WHITE BLACK LEGAL

VOLUME 1: ISSUE 8

||January 2020 ||

Email: editor@whiteblacklegal.co.in

DISCLAIMER

EDITORIAL TEAM

EDITOR

Name - Mr. SiddharthDhawan
Core Team Member || Legal Education Awareness Foundation

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

WHITE BLACK LEGAL: THE LAW JOURNAL

OPPRESSION AS A GROUND FOR RELIEF UNDER THE INDIAN COMPANIES ACT COMPARED WITH 'UNFAIR PREJUDICE' UNDER THE ENGLISH COMPANIES ACT

SUBMITTED BY:

GAUTAM MANOJ

TABLE OF CONTENTS

INDEX OF AUTHORITIES **3**

INTRODUCTION **5**

JOURNEY OF MINORITY RIGHTS: FROM *FOSS* V. *HARBOTTLE* TO UNFAIR PREJUDICE: **5**

MINORITY SHAREHOLDERS' REMEDIES IN INDIA **10**

CONCLUSION **17**

ISSN: 2581-8503

INDEX OF AUTHORITIES

CASES:

1. *Elder* v. *Elder and Watson Ltd.,* 1952 SC 49.
2. *Foss* v. *Harbottle* [1843]2 Hare 461
3. *H P Bagri* v. *Bagress Cereals P Ltd.* AIR 2001 SC 1416.
4. *Industries Ltd* v. *Needle Industries Newey Holding Ltd* AIR 1981 SC 1298
5. *Maharani Lalitha Rajya Lakshmi* v. *Indian Motor Co. Ltd.* (1962)32 Com Cas 207.
6. *O'Neill and Another* v. *Phillips and Others* [1999] 2 BCLC 1
7. *Re A Company* [1986] BCLC 376
8. *Re Bellador Silk Ltd*. [1965]1 All ER 667.
9. *Re Bovery Hotel Ventures Ltd.* [1983] BCLC 290
10. *Re H R Harmer* [1959]1 WLR 62
11. *Re Jermyn Street Turkish Baths Ltd.* (1972)3 All ER 184.
12. *Re Macro (Ipswich) Ltd.* [1994]2 BCLC 354
13. *Re Saul D. Harrison & Sons plc* [1994] BCC. 475
14. S S Bindra v. Hindustan Fasteners Ltd. [1989]2 Comp LJ 216.
15. *Scottish Co-operative Wholesale Society* v. *Meyer* 1959 AC 324.
16. *Shanti Prasad Jain* v. *Kalinga Tubes Ltd.* (1965) Com Cas 351.
17. *State of Bihar* v. *Kameshwar Singh* AIR 1952 SC 252.

ARTICLES

1. A J Boyle, Unfair Prejudice In The House Of Lords, Company Lawyer, Vol.21 2000, p.253.
2. C A Riley, "Contracting Out of Company Law: Section 459 of the Companies Act 1985 and The Role of Courts", *Modern Law Review* Vol.55, 1992, p.782.
3. D A DeMott "Oppressed But Not Betrayed: A Comparative Assessment Of Canadian Remedies For Minority Shareholders And Other Corporate Constituents", *Law and Contemporary Problems*, Vol.56, 1993, p.181.
4. H Rajak, "The Oppression of Minority Shareholders", *Modern Law Review* Vol.35, 1972, p.156.

5. J Lowry, "Mapping the Boundaries of Unfair Prejudice" p.229 in J deLacy, *The Reform of UK Company Law*, (Cavendish Publishing Ltd.: London, 2002).
6. M B Rao, "Oppression of Minorities and Mismanagement", *The Company Law Journal* [1965]II, p.43.
7. R Instone, "Unfair Prejudice: An Interim Report", *Journal of Business Law* 1988, p.20 D D D Prentice, "Winding Up on the Just and Equitable Ground: The Partnership Analogy," Vol. 89 *Law Quarterly Review* 1972, p.107.
8. S Copp., "Protecting Shareholder Expectations: A Comparison Of U.K. And Canadian Approaches To Conduct Unfairly Prejudicial To Shareholders: Part 2" *International Company and Commercial Law Review*, Vol.11, 2000, p.217.

