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"I think shareholders are the greatest evil of this modern world"

- **Chris Martin**

Shareholders, as the name suggests are those who have a share in the stock of the company. One of the most important aspects of the shareholding is the fact that the shareholders make a financial investment in the corporation and they have the authority which no one possesses. They could elect the directors of the company. But with great powers great come great responsibilities. They are the financial supporters, hence, they exercise the ultimate control over the company in which they have their shares. One of the main duties of the shareholders is to pass the resolutions at general meetings held in the company from time to time. They exercise their voting powers in the shareholder capacity.

Legal perspective

Even though one would say that there is no such requirement to have an agreement with the shareholders that is the shareholding agreement, however, the companies having more than one shareholder would be required to enter into the same. This agreement is very important as it is in conjunction with the articles of association of the company. Also, this agreement gives way more powers to the shareholders than the articles alone give. However, misuse of the powers has become one of the most common problems of the shareholders who own the larger part of the share of the company. In order to protect the interests of those shareholders who have a minor stake in the stock of the company from the actions of those shareholders which are oppressive and control the articles of the company. The Companies Act of the United Kingdom had been recently amended for the purpose of rendering equitable and just rights to the minority shareholder. These remedies are also rooted in the common law.[1]

Shareholder's disputes could be said to be one of the major reasons due to which the destruction of corporate enterprise was initiated. Protection of the shareholders that possess a minor share is basic for the existence of a corporate entity. One of the remedies is the petition which is filed on the ground of the unfair prejudice. This is one of the most important remedies which states helps in the equipment of the minority shareholder to fight for their rights against the majority

[1] In Brief, 2018. The roles and duties of shareholders. [Online] Available at: https://www.inbrief.co.uk/company-law/shareholder-roles-duties/ [Accessed 2018].

shareholders. Section 994 of the Companies Act, 2006[2] of the United Kingdom grants this right to the shareholders. If the conduct of the majority is unfairly prejudicial to the interests of those who are minor, then the minority would have a remedy against it. This action would be taken against those who have the authority to act on their behalf and not only a single person who is acting in his own personal capacity. [3]

However, elements of good faith must be shown the minority while filing a petition against the majority. In one of the case laws, called as Rea company, it was stated by the Lords that the use of this remedy provided to the minority shareholders must not be used invariably and as a means of oppression.

There was yet another case law, ***In Re Leeds united Holdings plc,***[4] wherein the court had rejected the petition as it was based on the assertion that there was a conflict between manager and the shareholders where the shareholders did not dispose of their shares in accordance with the manager's wishes. The petition was not allowed on the ground that this conflict did not relate to the conduct of the affairs of the company.

As against the principle of unfair prejudice, there is the derivative claim principle which finds it roots in the Part 11 of the Companies Act, 2006. Earlier only the company was allowed to bring an action suo moto. This principle of common law originated from the case ***Foss vs. Harbottle***[5]. This case gave birth to two principles. One principle was that- if any matter affects the company in a negative manner, then only the company can commence any action against it and the other principle said that only the simple majority of the members could bring a claim against the company.[6]

The derivative principles could be said to be in contrast with the unfair prejudice remedy.[7] If the shareholder files a petition against the majority shareholders instead of going for a derivative

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[2] Companies Act 1980, then became s 459 – 461 Companies Act 1985, now repealed pursuant to the Companies Act 2006

[3] P., Richard, 2018. Protection of Minority Shareholders. [Online] Available at: http://www.lawsonlewis.co.uk/protection-of-minority-shareholders.htm [Accessed 2018].

[4] [1996] 2 BCLC 545

[5] 1843) 67 ER 189

[6] T., Julia, 2018. Shareholder Remedies: Demise of the Derivative Claim?. UCL Journal ofLaw and Jurisprudence, Volume 1.

