
FIDUCIARY DUTIES OF COMPANY PROMOTERS: A CRITICAL ANALYSIS OF THEIR SCOPE AND ENFORCEMENT IN MODERN CORPORATE STRUCTURES

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ABSTRACT

Fiduciary obligations of promoters are very essential in understanding the Indian Corporate Law. Starting from the creation of the identity of a company the role of promoters continues even after the incorporation. The position of the promoters is very related to the ideas of honesty, fairness, and disclosure. From the very traditional approach of considering a promoter as an individual who promotes the business, we have come a very long way. As the corporate governance grows with advancements of Companies, this research tries to understand the dynamic character of promoters. The importance of due diligence from the side of promoters is analyzed with a comparative approach. The presence of various institutional oversight mechanisms and their role in regulating promoters aligns with this demand. There must be an alignment which balances corporate accountability and business innovations. The present corporate matrix has made it complex to understand. The presence of various layered subsidiaries and cross-holdings mixed difficult to find the real promoter. With the emergence of digital economy, share holdings has become more cross border and promoters has become international. Even when India has multiple Institutions to regulate promoters, enforcement of many rules is still a dream. The overlapping of duties and contradictory regulations makes the situation words. The duties of the promoters are not completely legal and there is a great ethical angle for the same. We must see promoters as not the developers of a business but the real protector of investor confidence. They are the strongest bridge that connects the investors fortune with the bright future of a company. That is primarily why transparency and fairness is always attached to the duties of promoters. With clear regulations, both promoters and the company will benefit together.

Keywords: Fiduciary obligations, Corporate governance, Due diligence, Corporate accountability, Investor confidence.

INTRODUCTION

If the corporate entity can be considered to be a manmade structure, the promoters are the real Architects behind the construction. Within the definition of the Indian Company laws the promoters have a very special role to play regarding corporate governance. Being the Architects, they shape the real identity and objectives of the business. They understand the real framework required to run the business and take decisions accordingly in the interest of the same business. The real idea starts before the incorporation of a company. It is the promoter who gets the real idea about the business and the company first. The very next important aspect is regarding the resources that are required for the business or the company to exist successfully. Mobilization of the same resources are also done under the leadership of the same promoters. Once everything comes in place it needs to be executed by registering under the legal regulations that are present within the jurisdiction. The promoters also ensure that the legal registrations happen accordingly and the company is clearly incorporated by coming into existence.

The Companies Act of 2013 does not give a very detailed or elaborate definition about promoters. It can be understood that they are the people in control of the day to day affairs of the company or as the people who give real and proper advices to the board. The role that is played by the promoters is very complex to understand because it stands in between two main ideas. One does the very personal and private business initiative that has been launched for profit while the second aspect is regarding the public fiduciary responsibility. The role of the promoter does not begin and end with the existence of the company or when the business is initiated. That trust of the public, which is the most important aspect for any business is protected by the ideas and actions of the promoters. Funds are raised by any company considering the integrity of the promoters.

Considering the historical angle, we see that the role of the promoter has evolved from the older colonial company law ideas. The initial legal systems had only focus on the protection needed for investors and wanted to ensure that the dealings happen in a fair environment. The earlier English legal system also believed that it is the promoter who really protects the interest of the investors and the public in total. Thus the promoters had to disclose every single fact that the public must know about the company and their business activities. When the world became more globalized and the idea of liberalization became the key in corporate governance the idea

has also changed. Now promoters are considered more important in any company but the need of accountability and the methods of accountability has also changed. When the businesses have tried to become more productive and better, the legal accountability measures have also grown. That is why globally, there is a demand to clearly mention the fiduciary duties that the promoters must have to follow. The main Idea behind the same is that the promoters come to play in the field of business even before the incorporation of the company and it is on their name a company makes the very first foot step.