BOOKS

1. A J Boyle, *Minority Shareholder's Remedies* (Cambridge University Press: Cambridge, 2002).
2. A Ramaiyya, *Guide To Companies The Act Part 2*, (Wadhwa & Co.: Nagpur, 2004).
3. A Singh, *Company Law* (Eastern Book Company: Lucknow, 2004).
4. J deLacy, *The Reform of UK Company Law*, (Cavendish Publishing Ltd.: London, 2002).
5. J Dine, *Company Law* (Macmillan Press Ltd.: London, 1998).
6. P L Davies, *Gower & Davies' Principles of Modern Company Law* (Sweet & Maxwell: London, 1997).
7. R R Pennington, *Pennington's Company Law* (Butterworth: London, 1995).
8. R Smerdon, *Palmer's Company Law Vol.2 PartA* (Sweet & Maxwell: London, 2000).

STATUTES

1. COMPANIES ACT, 1948.(UK)
2. COMPANIES ACT, 1956.(INDIA)
3. COMPANIES ACT, 1985.(UK)
4. COMPANIES ACT, 2013 (INDIA)

INTRODUCTION

Recognition of democracy as a universally relevant system was a major revolution in thinking, and one of the main contributions of the modern times. However making democracy work and evolving a system which will give suitable expression to the democratic aspirations of all has always been a formidable task. Any democratic set up whether working in political sphere or anywhere else is generally accused of majority opportunism. This does not bypass the realm of company law and becomes quite apparent here also, wherein the principle of majority remains fundamental to its operation. Then, how the existing legal framework accords protection to minority from the tyrannical majority with respect to company transactions is the prime question that is addressed in the present paper. However the scope of the paper is limited to explore the statutory remedies available to the oppressed minority.

JOURNEY OF MINORITY RIGHTS: FROM *FOSS* V. *HARBOTTLE* TO UNFAIR PREJUDICE:

Prior to 1948, minority shareholders in English companies hardly had any remedies against overreaching behaviour of majority shareholders.[1] Major inhibition in this regard is said to be the case of *Foss* v. *Harbottle*[2] where aggrieved minority was held to be obligated to show that any possibility of redress through an internal forum has been exhausted as a condition precedent to obtain any judicial relief.[3] Justification of the rule can perhaps be that the judges sitting in courtrooms are ill-equipped to decide how the affairs of company ought to be conducted. Also, the principle of non-interference with the internal management appears as an attractive explanation.[4] However, this rule as it later emerged barred the minority action whenever the alleged misconduct was capable of being ratified in law

[1]D A DeMott "Oppressed But Not Betrayed: A Comparative Assessment Of Canadian Remedies For Minority Shareholders And Other Corporate Constituents", Law and Contemporary Problems, Vol.56 (1993), p.181 at 192.

[2][1843]2 Hare 461.

[3]A J Boyle, Minority Shareholder's Remedies (Cambridge University Press: Cambridge, 2002) at p.4.

[4]H Rajak, "The Oppression of Minority Shareholders", Modern Law Review Vol.35 (1972), p.156 at 156.

irrespective of any real possibility of majority reconsidering the matter.[5] This resulted in preventing the court from remedying a wrong done to the company unless the majority wanted to set it right.[6]

This 'unjustifiably restrictive'[7] rule led to the search for possible exceptions that could be carved out to serve the interests of justice. The foremost among them was the doctrine of 'fraud on minority' that applied to extreme misbehaviour. Even under this category, establishing fraud was not enough to get any relief. The key question was to prove to the satisfaction of the court that perpetrators of alleged misconduct had *de jure* control of the company.[8]

Though the remedy of applying to the court for the winding up in the event of majority acting in oppressive manner had always been there, but it was very often not in the interests of minority.[9]

The Companies Act of 1948, as a result of Cohen Committee report, in order to strengthen the minority shareholders, included an oppression provision that gave the court greater scope for interference by way of alternative remedies other than an order to wind up the company.[10] When the petitioner could establish that the company's affairs were being conducted in an oppressive manner and that the facts would justify a winding up order, but that winding up would unfairly prejudice the parties, the court had the power to order an alternative remedy.[11] However, the alternative remedy as envisaged by the provision was not popular with the court.[12]

[5]A J Boyle, Minority Shareholder's Remedies (Cambridge University Press: Cambridge, 2002) at p.4.
[6]R R Pennington, Company Law, (Butterworths: London, 1990), at 648.
[7]A J Boyle, Minority Shareholder's Remedies (Cambridge University Press: Cambridge, 2002) at p.6.
[8]A J Boyle, Minority Shareholder's Remedies (Cambridge University Press: Cambridge, 2002) at p.27.
[9]R Smerdon, Palmer's Company Law Vol.2 Part A (Sweet & Maxwell: London, 2000).
[10]M B Rao, "Oppression of Minorities and Mismanagement", The Company Law Journal [1965]II p.43 at 43.
[11]Section 210 of Companies Act, 1948.
[12]D A DeMott "Oppressed But Not Betrayed: A Comparative Assessment Of Canadian Remedies For Minority Shareholders And Other Corporate Constituents", Law and Contemporary Problems, Vol.56, p.181 at 192.