[7] Fawcett, 2018. Shareholder Disputes. [Online]
Available at: https://www.luptonfawcett.com/services-for-business/corporate/limited-liability-partnerships-llps/shareholder-disputes/

action, then that shareholder would be told by the judge to bring a derivative action. In order to institute the derivative action, a lot of complexities are faced. It is due to the fact that the court is burdened with the duty of screening a lot of cases that may be frivolous in nature. This may then hinder its daily operations. In the case of ***Barett vs. Duckett***,[8] the Lords held that only derivative action was not the sole and most effective method of resolving the disputes of shareholders, there could be a more favorable method for the same.

As per the Companies Act,2006, the statutory derivative claims have been included under the section 260 to 269[9]. The derivative claim has been included under these sections. A prima facie case has to be made out by the litigant through the submission of the paper documents. The court would further move onto the second stage when it is satisfied by the evidence submitted on the first stage. As per section 263 of the Act,[10] the court has the power to deny the permission to litigate, if the person who has come to the court is no one but a hypothetical person who has come to the court is acting as fulfilling a duty to promote the company's success. There could be another bar to the derivative claim wherein the matter that has been complained of has been ratified or has been authorized since it has taken place at the first instance.[11]

Another shareholder remedy was the statutory remedy which was in form of the winding up order that was given on a just and equitable ground in accordance with the provisions enshrined in the Companies Act, 2006. The aim of the petition under this remedy was to oblige the company to seek a validation order by putting a pressure on the company if the petition pertaining to the unfair prejudice has also been brought at the same time. The court had the power under the Insolvency Act to decide whether to allow a winding up petition to be filed in the court. The court may dismiss this petition if there is an alternative remedy apart from this just and equitable wind up.

According to section 122(1)(g) of the Insolvency Act, 1996,[12] the UK law has provided the various circumstances in which the company may be wound up by the court or the tribunal. The company can be wound by a special resolution or the company is unable to pay its debts. This section

[Accessed 2018].
[8] [1995] 1 BCLC 243
[9] Companies Act,2006, S. 260 to 269
[10] Companies Act, 2006, S. 263.
[11] LLP, 2007. Derivative actions under the Companies Act 2006. [Online] Available at: https://www.lexology.com/library/detail.aspx?g=f83177a0-d20e-4be5-9560-070c7b71f808 [Accessed 2018].
[12] Insolvency Act, 1996, section 122(1)(g)

provides the company with the leverage in order to get wound up. This is how the shareholders have the power to have an action against the company.

After learning the provisions of the Companies Act, 2006 it could be stated that this Act has filled the void that wad existent in the common law and which common law could not address in an adequate manner. The different provisions helped in the protection of the minority shareholders.

Theoretical perspective

Shareholder's primacy is one of the most important aspects of shareholding business. One of the major theories related to this is the agency theory. The agency theory accords the primacy to the shareholders. Henry Manne, could be said to be the profounder of the agency theory. He is one of the founding fathers of economics. Manne' ideas were protective of the shareholders and he thought that whatever shareholder receive is nothing but just a fair return and that is what they are deserve. The other stakeholders' interest also need to be considered.[13]

He said that the main idea should be to stress the disciplining role of the capital markets. If the shareholders are not satisfied and they sell their shares, this would lead to a reduction of the ownership in the company and the share prices would reduce. Hence, the consequence of this would be that it would lead to the removal of the management. This threat of removal had led to a belief that whatever interests the managers possess should be in consonance with those of the shareholders. Various other economists believed that the shareholders play a major role in ensuring the fact that the maximization of profits is to be undertaken. The shareholders thus countervail the powers that the management people possess and thus, in this way they benefit the society.

Agency theory was born on this premise. The notion of agency had been introduced in order to curb the confusion with regard to the relation between the shareholders and the company. The shareholders do not possess the ownership of the firm but they possess the ownership rights. The company is just a device to facilitate the contracting parties to bind each other with some duties and powers. The main idea behind the agency relationship was to establish the agency between the shareholders who are principals and managers, who are the agents. Therefore, the principal, that is

[13] E. David, 2005. Agency Theory and Trust Ownership of Shares. [Online] Available at: https://www.victoria.ac.nz/sacl/centres-and-institutes/cagtr/working-papers/WP32.pdf [Accessed 2018].

the shareholders possess all the powers to control the agents, that is the managers. This is how, the powers were rendered to the shareholders by one of the renowned economists.

