Minority Shareholder Protection Under the Companies Act, 2013: A Critical Evaluation of the Remedies Against Oppression and Mismanagement

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ABSTRACT

Corporate governance rests on the principle that a company is managed in accordance with the wishes of the majority of its members. That principle promotes efficient decision-making, but it also exposes shareholders with smaller holdings to the risk that those in control will use their power unfairly, whether by excluding them from management, diluting their holdings, diverting company resources or manipulating the company's affairs for private advantage. The Companies Act, 2013 addresses this risk mainly through Chapter XVI (sections 241 to 246), which provides remedies for oppression and mismanagement, and through supporting provisions on class actions, investigation, minority exit and the appointment of a small shareholders' director. This review article examines whether those remedies adequately protect minority shareholders in India while respecting the legitimate authority of the majority and the board. It reviews the statutory text, the leading judicial interpretations and selected comparative principles, with particular attention to the standing requirements in section 244, the powers of the National Company Law Tribunal (NCLT) under section 242, and the class-action mechanism in section 245. The article argues that the statutory framework is wide in its remedial scope, but that its effectiveness is limited by demanding standing thresholds, the evidential burden of proving oppression, procedural delay and uncertainty about the standard of unfairness. It recommends clearer judicial guidance on the standard of oppression, calibrated use of the waiver power, faster interim relief, and stronger disclosure and approval safeguards in related-party and capital-raising transactions.

This article uses a doctrinal and analytical review method. It relies on legislation, reported decisions and selected secondary writing. It does not provide an empirical estimate of the number or outcome of petitions before the NCLT, and the case descriptions should be verified against the full law reports before citation in any formal submission.

KEYWORDS: Companies Act, 2013; minority shareholders; oppression; mismanagement; NCLT; class action; section 241; section 242; section 244.

I. INTRODUCTION

A company is a body corporate with its own legal personality, and its affairs are ordinarily decided by majority vote. The rule that the court will not interfere in the internal management of a company at the instance of a dissatisfied member, and that a wrong done to the company is for the company to remedy, is traditionally traced to *Foss v Harbottle*.[1] The rule has practical value. Courts are not equipped to review every business judgment, and a company would be difficult to run if every shareholder could challenge every decision. Yet the same rule can leave a minority shareholder without a remedy when the majority is also the wrongdoer.

Indian company law has long recognised this tension. The Companies Act, 1956 provided relief against oppression and mismanagement in sections 397 and 398, and the Companies Act, 2013 retains and reshapes these remedies in Chapter XVI.[2] The Expert Committee on Company Law chaired by Dr. J.J. Irani had recommended a modern company law that balances flexibility for management with effective protection of investors and minorities, and the 2013 Act reflects that aim.[3] The question for this review is whether the present remedies deliver on that aim in practice.

The term "minority" in this article means members who do not control the company's decision-making, whether because they hold a small proportion of the shares or because they are excluded from the management group. It is not limited to holders of less than half of the shares, and a person with a sizeable holding may still be in a minority in a practical sense. The relevant question in each case is not the size of the holding alone but

whether the affairs of the company have been conducted in a manner that is unfair to the members as members, or prejudicial to the company.

This review covers the doctrinal background, the statutory scheme, the meaning of oppression and mismanagement, the standing and relief provisions, the class-action remedy, other protective mechanisms and the main weaknesses of the present system. It then offers recommendations. Its central position is that minority protection should be real but disciplined: a remedy that is too easy to invoke would interfere with commercial decision-making, while a remedy that is too hard to invoke would leave the statutory promise empty.

II. SCOPE AND METHOD OF THE REVIEW

This article is a review of legal materials rather than an empirical study of company disputes. It draws on three sources: first, the text of the Companies Act, 2013 and the rules and notifications made under it; second, decisions of the Supreme Court of India and of the appellate tribunal in leading oppression and mismanagement matters; and third, selected comparative and secondary materials that explain the underlying principles.[4]

The method is doctrinal because it interprets statutory provisions and judicial reasoning. It is critical because it asks whether the remedies are workable for a real minority shareholder, not merely whether they exist on paper. It is limited in that it does not rely on statistical data

[1] *Foss v Harbottle* (1843) 2 Hare 461, 67 ER 189.

