ANALYSIS ON SHAREHOLDER DEMOCRACY¹

ABSTRACT

Modern corporate governance has started to increasingly rely on the decisions of shareholders. Although, most decisions about a company are taken by the Board, the shareholders still have a very important role to play in the decision-making process. Traditional models like directorial accountability depend on the ability of the shareholders to review the performance of the Board. In an era where the scope of corporate governance extends to the approvals and disapprovals, agreements and disagreements by the shareholders with the Board, this piece of research looks to examine the key aspects of shareholder democracy, the areas it extends to and some of the instances of practical approach by the shareholders. The author in due course of research analytically tries to put forward the democratic approach adopted by shareholders according to the Companies Act, 1956 and the Companies Act, 2013. Rights and duties of shareholders are highlighted keeping in view of the co-existence of majority and minority shareholders in a company.

BACKGROUND

Across various jurisdictions, laws related to shareholder governance reflect the lawmakers’ belief that shareholders can perform their role in a manner best suited to the company’s interests. It is worthwhile to note that much of the role played by the shareholders depends on the functioning of the board of directors. Historically, as residual claimants to the interests of the company, shareholders of a corporation would certainly opt for the directors to be skillful and loyal.² Shareholder Activism is a broad phenomenon and is a result of various steps undertaken by investors for better corporate management and to promote CSR.

“Shareholder Democracy” typically refers to the decision-making powers and functions of the shareholders. The inclusion of the term ‘democracy’ highlights the effective role played by them, the analogy being functionaries of a democratic State. As imperfect as the idea of shareholder democracy might seem, dispensation of powers as owners of the company by the shareholders has proved to be one of the focal points of transformation in corporate governance. The underlying reason for this imperfection is the conflict of ideas and interests between the majority and the minority shareholders. There is a clear separation of ownership and control when it comes to companies. While the shareholders are the owners of the company, the management of the affairs of the company is handled by the Board of Directors. This division of labour is in anticipation of smooth functioning and unbridled growth of the company to maximise profits, which unfortunately is too idealistic an idea to make into reality. When closely observed, consensus of shareholders seeps into the process of appointments of key officials, matters relating to financial institutions, voting rights on resolutions at meetings and so on. The theory of shareholder democracy owes its origin to the study and research conducted by Professor Berle’s and Means’.

“Shareholder Democracy” focuses largely on the secondary rights of a shareholder. Shareholders’ rights emanate from two sources – the Articles of Association and the Shareholder Agreement. The Articles of Association are regulations for the management of a registered company. They form, together with any relevant resolutions or agreements, the company’s constitution. These are articles subscribed by the members of a joint-stock company or corporation organized under a general law, which create the corporate union between them. Such articles are in the nature of a partnership agreement, and commonly specify the form of organization, amount of capital, kind of business to be pursued, location of the company, etc.³ The Shareholder Agreement is a contract amongst the shareholders of a company that lay guidelines for operation of the company and addresses the rights and obligations of a shareholder. As shareholders, members are practically the owners of a company. Just like a common citizen enjoys his rights, a shareholder also is entitled to certain rights for he is the one who finances the ventures of a company. The primary right arising from the ownership of

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²Charles O Kelley and Robert B Thompson, Corporations and other Business Associations 176
⁵The law dictionary, available at https://thelawdictionary.org/articles-ofassociation/
shares is the right to profits and assets and the secondary being the right to appoint the Board members and to approve major decisions.6

From the time the concept of corporate governance started gaining momentum in the mid-20th Century, across various jurisdictions, the nature of shareholder activism has taken small steps culminating into the whole idea of shareholder democracy. The idea of corporate governance of American companies is structured on the democratic principle of one share, one vote—much like Britain, Australia and a growing number of countries that are gradually embracing the “Anglo-Saxon model” of capitalism.7 For example, in early 21st Century, institutional investors in the US started a new wave of shareholder activism by introducing more proxy statement proposals to companies. The Investor Responsibility Research Centre (IRRC) in the US reported that shareholders in 2003 submitted 774 proposals regarding corporate governance for inclusion in annual meeting proxy statements, compared with 528 in 2002 and 502 in 2001 across different companies. Most of such proxy statement proposals have highlighted the need for the company management to get more shareholder input on important corporate governance matters, including, most notably, the process by which persons are nominated for election to the boards of directors.8 The Council of Institutional Investors (CII) states that at least 2/3 of the Board must be independent directors.9 As per the NYSE, the Nominating and Corporate Governance Committee, alongside the Audit Committee and Compensation Committee, should consist entirely of independent directors.10 In addition to this, the US National Association of Corporate Directors (NACD) has taken several initiatives to bring about transparency about the functioning of the Board to shareholders.11 Such a movement has indicated that corporations in the US are more investor-driven than concentration of power in the Board.

