Assessing Shareholder Activism in India: Authentic Engagement Or Misleading Impression?

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Introduction

In recent decades, the global corporate landscape has expanded significantly, driven by technological advancements and increased international trade. This growth has shifted corporate priorities beyond shareholder value to include sustainability and social responsibility, highlighting the evolving, community-oriented role of modern corporations. Amid these changes, the traditional principle of majority rule—where decisions by majority shareholders bind the company—has come under scrutiny. Rooted in the 1843 English case *Foss v. Harbottle*, this doctrine long discouraged judicial intervention and limited the role of minority shareholders, often rendering them passive in corporate governance.[1] As a result, shareholder activism—the effort by shareholders to influence corporate decision-making—was historically constrained but is now gaining renewed relevance in today's dynamic corporate environment. Shareholder activism involves actively engaged shareholders considering their share investment not just as a financial decision but as a strategic one. Although the principle of majority rule initially aligned with democratic principles, subsequent developments revealed that majority decisions are not always optimal. The dominance of majority shareholders in directing company affairs according to their preferences has led to the acknowledgment that the majority may not always act in the company's best interests.

In the 1980s, shareholder activism began to gain momentum in the UK and the US, driven by changes in legal frameworks, the rise of pension and hedge funds, increased share ownership, and a surge of corporate takeovers.[2] While this movement is well-established in Western economies, it is still in its early stages in India.[3] Despite India's historical connection to English company law, the corporate landscape differs significantly due to concentrated ownership in

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[1] The Companies Act, 2013, §241 & 244, The National Company Law Tribunal Rules, 2016, Rule 84.

[2] Reddy, M. Sreenivasulu v. Kishore R. Chhabria, [2002] 109 Comp. Cas. 18 (Bom).

[3] Grover, Neeraj, Shareholder Activism: Will the Indian Landscape Change? Deccan Herald (2020), https://www.deccanherald.com/opinion/panorama/shareholder-activism-will-the-indian-landscape-change-850413.html.

business families and government control in public sector enterprises. This structure presents challenges for activist shareholders. Moreover, high-profile corporate scandals, such as the Satyam fraud and the collapse of Kingfisher Airlines, have highlighted governance failures. A robust shareholder activism movement is crucial to improving corporate governance standards and enhancing India's appeal as an investment destination.

Although shareholder activism in India has faced challenges due to systemic and institutional weaknesses for many years, recent developments have shown promising signs of progress. Institutional investors such as mutual funds and other long-term investors have started engaging more actively with company promoters, indicating a growing level of involvement.

Moreover, over the past two decades, significant legal and regulatory measures have been implemented to enhance shareholder protection. These include the Companies Act, 2013, and its subsequent amendments, guidelines issued by the Securities and Exchange Board of India (SEBI) under the SEBI Act, 1992, including the SEBI (Issue of Capital and Disclosure Requirements), 2018, and SEBI (Listing Obligations and Disclosure Requirements), 2015, along with circulars for listed companies. The recommendations of the Kotak Committee and their implementation, as well as guidelines from the Insurance Regulatory and Development Authority of India regarding stewardship and the expansion of proxy advisory firms, have also played a crucial role in advancing shareholder activism in India.

Current Trends in Shareholder Activism in India: A Recent Perspective[4]

Shareholder activism is gradually gaining ground in India's corporate landscape.[5] Legal reforms have clarified previously vague issues and established a stronger framework for transparency, reporting, and governance. Amendments to laws, along with the implementation of the Kotak Committee's recommendations, have enhanced shareholder protections. SEBI's regulatory measures, particularly the SEBI (ICDR) and (LODR) Regulations 2015, have also improved corporate governance standards for listed companies. The rise of proxy advisory firms, regulated under SEBI's (Research Analysts) Regulations 2014, provides shareholders with expert guidance, empowering them to make more informed decisions. Though their impact in India is still growing, these firms play a significant role. Shareholder grievance

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[4] Mehta, Kunal & Puneet Rathsharma, Shareholder Activism in India – Has it Been Successful? The Economic Times (2018).

