OPPRESSION DILUTED, GOVERNANCE DERAILED: THE TATA-MISTRY LEGACY

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ABSTRACT

Walking into the halls of the National Company Law Tribunal (NCLT), Mumbai, one cannot help but sense an almost pity-like, shared resignation among lawyers, as well as technical and judicial members, when faced with oppression and mismanagement matters in the wake of the Tata Consultancy Services Ltd. v. Cyrus Investments (P) Ltd.[1] judgment. In 2012, Cyrus Mistry was appointed as the Executive Chairman of Tata Sons. However, in October 2016, he was removed from the post by the board, leading to widely publicised corporate fallout. Mistry's family investment firms, primarily Cyrus Investments and Sterling Investment Corp., held an equity stake of 18.4% in Tata Sons and alleged oppression and mismanagement under Sections 241 and 242 of the Companies Act, 2013. Ultimately, the Hon'ble Supreme Court, by overturning the NCLAT Judgement, held that a company's majority shareholder and board have the authority to remove a director, and doing so without violating laws such as proper notice, among others, does not constitute oppression. Rejecting the contention of Tata Sons functioning like a quasi-partnership, it emphasized that the private limited company is not governed by equitable principles like mutual trust and confidence found in partnerships. Moreover, it also restricted the powers of the NCLAT by holding that tribunals cannot force reinstatement, as the same is governed by employment law. While it is widely accepted that not every grievance merits judicial intervention and that statutory thresholds serve to deter frivolous claims, this paper argues that the Tata-Mistry verdict appears to have swung the pendulum too far, disproportionality, in favour of the majority shareholders. This shift has arguably curtailed minority shareholder protections and led to a regressive turn in the landscape of corporate accountability, albeit rendering sections 241 to 244 of the Companies Act, 2013, almost redundant.

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[1] Tata Consultancy Services Ltd v Cyrus Investments (P) Ltd (2021) SCC OnLine SC 272

INTRODUCTION & HISTORICAL ROOTS OF THE MAJORITY RULE

Tracing the historical root of the principle institutionalized by the judgment is the common law precedent of Foss v. Harbottle - when a wrong is alleged to have been committed against a company, the appropriate claimant in such an action is the company itself. Furthermore, if the company possesses the capacity, either through its internal governance mechanisms or by a resolution of the majority shareholders, to rectify, ratify or condone the alleged wrongdoing, individual members are precluded from initiating legal action.[2] This doctrine, commonly referred to as the 'proper plaintiff rule' or the 'majority' rule, was subsequently expanded to hold that where an alleged wrong is capable of ratification by a majority of shareholders, the minority has no standing to sue.[3] The underpinning rationale is the principle of corporate majority governance- it holds that if the act being challenged is one that the majority of shareholders are lawfully entitled to perform, or if an irregularity has occurred in the exercise of a power that the majority could validly execute through proper procedure, and then pursuing litigation serves little purpose. In such instances, the likely outcome would merely be the convening of a general meeting, where the majority would ultimately prevail. As a result, when legal discourse refers to the Foss v. Harbottle rule, it typically encompasses this broader framework concerning majority authority and the futility of minority initiated litigation, rather than the sole issue of locus standi articulated by Sir James Wigram in the original judgment.[4]

STATUTORY FRAMEWORK ON OPPRESSION & MISMANAGEMENT

One of the four exceptions to the rule was codified by the Indian legislature vis-à-vis Sections 241 to 246 of the Companies Act, 2013. Sec. 241 provides a statutory remedy to address instances of oppression and mismanagement within a company, and is reproduced herewith-
(1) any member of a company who complains that

a) the affairs of the company have been or are being conducted in a manner prejudicial to public interest or a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company;

