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PROTECTION OF MINORITY SHAREHOLDERS RIGHTS

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Chapter 1

[General Introduction About Corporate Governance and Shareholders]

1.1 Introduction

Corporate governance has gained considerable interest across the globe[1]. With a growing interest in corporate governance, it becomes very important that there should be appropriate laws for both developed and developing countries to maintain their economy and achieve their economic goals. As the shareholders are considered the owners of a company protecting their rights so that they can participate in the decision-making process is an essential requirement, since they are the ones who are directly investing in the company's capital.[2] This can be done only when there are proper laws providing this protection but, in most cases, the interest of minority shareholders tends to be suppressed by the majority shareholders' rights.[3] Therefore, safeguarding minorities' rights is important and may affect the firm's valuation considerably.

Countries that give rights to protect minority shareholders tend to attract more investors since investors are willing to take more risk in these countries. In India, the promoter, their close family members, and occasionally their overseas business competitors also hold most of the company's shares, either directly through institutional investments or as investments.[4] However, this does not imply that the firm should disregard the concerns of the company's minority owners. Let us first examine what shareholders and minority shareholders mean before going into depth on the rights of minority shareholders.

[1] Rusty O'Kelley, Anthony Goodman, and Laura Sanderson, 2021 Global and Regional Trends in Corporate Governance, 2021 Global and Regional Trends in Corporate Governance, (2021)

[2] Justin Fox and Jay W. Lorsch, What Good Are Shareholders?, Harward Business Review, (2012)

[3] Government of India, Minority Interest, Ministry of Corporate Affairs, (2023)

[4] Maulik Vyas, With 73% of the top 500 firms on BSE being family-run, 'constitution' keeps business families together, The Economic Times, (2013)

Andy Mukherjee, Who owns India's firms? It's time to find out, The Economic Times, (2023)

1.2 Shareholder of a company

In the Companies Act 2013 the word 'shareholder' is not defined as such but section 2 (55) (iii) defines the word 'member' in relation to a company[5]:

> *"(iii) every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository".*

As per the Cambridge Dictionary definition, a shareholder is[6]:

> *"A person who owns shares in a company and therefore gets part of the company's profits and the right to vote on how the company is controlled."*

1.3 Majority Shareholder

Majority shareholders are the member who owns more than 50% of the voting shares in any corporation, which gives them the ability to pass ordinary resolutions (or, in the case of a majority shareholder holding 75% or more of the shares, special resolutions or any other resolution requiring a higher majority) and, consequently, the control of the company[7].

As per the Cambridge Dictionary definition, a majority shareholding is[8]:

> *"A group of shares that together are more than any other shareholder has, and that gives the person or organization that owns them the right to control the company."*

1.4 Minority shareholder

The word 'minority shareholder' is not directly explained in the Companies Act 2013 but its definition can be inferred from the understanding of the term 'majority shareholder'.

They are the shareholders who own less than 50 percent of the voting rights in a company and hence have no control over the management of a company.

[5] Section 2 (55)(iii) of The Companies Act, 2013

[6] Shareholder, Cambridge Dictionary

[7] LexisNexis, Majority shareholder definition, (2023)

[8] Majority Shareholding, Cambridge Dictionary

As per the Cambridge Dictionary definition the minority shareholding is[9]:

> *"A person or organization that owns fewer shares in a company than the controlling shareholder."*

Majority shareholding is considered as having a controlling stake in the company. And since small shareholders own a small number of shares, resulting in a noncontrolling stake in the company, they can be considered minority shareholders. Hence the degree of control which a shareholder has can be used as a differentiating factor since there is no statutory provision determining the type of shareholders in a company.

[9] Minority Shareholder, Cambridge Dictionary

Chapter 2

[The Majority Rule and Its Exceptions]

This chapter explores the foundational principle of the majority rule, as established in the case of Foss v. Harbottle[10], and its exceptions. By looking at the historical background, underlying rationale, and criticisms associated with this rule.

2.1 The Majority Rule

The rule of the majority was first established in the judgment of Foss v. Harbottle in this case five directors were sued by two shareholders. They alleged that the company's assets were misused and wasted. They also wanted to hold the defendants responsible for the actions of the company and requested the appointment of a receiver. However, the court held that the plaintiffs were not eligible to bring such a lawsuit, as only the company itself or its authorized representatives could do so. The court relied on the fact that the company's shareholders at a special general meeting, held the authority granted to them by the company's charter. Individual shareholders were not allowed to take legal actions like the plaintiff wanted.

