

ARTICLE

TATA V. MISTRY: A CRITICAL CASE OF OPPRESSION AND MISMANAGEMENT

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Abstract

When we discuss democracy, the majority in the room immediately comes to mind. In these situations, where corporate democracy is dominant, how can we guarantee corporate governance, which includes the protection of minority rights and the absence of oppression? There has been a growing uproar of this dichotomy in the academic community. With its latest ruling on March 26, 2021, the Supreme Court (SC) finally put an end to the historic Tata-Mistry legal dispute. The minority shareholder rights dispute has once again gained attention as a result of the ruling. The goal of this study is to comprehend the notions of minority oppression, poor management, and bias against minority ownership in corporate structures. There is a severe lack of legal jurisprudence on the subject and it has to be revised. The first part of this project will examine the origins of the rule established in *Foss v. Harbottle* and how, after proving to be inflexible, related clauses were added to the Indian legal corporate law with some leeway. These clauses have led the way in advancing minority rights and laying the groundwork for the prohibition of discrimination. Since the Tata-Mistry issue is the most recent example of minority discrimination, it has been examined. The primary legal matter addressed by the courts and tribunals in this case, as well as its long-term implications, will be the focus point of the research.

Keywords – Tata v. Cyrus Mistry; Oppression and Mismanagement; Minority Shareholder Rights; Corporate Governance; Comparative Company Law.

I. INTRODUCTION

A proper balance between the rights of majority and minority shareholders is essential for the smooth functioning of the company. The conflict between the majority and minority is not a new issue; in fact, it has been debated extensively in the corporate world. The premise of Oppression and Mismanagement is primarily based on this conflict. In fact, the British rule has influenced every aspect of Indian law, including company law. One notable English precedent that governs Indian corporate jurisprudence on minority shareholders' rights is *Foss v. Harbottle* (1897). The rules laid down in *Foss v. Harbottle* were appearing to be very rigid and inadaptably in accordance with the changing scenario. Hence, over time, many exceptions to the rules were developed. There are presently 6 exceptions to the above rules. In India, Chapter XVI of the Companies Act, 2013 thoroughly deals with these exceptions' remedies available against the mismanagement and oppression of the minority shareholders. What constitutes prejudice and oppression is a subjective question and is usually dealt on case-to-case basis. The Supreme Court's (SC) recent verdict as delivered on 26th March 2021, at last, put a rest to the infamous Tata-Mistry tussle.

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a number of significant rulings, including those from outside and India, have been used to define majority rule. Second, the Companies Act of 2013 has been considered while discussing the implications of the majority rule in the Indian context. Furthermore, with the aid of certain clauses under the Companies Act, 2013 and court precedents, the implications of tyranny and mismanagement have been examined.

Finally, the recent Supreme Court decision in the *Tata v. Cyrus Mistry* case has been linked to the ideas of oppression and mismanagement. This includes a thorough discussion of the background, the adjudicatory phase, and the Supreme Court's ruling, particularly the section that addresses the topics of oppression and poor management

II. MEANING OF RULE OF MAJORITY

It has been argued in the case of “*North-West Transportation Co. v. Beatty*”¹ that for this reason, “One of the most challenging difficulties faced by current company law is the protection of minority shareholders under the corporate sector. For companies, the majority rule applies. The majority rule says that the will of the majority of its members prevails in the administration of a company's activities. Consequently, a problem with the administration of the firm is resolved by the consent of the company by the appropriate stakeholders at most meetings of the company.

The company law demands the adoption of a motion, be it simple or noteworthy, for most members' votes. A motion binds any member of the organization, irrespective of whether or not the organization votes for or against it or refrains from voting. The objective must be to create a balance between effective business control and tiny individual shareholders' interests.” The powers of a majority in relation to minority rights, “It is vital to ensure the smooth operation of the firm to have a proper balance of major and minority shareholders' rights.” To preserve minority shareholders' rights and preserve investment interests from coercive majority shareholder actions.