The other theory which is related to the shareholders' disputes is the incomplete contract theory. There are various of this model pertaining to the incomplete contract. There are various reasons due to which there might arise a problem in the contractibility and this is due to the fact that the transactional technologies for the same have not been evolved. There are various problems related to the non-contractible governance. The corporate capital structures help in the understanding of the same. These contracts are empty if we look at the core or the basic level. Various variables pertaining to the future might be avoided as it is difficult to produce an ex-ante description to the same. The ex-post observation or might as well be called verification is not an easy task. For example, the shareholders contribute to the company's capital even if there is no presence of the terms that govern such kind of fundamental matters such as the policy of investment, or the rate at which the dividend might be paid out, remuneration of the management. Even if the specific directives stating regarding the aforementioned are absent, still the outcomes that render respect to such kind of matters must be determined beforehand. This comes out of necessity. Renegotiation or specification of that part which has been empowered could be of help.[14]

Some of the contracts that involve the capital structure of the firm have to deal with a lot of contingencies that could occur and have not been contracted for. The solution for this is, that some open-end processes be included that help in the facilitation of the allocation of the power or control to one of the parties involved. These kind of mechanisms of transfer of control, help in the stages wherein bad performance could be seen. These help in the determination of the control exercised by the shareholders. It helps in the determination of action that could be taken by the shareholders to vote or not to vote out the managers of the firm. Also, different questions might be answered, such as whether the bondholders would take the charge of the assets in the situations of distress. This theory basically helps in the determination of the fact that at the time of distress which party has the control of all the aspects in relation to assets of the firm. Under this theory, one could say that the person who has the control would have the ownership. These two cannot be separated under this definition. Hence, according to this theory, shareholders are given the rights or in other

[14] S. M. Klaus, 2010. Incomplete Contracts. [Online] Available at: http://www.et.econ.uni-muenchen.de/studium_lehre/lehrveranst/lehre_files/contract_theory/lecture/contract6.pdf [Accessed 2018].

words, the control of the assets of the company wherein majority shareholders take decision and overpower the management with the same.

Another theoretical aspect of the shareholders' disputes is the collective action problem. A collective action as the name suggests is an action that is taken collectively on the behalf of a larger group of larger number of people who have similar interests. It is taken up by a person who could be called a representative entity. The Netherlands for example, gives away two options in order to file a representative suit-[15]

1. The first option pertains to the representative collective action.
2. A class collective mechanism which could be based on a system known as opt- out system. This system resembles with the one in the U.S.

The first method that is the representative collective action involves a procedure which is purely legal. Herein an entity which represents the class, which has been named as the Dutch Vereniging or Stichting initiates the idea or the process in the legal parlance in order to protect the interests of the people. However, the scope in this kind of action is not very wide but gets restricted to a certain level. If someone files a collective action for the purpose of monetary compensation, then it is not admissible in the court of law. However, in lieu of this, there has been provided an option by the law which states that declaratory judgment could be taken against the same. This would render the option to the litigant to seek the injunctive relief as against the defendant in case he establishes the guilt.

The other method, as posited above, is that of the class action or class settlement.[16] This method allows the parties to make a joint request in the court of law to get the settlement, for which they have come, to be bound. If the compensation request is assessed by the competent court and it is of the view that the request made is reasonable enough, then it would allow the same. There are various uses of the collective actions that are taken up by the litigants. These involve, getting injunctions, the ability to step out of the judgment, in case, one does not want to be bound by the

[15] K. Albert, 2017. Class/collective actions in The Netherlands: overview. [Online] Available at: https://uk.practicallaw.thomsonreuters.com/6-618-0285?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1 [Accessed 2018].
[16] W. Clive, 2004. Facilitating Shareholder Class Actions: Proposals for reform. [Online] Available at: https://www.barcouncil.org.uk/media/61943/clive_wolman_04.pdf [Accessed 2018].

same. In the Netherlands, there is a statute which is the Collective Settlement of Mass Damage, that came into force in the year 2005.

