OPPRESSION, MISMANAGEMENT, AND THE ROLE OF CLASS ACTIONS IN STRENGTHENING CORPORATE GOVERNANCE IN INDIA

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ABSTRACT

Corporate Governance is the backbone of a Company's integrity, long-term sustainability and accountability in India. Under Companies Act, 2013, the powers have been divided into two segments to run and regulate the Company: one is the Board of Directors and other is the Shareholders or owners. The Directors exercise their powers through Board Meetings being responsible for day to day operations of the Company, whereas the Shareholders exercises their powers through General Meetings. It is a widely acclaimed fact that in any corporate entity, the shareholders are the owners. But they are rarely able to exercise any ownership rights in the company except for casting votes in General Meeting, therefore they are only the passive investors and not active participants to the governance process. This research paper critically analyses the legal remedies available in Companies Act, 2013 against oppression of minority shareholders and mismanagement by Directors of a company prejudicial to Company's interest. Additionally, it examines the currently explored yet underdeveloped mechanism of class action suits available but infrequently used, provided in Section 245 of the Act, and demonstrates how stakeholders can use class actions suits to harness and strengthen governance frameworks of accountability. It examines procedural challenges, implementing gaps, and the emerging area of law around corporate behaviour in leadership accountability by situating polite conversation within the broader framework of corporate governance and sustainable development.

Keywords: Oppression, Mismanagement, Class Action Suit, Companies Act, 2013, Minority Shareholders.

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I. Introduction

In the last 20 years, India has seen major changes in the way companies are governed due to advances in the economy allowed through liberalization, the growth of global markets and the increase in power held by institutional investors. As a result of this transition to very complicated, multi-layered organizations India has seen an increase in concern regarding transparency, accountability and the protection of minority shareholders (Majumdar, 2016). Nevertheless, even with improvements made to Corporate Governance in India, the corporate environment is still defined by the dominance of Promoters, Concentrated Ownership and Asymmetric Information; all of these create inherent structural weaknesses and expose minority shareholders to exploitation (Pandya, 2016).

The Companies Act, 2013 was enacted to address the governance issues faced by Indian companies and to monitor companies closely, and it also provide for better protection for shareholders. Sections 241 and 242 of the Companies Act, 2013 introduced statutory remedies for shareholders experiencing oppression or mismanagement; therefore, Minority Shareholders may approach the National Company Law Tribunal (NCLT) if the Conduct of the Majority is compromising their interests or the interests of the Corporation as a whole. While this is a good starting point and an improvement to the Corporate Governance of India, there has been extensive academic discussion about the inadequacies of these traditional remedies when it comes to shareholder harm and systemic failures of corporate governance (Majumdar, 2022; Choudhary, 2018).

This paper critically evaluates Section 245's ability to strengthen India's corporate governance via class action lawsuits. Specifically, can class actions bridge the gap between legal standards and enforcement realities where conventional remedies are inadequate. This paper will also evaluate the role of class actions in providing a mechanism to protect the rights of minority shareholders and the future directions for class action lawsuits as a protective mechanism within India's corporate governance frameworks, using doctrinal research, case law, and comparative analyses to the US and UK.

II. Identification of Statement of Research Problem

Despite the many provisions contained within the Companies Act 2013 that are designed to remedy oppression, mismanagement and protect minority shareholders; large gaps continue to exist between the expectations of the legislation and what is observable in practice. The remedy at common law for oppressive and/or prejudicial conduct under the powers of Section 241-242 of the Companies Act has been severely limited by the high threshold levels necessary for securing judicial relief, discretionary power of the judiciary to determine eligibility for relief, procedural delays that often span several years, and an over-representation of promoters within the ownership structure of companies.

While the introduction of Class Actions through Section 245 was intended to provide a mechanism whereby the enforcement of corporate accountability can occur collectively, the provision continues to be largely underutilized in India due to a number of reasons including ambiguity in the procedures, the imposition of excessive numerical thresholds, little/no access to litigation funding, lack of precedential case law, and low levels of awareness amongst retail investors as to how to invoke the process. As a result, minority shareholders continue to face systemic impediments to accessing justice and affecting corporate governance outcomes.

The principal research question raised in this paper is whether the existing remedies available under Section 241-242 have provided sufficient protection for minority shareholders in India and whether Section 245 has been an effective additional mechanism to assist in overcoming the existing enforcement gaps and enhance the accountability of corporate governance. Additionally, the research considers the reasons why the class action mechanism provided for by the Companies Act has not had a significant operational impact despite its ability to achieve far-reaching change.