On the other hand, when we closely observe the framework of corporate governance in the UK, one can historically trace that the constitutional heart of a corporation regulating the power structure of the company is mostly left to those who initially formed the company or the protagonists. The wings of a given company, the board and the general meeting are given as default tools of operation. Irrespective of those forming the company using the default methods to create the board and general meeting, the internal rules originally provided by the framers of the Articles become the rules of the company by which the members and directors are bound unless a special majority changes or modifies the same.12 It is interesting to note that although the shareholders according to the UK company law have reserve power to invalidate the past acts of a director, the board is appointed the primary power-wielding organ of the company.13 A question then arose as to whether the general management powers of the board could override the dissenting voice of the shareholders. In Howard Smith Ltd. v. Ampol Petroleum Ltd.,14 it was held that the directors could take decisions against the wishes of the majority of shareholders. However, it becomes all the more intriguing when the company law significantly allows a simple majority of the shareholders to remove the board.15

The Asian countries have also been towards empowerment of investors. Most of the countries in Asia require a third of the Board to consist of independent directors. Independent board directors, entrusted to protect the interests of the minority shareholders, are elected by shareholders to serve the same purpose. They monitor the activities of stakeholders and the board. In 2012, the Singapore corporate governance code recommended the major chunk to be independent directors while the chairman would not be

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10Ibid. p.6
11Supra note 8 p. 7.
13UK Companies Act 2006, Article 3
141974 A.C. 821 P.C. 837.
15Companies Act 2006, c. 46, § 168 (U.K.).
independent. A select committee would allow for better management of remuneration policy and contracts for Board Members and key executives constituting partly or wholly of these independent directors, most countries allow this except Vietnam.

In Brazil, the IBGC Code of Best Practices (Brazilian Institute of Corporate Governance) recommends that there be a formal evaluation on the performance of the Board and the same process be disclosed to the shareholders. Shareholder activists, although primarily focus on voting rights, over the years have branched out to fulfilling non-financial goals as well. Here, the shareholders wish to change a company’s social and environmental performance, for example, a union’s interest in employee working conditions. To provoke shareholders to act there must be an environmental or social issue, or combination of issues, that matters sufficiently to shareholders for them to commence their activism. The Process Model for Non-Financing Shareholder Influence states that by enabling shareholders with options such as coalition, NGOs, media, indices and regulators, they would be empowered to perform interventions against the companies through divestment, dialogue and proposals in order to achieve their desired power provided there is a suitable mind-set of the company. However, these lobbying steps take place before the resolution. India has quite a strange corporate environment that has traditionally and historically not been conducive to shareholder activism as compared to some of the other jurisdictions discussed earlier. There is no distinction between ownership of company and management of company since both usually lie with the promoters or the founders of a company. Hence the role played by the members might not seem to be as active as it is in other countries. However, the Companies Act, 2013 has brought about reforms in the area of corporate governance enhancing the role played by shareholders under Indian company law.

RIGHTS UNDER INDIAN LAW

Although the fundamental concepts of investor rights have remained the same since the enactment of Companies Act, 1956, newer dimensions have been added by law to the rights of shareholders depending on the type of shares held, with protection of investors being one of the main themes. But in general, rights of shareholders can be observed among individual shareholders, minority shareholders and majority shareholders. In case of an individual shareholder, he is entitled to receive copies of the memorandum and articles of association upon investment, list of members, minutes of proceedings of general meetings, board resolutions appointing directors, etc. Interestingly, even though an individual shareholder is entitled to inspect the register of investment and annual returns, he cannot inspect the book of accounts since there is a possibility of shareholders disclosing crucial day-to-day financial information to outsiders or themselves conspiring towards an objective detrimental to the company. The most common right among shareholders across is their right to dividends of the company. Once a company has declared dividend for a financial year at an annual general meeting, which it cannot declare further dividend at an extraordinary general meeting in relation to the same financial year, the dividend is then distributed pro-rata among shareholders i.e. in proportion to the shares held unless the shares specify special treatment of dividend to those shareholders. By virtue of investing in shares of a company, a shareholder is entitled to vote on certain matters regarding the company. As law states, voting rights are given to equity shareholders to vote on every resolution. Upon examination of the jurisprudential rights of investment, it is sometimes understood that investment in any kind of shares in a company would end up in the shareholder exercising his voting rights but the mentioned provision does not talk about shareholders apart from