International perspectives to the shareholder's disputes

If a comparison is made between the laws of the two countries with regard to the disputes between the shareholders, US and UK share a lot of elements. For example, with regard to the collective actions to be taken, the most important element is the fact that both the UK and US have similar kind of mechanisms to deal with the same. The class action settlement as posited above resembles the class action settlement that has been included in the law of US. In the United states of America, similar ways the purpose of the class action suits have been reiterated as that of in the United Kingdom. Therein, class action also serves to eliminate the redundancy which is inbuilt in the judicial system. A common damage is pursued by a majority of the people to pursue the various claims for the purpose of getting damages from the court of law for the unreasonableness and inconvenience caused. This helps in the bringing out of the efficiency in the litigation system.

Most of the shareholder class actions that take place in the North America and Australia are found on the basis of one common problem that is known as the alleged misrepresentation. This is again a feature which could be seen in the class action litigation in the United Kingdom. Mostly under the UK law, these people are the ones that are the shareholders of a small private company.

Just as the shareholders have rights in the United Kingdom granted to them under the Companies Act, 2006, similar ways, US laws grant the same to their shareholders. In the US, the minority shareholders are rendered rights under the statutory and the common law too. The statutory law comes from the state in which the company has been incorporated. The U.S. federal securities laws provide for rules for the protection of the shareholders. Also, various other corporate laws, for example the Delaware corporate named as the Delaware General Corporation law and the various decisions rendered by the US court laws could be said to be primary sources from where the minority shareholders get all the rights. For example, the shareholders under this corporate law, under section 109 have the ability to change the corporate bylaws.[17] Under various other sections. The shareholders, in most of the US states

[17] Delaware INC, 2017. The Delaware General Corporation Law. [Online]
Available at: https://www.delawareinc.com/corporation/delaware-general-corporation-law/

get the right to opt out, which is the same as the granting the rights to the shareholders to violate or not obey the rules and regulations as provided in the charter. This is the same as the UK law. This way various pre-emptive rights are rendered to the shareholders.

The US takes into account the common law principle wherein any shareholder that has been damaged in a direct manner can seek remedy from the law courts in the U.S. by either going for an individual lawsuit or he can go for a class action suit. This has been mentioned in the Common law that is DGCL section 327. The shareholders can exercise only two options. The first option being the fact that in case of any oppression, company brings the action or the derivative action can be undertaken by the shareholders. This is on similar stands with the United Kingdom laws for the protection of the shareholders.[18]

In a similar way UK laws for the protection of minority shareholders could be compared to that of Australian laws. The Corporations Act of Australia, has rendered the remedies to the oppressed shareholders that are in the minority and are often on the toes of majority shareholders. Section 232 of the Corporations Act[19], states about the conduct which leads to determination of the fact whether there is any kind of minority oppression. Oppression usually, in terms of Australian law arises when the minority shareholder is subjected to prejudice by the majority shareholders who are unfair to them. For example, the issue of the shares for the sole purpose to dominate the minority rights and curb their voting power. Under section 232, the shareholders possess the various rights pertaining to seeking of injunctions against the company or the filing of the lawsuit. The other remedy is to opt for winding up of the company. The laws are more or less the same as that of the UK.[20]

Also class actions taken up by shareholders could be seen as one of the remedies that has been rendered under the Australian law. This is again in consonance with the laws protection the

[Accessed 2018].

[18] C. Steven, 2016. Minority Shareholder Rights. [Online] Available at: https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwiH8Y_IojYAhVBrY8KHaNvBP8QFggoMAA&url=https%3A%2F%2Fwww.ibanet.org%2FDocument%2FDefault.aspx%3FDocumentUid%3DF20BDF81-27B1-43D1-AEEB-4C40292F4857&usg=AOvVaw3kA3M-U[Accessed 2018].

