
EXPLORING CORPORATE GOVERNANCE AND SHAREHOLDER ACTIVISM IN INDIA'S BUSINESS ENVIRONMENT

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ABSTRACT

This paper examines shareholder activism and corporate governance in India with a focus on the Companies Act of 2013. It is noteworthy that shareholders have the ability to use their rights to force radical changes in the structure of the board. Organizations have demonstrated stronger firm values, made better judgements, eradicated misconduct inside the organization, increased sales, and reduced mergers and acquisitions as a result of the improved application of statutory regulations controlling corporations. The paper discusses the current developments in shareholder activism in India, their strength and efficacy, and how they might be improved overall to completely transform the corporate governance framework in all business contexts.

Keywords: Shareholder Activism, Corporate Governance, Companies Act, Shareholder Rights

I. INTRODUCTION

The ethical behaviour of businesses is the focus of corporate governance. Ethics is the study of the set of moral standards and values that lead an individual to make moral decisions.² The managers of the company make decisions based on a set of principles inspired by the ethical values and culture of the organisation when there is a conflict between the interests of the parties. A company's business will always perform better if its management upholds ethical principles because it will be perceived as operating in a way that meets the expectations of all investors. The field of law has never been the exclusive domain of corporate governance.

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² N. R. Narayan Murthy Committee Report on Corporate Governance. Page no. 1

It may not be solely governed by the legislation; rather, it emanates from the management culture and mind-set.³ Corporate governance pertains to the operation of the business in a manner that ensures equity for all parties involved while also having the potential to be advantageous to all. It has to do with accountability, fairness, and integrity. The business must understand that the cooperation of all stakeholders is necessary for its development, and that cooperation can be increased by adhering to sound corporate governance principles.

In India, shareholder activism has become a powerful force in corporate governance, changing the dynamic between shareholders and businesses. Investors are taking a proactive approach with this developing trend, seeking to impact business strategies, governance procedures, and overall decision-making processes.

The legal framework in India that oversees corporate governance and shareholder rights is a significant factor in determining the characteristics of shareholder activism. The success of shareholder activism tactics is greatly impacted by clauses pertaining to board composition, voting rights, disclosure obligations, and shareholder meetings. In India, shareholder activism has an impact that goes beyond specific businesses. It affects investor views, market dynamics, and the advancement of business best practices. Companies are compelled to review their governance frameworks and stakeholder engagement tactics in order to strike a healthy balance between the interests of shareholders and more general company goals, as shareholders grow more active and vocal.⁴

II. AUTHORITY OF THE BOARD OF DIRECTORS AND SHAREHOLDERS

The general meeting has plenary powers, which are divided between the board and the general meeting by the Companies Act, any other legislation defining the division of powers, the company's charter, and the rules established by the general meeting. Applying the idea of separation of ownership and control strictly⁵ makes it obvious that only the board has the authority to exercise management functions because the board is responsible for overseeing the

³ Id at 1.

⁴ Nammrta Singh, Manpreet Kaur, 'Shareholder activism and its influence on corporate governance practices in India', (2023) 9 IJL 184

⁵ Jensen, M.C. and Meckling, W.H. (1976) Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure. Journal of Financial Economics, 3, 305-360.

organization. The general meeting is responsible for carrying out the board's duties in cases where the board of directors is either unable or unwilling to act.

It is undeniable that shareholders acting through the general meeting are avoiding the traditional ownership-control divide to the extent that such powers are granted to them by legislation or the company's constitution. It is the responsibility of shareholders to exercise diligence in protecting their investments and to entrust them to management that can guarantee investors' safety and security⁶. They are exercising their basic entitlement as stockholders in this instance. It is crucial to recognise that, in contrast to American and Continental European law, English and Indian law does not view some roles and authority as managerial; rather, it views them as fundamental rights that can only be exercised by the Board of Directors⁷. The language of Section 179 of the Indian Companies Act, 2013⁸ makes this clear. Additionally, the firms' legislation has certain parts where the approval of the general meeting is necessary before the board may take any positive action or where specific powers are reserved solely for the general meeting⁹. Among these, the ability to remove directors with a simple resolution is the most significant. The board of directors is viewed as a "self-perpetuating oligarch" by those who support modern corporations¹⁰. The stockholders wield a very significant power in this regard. There is no possibility of an oligarchy-like situation developing because they can remove the directors of the corporation with a simple resolution if they are unhappy with how the affairs are being managed.

