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The Eclipse of Corporate Democracy in India

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Abstract: *Corporate governance is much discussed concept in India. There are significant changes incorporated inCompanies Act, 2013 to maintain governance in the company. But the concept of corporate democracy is always sidelined in the governance of company. Corporate governance cannot complete without inculcating corporate democracy. It is the responsibility of company to provide all necessary information and to encourage participation of shareholders in affairs of company. But the management strives not to maintain democratic culture in Company. Shareholders are the essence of any public company. But their role becomes limited mere to get monetary benefit. Their participation in administration of company is never encouraged by the management.*

Companies Act, 2013 has more focus on corporate governance but less on corporate democracy. The excessive powers to directors and limited rights to shareholders is questionable factor under the new Act. Directors are fiduciary agent and managers of company. But they could not enjoy excessive powers in public company. Shareholder's checks and balance is remedial measure to maintain corporate governance in any public company.Legal foundation is very important to encourage corporate democracy in the company.

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Introduction

"Corporate governance is the system by which businesses are directed and controlled." The basic objective of corporate governance is to build up an environment of trust and confidence amongst those having competing and conflicting interest to enhance shareholders' value and protect the interest of other stakeholders by enhancing the corporate performance and accountability. Corporate governance is the acceptance by management of the inalienable rights of shareholders as the true owners of the corporation and of their own role as trustees on behalf of the shareholders.

Corporate democracy is an essential part of corporate governance. It is assumed that shareholders in a publicly-held corporation should take a more active interest in the affairs of their corporation. Management should provide them with more information to guide them in exercising voting rights. Management shall give them fair opportunity to be a part of administrative process wherever required. They shall be free to express their opinion in company without any fear or favour. The public limited company is built upon the investment of shareholders. So their participation is also equally important to maintain corporate governance. The few giants in organization people take most of administrative decisions which are then applicable on shareholders. These few people run the company at their discretion and the rest is treated as matter of opportunity. So these managers of corporations earn more benefit as they control affairs of company. The mass shareholders have hostile voting in large corporations and their rights are virtually regulated by few managers of organization.

The shareholders cannot get across their opinions because of sturdy promoters, directors and their managers in company. The role of shareholders in most administrative process in public company is limited to casting of vote. Shareholders are relatively powerless. The corporate structure typically permits only a formal role for shareholders on corporate governance. Ultimately the concept of corporate democracy is sidelined in public corporations. The provisions of Companies Act, 2013 are very positive with respect to corporate governance. But corporate democracy is a less focused area in corporate laws. The voting rights given to members are exhaustive and it empowers members to take part in company's affair. But it gives more autonomy to directors in certain matter. In fact certain rights of directors surpass the voting right of shareholders. So the question is whether the corporate democracy is sidelined in the governance of public companies under the Act.

Scope

The corporate democracy discussed in India is mostly with reference to shareholder voting rights to elect directors. Corporate governance in India has not given much attention for maintaining corporate democracy. Large size corporations are largely depends on shareholders to expand their business. Thus the management cannot isolate shareholders while taking any decision in company. So the core of research involved in this paper is whether corporate democracy exists to protect the rights of shareholders.This paper assesses the potential of shareholders to use their voice in corporate governance and to increase their contribution in management. This paper questions the basic allocation of power between directors and shareholders which undermines rights of shareholders while providing excessive rights to directors of the company. These preferences under new Company statute not giving rise to corporate democracy. The certain rights given to directors are discouraging the democratic culture of Company Act which needs revision.

Corporate Democracy

Shareholders' legal rights to participate in corporate governance are often said to constitute "corporate democracy. In the Progressive era, the government had been the regulator of corporations. The legitimating power of "shareholder democracy" is undeserved. Adjustments in the balance of power between shareholders and management seek to bring corporate governance into conformity with its own professed aspirations about governance. But those aspirations are hardly "democratic."

