LEGAL SIGNIFICANCE OF CORPORATE DEMOCRACY AND ITS ESSENCE OVER THE POWERS OF A SHAREHOLDER

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ABSTRACT

The present research examines the legal implications of corporate democracy, the function of shareholders within it, and the regulatory frameworks that control the shareholder position. Case studies are used to demonstrate the ideas raised and offer a thorough analysis of the legal importance of corporate democracy and its significance over stockholder rights. It stresses the necessity of balancing shareholder interests with the larger interests of the company and its stakeholders, as well as the significance of understanding the legal framework surrounding corporate democracy and shareholder power.

Keywords: Democracy, Governance, Corporate, Shareholder.

INTRODUCTION

Corporate Democracy under company law refers to the principles and practices that enable shareholders to participate in the decision-making process of a company. It is based on the idea that shareholders, who are the owners of a company, should have a say in how the company is run and how its profits are distributed.

From a legal standpoint, the concept of corporate democracy is significant because it reflects the underlying principle that a corporation is owned by its shareholders, who have the ultimate authority to control the company's affairs. This principle is enshrined in corporate law and is often referred to as the "shareholder primacy"[1] doctrine.

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[1] Shareholder Primacy, Corporate Financial Institute, 2023, https://corporatefinanceinstitute.com/resources/equities/what-is-shareholder-primacy/

It may be attained through various mechanisms:

Shareholder meetings:	Shareholders have the right to attend and vote at annual general meetings and extraordinary general meetings. These meetings provide a forum for shareholders to ask questions, raise concerns, and vote on matters such as the election of directors, the approval of financial statements, and changes to the company's articles of association.
Proxy voting:	a)Shareholders who are unable to attend meetings in person can appoint a proxy to vote on their behalf. This enables shareholders to participate in the decision-making process even if they are unable to attend meetings.
Shareholder resolutions:	a)Shareholders have the right to propose resolutions for consideration at shareholder meetings. These resolutions can cover a wide range of topics, including corporate governance, social and environmental issues, and executive compensation.
Board of directors:	a)The board of directors is elected by shareholders and is responsible for overseeing the management of the company. Directors are expected to act in the best interests of the company and its shareholders, and to ensure that the company operates in a transparent and accountable manner

LITERATURE REVIEW

1. The Eclipse of Corporate Democracy in India[2] is a research paper written by Vaibhav Sonule and Prof. (Dr.) Bindu Ronald discusses the challenges faced by corporate democracy in India. The paper argues that despite the existence of legal and regulatory frameworks, corporate democracy in India is undermined by a range of factors, including the concentration of ownership, weak institutional mechanisms, and a lack of transparency and accountability.

2. Democracy and the Evolution of Corporate Governance[3] is a research paper written by Pierre-Yves Gomez, which explores the relationship between democracy and corporate governance. The paper argues that democracy and corporate governance are not mutually exclusive, but rather complementary concepts that can work together to create a more sustainable and socially responsible economic system.

3. Corporate Social Responsibility and Stakeholder Democracy: A Theoretical

[2] Vaibhav Sonule & Prof. (Dr.) Bindu Ronald, The Eclipse of Corporate Democracy in India, 6 International Journal of Humanities and Social Science Invention (2017).
[3] Pierre-Yves Gomez & Harry Korine, Democracy and the Evolution of Corporate Governance, 13 Blackwell Publishing Ltd., (2005).

Framework[4] is an article by Florian Wettstein where it was argued that corporate social responsibility (CSR) argued that CSR is an important component of stakeholder democracy because it allows corporations to take into account the interests and needs of all stakeholders, including employees, customers, suppliers, local communities, and the environment.

4. The book Corporate Democracy: The Role of Shareholders in the Governance of Corporations by Cynthia A. Williams, explores the relationship between corporations and their shareholders. Cynthia argued that shareholders have a vital role to play in corporate governance.

RESEARCH OBJECTIVE

This paper mainly revolves around the following questions:

- What are the legal and regulatory frameworks that govern the powers of shareholders in the appointment and removal of directors?
- How is shareholder's power in director appointment and removal and corporate democracy related?
- Does corporate democracy affect the working of the company?

It also tries to give a critical analysis of the essence of corporate democracy over the powers of shareholders.

LEGALITY OF CORPORATE DEMOCRACY

The legal framework regarding corporate democracy varies widely from each jurisdiction. Some countries have laws and regulations that explicitly recognize and protect the rights of employees and other stakeholders to participate in the decision-making processes of the company, while other countries may have more limited legal protections for these groups.

From a legal perspective, several aspects of corporate democracy are important to consider:

- **Corporate governance:** A company's direction and control are governed by a collection of laws, customs, and procedures known as corporate governance. It

[4] Florian Wettstein, Corporate Social Responsibility and Stakeholder Democracy: A Theoretical Framework, Journal of Business Ethics (2012).

involves allocating duties and rights to various parties, including shareholders, directors, and management.

- **Shareholder rights:** A company's owners are its shareholders, and as such, they are afforded certain privileges that enable them to influence corporate decisions. These privileges might consist of the ability to cast a ballot in crucial elections for executives or in favour of crucial corporate decisions.