Furthermore, in the case of “*Foss v. Harbottle*,”² the infamous rule of will of majority prevails over the minority was coined. This rule and case is so prominent that, wherever in the world the aspect of majority and minority is discussed, this case is incorporated. This rule states that, courts will not intervene in a company's management by its directors at the request of its shareholders as long as the directors are working within the authorities placed on them by the articles of incorporation. Thus, in essence it can be said that the court envisioned the concept of non-interference. The non-interference principle in the exercise of powers by majority must be founded on the concept that large powers shall be granted to the shareholders who supply the company with the capital and incur the risk. A majority decision adopted at an agreed meeting therefore binds the minority as well as the company. The opinion of majority is therefore binding.

Implication of Rule of Majority under Indian context

Despite the fact that the rule of majority was intended for use in foreign courts, Indian courts have equally accepted and rejected its implications. Let's start by going at the instances in which this idea

¹ (1887) LR 12 AC 589.

² (1843) 67 ER 189.

was accepted in the Indian setting. “The question as to who should be the management agents of the corporation is difficult to understand how certain shareholders represent the minority are allowed to take action and petition the Court,” the court said in the case of “*Bhajekar v. Shinkar*.”³ Additionally, in the case of “*Parashuram v. Tata Industrial Bank*,”⁴ the court determined that the court should refrain from meddling in the internal affairs of the firm since doing so would probably paralyse joint stock corporations.

Also, in the landmark judgment delivered by the Apex Court in “*Rajahmundry electric supply company v. A Nageshwara Rao*,”⁵ held that the conduct of the defendant along with the plaintiff was also harmful for the company. Thus, the corporation needs to defend both its own interests and its capabilities. It is not proper for each partner in the firm to assert that they have the authority to bring legal action on the company’s behalf. Additionally, the court noted, “The courts will not interfere with the directors’ control over the company as long as they are acting within the authority granted to them by the articles of incorporation, nor will they step in at the request of shareholders in matters of internal administration. Furthermore, minority shareholders are unable to intervene if the majority owners agree of the directors’ decisions.

However, the Indian courts even held that the rule of majority is not directly applicable in the Indian context. The Delhi High Court, in the case of “*The Industrial Credit & Investment Corporation of India Limited v. Parasrampuriah Synthetics Ltd.*”⁶ held that, “a mechanical and automatic application of *Foss vs. Harbottle* rule to the Indian situations, Indian conditions and Indian corporate realities would be improper and misleading. The principles in the countries of its origin, owes its genesis to the established factual foundation of shareholder power... which is vastly different than the ground realities in our country.” Thus, it is open for the Indian courts to accept or reject the rule of majority or the rule of “*Foss v. Harbottle*” as per the facts and circumstances of the case.

III. MEANING AND IMPLICATION OF OPPRESSION UNDER COMPANIES ACT, 2013

The definition of oppression is provided in Section 241 I, which is an application to the tribunal for cases of oppression relief.⁷ Specific steps to avoid persecution of any member or component of the business are outlined in the business Act, 2013. The winding-up of the order, or under a fair and equitable provision, was the only viable remedy against oppression under “Section 271 of the Companies Act, 2013”. But frequently, the ailment turned out to be worse than the cure. As a result, the Tribunal has extensive authority to uphold the parties’ best and reasonable judgement under whatever settlement it determines to be appropriate.

³ (1934) 4 Comp Cas 434.

⁴ (1924) 26 BOM LR 987.

⁵ 1955 INSC 76.

⁶ MANU/MH/0003/1969

⁷ Umakanth Varottil, ‘Unpacking the scope of oppression, prejudice and mismanagement under the Companies Act, 2013’, SSC ONLINE, (12 September 2020), <https://www.sconline.com/blog/post/2020/09/12/unpacking-the-scope-of-oppression-prejudice-and-mismanagement-under-the-companies-act-2013>.

In landmark case of “Shanti Prasad Jain v. Kalinga Tubes Ltd.”⁸, the court interpreted the word “Oppression” in Indian Context, considering that, a burden of proof must be placed on an unjust, severe, or despotic complaint. Therefore, it is crucial to show that singular instances of oppression and ongoing unfair behaviour by several owners often do not qualify for the discharge under Section 241 of the Act, 2013. “The essence of the matters seems to be that the conduct complained of should at the lowest,” the court continued. include a clear break from the rules of fair play and fair dealing, which are the rights of every shareholder to rely on when entrusting their money to the corporation.

