shares can be found in Section 61(1)(b) of the Act and Rule 71 of the National Company Law Tribunal (NCLT) Rules, 2016.

THE ISSUE WITH THESE PROVISIONS

When we investigate the provisions further, we realize the issues and complexities regarding them. For instance, the recent amendments to Section 236 of the Companies Act 2013 have given rise to significant questions surrounding the rights of minority shareholders when an acquirer or a group secures 90% or more of a company's issued equity share capital. The crux of the matter is whether minority shareholders are compelled to accept an exit offer or the mandatory purchase of their shares, or if they retain the ability to contest this process.

Under the Act's provisions, "mismanagement" is broadly defined, covering actions like obstructing directorial functions, breaching statutory provisions and the company's governing documents, and misappropriating company funds. When an acquirer or group attains 90% or more of a company's issued equity share capital, they must formally notify the company of their intent to acquire the remaining equity shares. Following this notification, the acquirer is required to extend an offer to purchase the equity shares held by minority shareholders at a price determined by a certified valuer in accordance with established regulations.

On the flip side, minority shareholders have the option to offer their shares for sale to the majority shareholders at the same price as determined under the Act. As part of this process, the majority shareholders are obligated to deposit the sum corresponding to the shares they

wish to acquire under the Act into a dedicated bank account, which is maintained by the transferor company for a minimum of one year. The transferor company acts as an intermediary, managing the receipt of payments from and disbursements to minority shareholders, while facilitating the transfer of shares to the majority.

If, for some reason, minority shareholders do not transfer their shares within the stipulated timeframe, the transferor company will issue new shares and proceed with the transfer as mandated by the law. Additionally, should the majority shareholders negotiate or arrive at an agreement for a higher price in any share transfer without disclosing this to the minority shareholders, they are obligated to equitably share the extra compensation received.

The issues stemming from these provisions are quite noteworthy. Firstly, the Companies Act does not set a clear and specific deadline within which minority shareholders must sell or transfer their shares to the majority shareholders after the acquisition of 90% or more of the company's equity share capital. This lack of clarity creates uncertainty for minority shareholders, as they may be unsure about the timeframe in which they need to make a decision regarding their shares. It leaves room for ambiguity and potential disputes.

Secondly, the Act fails to include provisions for organizing a separate, exclusive meeting specifically designed for minority shareholders to express their concerns and opinions about the sale of their shares to the majority shareholders. This omission is significant because such meetings provide a platform for minority shareholders to voice their grievances, negotiate better terms, or seek alternative solutions. Without this provision, minority shareholders may find it challenging to effectively communicate their concerns and protect their interests, potentially putting them at a disadvantage in the process.

Instead, the Act references the approval process in cases where a majority of creditors or shareholders support a merger. In such situations, the Tribunal is given the authority to approve the compromise or arrangement. This means that if a merger is approved by the majority, it can proceed, even if the minority shareholders have reservations or concerns. The absence of provisions for a separate meeting for minority shareholders and the reliance on majority approval can leave minority shareholders in a vulnerable position, as their objections may not carry the weight needed to affect the outcome of the merger.

In essence, these gaps in the Act's provisions can create uncertainty and potential challenges

for minority shareholders. It can leave them with limited avenues to protect their interests, especially when the majority shareholders and the acquirer have substantial control and influence over the decision-making process. This lack of clarity and protection for minority shareholders highlights a potential area for improvement in the regulatory framework.

THE RESPONSE OF THE COURTS

In the earlier stages, the courts staunchly adhered to the Majority rule, even allowing irregular actions by majority shareholders to be validated through resolutions. A prominent example of this approach can be found in the *Bhajekar v. Shinkar* case, where the board of directors passed a resolution appointing certain individuals as managing agents. This resolution was ratified by the company in a general meeting, and despite claims by minority directors that it was irregular, the court ruled that the company had the right to validate any agreement, even if it had irregularities. The court firmly asserted that it would not interfere in a company's internal affairs under any circumstances.

However, over time, the judiciary has moved away from a strict adherence to the majority rule and sought to strike a balance between the interests of minority and majority shareholders, thereby safeguarding the rights of the former. This shift is evident in cases like *Sri Ramdas Motor Transport Ltd. v. Tadi Adhinarayana Reddy and Ors*, where Section 397 of the Companies Act 1956 provides a route for a member of a company to approach the Company Law Board and file a complaint if they believe that the company's affairs are being conducted in a manner prejudicial to public interest or oppressive to any member. It's important to note that minority activism doesn't undermine the democratic rights of the majority shareholders.