[19] Corporations Act, 2001, S. 232

[20] E. Mark, 2013. Don't forget minority shareholders. [Online] Available at: http://www.companydirectors.com.au/director-resource-centre/publications/company-director-magazine/2013-back-editions/april/opinion-do-not-forget-minority-shareholders[Accessed 2018].

minority shareholders in UK. Since 1999, the class action lawsuits by the shareholders have been on a rise.[21]

Conclusion

After going through the research undertaken in the above essay, it could be states that more or less all the countries, the laws pertaining to the protection of the minority shareholders are the same. The laws of every country render various powers through which oppression against the minority could be curbed to a great extent. The threat is when there is a misuse of these laws against the company by the shareholders. Time and again, the majority shareholders have tried to curb the right of the minority, however, with the various laws formed and the judgments in the case laws rendered by the judges, it could be seen that the shareholders do have a fair chance.

[21] D. Ross, 2017. Shareholder class actions in Australia. [Online] Available at: https://www.allens.com.au/pubs/pdf/class/papclassfeb17-02.pdf [Accessed 2018].

Bibliography

C. Steven, 2016. *Minority Shareholder Rights.* [Online] Available at: https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwiH8Y_Io-jYAhVBrY8KHaNvBP8QFggoMAA&url=https%3A%2F%2Fwww.ibanet.org%2FDocument%2FDefault.aspx%3FDocumentUid%3DF20BDF81-27B1-43D1-AEEB-4C40292F4857&usg=AOvVaw3kA3M-U[Accessed 2018].

D. Ross, 2017. *Shareholder class actions in Australia.* [Online] Available at: https://www.allens.com.au/pubs/pdf/class/papclassfeb17-02.pdf [Accessed 2018].

Delaware INC, 2017. *The Delaware General Corporation Law.* [Online] Available at: https://www.delawareinc.com/corporation/delaware-general-corporation-law/ [Accessed 2018].

E. David, , 2005. *Agency Theory and Trust Ownership of Shares.* [Online] Available at: https://www.victoria.ac.nz/sacl/centres-and-institutes/cagtr/working-papers/WP32.pdf [Accessed 2018].

E. Mark, 2013. *Don't forget minority shareholders.* [Online] Available at: http://www.companydirectors.com.au/director-resource-centre/publications/company-director-magazine/2013-back-editions/april/opinion-do-not-forget-minority-shareholders [Accessed 2018].

Fawcett, 2018. *Shareholder Disputes.* [Online] Available at: https://www.luptonfawcett.com/services-for-business/corporate/limited-liability-partnerships-llps/shareholder-disputes/ [Accessed 2018].

In Brief, 2018. *The roles and duties of shareholders.* [Online] Available at: https://www.inbrief.co.uk/company-law/shareholder-roles-duties/ [Accessed 2018].

K. Albert, 2017. *Class/collective actions in The Netherlands: overview.* [Online] Available at: https://uk.practicallaw.thomsonreuters.com/6-618-0285?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1 [Accessed 2018].

LLP, 2007. *Derivative actions under the Companies Act 2006.* [Online] Available at: https://www.lexology.com/library/detail.aspx?g=f83177a0-d20e-4be5-9560-070c7b71f808 [Accessed 2018].

P., Richard, 2018. *Protection of Minority Shareholders.* [Online]
Available at: http://www.lawsonlewis.co.uk/protection-of-minority-shareholders.htm
[Accessed 2018].

S. M. Klaus, 2010. *Incomplete Contracts.* [Online]
Available at: http://www.et.econ.uni-muenchen.de/studium_lehre/lehrveranst/lehre_files/contract_theory/lecture/contract6.pdf
[Accessed 2018].

T., Julia, 2018. Shareholder Remedies: Demise of the Derivative Claim?. *UCL Journal ofLaw and Jurisprudence,* Volume 1.

W. Clive, 2004. *Facilitating Shareholder Class Actions: Proposals for reform.* [Online]
Available at: https://www.barcouncil.org.uk/media/61943/clive_wolman_04.pdf
[Accessed 2018].