Meaning and Implication of Mismanagement under Companies Act, 2013

The Companies Act of 2013 has addressed the issues of mismanagement and oppression in a fundamental way. The provisions of Section 241 of the Companies Act, 2013 pertaining to mismanagement. It specifically talks about the prevention of mismanagement where an application can be made to the tribunal, where any of the affected person of the company can raise such complain in a way that-

- (a) “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 him or any other member or members or in a manner prejudicial to the interests of the company; or
- (b) the material change, not being a change brought about by, or in the interests of, any creditors, including debenture holders or any class of shareholders of the company, has taken place in the management or control of the company, whether by an alteration in the Board of Directors, or manager, or in the ownership of the company’s shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members,

may apply to the Tribunal, provided such member has a right to apply under section 244, for an order under this Chapter.”

This clause may be put into action in a number of ways, such as when employees in charge of the company’s management abuse their authority Additionally, management might be harmful to the company’s interests if it is operating the business in a way that disregards the expectations and interests of the majority of shareholders and engages in frivolous legal challenges.

Regarding judicial analysis, Indian courts have offered different interpretations of the Act’s Section 241’s implications. In the Delhi High Court case “Chander Kishen Gupta Pannalal Girdharib Ltd.”⁹, it was decided that carrying on with the business’s operations in a manner that would prejudice the company’s interest would fall under Article 241 of the Company Act, 2013, provided that the company’s non-conduct falls within its purview if it.

⁸ 1965 INSC 6.

⁹ MANU/DE/0242/1981.

a number of shareholders filed a petition against a corporation in the matter of “Rajamundry Electric Supply Corporation v. Nageswara Rao,”¹⁰ alleging that the directors had mismanaged the business. The Vice-President was found to have gravely mismanaged the company’s affairs, raised a sizable sum in his individual capacity, and caused delays in the supply of electricity to the State. The Court further found that the machinery was in a degraded state and that “the strong local junta ruled roost.” Furthermore, “the Court appointed two administrators for the management of the company for a period of six months vesting in them all the powers of the Board of Directors, finding this to be sufficient evidence of mismanagement.”

Difference between the prevention of Oppression and Mismanagement in the older and the new regime

A drastic change could be observed in the Companies Act, 1956 and Companies Act, 2013 regarding the remedies provided for prevention of oppression and mismanagement.¹¹ Under the older regime, the aspect of oppression was dealt under Section 397¹² whereas, Section 298 was dealing with the provisions for prevention of mismanagement.¹³ While facts were required to support the issuance of an order for winding up in cases of oppression under Section 397, they were not required in cases of mismanagement claims under Section 398. Furthermore, “Under Section 397, the Tribunal by its order, prevents injustice being done to the member or members in capacity of member, but under Section 398, the Tribunal makes an order to prevent injustice being done to the interests of the company as a whole. The provision of Section 398 was of a preventive nature whereas under Section 397, the Tribunal sought to end the oppression complained of by the petitioner.”

However, under the Act of 2013, no such distinction has been made regarding the prevention of oppression and mismanagement. Both these aspects have been dealt under Section 241 of the Act.

IV. THE NEW AGE ASPECT OF OPPRESSION AND MISMANAGEMENT- TATA/CYRUS MISTRY CASE

Background of the case

The importance of this judgment could be understood in a way that, whenever the discussion regarding the prevention of oppression or mismanagement and rule of majority v. minority comes up, it is always the case of “Foss v. Harbottle” is cited. However, with the advent of Tata v. Cyrus controversy, this trend will change drastically. A majority of litigation in business law will relate to oppression and mismanagement, covering much of the data analysis pie chart. Despite abundant litigation on this issue there has been nonetheless continuous ambiguity about the law of oppression and mismanagement, mainly because it is a subjective and discretionary relief that is equitable and that each case will depend on its circumstances and facts.

¹⁰ 1955 INSC 76.

¹¹ Umakanth Varottil, ‘Unpacking the scope of oppression, prejudice and mismanagement under the Companies Act, 2013’, SSC ONLINE, (12 September 2020), <https://www.sconline.com/blog/post/2020/09/12/unpacking-the-scope-of-oppression-prejudice-and-mismanagement-under-the-companies-act-2013>.

¹² Section 397 of the Companies Act, 1956.

¹³ Section 298 of the Companies Act, 1956.