[2] Companies Act, 2013 (India), Chapter XVI, ss 241–246; compare Companies Act, 1956 (India), ss 397–398 (now repealed).

[3] Ministry of Corporate Affairs, Government of India, *Report of the Expert Committee on Company Law* (Dr. J.J. Irani Committee, 2005).

[4] Companies Act, 2013 (India); Supreme Court of India, reported decisions cited in this article, to be verified against the official law reports before formal citation.

about case pendency, success rates or the identity of petitioners. Where the article refers to practical difficulties such as delay, it does so as a recognised concern in the literature and in policy discussion rather than as a measured finding.

The review also avoids treating every dispute between shareholders as a case of oppression. A disagreement about business strategy, a justified removal of a director or a lawful capital-raising exercise may disappoint a minority member without amounting to a statutory wrong. The distinction between lawful majority action and oppressive conduct is the main subject of the analysis.

III. THE MAJORITY RULE AND ITS EXCEPTIONS

The general rule from *Foss v Harbottle* has two parts: the proper claimant in respect of a wrong done to the company is the company itself, and the court will not interfere where the alleged irregularity is one that the majority can ratify.[5] English law developed recognised exceptions, including acts that are ultra vires or illegal, acts that require a special majority but were passed by a simple majority, infringement of a member's personal rights, and fraud on the minority by those in control.[6] These exceptions allow a member to sue in particular circumstances but do not provide a general remedy for conduct that is lawful in form yet unfair in substance.

Statutory remedies for oppression were introduced to fill that gap. Rather than requiring the member to fit the case within a technical exception, the statute asks whether the company's affairs are being conducted in a prejudicial or oppressive manner. This shifts the inquiry from legality alone to fairness and probity, while still requiring the petitioner to prove the facts alleged.

The statutory approach also changes the relief available. A personal action may result in a declaration or damages, and a derivative action benefits the company. A petition under Chapter XVI allows the Tribunal to make orders designed to bring the matters complained of to an end, including orders that restructure the relationship between members. This flexible remedial power is the principal strength of the statutory scheme.

IV. THE STATUTORY FRAMEWORK UNDER CHAPTER XVI

Section 241 permits a member who complains of oppression or mismanagement to apply to the Tribunal for relief, provided the member has the right to apply under section 244. The application may be based on two broad grounds. The first is that the affairs of the company have been or are being conducted in a manner prejudicial to public interest, or in a manner prejudicial or oppressive to the applicant or any other member, or prejudicial to the interests of the company. The second is that a material change has taken place in the management or control of the company, whether by an alteration in the Board of Directors, in the manager or in the ownership of shares, and that by reason of that change it is likely that the affairs of the company will be conducted in a prejudicial manner.[7] Section 241 also allows the Central Government to apply to the Tribunal where the affairs of a company are being conducted in a manner prejudicial to public interest.[8]

Section 242 then sets out the Tribunal's powers. Under section 242(1), the Tribunal must be of the opinion that the company's affairs have been or are being conducted in a prejudicial or oppressive manner, and that the facts would justify a winding-up order on the just and equitable ground but that winding up would unfairly prejudice the applicants. In such a case, the Tribunal may make such order as it thinks fit with a view to bringing to an end the matters complained of.[9] This preserves the link between oppression and the just and equitable ground for winding up, which has its origin in the English decisions on quasi-partnership companies.[10]

Section 243 deals with the consequences of an order that terminates, sets aside or modifies an agreement with a managing director, director or manager, and restricts the reappointment of persons whose agreements were affected, subject to leave of the Tribunal.[11] Section 244 governs who may apply, and section 245 provides for class actions. Section 246 applies certain provisions on the powers of the Tribunal in respect of winding-up proceedings to applications under section 241, so far as may be.[12]