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16 Supra note 8.
17 Supra note 8, at p. 6.
18 Supra note 8, at p. 6.
19 SINGAPORE INSTITUTE OF DIRECTORS, CORPORATE GOVERNANCE GUIDES FOR BOARDS IN SINGAPORE 537 (2nd ed, 2017).
22 Ibid, at p. 11.
23 Companies Act 1956, Section 118(1)
24 Companies Act 1956, Section 163(4)
25 Companies Act 1956, Section 196(2)
26 Companies Act 1956, Section 302(6)
28 Companies Act 2013, Section 51
29 Companies Act, 2013, Section 47
those having equity shares to have voting rights except for preference shareholders who are entitled to vote on any resolution which affects the preference shareholders. In Suryakant Gupta v. Rajaram Corn Products (Punjab), the Tribunal held that if the company defaults in paying dividend to the preference shareholders, such shareholders can exercise voting rights by virtue of owning preference shares of the company.

RIGHTS OF SHAREHOLDERS

There are two kinds of share capital – 1) Equity share capital and, 2) Preference share capital. Equity share capital further gets divided into i) equity shares with voting rights and, ii) equity shares with differential rights as to dividend, voting or otherwise.

Rights of Equity Shareholders with Voting Rights

An equity share is sometimes referred to as the ‘risk’ capital. Although they carry great prospects of financial reward, on the downside, they are equally prone to risk if the company is unsuccessful. Due to the risk factor attached to it, equity shares come attached with voting rights so that shareholders have control over how their capital gets utilised. Section 47(1) of the Companies Act, 2013 confers upon the shareholders the right to vote. ‘Voting right’ has been defined under Section 2(93) of the Act as ‘the right of a member of a company to vote in any meeting by post or means of a postal ballot.’ Every member has the right to vote on every resolution and voting right is in proportion to the shares owned in the paid-up equity share capital.

Rights of Equity Shareholders with Differential Rights

Equity shares with differential rights are shares that have a combination of ‘different’ voting rights, dividends rights or other rights, or all of these. The other rights may include rights of participation in management, rights available to equity shareholders in the event the company issues bonus shares, rights shares, rights when the company enters into a scheme of arrangement or amalgamation, open offer in accordance with takeover regulations issued by SEBI, delisting of securities shall enjoy all other rights such as bonus share, rights shares, etc. Shares with differential rights are issued when it is so specified in the articles of association and an ordinary resolution to issue the same has been passed at a general meeting of shareholders. It is pertinent to note that not more than twenty-six% of the total paid-up share capital is allotted for issuing equity shares with differential rights. A company cannot convert its equity shares with voting rights into equity shares with differential rights. The rights of an equity shareholder with differential rights include the right to be served with a notice annexed with an explanatory statement and the right to Board Report. Equity shares with differential rights come with the ‘one share – one vote’ rule or on the basis of the paid-up value of the shares as substantiated by Section 47 (1) (b) of the Act, where members can vote in proportion to their shares in the company.

Rights of Preferential Shareholders

Preference shares, on the other hand, are so called because they are given preference over equity shares. It must satisfy two conditions – 1) as per dividends, it carries a preferential right to a fixed amount, or an amount calculated at a fixed rate, and 2) as regards to capital, in the event of winding up or other arrangement to repayment of capital, there must be a preferential right to be repaid the amount of capital on such share. The rights of a preference shareholder should be stated in the articles or if not, the memorandum as precisely and exhaustive as possible. In the absence of such caution, problems may arise with respect to their ambit of rights to