Corporate democracy is the core of keeping transparency in company. The core issue of shareholders participation in Corporate Governance is that of disclosure and information flow to the shareholders. So it is about sharing information with the shareholders and also about participation of shareholders in the administration of companies. But it does not mean that shareholders are substitute to the management abolishing role of directors in corporations. A fundamental principle is directors are not shareholders manage the company. But failure of corporate governance makes directors liable to respond shareholders. This essence of checks and balance is corporate democracy where shareholders have such powers to question the management.

Company with thousands of shareholders should run like democracies. The corporate democracy is an essential part of corporate governance. It is considered as a participation and contribution of stakeholders in corporate governance. Shareholders are major part of stakeholders in any public company. Shareholders can promote corporate democracy by casting their vote and elect directors to manage the affairs of the company. They can make contribution by expressing their views in the affairs of company. Shareholders are one of the vital parts in the company. They are theoretically empowered to influence and even frame major corporate decisions.

Corporate Democracy – The Missing Essence of Corporate Governance

Many contemporary proponents of corporate democracy argue that conventional forms of corporate governance typically represent only the interests of the shareholders against the background of other critical voices on shareholder orientation. The conventional model of shareholder-oriented corporate governance rests on basic premises like corporate decisions mainly affect shareholders and contracts matter in corporate governance. These assumptions are based on the idea that other stakeholders, such as employees, suppliers, and debtors, can secure their interests through contracts that fix the return on their investment in the firm, whereas shareholders cannot. If stakeholders are no longer satisfied with these cooperative deals, they can simply leave the cooperation and make use of an exit strategy.The critics of corporate democracy argue, however, that shareholders are often let down by the board of directors. This is the most essential link in the chain of corporate democracy is hopelessly weak.

Multi-owner businesses with no single controlling shareholder have always had to select managers (here including the board of directors) to avoid the excessive costs and inconveniences of personal consultation. The selection of managers in corporations is ultimately a function of majority shareholder. It should also demonstrate the intelligence of shareholder democracy. Shareholders are assigned many rights in corporate governance, but they are unable to exercise their rights in most scenarios. In India, public shareholders display a monumental apathy as far as the management of company affairs is concerned.Public voting in corporations, which has so confused the public on the issue, is merely a cheap way of determining who holds the requisite number of shares and only incidentally who shall be the managers. This is the basis for the currently popular claim that so-called "stakeholders" should have a real voice in how the corporation conducts its affairs.

In theory, shareholder meetings lie at the heart of corporate democracy. But when a shareholder does attend a shareholder meeting, he will find that it is not the open forum for discussion that he might have expected. The process of nominating candidates for the position of director is completely undemocratic. The management has far more powers than shareholders in electing their own body. Corporations generally don't ask shareholders who they want to run; instead they tell them who is running. The tendency for corporations to nominate "celebrities" for the position of director hampers public interest. The directors recommend that you vote for the above slate of candidates. Corporations do not have directors which are on wish list of shareholders. The process of nominating candidate for the position of directors is becomes undemocratic. Shareholders have attempted to maintain corporate governance but they failed to gain actual advantage from corporations.

Corporate Democracy under Companies Act, 2013

The protection of shareholders and creditors by the legal system is at core to understand the patterns of corporate governance. Investor protection turns out to be crucial. The most basic prediction of the legal approach is that investor protection encourages the development of financial markets in the Country.

We could categorize the main reasons for the lack of shareholder activism in India. Most investors in India are focused on short term gains. They are only interested in dividends. Active participation in governance is not their fundamental. 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.

Establishment of Committees

The Stakeholders Relationship committeeis good move to have shareholders participation in corporate governance. The Board of Directors of a company which consists of more than one thousand shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year shall constitute this committee. The aggrieved shareholders through non-executive and a member decided by board director can redressed their grievances.