The Companies Act of 2013 has attempted in codifying many principles that should govern the behavior of promoters. The act has considered the importance of regulating some of the reaction and ensuring that they work for the Welfare of both the company and the society. SEBI regulations and judicial interpretations has also kept the same idea in their mind while dealing with the same matter and has provided multiple analysis of what happens if the promoters are acting illegal and without ethics. Provisions such as Sections 7, 26, 35, and 300 of the Act, along with SEBI (Issue of Capital and Disclosure Requirements) Regulations, require promoters to ensure transparency in prospectuses, maintain fair valuation, and prevent fraudulent practices. The entire idea of corporate governance thus is very dynamic in the present context of company law.

There are also multiple examples to show the fact that illegal acts from the side of the promoters has directly lead to corporate abuses. Multiple cases regarding misrepresentation, insider control, or related-party transactions has shown that the basic democratic ideas that used to exist within the corporate structures has eroded the entire integrity. That is one of the main reasons why the ethical concerns were also debated when the role of promoters was discussed. The present legislations focused on improving the transparency and accountability measures so that the entire business environment is perfect for competition and growth. In multiple cases the promoters were also declared liable for the actions they have committed and the financial loss that was caused from their side.

LITERATURE REVIEW

Gopalan, S. & Raj, P, “Fiduciary Duties of Company Promoters under Indian Corporate Law: Challenges in Implementation and Enforcement” (2021). The study here evaluates the evolution of promoter mandates resulting from the Companies Act, 2013 and SEBI regulations. It shows how SEBI, MCA, and the courts all have the same power. The process can cause

delays and make it less likely that people will break the law. This literature clearly shows the gaps in the present legal frameworks that India has. The researcher has used this to understand the enforcement mechanisms available and the issues associated with the same. It can also be used to write a critical analysis of the present legal system.

Khanna, V., *Enforcement of Promoters' Fiduciary Duties: The Indian Experience* (2020). The author has given the idea that India has a reactive approach towards the issue. He believes that a preventive approach is better to solve the matter. This literature has helped in writing a critical review of the provisions that we have. It also focuses on how the promoters misuse the present laws through the loopholes. Often the case of minority shareholders are undiscussed. The author has taken the effort to study it as well providing a better insight.

Dasgupta, A., *Corporate Governance and Promoter Accountability in India: Insights from the IL&FS Crisis* (2023). This research conducted here is very special considering the focus towards a peculiar crisis. It is the IL&FS crisis. The author identified that the presence of weak regulations and bad control systems in the corporate structures to be the main culprit behind the issue. The author connects the wrongdoings of the promoter with the total instability that can be caused to the economy. However, he also provides many solutions to the same. Some examples are usage of digital technologies to regulate and monitor.

Coffee, J.C., *Gatekeepers: The Professions and Corporate Governance* (2007). The author writes this literature analyzing the American administration regarding corporate governance. For example, the Securities Exchange Act, 1934 and the Sarbanes Oxley Act, 2002. This provides a better understanding of the comparative approach to be taken. The author has used the same to understand the preventive approach taken by USA to control promoters. The need for having stricter regulations is understood by reading this. The researcher has understood that the comparative approach works well in studying this matter as some clear differences are seen.

Tricker, B., *Corporate Governance: Principles, Policies, and Practices* (2019). In this literature, the author examines corporate governance in the UK government. For instance, the UK Corporate Governance Code and the Companies Act of 2006. This improves comprehension of the comparison method that should be used. The same has been employed by the author to comprehend the UK's preventative strategy for managing promoters. Reading this makes it clear that tighter rules are necessary. Since there are some obvious distinctions, the researcher has realized that the comparative method is effective in this case.

Claessens, S., *Corporate Governance and Development* (2016). Unlike all other authors, Claessen gave a new angle to the understanding of regulating promoters. The author focused on a different aspect of 'good governance'. He states that the ethical side of regulating promoters are very huge in scope. It is relevant to study the same as better regulations can be formulated, keeping this as a foundation. When the governance matrix itself is undergoing changes globally, the promoters must be regulated to make corporates better.

Indian scholars like Gopalan & Raj, Khanna, and Dasgupta has also used the doctrinal and casebased insights to support the same idea. The only one issue is that there does not exist enough empirical data to substantiate their findings and understandings. There are also very few studies that clearly used the comparative approach to find the relevance in India. However, this research is an attempt to solve this issue and thus adopts the approach. Both global researches and conclusions alongwith the Indian corporate environment provides the best ground for study. The real aim is still the same. To provide adequate amendments within the provisions so that the regulations are better always.