In the *Shanti Prasad Jain v. Kalinga Tubes Ltd* case, a dispute over control of a company arose, with the chairman alleging oppression in the company's affairs. The Supreme Court ruled that there was no case for action under Section 397, stating that the mere allotment of new shares does not amount to oppression and that specific facts justifying mismanagement or oppression must be present.

The cases of *Rajahmundry Electric Supply Corpn Ltd. v. Nageshwara Rao and Miheer H. Mafatlal v. Mafatlal Industries Ltd.* illustrate a shift in the judicial approach over the years. These cases reflect a departure from the rigid adherence to the majority rule in order to protect the interests of minority shareholders.

In *Rajahmundry Electric Supply Corpn Ltd. v. Nageshwara Rao*, the court emphasized that it would refrain from interfering in the internal affairs of a company or the actions of its directors as long as those actions fell within the scope of the powers granted to them by the Articles of Association. This stance signified a hands-off approach by the court regarding a company's internal governance, as long as it was conducted within the legal boundaries defined by the company's governing documents.

The evolution in judicial perspective is further evident in *Miheer H. Mafatlal v. Mafatlal Industries Ltd.* In this case, the court emphasized that it would not intervene if a scheme had received the approval of the majority of shareholders and was lawful. The court's role was limited to examining whether the scheme met all the statutory requirements under Section 391(2) and if it had been passed by the necessary majority. If the scheme was deemed just and fair and had majority approval, the court would not interfere. However, the court would step in if the actions of majority shareholders impacted the interests of a specific class of equity shareholders.

In essence, these cases demonstrate that the judiciary has transitioned from a strict adherence to the majority rule to a more balanced approach. They show that while majority decisions still hold great weight, the court is prepared to intervene when the rights and interests of minority shareholders are at risk or when there are specific legal infractions. This shift reflects a commitment to protecting the rights and equitable treatment of all shareholders, not solely the majority as it recognizes the importance it holds when it comes to ensuring that in order for a company's economic and overall growth, the rights and freedom of the minorities and are not totally compromised or oppressed. A company's aim naturally would be to generate profit, but it is necessary to maintain a line of balance between generating profit and oppressing the minority shareholder.

ANALYSIS

The case of *Foss v. Harbottle* rule, although, founded on the principle of majority supremacy, that establishes that once a majority resolution is passed, it binds all members and was originally viewed as a representation of democracy and of the utilitarian approach, in the context of India, it has been diluted and is not rigorously upheld. The Companies Act of 1956 marked the initial legislative effort to safeguard the rights of minority shareholders in India.

However, this Act did not accord significant recognition to minority shareholders within companies, largely due to their subjugation by the majority.

The Companies Act of 2013 has taken substantial steps to protect the interests of minority shareholders, even when they face situations involving oppression and mismanagement that jeopardize their rights. The core intention of this legislation is to ensure the protection of minority shareholders. Nevertheless, the challenge remains in effectively enforcing these rights. The rightful administration of minority shareholders' rights is guaranteed only when their significance is acknowledged in the management of a company and when these rights are consistently implemented.

One crucial concern with the Companies Act of 2013 is the numerical threshold stipulated in Section 244. While it is essential to have safeguards against frivolous suits, this numerical requirement can sometimes prove challenging to meet. A prominent example of this challenge was seen in the recent dispute between Tata and Cyrus Mistry, where Mistry's plea was initially rejected due to the failure to meet the numerical threshold. Although the National Company Law Tribunal (NCLT) possesses the authority to waive this requirement, there is a lack of clarity regarding when and what criteria are employed for such waivers. These filters can undermine the spirit of corporate law and weaken the rights of minority shareholders, particularly in cases involving oppression where shareholders are seeking to assert their rights.

The introduction of class action suits is a positive step towards protecting minority shareholders' rights. However, further efforts are required to raise awareness among affected parties so they can seek justice through this mechanism. This approach can also help reduce the number of individual lawsuits, as a group can collectively file a case against a common defendant on shared grounds.

Fortunately, there are promising signs that companies are increasingly taking measures to ensure that the rights of minority shareholders are respected. For instance, the concept of "piggybacking" is being embraced, which mandates that when the majority shareholders sell their shares, the rights of minority shareholders must be included in the transaction. Furthermore, parties are encouraged to consider purchasing the business to acquire 100% of the outstanding shares, thus affording a more equitable approach.