The Audit Committee maintains checks and balance. This committee is the direct functionary under public company as whistle blower. The Audit Committee is one of the main pillars of the corporate governance mechanism in any company. Charged with the principal oversight of financial reporting and disclosure, the Audit Committee aims to enhance the confidence in the integrity of the company's financial reporting, the internal control processes and procedures and the risk management systems. Perhaps, it is the most the most powerful committee under any company. There should be a minimum of two independent members. The Audit Committee has authority to investigate into any matter in relation to the items specified in terms of reference or referred to it by the Board and for this purpose the Committee has power to obtain professional advice from external sources. The Committee for this purpose shall have full access to information contained in the records of the company.

The Company shall also set up a Nomination and Remuneration Committee which shall comprise at least three directors, all of whom shall be non-executive directors and at least 1/2 shall be independent.Chairman of the committee shall be an independent director. The purpose of this committee is to identify persons who are qualified to become directors and to decide their remuneration. This committee shall carry out evaluation of every director's performance and also determines qualifications, positive attributes and independence of a director.

All these committees are encouraging corporate governance. These committees have given wide powers to non-executive and independent directors. The role independent directors are crucial in corporate governance. These Committees are mainly a functionary of non-executive director and a member decided by board director and aiming fair justice for any grievances of shareholders. But the concept of corporate democracy is missing here. The compositions of all these committees have non-executive directors and the persons nominated by board. The participation of shareholder is not encouraged in the Act. The role of non-executive is limited in corporate governance. The member decided by BOD is the representation of management. It cannot be so independent to redress any matter which goes against established administration of company. There is no equal important to shareholders participation in such committee to make governance very transparent in nature.

Under the present constitution shareholders interest is at stake because the composition of each committee controlled by board nominated members.Shareholders can take a move only after a grievance has happened and not before. To protect interest of shareholders their own nomination is very important. Any representative of shareholder can play important role to address their grievances. The shareholders can get easy way to address their disputes as the member of such committee is one of them. Also shareholders can understand the corporate administration with their own participation.

Proxy Mechanism

The most important point of attack on corporate governance is its control over the proxy machinery under the Act. The proxy machinery is a practical necessity. Shareholders are not obliged to attend the meeting in person or to be represented by proxy. Sometimes it takes considerable urging to secure the necessary quorum. Therefore, a form of proxy, commonly referred to as the management proxy, accompanies the notice and each shareholder is requested to sign and return it to the corporation if he does not expect to attend the meeting. Nominations were made at the meeting, and management proxies were voted for the management nominees.
Companies Act, 2013 does not allow proxy members to speak in meeting but they have only voting powers provided that a person appointed as proxy shall act on behalf of such member or number of members not exceeding fifty.Another provision encourages corporate democracy through giving opportunity to shareholders to take part in administration through postal ballot. But this section is not applicable for ordinary business and any business where directors and auditors have a right to be heard. Here central government got the discretion to decide the matter to use postal ballot in affairs of company.

The Companies (Management and Administration) Rules, 2014 also provides participation of shareholders through postal ballots and electronic communication by sending notice to all the shareholders, along with a draft resolution explaining the reasons therefor and requesting them to send their assent or dissent in writing on a postal ballot. The further part of this rule is procedural in nature.

These are various attempt made under the Act to sustain corporate democracy in the company. The applicability of all these provisions is different. But all these provisions are giving limited scope to maintain corporate democracy. These provisions are giving right to participate but not to contribute in the governance of company. It is true that when enough proxies are received to effect a decisive vote on the business of the meeting, the management does not see much point in the personal attendance of a large number of small holders who come to the meeting to make a personal complaint. The critics of management contend that personal attendance is so discouraged by the management itself.

The shareholders of listed companies usually scattered throughout the country. with meetings often held at places selected without much thought being given to shareholders' convenience, and as a result of the general inertia of shareholders, personal attendance at these meetings is normally quite small; and for all practical purposes, the shareholder's sole means for making his voice heard is through a proxy machinery.