Furthermore, the court founded the majority rule which states that the minority shareholders are bound by the decisions and actions of the majority shareholders. This principle is based on the idea that a corporation is treated as a separate "entity" from its members. So, any legal harm the corporation faces should be dealt with through corporate actions, not individual member lawsuits.

The idea behind this rule is to protect majority shareholders' interests. When a person buys the shares and becomes a member of a company, they implicitly agree to abide by the decisions made by the majority in the general meetings.

[10] Foss v Harbottle (1843) 2 Hare 461, 67 ER 189

However, there are exceptions to this rule that have been identified over time to protect the rights of minority shareholders, regardless of majority decisions. These exceptions include situations where:

(a) An act is performed outside the company's legal authority (ultra vires act);

(b) Special majority vote is required for a specific decision.

(c) Personal rights of shareholders are violated; and

(d) Fraudulent actions are committed by those in control of the company.

These exceptions provide a way to protect the minority shareholders when necessary.

2.2 The Derivative Action

Another way to address issues is through a derivative action, which is largely the only main exception to the majority rule founded in Foss v. Harbottle. This rule serves as the basis for remedies available to minority shareholders. Essentially, it lets a minority shareholder bring a claim on the company's behalf to address any issues instead of suing on their own because individual shareholders don't have that right. If their rights are violated, they can start a group lawsuit.[11] In practice, the Foss v. Harbottle rule successfully stops minority actions when the misconduct can be legally ratified, regardless of whether an independent majority has a genuine opportunity to review the matter.

2.3 Criticisms of the Rule

The application of this rule in England has faced heavy criticism from various parts. Professor Sealy, for instance, has pointed out a simple contrast between the treatment of different types of litigants. He argues that even an individual seeking judicial review in court is likely to receive a more favorable outcome than a minority shareholder.[12] A shareholders in a large public company, often lack the necessary information to make informed decisions about their interests or the company's interests.

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[11] A. J. Boyle, Minority Shareholders' Remedies, Cambridge University Press

[12] Sealy, The Problems of Standing, Pleading, and Proof in Corporate Litigation in B. G. Pettet (ed.), Company Law in Change (Stevens & Sons, 1987), p. 2.

A closer look reveals that the Foss v. Harbottle rule combines both substantive and procedural elements, resulting in complexities. The limited exceptions to this rule present two main issues: they overlook precedent cases like Davidson v. Tulloch[13], which had restricted certain frauds and deceits from being "confirmed by the corporation," and they appear inconsistent with broader exceptions favored by other judges in similar cases.

[13] Davidson v. Tulloch (1860) 3 Macq. 783, 790 (H.L.)

Chapter 3

[Empowering Minority Shareholders in India]

3.1 The Companies Act, 1956

Indian scenario is like England, as our Company Law is derived from common law principles. Under the Old Companies Act of 1956, several provisions were established to address the concerns of minority shareholders, covered within Sections 397 to 409. These provisions are there to protect the interests of minority shareholders when they face unjust actions from majority shareholders. Sections 395 and Section 399 of the Act explain the criteria for identifying minority shareholders. Minority shareholders are those who hold either 10% of the shares or 100 shareholders (whichever is low), while in companies without share capital, it constitutes $1/5^{th}$ of the total membership.

The Act incorporated specific provisions to address situations where the rights of minority shareholders could be at risk. These provisions can be categorized into two main sections:

- Section 397 - This section allows minority shareholders to seek relief from the Company Law Board in cases of unfairness.
- Section 398 - This section allows minority shareholders to approach the Company Law Board for relief in cases of mismanagement.

The authority to apply to the Company Law Board for relief in case of oppression and mismanagement under Sections 397 and 398 is granted by Section 399 of the Companies Act

of 1956. The section also defines the numerical thresholds for determining minority shareholders, which include a ten percent shareholding or one hundred members, as applicable. Nevertheless, the central government was given the authority to grant waivers to these thresholds when deemed necessary.