In summary, while the legal landscape has evolved to provide better protection for minority

shareholders, there remain challenges in enforcing these rights. Ensuring the fair treatment of minority shareholders requires not only robust legislation but also a commitment from all stakeholders, including companies and the judiciary, to uphold these rights and prevent their erosion.

COMPARATIVE ANALYSIS

The shareholder rights play a crucial role in both India and the UK¹¹, and the statutory provisions surrounding these rights exhibit a comparable array of legal attributes and encounter similar legal issues. While there are differences in the specific articulation of these rights, both countries emphasize the range of rights available to shareholders, including the right to obtain information, elect and dismiss directors, and share in the company's earnings. The document also notes that corporate structures and laws continue to evolve, and there is room for both countries to learn from each other's experiences and amend their statutes accordingly.

This research emphasises that the UK distinguishes shareholder rights based on the percentage of shares owned, but India allows for different rights to be granted to minority owners. Furthermore, the text emphasises the UK's more flexible and accommodating approach to promoting and safeguarding the rights and interests of corporations and shareholders. Here are a few criteria by which the UK and India can be distinguished¹²:

Right to Information

Minority shareholders have the right to receive information about the company's affairs in both India and the United Kingdom. This includes the right to financial statements, director's reports, and meeting notices. According to the Companies Act 2013 (the "Indian Act"), every shareholder in India has the right to see the company's books of account and other papers. The Companies Act 2006 (the "UK Act") in the United Kingdom specifies that every shareholder has the right to a copy of the company's annual accounts and directors' report.

¹¹ A COMPARATIVE ANALYSIS OF THE RIGHTS OF SHAREHOLDERS IN INDIA, FOX MANDAL SOLICITORS AND ADVOCATES, <https://www.foxmandal.in/wp-content/uploads/2022/08/A-COMPARATIVE-ANALYSIS-OF-THE-RIGHTS-OF-SHAREHOLDERS-IN-INDIA-AND-THE-UNITED-KINGDOM.pdf>

¹² Minority Interest. (n.d.). <https://www.mca.gov.in/content/mca/global/en/data-and-reports/reports/other-reports/report-company-law/minority-interest.html>

Right to Vote

Minority shareholders have the right to vote on business decisions in both India and the United Kingdom. This includes the opportunity to vote on director elections, constitution revisions, and mergers and acquisitions. The Indian Act specifies that every shareholder in India has the right to vote at corporate general meetings. According to the UK Act, every shareholder in the UK has the right to vote on any resolutions made to a general meeting of the company.

Right to Receive Dividends

Minority shareholders have the right to receive dividends from the company's profits in both India and the United Kingdom. The Indian Act requires a company's directors to declare a dividend if the company has achieved a profit. In the United Kingdom, the UK Act requires business directors to consider the interests of the company's members as a whole when deciding how to distribute profits.

Right to Attend and Participate in Meetings

Minority shareholders have the right to attend and participate in corporate general meetings in both India and the United Kingdom. The Indian Act specifies that every shareholder in India has the right to attend and speak at corporate general meetings. The UK Act states that every shareholder has the right to attend, speak, and vote at corporate general meetings.

Right to Apply for Winding Up¹³

Minority shareholders have the right to petition the court in both India and the United Kingdom to have the firm wound up. The Indian Act specifies that a shareholder may apply to the court for the winding up of the business if the firm is unable to pay its debts or if the court believes that the company should be wound up for just and equitable reasons. The UK Act states that a shareholder may petition to the court for the company's winding up if the firm is unable to pay its debts or if the court believes that it is just and equitable that the company be wound up.

¹³ Diversity In Shareholder Protection In Common Law Countries Priya P. Lele And Mathias M. Siems*, <https://www.ifo.de/DocDL/dicereport107-forum1.pdf>

Right to Object to Unfair Prejudice¹⁴

Minority shareholders in India have a legal right to object to any act or omission by the firm or its board that is unreasonably harmful to their interests. Section 241 of the Indian Act guarantees this privilege. There is no statutory right to object to unjust prejudice in the United Kingdom. Minority shareholders, on the other hand, can seek remedies in court under common law.

Right to Pre-emption

Minority shareholders have the right to be offered new shares in the company on a pro rata basis in both India and the United Kingdom. This is referred to as the right of pre-emption¹⁵. According to the Indian Act, each shareholder has the right to be issued new shares in the firm on a pro rata basis. The UK Act states that, unless the firm's articles of association provide otherwise, every shareholder has the right to be offered new shares in the company on a pro rata basis.