Although there is nothing inherently wrong with the proxy method of conducting a shareholders meeting, and although the shareholders themselves foster managerial domination by their apparent lack of interest in the affairs of the company, it seems to be contrary to our concept of fair play to permit such a system to operate without greater checks and balances against possible managerial abuse.

Wider participation by the shareholders in the decision-making process is a pre-condition for democratizing corporate bodies. Due to geographical distance or other practical problems, a substantially large number of shareholders cannot attend the general meetings. One needs to understand the rational of these sections. They meant for the active shareholders those could not participate in corporate governance because of their unavailability. So only giving right of vote but not to express their views is halfhearted attempt in this Act. This is not giving justice to active shareholders of company to have contribution in corporate governance.

The Sacchar Committee recommendation which has given long back to allow proxy to speak and vote is turning to be a valid and practical way out in era of globalization. The committee after exhaustive study recommended that for more effective and meaningful participation by shareholders at meetings, right to speak by proxy is very important.

Large corporations are indeed like small republics. Here shareholders would recognize that they are citizens of corporate democracy. Many promoters of companies are voting themselves new allotments of shares at highly preferential prices. This is a terrible twisting of the meaning of democracy which must be exposed.Right to comment is the basic right of such citizen. It is corporate socialism which makes management and stakeholder responsibility towards each other. Corporate awareness in India is very low. People purchased shares only for investment purpose. They do not want to be a part of administration. In such a scenario the vigilant shareholders who want to take part in administration did should get an opportunity to present their views by proxy members.

Directors Election and Powers

The supreme executive authority controlling the management and affairs of a company vests in the team of directors of the company, collectively known as its Board of Directors. Corporate law allows corporations to create classes according to series of shares which give different rights to each category. These characteristics include voting rights, financial rights, and restrictions on transferability. Since the board of directors serves as the main power center for a corporation and is the mediating hierarchy between management and shareholders, one would assume that the main criteria for a directorship would be competency and the ability to add value to the business.According to the institutional theory, the corporation is a long-standing structure that is governed by a set of rules. These frameworks are enlightening as a general view of the corporation and seem to favor the board of directors in the allocation of corporate power.

Directors’ election is at the core of corporate governance. The primary powers of shareowners aside from buying and selling their shares are to elect and remove directors. Shareowners in most countries have few tools to exercise these critical and most basic rights. Several statutory, regulatory and contractual provisions grant directors effective control and indeed obstruct shareowners to exercise their voting rights effectively. As a consequence, the board of directors can become a largely self-perpetrating body and the shareholders become powerless spectators. This is violation of the most fundamental right of shareholders. It would cripple the very base on which the corporate law system is founded.

It might also be argued that shareholder intervention power could have little beneficial effect because shareholder-initiated proposals would be unlikely to pass. On this view, most shareholders, including institutional investors, can usually be expected to defer to management rather than to vote against it. When shareholders initiate such an arrangement, they will do so knowing that, if ultimately adopted, significant time will pass before it becomes effective. So shareholders also willing do not want to become a part of corporate administration.

Companies Act, 2013 provides due process for election of directors. The Companies Act, 2013 does not contain an exhaustive definition of the term “director”.Chapter XI has briefed qualification, appointment, and removal of directors. The detail procedure is mentioned. Various provisions have given powers to shareholders to elect directors in company board. So the basic structure of this Act is democratic.

Every company shall have a minimum number of three directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company. A company can appoint maximum fifteen directors. A company may appoint more than fifteen directors after passing a special resolution in general meeting and approval of Central Government is not required. Every listed public company shall have at least one-third of the total number of directors as independent directors. An independent director means a director other than a managing director or a whole-time director or a nominee director who does not have any material or pecuniary relationship with the company or directors. So the election of director is seems to be a fair process under different provisions of Act. The directors are elected in general meeting of company. Section 152 of the Act discuss about the election process of nominated directors by board of company.