III. Research Methodology

This research uses doctrinal analysis for research purposes, relying primarily on qualitative analysis of existing statutory provisions, judicial decisions and academic literature. The focus of this research has been to analyse thoroughly the Companies Act, 2013 in order to evaluate the scope, limitations and practical enforceability of remedies available for minority shareholders with respect to: 1) sections 241-244, and 2) section 245; the case law associated with the National Company Law Tribunal (NCLT) and other similar forums captured for the understanding of emerging trends, procedural challenges, and the approach taken by judiciary with regard to issues of oppression, mismanagement and class action suits. Also, a comparative legal analysis of class action regimes in the US and UK in order to identify best practices, structural differences and procedural safeguards that may assist in reforming India's class action regime. In addition to relying on primary source material (i.e. judicial and legislative), this research utilises secondary source material including academic literature, reports from the law commission, policy papers, and studies of corporate governance to aid in identifying systemic problems, enforcement shortfalls and theoretical underpinnings of shareholder protection. This research has not employed empirical data collection; however, it has integrated and synthesised doctrinal and comparative insights to develop governance-related conclusions and recommendations on how to reform the existing enforcement regime.

IV. Analysis & Findings of the Research

A. *Literature Review*

The literature of corporate governance has continually stressed the need for accountability and transparency as well as an equitable system of management as part of an efficient structure of the corporation. The earliest literature concerned with remedies available to shareholders under Common Law jurisdictions heavily relies upon Foss v. Harbottle (1843), in which shareholders of a corporation could not sue to enforce their rights against management unless the action fell within specified statutory exceptions (Gower 1969; Majumdar 2016). The reluctance of Common Law courts to permit minority shareholders to sue to enforce their rights against managers resulted in the adoption of Statutory remedies to protect minority interests when the internal democracy of a corporation fails to do so.

A growing number of studies have pointed to the structural concentration of ownership in India as creating agency conflicts, which limit monitoring and reduce the ability of minority shareholders to participate in influencing governance decisions (Pandya 2016; Varottil 2018). The information provided further strengthens the evidence supporting the conclusion that accessibility and enforceability of shareholder remedies address the asymmetrical distribution of power between majority and minority Shareholders in India.

When compared to how class action suits are successful in the USA and UK, the class action model has also enhanced corporate accountability, reduced the disparity of information between the corporation and its investors, and created more confidence in investors (Coffee, 2007). These two jurisdictions also show that class action suits may act as a deterrent against wrongful conduct by management, if there are adequate contingency fee arrangements and a significant level of institutional investor participation.

Nevertheless, the consensus in Indian scholarship appears to be that Section 245 continues to be under-utilised. Factors identified by research as contributing to the under-utilised nature of

Section 245 include, but are not limited to the following: the high eligibility requirement; the lack of clarity around procedural rules; low levels of investor knowledge; the absence of strong associations for minority shareholders; and the reluctance of minority shareholders to litigate (Majumdar, 2016; Arjya, 2017). Scholars have also indicated that without complementary mechanisms, i.e., third-party finances, better access to information and reduced litigation costs, the promise of section 245 might remain for the most part unfulfilled (see Pandya, 2016).

By combining the array of literature found regarding sections 241–242 being the core remedy for oppression and mismanagement, Section 245 is viewed as a promising, yet still relatively, under-developed area of corporate governance in India.

B. *Legal Framework Governing Oppression And Mismanagement (Sections 241–244)*

The statutory framework that addresses oppression and mismanagement in India originated from the Companies Act of 1956, through Sections 397 and 398, which provided equitable remedies for minority shareholders when majority shareholders or management acted in a way that harmed minority shareholders. There has been a significant expansion and retention of similar provisions in the Companies Act of 2013, through Sections 241 and 242, with an emphasis on modernising company governance and protecting minority shareholders. The remedy is still fundamentally an equitable remedy for shareholders to bring matters before the NCLT when corporate affairs are being conducted in an oppressive manner against any member or detrimental to the interests of a corporation.

The words “oppression” and “mismanagement” are not defined in the Act. The meaning of these words shall be interpreted in broad general sense and not in any strict literal sense.

- Oppression: Oppression is any action by the majority shareholders or the management that disproportionately prejudices or damages the rights of minority shareholders. Such acts are classified to be harsh, wrongful and burdensome on the Minority Shareholders. It encompasses acts like unfair dilution of equity, withholding of voting rights, and exclusion from decision-making.