Right to Take Legal Action

Minority shareholders in both India and the United Kingdom have the power to sue the firm or its directors for breach of duty. The Indian Act allows that a shareholder may file a derivative action against the directors on behalf of the company for violation of duty. The UK Act stipulates that a shareholder may file a derivative action against the directors on behalf of the company for breach of duty.

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- The Companies Act 2013 of India establishes a comprehensive framework for minority shareholder protection. Minority shareholders have the right under Section 241 of the Act to object¹⁶ to any act or omission by the firm or its directors that is unduly harmful

¹⁴ Rai, D. (2021, June 15). *The protection of minority shareholder's rights : remedies to unfair prejudice and premises for bringing proceedings - iPleaders*. iPleaders. <https://blog.ipleaders.in/protection-minority-shareholders-rights-remedies-unfair-prejudice-premises-bringing-proceedings/#~:text=In%20the%20case%20of%20unfair,the%20affairs%20of%20the%20company.>

¹⁵ Tardi, C. (2021, April 16). *Preemptive Rights: Some Shareholders Get First Dibs on New Stock*. Investopedia. <https://www.investopedia.com/terms/p/preemptiveright.asp>

¹⁶ Parikh, S. (2023, March 6). *Protection and Redressal of Minority Shareholder Rights | India Corporate Law*. India Corporate Law. <https://corporate.cyrilamarchandblogs.com/2023/03/protection-and-redressal-of-minority-shareholder-rights/>

to their interests. This right does not apply to certain forms of behaviour, but rather to any activity that has a negative impact on the minority shareholders' position in the corporation. The standard for demonstrating unjust bias is low, and courts have widely interpreted the term to embrace a wide variety of acts. Furthermore, Minority shareholders in India have a variety of other statutory rights in addition to the power to complain to unjust prejudice. They have the right, for example, to obtain information about the business's activities, to vote on topics affecting the company, and to receive dividends. These rights are intended to ensure that minority shareholders can engage actively in the company's governance and hold management accountable for their actions.

- The legislative structure for minority shareholder protection in the United Kingdom¹⁷ is less comprehensive than in India. There is no statutory right to complain to unjust prejudice, but under common law, minority shareholders can seek remedies from the court. The standard for showing unjust prejudice is higher than in India, and the courts have been more stringent in giving relief. However, courts have broad power to offer remedy in suitable instances, and they have established a range of equitable remedies to safeguard minority shareholders.
- In addition to common law, there are a variety of statutory provisions in the UK that protect minority shareholders. For example, the Companies Act of 2006 offers minority shareholders the power to petition the court for an injunction if they consider the company's operations are being conducted in an unduly prejudicial manner to their interests. However, this right is not as extensive as the one under Indian law to complain to unfair prejudice.
- Overall, India's legislative system for preserving minority shareholders' interests is more thorough than that of the United Kingdom. The UK courts, on the other hand, have a more lenient approach to awarding remedy to minority shareholders who have been unfairly harmed. The jurisdiction chosen for a given firm will thus be determined by a number of considerations, including the extent of minority shareholder protection

¹⁷ Rickman, J. (2022, November 21). What Rights Do Minority Shareholders Have in the UK? LegalVision UK. <https://legalvision.co.uk/corporations/minority-shareholder-rights-uk/#:~:text=At%20the%20most%20fundamental%20level,judge%20to%20recognise%20the%20conduct.>

desired.

In conclusion, the document emphasizes the growing importance of shareholders' rights in the corporate world and the need for continuous evolution in corporate structures and for the rights of shareholders in the corporate structure, with a focus on the legal entitlements and protections they have in India and the United Kingdom. It highlights the fundamental uniformity in the corporate structure across jurisdictions, with variations in the rights accorded to different classes of shareholders. The document acknowledges the influence of customs and traditions in shaping company laws and the importance of learning from different nations.