302002 108 Comp Case 133 CLB
31Companies Act 2013, Section 43
32A. Ramaiya, 775.
33Companies (Shares and Debentures) Rule 2014, Rule 4
34A. Ramaiya, 782.
35A. Ramaiya, 783.
36Companies (Shares and Debentures) Rule 2014, Rule 4
37Companies (Shares and Debentures) Rule 2014, Rule 4 (1)(a)
38Companies (Shares and Debentures) Rule 2014, Rule 4 (1)(b)
39Companies (Shares and Debentures) Rule 2014, Rule 4 (1)(c)
40Companies (Shares and Debentures) Rule 2014, Rule 4 (3)
41Companies (Shares and Debentures) Rule 2014, Rule 4 (2)
42Companies (Shares and Debentures) Rule 2014, Rule 4 (4)
dividends and participation in the distribution of surplus assets. The most important aspect of their rights happens to be the distribution of surplus assets at the time of winding up of a company. A company that has incurred losses cannot declare or pay its dividends but when it declares them, it becomes liable to pay the shareholders. Since preference shareholders have their significant preferential rights over their equity shareholder counterparts, the company is liable to pay them before the equity shareholders. Voting rights of preference shareholders are negligible however, in cases where their right to dividends is in jeopardy, they are given this special right. A preferential shareholder has the right to vote only on resolutions that would – affect his rights, be related to winding up of the company, or repay or reduce the equity or preferential share capital. The same principle of proportional votes to shares is also applied here. If a class of preferential shareholders have not received dividends for two or more years, they shall have the right to vote on all resolutions.

MEETINGS

Annual General Meeting and Extraordinary General Meeting

Section 96 of the Act of 2013 provides for a forum of self-protection and that is the annual general meeting. Every company is mandated to have an annual general meeting each financial year. An annual general meeting is a general meeting of members and the board of directors. An AGM has two types of businesses transacted, namely, ordinary and special business. In ordinary business, there is the consideration of financial statements and the reports of the Board of directors and auditors, the declaration of any dividend, the appointment of directors in place of those retiring, the appointment of, and the fixing of the remuneration of, the auditors. Any other meeting is deemed to be special business. The board should use the AGM to communicate with the investors and to encourage their participation. A company which is newly incorporated shall have its first annual general meeting within nine months of closing of its financial year. Companies shall have their annual general meetings within fifteen months of their previous ones and within six months of closing of the financial year, if not, they must take the permission of the Registrar to extend it by three months.

An AGM has to be held in business hours, i.e., only from 9 am to 6 pm on days that are not National Holidays. They shall be held either at registered office of the company or at a different location within the same city, town or village of the place the registered office is situated at. It is pertinent to note that notices of the AGM have to be sent to shareholders beforehand. It can be observed that the provision has been framed in a manner to make it convenient for shareholders to attend meetings, in spirit of Cannon v. Trask.

An Extraordinary General Meeting is a meeting of investors and Board members apart from an annual general meeting. It is a special meeting called for matters that require immediate attention by the Board. For a company having a share capital, a requisition by shareholders who hold not less than one-tenth of the paid-up share capital carrying the right to vote on the day of receipt of the requisition is required while for a company with no share capital, it shall be a requisition by members who hold not less than one-tenth of the total voting power.

It would be pertinent to note that the Board shall arrange for the meeting at the requisition of members. Section 100(4) is the highlight of this provision; it states that the Board has to, within twenty-one days of receipt of a valid requisition, arrange a meeting within a

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42 Companies Act, 2013, Section 47(2)
43 Companies Act, 2013 Section 112(2)(a)(1)
44 Companies Act 2013 Section 112(2)(a)(2)
45 Companies Act 2013 Section 112(2)(a)(3)
46 Companies Act 2013 Section 112(2)(a)(4)
47 Companies Act 2013 Section 112(2)(b)
48 Companies Act 2013 Section 96(1)
49 Companies Act 2013 Section 96(2)
50 1875 20 Eq 669
51 Companies Act 2013, Section 100(1)
52 Companies Act 2013, Section 100(2)(a)
53 Companies Act 2013, Section 100(2)(b)
period of forty-five days from the receipt of a valid requisition, failing which the requisitionists can arrange a meeting by themselves within three months of the date of the requisition.