[2] Foss v Harbottle (1843) 2 Hare 461
[3] Oluwaseyi Mike Bamigboye, "The True Exception to the Rule in Foss v. Harbottle: Statutory Derivative Action Revisited" (2015) 2 Journal of the Law Students Society Adekunle Ajasin University Akungba <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2863851> accessed 30th April 2025
[4] Oluwaseyi Mike Bamigboye, "The True Exception to the Rule in Foss v. Harbottle: Statutory Derivative Action Revisited" (2015) 2 Journal of the Law Students Society Adekunle Ajasin University Akungba <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2863851> accessed 30th April 2025

b) or the material change, not being a change brought about by, or in the interests of, any creditors, including debenture holders or any class of shareholders of the company, has taken place in the management or control of the company, whether by an alteration in the Board of Directors, or manager, or in the ownership of the company's shares, or if it has no share capital, in its membership, or any other manner whatsoever, and that because of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members, may apply to the Tribunal, provided such member has a right to apply under section 244, for an order under this Chapter."[5]

Additionally, the Central Government may intervene if it believes the conduct of the company is against public interest or if individuals in the management are suspected of fraudulent or unlawful conduct.[6] Sec. 242 outlines the remedial powers of the NCLT when it is satisfied that a company's affairs are being conducted in a manner oppressive to its members or prejudicial to public or corporate interest. Crucially, it empowers the Tribunal to intervene in cases where the facts would justify winding up of the company on just and equitable grounds, but where such a move would unfairly prejudice minority shareholders.[7]

PRE TATA MISTRY JUDICIAL LANDSCAPE

The Pre-Tata-Mistry judicial landscape afforded some flexibility and rendered a striking balance between meaningful implementation of the statutory safeguards and the 'majority' rule. The below-mentioned illustration of the historical statutory evolution and case precedents is thus useful to showcase the above proposition.

By clubbing together oppression and mismanagement under one section, it contrasts with the previous 1956 Act, in which both existed as two separate remedies.

Chatterjee Petrochem, (I) Pvt. Ltd. v. Haldia Petrochemicals Ltd: In this case, the apex court had observed that the law does not specifically define what constitutes 'oppression' under the old Sec. 397 of the 1956 Act (now sec. 241), and it is therefore left to the courts to determine, based on the facts of each case, whether circumstances of oppression exist that

[5] The Companies Act 2013, s 241
[6] The Companies Act 2013, s 241
[7] The Companies Act 2013, s 242

warrant intervention under the provision[8]. Mismanagement does not have a direct counterpart in English Law- on the suggestion of the Bhabha Report to include instances of serious mismanagement of a company's affairs that couldn't be dealt with under existing provisions, it originally appeared as sec. 398 of the 1956 Act. Thus, the mismanagement remedy served to soften the stringent requirements of the oppression remedy.[9] Moreover, judicial interpretations have consistently emphasised that the scope of mismanagement is broader than that of oppression- this is also evident from the language in Sec 241(1)(b) of the 2013 Act and the rationale behind including it as a distinct category of shareholder protection[10]. Another novelty is the introduction of 'prejudice' as against the shareholder or any other member as a ground, differing from the 1957 Act, which did not explicitly mention so. Thus, it offers minority shareholders and regulatory authorities a mechanism to check managerial abuse.

Needle Industries (India) Ltd & Ors v Needle Industries Newey (India): By crystallising the foundation established in SP Jain v Kalinga Tubes Ltd, [11]it established the mandated rules of prudence - a continuous act or omission may amount to oppression if it is unfair, incorrect and prejudicial to a member's propriety and legal rights. Whether an act is oppressive does not depend solely on its legality or illegality[12]. Rather, the test lies in assessing the intention behind the conduct and the facts of the case. A mere act that is contrary to law does not, by itself, establish malafide intention, and an isolated event cannot be treated as oppressive unless it is shown to be tainted with such malafide intent[13]. World Wide Agencies (P) Ltd. v. Mrs. Margaret T. Desor**[14]** held that a petition under Sec. 397/398 (1956 Act) does not even require the petitioner's name to be in the register of members. In this light, I argue the ongoing redundancy in oppression and mismanagement matters.