RESEARCH METHODOLOGY

The present study has a doctrinal and a comparative approach as the key method. The doctrinal approach is applied to understand the various legal regulations that exist to regulate the activities of promoters. This approach will also help in understanding the loop holes that are available within the present legal regulations. It will help in knowing the efficiency of the current regulations. The same approaches used when other international regulations are studied. It is to get a picture about the efficiency of legal regulations present across borders. Both the comparative approach along with a detailed doctrinal analysis will help the researcher in knowing the advancements to be made.

It will also highlight the present gaps within the existing frameworks.

The primary sources for this research include the following:

1. Statutory Frameworks: The Companies Act, 2013 acts as the key legislation dealing with promoter responsibilities, such as Sections 66, 68, 185, and connected provisions in respect of disclosure, self-dealing, and shareholder sanction. SEBI regulations, such as the Listing Obligations and Disclosure Requirements (LODR) Regulations, 2015, and Issue of

Capital and Disclosure Requirements (ICDR) Regulations, 2018, provide additional guidance on promoter duties in the context of public issues and listed companies. The Insolvency and Bankruptcy Code, 2016 (IBC), further delineates the responsibilities of promoters in cases of corporate insolvency and creditor protection.

2. Judicial precedents - multiple judgements of the supreme court and the court of appeal in England has been studied to understand a pattern on how the Judiciary has tried in understanding the role of the promoters. It will also help in knowing the ultimate aim of regulating promoters within the corporate structure. The intention of the judiciary is truly reflected in the judgements related to promoters.

3. Regulatory circulars - the Ministry of Corporate Affairs and the Securities and Exchange Board of India has made multiple notifications regarding the regulation of promoters. The circulars will help in understanding the various regulatory mechanism that are present in our nation. The efficiency of the regulatory systems and the loop holes that are present can be studied with this.

Secondary sources comprise scholarly books, peer-reviewed articles, and legal commentaries offering theoretical and critical insights into corporate governance norms. OECD and World Bank reports comparing India's regulatory framework against international standards and best practices are also utilized (Claessens, 2016; Tricker, 2019). Law commission reports and policy documents offer insights into proposed reforms for increasing promoter accountability.

ANALYSIS AND DISCUSSION

FIDUCIARY DUTIES OF PROMOTERS

As company laws and Institutions regarding the corporate governance has been dynamic and changes according to the demands we see that the role played by promoters as very important to be studied. They are not just the Agents of initiating a business but also has a moral angle within the ecosystem of corporate governance. In the confidence and integrity, the promoter shows within the business environment directly decides the future of any business and the confidence the investors will have upon the same. That's the main reason why many legal systems are focused on providing them with fiduciary obligations. That is also why debates happen to analyze the importance of bringing a cultural honesty within corporate democracy

so that fair dealing becomes the key. In the present context, their role is not completely commercial or related to business but also very much concerned about the ethical aspects of modern corporate structures.

Duty of Good Faith and Loyalty

This means that the promoters must have good faith in the actions they commit while a business is created. The interest of the company must always be their primary concern. They must not commit any action which directly violates the existence of the company or that works against the interest of the company. For example, they must not engage in activities so that they receive some secret profits or that can help them misuse their personal position for any kind of personal gain. Such actions are completely illegal and unethical. The Judiciary has also recognized that the promoters must be very loyal to the company and must not disrespect the trust the prospective shareholders have upon them. For example, under Sections 34 and 35 of the Companies Act, 2013, promoters are liable for misstatements in the prospectus. The primary reason for having such a liability is that they must be transparent in the actions of the promoters. If there is no transparency, then there is a high chance that conflicts may arise between the private interest of the promoters and the total welfare of the corporate entity.