[5] Iqbal Khan & Aparupa Saha, India: 'Shareholder Activism'': Recent Developments and the Evolving Landscape, MONDAQ (2019), https://www.mondaq.com/india/shareholders/850288/shareholder-activism39-recent-developments-and-the-evolving-landscape.

mechanisms, including personal suits, class actions, and [6]derivative actions, offer ways for shareholders to resolve issues. While shareholder activism in India is still developing, its achievements remain limited, and activism has primarily succeeded when governance standards were openly ignored.[7]

The report [8]*"The India Proxy Season 2017,"* by In Govern Research Services, provides valuable insights into shareholder activism in India. It highlights that 45% of the companies in the Nifty 100 index faced at least one resolution during their Annual General Meeting (AGM) that was opposed by 20% or more of the shareholders. Although shareholder actions in these cases were generally unsuccessful, they marked significant developments in the landscape of shareholder activism. One encouraging trend noted in the report is the growing number of activist campaigns, particularly among large and mid-sized companies, even if these efforts did not always lead to favorable outcomes. This could be attributed to the evolving legal environment, including the Companies Act and SEBI regulations. In contrast to more developed economies, where shareholder activism has often led to successful changes, India still has a long way to go. The rise in formal activism, such as raising concerns at AGMs or similar forums, marks progress, while informal activism, which typically takes place behind closed doors and outside the public eye, remains underdeveloped. Let's explore key instances where activist shareholders have influenced a company's decisions.

Appointments or Reappointments

[9]In July 2018, the reappointment of Mr. Deepak Parekh as a director at HDFC Ltd. faced opposition from 22.64% of shareholders, while 18.63% of Hindalco Industries' shareholders opposed [10]Mr. Kumar Mangalam Birla's reappointment in October 2018. While both reappointments were ultimately approved, the level of dissent, particularly against major corporate figures, was noteworthy. Traditionally, the strong control exerted by promoters made it difficult for shareholders to push for changes at the board level, but this is starting to shift. In

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[6] Khanna, Vikramaditya & Umakanth Varottil, The Rarity of Derivative Actions in India: Reasons and Consequences, DERIV. ACTION ASIA A COMP. FUNCT. APPROACH 369–397 (2012).

[7] SEBI, Report of the Committee on Corporate Governance (2017), https://www.sebi.gov.in/reports/reports/oct-2017/report-of-the-committee-on-corporate-governance_36177.html.

[8] INGOVERN, India Proxy Season 2017: An Analysis (2017).

[9] Sinha, Shilpy, 22.64% HDFC Shareholders Vote Against Deepak Parekh, THE ECONOMIC TIMES (2018), https://economictimes.indiatimes.com/markets/stocks/news/22-64-hdfc-shareholders-vote-against-deepak-parekh/articleshow/65207077.cms.

[10] Shah, Palak, Institutional Investors Veto Reappointment of Yet Another Conglomerate Head, The Hindu Business Line (2018), https://www.thehindubusinessline.com/companies/institutional-investors-veto-reappointment-of-kumar-mangalam-birla-as-hindalco-chairman/article25220998.ece.

May 2018, investors were successful in ousting a director from Fortis Healthcare over concerns regarding the board's evaluation of specific company bids. In 2019, CG Power and Industrial Solutions' board replaced its promoter as chair amid allegations of irregularities, though no directorial positions were removed. A key milestone occurred in March 2022 when Invesco secured a significant legal victory affirming its right to convene an Extraordinary General Meeting (EGM) to overhaul Zee's board, even though Invesco later withdrew the request. This ruling creates a legal precedent for future shareholder actions. In another related decision, the Bombay High Court ruled that Yes Bank had the right to vote at Dish TV's EGM in June 2022, where shareholders rejected the reappointment of the managing director and other directors, signaling a notable advancement in shareholder activism in India despite challenges from promoters.[11]

Related Party Transactions- Section 188

In recent years, there have been cases where shareholders have raised objections to related party transactions[12] that they believed would harm their interests. For instance, in 2018, [13]Tata Sponge Iron Ltd. saw its shareholders reject a board resolution regarding a related party transaction, leading to the resolution failing initially. It was only after a second vote that the resolution passed. Similarly, in June 2017, the board of Raymond Ltd. proposed selling a company-owned apartment at a price far below market value.[14] This proposal was rejected by 70.6% of the voting shareholders, all of whom were non-promoters.