As temporary non-executive chairman, Tata Sons Pvt. Ltd.'s board of directors decided on 24.10.2016 to replace Mr. Cyrus P. Mistry with Mr. Ratan Tata. Mr. Mistry had been dismissed as Executive Chairman in other words, yet he was allowed to continue his election as Non-Executive Director. It should be noted that the Company is the Tata Group holding firm and holds the bulk stock in the Tata company group. Mr. Cyrus P Mistry, therefore, had been suspended during extraordinary general meetings of the relevant businesses, of the management of Tata Industries Ltd., Tata Consultancy Services Ltd. and Tata Tele Services Ltd. Mr. Cyrus P. Mistry subsequently voluntarily resigned, with the aim of removing the company's imminent decisions from his management, from Indian Hotels Company Limited, Tata Steel Limited, Tata Motors Limited, Tata Chemical Solutions and Tata Power Limited.¹⁴

Subsequently, under Sections 241, 242, and 244 of the Companies Act, 2013, Mr. Cyrus P. Mistry filed a company petition before the National Company Law Tribunal, Mumbai, through two companies, Cyrus Investments Pvt. Ltd. and Sterling Investment Corporation Pvt. Ltd., in which he holds controlling stakes, alleging mismanagement of the company and oppression of minority shareholders. However, under Section 241-242 of the Firms Act of 2013 these two companies have not been entitled to petition because, together, Tata Sons Pvt. Ltd owns just 2% of the entire share capital. In the circumstances, these companies submitted a request for remission that NCLT, Mumbai had refused. However, NCLAT overruled this ruling on the appeal and the case was thus brought to substance.¹⁵

Before the NCLT and NCLAT

Only a few months before the end of this tenure, Mr. Cyrus Pallonji Mistry was unexpectedly dismissed as 'Executive Chairman' from the Tata Sons Limited in accordance with the resolution of the Tata Sons Board of Directors Limited on 24 October 2016. An application for prejudice and oppression by the majority shareholders was submitted in accordance with sections 241-242 of the Companies Act of 2013. In accordance with Article 244 of the Companies Act 2013, a request has also been submitted for remission.¹⁶

Mistry's main assertion was that, due of the rule of Tata's founding members Tata Trusts, who owned over 68 percent of the corporation, he had been driven out of his post as "executive chairman of Tata Sons and afterwards as director on the management board of the business and other Tata enterprises." The opposition is defined under section 241 when a company conducts its business in a way that is prejudicial or oppressive to the public's eye, the rights of the company, or the welfare of its

¹⁴ Dev Chatterjee, 'Miscarriage of justice', claims SP group's Tata-Mistry case review plea, BUSINESS STANDARD, (Apr. 27, 2021), https://www.business-standard.com/article/companies/miscarriage-of-justice-in-tata-mistry-case-sp-group-in-review-petition-121042700538_1.html.

¹⁵ Arpan Chaturvedi, *Tata-Mistry Case: Why NCLAT Found Oppression and Mismanagement at Tata Sons*, BLOOMBERG QUINT, (18 December 2019), <https://www.bloombergquint.com/law-and-policy/tata-mistry-case-why-nclat-found-oppression-and-mismanagement-at-tata-sons>.

¹⁶ Indu Bhan, *Tatas win case against Cyrus Mistry*, FINANCIAL EXPRESS, (Mar. 27, 2021), <https://www.financialexpress.com/industry/tatas-win-case-against-cyrus-mistry/2221401/>.

members.¹⁷Initially, in accordance with Sections 241-242 of the Companies Act, the Company Law Tribunal (NCLT) refused the petition, which could not be maintained until 2013. The same was then made to appeal before the NCLAT, where the tribunal made a diagonally observation.¹⁸

The NCLAT found that the activities of the company were carried out in a way oppressive and/or adverse to the interests of the Mistry group by the majority owners - the Tata trusts. The deportation of Mistry has also been found to be unlawful, repressive and harmful. One reason why positive judgment of oppression and mismanagement was based upon the problem of a number of Tata Group firms experiencing loss and the passivity of their boards of directors, including the nominees of the Tata trusts, in taking appropriate actions notwithstanding Mistry's emphasis. This opinion of NCLAT has raised global concerns regarding Corporate Governance, the duty of managers, the framework for dealing with non-listed holding companies driven by promoters, transparency of decision-making by the board of directors, and the relationship between majority minority shareholders.¹⁹