Duty of Care and Skill

This is also one of the very important duties that the promoter must consider while working for a company. He must exercise reasonable care while taking decisions and also when the information is shared across the company. If due diligence is not exercised by the promoter, there is a very high chance of misusing the information for the personal gains of some individuals, thus affecting the interest of the corporate entity. The competence of the company is also reduced when the promoters lack care in conducting affairs. It is a very common fact that the promoters are not expected to have very high, expert knowledge about the corporate legal system, but if they are not applying diligence, the liability is still very crucial. This can be better understood by studying SEBI's Listing Obligations and Disclosure Requirements (LODR) Regulations. Promoters usually analyze various contracts the company may have to enter into and the same information is passed to the investors. Without adequate skill and care, it can become very controversial and problematic.

Duty of Disclosure

Transparency and accountability are the new keywords of the present corporate structures. The confidence that the investors have while investing is mainly concerned about the facts and figures that are made public about the company. It is the very basic duty of the company to show the information that are crucial and related about their business activities before the public. For the same process the promoters must conduct a fair disclosure of all material facts about the company. This will also include various transaction and details about the interests related to the company or of its various shareholders. Under Section 102 and Section 184 of the Companies Act, 2013, failure to disclose interest in related-party transactions can attract penalties. If the information provided are wrong of the corporate institutions that exist within the legal frameworks it is a case of manipulation and must not be entertained by law. Key information are not to be suppressed by any individual who holds a particular office in the company and must be closed for better corporate ethics.

Duty to Avoid Conflict of Interest

It is the primary duty of the promoters to ensure that there does not exist must conflict within the company. A conflict, small or big will have a huge impact on the affairs of the company and its administration. Conflicts usually happen when the professional duties overlaps with the person and interest and motives of the individuals who are working. The objectives of the company must always be protected even when the conflict is regarding any personal interest. If not, the personal interests will dominate thereby affecting the welfare of the company. SEBI's takeover and insider trading regulations further reinforce this duty by restricting unfair practices and insider advantages. That is one of the main reasons why integrity and ethics is promoted while decisions are taken. If the promoters itself support any kind of a legality the conflict of interest becomes the worst. Thus regulations are placed to monitor the actions of the promoters and the business of the company.

Duty of Fair Dealing and Transparency

Promoters are duty bound to conduct various transactions for the company. They cannot escape from the main duty of conducting these transactions considering the Welfare and growth that is needed for any company to exist in the competitive environment. It is very important to ensure that the transactions happen in a very fair manner and is also transparent. Multiple

contracts are made every single day as the present business environment is very complex. Sections 188 and 192 of the Companies Act, 2013 regulate such transactions to prevent undue enrichment. Various decisions of the courts say that the promoters are the real trustees of the public funds once investments are invited from the side of the promoters. This can also be linked with the need for providing accurate and correct information regarding the business to the public. When the dealings become ethically and legally correct, the corporate environment itself becomes better.

SCOPE OF DUTIES OF PROMOTERS

The duties of the promoter are not just limited to the activities of the company alone. Considering the fact that the present corporate mechanism is very complex their duties also become alike. The organizational activities are just one part of their main work. We can understand that there exist legal, ethical and fiduciary responsibilities from the side of the promoter. These responsibilities begin before the incorporation of the company and before capital infusion. The Companies Act, 2013 and judicial interpretations also shows that the role of promoters and their duties to be very important in this context. The board of the company always acts according to the suggestions and innovative ideas of the promoters. This will show us that two main functions are always related to the promoter, both entrepreneurial initiative and fiduciary obligation.

The very best example is the duty of the promoter to act in his good faith. This shows the fact that all the functions and fiduciary duties of promoters carry huge scope. Acting in good faith requires lot of honesty and commitment to the firm. The trust of the investors on the promoters truly make them trustees of the company. If they act detrimental to the interest of the company, the entire corporate entity suffers. The duty of disclosure also has the same potential in scope. The activity of disclosing the facts that are material ensures that transparency and accountability mechanisms work together for fairness in administration. If not, the secret activities affect the betterment and is wrong.

