TREASURY SHARES IN INDIA: ANALYSING THE PROPOSED SECTION 233A OF THE COMPANIES ACT, 2013

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ABSTRACT

The Corporate Laws (Amendment) Bill, 2026 proposes to rectify one of the oldest anomalies in the corporate laws of India through the proposed insertion of Section 233A of the Companies Act, 2013. The provision addresses legacy schemes of amalgamation and restructuring since 2013 in which the companies had held their own shares, sometimes indirectly through trusts, and had not been required by law to wind up arrangements. These arrangements have brought up many corporate governance issues, especially about how votes are cast and the centralization of managerial power.

This article examines the legal and policy background of Section 233A, and discusses the central elements of the regulations, such as the three-year irrevocable disposal time, the automatic cancellation and extinguishment of undisposed shares and ongoing sanctions for failure to comply. It also addresses the shareholder democracy, capital reduction law and doctrine, creditor protection, and securities regulation aspects of the provision. Although the proposed framework is a major stride towards the phasing out of legacy treasury share structures and enhanced corporate accountability, there are some ambiguities, such as voting rights during the transition process and whether there will be tax liability on disposal or deemed cancellation. Despite the unresolved matters, the article explains how Section 233A is a significant development in the corporate governance landscape of India as it finally addresses a longstanding gap in the law since the introduction of the Companies Act, 2013 from the Companies Act, 1956.

India's corporate law landscape is rarely short of quiet anomalies, gaps in statute that persist for years, not because legislators overlooked them, but because the real-world consequences took time to crystallise into problems urgent enough to fix. Treasury shares represent one such anomaly. They have sat at the intersection of mergers law, corporate governance, and capital markets regulation for over a decade, uncomfortably unaddressed. The Corporate Laws (Amendment) Bill, 2026,[1] introduced in the Lok Sabha on

[1] The Corporate Laws (Amendment) Bill, No. 85 of 2026, Bill introduced in Lok Sabha (India), https://prsindia.org/files/bills_acts/bills_parliament/2026/Corporate_Laws_(A)_Bill_2026_Text.pdf (last visited

23 March 2026 and currently under scrutiny by a Joint Parliamentary Committee, finally proposes to close that gap through the insertion of a new Section 233A. The provision is compact in length but significant in reach, and its implications deserve careful unpacking.[2]

The Legal Lacuna: How Treasury Shares Fell Through the Cracks

For most jurisdictions, treasury shares mean shares that are repurchased, retained, and not cancelled by the company. Shares in treasury are usually used in employee stock plans, acquisitions, or used in the company's capital management. Retained shares also are usually deprived of voting rights. This prevents the company from voting and influencing the company's governance.

India's regulatory policy on buyback of shares is more controlled. India's Companies Act of 2013 mandates that shares that are bought back are also cancelled and extinguished. This policy is more cautious when compared to other jurisdictions and is due to concerns of market manipulation. In India, treasury shares do not exists in the conventional sense.[3]

Even with the treasury shares that do not exist, treasury-like structures began to appear through the corporate restructuring process.[4] In several mergers and amalgamations that took place before the year 2013, the transferring Company held shares of the transferee Company. After the merger, the transferee Company held its own shares through the employee welfare trusts or through other similar vehicles. In many instances, these shares maintained their voting rights which gave rise to a great deal of corporate governance issues.

The Companies Act 2013[5] made provisions in its Sections 230 and 232 to deal with the issue in the future by requiring cancellation of self-held shares that might occur under a scheme of arrangement or extinguishment of such shares. But the law didn't say anything about the legacy treasury shares that were established under arrangements that closed before 2013. This led to many listed companies retaining these structures with no statutory requirement to unwind them.

Aug. 14, 2026).

[2] Khaitan & Co., *Navigating the 2026 Corporate Law Reforms: A New Era for the Companies Act, 2013*, Mondaq (July 31, 2026), https://www.mondaq.com/india/corporate-governance/1764318/navigating-the-2026-corporate-law-reforms-a-new-era-for-the-companies-act-2013

[3] *Buy-Back of Shares: An Analysis under Companies Act & Income Tax Act*, TaxGuru, https://taxguru.in/company-law/buy-back-shares-aeanalysis-companies-act-income-tax-act.html

[4] Subhashish Kumar Sahu, *Role of SEBI in Regulating Market Manipulation and Insider Trading, Int'l J. for Multidisciplinary Res. (2025), https://www.ijfmr.com/papers/2025/5/56916.pdf (last visited Aug. 14, 2026).*

[5] Companies Act, No. 18 of 2013, Acts of Parliament, 2013 (India), https://www.indiacode.nic.in/bitstream/123456789/2114/5/A2013-18.pdf.

Section 233A aims to remedy this situation by offering a way to solve the longstanding problems associated with treasury share arrangements.

What Section 233A Proposes: Mechanics, Timelines, and Consequences

Clause 70 of the Companies Amendment Bill adds Section 233A, "Treatment of Certain Shares Held in the Name of a Company or Trust." Although the section is short, it attempts to address a quality problem in corporate governance regarding legacy treasury shares.

This section aims to address the situation where a transferee company holds its own shares (either directly or through a trust acting on its behalf or on behalf of its subsidiaries or associates), pursuant to a compromise or arrangement made prior to the coming into force of the Companies Act, 2013 a scenario rooted in the legislative gaps identified by the Company Law Committee Report (2022)[6] and the Expert Committee on Company Law (J.J. Irani Committee Report, 2005).[7]

The aims of the section are best served by providing that the treasury shares must be disposed of within three years of the coming into force of the Amendment Act. The three-year limit is a statutory sunset period intended to remove legacy treasury share arrangements. The sunset period is not a discretionary grace period.