3.2 The Companies Act, 2013

Under the new Act, provisions addressing oppression and mismanagement have been introduced through Sections 241-246. Under these sections, the affected party can seek relief by going to the National Company Law Tribunal (NCLT). Section 244(1) has the same numerical thresholds as the previous Act. However, the authority to waive these thresholds has been given to the NCLT. Notably, the new Act introduces the concept of class action, allowing such suits to be filed against both the company and its auditors.

To address certain flaws, Section 235 provides the majority the power to acquire shares from dissenting shareholders at a fair market price. This process requires the company to notify the dissenting shareholder of its intention to purchase their shares.

Moreover, the new Act promotes the role of minority shareholders in decision-making. According to Section 151, small shareholders are necessary to appoint a director in listed companies. This provision is explained in section 151 of the Act, stating that a listed company may elect a small shareholder as a director. Furthermore, the Companies Act of 2013 explicitly states that the small shareholder director will not be subject to rotational retirement and will serve a three-year term, with no eligibility for reappointment.[14]

In summary, the Companies Act of 2013 has made serious efforts to ensure that minority and small shareholders participate in decision-making processes and company management.

3.3 Judiciary and Minority Shareholders' Rights

Minority shareholders can protect their interests by including specific conditions in the shareholder's agreement. This section will discuss the rights that minority shareholders have under the Companies Act of 2013.

3.3.1 Right to Appoint Small Shareholders' Directors[15]

Under the Companies Act of 2013, small shareholders in listed companies have the right to appoint directors. This provision aims to ensure that the voices of small shareholders are heard in the company's decision-making process. Small shareholders can elect a director who serves a three-year term, with no possibility of reappointment, thus enhancing their influence within the company.

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[14] Rule 7 of the Companies (Appointment and Qualification of Directors) Rules, 2014

[15]. Section 151 of the Companies Act, 2013

3.3.2 Right to apply to NCLT for Oppression and Mismanagement[16]

The new Act gives shareholders the right to seek relief from the National Company Law Tribunal (NCLT) in cases of oppression and mismanagement. This mechanism provides a way for shareholders to address issues where their interests have been unfairly compromised by the company's actions or management, ensuring a legal remedy for such grievances.

3.3.3 Maintainability of the suit filed under section 241.[17]

The question of the maintainability of a suit filed under Section 241 is important. To initiate such a suit successfully, the complainant must show that there are sufficient grounds to permit NCLT intervention. The NCLT evaluates the validity of the case and decides whether it meets the eligibility criteria for addressing issues related to oppression and mismanagement.

3.3.4 Right to File a Class Action Suit[18]

The introduction of class action suits under the Companies Act of 2013 is an important development. Shareholders can now collectively file lawsuits against a company or its auditors. This gives shareholders a way to address grievances more effectively, particularly in cases where a large group of shareholders has been wrongly affected by a company's actions or financial mismanagement.

3.3.5 Merger and Acquisitions and Minority Squeeze Out[19]

Section 235 of the new Act provides the majority with the power to acquire shares from minority shareholders during mergers and acquisitions. This mechanism guarantees that minority shareholders receive fair market value for their shares, providing them with a just exit

option when the majority aims to unite or restructure the company. This provision helps prevent the oppression of minority shareholders during such corporate actions.

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[16]. Section 242 of the Companies Act, 2013

[17]. Section 241 of the Companies Act, 2013

[18]. Section 37 of the Companies Act, 2013

Section 245 of the Companies Act, 2013

[19]. Section 236 of the Companies Act, 2013

Chapter 4

[Class Action Suits in the U.S. and India: A Comparative Analysis]

This chapter provides a comparative analysis of class action suits in the United States and India, exploring their historical development, legal frameworks, and practical challenges.

4.1 Class Action Suit in the U.S. and India

Class action suits were introduced in the United States when the Equity Rule gave individuals the right to initiate lawsuits in 1842. Over time, it underwent various modifications and reached its latest form in 1966.[20] Since then, this legal way has been frequently employed in the U.S. For example, in the U.S. shareholders (2006) suffered financial losses when they invested in Enron's shares. They eventually received an aggregate compensation worth $7.2 billion after an investigation showed that the company's representatives had misrepresented data from investors and concealed losses before declaring bankruptcy.[21] This history highlights the common use of class action suits in the U.S. as a significant means of seeking damages.