- Mismanagement: Mismanagement takes place when the affairs of a company are handled in a way that is contrary to its overall health, financial stability, or compliance with the law. Instances include financial forgery, fund embezzlement, absence of transparency, and unethical operations.

1. *Powers of Tribunal: Section 242*

Section 242 of the NCLT provides a wide variety of discretionary powers to the NCLT, which may be used by the NCLT to issue whatever order(s) it believes to be 'just and equitable' for the purpose of finally resolving complaints made about company conduct. These include regulating a company's future conduct of its business affairs; regulating a company's shareholding arrangements; restructuring or terminating management contracts; removing directors; recovering profit obtained contrary to law; and appointing new directors to ensure compliance with any orders issued by the Tribunal.

The wide-ranging powers provided for by section 242 acknowledge that management failure and issues with power imbalance in governance need tailored, future-oriented, prospective remedies, rather than merely correctional or retrospective sanctions limited to those defined as defects based upon an act or omission or an event where the governance framework was not functioning correctly. Therefore, section 242 provides the Tribunal with authority to address issues of imbalance in power structures and restore confidence regarding how companies will govern themselves.

However, the expansive power given to the NCLT by this section has led to variability in the relief obtained by minority shareholders, and due to the lack of predictability associated with how courts interpret the powers given to the NCLT. The nature of these variables creates uncertainty in the minds of minority shareholders regarding the likelihood of the NCLT providing an effective remedy.

2. *Section 244: Right to apply under section 241*

Section 244 defines the minimum qualification requirements for Members of Companies to be eligible for relief under Section 241 of the Companies Act, 2013. For Companies without share capital, application can be made by not less than one fifth of the total Members of the Company to qualify. In addition, for Companies with share capital, there are two ways in which an applicant may qualify: Either by 100 Members or 10% of total Members or having 10% of the issued share capital of the Company.

While the Tribunal may exercise discretion to relax these requirements in appropriate circumstances, it is rare for them to do so. While these qualification requirements serve to weed out frivolous claims, they also present as a significant barrier to those Companies which have a broadly distributed shareholding network (for example: Listed Companies). As such, many Minority Shareholders, who are often the victims of Stock Market Abuse will continue to request the Tribunal for Relief but will ultimately be unable to do so.

C. *Class Action Suits*

1. *Evolution and Legislative Intent*

A statutory method that gives shareholders and depositors legal options to collectively seek redress from a company through Section 245 of the Companies Act 2013 has been established in India for the first time, significantly altering the individualised method of shareholder litigation that exists in the country today. Section 245 was passed following the failings of many large corporations that were unable to remedy the lack of adequate redress for their investors through traditional lawsuits. The Satyam Computer Services case exemplifies the inability of investors to pursue a successful civil action against management, auditors, and other professional advisors due to their inability to locate helpful information at home.

There are three primary goals of the legislative intent of Section 245: 1) Aggregate shareholders' claims and eliminate unnecessary costs and the complexity of litigation; 2) Eliminate multiple court action on the same issue; 3) Promote a stronger corporate responsibility by permitting a private party to bring suit against the corporation, directors, auditors and other professionals involved. By providing for a larger pool of shareholders and investors as potential litigants, the purpose of the new law is to bolster ethical leadership and foster improved levels of corporate accountability through increased transparency and responsibility within the corporate governance framework.

2. *Eligibility and Access Barriers*

The sections 245 (1) and 245 (2) both have numerical and percentage requirements which must be satisfied before an application can be filed for a class action suit. For those companies that have share capital, the applicant must have at least one hundred or ten percent of the total number of Members of the Company whichever is lower and the applicant must hold at least ten percent of the total issued share capital of the Company. For depositors and for Companies without any capital shares the same types of requirements must be satisfied.

The intention of establishing the numerical and percentage requirements was designed to discourage the filing of frivolous lawsuits; however, the numerical and percentage requirements as currently established are prohibitive barriers for individuals trying to file suit in the Courts. For Listed Companies that have thousands of shareholders, getting the number of required shareholders is nearly impossible if neither a Shareholder Association nor institutional support exists. Therefore, many of the minority investors who were intended to be protected under the Act will be unable to access the courts under the Act and therefore the Act fails to achieve its remedy purpose.