HOW IS INDIA BETTER THAN UK

According to the above analysis, India received a flawless 10/10 in the World Bank's Ease of Doing Business report for respecting the rights of minority shareholders, whereas the UK received a 7/10. This shows that India may have an advantage over the UK in terms of providing rights and safeguards to minority shareholders.¹⁸

Some key points that indicate India's approach to protecting minority shareholders' rights include:¹⁹

1. Lower Shareholder Limit: According to the paper, India has a lower shareholder limit that varies depending on the type of firm. This means that even smaller organisations with fewer shareholders must offer minority shareholders with rights and safeguards.
2. Class Action cases: The Companies Act, 2013, in India, allows minority shareholders to file class action cases in specific instances. This mechanism allows minority shareholders to seek redress collectively for actions that are damaging to their interests.
3. Rights Variation: The Act allows shareholders who own a certain percentage of a class of shares to seek a change in the rights attached to their shares if they do not consent to

¹⁸ P. (2020, November 24). *India's score on protecting minority investors has slipped, need to sharpen focus: Finance ministry official*. The Times of India. <https://timesofindia.indiatimes.com/business/india-business/indias-score-on-protecting-minority-investors-has-slipped-need-to-sharpen-focus-finance-ministry-official/articleshow/79390869.cms>

¹⁹ Minority Interest. (n.d.). <https://www.mca.gov.in/content/mca/global/en/data-and-reports/reports/other-reports/report-company-law/minority-interest.html>

the change. This provision protects minority shareholders' rights from being modified without their consent.

4. **Protection against Oppression:** The Act also gives minority shareholders the ability to file a complaint with the National Company Law Tribunal if the company's business is conducted in an oppressive manner that is detrimental to their interests. This enables minority shareholders to seek redress if they believe their rights are being violated.

These factors indicate that India has taken steps to ensure minority shareholders' rights and protections. It is crucial to note, however, that the paper also cites areas where India can learn from the UK's laws and policies. As a result, it is not a clear assertion that India is superior to the UK in all elements of giving minority shareholders with rights. It simply means that India obtained a higher score in the specific context of minority shareholder protection in the Ease of Doing Business report.

FUTURE REFORMS

Based on the above paper, it is mentioned that despite the similarities in the rights of shareholders in India and the UK, there are areas where India can learn from the UK. Here are some potential areas where India can learn from the UK:

1. **Clear Demarcation of Shareholder Rights:** Clear Demarcation of Shareholder Rights: According to the paper, in the United Kingdom, shareholders' rights are determined by the percentage of shares/voting rights they own in the corporation. Because of the clear differentiation based on share ownership, shareholder rights can be approached in a more systematic manner. To offer clarity and consistency in shareholder rights, India should consider taking a similar approach.
2. **Flexibility and Liberalization:** According to the text, several aspects of Indian law appear to be more flexible and liberalised than those in the United Kingdom. India can benefit from the United Kingdom's broad and accommodating approach to promoting and preserving the rights and interests of both enterprises and shareholders. This may entail assessing and maybe amending some elements of Indian law in order to provide greater flexibility and protection for shareholders.
3. **Protection of Auditors:** According to the paper, shareholders in the United Kingdom have

the authority to remove an auditor at any time by passing an ordinary resolution in a general meeting. The dismissal of an auditor in India necessitates a formal resolution and authority from the national government. India should pursue a more simplified method that allows shareholders to remove auditors when necessary while ensuring proper safeguards are in place.

4. Learning from Customs and Traditions: The text emphasises how norms and traditions have shaped both Indian and English law. India may continue to learn from the experience of the United Kingdom and modify its legislation to changing conditions and worldwide best practises. This continuing learning process can assist India in strengthening its corporate structures and protecting shareholder rights more effectively.

It should be noted that the paper does not present a full list of topics in which India can learn from the United Kingdom. Depending on the context and developing needs of the Indian corporate landscape, the specific areas for improvement may differ.

CONCLUSION

In conclusion, India's legal framework, governed by the Companies Act, 2013, provides a comprehensive set of rights, including the right to object to unfair prejudice, along with statutory protections that aim to ensure the interests of minority shareholders. In contrast, the UK relies more on common law principles, but the courts have developed a flexible approach to granting relief to minority shareholders who have been unfairly prejudiced.

The choice of jurisdiction for a particular company will depend on various factors, including the level of minority shareholder protection desired. Both countries have strengths and areas for improvement, and there is room for mutual learning and adaptation in the ever-evolving landscape of corporate governance and minority shareholder rights. This comparative analysis underscores the significance of ensuring robust legal frameworks that protect the rights of minority shareholders, promote corporate transparency, and enhance the overall corporate governance landscape.

While India offers a more detailed statutory framework, the UK provides flexibility and adaptability in its common law-based system. It's essential for both countries to continue evolving their corporate structures and laws to meet the changing needs of shareholders and to learn from each other's experiences in safeguarding minority shareholder rights. Moreover, the

increasing trend of shareholder activism in both countries reflects the growing importance of shareholder engagement and their influence in corporate decision-making processes.