Furthermore to obtain relief the petitioner had to show not only that he was a member of the company but that he was oppressed as a member not in any other capacity.[13] Another requirement was that of just and equitable winding up i.e. petitioner had to show that the facts of the situation would justify the winding up of company on the grounds that this would be just and equitable to do so.[14] This had rendered the remedy under section 210 virtually useless in practice.[15] Due to the 'just and equitable' winding up factor, which is beset with many technical requirements, even where the oppression is proved to the satisfaction of the court the relief may not be given in deserving cases.[16] In *Re Bellador Silk Ltd*.[17] the petition failed as it could not be proved that there would be sufficient assets left with the company for distribution among shareholders after paying off the creditors.

To overcome the surrounding difficulties of S. 210, on the recommendation of Jenkins Committee, remedy of 'unfair prejudice' took birth in the form of S. 459 of Companies Act, 1985.[18] Section 459 marks a move away from traditional supremacy of majority rule and judicial reluctance to interfere into the internal affairs of the company.

The section revolves around the interpretation given to the expression 'unfair prejudicial conduct'. The open-ended nature of the expression has led to differences of approach towards the determination of its scope.[19] Arden LJ maintains, "the jurisdiction under S. 459 has an elastic quality which enables the courts to mould the concepts of unfair prejudice according to the circumstances of the case."[20] On the other hand Slade J. insists on the

[13]Although this was not explicitly mentioned in the provision, this additional requirement has widely been accepted. Re H R Harmer [1959]1 WLR 62. See, H Rajak, "The Oppression of Minority Shareholders", Modern Law Review Vol.35 (1972), p.156 at 159.

[14]S.210 of Companies Act 1948.

[15]R Instone, "Unfair Prejudice: An Interim Report", Journal of Business Law 1988, p.20 at 20.

[16]D D Prentice, "Winding Up on the Just and Equitable Ground: The Partnership Analogy," Vol. 89 Law Quarterly Review 1972, p.107.

[17][1965]1 All ER 667.

[18]Section 459(1)

[19]J Lowry, "Mapping the Boundaries of Unfair Prejudice" p.229 at 237 in J deLacy, The Reform of UK Company Law, (Cavendish Publishing Ltd.: London, 2002).

[20]Re Macro (Ipswich) Ltd. [1994]2 BCLC 354 at p.404.

objective reasonable bystander test to determine what unfairly prejudicial conduct is.[21] It was held that:

> *"the test for unfairness must, I Think, be an objective, not a subjective, one. In other words it is not necessary for the petitioners to show that the persons who have defacto control of the company have acted as they did in the conscious knowledge that this was unfair to the petitioner or that they were acting in bad faith in the conscious knowledge that this was unfair to the petitioner or that they were acting in bad faith; the thest, I think, is whether a reasonable bystander observing the consequences of their conduct, would regard it as having unfairly prejudiced the petitioner's interests."*

Before remedy on the basis of S.459 could be claimed one must first identify the interests of members to be accorded protection and then to proceed to inquire they have been unfairly prejudiced.[22] Under S.459, interests of members to be protected are not limited to their strict legal rights since the use of the word 'unfairly' enables the court to have regard to wider equitable considerations.[23] Scholars opine that the important step taken by the courts in relation to section 459 is the recognition that it protects expectations and not just rights.[24]

Noteworthy is that terms legitimate expectations or reasonable expectations find no mention in the provision yet they are very much entrenched minority remedies' discourse. What then is the basis to distinguish between expectations deserving legal protection from those which do not? Absent existence of any precise test, it is submitted, makes the expression 'legitimate expectations' synonymous with equitable consideration thus providing for greater scope for judicial intervention. Hoffman L.J. sought to clarify the expression in these terms:

> *"It often arises out of a fundamental understanding between the shareholders which formed the basis of their association but was not put into contractual form, such as*

[21]Re Bovery Hotel Ventures Ltd. [1983] BCLC 290. Here Slade J. said,

[22]C A Riley, "Contracting Out of Company Law: Section 459 of the Companies Act 1985 and The Role of Courts", Modern Law Review Vol.55, 1992, p.782 at p.793.