This structure is significant for two reasons. First, the Act adds the concept of conduct prejudicial to the interests of the company, which broadens the inquiry beyond harm to individual members and allows a petitioner to rely on corporate mismanagement. Second, the Act places the Tribunal, rather than the High Court, at the centre of the process, with appeals to the National Company Law Appellate Tribunal (NCLAT) and then to the Supreme Court on questions of law.[13]

V. THE MEANING OF OPPRESSION

The statute does not define "oppression". The meaning has been developed by courts. In *Shanti Prasad Jain v Kalinga Tubes Ltd*, the Supreme Court approached oppression as conduct that is burdensome, harsh and wrongful, and noted that a mere dissatisfaction with management or an isolated irregularity is not enough.[14] In *Needle Industries (India) Ltd v Needle Industries Newey (India) Holding Ltd*, the Court examined a dispute over allotment of shares and emphasised that the court must look at the substance of the conduct and ask whether there was a lack of probity and fair dealing in the affairs of the company.[15]

[5] *Foss v Harbottle* (1843) 2 Hare 461, 67 ER 189.

[6] *Edwards v Halliwell* [1950] 2 All ER 1064 (CA); see also Paul L. Davies and Sarah Worthington, *Gower's Principles of Modern Company Law* (Sweet & Maxwell, latest edition), chapters on shareholder remedies.

[7] Companies Act, 2013 (India), s 241(1).

[8] Companies Act, 2013 (India), s 241(2).

[9] Companies Act, 2013 (India), s 242(1).

[10] *Ebrahimi v Westbourne Galleries Ltd* [1973] AC 360 (HL).

[11] Companies Act, 2013 (India), s 243.

[12] Companies Act, 2013 (India), s 246.

[13] Companies Act, 2013 (India), ss 421 and 423 (appeals to the National Company Law Appellate Tribunal and the Supreme Court).

[14] *Shanti Prasad Jain v Kalinga Tubes Ltd* AIR 1965 SC 1535.

[15] *Needle Industries (India) Ltd v Needle Industries Newey (India) Holding Ltd* (1981) 3 SCC 333.

Two features of the Indian approach should be noted. First, the conduct complained of is judged against the standard of fair dealing, not the standard of strict legality. A transaction can comply with the articles and the Act and still be oppressive if it is carried out for an improper purpose or in bad faith. Second, a petitioner must usually show a course of conduct, or at least an act with continuing consequences, rather than a single, completed event that has no continuing effect. The requirement of continuity has been applied with varying strictness, and later authorities have recognised that a single act may suffice where its effects continue.[16]

The English decision in *Ebrahimi v Westbourne Galleries Ltd* explained that a company formed on the basis of a personal relationship, mutual confidence and an understanding that all members would participate in management may be treated in equity as a quasi-partnership, so that exclusion from management in breach of that understanding can justify relief even though the exclusion is lawful under the articles.[17] Indian courts have referred to this reasoning in appropriate cases, particularly in closely held family companies. The idea is useful because it recognises legitimate expectations that are not recorded in the constitutional documents. It also has limits. A listed or widely held company cannot ordinarily be treated as a quasi-partnership, and expectations of that kind must be proved.

The Supreme Court's decision in *Dale and Carrington Investment (P) Ltd v P.K. Prathapan* illustrates a related point. The Court treated the directors' power to allot shares as a fiduciary power that must be exercised for the benefit of the company and not to alter the balance of control to the prejudice of existing members.[18] The decision shows that capital-raising decisions, which are often defended as ordinary commercial acts, remain open to scrutiny where their real purpose is to dilute a minority.

A practical test emerges from these authorities. The Tribunal asks whether the majority has acted in a manner that is unfair to the minority as members, whether the conduct amounts to a lack of probity, whether the petitioner's legitimate expectations were defeated, and whether the matters complained of continue to affect the members. None of these questions has a mechanical answer, and the result depends on the facts.

