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Shareholders' Rights in Private and Public Companies

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Abstract

Companies in India are largely created and regulated by the Companies Act 2013. In India, there are two major categories of corporations, private limited companies and public limited companies which are limited either by shares or by guarantee. In both of these companies, shareholders play an extremely crucial role. A shareholder, also known as a stockholder, is any person, corporation, or entity who owns at least one share of the underlying capital of a corporation. Recently, factions of shareholders of some firms have waged their battles in the mainstream media. Despite more than a hundred clauses in the Companies Act specifically outlining shareholder rights, shareholder democracy has not yet been successful due to a lack of vigorous and well-developed shareholder sentiment. In India, the same applies with similar authority. A big company's shareholders do not choose to attend general meetings when much of the authority is concentrated in the hands of the directors or majority shareholders. They are only concerned with the valuation of stock and dividends. When they learn that they are not earning a reasonable yield or that the valuation of their stock has no chances of growing in value, they transfer their investment to shares of other firms[2]. It is critical for a company to look after them because they play an important part in the company's structure and earnings. They are the company's key owners and should be protected and rewarded on a regular basis. Shareholders ought to know about the limitations on their rights, whether a company appoints directors using a majority-voting system, their capacity to approve impact organizational transactions, their ability to submit dissenting resolutions at an annual general meeting, how directors using a majority-voting system, their capacity to approve impact organizational transactions, their ability to submit dissenting resolutions at an annual general meeting, how to participate in share voting – in person or otherwise – and strategies in order to effectively assert their rights This article seeks to elaborate the concept of shareholders and their importance in the corporate sector of the country and because of the division of ownership and management, as well as the dispersion of shareholders across the world, it is important for shareholders to recognise their rights, privileges, and liabilities.

Keywords: *Companies Act, 2013; Shareholders; Democracy; Transparency; Voting.*

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[2] N.M. Tripathi, *Some Problems of Monopoly and Company Law 210*

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I. INTRODUCTION

A shareholder, also known as a stockholder, is a person or entity (including a corporation) that legally holds one or more shares of a public or private corporation's share capital. Shareholders of a company can be referred to as ‘owners’. An individual is not a shareholder of a company unless their name and other information are registered in the corporation's registry of shareholders or members. The shareholding percentage held dictates a shareholder's impact on the company. In certain cases, majority shareholders are the creators of the firm. Majority owners of older corporations are often relatives of the company's founders. In any case, by owning more than half of a company's voting interest, majority owners wield significant ability to manipulate crucial operating decisions, such as the replacement of board members and C-level executives such as CEOs and other senior employees. As a result, corporations often want to stop getting majority owners within their ranks. A company's shareholders are constitutionally distinct from the corporation itself. They are usually not responsible for the corporation's obligations, and shareholders' responsibility for business debts is stated to be limited to the outstanding share price, unless a shareholder has given assurances. The company is not obligated to report the beneficial ownership of a shareholding, only the registered owner. When more than one person is listed as the owner of a shareholding, the first person listed as the owner is deemed to have ownership of the shareholding, and all contact and messages are directed to that person. Since shareholders are effectively owners of a corporation, they profit from its growth. These benefits take the form of higher equity market values or financial gains distributed as dividends. When a company loses revenue, the share price invariably increases, leading shareholders to lose money or see the value of their investments fall. If the business is liquidated and the properties are sold, the shareholder will be entitled to a part of the proceeds, assuming that all creditors have been compensated. When such a situation happens, the value of becoming a stockholder is that they are not obligated to shoulder the company's loans and contractual commitments, which means creditors cannot force stockholders to pay them

II. TYPES OF SHAREHOLDERS

Shareholders are divided into two types: Equity or Stock shareholders and Preference shareholders. These two are the two main types of shareholders in India. Equity shareholders are the most significant stakeholders of a company and possess voting rights but when it comes to dividend payment, preference shareholders would be paid first. When it comes to preference shareholders because of their ‘preferential’ position, normally do not have voting rights. They

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earn fixed dividends that are usually greater than those paid to common stockholders, and their dividends are paid before those of common stockholders.

III. Rights of Shareholders in a Company

(A) Appointment of Directors

Directors are people who are in charge of overseeing the affairs of a corporation. They are referred to collectively as the ‘Board of Directors’ or the ‘Board’. A company's brain is its board of directors. They play an important part in the company's organisation.

Directors make decisions on a company's management individually at Board Meetings or at meetings of committees established for particular purposes.

Shareholders have a major impact on the selection of directors. For the nomination, the shareholders must pass an ordinary resolution. Aside from that, shareholders may nominate different styles of directors. They are as follows:

i. An Additional Director who will serve until the next general body meeting;
ii. An Alternative Director who will serve as such for a period of three months;
iii. A Nominee Director
iv. In the event of a casual vacancy in the office of any director selected at a general meeting of a public corporation, a director is appointed.
v. Moreover, any proposal passed in the general body meeting for the appointment of a director may be questioned.