The importance of regulating the activities of the promoters can be understood by learning the scope of the activities. For example, in the case of a multinational company which has a very important impact on the overall economy of a nation the promoters also play a very vital role. If they commit anything that is illegal and unethical the entire investors along with the economy suffers. It can be understood from Section 300 of the Companies Act, 2013 prevents promoters

and interested directors from participating in discussions involving their own interests, thus ensuring unbiased decision-making. Accuracy is thus the most important aspect that the promoters must consider. A small mistake with or without intention will have serious repercussions and may cause great damage. Similarly, the activities of the company must also ensure that it does not contradict the presence and priorities of the investors. There must not be a situation where the both parties come in conflict. They both are sides of a same coin and play very equal role for the betterment of the company.

The fiduciary duties remain to be continuous and get stronger day by day. Even after the formation of the company their duties and the scope remains important. This also means that after the formation of the company the promoter is not a separate entity and remains an integral part of the company. As the company grows in size and business, the promoter also becomes strong and more attached with the company's activities. These duties can be seen as the pillars of better corporate governance. It aligns with the vision of the company and basic ethical guidelines. We can conclude that the role of the promoter is very innovative on one side and very much restrained and regulated by the legal system on the other side. This makes it very unique in place and position.

CHALLENGES OF MODERN CORPORATE STRUCTURES

We must understand the fact that the present corporate structures are very complex and cannot be dealt easily. Accordingly, the role and duties of the promoters will also have to improve. Traditionally, legal structures believed that there exist a clear definition for the role of promoters and was completely differentiated from the independence of a company. This differentiation is not a reality at the present context. We see multiple conglomerate ownership, layered shareholding, and complex financial structures dominating the whole world and sustaining stable economies. Even now the duties of promoters are relevant and cannot be reduced by any legal regulation. The companies trust these promoters and believe that their existence is only because of the focused work of promoters. The promoters are also aware of the fact that their transparent and committed approach helps the company to grow.

The very first issue is in identifying the real promoter. Selecting a promoter is not an easy job. The present complex corporate structures will need promoters who can be trustworthy and is able to run the business even during Complex situations. Shareholding patterns and investor relations has become very difficult to understand in the present situation. Management of any

company is now very professional and accurate where mistakes does not find any place to exist. They are must be a balance in the activities of the promoters and the results they produce. Investors and the board of the company should equally be satisfied with the results and the activities of the promoters. Similarly, promoters must also be given adequate space to work and bring those results that will provide adequate growth.

The other main issue is an understanding the fiduciary duties of promoters and enforcing it without confusion. The investments happen every single day and the business times sections are very complex to understand. If the promoters fail in understanding their duties and protecting the interest of the company, the after effect is very dangerous. The present Corporate structures use very complex instruments like convertible debentures, special purpose vehicles, and layered subsidiaries. It is not easy for everyone to understand in detail these aspects and make decisions accordingly. Transactions happen internationally and the legal regulations are also Complex along with it. Something that is legal in one Nation may not be the same when the border is crossed. Promoters also be able to interact with other international promoters to understand the business environment there so that their duties are followed accordingly. A company will always be in a situation of tension about the duties of the promoters and then how efficient they are in enforcing the same. It is a reality that such tensions are bound to exist but must not be strong enough to affect the welfare of the company.

Information asymmetry is one another issue that we must consider. Sharing of information is a very dangerous activity. Regulations mandate that real, true and reliable information must be shared by the promoters. While the Companies Act, 2013 introduced safeguards such as independent directors and audit committees, enforcement remains a big question that we must study. Some information about the company remains integral and must be protected. On the other side, the investors and the public is also a stakeholder and needs to know about the affairs of the company. For example, a company which plans to go for an IPO must have to publish lot of facts and figures in detail. Only after considering these facts and figures is when a proper decision can be taken regarding the investment. If not the decision that is taken is wrong and is completely not ethical to do so. It is a very complex fact that information is not available to everyone and the same time in the same manner. Some people may get the facts earlier and make benefits accordingly. The early access they got will help them dominate the scene. The other group is discriminated and does not stand in equal footing. Such discriminations were not happening within the corporate structures because when one group of investors lose confidence

in the process they tend to stay aloof from the same company.