[8] Chatterjee Petrochem (I) Pvt Ltd v Haldia Petrochemicals Ltd 2011 (10) SCC 466
[9] Umakanth Varottil, " UNPACKING THE SCOPE OF OPPRESSION, PREJUDICE AND MISMANAGEMENT UNDER COMPANY LAW IN INDIA" [2020] NUS Law Working Paper 2020/020 < http://law.nus.edu.sg/wps/> accessed 1st May 2025
[10] Umakanth Varottil, " UNPACKING THE SCOPE OF OPPRESSION, PREJUDICE AND MISMANAGEMENT UNDER COMPANY LAW IN INDIA" [2020] NUS Law Working Paper 2020/020 < http://law.nus.edu.sg/wps/> accessed 1st May 2025
[11] SP Jain v Kalinga Tubes (1965) AIR 1535
[12] Needle Industries (India) Ltd & Ors v Needle Industries Newey (India) (1981) AIR 1298
[13] Needle Industries (India) Ltd & Ors v Needle Industries Newey (India) (1981) AIR 1298
[14] World Wide Agencies (P) Ltd v Mrs. Margaret T Desor (1990) 1 Comp LJ 208 (SC)

THE TATA-MISTRY JUDGMENT: ANALYSIS AND CRITIQUE

In this legality of Mistry's removal was upheld by framing it as a matter of 'business judgment' and board autonomy under corporate governance principles. The judgment failed to engage with the oppressive patterns of control and marginalisation of minority shareholders, despite evidence of strategic manoeuvring by Tata Trusts (majority shareholders) to marginalise Mistry[15], thereby treating removal from directorship as a mere consequence of corporate strategy. Critically, while the court emphasised that the role of 'Executive Chairman' lacks statutory recognition, it ignored that the Articles of Association commonly confer such designations, and thus invoked compliance under Sec. 196 (formal appointment terms)[16] and 169 (mandating removal through a shareholders' meeting with prescribed notice)[17], both of which necessitate due procedural safeguards. The sudden removal of Mistry without providing the mandatory 15-day notice[18] violated the ratio in Ms. Varshaben S. Trivedi v. Shree Sadguru Switch Gears (P) Limited, which held that the statutory right conferred by sec. 169 cannot be taken away by the MOA or AoA. [19] It is also pertinent to note that the removal being sudden was even confirmed and declared in the initial paragraphs of the overturned NCLAT judgment[20]. The court exhibited excessive deference to the majority rule, thereby insulating potentially oppressive conduct under the guise of business autonomy, as well as undermining Sec. 241 and 242.

Secondly, Mistry alleged that the Articles of Association of Tata Sons were skewed to favour certain shareholders, particularly Mr. Ratan Tata and the Tata Trusts, resulting in the concentration of decision-making in a few hands. He further pointed to poor corporate governance practices and a pattern of loss-incurring transactions, all of which had a prejudicial effect on the interests of the minority shareholders. Despite these allegations, the Supreme Court, by applying a conduct and effect-based approach[21], concluded that an infliction of a disadvantageous position or removal from directorship does not, by itself,

[15] Sankalp Sanjay Shanbhag, "A Study on the Majority Rule and Minority Interest in Indian listed companies in the context of minority shareholder oppression with reference to majority rule as a framework" (LLM Dissertation, National Law School of India University Bangalore 2024)
[16] The Companies Act 2013 s 196
[17] The Companies Act 2013 s 169
[18] The Companies Act 2013 s 169
[19] Ms. Varshaben S. Trivedi v. Shree Sadguru Switch Gears (P) Limited (2013) 116 CLA 153 (CLB)
[20] Cyrus Investments (P) Ltd v Tata Sons Ltd (2019) SCC OnLine NCLAT 858
[21] Joyce law, "Prohibition on Taking Actions Prejudicial to Relevant Stakeholders' Interests under Indian: A Review of Case Laws" (Lexology, 13 February 2025) <https://www.lexology.com/library/detail.aspx?g=dc4d798e-88d1-4b3b-8e04-0ca078cf6601> accessed 30th May 2025