On the other hand, in India, before the passing of the new Companies Act 2013, people resorted to class actions through a mechanism known as Public Interest Litigation. The introduction of class action suits under Section 245 of the Companies Act of 2013 was supported by the Satyam Computer Services Scam, widely known as the Satyam Scam, which came to light in 2009.[21]

This scam left numerous stakeholders affected without any legal remedy. Unlike their counterparts in the U.S., Indian investors had no avenue for filing class action suits against the company to seek compensation.

Class action suits developed as a way to encounter the "Collective Action" problem, where smaller stakeholders find it expensive to carry out individual lawsuits. Section 245 of the Companies Act 2013 also covers depositors, and the court issues restraining orders against the company under this provision. An additional advantage is that the National Company Law Tribunal usually issues a public notice after the commencement of a class action suit, allowing

[20] Ashish Rukhaiyar, Class action suits ripe for review?. The Hindu, 2017

[21]. ICSI, Resolution of Corporate Disputes, Non-Compliances & Remedies, Module 2 Paper 6, (2019)

other affected parties to join, turning it into a representative action.[21]

However, in India, class action suits are not used that as compared to the U.S. One major difference is that in the U.S., firms and lawyers play an active role by encouraging affected parties to file cases, as they are entitled to the compensation, and aggrieved parties do not bear the legal costs upfront. This is doable because in the U.S. lawyers can charge contingency fees, meaning they will receive payment only if their case is successful. While in India, lawyers are not allowed to charge such fees, which could discourage the filing of class action suits. Relaxing this rule might incentivize the use of this mechanism by both lawyers and concerned parties.

Additionally, in India the purpose of the Investor Education and Protection Fund is to reimburse expenses incurred by affected parties suing under Sections 37 and 245 of the Companies Act 2013. However, given the government's control over the fund and the potential for its misuse makes it difficult to implement this rule.[21]

In summary, while there is an remedy of class action suits available in India, they are not as successful as in the U.S., mainy due to differences in legal fee structures and other practical considerations.

[21] **ICSI, Resolution of Corporate Disputes, Non-Compliances & Remedies, Module 2 Paper 6, (2019)**

Chapter 5

[Shareholder Activism in Indian Corporate Governance: Challenges and Recent Developments]

5.1 Transformation of India's Corporate Governance Landscape

In recent years, India's corporate governance has seen important legal and regulatory changes focused on improving fairness, transparency, and the treatment of minority shareholders.[22] The Companies Act of 1956 served as the foundational statute for safeguarding the investor, while the Securities and Exchange Board of India (SEBI), established in 1992, has taken various initiatives to safeguard shareholder interests. Notably, the Birla Committee emphasized the pivotal role of strong corporate governance in ensuring investor protection and fostering a vibrant capital market.[23]

Despite these legal provisions and regulatory efforts, shareholder rights in India often remain theoretical, with limited practical execution. One primary reason for this discrepancy is the lack of active shareholder engagement in company meetings and decision-making processes. Many Indian companies are family-run or promoter-controlled, which hinders the participation of minority shareholders. Additionally, promotors sometimes use non-voting preferential shares to redirect funds and exploit minority shareholders.[24]

In India the involvement of institutional investor is less, and they often fail to exercise their voting rights significantly due to the high costs and limited advantages. Several factors contribute to the lack of shareholder activism in India:

5.1.1 Short-Term Focus: Mostly Indian investors give preference to the short-term gains, while long-term institutional investors like pension funds and hedge funds typically take a 5-7 year view on companies.

[22] Dhruv A Thaker, Minority Shareholders: Fighting for a Fair Share in India, SSRN, (2023)

[23] Shri Kumar Mangalam Birla, Report of the Committee Appointed by the SEBI on Corporate Governance under the Chairmanship of, nfcg, (1999)

[24] Sara Pockkathayil Jacob, Shareholders' rights and empowerment in India & U.S., Tilburg University, (2012)

5.1.2. Family Control: Promoters usually keep the majority ownership stake in companies, and shares which are not controlled by them are widely circulated, making it difficult for minority shareholders to raise their concerns.

5.1.3. Institutional Ownership: Although Foreign Institutional Investors (FIIs) own considerable number of shares in Indian companies, no single minority shareholder owns enough shares to start a change. Even government-owned entities like LIC and UTI, which hold significant stakes, do not function as activist shareholders.[25]

5.1.4. Limited Investment Scope: Government regulations limit the investment scope of pension and insurance companies, further reducing institutional involvement.[26]

5.1.5. Weak Court System: The court system in India is normally considered insufficient to manage the volume of cases, resulting in significant delays.[27] Shareholders are not willing to wait decades for the verdicts.