General Powers: According to UK and Indian company law regulations, the directors' management authority is "(subject) to any regulation made by the company in general meeting." A further explanation is given, saying that the regulation in question "shall not disqualify any previous act of the directors that would be deemed valid (without the regulation)". The distinction is that UK company law states that it will be subject to any "directions given by special resolution," in contrast to Indian company law. The question that comes up in this instance is the extent of the general meeting's regulatory authority. However, prior English law cases have generally held that this kind of regulation does not indicate that

⁶ LIC v. Escorts Ltd. 1986 1 SCJ 38

⁷ Credit Development Pte Ltd. v IMO Pte Ltd. 1993 2 SLR 370.

⁸ Companies Act (2013) Ministry of Company's Affairs. Government of India, New Delhi.

<http://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf>

⁹ It is possible for the articles to concurrently vest the same powers in the members and the board of directors. Since the general meeting is regarded as the superior organ, in the event of a conflict, the decision in the general meeting would prevail over that of the board.

¹⁰ Davies, P.L. (2008) Gower & Davies: The Principles of Modern Company Law. Sweet & Maxwell, London.

the general meeting has general administration or oversight authority¹¹. This has been defended because, in their true form, the articles deny members the ability to control the directors.

The following are the general powers of shareholders: 1) to participate in shareholder meetings and use a proxy or one's vote to exercise voting rights 2) to move stocks 3) to obtain the dividend upon its declaration 4) to choose directors 5) to call an extraordinary meeting of the company's general assembly. 6) must possess a bonus and appropriate shares. 7) to bring class action lawsuits; 8) to apply to the Tribunal 9) to bring legal action if the prospectus contains any false information.

A firm's board of directors has the authority to use all the authority granted to it by the company and to carry out all authorized actions. However, this authority is limited by the authorities specified in the Companies Act of 2013 and which must be exercised by the company in general meetings. The following is a summary of the board of directors' powers: 1) To issue debt instruments, such as debentures 2) To invest the company's cash 3) To make loans, offer guarantees, or offer security for loans 4) to accept the Board's report and the financial statements 5) to borrow money 6) to expand the company's line of business 7) to select and dismiss important managerial staff 8) to choose an internal auditor 9) to authorize the financial accounts for the quarter, half-year, and full year 10) to take in or replenish public funds 11) to approve the repurchase of securities.

Residuary Powers: When the Board is unable or unwilling to take action, a legal conundrum occurs. In these circumstances, the general assembly may use the powers granted to the Board of Directors, even if it may be doing so in the course of carrying out the board's mandate. The general meeting may be called upon to exercise these "default" or "residuary" powers in a number of scenarios: when the board is in a deadlock; when an effective quorum cannot be formed due to the disqualification of directors or their absence; or when the transaction under consideration is outside the purview of the board. It's also critical to recognize that the General Meeting is exercising its residuary rights in these circumstances. As such, it may approve the directors' actions or, by regular resolution, permit the directors to act on their behalf. In either scenario, the directors are subject to the agency regulations since they are functioning as the general meeting's agents rather than as corporate directors.

III. REMARKABLE EVENTS IN SHAREHOLDER ACTIVISM

¹¹ Breckland Group Holdings Ltd. v London and Suffolk Properties Ltd. 1989 BCLC 100.

This section will highlight India Inc.'s unprecedented experience with shareholder activism over the past few years, during which shareholders have voted against board proposals to increase top executives' compensation, appoint independent directors, and restrict related party transactions. These actions will help shape the corporate landscape as activist investors take control of the companies in which they invest.