Before the Supreme Court

The Supreme Court while deciding the matter between the two parties formed four main issues which were focused on-

1. "Whether NCLAT was justified in holding that affairs of company were conducted in a manner prejudicial and oppressive to some members and that the facts otherwise justify the winding up of the company on just and equitable ground?
2. Whether the reliefs granted, and the directions issued by the NCLAT, including the reinstatement of Mr. Cyrus P. Mistry into the Board of Company and other Tata Group of Companies were in consonance with relief sought and powers available under Section 242(2) of Companies Act, 2013?
3. Whether NCLAT could have interfered with various clause of AoA of the Company and issued directions nullifying the effect of some of the clauses of AoA?
4. Whether NCLAT was right in holding that re-conversion of Company from a public company into a private company, required the necessary approval under Section 14 of the Companies Act, 2013 or at least an action under section 43A(4) of the Companies Act, 1956?"

¹⁷ Chaitanya Verma, *Analysis of Tata-Mistry case Judgment: Analyzing it through the lens of established principles of co.*, LEGAL SERVICES INDIA, <http://www.legalserviceindia.com/legal/article-1803-analysis-of-tata-mistry-case-judgment-analysing-it-through-the-lens-of-established-principles-of-corporate-law.html>.

¹⁸ Dev Chatterjee, 'Miscarriage of justice', *claims SP group's Tata-Mistry case review plea*, BUSINESS STANDARD, (Apr. 27, 2021), https://www.business-standard.com/article/companies/miscarriage-of-justice-in-tata-mistry-case-sp-group-in-review-petition-121042700538_1.html.

¹⁹ Arpan Chaturvedi, *Tata-Mistry Case: Why NCLAT Found Oppression and Mismanagement at Tata Sons*, BLOOMBERG QUINT, (18 December 2019), <https://www.bloombergquint.com/law-and-policy/tata-mistry-case-why-nclat-found-oppression-and-mismanagement-at-tata-sons>.

The Hon'ble Court provides for a fair and fair provision on the exercise of competence under this

Under two instances, provision can typically be triggered. If a functional is available Block affecting the operation of the firm at level of Board or Shareholders or Company is a quasi-company and an irreparable collapse of confidence. It took place between the participating members.²⁰ The Supreme Court found it was inadequate for a chairman or even a director to be dismissed, reversed the 'National Company Law Appellate Tribunal' judgment considering oppression and mismanagement and ordered the reinstatement of Mistry. A court may not question whether the termination was appropriate or legal, but instead must decide if the removal will lead to minority shareholder discrimination. This also established some new principles and clarified some of the existing but ambiguous company positions.²¹

Aspect of Oppression and Mismanagement

The mismanagement of Tata Sons and other Tata Group enterprises was a further major factor. The NCLT rejected Tata Sons' bias arguments as they were important stakeholders and could not conduct themselves in a harmful manner. In addition, Ratan Tata was rejected as silhouette administrator because the requesters refused to prove Tata or any other representative's behavior was harmful and prejudicial to the interests of the firm or applicants. Tata's dependence on e-mail exchanges also showed that the corporation responded correctly to Mistry's request for direction.²² Regarding the most important issue of oppression and mismanagement, which this piece is based upon, the court observed that, Hon'ble Court firmly concluded that the withdrawal from the administration could never be considered oppressive or harmful. A Court under Section 242 may never focus primarily on the legitimacy and rationale for the dismissal of a person as its director unless in order to promote a behavior oppressing or prejudicing certain members. Hon'ble Court further held that, since Sections 241 and 242 of the Company Law 2013 do not clearly bestow reintegration jurisdiction upon NCLAT in mandating the restoration of Mr. Cyrus P Mistry.²³

In contesting several provisions of AoA, Hon'ble Court concluded that a person who has voluntarily become a shareholder and hence has subscribed to the AoA and who consents to the changes to those Articles cannot thereafter reverse those Articles and dispute them. The same would mean that the Court would rewrite a contract for a party with wide eyes. In addition, Hon'ble Court issued an exception to this norm and stated that, pursuant to Section 242, the Tribunal has the jurisdiction to delete any change to the Articles which takes away recognized proprietary rights if the behavior of making this alteration itself was oppressive.