Technological and financial innovations that happen across the world must also be considered to understand this issue. The benefits of the same are not shared equally by everyone. Coordination among some companies help them gain an advantage to receive a particular advantage of some innovation so that they make more profits. Such coordination is against the basic democratic principles within the corporate regulations. It is a sad fact that the promoters of some companies also engage in the same activity by promoting it. When multiple Institutions exist to regulate such activities of the promoters we obtain see that the overlap in function and duties. Thus a proper analysis is mostly not possible and efficient results are not produced. Many illegal activities happen very easily and are unrecognized.

COMPARATIVE INSIGHTS

In the Indian context, the common law traditions can be easily seen because of the British rule that existed earlier. It was a time when the role of the promoters was not analyzed in a perfect way and studies were also Limited. The corporate structures and functions were very limited and the duties of the promoters were also minimum. An integration of the role of the promoters within the company was not considered to be important. Instead, it was made separate and was limited in scope. However, when there was a very gradual increase in the corporate matrix the functions of the promoters also increased and various Nations came with many type of regulations to match the demands.

In the United Kingdom the concept of fiduciary duties started from the 19th century. The English judicial system was more focused on establishing the fact that exist a relation that is based on 'trust' between the company and the promoters. The main Idea was that there was not be any kind of profits that are taken away for personal interest. Such sharing of profit was only considered to be the main issue and other Complex structures were not studied. The UK Companies Act also does not mention in detail the duties that are given to the promoters of a company. Instead an ethical angle is considered which focus is more on disclosure and fairness under the Financial Services and Markets Act.

In the United States of America, the fiduciary role of the promoter is clearly mentioned. Under the supervision of the Securities and Exchange Commission disclosure conditions are very strict and mandatory by law. All offerings that are made by the public are completely

transparent and are regulated by various Institution. Unlike the Indian context, the American system is more focused on the legal aspect and not the ethical side. The enforcement capacity given to Securities and Exchange Commission is very strong and can be a best example for study. criminal penalties for misrepresentation, insider trading, or omission of material facts are considered to be very serious offences. It can be said that the American administration has a very enforcement oriented angle which is also very procedural where in India it is more equitable and US focused more on ethics.

In the case of Australia, they have adopted a very simple hybrid approach in dealing the same matter. The Corporations Act, 2001 and the Australian Securities and Investments Commission (ASIC) combine statutory and common law regulations so that both the ethical side and the legal regulations exist peacefully without much confusions. The law says that the promoters is bound by duty to disclose all interests they have within the company and its property. It also gives a special punishment if such disclosures are not made. One common fact is that the idea of good faith and fairness is same like in India. Even in Australia, the enforcement is very strict and the penalties are not very simple. The ASIC's civil penalty structure allows the regulators to directly disqualify the promoters for the director of the company if any kind of misconduct is done without much excuses.

In Singapore and Malaysia, the legal regulations are very close to the British model but considers the local demands perfectly. They also have special duties for the promoters which they must follow strictly. The main to duties are regarding disclosure and honesty. These two factors are considered very seriously and their ethical importance can be seen within their legal framework. The duties of the promoters are bound to exist until their powers are transferred to independent directors. Their legal framework focus is more on contracts that are made before the incorporation of the company and the disclosure of the prospectus. Singapore's Monetary Authority is also a very good example to understand how the advanced corporate governance mechanisms are followed.

The Indian Corporate Framework is not completely perfect to match the modern demands of the economy. There are multiple cases where the promoters have committed cases of fraud and cheating. The after effects of such illegal acts has caused very serious damages. Thus this comparative approach will help us understand this issue better.

CONCLUSION AND RECOMMENDATIONS

The promoters stand at the very basic foundation of corporate governance. From the very beginning of a business where the idea is discussed till it reaches the maximum potential, promoters play a very active role. That is one main reason why the legal system treats promoters as the fiduciaries who have a great potential in describing the entire framework of a corporate structure. In simple words it can be stated that promoters refer to a position of confidence. It is the confidence upon which a business entity is built. It is the confidence upon which investors understand the business and decides whether to invest or not. It is the confidence upon which a business grows and takes decisions that improves the betterment and profit. In simple words promoters and their characteristics guide the company either to light or darkness.