VI. THE MEANING OF MISMANAGEMENT AND PREJUDICE TO THE COMPANY

The Chapter heading refers to oppression and mismanagement, but the statute does not define mismanagement. In practice it covers conduct that harms the company, such as diversion of funds, sale of assets at an undervalue, unjustified related-party dealings, failure to maintain proper accounts, and neglect of statutory duties. The language of section 241(1)(a), which refers to conduct prejudicial to the interests of the company, gives textual support for relief of this kind.[19]

[16] See, for the continuing-conduct requirement under the corresponding provisions of the 1956 Act, *Hanuman Prasad Bagri v Bagress Cereals (P) Ltd* (2001) 4 SCC 420.

[17] *Ebrahimi v Westbourne Galleries Ltd* [1973] AC 360 (HL).

[18] *Dale and Carrington Investment (P) Ltd v P.K. Prathapan* (2005) 1 SCC 212.

[19] Companies Act, 2013 (India), s 241(1)(a).

The inclusion of mismanagement raises a conceptual difficulty. Harm to the company is, in principle, a wrong to the company, and the remedy would ordinarily belong to the company or to members through a derivative action. The oppression remedy allows a member to seek personal relief for wrongs that also injure the company. This is justified where those who control the company would not cause it to sue themselves, and it avoids the procedural limits of derivative proceedings. The risk is that petitions founded on commercial disagreement may be framed as mismanagement. Tribunals must therefore ask whether the petitioner has shown a breach of duty or a lack of good faith, not merely a business decision that turned out badly.

The second limb of section 241(1), which concerns a material change in the management or control of the company, is preventive in nature. It allows a member to apply where a change in the board or in the ownership of shares makes it likely that the company's affairs will be conducted in a prejudicial manner.[20] The provision is useful in takeover and control disputes, but it requires proof of likelihood, which is a demanding standard where the change is recent and the new management has not yet acted.

Section 213 supplements these remedies by allowing the Tribunal, on application by a prescribed number of members, to order an investigation into the affairs of a company by an inspector where the circumstances justify it.[21] An investigation is slower than a petition for relief, but it can reveal facts that a minority member could not otherwise obtain.

VII. STANDING: SECTION 244 AND THE POWER OF WAIVER

The most contested feature of the remedy is the right to apply. Under section 244, in the case of a company having a share capital, an application under section 241 may be made by not less than one hundred members or one-tenth of the total number of members, whichever is less, or by any member or members holding not less than one-tenth of the issued share capital, provided the applicants have paid all calls and other sums due on their shares. In a company without share capital, the application may be made by not less than one-fifth of the total number of members.[22] Where members entitled to apply under the section wish to do so, one or more of them may apply on behalf and for the benefit of all, with the written consent of the rest.[23]

The thresholds are intended to prevent frivolous or vexatious petitions and to ensure that the petitioners represent a real constituency. They also operate as a barrier. A shareholder with a small holding in a large company may be unable to meet either test, and may not be able to find enough other members willing to join. The difficulty is greatest in widely held companies, where the members are dispersed and have little incentive to organise.

[20] Companies Act, 2013 (India), s 241(1)(b).
[21] Companies Act, 2013 (India), s 213.
[22] Companies Act, 2013 (India), s 244(1).
[23] Companies Act, 2013 (India), s 244(2).

The proviso to section 244(1) allows the Tribunal to waive the requirements so as to enable members to apply for relief.[24] The proviso has been central to several high-profile disputes. In the dispute between Cyrus Investments Ltd and Tata Sons Ltd, the question whether the petitioners, who held a minority stake of the kind that did not satisfy the threshold on its own terms, should be permitted to proceed by waiver was an early battleground, and the appellate tribunal ultimately upheld the grant of waiver.[25] The Supreme Court later considered the merits and set aside the appellate tribunal's order.[26]

The waiver power raises a policy question. If it is exercised liberally, the thresholds become a formality and the Tribunal may be burdened with petitions that the legislature intended to filter out. If it is exercised sparingly, the minority with the strongest case may be shut out on a technical ground. A balanced approach would treat waiver as a discretionary power that depends on the prima facie strength of the allegations, the nature of the conduct complained of and the applicant's lack of other practical remedies, and would require the Tribunal to give reasons for allowing or refusing it. The Tribunal should avoid turning the waiver stage into a mini-trial on the merits, but should be satisfied that a real question of oppression or mismanagement arises.