²⁰ Rajat Sethi, *Tata-Mistry Case: A Bittersweet Victory for The Tata Group*, MONDAQ, (Apr. 07, 2021), <https://www.mondaq.com/india/shareholders/1055032/tata-mistry-case-a-bittersweet-victory-for-the-tata-group>.

²¹ Arpan Chaturvedi, *Tata-Mistry Case: Why NCLAT Found Oppression and Mismanagement at Tata Sons*, BLOOMBERG QUINT, (18 December 2019), <https://www.bloomberquint.com/law-and-policy/tata-mistry-case-why-nclat-found-oppression-and-mismanagement-at-tata-sons>.

²² *SC sets aside NCLAT order restoring Cyrus Mistry as Tata Group's executive chairman*, FIRST POST, (Mar. 26, 2021), <https://www.firstpost.com/india/sc-sets-aside-nclat-order-restoring-cyrus-mistry-as-tata-groups-executive-chairman-9466841.html>.

²³ Rajat Sethi, *Tata-Mistry Case: A Bittersweet Victory for The Tata Group*, MONDAQ, (Apr. 07, 2021), <https://www.mondaq.com/india/shareholders/1055032/tata-mistry-case-a-bittersweet-victory-for-the-tata-group>.

Mistry brought numerous obvious claims against Tata Sons, although a few of them had only been examined by the Supreme Court. The Court indicated that all of the claims were sustained by the national law court of the company, but only a few of the dismissals had been reversed by the NCLAT. The case was restricted to the conclusions of the NCLAT since the tribunals are evidentiary courts and the Supreme Court is a court of law.²⁴

The Court decided that its nominated directors on Tata Sons' board are not like any other ordinary directors provided that the caring interests of the Tata Trusts are based on the charity interests. It also called into question the statement that impartial board directors could not be trusted by every director to execute a totally unbiased assessment, irrespective of who nominated them. The prospective directors of the trusts are trustworthy towards their recipients.

With regard to the other matters that originally had been brought before NCLT in Mumbai by Mister Cyrus P, Mistry and Group, but which were not specifically dealt with by NCLAT in their judgment, Hon'ble Court concluded that NCLAT's judgment was reversible and NCLT's findings must also be reversed. In certain ways it has thus been restored and approved the finding of facts from NCLT, Mumbai qua businesses regarding the Siva and the Sterling Group, Air Asia, Mehli Mistry, the Nano Car project, et.

V. A COMPARATIVE ANALYSIS OF OPPRESSION AND MISMANAGEMENT JURISPRUDENCE: INDIA AND THE UNITED STATES

In our earlier parts of the paper, we have dealt with the decision of the treatment in India of the topic of the oppression and mismanagement of companies by the laws and in the case of Tata v. Mistry case. The clash of majority shareholders who seek to have their way in the company and the minority shareholders who seek protection against unfair treatment are highly visible in this case. This chapter carries on that debate by comparing how India and the United States go about solving these issues. Not only on the reason of discovering differences but also to understand why a specific country finds itself doing things in a specific way and what the real consequences of these rules on the shareholders is.

The main difference is that both countries are concerned with majority securing minority shareholders, but in different ways. The India system, according to its British legal tradition, is dependent at large on written legislation providing some exceptions to the fundamental rule of the majority rules, as first considered in the Foss. Harbottle case. The US legal system, especially that covering privately held corporations has, conversely, been built up over time through rulings by courts that allow rules strictly above majority. Such strategies affect how unfair behavior is defined, what can be done by the shareholders, when they are not being treated fairly and the nature of solutions, available to the shareholders.

²⁴ Indu Bhan, *Tatas win case against Cyrus Mistry*, FINANCIAL EXPRESS, (Mar. 27, 2021), <https://www.financialexpress.com/industry/tatas-win-case-against-cyrus-mistry/2221401/>.

The US Response to Shareholder Oppression

The rules that relate to the oppression of the shareholders in the US are both the state law and the court decision. The laws mainly apply to closely held businesses: business establishments not listed on a public market. It is against the best interest of the minority shareholders of such companies who find it difficult to sell their shares since they are at a disadvantage. This eases their exploitation by the majority shareholders. An average course of action is not to divide the cake, to give exorbitant wages to those at the helm of affairs, to deny the minority stock holders access to the company books or to fire them.