[23]Per Hoffman J. in Re A Company [1986] BCLC 376.

[24]P L Davies, Gower & Davies' Principles of Modern Company Law (Sweet & Maxwell: London, 1997) at p.742.

> *an assumption that each of the parties who has ventured his capital will also participate in the management of the company and receive the return on his investment in the form of salary rather than dividend"*[25]

This recognises that a company is more than a mere legal entity and there is room in company law for recognition of the fact that behind it are individuals with rights, expectations and obligations *inter se* which are not necessarily submerged in the company structure.[26]

The decision in *O'Neill and Another* v. *Phillips and Others*[27], must now be considered, which was the first decision of the House of Lords on Section 459 and which paid much attention to the question of legitimate expectations. Here Lord Hoffmann observes,

> *"…a member of a company will not ordinarily be entitled to complain of unfairness unless there has been some breach of the terms on which he agreed that the affairs of the company be conducted. These terms are contained in the articles of association and sometimes in the collateral agreements made between shareholders…."*

With the objective to provide content to the concept of unfair prejudice so as to achieve legal certainty, Lord Hoffmann drew an analogy between 'just and equitable' winding up and the notion of unfairness in section 459. He observed that the parallel have drawn does not mean that conduct will not be unfair unless it would have justified an order to wind up the company.[28]

[25]Re Saul D. Harrison & Sons plc [1994] B.C.C. 475 at p.490.

[26]S Copp., "Protecting Shareholder Expectations: A Comparison Of U.K. And Canadian Approaches To Conduct Unfairly Prejudicial To Shareholders: PART 2" International Company and Commercial Law Review, Vol.11, 2000, p.217.

[27][1999] 2 BCLC 1 at 9.

[28][1999] 2 BCLC 1 at 9.

MINORITY SHAREHOLDERS' REMEDIES IN INDIA

The Cohen Committee's recommendations with regard to the need for an alternative remedy to winding up were incorporated by India in section 241 of the Companies Act. The Indian law differs with UK law in as much as the latter uses the phrase 'unfairly prejudicial' whereas Indian statute provides for oppression.

The Indian Act, like Companies Act 1948 does not define 'oppression'. Borrowing from English decisions the Supreme Court of India interpreted 'oppressive' manner to mean manner which is 'burdensome, harsh and wrongful'.[29] It was held that on a wise construction of S.397 neither every illegality can be said to be oppressive nor can it be said that the illegality of the action does not bear upon its oppressiveness.[30] The person complaining of oppression must show that he has been constrained to submit to a conduct which is unfair to him and which causes prejudice to him in the exercise of his legal and proprietary rights as a shareholder.[31]

In *Scottish Co-operative Wholesale Society v. Meyer HL,*[32] it was held that:

> *"Exercising the majority power in a manner that is burdensome, harsh or wrongful to shareholders or a part of the shareholders, including the petitioners."*

It was held in *Elder v. Elder and Watson Ltd.,* [33]

> *"The conduct complained of should at the lowest involve departure from the standards of fair dealing and a violation of the conditions of fair play on which every shareholder is entitled to rely on."*

In *Re Jermyn Street Turkish Baths Ltd.,* [34] held that:

> *"Oppression occurs when shareholders, having a dominant power in a company, either (1) exercise that power to procure that something is done or not done in the*

[29]Needle Industries Ltd v. Needle Industries Newey Holding Ltd AIR 1981 SC 1298.
[30]Id.
[31]Id.
[32]HL 1959 AC 324
[33]1952 SC 49.
[34](1972)3 All ER 184.

conduct of the company's affairs or (2) procure by an express or implicit threat of an exercise of that power that something is not done in the conduct of the company's affairs and when such conduct is unfair."

Even though unfair prejudice is not the same as oppression, it is submitted that anything that would have justified relief under the section 210 oppression remedy which was similar to section 241 will also justify relief under the section 459 'unfair prejudice' remedy. In other words, the concept of oppression is not only subsumed within unfair prejudice but the former is merely a particular manifestation of unfair prejudicial conduct.