amount to oppression or prejudice under Sec. 241 and 242. The court held that such relief would only be available if the company functioned as a quasi-partnership, and there was a breakdown of mutual trust and confidence sufficient to warrant winding up on just and equitable grounds. Thus, it concluded that there was a quasi-partnership between the two and hence the question of breakdown of trust did not arise. The court further weakened and raised the threshold for minority claims by noting that the minority had previously benefited from the company's arrangements, had consented to, or had knowledge of, and participated in, the formulation of the impugned Articles, and had failed to oppose certain transactions at the time of their ratification. The lapse of a significant time since the occurrence or ratification of the impugned acts also counted against their claim. It also addressed the lacunae in the Companies Act by differentiating between 'small shareholders' and 'minority shareholders'- while the latter is an ambiguous term, small shareholders are defined under Sec. 151 as having shares less than the nominal value of Rs. 20,000.[22] Small shareholders, a sort of special sub-category of minority shareholders, have the right to ask for proportional representation on the board of a publicly listed entity. The court categorically stated that the Mistry group were a 'minority' and not 'small shareholders', disqualifying them from the right to ask for proportional representation. Essentially, it held that unless a specific law exists on the matter, minority shareholders must have a contractual agreement through the Articles of Association with the company's majority shareholders or promoters to secure adequate or proportional representation on the board.[23]

A more progressive understanding could have been drawn from the English case Lau v. Chu[24], which recognised that where there is a management deadlock- where members lose faith in management to such an extent that the company can no longer function, it is just and equitable to wind up a company even if it is not a quasi partnership. The court missed this opportunity to give a reasoning that could apply the principle meaningfully, rather than rigidly requiring a quasi-partnership structure in the absence of pleading of a deadlock. Most critically, it also missed a significant opportunity to provide a judicial exposition clarifying the meaning of 'prejudicial' and 'oppressive' conduct, leaving minority rights vulnerable to erosion under the pretence of internal corporate autonomy. Sec. 244 lays down the criteria for members who have the right to apply under Sec. 241. In a company with share capital, at

[22] The Companies Act 2013 s 151
[23] Sudipto Dey, " Tata-Mistry spat: What it means for minority and small shareholders" (Rediff, 9 April 2021) <https://www.rediff.com/business/report/tata-mistry-spat-4-key-shareholders-issues-answered/20210409.htm> accessed 2 April 2025
[24] Lau v Chu [2020] UKPC 24

least 100 members, or one tenth of the total members (whichever is lesser), or members with at least 10% of the issued share capital (with all dues paid) can apply. Importantly, the Tribunal also has the power to waive these requirements to allow members to apply.[25] Before the NCLAT decision was overturned, the tribunal was also faced with the issue of whether the 10% issued share capital requirement pertained solely to equity share capital or encompassed both equity and preference share capital. Since the legislature did not specifically restrict the term to equity shares, the tribunal concluded that issued share capital must include the entire shareholding - equity and preference combined. Consequently, it held that Cyrus's investments, despite holding 18.37% of equity shares, failed to meet the sec. 244(1) requirement, as its shareholding constituted only 2.17% of the total issued share capital. In considering the appeal for relief, the NCLAT laid down detailed guidelines for the grant of waiver under Section.244 proviso, emphasising factors such as - whether the applicant is a member, whether the proposed application relates to oppression and mismanagement, whether similar allegations have already been adjudicated, and whether exceptional circumstances justify waiver. It is pertinent to note here that previous jurisprudence has evolved to recognise grounds such as significant interest, fragmented ownership, and oppression causing dilution below ten per cent. [26] By overturning the same, the Supreme Court failed to meaningfully engage with the tribunal's detailed reasoning, contributing significantly to the erosion of protections for minority shareholders. There is potentially a need for either clear legislative intervention or a definitive Supreme Court ruling that would standardise the future approach of courts. Revising the 10% standard would greatly enhance India's reputation as an investor-friendly jurisdiction. Rather than rigidly adhering to numerical thresholds, the judicial bodies should assess whether minority shareholders can prima facie establish the allegation in their complaint. Notably, in Manoj Bhatia v. Vishwanath Bathla, the NCLAT rejected the argument that shareholders with 'nearly 0% ownership' were not members, affirming that even a mere 0.3% ownership suffices for membership under law[27]. Thus, the quantum of shareholding shouldn't dictate access to justice under Section 241 qua sec. 244. Promoting mechanisms such as cumulative voting and minority board quotas in listed companies would rather strengthen minority shareholder rights.