To deal with these problems, the courts in the US have formulated 2 important concepts of law. The latter is that of *Donahue v. Such* a case as *Rodd Electrotpe Co* that has offered the so-called partnership analogy. This concept further suggests that the shareholders of closely held companies should establish relationships with each other similar to the partners of a business they act truthfully and faithful towards each other. The second one is the reasonable expectations test that views if the operations of the majority fully represents what the minority shareholders had anticipated when they joined the company. These expectations are often general, as in the right to vote, or quite particular, as in continuation of employment or on the board. Whenever the acts of oppression are proven to be true, courts may offer several resolutions. The most popular ones are the fair value buy out in which the company or the majority shareholders must buy the shares of the minority shareholders at a fair price without a wicked intent of underpricing them simply because of the percentage they own. Other options include liquidating the company, injunctions to provide against unfair practices by the court, or letting a custodian manage the company. Not every state will make exactly the same step-as some have stated that Texas has done so-as seen in the *Ritchie v. Rupe* case.

India and Stockholder Oppression

Most of the system in India is based on a Companies Act 2013, which dictates the regulations in dealing with oppression and mismanagement. It requires a much higher burden to show that there is oppression, however. A minority said would need to prove that the unfair practice was endemic and one that is severe in nature. In *Tata v. The Supreme Court* decided in favor of the majority shareholders saying how hard it is to prove wrongdoing through mismanagement by law in India. Although, the law has offered the resolution to the situation by dissolving the company, it is taken as a last resort and the shareholders are unwilling to attain the remedy.

Comparing the Two Systems

The biggest gap between the US and India is in regards to minority shareholders protection. US system built through judicial decisions is more accommodating and pragmatic. It knows that shareholders tend to make fair expectations when they enter a firm and even offer a solution to unreasonable treatment like fair buyouts. The system in India is based more on written rules and is harder to implement. Minority shareholders may not readily access help because there are such high standards to prove oppression. Whereas tribunals are in place to assist solve conflicts, it might be a costly, time consuming procedure.

After all, the lesson the US shows is not to just protect minority shareholders by granting the majority rule one or two exceptions-it is by creating new rules that reveal more clearly what businesses are doing and what minority shareholders themselves are experiencing. The Indian system with all its best intentions can adopt alternative more realistic and flexible ways like in the US.

VI. CORPORATE GOVERNANCE V. CORPORATE DEMOCRACY: A CONCLUDING REMARK

Corporate governance versus corporate democracy is an upcoming debate in the academia of India. The expression corporate governance was coined in America in the late 1980s. Corporate governance is a system by which the companies are effectively controlled and directed and it aims at functioning of a company to put in a place of check and balances between the various share and stakeholders. The very issue of corporate governance which was raised in the case of Tata-Mistry was the issue of competence v. charisma, can a predecessor be involved in the companies affair this much too actually disrupt the normal functioning of the company by the successor. The dispute is the epitome of the legacy problems and the tactics devised to protect the same. For the more there is a paradox existing between the corporate governance and corporate democracy. When we talk about democracy once mind goes straight to the majority in room, in such circumstances where the corporate democracy is prevailing how we can ensure corporate governance which includes the safety of minority rights and non-oppression. This dichotomy has been prevailing amongst the academia and is an upcoming enquiry into the field. The present Indian legal jurisprudence on corporate law is gravely inefficient to incorporate such a paradox. There is an immediate need to update the law and to lower the bar of proving mis-management and oppression for an effective safety against such tactics applied by the major corporations.

As observed in this research that minority rights protection is a booming area of law. It conflicts with the corporate governance issues. In this research we have critically analyzed the Tata-Mistry dispute from the point of minority oppression. There is a need to overhaul the present legal regime as it provides very limited protection and to avail such protection the threshold is very high. In order to make a more corporate governance environment, it is necessary to widen the protection awarded to such minority shareholders.

At last, it can be said the apex court did tried to deliver the judgment in an exhaustive manner, but the concept of oppression and mismanagement is so wide and interlinked that it is very hard to substantiate even for the Supreme Court. This judgment will always be treated as a landmark ruling in India after some of the prominent cases like, “Needle” and “Shanti”. Moreover, it will be very interesting to see what the Supreme Court in the review petition will decide upon and will the existing judgment be overruled subsequently