Another difference between the English and Indian provisions relate to the focus of the remedies under the two statutes. Under English law the remedy extends to the past or present conduct of the company's affairs as well as any actual or proposed act or omission of the company. However under Indian law to obtain judicial relief alleged oppressive conduct must continue up to the date of petition showing that the affairs of the company are being conducted in the oppressive to some part of members.[35] This requirement prevents cognizance of past oppressive behaviour unless they constitute a continuing whole with the present facts.[36] Similarly events subsequent to the petition can also not be taken into account.

The phrase 'the affairs of company are being conducted' suggests *prima facie* a continuing process and covers oppression by anyone who is taking part in the conduct of the affairs of the company, whether *de facto* or *de jure.*

It has been held by the courts that one single and solitary instance of any act is not sufficient to establish the oppressive continuity of conducting the affairs of the company implicit in the words 'the affairs are being conducted' used in section 241.[37]

[35]Shanti Prasad Jain v. Kalinga Tubes Ltd. (1965) Com Cas 351.

[36]S S Bindra v. Hindustan Fasteners Ltd. [1989]2 Comp LJ 216.

[37]Maharani Lalitha Rajya Lakshmi v. Indian Motor Co. Ltd. (1962)32 Com Cas 207.

Similar to English law under section 241 the complaining member must show that he is suffering from oppression in his capacity as a member.[38] Also he must show, as he was obligated under s.210 of Companies Act 1948 that the facts alleged in the petition justify a winding up order under the 'just and equitable' clause of section 433 of the Companies Act.[39]

By virtue section 241, the CLT would have jurisdiction to interfere in cases where the oppression complained of is prejudicial to the public interest though nothing prejudicial to the shareholders. This concept of 'public interest[40]' takes the company outside the conventional sphere of being a concern in which the shareholders alone are interested. It emphasises the idea of the company functioning for the public good or general welfare of the community at any rate not in a manner detrimental to the public good. It was held that:

> *The expression 'public interest is not capable of precise definition and has not a rigid meaning and is elastic and takes its colours from the statute in which it occurs, the concept varying with the time and state of society and its needs. In the case of a company the concept of public interest takes the company outside the conventional sphere of being a concern in which the shareholders alone are interested. It emphasizes the idea of the company functioning for the public good or general welfare of the community at any rate not in a manner detrimental to the public good.*

It is submitted that an analysis of the provision reveals that though this provision gives a right to apply where the affairs of a company are conducted in a manner pre-judicial to the public interest, it is difficult to sustain an application under this section on this ground as the condition in clause (b) of sub-section (2) cannot be satisfied in such a case as conducting the affairs of a company in a manner pre-judicial to the public interest cannot be a just and equitable ground for ordering the winding up of the company, unless it should be considered illegal or opposed to public policy.

[38]A Singh, Company Law (Eastern Book Company: Lucknow, 2004) at pp.487-488.

[39]H P Bagri v. Bagress Cereals P Ltd. AIR 2001 SC 1416.

[40]State of Bihar v. Kameshwar Singh AIR 1952 SC 252.

THE EBRAHIMI TEST IN ITS UNDILUTED FORM IS THE TEST APPLICABLE UNDER INDIAN LAW TODAY.

In brief, it recognizes that where there exists a relationship of trust, there exists certain rights and obligations amongst the shareholders who enjoy the relationship of trust which go beyond the Corporate-structure. A breach of this obligation would give the aggrieved shareholder a right to sue for oppression.

MARCH OF LAW IN United Kingdom & India:

i. ***In Re Yenidje Tobacco Company Limited [1916] 2 Ch 426:***
This was perhaps the first case where the principles of dissolution of partnership was applied in the context of a company. While this involved a case of deadlock & equal shareholding, the ratio nowhere spelt out that the principles of dissolution of partnership could only be applied when there was deadlock/ equal shareholding.

ii. ***Loch v. John Blackwoods Ltd [1924] AC 783 PC***
Test in In Re Yenidje Tobacco Company Limited was upheld in loch by the privy-council and applied in a context outside deadlock/ equal shareholding (facts to be verified)

iii. ***Thomson v. Drysdale 1925 S.C. 311***
Held by the court of appeal that the unfair exercise of voting power by the majority is a ground for winding up under the just and equitable clause.

iv. ***Ebrahimi v Westbourne Galleries Ltd [1973] AC 360***
Monumental decision in this recognized the following:

a. Recognizes that the decision in Yenidje treats deadlock as "an example only" of the reasons why it could be just and equitable
   - Are expressed in terms of lost substratum or deadlock words clearly used in a general rather than a technical sense.