Appointment of additional director, alternate director and nominee director is also one of the additional powers granted to board and government institution. The articles of a company may confer on its Board of Directors the power to appoint any person, other than a person who fails to get appointed as a director in a general meeting, as an additional director at any time who shall hold office up to the date of the next annual general meeting. Further, the Board may also appoint any person as a director nominated by any institution or by the Central Government or the State Government by virtue of its shareholding in a Government company.

All these types are encouraging corporate governance in the company. Every election process mentioned under the Act is about electing person who is nominated by the board. Act also gives additional powers to board in from section 161 in case the director is not elected in general meeting, board can elect such person as director. The participation of shareholders is encouraged by electing directors in general meetings. But the contribution of shareholders is absolutely missing in the election process of directors. These directors are mere agent of management. They are nominated by the board itself and shareholders elect these directors without questioning.So the nominated director by shareholders is matter of great significance to maintain corporate democracy in the company. Another issue is excessive powers are vested to Board of directors. It makes this statute little biased towards management and not the stakeholders. The powers of Board of director have given wide powers which are unquestionable by shareholders. Section 179(2) gives absolute powers to board to execute regulation before conduct of general meeting of company.The first part of section is about The Board of Directors of a company shall be entitled to exercise all such powers as the company is authorized to exercise subject to this Act, or in the memorandum or articles, or in any regulations made in general meeting.

The regulation cannot be questioned in any general meeting of company where shareholders can play significant role. Together on analysis one can observe that the suppression of shareholders happened in the company because of such absolute powers. Management of any corporation insists shareholders to accept their resolution. Here shareholders will not oppose management just not to cause any financial damage. Also shareholders are not vigilant to take any strong decisions.Such absolute powers will not lead corporate democracy in any corporation. Without shareholder intervention, management creates monopoly over the company. Management's control over company decisions can produce severe distortions over time. Here Shareholder intervention would address the problem. It would ensure that corporate governance arrangements do not considerably depart from the ones that shareholders view as value-maximizing. Such false democratic process under Companies Act, 2013 is not making any social utility.

Conclusion

It is important to address exactly what its proponents mean by "democracy." Democracy is a fluid concept and does not mean the same thing to all people. 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.

Corporate governance is also about participation and contribution of shareholders in the governance of company. But this concept of corporate democracy is sidelined under statute. Corporate governance is not only about achieving financial goals of company; such progress can never be economical development of corporations.

Most of the incorporations get to remind that corporate democracy is not only organizational principle but a Legitimating Principle. First, in terms of inclusiveness, conventional corporate governance gives only managers the authority to make routine decisions, whereas shareholders are merely informed by the management about any decision.Thus democratic inclusiveness is extremely low. The general understanding in company is that the unsatisfied stakeholders can choose exit of company. The management runs company with absolute powers where stakeholders and mainly shareholders do not have much power.

Indian Corporate laws have less focus on corporate democracy. The Companies Act, 2013 moreover discussed corporate governance 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. Informed participant shall actively participate in company's affairs. They should contribute in decision making and help the management in decisions making. To effectively create these checks and balance in different board committees' nomination of shareholders is very important. So Nominated Director of shareholder is very important in composition of Stakeholders Relation Committee and Audit Committee. The Nomination and Remuneration Committee shall ask intent for Nominated director of shareholders for their consideration.

The participation of the shareholders is less in company meetings. It can increase, by way of proxies. But the limitation put in Act is proxy members can speak but vote. To enlarge contribution of shareholders their opinion is very significant which is suppressed in the Act. The shareholders sending proxies are aware about their rights and they want to be part of corporate governance but could not make it possible in person. So their nominees shall get right to express views on behalf of them. Another important initiative in the platform of corporate democracy is that shareholders should be permitted to submit proposals for action at a meeting of the shareholders, whether the management approves or not, either in the management's proxy statement or from the floor at the meeting.