(B) Legal Action against Directors

Shareholders have the right to file a suit on behalf of the corporation based on the fact that if the people in charge of the company, do not take action to enforce the company's interests, the shareholders, as members of the company, are permitted to sue them. Pennington refers to such individual members' actions as "derivative conduct" in his book ‘Corporate Law’ since the right to sue is obtained from the company. [3] That being said, since the money collected would be in the company's interest, the company must be listed as a claimant in the action. Shareholders can also prosecute directors under the laws outlined in the Companies Act of 2013. They are as follows:

i. Any act done by the director in any way that is counterproductive to the company's affairs.

[3] N.M. Tripathi, *Some Problems of Monopoly and Company Law 219, (*N.M. Tripathi, 1972)

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ii. Any act that goes above the letter of the law or violates the Constitution.
iii. Fraud.
iv. If the company's properties are transferred at a low valuation.
v. When there is a diversion in business money.
vi. Any act committed in bad faith.

In *Foss v. Harbottle,* the focus was on the procedural character of the action, that a corporation is a distinct legal body, and if it suffers a legal injury, it does not follow that any of the employees collectively incur legal injury as well.

(C) Appointment of company auditors

The laws requiring corporations to be audited by chartered accountants are a great security for shareholders. The auditors must review the accounts and report that the profit and loss account provides a truthful and correct view of the company's profit or loss for the year, and that the balance sheet provides a truthful and correct view of the company's state of affairs. The auditors of the corporation are also expected to specify in their report if the records are clear and transparent and represent the correct numbers as legally required to have been established in their view. The auditors will be found accountable if they fail to carry out the audit correctly and diligently report to the shareholders. Shareholders may also nominate the company's auditors. According to the Companies Act of 2013, the board of directors shall select the company's first auditor. Furthermore, the owners will vote at the annual general meeting on the report of the board of directors and the audit committee. The appointment is usually made for a period of five years, and it can be accelerated by passing a resolution at the annual general body meeting.

(D) Voting Rights

Any shareholder of a company limited by shares who holds some equity share capital has the right to vote on any motion put before the company in respect of such securities, and his voting right on a poll is proportionate to his share of the company's paid up equity capital. A member owning any preference share capital shall have the right to vote only on motions affecting the rights attached to preference shares. Any equity shareholder has the right to vote on any issue that the company is constitutionally competent to deal with, even though he has a vested interest in the subject-matter that is contrary to or separate from the general or special interests of the company. A shareholder's vote is a property right that can be exercised when a shareholder sees fit in his own best interests. When a shareholder's name is entered in the company's registry of shareholders, he cannot be denied the right to vote on the grounds that

his name has not been on the register for the defined time prior to the date of voting.

Shareholders may also attend and vote at the annual general body meeting. The rules of the Companies Act 2013 must be followed by any company registered in India. Any Indian company is required to hold an annual general meeting once a year. The meeting may be held anywhere, including the company's headquarters or any other location specified by the company. There are also mandatory agendas to be addressed at the conference. These include matters like implementing financial statements, nominating or ratifying directors and auditors, and so on. When a motion is proposed by a company's owners, it can only be approved by a vote of the shareholders, according to the Companies Act of 2013. The Companies Act of 2013 acknowledges the following forms of voting:

i. Voting by show of hands – Each delegate of the meeting has one vote. As a consequence, in this form of election, shareholders vote exclusively by showing their hands.
ii. Polling votes – In this form of voting, the chairman or shareholders request a poll. However, in the case of differential voting rights, a specific class of stock shares can also have weighted voting rights.
iii. Electronic voting– A business with more than 1000 shareholders is expected to set up an online voting facility. Every member should be granted the option of voting online.
iv. Voting by postal ballot– Any motion in the meeting can also be approved using a postal ballot.

In this respect, it is also crucial to note that section 176 of the Companies Act grants a shareholder who is entitled to attend and vote at a business meeting the essential right to nominate another person (whether a member or not) as his proxy to attend and vote in his place. Attending meetings of a corporation located in a remote location is usually inconvenient for a shareholder. However, he will exercise his right to vote by naming a man of his choosing as his proxy under the proxy scheme.

(E) Right to call General Meeting

Calling an Annual General Meeting is well within the rights of the shareholders. They have the authority to order a company's director to call an extraordinary general meeting. They can also appeal to the Company Law Board for the conducting of a general body meeting if it is not performed in compliance with the regulatory specifications.