Proxy Advisory Firms

Proxy advisory firms have played a crucial role in mobilizing opposition against company actions or resolutions that are perceived to be against shareholders' interests. For instance, they recommended voting against Tata Motors' executive remuneration resolution in 2014 and took a stand on the leave absence issue of the former CEO of ICICI Bank. In 2019, these firms challenged the management of Sterling Wilson, highlighting the failure to use IPO proceeds

[11] Ringe, Wolf-Georg, Shareholder Activism: A Renaissance, in The Oxford Handbook Of Corporate Law And Governance (Jeffrey N. Gordon & Wolf-Georg Ringe eds., Reprint ed. 2020).
[12] Companies Act, 2013, §188(1) Proviso, The Companies (Meeting of Board and its Powers) Rules, 2014, Rule 15.
[13] Gaur, Vatsala, Tata Sponge's Related Party Deal Plan Gets Approval, The Economic Times (2018), https://economictimes.indiatimes.com/industry/indl-goods/svs/steel/tata-sponges-related-party-deal-plan-gets-approval/articleshow/65879724.cms?From=mdr.
[14]The Companies Act, 2013, §188(1) Proviso, The Companies (Meeting of Board and its Powers) Rules, 2014, Rule 15.

for debt repayment. These actions by advisory firms have significantly influenced shareholder activism and engagement.

Measures taken against fundraising or suggested investment.

[15]In July 2018, shareholders of Suzlon Energy rejected a proposal by the board to raise INR 2,900 crore through equity shares and debentures, with the resolution securing only 65.12% of votes, short of the 75% required. Similarly, in November 2015, Sun Pharma faced strong opposition from shareholders over a proposed $225 million investment in the U.S. wind energy sector, leading to the abandonment of the plan. In late 2016 and 2017, Infosys, known for its strong corporate governance, faced challenges from its founders over alleged improper severance payments to executives. Although an investigation cleared the management, the dispute resulted in the CEO's resignation, exposing internal divisions.

Additionally, there have been significant developments pointing to a bright future for shareholder activism. For example, substantial investments by external investors in Jio, a subsidiary of Reliance Industries Limited (India's largest listed company), highlight a positive trend. Since Jio is currently unlisted, increased involvement from these investors over time could give 'outside' shareholders the power to influence corporate strategy, marking the beginning of a new era in shareholder activism.

Key episodes of shareholder activism observed in the Indian landscape

Given the dynamic evolution of shareholder activism in India over recent years, it is crucial to delve into pivotal cases that have reverberated throughout the Indian corporate sphere, leaving lasting impressions that may chart the future trajectory of shareholder movements in the country.

- **HDFC Life- Max Life merger case**

In August 2017, HDFC Standard Life and Max Life Insurance canceled their proposed merger after months of discussions. The merger, which would have created a giant worth INR 1.1 trillion, failed to gain approval from authorities due to its structure violating §35 of the Insurance Act, 1938. Additionally, concerns over a proposed INR 850 crore non-compete fee

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[15] CS Network, Suzlon Shareholders Reject Proposals to Raise Rs 2,900 Crore, CLIMATE SAMURAI (2018), https://climatesamurai.com/wind/suzlon-shareholders-reject-proposals-to-raise-rs-2900-crore/.

to the Max Life group sparked opposition from proxy advisory firms and mutual funds, arguing it should have been part of the open-offer price to protect minority shareholders.

The McDonald Case[16]

The [17]Vikram Bakshi v. Connaught Plaza Restaurants case, a victory for Indian entrepreneurs, gained attention due to McDonald's popularity. Bakshi alleged oppression by McDonald's and challenged his removal in 2013 under the Companies Act. The NCLT ruled that Bakshi's removal was unlawful, acknowledging his 16 years of contributions to the joint venture and finding that McDonald's India had tried to buy his shares at an undervalued price. The tribunal deemed his ousting an act of oppression.

The key lesson from this case is that the NCLT expanded the interpretation of oppression provisions in joint venture contracts in two significant ways:

(a) It allowed individuals to seek relief based on oppression grounds beyond just being shareholders or members, provided they can demonstrate that their shareholding or membership has been impacted. In Mr. Bakshi's case, his claim that not being elected as MD amounted to oppression, even though it did not directly affect his shareholder status, was accepted by the NCLT, marking a novel stance.

(b) The NCLT's ruling provided a framework for petitioners to base their oppression claims on provisions within independent contracts. This paved the way for future petitioners to cite the breach of agreement conditions within the Articles of Association as sufficient grounds for alleging oppression.[18]

- **Tata- Mistry Case**

Under the leadership of Mr. Mistry, the SP Group, holding a controlling interest, strongly opposed the board's decision and took the matter to the NCLT through Cyrus Investments Private Limited and Sterling Investment Corporation Private Limited.[19] They claimed

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[16] Yerrapureddy, Poorvi, India: The Redefined Boundaries of Section 397 After the McDonald's Case, MONDAQ (2021), https://www.mondaq.com/india/shareholders/1087120/the-redefined-boundaries-of-section-397-after-the-mcdonald-case.