VIII. REMEDIAL POWERS OF THE TRIBUNAL UNDER SECTION 242

The breadth of section 242(2) is one of the most important features of the Indian scheme. The Tribunal may make an order that regulates the conduct of the company's affairs in the future; provides for the purchase of the shares or interests of any members by other members or by the company; provides for a reduction of share capital where the company purchases shares; restrains the company from doing or continuing an act complained of; terminates, sets aside or modifies an agreement with the managing director, any other director or the manager, subject to notice; sets aside transactions involving property made within a specified period before the application that would amount to a fraudulent preference; removes a managing director, manager or director; provides for recovery of undue gains made by a managing director, manager or director during the period of oppression; appoints directors to report to the Tribunal; imposes costs; and makes any other provision that is just and equitable.[27] The Tribunal may also pass interim orders on the application of a party. A copy of the order must be filed with the Registrar within the prescribed time, and the order has effect accordingly.[28]

These powers allow the Tribunal to match the remedy to the wrong. The most commonly sought relief in closely held companies is an order for the purchase of the petitioner's shares at a fair value, which allows the dissenting member to exit without forcing a winding up. In other cases, the better remedy may be restoration of the petitioner to the board, reversal of an improper allotment, or the appointment of a professional director to supervise management.

[24] Companies Act, 2013 (India), proviso to s 244(1).

[25] *Cyrus Investments Ltd v Tata Sons Ltd*, National Company Law Appellate Tribunal (December 2019), on the grant of waiver under the proviso to s 244(1).

[26] *Tata Consultancy Services Ltd v Cyrus Investments Pvt Ltd* (2021) 9 SCC 449.

[27] Companies Act, 2013 (India), s 242(2).

[28] Companies Act, 2013 (India), s 242(4) and s 242(5).

The power to recover undue gains and to set aside certain transactions gives the Tribunal tools to reverse the effects of past conduct, not merely to regulate the future.

The remedy also creates practical difficulties. Valuation is frequently disputed, and a buy-out order requires the Tribunal to decide the date of valuation, the method, and whether a discount should be applied for a minority holding. Where the Tribunal orders the majority to buy the petitioner's shares, there may be a question whether the order should reflect the pro rata value of the company as a whole. A principled approach is that where the minority is excluded through unfair conduct, a discount for the minority character of the holding would reward the wrongdoer, whereas where the petitioner is leaving voluntarily, a different approach may be justified. The statute leaves this to the Tribunal's discretion, and further guidance would improve consistency.

Section 243, which restricts the reappointment of persons whose agreements are terminated and removes the right to compensation in specified cases, is meant to prevent the removal order from being undermined.[29] It should be applied with attention to fairness, because the persons affected are entitled to be heard before their contractual rights are changed.

IX. CLASS ACTIONS UNDER SECTION 245

Section 245 introduced a collective remedy that was not present in the earlier Act in this form. It allows a specified number of members or depositors to file an application on behalf of all members or depositors seeking orders against the company and its directors, auditors and other advisers. For a company having a share capital, the threshold is not less than one hundred members or such percentage of the total number of members as may be prescribed, whichever is less, or members holding not less than the prescribed percentage of the issued share capital, and for depositors a corresponding number or percentage.[30] The reliefs include restraining the company from committing an act that is ultra vires or in breach of the memorandum or articles, restraining the company from acting on a resolution obtained by misrepresentation or suppression of material facts, restraining the company and its directors from acting in breach of the Act, and claiming damages or compensation or demanding other suitable action against an auditor, including an audit firm, for any improper or misleading statement, or against an expert or advisor for any incorrect or misleading statement made to the company.[31]

The class action has several attractions. It permits dispersed members to share costs and pursue a remedy that no individual could justify financially. It extends beyond oppression to a range of corporate wrongs, and it binds all members of the class, which promotes finality. It also includes claims against professionals, which can create deterrence for auditors and advisers.