The expenses incurred during such a meeting shall be borne by the company and specifically from the fee or remuneration of the directors as prescribed under Section 197 who defaulted the calling of the meeting.\textsuperscript{54}

**Notice of meeting**

A shareholder has the right to know and to be informed as to when the meetings are to take place. Section 101 of the Act prescribes a directory\textsuperscript{55} period of not less than twenty-one days’ prior notice to be served in writing or through electronic means to attend the meeting. The manner of computation of these twenty-one days is such that the date of service of notice and the day of the meeting have to be excluded.\textsuperscript{56} The proviso to the provision allows for general meeting to be called at a shorter notice only when ninety-five\% of members who can vote at the meeting give their consent in writing or by electronic means. The said notice shall specify the venue, date, day and time of the meeting and shall contain a statement of the business to be transacted.\textsuperscript{57} The notice shall be served to every member of the company, the legal representative in case of a deceased member or the assignee of an insolvent member.\textsuperscript{58} However, it is pertinent to note that the non-receipt of this notice by any member shall not invalidate the proceedings of the meeting.\textsuperscript{59} A good notice must fairly disclose the purpose, for which the meeting is called, must be open and free from trickiness and must be in a language understood by common people.\textsuperscript{60} In Pacific Coast Coal Mines Ltd. v. Arbuthnot,\textsuperscript{61} it was held that the contents of the notice were insufficient in revealing material information which ought to have been provided to the shareholders before asking for sanction to make amendments to the powers and constitution of the company.

Annexed with the notice is a statement, as per Section 102 of the Act, that includes material facts of items of special business related to the interests of the directors and those at key managerial positions and any other information that would assist the members understand the meaning and scope of business being transacted thereat. There has to be an explanatory statement as to what the interests of the management with regard to the company are so that the investors are enabled to make informed decisions. Any document of an item of special business can be inspected.\textsuperscript{62} To protect the interests of investors, if due to non-disclosure or insufficient disclosure of material facts related to items of special business, any person holding managerial positions, auditors and directors accrues any benefit, it will be held in trust of the company and if found guilty, shall be liable to compensate the company.\textsuperscript{63} Non-compliance with the provisions by directors, auditors or managers would attract a fine extendable upto Rs. Fifty Thousand or five times the benefit accrued to them whichever is more.\textsuperscript{64}

**Quorum**

An AGM is presided over by the Chairman who is chosen by the members amongst themselves by a show of hands, unless otherwise provided by the company’s article of association.\textsuperscript{65} If a poll is demanded to elect the Chairman, the Chairman who was voted via show of hands will preside over the gathering until a new Chairman through a poll is elected.\textsuperscript{66} In an AGM of a public company\textsuperscript{67} – (i) at least five members must be present if the total number of members in the company is one thousand; (ii) at least fifteen members must be present if the total number of members in the company is more than one thousand but up to five thousand; (iii) at least thirty members must be present if the total number of members in the company is more than five

\begin{itemize}
    \item \textsuperscript{54} Companies Act 2013, Section 100(6)
    \item \textsuperscript{55} Shailesh Harilal Shah v. Matushree Textile Ltd AIR 1994 Bom 20.
    \item \textsuperscript{56} Bharat Kumar Dilwali v. Bharat Carbon and Ribbon Manufacturing Co. Ltd.(1973) 43 Comp. Cas. 19
    \item \textsuperscript{57} Companies Act 2013, Section 101(2)
    \item \textsuperscript{58} Companies Act, 2013, Section 101(3)
    \item \textsuperscript{59} Companies Act, 2013 Section 101(4)
    \item \textsuperscript{60} A Ramaiya 1683
    \item \textsuperscript{61} 1917 AC 607.
    \item \textsuperscript{62} Companies Act, 2013 Section 102(4)
    \item \textsuperscript{63} Companies Act, 2013 Section 102(5)
    \item \textsuperscript{64} Companies Act, 2013 Section 104(1)
    \item \textsuperscript{65} Companies Act, 2013 Section 104(2)
    \item \textsuperscript{66} Companies Act, 2013 Section 103(1)
\end{itemize}
thousand, on the day of the meeting. In case of a private company, two members have to be personally present to complete the quorum. If the required quorum is not present in half an hour, the meeting shall stand adjourned to the same day in the next week at the same time and venue.\textsuperscript{68} The company shall give a notice of at least three days to the members, either individually or by publishing an advertisement in an English newspaper and a vernacular newspaper. Even if at the adjourned meeting, the quorum is not attained in half an hour, the members present shall be the quorum.\textsuperscript{69} However, if a requisitionists meeting doesn’t reach the required quorum, the meeting shall stand cancelled. It would be pertinent to note that a quorum must be present to not only start the meeting but to also transact a business.\textsuperscript{70}