Both sections 241 and 242 of the Companies Act 2013 and SEBI's Listing Obligations and Disclosure Requirements can be considered as the very basic structure upon with the idea of promoters are discussed with in Indian legal system. The issues of oppression and mismanagement highlights the importance of regulating promoters so that a business system itself is regulated. That is also one reason why courts stated that the promoters cannot benefit from the expense of the company and the profit of the company is not to be exploited by the promoters. This clearly shows that the personal interest of the promoters has no space in the growth of a company. It is the idea of Corporate welfare that plays the most important role.

In the case of *Erlanger v. New Sombrero Phosphate Co*¹, the English Court of appeal made a very famous statement. The promoters were crowned with a fiduciary position towards the company. The court status that it is the basic duty of the promoters to mention every single fact that are relevant for the business. The same Idea has been the basis of the Indian Legal Framework that government promoters. Even when there is an entrepreneurial angle towards the role of promoters it is not just limited to making profits. There is always a moral angle that we must consider.

In India, the supreme court in the case of *S.P. Chengalvaraya Naidu v. Jagannath*² the court made a statement that is still used in other corporate cases. The court stated that an individual who approaches the court must be present with clean hands. The same rational is used in other corporate cases to warn the promoters that they must have clean hands when doing activities

¹ Erlanger v. New Sombrero Phosphate Co. (1878) 3 App Cas 1218.

² S.P. Chengalvaraya Naidu v. Jagannath, (1994) 1 SCC 1.

related to the company. For example, hiding a very material fact that may be advantageous to investors is not correct. Hiding some transactions or Assets of a company to highlight a particular advantage is completely wrong. These misrepresentations will have serious implications before the court of law.

In another case of *Dale and Carrington Investment (P) Ltd. v. P.K. Prathama*³, the supreme court conducted an examination to study how the directors and promoters of the company became a nexus to do some manipulations. The aim of the parties was to manipulate the share allotments to gain control over the entire company and thus make profits. The court highlighted the same and declared that the intention is wrong and illegal. Also, the court was of the opinion that there exist a clear and strong ethical boundary covering the promoters. This ethical boundary will have to be present even after the incorporation of the company and must guide the promoters to act in good faith by disclosing all relevant facts.

In the case of *Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd.*⁴, the tension that was caused due to the control and fairness in a company was discussed. The supreme court declares that all majority shareholders and the promoters can exercise their duty only under good faith. The authority that is granted to them is with the intention of making the company successful and not to have some personal interest for profits. The minorities shareholders also have the right to participate in the proceeding and the right to know about the company. It is mutual trust that must exist between them so that the corporate structure becomes strong. If some shareholders and discriminated against the other, it becomes a case of illegality and is against corporate democracy.

We can analyze and understand a clear pattern from this judicial decision. The most important thing is that promoters are not considered to be creators of wealth for the company. They have the potential much above all profits that are to be made by the company. They are truly the protectors of Investments that are made for the betterment of a firm. They are the real links that connect the company with people so that both the parties get adequate growth gradually. The role of promoters has never been static considering the dynamic matrix of corporate governance. When the transactions become International covering international borders and when promoters interact beyond National regulations their duties also get bigger. Despite the

³ Dale and Carrington Investment (P) Ltd. v. P.K. Prathapan, (2005) 1 SCC 212.

⁴ Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd., (1981) 3 SCC 333.

evolution we see a lot of challenges that still exist within the role of promoters. The loop holes that are present within the legal structures are clearly understood and exploited by the promoters to help a particular group gain some advantage over the other. These practices are not fictions but are real incidents that happen even now. Confusions and inconsistent regulations still exist within the corporate governance making the role of promoters above legal regulations.

From the comparative approach we can conclude that the Indian legal system is not completely efficient enough to handle the present situation. There are multiple legal regulations and institutions that are created for the same purpose. We see that the duties of these institutions often are contradictory and cannot be named as efficient. That exist no monitoring of these activities thus providing adequate loopholes for escape. When the promoters are regulated considering the corporate democracy it is the economic stability of a nation that is guaranteed.

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