- **Board of directors:** The board of directors oversees directing corporate administration and making strategic choices on behalf of the stockholders. The board of directors must often be chosen by the owners and answerable to them.

- **Transparency and accountability:** Corporate democracy places a strong emphasis on responsibility and transparency. Companies ought to be transparent with their stockholders about their business activities, financial situation, and decision-making procedures. [5]

This indeed leads to a need to understand the Powers of a shareholder through a legal aspect and the essence of Corporate Democracy over these powers.

POWERS OF SHAREHOLDER IN APPOINTMENT AND REMOVAL OF DIRECTORS OF A FIRM.

It is crucial to realize that English and Indian law, unlike most laws of countries in Continental Europe, do not view certain functions and powers as managerial and as such do not consider them to be naturally exercisable by the Board of Directors alone or to be transferable by it.[6] The explanation under Section 179 of the Indian Companies Act, 2013, makes this clear.

General Powers

The management authority of the directors will be subjected to any regulation made by the company in general meetings, according to company law provisions in both the UK and India. This regulation" shall not invalidate any prior act of the directors which would have

[5] Veronique Magnier, Chapter 1: Legal aspects of corporate governance models, pg 15-39, Elgar Online, 2017, https://www.elgaronline.com/display/9781784713553/09_chapter1.xhtml

[6] Credit Development Pte Ltd. v IMO Pte Ltd. 1993 2 SLR 370.

been valid it is further stated by way of clarification.[7] Sections 48 & 49 of the Companies Act give a brief description of the powers and duties of the shareholder.

Shareholders in general have the following powers:

1) To participate in shareholder meetings and utilize voting rights either in person or by proxy
2) Transferring shares
3) to receive dividends when they are released.
4) To call a special meeting of the board of directors of the business.
5) To have bonus and ownership shares.
6) To appeal to the Tribunal.
7) To bring collective actions.
8) To file a lawsuit if the prospectus contains any deceptive claims.

Residuary Powers

If the Board of Directors is unwilling or unable to take action, there may be a legal problem. In such cases, the General Meeting may use the powers of the Board of Directors, even if they are acting on behalf of the Board. There are various situations where the General Meeting may need to use these "default" or "residuary" powers, such as when there is a deadlock on the Board, when an effective quorum cannot be achieved due to disqualification or absence of directors, or when the proposed transaction is outside the Board's powers.

RELATIONSHIP BETWEEN CORPORATE DEMOCRACY AND SHAREHOLDER'S POWERS

Corporate democracy and shareholder powers are closely related, as corporate democracy is often seen to increase the power and influence of shareholders in the governance of a company.

[7] Breckland Group Holdings Ltd. v London and Suffolk Properties Ltd. 1989 BCLC 100.

Greater legislative and corporate attention is required to support the company's economic growth.

An Essence Of Corporate Democracy Over Corporate Governance

Corporate governance is a framework that guides business direction and control.

Its primary goal is to build stakeholder confidence and trust while boosting shareholder value and protecting the interests of other stakeholders. Corporate governance acknowledges that shareholders are the true owners of the business and that management is obligated to serve as their trustees.

Corporate democracy is a crucial component of good corporate governance, particularly in businesses that are publicly traded where shareholders should have an equal chance to participate in the decision-making process and voice their opinions.

IMPACT ON THE FIRMS

Corporate democracy can have a significant impact on firms in several ways, both positive and negative. Here are a few examples.

Increased Shareholder Engagement	**If companies implement corporate democracy principles, it means that shareholders will have more say in the decision-making process. As a result, shareholders may become more involved in important issues and campaign for changes they feel are essential. This has a positive impact on the company as committed shareholders can provide valuable feedback and play a significant role in ensuring accountability.**
Improved corporate governance	In addition, corporate democracy can enhance corporate governance by ensuring that power is shared more equitably across the organization. This can prevent any individual or group from gaining excessive control over the company, which in turn can mitigate the likelihood of unethical or unlawful conduct.

Slower decision-making	Conversely, the democratic process can potentially result in slower decision-making since more parties have to be consulted and agreement must be reached. This can pose a challenge for businesses operating in rapidly changing industries where prompt decisions are critical to maintaining competitiveness.

CONCLUSION

Corporate democracy is a key legal idea with important consequences for how corporations operate. It makes sure that decision-making authority is distributed more fairly throughout the firm, allowing shareholders to have a say in how the business is run.

Corporate democracy is vital, but it's also critical to strike a balance between shareholders' rights and the needs of the company. Shareholder participation in corporate decision-making is important, but it shouldn't compromise the company's long-term viability.

RECOMMENDATIONS

Which strategy is better for company governance is a subject of continual debate. An emphasis on shareholder power, according to some, can cause short-term thinking and a disregard for the interests of other stakeholders.

Ultimately, the best approach will depend on the specific circumstances of the corporation and its stakeholders.

- Companies should strive to find a balance between shareholder power and corporate democracy, considering the interests of all stakeholders and promoting long-term sustainability and success.
- This can be achieved through various measures, such as establishing independent boards, implementing transparent decision-making processes, and providing opportunities for stakeholder input and participation.

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