**Resolutions**

There are two types of resolutions – ordinary and special. Ordinary resolutions are those resolutions where post voting (by show of hands, by poll or electronically), if the votes for the resolution are more than against the resolution, it gets passed;\textsuperscript{71} only a simple majority is enough. A special resolution is one where it has already been intimated to the members about its nature in the notice. Here, votes cast in favour should not be less than three times the votes cast against the resolution by members so entitled and voting.\textsuperscript{72}

If members want to bring on the floor a resolution with respect to the articles of association and the provisions of the Act, it requires a special notice to be served to the company. For example, to appoint an auditor other than a retiring auditor, a special notice would be required. This notice shall be moved by shareholders who hold not less than 1% of total voting power or who hold shares whose aggregate would not be more than Five Lakhs.\textsuperscript{73} The notice has to be sent to the company fourteen days prior to the meeting.\textsuperscript{74} The company shall give its members the notice of resolution at least seven days prior to the meeting\textsuperscript{75} and shall publish the notice in an English newspaper and a vernacular newspaper.\textsuperscript{76}

**Voting by Show of Hands**

As rightful members of the company, the role played by shareholders is usually evident by the votes they cast on resolutions. The law prescribes that shareholders, at any general meeting can vote by show of hands indicating their opinion on the resolution.\textsuperscript{77} A person by show of hands can record both the number and value of his own dues and show those as well of persons whom he represents or whose proxies he gives for this purpose.\textsuperscript{78} This method is quicker and tends to avoid unnecessary formalities and costs. While the advantages of such a voting method is seen to treat all the shareholders equally, at the same time, in a poorly attended meeting, a dominant group of shareholders might end up overriding the rest although the rest might hold more shares. At this stage, quite interestingly, one shareholder, one vote situation could be seen to be undemocratic.

**Electronic Voting**

Shareholders are also entitled to vote electronically in a general meeting.\textsuperscript{79}Electronic voting is a common internet infrastructure that enables the investors to vote through digital means on resolutions. The notification\textsuperscript{80} however has put a cap that only a company with at least a thousand shareholders can avail this method of voting. It is clarified that where electronic voting is adopted, voting by show of hands cannot exist in the same general meeting. As e-voting already contemplated the one share one vote principle, show of hands
would be irrelevant and the question of demanding a poll at a general meeting of a listed company therefore does not arise.\textsuperscript{81} Electronic voting provides an opportunity to shareholders residing in far-flung areas to take part in the decision-making process of the company without being physically present at the meeting. This kind of voting is a further step to encourage corporate democracy and to promote good corporate governance by modern means.\textsuperscript{82} A shareholder at a remote location and a shareholder at a meeting will both be required to use the same portal to cast their votes. This requires the company to have a single integrated electronic system for voting. This is technologically feasible and, indeed, essential.\textsuperscript{83}

Voting by Poll

Shareholders having shares worth a minimum of five lakh or 10\% of the voting power of the company have the option to demand for voting by poll. This is made to the Chairman of the meeting before or on the declaration of the result of the voting on any resolution on show of hands.\textsuperscript{84} Although the Chairman has the power to regulate poll and delegate powers to scrutinise the poll process and votes given on the poll, the demand for a poll is initiated by a shareholder. The provisions of company law also provide for a system of postal ballot voting by post or through any electronic mode.