A. The input of shareholders on compensation for executives

Since the compensation for three of the company's top executives exceeded the set limits, Tata Motors Ltd. asked its shareholders for permission to pay executive salaries as early as 2014.¹² The plan was revoked because the Board was unable to secure the necessary 75% majority to approve a special resolution in support of the increased salary.¹³ But when the Board presented the same plan to the shareholders in January 2015, the investors approved it.¹⁴ However, this was among the first cases of shareholder activism, with investors claiming that the prior motion was not in line with the company's performance.¹⁵

The COVID-19 pandemic's negative impact on Indian companies' revenue and profits, along with management's lack of transparency, led to a sharp rise in shareholder activism last year. In these cases, shareholders challenged the management and promoters of multiple companies by voting against board proposals to increase executive compensation.¹⁶ For instance, the managing director of Eicher Motor Ltd., Siddhartha Lal, received a 10% pay increase in August 2021, but the business was unable to get the required number of votes to pass the special resolution.¹⁷ The plan to enhance the compensation of Shobha and Ekta Kapoor, promoter-directors of the Balaji Telefilms group firm, was rejected by shareholders in a September 2021 vote.¹⁸

B. The ability of shareholders to choose directors

A new wave of shareholder activism is emerging that goes beyond demands for increased executive pay. In 2021, a court case involving shareholder activism was brought before the

¹² Varottil & Naujoks, Corporate Governance In India: Law And Practice, THE BUSINESS OPPORTUNITY 289 (Linda Spedding Ed., 2016).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Kirthana Singh Khurana, Enhancing Shareholders' Say on Executive Compensation in India – A Regulatory Roadmap, CORPORATE GOVERNANCE IN INDIA: CHANGING LANDSCAPES 200-214 (2022).

¹⁷ Varun Sood, Big investors reject exec pay proposals, HINDUSTAN TIMES, <https://www.hindustantimes.com/business/big-investors-reject-exec-pay-proposals-101629654934350.html>

¹⁸ Bhaswar Kumar, Why is India Inc seeing a surge in shareholder activism?, BUSINESS STANDARD, https://www.business-standard.com/podcast/companies/why-is-india-inc-seeing-a-surge-in-shareholder-activism121100400363_1.html

parties. The issue concerned institutional shareholder Invesco Developing Markets Fund and listed business Zed Entertainment Enterprises Private Limited.¹⁹ The conflict started when Invesco sent out a requisition notice requesting the removal of three Zed directors and the appointment of six new independent directors to Zee's board. Zed declined to schedule a shareholder meeting in response.²⁰ In response, Invesco petitioned the NCLT under Section 98 of the Act to call the requisitioned meeting.²¹ Zee simultaneously petitioned the Bombay High Court for an injunction to stop Invesco from carrying out the request, and the court granted it.²² The Division Bench overturned the Learned Single Judge's decision, ruling that the term "valid requisition" under section 100(4) should be interpreted literally and limited to "numerical and procedural compliances" without mentioning the requisition's "object."²³ Based on the corresponding provision of the former 1956 Act, the Supreme Court rendered a decision in *LIC v. Escorts*²⁴. The Court held that departing from the precedent set in this case would undermine shareholder democracy by endorsing the Board's restrictive behavior. Zee was forced to convene the conference as a result.

C. Shareholders' voice in deals involving related parties

The transactions between the company's linked parties have also been closely watched by active investors. For example, in 2017, Raymond Ltd. proposed a related party transaction to its AGM that included selling the company's property to its controlling shareholders for less than its true value.²⁵ Since promoters and other controlling shareholders are prohibited from voting in related party transactions, the motion was lost despite the opposition of a small fraction of the overall holdings.

D. Examples of unsuccessful shareholder activism

Although there have been cases where activist shareholders have prevailed, boards do not always give in to their demands. Similar to what happened with Eicher Motor Ltd., the management of Hero MotoCorp Ltd., Bajaj Auto Ltd., and Balkrishna Industries Ltd. had to deal with minority shareholders rejecting plans for their chairmen's pay. The resolutions

¹⁹ *Zee Entertainment Enterprises Limited v. Invesco Developing Markets Fund* [2021] 229 CompCas 540 (Bom).