The second sub-section outlines the consequences for failing to meet the sunset period. Any share which is not disposed of within the designated time period will be automatically cancelled or extinguished, and the cancellation will be considered a reduction of share capital. This matters, as most reductions of share capital require a tribunal-approved process per Section 66 of the Companies Act, 2013. Section 233A[8] essentially ignores that process because of a statutory construction stating that the reduction naturally occurred.

This is supported by a continuing penalty system. If the company still has not complied after the three-year period, both the company and all officers in default will be liable for a penalty of ₹10,000 per day for each day default continues. This approach suggests that the lack of

[6] Ministry of Corporate Affairs, Government of India, https://www.mca.gov.in/bin/dms/getdocument?mds=bwsK%252FBEAFTVdpdKuv5IR5w%253D%253D&type=open (last visited Aug. 14, 2026).
[7] Expert Comm. on Company Law, Ministry of Company Affairs, Government of India, *Report of the Expert Committee on Company Law* (2005), http://www.primedirectors.com/pdf/jj%20irani%20report-mca.pdf.
[8] Companies Act, No. 18 of 2013, Acts of Parliament, 2013 (India), https://www.indiacode.nic.in/show-data?actid=AC_CEN_22_29_00008_201318_1517807327856&orderno=236.

action should be considered continuing disregard for the law as opposed to lapse of compliance.

Having Section 233A expressly state that all shares held through trust are subject to the said provisions is a noteworthy point. To manage Legacy treasury structures, companies previously used employee welfare trusts or other group trusts. Therefore, companies kept indirect control over shares, while avoiding the appearance of having self-owned shares. By extending the provision to subsidiary and associate company trusts, the legislature removes the opportunity to avoid the appearance of self-owned shares.

The statute uses the term "deal with or dispose of" and is intentionally broader than cancellation. Therefore, shares may be transferred, sold, or completely restructured in the three years before self-extinguishment occurs. For listed companies, the market becomes a consideration. Therefore, block trades, valuations, and the potential for securities law to govern sales may also need to be considered.

Governance Stakes and Open Questions

Section 233A is, at its core, a corporate governance reform rather than a mere compliance exercise. Legacy treasury shares not only increase control but also create a vicious control cycle. For example, if management controls voting rights on shares held in trust, then the company can control the decisions on issues that should be voted on by the independent shareholders. This undermines the idea that the power to vote should reflect the will of the shareholders, not the company.

The provision's three-year sunset period strikes a pragmatic balance. It allows companies to assess their treasury holdings and obtain legal and tax advice, and then orderly disposal can be implemented. It also means that legacy structures will not be retained forever. The provision also does not impose a requirement for companies to cancel shares in the near future. By authorizing companies to deal or dispose of shares, flexibility is maintained, and companies can realize value before the automatic cancellation happens.

However, a few concerns require further scrutiny. To begin with, Section 233A does not mention voting rights during the three-year transition phase. In contrast, Section 232 specifically forbids voting on treasury shares stemming from post-2013 schemes, and the provision does not prohibit voting rights during the treasury shares disposal. Thus, the same governance issues that prompted the changes may remain for three more years. A temporary voting rights suspension that lasts from the provision's enactment would likely meet the provision's intent more accurately.

Second, the deemed capital reduction structure raises concerns for creditors.[9] As per Section 66 of the Companies Act, a reduction of the capital of the company's shares is subject to the tribunal's oversight and the objection of the creditors. By permitting treasury shares to be cancelled without the NCLT's approval, Section 233A provides no such safeguards. While the effect may practically be of little consequence if treasury shares constitute a small segment of the company's overall share capital, the concern moves away from creditor protection and merits examination.

Finally, there is still uncertainty about the tax consequences of disposal or deemed cancellation of legacy treasury holdings. Capital gains tax considerations could arise from the appreciation of many legacy treasury holdings since their creation in the original restructuring transactions. Clarity regarding the valuation, holding period, applicable tax rates, and the treatment of gains in light of existing grandfathering provisions would be necessary. Hence, guidance from the Finance Ministry would be imperative to facilitate transition.

Conclusion

Section 233A is a commendable addition to the Indian corporate law. This new provision closes a governance gap that has existed since the transition from the Companies Act, 1956 to the Companies Act, 2013. This new provision introduced a credible mechanism to unwind a legal grey area by mandating the disposal of legacy treasury shares within a three-year period and providing for their automatic cancellation at the end of that period.

Its principal strength lies in recognising that treasury shares carrying voting rights are fundamentally inconsistent with sound corporate governance. The proposed sunset framework ensures that companies can regularise their holdings in an orderly manner while preventing indefinite preservation of these arrangements. But the provision would be much stronger if it clearly made provision to forfeit the right to vote during the transition. If there is no such

[9] *Section 66 of the Companies Act, 2013 Deals with Reduction of Share Capital*, Prepp.in, https://prepp.in/question/section-66-of-the-companies-act-2013-deals-with-663a4ef10368feeaa5c2b459 (last visited Aug. 14, 2026).

restriction, then the governance issues that led to the reform could last until the end of the 3-year period.

To make the framework even more effective, there should be greater clarity on the tax consequences of disposal and the effect of the deemed capital reduction on creditor protections. In its current form, subject to these developments, Section 233A could be a valuable tool for protecting shareholder democracy and corporate accountability. More broadly, the Corporate Laws (Amendment) Bill, 2026 is indicative of a legislative commitment to finally resolving structural problems that have long remained unsolved. The Bill comes at the right time (earlier than some would have liked) and in the right direction to deal with the issue of legacy treasury shares.