[25] The Companies Act 2013 s 244
[26] Umakanth Varottil, "NCLAT Ruling on Maintainability in the Tata Sons Case" (India Corp Law, 23 September 2017)
< https://indiacorplaw.in/2017/09/nclat-ruling-maintainability-tata-sons-case.html> accessed 4th April 2025.
[27] Manoj Bhatia v Vishwanath Bathla (2018) 399 NCLAT

A part of the reasoning to invalidate the circumstances that warranted winding up on just and equitable grounds was emphasis on the fact most of the shareholding of Tata Sons, a primarily investment holding company was of philanthropic and charitable trusts- According to Article 121 of the AoA, a decision requiring a majority vote among directors must receive affirmative approval from directors appointed under Article 104B, which refers to 1/3rd of the board nominated by the Tata Trusts. It further observed that these very nominee directors played a key role in appointing Mistry as the EC, and these directors may have dual fiduciary duties - to both the company and the trusts, given their commitment to philanthropic goals over purely commercial ones.

Lastly, in a general meeting, their influence is significantly greater given the trust's 66% ownership.[28] However, this blurs the priority of fiduciary duties because if affirmative voting rights are justified on the basis that nominee directors must serve public interest through their duties to Tata Trust, it conflicts with standard corporate law where duties to the company override loyalty to nominators.[29] This artificial distinction created by the court remains confusing, as the Companies Act makes no such differentiation, and the statutory duties of directors bear no clear connection to the company's specific operations or line of business. Sec. 166 is corporate form-agnostic, applying to all companies. It also sets a dangerous precedent as it may be used by government or public sector nominees to claim immunity, under the guise of public interest. The only silver lining is that the decision to hold the conversion of Tata Sons to a private limited company as valid, thus perpetuating the hold of Tata Trusts over Tata Sons, who retain majority shareholding without dilution, and keeping the Shapoorji Pallonji Group (the second largest shareholder), from additional rights and powers is now again being contested- The Reserve Bank of India in 2022 classified Tata Sons as a Non Banking Financial Company and thus mandated listing and conversion to a public company; the decision of whether or not to grant an exemption to the same will be out in September 2025.[30] Until then, a chilling effect on corporate governance, caused by blatantly importing Eurocentric jurisprudence to a promoter-driven, closely held company landscape

[28] Krishnamurthy & Co, "Tata-Mistry Conflict: The Continuing Corporate Schism" (K LAW, 23 September 2021) <https://www.klaw.in/tata-mistry-conflict-the-continuing-corporate-schism/> accessed 4th April 2025
[29] Umakanth Varottil, " Supreme Court on Directors' Duties in the Tata/Mistry Case: A Critique" (India Corp Law, 29 March 2021) <https://indiacorplaw.in/2021/03/supreme-court-on-directors-duties-in-the-tata-mistry-case-a-critique.htm> accessed 29th April 2025
[30] Nivedita Mookerji, "Is Tata Trusts a charity or a business empire? See Tata Sons stormy listing" (The Print, 1 May 2025) <https://theprint.in/opinion/is-tata-trusts-a-charity-or-a-business-empire-see-tata-sons-stormy-listing/2610875/> accessed 6th April 2025

continues; Sec. 166 (3) requires all directors to exercise independent judgment, and this judgment seems to carve out exceptions to the codified fiduciary standards. At a prima-facie glance, the only problematic issue might seem the reduced powers of the NCLAT by prohibiting reinstatement, but on a deeper analysis, it becomes clear that the judgment has moved more towards the 'enlightened shareholder value' UK model by weakening Sec. 166(2)'s stakeholder model, making director duties nominator-centric, rather than company-centric.