The democratic culture of company is less focused area since inspection of Companies Act, 2013. The overall impression is this Act is protecting the rights of shareholders in exhaustive manner. Partially this is right also as the voting rights are vested to shareholders. In Corporate democracy directors are subject to fiduciary duties to the corporation they serve and all of its shareholders, such that they are potentially exposed to personal liability. Their loyalty for all actions is very significant to maintain corporate culture in any company. It is also important to note it is not possible to discuss every regulatory matter in annual general meeting. The Board of directors is the reflection of majority shareholders. So their decision making is impliedly applicable to shareholders. But vast powers given under section 179 regarding policy making cannot justify in the corporate democracy. Corporate world continues to suffer from the much prevalent disputes between shareholders. Though the board of directors is supposed to ensure wealth maximization for the shareholders and act in the interest of the shareholders, this is not always the case. Boards often act only in self-interest to maximize their personal wealth or for their job security. Examples of such conduct which resulted in corporate governance related failures such as in Enron, WorldCom & Parmalat. This is essentially the agency cost involving delegating responsibilities to the board as an agent of the shareholders.Section 179 is management centric provision where shareholders cannot take any role in governance of company. So the application of this section needs revision where board cannot take any resolution without the approval of shareholders in general meeting.

It definitely is not a phenomenon specific to India but is and has always been a universal problem. As can be seen from the above, majority rule is the hallmark of democracy. This equally applies to corporate democracy. The majority rule however, is not free from misuse or abuse. It is more vulnerable to such misuse because it is reckoned with the number of shares that a shareholder holds and not with the number of individuals involved. We need corporate activism today more than ever; we need them to argue for ill-serving corporate managers. The attitude of Indian shareholders is very passive in governance of company. Very little crowd is active to understand and shape companies policy. Most crowd is moreover desired to get financial befits only. They never think about administrative powers they are entitled too. The management is taking undue advantage of such real scenario. Sometime board also considers vigilance of shareholders is threat to their position. But the role of shareholders is not to question management but to maintain corporate governance. The concept of corporate democracy is the essence of corporate governance. It needs more attention in statute and address by corporate to crate economic development of company. The companies must realize its responsibility towards its shareholders in general and towards society at large.

Reference

[1]. The title is inspired from the article. M. Jensen, Eclipse of the Public Corporation, 67 Harvard Law Review 61, 61-62 (1989), available at https://hbr.org/1989/09/eclipse-of-the-public-corporation, last seen on 22/02/2017

[2]. The Committee on the Financial Aspects of Corporate , The Financial Reporting Council, The United Kingdom, Governance, 1992, https://www.governance.co.uk/resources/item/255-the-cadbury-report , last seen on 24/03/2017

[3]. Committee on Corporate Governance, Security Exchange Board of India, 2003, http://www.sebi.gov.in/reports/reports/mar-2003/the-report-of-shri-n-r-narayana-murthy-committee-on-corporate-governance-for-public-comments-_12986.html , last seen on 28/03/2017

[4]. H. Frank, The Future of Corporate Democracy, Faculty Publications, William & Mary Law School Scholarship Repository45,48(1976),availableathttp://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=2092&context=facpubs, last seen on 29/06/2017

[5]. R. Garrett, Attitudes on Corporate Democracy, 51, Northwestern University Law Review, 310, 312 (1956-1957), available at http://heinonline.org/HOL/LandingPage?handle=hein.journals/illlr51&div=32&id=&page=, last seen on 27/02/2017

[6]. Mark Green, The Content of Corporate Democracy, available at file:///C:/Users/ss/Downloads/4Regulation20.pdf, last seen on 12/02/2017Ibid.