3. *Scope of Relief and Enforcement Potential*

Section 245 empowers the National Company Law Tribunal (NCLT) to grant a wide range of preventive and compensatory reliefs. These include injunctions restraining ultra vires or unlawful acts, declarations rendering resolutions void where passed by suppression or misrepresentation, and claims for damages or compensation against the company, its directors, auditors, and advisors.

From a governance perspective, the breadth of available relief reflects a shift towards collective accountability and deterrence. By permitting claims against auditors and professional advisors, the provision recognises the systemic role played by gatekeepers in corporate failures. However, the absence of detailed procedural guidance on issues such as class representation, notice requirements, discovery, and settlement approval significantly limits the enforceability of these reliefs.

D. *Case Law Developments*

Section 245 is a relatively new section of the Companies Act 2013 that has been interpreted by very few Courts so far; however, there have been some decisions that have provided insights into how the Courts interprets the provision.

- *Bayer Cropscience Ltd. (2016)* NCLT held that for a class action to be sustainable, the applicants must establish commonality of interest and grievance; moreover, it was made clear that class actions cannot be used as a forum to resolve individual disputes under the guise of class action. This is similar to the "commonality" requirement under Rule 23 of the Federal Rules of Civil Procedure in the USA; however, there is no analogous statutory provision in India.

- *DLF Home Developers Ltd. (2019),* NCLT held that even though the petition was dismissed due to procedural problems, it highlighted several significant procedural issues such as inadequate and unclear rules regarding notices, representation and consolidation of claims. The NCLT's decision made clear to academics that there are several gaps in the statute that exist, and that the NCLT appears to be reluctant to allow class action applications (Majumdar, 2016).

- *Coffee Day Enterprises Ltd.* is another example where many investors reported significant financial irregularities following the death of Coffee Day's founder, but did not commence formal proceedings under Section 245. Rather, this case highlighted how investors are becoming more aware of being able to pursue claims collectively in instances where governance failures result in detriment to many shareholders.

E. *COMPARATIVE ANALYSIS*

Statutory framework(s), incentives for litigation, and judicial capacity influences the effectiveness of shareholder remedies. By comparing the United States and the United Kingdom, thus providing insights into India's new shareholder class action remedy under section 245.

1. *United States of America*

In the US, the established legal system for shareholders to seek redress from companies through litigation is also the most developed. Investors in the US can conduct collective class action lawsuits (as they relate to common questions of law or fact) by using Rule 23 of the Federal Rules of Civil Procedure (FRCP). In addition, prior contingency fee agreements allowed many law firms to shoulder a major portion of the financial risk and expense of litigation on behalf of smaller shareholders, enabling smaller shareholder(s) to litigate without facing excessive barriers to entry. In addition, many states, including Delaware, have enacted various state and federal statutes that govern the conduct of derivative lawsuits against officers and directors for breaches of their respective fiduciary duties. The enormous financial awards obtained from class actions, often numbering into the hundreds of millions and billions of dollars create significant motivation for parties to comply with these procedures. The US approach to shareholder remedies is primarily determined by the requirements and interests of shareholders, which has a strong connection to procedural rules.

2. *United Kingdom*

The UK system emphasises the power of judges to control the procedure and to allow businesses to have a high degree of independence from the courts. Group Litigations Orders (GLOs) offer a structured way to bring together claims that involve the same legal or factual issues and are available only if the group members 'opt-in' to the process. The long-standing position of derivative claims as previously restricted by Foss v Harbottle has been liberalised through the Companies Act 2006 by allowing minority shareholders to bring derivative actions against their directors for any breach of fiduciary duty, fraud on the minority shareholders or for improper or negligent actions taken as a corporate body.

3. *India*

Section 245 of the Indian Act is based on the global principles of collective redress but lacks the benefit of an established procedural framework. There are three main conclusions which can be drawn from a comparative analysis of the two systems:

- Lower thresholds - The requirement for 100 or 10% of a company's shareholders to obtain permission from a court to bring a collective claim creates an impracticality for those companies that have a dispersed shareholding. To overcome this, the Indian Government must adopt more flexible thresholds similar to those found in the US Rule 23 and UK GLOs.
- Third-party funding - The establishment of a regulatory framework for litigation funding is vital for removing barriers to participation in litigation, such as costs. A framework similar to that found in the UK, would allow more people to access justice.
- Clarity of procedure - In order to have a functioning class action regime, India must clearly define its rules for class certification, class notice, selection of representatives, consolidation of claims and class action settlements.