[29] Companies Act, 2013 (India), s 243.

[30] Companies Act, 2013 (India), s 245, read with the National Company Law Tribunal Rules, 2016 and the rules made under the Act.

[31] Companies Act, 2013 (India), s 245(1).

Its practical use has been limited by the same features that limit other collective mechanisms: the difficulty of coordinating a large number of members, the cost of litigation, the risk of adverse costs, and uncertainty about how

the Tribunal will apply the provision. Reported experience appears to be modest, although a systematic empirical study would be needed to support a firm conclusion. A more supportive framework might include clearer rules on the appointment of lead applicants, cost-sharing, notice to members and the role of regulators or investor protection bodies in supporting suitable cases. The provision should also be applied with safeguards against abusive litigation, such as an early stage at which the Tribunal tests whether there is a genuine cause of action.

X. OTHER PROTECTIVE MECHANISMS

Minority protection is not confined to Chapter XVI. Several other provisions of the Act and related regulation contribute to the overall scheme.

First, members holding a prescribed proportion of the paid-up capital may requisition an extraordinary general meeting under section 100, which allows a minority to place matters before the members even where the board is unwilling to do so.[32] Second, certain decisions require a special resolution, which in general requires a three-fourths majority of those voting, so that a bare majority cannot pass them. Alteration of the articles is an example.[33] Third, section 188 regulates related-party transactions by requiring board or shareholder approval in specified cases and by excluding interested members from voting on the relevant resolution, which gives the disinterested members control over transactions that are most likely to disadvantage them.[34]

Fourth, section 151 permits a listed company to have a director elected by small shareholders, and a small shareholder is defined by reference to a nominal value of holding set by the Act and the rules.[35] The provision gives small investors a voice on the board, though its effect depends on how often small shareholders actually organise to use it. Fifth, section 236 provides a mechanism by which an acquirer or person holding ninety per cent or more of the issued equity share capital may require the remaining holders to sell their shares at a price determined in accordance with the prescribed method, and the minority holders have a corresponding right to offer their shares.[36] This provides a regulated exit, but it also raises the question whether the price fairly reflects the value of the shares.

Sixth, a member may seek winding up on the just and equitable ground under the provisions on winding up by the Tribunal. This is a serious remedy, and the Tribunal will ordinarily prefer a less drastic order under section 242 where one is available.[37] Seventh, for listed companies, the regulations of the Securities and Exchange Board of India on disclosure, related-party transactions, takeover offers and delisting add a further layer of protection, enforced by a regulator and not dependent on the initiative of a minority shareholder.[38]

These provisions form a layered system: pre-emptive protection through governance rules, preventive protection through approval requirements, and corrective protection through Tribunal relief. Their combined effect is stronger than any single remedy, but the system is complex, and a minority shareholder may find it difficult to know which route is appropriate.

XI. JUDICIAL APPROACH AND CRITICAL ASSESSMENT

The leading judicial discussion of the modern framework is the Supreme Court's decision in *Tata Consultancy Services Ltd v Cyrus Investments Pvt Ltd*, the Tata Sons dispute, in which the Court reversed the appellate tribunal's order that had found oppression and mismanagement and had reinstated a removed chairman.[39] The Court emphasised that the powers of the Tribunal under sections 241 and 242 are not to be used to second-guess business decisions, that an act which the articles permit does not become oppressive merely because the

[32] Companies Act, 2013 (India), s 100.

[33] Companies Act, 2013 (India), s 13 (alteration of memorandum) and s 14 (alteration of articles), read with s 114 (ordinary and special resolutions).