An Indian corporation is mandated by law to hold an annual shareholders' meeting known as

the annual general meeting (AGM). The first AGM must be held within nine months of the end of the first fiscal year, and subsequent AGMs must be held within six months of the end of each subsequent fiscal year. Companies can request a three-month extension for keeping the AGM by submitting an application to the Registrar of Companies. However, there is no way to extend the period until the first AGM. A fiscal year or financial year starts on April 1 and ends on March 31 of the following year. The AGM must be held within working hours, which are from 9:00 a.m. to 6:00 p.m. on days other than national holidays.

i. The AGM must be held at either the company's registered office or its principal place of business.
ii. Any other location within the district, town, or village where the company's registered office is located. An unlisted company's annual general meeting (AGM) may be held anywhere in India with the prior written or electronic consent of all shareholders.

The following things are needed on the AGM agenda:

a) Adoption of financial statements.

b) Appointment of the company's auditors.

c) Appointment of directors to replace those who are retiring on a rotating basis (in the case of a public company).

(F) Right to receive Notice of meetings

Shareholders may express their opinions on the governance, stewardship, and direction of their businesses at annual general and special meetings. As a result, they should be given plenty of notification of upcoming sessions, as well as adequate detail about the topics being addressed, so that they can carefully consider their answers and votes. In addition, businesses can introduce systems and processes that allow shareholders to exercise their voting rights regardless of whether or not they are present at company meetings. Every shareholder must be given notice of every meeting, either directly or by letter, at his registered address in India, or, if he does not have a registered address in India, to the address, if any, within India supplied by him to the company for receiving notices. A notice convening a meeting shall specify the location, date, and time of the meeting, as well as the nature of the business to be transacted. For holding some kind of general meeting or passing some kind of motion, whether ordinary or extraordinary, twenty one days' notice is needed. A general meeting can be held with less notice if, in the case of an Annual General Meeting, all members eligible to participate and vote agree in writing, or in the scenario of other general meetings, only members holding 95%

of the available voting power agree. The twenty-one-day notice period has been set to provide shareholders time to organise themselves and form an opinion, if needed, on the agenda and proposals to be discussed at the general meeting. And more importantly, even if it can be shown that a delegate will not have attended the meeting, the convener of the meeting is always expected to provide him with adequate notice.

(G) Right to inspect the records and registers and get copies of financial statements

According to Section 163 of the Companies Act, 2013, directors of the company are expected to retain financial documents such as lists, indices, and debenture holders of the members at the registered office of the company. Furthermore, those documents are available for review within regular business hours. Any minimal fees can be levied for inspecting business archives and obtaining extracts from them. Since shareholders are the principal stakeholders in a company, they have the right to audit the company's accounting registry and books, as well as raise questions about them if they so wish. Shareholders are also allowed to obtain copies of financial statements. It is the company's responsibility to deliver the company's financial report to all of its owners, whether in a quarterly or annual filing.

(H) Winding up of the Company

Before the corporation is dissolved, it must notify all of its shareholders, and all credit must be granted to all of its shareholders. A corporation can be wound up by its shareholders. The Companies Act of 2013 allows a shareholder to petition the Tribunal for the winding-up of a company even though he/she is the holder of fully paid-up shares, or the company has no assets or surplus to distribute among shareholders after the satisfaction of its liabilities, and certain shares were originally allotted to him or have been held by him and registered in his name.

IV. Conclusion

Shareholders play an important role in the management of a company. They have a variety of privileges, including the naming of the company's management, auditor, and so forth, as well as voting rights and a say when the company goes bankrupt but for every right comes a corresponding obligation, which the shareholder must faithfully carry out. Companies in India are largely established and regulated by the Companies Act of 2013. In India, there are two categories of corporations: public limited companies and private limited companies. People in India like to establish a private limited company because there are less regulations and more incentives. Shareholders play an important role in the operation of a company. An organisation must look after them, and they should all be safeguarded and they should get an adequate bonus on time. The main managers, including directors and others, were granted a legislative role and

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some privileges. Different members of the Company, including the Chairman, are also allowed to hold statutory financial reports and the company registry in compliance with section 170 of the Companies' Act, have also been granted special powers. Members will have the freedom to audit and extract those documents and file in order to preserve integrity of every organisation during the due course of registration. This is to comply and uphold provisions on corporate governance. The shareholders should have an inspection right in the current process of the country's growth to audit books of accounts. A duty to explain the Board's report in relation to non-declaration of dividends where a company's earnings are adequate to guarantee declaration of dividends should be put on the directors. Shareholders must know, if necessary, whether a business elects directors by a majority voting standard, their eligibility to approve substantial company transactions, their ability to present dissident resolutions at an annual meeting, their participation in voting by shareholders – whether in person or otherwise, and the opportunities available to shareholders to exercise their rights appropriately.

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