[7]. T.W Joo, Understanding Corporate Law Through History, 63 Washington & Lee Law Review 1579 (2006), available at http://www.lexisnexis.com.elibrary.symlaw.ac.in:2048/hottopics/lnacademic/ , last seen on 12/04/2017

[8]. Available at http://www.mondaq.com/india/x/286620/Shareholders/Supremacy+Of+Shareholders+Their+Democracy+In+Line+With+New+Act+2013 , last seen on 20/05/2017

[9]. Corporate Governance relatively includes of everything for the good cause in company.

[10]. Goergen and Renneboog defined corporate governance system is the combination of mechanisms which ensure that the management runs the firm for the benefit of one or several stakeholders. Such stakeholders may cover shareholders, creditors, suppliers, clients, employees and other parties with whom the firm conducts its business. Available at http://www.corpgov.net/library/corporate-governance-defined/ , last seen on 11/03/107

[11]. The shareholders are backbone of financial base of public company. They shall constitute Board of Directors. Their vigilance is important for corporate governance and quality management.

[12]. S. Hielscher , M. Beckmann & I. Pies, Participation versus Consent: Should Corporations Be Run according to Democratic Principles?, 24 Business Ethics Quarterly, 533(541) 2014, available at https://eds.b.ebscohost.com/eds/detail/detail?sid=e09ad0b1-06d8-4778-a5f1-320ffa8e30ed%40sessionmgr103&vid=19&hid=127&bdata=JnNpdGU9ZWRzLWxpdmU%3d#AN=100357744&db=bth , last seen on 17,04/2017

[13]. W. Irvine, Corporate Democracy and the Rights of Shareholders, 7 Journal of Business Ethics, 99-108 (1988), available at http://www.jstor.org/stable/25071730, last seen on 07/03/2017

[14]. Henry G. Manne, The Corporate Democracy, Oxymoron The Wall Street Journal (2007) http://www.law.harvard.edu/programs/corp_gov/MediaMentions/01-02-07_WSJ.pdf

[15]. Ibid.

[16]. Supra 14.

[17]. S. 178 , Companies Act, 2013

[18]. S. 177 , Companies Act 2013

[19]. Mondaq,Supremacy of shareholders available at https://www.icsi.edu/WebModules/CompaniesAct2013/Board%20Committees.pdf , last seen on 2/05/2017

[20]. Supra18.

[21]. S. 178, Companies Act, 2013

[22]. Non-executive directors act in advisory capacity only. Typically, they attend monthly board meetings to offer the benefit of their advice and serve on committees concerned with sensitive issues such as the pay of the executive directors and other senior managers. Fundamentally the non-executive director role is to provide a creative contribution and improvement to the board.

[23]. S. 2 (10), Companies Act, 2013 defined that “Board of Directors” or “Board”, in relation to a company, means the collective body of the directors of the company.

[24]. Infra 29.

[25]. S. 105, Companies Act, 2013

[26]. S.110, Companies Act, 2013

[27]. Rule 22, The Companies (Management and Administration) Rules, 2014

[28]. The Board of directors shall appoint one scrutinizer, who is not in employment of the company and who, in the opinion of the Board can conduct the postal ballot voting process in a fair and transparent manner. The scrutinizer shall be willing to be appointed and be available for the purpose of ascertaining the requisite majority. If a resolution is assented to by the requisite majority of the shareholders by means of postal ballot including voting by electronic means, it shall be deemed to have been duly passed at a general meeting convened in that behalf.

[29]. R. Garrett, Attitudes on Corporate Democracy, 51 Northwestern University Law Review 310, 314 (1956-1957), available at file:///C:/Users/ss/Downloads/51NwULRev310.pdf , last seen on 20/06/2017

[30]. M. Caplint, Meetings and Corporate Democracy, 37 Virginia Law Review 653, 658 (1951), available at http://heinonline.org.elibrary.symlaw.ac.in:2048/HOL/Page?handle=hein.journals/valr37&div=50&start_page=653&collection=journals&set_as_cursor=0&men_tab=srchresults , last seen on 26/06/2017

[31]. Ibid.