[34] Companies Act, 2013 (India), s 188.

[35] Companies Act, 2013 (India), s 151, read with s 2(85) (definition of small shareholder).

[36] Companies Act, 2013 (India), s 236.

[37] Companies Act, 2013 (India), s 271 (winding up by the Tribunal on the just and equitable ground).

minority dislikes it, and that the petitioner must establish that the conduct complained of was oppressive to members, or prejudicial to the company, on the facts. The decision is important for what it says about the limits of the remedy: a loss of position or confidence at board level is not by itself a ground for relief.

The decision should be read together with *V.S. Krishnan v Westfort Hi-Tech Hospital Ltd*, where the Supreme Court insisted that allegations of oppression and mismanagement must be proved by evidence and that the Tribunal or court should not intervene on the basis of general complaints.[40] The two decisions reflect a judicial caution that guards against misuse of the remedy.

This caution is justified, but it carries a risk. The majority in a closely held company often controls all the relevant documents, and a minority petitioner may have limited ability to prove diversion of funds or improper dealings without access to company records. If the evidential burden is applied too strictly at the outset, the remedy may be unavailable to those most in need of it. The Tribunal should use its powers to order production of documents, appoint independent examiners and, where appropriate, order investigation, so that the burden of proof is not rendered impossible to meet by the very conduct complained of.

The interaction between the legality of an act and its fairness also needs clearer treatment. The Indian cases accept that lawful acts may be oppressive where they are done in bad faith, but the practical test is not always applied consistently. Decisions differ on how much weight to give to the petitioner's own conduct, to the passage of time since the act complained of, and to the existence of an alternative remedy. A body of reasoned and consistent decisions would reduce uncertainty for both minority and majority.

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[38] Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015; SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011; SEBI (Delisting of Equity Shares) Regulations, 2021.

[39] *Tata Consultancy Services Ltd v Cyrus Investments Pvt Ltd* (2021) 9 SCC 449.

[40] *V.S. Krishnan v Westfort Hi-Tech Hospital Ltd* (2008) 3 SCC 363.

A further issue is the relationship between corporate and personal remedies. A petition under section 241 can lead to relief for the benefit of the company, but the statute does not make this easy to distinguish from a derivative action. Clearer guidance on when the Tribunal should treat a mismanagement complaint as a matter for the company, and when it should allow a member to proceed directly, would help avoid inconsistent practice.

XII. PROCEDURAL AND INSTITUTIONAL CHALLENGES

The effectiveness of any remedy depends on how quickly and predictably it can be obtained. Delay is widely recognised as a problem in the Indian dispute-resolution system, and oppression petitions are particularly sensitive to it because the harm can become irreversible. A company that has issued new shares, sold a principal asset or changed its board may be difficult to restore to its earlier position once the case is decided. Interim relief is therefore important. The Tribunal has power to pass interim orders, but applicants must generally show a prima facie case, a balance of convenience and the risk of irreparable harm.[41] These tests are familiar, but their application in oppression cases should recognise that the preservation of the status quo may be the only way to protect the final remedy.

The provisions of the Limitation Act, 1963 apply to proceedings before the Tribunal and the appellate tribunal, so far as they are applicable.[42] The question of when time begins to run in a case involving a continuing course of conduct is often contested. A reasoned approach recognises that where the oppressive conduct is continuing, a petitioner should not be barred merely because the first act occurred some time earlier, while a petitioner who delays unreasonably in challenging a discrete act may not obtain equitable relief.

Appeals lie from the Tribunal to the NCLAT, and from the NCLAT to the Supreme Court on a question of law, within the periods stated in the Act.[43] A route of appeal is necessary for consistent development of the law, but it can also lengthen the dispute. Parties may find that a final outcome takes years, during which the minority holding is illiquid and the company continues to operate under the control of the majority.