5.1.6. Regulatory Complexity: An excess of regulations and the prevalence of manipulation by promoters create a lack of faith in the system, making it challenging for activist shareholders to thrive.

5.1.7. Lack of Minority Shareholder Protection: While Indian corporate governance laws offer strong minority shareholder protection in theory, practical application is hindered by the high threshold for minority shareholder participation, the control of founder promoters, and the dispersion of minority shares.

5.1.8. Corruption: Corruption in Indian bureaucracy and the influence of large shareholders over government authorities further deter investor confidence.[28]

5.1.9. Recent Developments in Indian Shareholder Activism

Despite these challenges, recent developments indicate a growing trend of shareholder activism in India. Shareholders, including institutional and minority shareholders, are becoming increasingly assertive in influencing corporate decisions. For example, prominent Indian

[25] Lalita S Som, Corporate Governance Codes in India, Economic and Political Weekly, Vol. 41, Issue No. 39, (2006)

[26] OECD, Regulation Of Insurance Company And Pension Fund Investment, OECD Report To G20 Finance Ministers And Central Bank Governors, (2015)

[27] Judicial delay in India, Time of India, (2023)

[28] Kaunain Rahman, Overview of corruption and anticorruption developments in India, Transparency International Knowledge Hub, (2022)

companies like Infosys, Akzo Nobel, Coal India, and Vedanta have encountered vocal shareholders, even when they hold minority stakes. In some instances, institutional investors have successfully reversed controversial proposals, demonstrating their influence.[29]

Additionally, India has seen international investors threaten to take the government to arbitration for not adequately protecting their rights under Bilateral Investment Promotion and Protection Agreements (BIPPAs) and Comprehensive Economic Partnership Agreements (CEPAs).[30] Foreign investors are using dispute-settlement provisions to safeguard their interests.

In conclusion, while India faces several challenges in promoting shareholder activism, recent developments suggest a changing landscape. Shareholders, both domestic and foreign, are becoming more vocal in asserting their rights and influencing corporate governance practices. The push for greater shareholder democracy, investor protection, and transparency is evident, and it remains to be seen how these trends will shape the future of corporate governance in India.

5.2 Shareholder Rights in the U.S.: Challenges and Limitations

In the United States, shareholders encounter significant hurdles when it comes to effectively exercising their rights. This overview highlights the principal rights granted to shareholders

under current corporate governance regulations, with insights from Lucian Arye Bebchuk, a professor at Harvard University Law School, serving as a key reference.[31]

5.2.1 Fundamental Board Authority

An important principle in the U.S. is that, unlike some other common law countries like the UK or India, shareholders cannot initiate or influence major corporate decisions directly. They can only bring about change by replacing the board with a new one that aligns with their objectives. Consequently, U.S. companies do not inherently reflect the modern, large

[29] Khushboo Narayan, The Advent of Shareholder Activism in India, Mint, (2014)

[30] Biswajit Dhar, Protecting Investor Rights, Mint, (2012)

[31] Bebchuk, Lucian Arye, School of Law, Harvard University "The Case for Empowering Shareholders" (2003)

corporation's structure.[32]

5.2.2 Voting Rights on Key Transactions

Shareholders has veto power to make important amendments rather than the authority to initiate them. Under the Delaware General Corporation Law, the board's approval is the initial step in merger or consolidation transactions.[33] Afterward, stockholders must vote on these transactions, requiring approval by a majority of outstanding shares. Similar procedure is applicable for the liquidation and the sale of corporate assets. Importantly, boards hold the authority to abandon transactions, even if previously approved by shareholders.

Shareholders can reject proposed changes, but they lack the capacity to initiate them. The board of directors have the exclusive power to declare dividends under Delaware law.[34] Additionally, corporate charter amendments must undergo a majority vote by outstanding stockholders, with only the board able to initiate such proposals.