[32]. Ministry of Corporate Affairs, Government of India, Sacchar Committee 1978, available at http://reports.mca.gov.in/Reports/30-Rajindar%20Sacher%20committee%20report%20of%20the%20High-powered%20expert%20committee%20on%20Companies%20&%20MRTP%20Acts,%201978.pdf , last seen on 02/06/2017

[33]. J. Blount, Creating a Stakeholder Democracy under Existing Corporate Law, 18 University of Pennsylvania Journal of Business Law 365 (2016) , available at http://www.lexisnexis.com.elibrary.symlaw.ac.in:2048/hottopics/lnacademic/ , last seen on 20/06/2017
[34]. S. Cools, The Dividing Line Between Shareholder Democracy and Board Autonomy: Inherent Conflicts of Interest as Normative Criterion, 11 European Company & Financial Law Review 258, 264 (2014), Available at https://eds.b.ebscohost.com/eds/detail/detail?sid=e09ad0b1-06d8-4778-a5f1320ffa8e30ed%40sessionmgr103&vid=9&hid=127&bdata=JnNpdGU9ZWRzLWxpdmU%3d#db=lgs&AN=96534850 last visited on 18 March 2017
[35]. A. Robert, The Statutory Requirement of a Board of Directors: A Corporate Anachronism, 27 University of Chicago Law Review, (1960) Available at: available at http://chicagounbound.uchicago.edu/uclrev/vol27/iss4/4, last seen on 22/05/2017
[36]. L. A Bebchuk, The case for increasing shareholder powers, Harvard Law Review, 118 (2005), Available at http://www.lexisnexis.com.elibrary.symlaw.ac.in:2048/hottopics/lnacademic/last visited on 21 March 2017
[37]. S. 2 (34), Companies Act, 2013. "director" means a director appointed to the Board of a company.
[38]. Ss 150 (2), 151 & 152 (2), Companies Act 2013.
[39]. S. 149(1), Companies Act, 2013.
[40]. Section 149 (5) & (6), Companies Act, 2013.
[41]. S. 161, Companies Act, 2013.
[42]. S. 179, Companies Act 2013.
[43]. S. 179 (3), Companies Act, 2013.
[44]. The Board of Directors of a company shall exercise the following powers on behalf
[45]. of the company by means of resolutions passed at meetings of the Board, namely:—
(a) to make calls on shareholders in respect of money unpaid on their shares;
(b) to authorise buy-back of securities under section 68;
(c) to issue securities, including debentures, whether in or outside India;
(d) to borrow monies;
(e) to invest the funds of the company;
(f) to grant loans or give guarantee or provide security in respect of loans;
(g) to approve financial statement and the Board's report;
(h) to diversify the business of the company;
(i) to approve amalgamation, merger or reconstruction;
(j) to take over a company or acquire a controlling or substantial stake in another company
[46]. Supra 38.
[47]. Supra 35.
[48]. Supra 12.
[49]. Rule X-14A-8 27 of the Securities Exchange Act of 1934, USA popularly known as the "proposal rule," covers the right, procedure, and conditions for submitting such proposals in the proxy statement.
[50]. Companies Act app For UK art. 70 Under the default arrangement of U.K. law, the board is subject to "any directions given by special resolution" of the shareholders.
[51]. [1]S. K. Chakraborty , Notes & Comments: Market and the Boardroom , 1 NUJS Law Review 93, 95 (2008) available at http://www.scconline.com.elibrary.symlaw.ac.in:2048/Members/SearchResult2014.aspx#FN0002 , last seen on 27/06/2017
[52]. [1]M. R. Dugar, Minority Shareholders Buying Out Majority Shareholders—An Analysis, 22 NLSI Law Review 105, 105 (2010), available at http://www.scconline.com.elibrary.symlaw.ac.in:2048/Members/SearchResult2014.aspx , last seen on 14/06/2017

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