Proxy Voting

One of the significant factors adding up to the role played by shareholders will be proxy voting. It is the method through which a member is represented at meetings to cast vote by another person on his behalf.\textsuperscript{85} The provision states down that any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person (who maybe a member or not) as his proxy to attend and vote on his behalf; but a proxy so appointed shall not have the right to speak in the meeting and cannot vote except during poll.\textsuperscript{86} This method still keeps the representative aspect of a shareholder intact. A person can be appointed as proxy for a maximum of 50 members and holding not more than 10\% of the aggregate share capital carrying voting rights. The relationship between a member and a proxy is that of principal and agent. It is a settled principle of law that if there are two members appointed as proxy by one member, the proxy instrument bearing the latest date will prevail over the other.\textsuperscript{87}

Allowing members to bring acquisition offers to a shareholder vote would enable the full realization of tax benefits that are now possible only with merger agreements supported by management of the company.\textsuperscript{88}

RIGHT AGAINST OPPRESSION AND MISMANAGEMENT

Any member can approach the NCLT in case of activities or decisions taken by the company pre-judicial or oppressive to his interests.\textsuperscript{89} In case a member or class of members claim damages or compensation for any act undertaken to oppress the minority shareholders, the liability will be of the firm as well as of each partner who was involved in making any improper or misleading statement of particulars in the audit report.\textsuperscript{90}

The Indian law gives a very important right to the minority shareholders of a public company to participate in the further issue of shares in proportion to their existing shareholdings so that they cannot be reduced to relatively insignificant voting power. The directors are required to offer the new issue of shares first to the existing shareholders before issuing it to outsiders. The directors can issue further shares to outsiders only with the consent of a special resolution or by an ordinary resolution but with the permission of

\textsuperscript{81}Sheetala Credit Holdings P. Ltd. v. S.V. Global Mill Ltd.\textsuperscript{\textsuperscript{MANU/CL/0030/2016.}}


\textsuperscript{83}Re: Godrej Industries Limited, p. 19, 20 and 21, 2014 184 Comp Cas 441 Bom.

\textsuperscript{84}Companies Act, 2013, Section 109(1)(a)

\textsuperscript{85}Companies Act, 2013 Section 105


\textsuperscript{87}Ibid.


\textsuperscript{89}Companies Act, 2013 Section 241

\textsuperscript{90}Companies Act, 2013 Section 245
the government. In Shanti Prasad Jain91, the Supreme Court held that the majority shareholders were not bound to accept the view of the minority shareholders that the new shares should be allotted only to the existing shareholders. It may be noted that the pre-emptive right is not available to shareholders where the capital of the company is increased by the conversion of debentures and loans into shares as per the exercise of option given in the loan agreement or debentures instrument and the terms are approved by special resolution of the company and by the Government.

Most investors in India are focused on short term gain, they are only interested in dividends. Active participation in governance is not their fundamental duty as shareholders. Promoters typically retain control of companies by owning a significant ownership stake in companies. Shares not owned or controlled by the promoter and his family and friends are widely dispersed, making it difficult for minority shareholders to voice their concerns.

Shareholding is usually not accompanied by any legal duties under the company law. For instance, while shares entitle their holders to vote at a shareholders’ meeting, there is no obligation to vote on the shareholder. At the most, there may be some indirect consequences of actions by a shareholder, such as an action for oppression or mismanagement initiated by minority shareholders or misappropriation of company funds. Acts related to corporate frauds are anyway covered under the law, hence not requiring listed duties of shareholders. However, a director as a shareholder will be under some obligations as a shareholder due to the position occupied like duty of care other and fiduciary duties, duties related to conflict of interest.92

CONCLUSION

Since democracy is a very fluid concept, in the team production model of corporate governance, the role of the board of directors is not merely to act as the agent of the shareholders to maximize their wealth, but rather to manage the firm-specific inputs of all stakeholders of the firm to coordinate their efforts and maximize productivity. Indian Corporate laws have less focus on corporate democracy. The Companies Act, 2013 moreover discusses corporate governance in detail and not democracy. The aim of legislature gets fulfilled when shareholders are free to exercise their rights in a democratic way. The management of the company is responsible towards involvement of shareholders in the decision-making process in order to create a "check and balance" system. This will ensure transparency in all the acts done by the company or by the shareholders.93

Wider participation by the shareholders in the decision-making process is a pre-condition for democratizing corporate bodies. Due to geographical hindrances or other practical problems, a substantially large number of shareholders usually cannot attend the general meetings. Large corporations are indeed like small Republics. Here, shareholders would recognize that they are citizens of corporate democracy and hence important to make their voices heard in the effective functioning of a corporation.94

93VaibhavSonule and Prof. (Dr.) Bindu Ronald, “The eclipse of corporate democracy in India”,Vol.6 Issue 7 International Journal of Humanities and Social Science Invention
94Ibid.