[17] Bakshi, Vikram & Ors. V. Connaught Plaza Restaurants Limited and Ors. [2017] 140 CLA 142.

[18] Chandratre, Dr. K.R., Law & Practice Relating to Oppression & Management (3rd ed. 2021).

[19] Tata Consultancy Services Limited v. Cyrus Investments Private Limited and Ors. 2021 SC 184. Civil Appeal Nos. 440-441, 13-14, 442-443, 19-20, 444-445, 448-449, 263-264, and 1802 of 2020.

mistreatment, oppression, and managerial malpractice under the Companies Act. However, in March 2017, the NCLT ruled in favor of the Tata Group, rejecting the SP Group's claims on all fronts.

The SP Group then appealed to the NCLAT, which in December 2019 ruled in their favor on all major issues. This decision was eventually reviewed by the Supreme Court, which issued a final judgment on March 26, 2021[20].

The Supreme Court highlighted the stringent criteria for invoking the just and equitable clause to dissolve a company, pointing out the lack of evidence for a deadlock or a breakdown of trust in the corporate relationship. The Court noted that the SP Group failed to provide sufficient evidence of a stalemate within the company's operations and dismissed the idea of a formal quasi-partnership between the Tata and SP Groups. It ruled that Mr. Mistry's promotion did not grant him permanent rights to representation and that his removal was a reasonable decision in the company's best interest, without any oppressive intent[21].

Furthermore, the court acutely noted the philanthropic stature of the company's promoters, cautioning against the deleterious repercussions of a winding-up scenario on their benevolent endeavors. Consequently, the Supreme Court unflinchingly repudiated the NCLAT's ruling, affirming that the company's operations were not marred by prejudice or oppression, and Mr. Mistry's ousting was warranted due to his professional lapses rather than any orchestrated act of oppression.

- **Infosys and Vishal Sikka's Resignation**

The case of Infosys and Vishal Sikka's resignation is a prominent example of the power of shareholder activism in India. Sikka, who became CEO in 2014, had a vision to modernize Infosys by embracing technologies such as artificial intelligence and automation. However, in 2017, co-founder Narayana Murthy raised concerns about the company's governance, criticizing issues related to executive compensation, severance packages, and acquisitions.

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[20] Sinha, Shilpy, 22.64% HDFC Shareholders Vote Against Deepak Parekh, THE ECONOMIC TIMES (2018), https://economictimes.indiatimes.com/markets/stocks/news/22-64-hdfc-shareholders-vote-against-deepak-parekh/articleshow/65207077.cms.

To address these concerns, Infosys launched a $2 billion share buyback in early 2017, but shareholder dissatisfaction persisted. In August of that year, Sikka resigned, citing personal attacks that hampered his ability to lead. His resignation marked a turning point for Infosys, leading to volatility in the company's stock price and raising questions about the balance of power between founder influence and professional management.

Following Sikka's resignation, Infosys focused on addressing governance issues and rebuilding trust. The company made key changes, including modifying its board structure, adjusting executive compensation policies, and improving transparency practices to restore investor confidence. The Infosys case highlighted the growing significance of shareholder activism in India, with investors asserting their rights to demand transparency, accountability, and ethical conduct from corporate boards and management teams. It underscored the need for companies to proactively engage with shareholders, address governance issues, and maintain open communication channels to avoid potential conflicts and disruptions. Overall, the Infosys and Vishal Sikka's resignation episode serves as a prominent case study illustrating the dynamics and impact of shareholder activism on corporate governance and management decisions in India's corporate landscape.

- **Fortis Healthcare**

Shareholder activism played a role in the Fortis Healthcare saga, where investors raised concerns about alleged financial irregularities and governance lapses. The case involved multiple stakeholders, including institutional investors and minority shareholders, advocating for transparency and accountability within the company.

- **Coal India Limited: In 2019**

Coal India Limited faced shareholder activism over concerns regarding executive compensation, dividend distribution, and corporate governance practices. Institutional investors, in particular, expressed their dissatisfaction at annual general meetings and through public statements, emphasizing the need for more active shareholder engagement.