5.2.3 Board-Initiated Bylaw Amendments

There is a coexisting authority between shareholders and the board to amend a company's bylaws. However, bylaws cannot supersede charter provisions. This means shareholders can influence second-order rules but not high-level ones.[35]

5.2.4 Director Elections

While certain companies have introduced majority voting standards for director elections, many still operate under a plurality vote system, where directors can be elected with a minority of shares.[36] Shareholders can replace directors only in companies allowing special meetings or written consent, excluding those with staggered boards.[37]

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32. Corporate Governance Laws and Regulations USA 2023

33. Lucian Arye Bebchuk, The Case for Increasing Shareholder Power, Harward Law Review, (2004)

34. Section 170 of the DGCL

35. Lucian Arye Bebchuk, The Case for Increasing Shareholder Power, Harvard Law Review, Vol. 118, No. 3 , JSTOR, (2005)

36. Majority Voting for Directors, Council for Institutional Investors

37. Emiliano M. Catan & Marcel Kahan, The Never-Ending Quest For Shareholder Rights: Special Meetings And Written Consent, Boston University, (2019)

5.2.5 Shareholder Proposals for Director Nominations

Shareholders face obstacles when proposing nominees to the board. Directors can exclude shareholders' proposals from corporate proxies regarding director elections. Shareholders may conduct their own proxy solicitation, but the process is expensive and fraught with potential liabilities.[38] Shareholders might also encounter procedural challenges.

In summary, U.S. shareholders face limitations in their ability to participate in corporate transactions and efficiently exercise their rights. These concerns will be discussed in further detail in subsequent sections.

5.3 Shareholder Activism in India vs. the United States: A Comparative Analysis

Shareholder activism plays an important role in the formation of the corporate governance in both India and the United States. In this chapter will analyse the practices and challenges faced by shareholders in these two countries.

5.3.1. Directors' Election

United States: In the U.S., shareholder activism has historically revolved around the election of directors. The proxy system, while not perfect, provides shareholders with the means to vote

for or withhold their votes for director nominees. Until 2010, brokers held the power to vote for uninstructed shares in uncontested elections, making it easier for incumbent directors to maintain their positions. After a rule change, uncontested elections now require more active shareholder participation. Majority voting for directors is becoming a standard, allowing shareholders to have a stronger say in electing directors.[39]

India: In India, shareholders' rights to remove directors are clearer. All directors regardless of the way they were appointed can be removed by a simple majority vote at a shareholders' meeting.[40] This gives Indian shareholders a more direct path to exercising their

[38] An Introduction to the Proxy Solicitation Process, Seward and Kissel LLP, (2009)

[39] SEC, Statement on Adoption of Amendments to Proxy Rules Governing Proxy Voting Advice & Proposal of Amendments to Rule 14a-8, U.S. Securities And Exchange Commission, (2022)

[40] Section 169 of the Companies Act, 2013

rights in director elections, making staggered boards largely ineffective in the context of takeovers.

5.3.2. Staggered Boards

United States: Staggered boards are a common practice in the U.S., which can extend the time required for shareholders to replace a majority of board members. This practice is gradually declining in S&P 500 companies, but it is still prevalent among smaller companies. Staggered boards are seen as a defence mechanism against hostile takeovers.[41]

India: The Companies Act 2013, makes it compulsory that a minimum of 2/3rd of the board including the board of directors who retire by rotation, but all directors, including those appointed by general meeting or rotation, can be removed by shareholders through a simple majority vote. This makes staggered boards ineffective as a takeover defence.[42]

5.3.3. Voting Rights on Fundamental Transactions

United States: In the U.S., directors have significant control over what matters are presented to shareholders for voting. This control allows them to structure transactions that may not require shareholder approval. While shareholders can propose their own resolutions, these are often nonbinding and subject to legal restrictions.[43]

India: In India, shareholders can vote on fundamental matters, and they can’t amend the bylaws without director approval, giving them more power in influencing corporate decisions.[44]

5.3.4. Proxy Rules

United States: Proxy rules have been established by the SEC, which regulate proxy solicitations and impose requirements on companies. While these rules are intended to promote "fair corporate suffrage," they have sometimes been criticized for deterring shareholder activism.[45]

[41] The Investopedia Team, Staggered Board of Directors: Structures and Meaning, Investopedia, (2023)

[42] Section 152 of the Companies Act, 2013

[43] ICLG, Corporate Governance Laws and Regulations USA 2023, International Comparative Legal Guides, (2023)

[44] Section 14 of the Companies Act, 2013

[45] Securities And Exchange Commission, Facilitating Shareholder Director Nominations, (2010)