F. *Role Of Class Actions in Strengthening Corporate Governance*

Litigation through class actions is becoming a popular way to increase the accountability of corporations, promote their transparency, and strengthen the protections for shareholders. In India, the potential for Sections 245 to help develop governance standards where there is a combination of a dispersed minority of shareholders and a concentrated group of promoters could be transformational. Although there is little history of class actions in India, comparative research and theories of corporate governance suggest that collective shareholder remedies can greatly improve market accountability.

1. *Accountability and Deterrence*

In terms of accountability and deterrence, class actions are not only a way for recovery on damages, but they also serve as a prevention mechanism against dishonesty and misconduct. Empirical studies indicate that the potential for class-action lawsuits improves disclosures and reduces opportunities for corporate fraud (Coffee, 2007). If applied appropriately, class actions could enable a similar level of deterrent effect to encourage higher standards of governance within Indian companies.

2. *Enhancing Minority Shareholder Voice*

Minority shareholders in promoter-controlled companies typically have little to no real power over their investments through general voting rights. Class actions help address this issue by allowing minority shareholders to combine their claims, enforce their rights together in court, and reduce their risk of retaliation against them as individual shareholders. Collective litigation allows institutional and retail investors to coordinate their efforts, thereby increasing the extent to which they can participate in corporate decisions.

3. *Improving Information Disclosure and Transparency*

Class actions require an organization to provide detailed information about its corporate practises, financial transactions, and decisions made by its board. By even commencing these types of lawsuits against a company, the company must provide information to the public that would otherwise be hidden from minority shareholders and not able to be obtained. The increased amount of information to shareholders about their company will:

- Increase internal transparency through the processes of document discovery and inquiry;
- Increase external transparency to the market by exposing corporate misconduct; and,
- Increase regulatory oversight of companies, as regulators will often rely on information obtained through litigation.

4. *Providing Additional Support to Regulatory Bodies*

Regulatory authorities such as SEBI and the MCA have limited resources, class actions provide additional forms of enforcement on behalf of investors and therefore reduces the regulatory burden of these authorities. Private shareholder litigation serve as an additional source of monitoring of companies on behalf of investors. The combination of public regulation and private litigation, as demonstrated in the U.S. and U.K., has proven to be an effective way of enforcing corporate governance.

5. *The Advancement of Shareholder Democracy*

Ultimately, class actions support the creation of a democratized corporate governance framework, as access to resorting to remediation will not be determined by size of ownership. In this regard, Section 245 of the act provides a normative basis for shareholder democracy by legitimizing the exercise of collective enforcement against abuses of power and promoting public confidence in governance systems.

G. *Findings and Critical Discussion*

The review of statutory provisions, academic scholarship, and emerging case law suggests that while there have been substantive developments in the conceptualisation of the minority protections framework, India still faces numerous structural, procedural and cultural obstacles that limit the effectiveness and ultimately the success of the framework. Sections 241-242 and Section 245 define the legislative intent to provide for equal and fair practices in the governance of corporations; however there exists a significant gap between what is legislatively defined and the actual implementation of that definition.

1. ***Conceptual Strengths, Limited Functional Impact***

While Sections 241-242 and Section 245 provide a solid legal basis to protect minority interests, they do not currently function effectively. In both empirical and doctrinal research performed by Majumdar (2016) and Pandya (2016), statutory remedies cannot succeed without set processes that provide clarity, certainty, predictability, and that compel active participation by shareholders. Thus, while the framework for the protection of minority interests in India is sound in theory, this framework has not been fully realized in practice.

2. ***Discouragement of collective action due to high thresholds and procedural rigidity***

Amongst the most important findings is how disproportionately the high eligibility thresholds under Section 244 and 245 are for companies with widely dispersed retail shareholders. The requirement for 100 members or 10% of total members places companies with retail investors in a position of significant difficulty in practice. This is further exacerbated by:

- low levels of awareness amongst investors regarding their rights;
- the geographic dispersion of shareholders;
- the lack of a robust association or alliances between companies and retail shareholders; and
- the problems inherent in retail shareholders coming together to take collective action.

3. ***Promoter-driven dominating behaviour restricts enforcement***

The promoter-driven ownership model is a primary systemic challenge to enforcement in India. Promoters typically maintain an enormous voting advantage, have the ability to disregard minority stakeholders and to influence board decisions, and their concentration of power skews not only governance outcomes but also promotes the perception that litigation is not an option for minority shareholders. As such, minority shareholders are less likely to confront a promoter for fear of retaliation and/or the futility of the action, further eroding the ability to enforce shareholder rights.