- Treating deadlock as an example only of the reasons why it would be just and equitable to wind the company up.
- Are such that we ought to apply, if necessary, the analogy of the partnership law and to say that this company is now in a state which could not have been contemplated by the parties when the company was formed

b. Recognizes that the decision in loch clearly "enlarges the width to be given to the just and equitable clause."

c. Recognizes citing Thomson that just and equitable winding up would apply even when there is no deadlock.

d. Emphatically states that a subsequent decision in *In re Cuthbert Cooper & Sons Ltd. [1937] Ch. 392* which placed greater emphasis on contractual rights arising from articles over equitable principles which may be based on partnership laws was clearly erroneous.

e. recognized that exclusion from management (Citing*Lewis v. Haas, 1970 S.L.T.* and expulsion from office might be a reason for winding up

f. quotes with approval

g. sets out the following test in its widest form

v. Hind Overseas Pvt. Ltd v. Raghunath Prasad Juhnhunhwala&Anr AIR (1976) SC 743

3 Judge Bench of the SC in this:

i. Recognizes that the principles in Ebrahimi are applicable in India)
ii. narrow wide reference
iii. facts of Hind clearly goes to show that this is not a case of quasi partnership as one of the shareholders worked as an employee under the direct supervision and control of the order
    1. The main grievance was that one of the shareholder's sons had been educated at the company's expense and later appointed as tech director. However the other shareholder was present in the meetings when the resolution were passed and never objected to the same.

vi. Needle Industries (India) Ltd., & Anr. vs Needle Industries Newey (India) 1981 AIR 1298:

Cites Ebrahimi in its undiluted form.

a. The following observation clearly shows that illustrations which may be used to discuss the principle behind the just and equitable clause should not narrow its scope

b. The Scope as in the judgement:

"It was wrong to confine the application of the just & equitable clause to proved cases of mala fides, because to do so would be to negative the generality of the words. Illustrations maybe used, but general words should remain general and not be reduced to the sum of particular instances"

c. Cites :BLISSET vs. DANIEL [1853] 90 RR 454

d. Kilpest Private Ltd. vs ShekharMehra: 1987 62 CompCas 717 MP

e. Sangramsinh P. Gaekwad & Ors vs Shantadevi P. Gaekwad, (2005) 11 SCC 314

vii. Re Saul D Harrison & Sons plc [1995] 1 BCLC 14:

a. The court of appeal recognized for the first time that where there existed a personal relationship between a shareholder and those who controlled the co., there existed additional legitimate expectations superimposed in certain circumstances even though their legitimate expectations cannot go beyond the constitution of the company.

b. These may arise out of agreements or understandings between the members or members and directors.

c. The phrase Unfairly prejudicial with the concept of fairness in it is capable of introducing considerations.

viii. O'Neill v Phillips [1999] UKHL 24

a. The court relied on Ebrahami to state that "It would be unfair on the part of Majority(Mr. Philips) to use their Voting powers under the articles to remove the Minority (O'Neill) from participation in the conduct of the business without giving him the opportunity to sell his interest in the company at a fair price"

b. The court also spoke of the constructive removal of the minority by the Majority when the Minority was not removed by the majority from the management of the business and minority remained a director and continued to earn his salary as a manager of the business elsewhere.

Therefore the Ebrahimi test, undiluted form stands in India even till today. A concept laid down in 1973 which is still in practice in India, puts a question to the Indian Legislators as to whether the same deserves a change. Law should change with time and the Indian Legislators should take steps to change the law from time to time

CONCLUSION

Preceding pages reveal that the legal battle of minority against the majority opportunism has been quite thorny and the law relating to the same is still evolving. However this battle can be compartmentalized into three phases. In the phase I, marked by the majority supremacy, litigation by minority was constantly discouraged. In this phase the courts opted to not to interfere into the internal affairs of the company. The phase II was marked by enactment of Companies Act 1948 which though a bold step yet in reality of little help. Phase III started since the inception of flexible unfair prejudicial remedy where courts gave up their reluctance to deal with the affairs of the company. Contemporary position on this front in India has however been quite disappointing. Legal provisions and the existing case law denote that we are still in phase II as described above.