India: India has also developed regulatory frameworks to govern proxy voting, which offer some degree of protection and fairness in the voting process. However, challenges remain in facilitating shareholder coordination.[46]

5.3.5. Executive Pay

United States: The Dodd-Frank Wall Street Reform Act 2010 has made shareholder election on executive pay compulsory, but these votes are not binding. Shareholders can express their views on executive pay, although they might not have the power to enforce their decisions until it is supported by majority of the shareholders.[47]

India: India is also grappling with the issue of executive pay. There is growing concern about the link between pay and performance. However, it remains to be seen whether India will adopt a mandatory say-on-pay mechanism.[48]

In conclusion, shareholder activism in the U.S. is more recognised, and recent legal developments have made it convenient for shareholders to carry out their rights, especially in director elections. In India, shareholders have clearer and more direct rights in certain areas, but challenges remain in coordinating their efforts. Both countries are gradually moving toward enhancing shareholder empowerment in corporate governance, acknowledging the importance

of providing executive pay as per the performance and encouraging better shareholder engagement.

[46] Sharon Pinto, Proxy advisors and their role in corporate decision making on questions of law, Vinod Kothari Consultants, (2021)

[47] Minor Myers, The Perils of Shareholder Voting on Executive Compensation, Brooklyn Law School, (2011)

[48] Pritish Gandhi, Unlocking Shareholder Influence: The Power of Say-on-Pay, Linkedin, (2023)

Chapter 6

[What India can adopt from other jurisdictions?]

6.1 The United States

The Indian judiciary can adopt several practices and principles from the United States judiciary to enhance the protection of minority shareholders' rights. Here are some key aspects that the Indian judiciary could consider:

1. **Class Action Lawsuits:** In the U.S., class action lawsuits empower minority shareholders to collectively sue companies for wrongdoing. India lacks a well-defined mechanism for such lawsuits, making it harder for minority shareholders to seek legal recourse in a unified manner.
2. **Shareholder Activism Protection:** The U.S. protects shareholder activists from retaliation, allowing them to challenge companies openly. In India, activists may face threats or hurdles, discouraging shareholder engagement and protection.

3. **Disclosure and Transparency**: The U.S. enforces stringent disclosure and transparency standards. In India, there's room for improvement in mandating comprehensive and timely corporate disclosures.
4. **Strong Regulatory Oversight:** U.S. regulatory bodies like the SEC are known for their rigorous oversight and swift enforcement actions. Indian regulators can strengthen their monitoring and enforcement capabilities to match this level of vigilance.

Chapter 7

[Conclusion & Suggestions]

This complete report on corporate governance and shareholder activism presents a general view of these important components of the commercial world. It highlights the universal importance of effective governance and shareholder engagement encouraging transparency, accountability, and fairness in business practices.

From an international perspective, the report recognizes the diversity of regulatory frameworks across countries and the need to adapt corporate governance strategies to the unique cultural, legal, and economic contexts of each nation. It emphasizes the importance of learning from global practices to enhance corporate governance.

In the context of India, the report highlights the robust legal framework, especially the Companies Act of 2013, which provides strong shareholder protection. However, it acknowledges the practical challenges that hinder meaningful shareholder engagement, including judicial delays, regulatory complexity, and corruption.

The stakeholder analysis in India's corporate governance landscape underscores the significance of collaboration and cooperation among various stakeholders, from shareholders and boards of directors to regulators and the government. It emphasizes that effective corporate governance is a collective effort.

The comparative analysis between shareholder activism in India and the United States reveals the unique challenges and limitations faced by shareholders in each country. It showcases the evolving nature of shareholder activism and its close connection to regulatory and legal frameworks.

Furthermore, the report provides practical recommendations for India, drawing from the experiences of other jurisdictions, notably the United States. These recommendations include adopting mechanisms like class action lawsuits, strengthening protection for shareholder activists, enhancing disclosure and transparency standards, and improving regulatory oversight.

In conclusion, this report sends a clear message about the fundamental role that corporate governance and shareholder activism play in building trust and sustainability within the corporate world. It underscores the importance of continually improving these systems to ensure that businesses operate with integrity, accountability, and fairness. The report encourages a global perspective, emphasizing that cross-jurisdictional learning and adaptation are key to achieving these crucial goals.

Chapter 8

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