4. *No Legal Funding or Cost Assistance for the Prosecution of a Class Action*

India has no formal legal provisions, as do the US and UK, regarding sponsorship (funding) of litigation and sharing of costs by shareholders when pursuing class-action lawsuits against corporations. Without financial sponsorship, retail investors cannot afford to pursue collective actions in India due to the costs incurred to file, engage counsel, and obtain expert opinions. Hence, the lack of financial support undermines the original intent of class actions: to collectively reduce the economic burdens on the individual.

5. *The Retail Investor is not aware about their Rights:*

In India, most retail investors are passive in their engagement in equity markets. Cultural, educational and informational barriers have resulted in low levels of engagement by retail investors as reflected in:

- Limited understanding of legal rights,
- Minimal participation in Annual General Meetings, and
- Limited familiarity with governance norms.

Proxy Advisory Firms and Stewardship Codes together with ESG Frameworks have increased the activism of Institutional Investors to some extent, but they do not have as much impact on the level of engagement of Retail Investors.

6. *Delays from Regulatory and Judicial Processes Are a Hindrance*

Continual delays within both the regulatory and adjudicatory systems, particularly at the NCLT, significantly weaken the effectiveness of the remedies available to shareholders. Delayed adjudication timelines lower the deterrent effect of pursuing legal action, thus allowing the alleged failures of governance to continue unabated. Timely resolution of the remedy is critical to stopping any ongoing harm; therefore, the procedural delays pose a significant structural barrier to shareholder remedies.

The lack of judicial precedents causes a “wait and watch” attitude amongst investors and has discouraged the submission of new applications under Section 245, leading to the limited utilisation of Section 245.

V. Conclusion

The corporate governance framework in India impacted by the Companies Act, 2013 is a deliberate effort to create an environment that includes accountability, transparency and minority shareholder protection. The introduction of statutory remedies for oppression or mismanagement found in Sections 241–242 as well as the introduction of Class Action Suits as per Section 245 shows a legislative commitment to create a culture which is based on fairness and ethical leadership in the decision-making process of Corporates. However, the findings of this Research indicate that the effectiveness of statutory remedies and class action referral mechanisms is still constrained because of their structural, procedural or institutional limitations.

Sections 241–242, provide relief in the form of equitable judicial relief for identifiable instances of abuse of power by Management but this relief is constrained by the very high thresholds required to be eligible for such relief, the discretionary nature of the Court's role in granting relief, and the lengthy time taken to adjudicate such claims under Section 245. Section 245 has been conceptually stated as being a transformative development but has not yet evolved into a practical enforceable mechanism, with the current imposed high thresholds, uncertainty attached to the requirements to pursue a claim under this provision, the relative lack of judicial precedent, the absence of Litigation Funding, and the very low levels of awareness of retail investors about the availability of collective actions through Section 245, the potential benefits of this provision have remained much more aspirational than operational to date.

Insights gained through the comparative analysis of the class action regimes in both the United States and Great Britain show that successful class action mechanisms require more than just recognition by legislation. Both jurisdictions show that class actions can serve as powerful mechanisms for increasing accountability to the markets through the deterrence of misconduct, enhanced rules of disclosure, increased fiduciary responsibilities placed on the board of directors, and increased confidence among investors.

Furthermore, from a governance perspective, effective class action mechanisms create opportunities for effective legal leadership by holding accountable all parties involved in any transaction including promoters, directors, auditors, and advisors. Effective class action mechanisms also enable a complementary function to existing regulatory authorities by providing additional sources of corporate governance through enhanced transparency and through allowing private enforcement of corporate governance practices when both public regulatory agencies do not have the resources to respond to corporate governance violations.

In order to realise this potential for improved governance practices through increased accountability with the class action mechanism, a variety of specific reforms are needed to improve access to, and thereby the effectiveness of, class actions. Some specific reforms include rationalising and clarifying eligibility thresholds; clarifying and streamlining procedural rules; enabling the use of litigation funding; strengthening institutional capacity at the National Company Law Tribunal; and enhancing investor education.

Therefore, strengthening the existing class action structure is not just about creating a procedural structure; rather, it is about creating an infrastructure that will also contribute to strengthening shareholder democracy, ethical leadership, and sustainable corporate governance practices over the long term. An effective and inclusive Class-Action framework will address this critical need between legislative intent and governance practice and ultimately create a more accountable, transparent, and durable corporate ecosystem.

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