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ [1986] 59 Comp Cas 548.

²⁵ Moneylife Digital Team, '2017 becomes tipping point of shareholder activism in India: Report', MONEYLIFE (28 November 2017). <https://www.moneylife.in/article/2017-becomes-tipping-point-of-shareholder-activism-in-indiareport/52297.html>

about the compensation due to the chairman of the other firms, in contrast to Eicher Motor Ltd., were standard and only required a simple majority of 50%. Therefore, greater promoter stakes overrode minority shareholders' objections, enabling the motions supporting the management to pass.²⁶ Therefore, even if the minority shareholders' attempt was unsuccessful, they were able to have an impact that should cause boards of directors of Indian corporations to take note of this specific class of shareholders.

IV. THE FUTURE OF SHAREHOLDER ACTIVISM AND CORPORATE GOVERNANCE IN INDIA²⁷

Over the past ten years, shareholder activism and corporate governance have grown in significance in India. Companies now have a great deal of responsibility to maintain excellent corporate governance standards because of the Companies Act of 2013 and the Securities and Exchange Board of India (SEBI) regulations. Future developments are anticipated to bring about a change in emphasis towards enhanced executive management oversight and monitoring, increased participation of minority shareholders in the decision-making process, and increased transparency and accountability in corporate decision-making. Some possible future paths for shareholder activism and corporate governance in India include the following:

- i. Stricter regulatory requirements: SEBI and the government may impose more stringent regulations on businesses, such as frequent and comprehensive disclosures, yearly director performance reviews, and strict guidelines for related party transactions.
- ii. Increased role for independent directors: To enhance board committee performance and provide more efficient executive management oversight, independent directors' duties and responsibilities may be increased.
- iii. Increased voting rights for minority shareholders: Minority shareholders may be given more power to veto important decisions or to start class action lawsuits against businesses that infringe on their rights.
- iv. Institutional investor activism: By actively using their voting rights and interacting with corporations on environmental, social, and governance (ESG) issues, institutional

²⁶ *Supra* note 16.

²⁷ <https://aklegal.in/corporate-governance-and-shareholder-activism-in-india/#:~:text=Finally%2C%20the%20paper%20concludes%20that,of%20good%20governance%20in%20India.&text=Cyrus%20Investments%20Pvt%20Ltd%20%26%20Anr,v.>

investors—such as mutual funds, pension funds, and insurance companies—may take a more active role in advancing good corporate governance.

- v. Put sustainability first: Businesses could be held more and more responsible for the effects they have on society and the environment. This may result in a stronger focus on responsible investing and the integration of sustainability issues into the company strategy.

India's corporate governance landscape is dynamic and ever-evolving. To enhance their governance and draw in investors, businesses must stay up to date on the latest developments and implement industry best practices.

V. CONCLUSION

In conclusion, shareholder activism and corporate governance have become increasingly important in India in recent years. Several initiatives have been put in place to support sound corporate governance and guarantee the preservation of shareholders' rights, including the Companies Act of 2013 and SEBI regulations. With these rules in place, Indian businesses are moving towards more accountable and transparent operations, which enhance stakeholder participation and decision-making. India's corporate governance environment is still changing, and further changes are probably on the horizon. Potential development areas include more regulation, strengthened shareholder rights, and an emphasis on sustainability. There's a chance that the role of institutional investors—in particular, mutual funds, pension funds, and insurance companies—will change and result in increased investor engagement. Companies that disregard stakeholder rights and corporate governance run the danger of losing the trust of investors and development possibilities in this dynamic environment. Through the implementation of best practices, the development of strong corporate governance frameworks, and the consideration of shareholder concerns, businesses may guarantee their long-term sustainability and competitiveness. In general, enhanced oversight, enhanced decision-making, and more stakeholder participation are the results of sound corporate governance processes. A culture of responsible investing and the advancement of accountability and transparency are two ways that effective shareholder activism can assist in achieving these goals. Indian corporations may contribute to the development of a more robust economy and improve the nation's standing as a commercial destination by adopting these principles.

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