Enhancing Shareholder Influence and Engagement

To empower shareholder activism within the context of Indian company law, a multi-dimensional approach is necessary, focused on improving transparency, accountability, and safeguarding shareholder rights. Below are several recommendations to achieve this:

1. Stricter Disclosure Norms: Enhance disclosure requirements for critical aspects such as executive compensation, related party transactions, and corporate governance. This will allow shareholders to make better-informed decisions and identify areas that may need attention.
2. Expanding Shareholder Rights: Offer shareholders more influence by giving them enhanced voting rights in decisions like mergers, acquisitions, and executive appointments. Create avenues for shareholders to propose resolutions and nominate directors, strengthening their role in corporate governance.
3. Improved Proxy Voting Process: Streamline and simplify the proxy voting system to make it easier for shareholders to participate in general meetings. Implement electronic voting options and ensure transparency in the proxy voting process to encourage wider engagement.
4. Protecting Minority Shareholders: Strengthen legal safeguards to protect minority shareholders from potential oppression by majority shareholders or management. Expand legal options for minority shareholders, such as class action suits and derivative actions, to address corporate misconduct.
5. Promoting Shareholder Engagement: Encourage open dialogue between shareholders, management, and the board to address concerns proactively. Create regular communication channels such as investor meetings, forums, and disclosures to foster transparency and improve corporate accountability.
6. Increased Role of Institutional Investors: Encourage institutional investors to actively participate in corporate governance issues. Establish clear guidelines and incentives for them to engage with companies on governance matters and responsibly exercise their voting rights.
7. Regulatory Framework: Strengthen regulatory support for shareholders by providing clear procedures for filing complaints, accessing company information, and seeking redress. Reinforce regulatory oversight to ensure adherence to corporate governance norms and safeguard shareholder interests.
8. Shareholder Education: Implement educational initiatives to raise awareness among shareholders about their rights and responsibilities. Equip them with the knowledge and

resources to actively engage with companies, thereby holding them accountable for their actions.

Conclusion

Shareholder activism in India has been growing, with investors taking a more proactive role. Over the past two decades, this shift has significantly influenced the country's corporate governance, focusing on global governance standards. As India's economy expands, shareholder activism is poised to increase, with activists leading the charge, reflecting Ben Horowitz's insight: "Shareholder activism thrives when activists discern business nuances evading the board." However, the legal and institutional challenges in India make it difficult for shareholders to use litigation against managerial misconduct. Historical efforts show that legal strategies often have limited success. To advance, India needs stronger shareholder-promoter relationships, institutional investor support, and enhanced regulatory frameworks to drive positive change[22].

[23]Australia's rise in shareholder activism, particularly in climate risk disclosures and ESG issues, serves as a strong example. This activism has proven to drive value and influence corporate governance. In India, shareholder activism goes beyond demands, aiming to improve corporate governance and ensure long-term stability. As legal and systemic improvements continue, India is positioning itself to play a leading role globally.

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[22] Shah, Palak, Institutional Investors Veto Reappointment of Yet Another Conglomerate Head, The Hindu Business Line (2018), https://www.thehindubusinessline.com/companies/institutional-investors-veto-reappointment-of-kumar-mangalam-birla-as-hindalco-chairman/article25220998.ece

[23] Shareholder Activism on Climate Change Heats Up, THE BLACK (2021), https://www.intheblack.com/articles/2021/04/01/shareholder-activism-climate-change

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19. Tata Consultancy Services Limited v. Cyrus Investments Private Limited and Ors. 2021 SC 184. Civil Appeal Nos. 440-441, 13-14, 442-443, 19-20, 444-445, 448-449, 263-264, and 1802 of 2020.
20. The Companies Act, 2013, §241 & 244, The National Company Law Tribunal Rules, 2016, Rule 84.
21. The Companies Act, 2013, §188(1) Proviso, The Companies (Meeting of Board and its Powers) Rules, 2014, Rule 15.
22. Vikramaditya Khanna & Umakanth Varottil, The Rarity of Derivative Actions in India: Reasons and Consequences, DERIV. ACTION ASIA A COMP. FUNCT. APPROACH 369–397 (2012).
23. Yerrapureddy, Poorvi, India: The Redefined Boundaries of Section 397 After the McDonald's Case, MONDAQ (2021), https://www.mondaq.com/india/shareholders/1087120/the-redefined-boundaries-of-section-397-after-the-mcdonald-case.