There is also a question of capacity. Tribunal benches must deal with complex valuation, accounting and corporate-governance issues. Specialist support, such as independent valuers and forensic accountants, may be necessary. The system benefits when the Tribunal can appoint such experts quickly and on clear terms, and when the cost of doing so is allocated fairly between the parties.

Finally, alternative dispute resolution deserves attention. Many oppression disputes involve family or long-standing business relationships, and a negotiated buy-out or governance settlement may serve the parties better than a contested judgment. Mediation and structured settlement should be encouraged, while ensuring that settlements affecting a class of members are not reached at the expense of those who are not represented.

[41] Companies Act, 2013 (India), s 242(4).
[42] Companies Act, 2013 (India), s 433 (application of the Limitation Act, 1963).
[43] Companies Act, 2013 (India), ss 421 and 423.

XIII. RECOMMENDATIONS

First, the standard for oppression should be stated with greater clarity in judicial decisions. Rather than repeating general formulas, the Tribunal and the appellate tribunal should identify the specific conduct, explain why it falls below the standard of fair dealing, and distinguish it from a mere disagreement over business policy. A reasoned approach to the standard of unfairness, drawing on the Indian case law and, where useful, comparative reasoning, would improve predictability.

Second, the power of waiver under section 244 should be exercised through a published and reasoned approach. The Tribunal should consider the prima facie strength of the allegations, the nature of the harm, the practical difficulty of satisfying the threshold and the availability of alternative remedies. The waiver stage should be dealt with promptly, so that it does not become a lengthy dispute in its own right.

Third, interim relief should be treated as a central part of the remedy. The Tribunal should consider the risk that the subject-matter of the dispute will be lost or altered before final judgment, and should be willing to preserve the position, subject to appropriate undertakings and security from the applicant where necessary.

Fourth, access to information should be strengthened. Minority petitioners should be able to obtain relevant company records at an early stage, subject to confidentiality, and the Tribunal should use its powers to appoint independent examiners or order investigation in proper cases.

Fifth, the class-action mechanism should be supported by clearer procedural rules on notice, lead applicants, costs and the role of regulators or investor protection bodies. Reforms should protect against abusive claims but should not make the remedy impractical.

Sixth, valuation principles in buy-out orders should be developed. The Tribunal should state the date and method of valuation, the treatment of minority discounts and the reasons for its choice, so that parties can settle on a principled basis.

Seventh, preventive governance measures should be reinforced. Stronger disclosure, independent director oversight, scrutiny of related-party transactions and clear rules on preferential allotments can reduce the incidence of disputes and protect minority members before harm occurs.

XIV. CONCLUSION

The Companies Act, 2013 offers minority shareholders a broad set of remedies. Sections 241 and 242 give the Tribunal wide power to bring oppressive or prejudicial conduct to an end, section 245 provides a collective remedy, and other provisions on meetings, special resolutions, related-party dealings, small shareholder representation and minority exit form part of a wider protective framework. In design, the system recognises that majority rule is a principle of efficiency and not a licence for unfairness.

In operation, the system faces limits. The standing thresholds in section 244 can exclude shareholders with real grievances, the burden of proving oppression is heavy, the standard of unfairness is not always applied

consistently, and delay can reduce the value of the final relief. Judicial caution, as shown in the Tata Sons litigation, protects companies from interference in legitimate business judgment, but it also underlines the need for petitioners and Tribunals to have the information and procedural tools required to test serious allegations.

The best approach is neither a rule that favours the majority by default nor one that treats every minority complaint as proof of wrongdoing. It is a framework that requires proof of unfair or prejudicial conduct, allows prompt and tailored relief where that proof is made, and encourages early disclosure and governance practices that reduce the need for litigation. Minority shareholder protection, properly understood, supports investment and confidence in the corporate form, and the continued development of principles, procedure and institutional capacity is essential for the Act's remedies to deliver the protection they promise.

XV. REFERENCES

1. Companies Act, 2013 (India), as amended.
2. Companies Act, 1956 (India), ss 397–398 (repealed).
3. National Company Law Tribunal Rules, 2016.
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