

RIGHTS OF MINORITY SHAREHOLDERS: ADDRESSING OPPRESSION AND MISMANAGEMENT

Oppression and Mismanagement **has not been defined specifically in the act.** When majority shareholders either pass any resolution, **which violates the rights of minority** or departs from standards of fair dealing then, taking into consideration the circumstances, **they may be held guilty of oppression and mismanagement.**

The meaning of oppression and mismanagement can be interpreted through **various judicial precedents**, as illustrated by the case laws discussed herein.

1. **Shanti Prasad Jain v. Kalinga Tubes Ltd.:**

- **Continuous oppressive acts** by majority shareholders upto the date of petition is required to file a petition for oppression; mere lack of confidence is insufficient.

2. **Rajahmundry Electric Supply Corp. v. A. Nageswara Rao:**

- Mismanagement of the affairs of the company like using the **funds of the company for the personal use** is a sufficient evidence of mismanagement

3. **Maharashtra Power Development Corp. v. Dabhol Power Co.:**

- A Series of illegal acts whose object is to commit oppression give rise to a suit for oppression. However, **if the effects of the single act** are burdensome, wrongful, oppressive, then the petition for oppression and mismanagement can be filed even in the single act.

4. **Increase in Share Capital Case:**

- Issuing shares to **oneself for control violates** fiduciary duty and constitutes oppression.

5. **Non-Declaration of Dividend:**

- **Non-declaration of dividends** by the board is not considered oppression.

6. **Non-Availability of Records:**

- **Failure to maintain statutory records** is mismanagement, not oppression.

7. **Non-Holding of Board Meetings:**

- **Not holding board meetings** affects a director's rights but not minority shareholders' rights, thus not oppression.

8. **Filing of Unaudited Balance Sheets:**

- **Filing unaudited financials** may indicate mismanagement but not necessarily oppression.

9. **Minor Acts of Mismanagement:**

- **Minor acts do not amount to mismanagement** and should be resolved mutually among shareholders.

10. **Past Acts of Oppression:**

- The law **does not allow** for redressal of **acts committed in the past** to be redeemed in the future.

11. **Suit of Oppression by Majority:**

- Majority shareholders can file for oppression **if wronged by the minority.**

12. **Suit by a Creditor:**

- **Creditors cannot file for oppression;** only shareholders can complain in their capacity as members.

WHO CAN MAKE AN APPLICATION TO TRIBUNAL (SECTION 241):

1. MEMBERS (241(1))

- a. When the affairs of the company are being conducted in such a manner that it is: **{u/s 241(1)(a)}**
 - i. Prejudicial to public interest
 - ii. Prejudicial or oppressive to members
 - iii. Prejudicial to company
- b. when material changes take place that the affairs of the company will be conducted in such a manner that it is: **{u/s 241(1)(b)}**
 - i. Prejudicial to company
 - ii. Prejudicial to members/ class of any of them

2. CENTRAL GOVERNMENT (241(2))

- When affairs of the company are being conducted in a manner prejudicial to public interest

3. SECTION 241(3)

- When in the opinion of Central Government there exist following circumstances the Central Government may initiate a case and refer the same to the Tribunal with a request that Tribunal should inquire and record a decision as to whether or not such person is a fit person to hold the office of director or other office connected with conduct and management of the company:
 - a. Any person concerned with the affairs of the company and its management or has been in connection is guilty of fraud, misfeasance, persistent negligence, breach of trust or has defaulted in carrying out his obligations and functions under law.
 - b. The person has not been managing the affairs of the company with sound business principles and prudent commercial practices.
 - c. A company has been conducted or managed in such a manner that it has cause damage or injury to trade, industry or business to which such company pertains.
 - d. Business of the company has been conducted with intention of defrauding its creditor, members or any other person.

➤ SIGNING AND VERIFICATION OF APPLICATION:

- **As per section 241(5)** of the Act, every application under sub-section (3)—
 - (a) shall contain a concise statement of such circumstances and materials as the Central Government may consider necessary for the purposes of the inquiry; and
 - (b) Shall be signed and verified in the manner laid down in the **Code of Civil Procedure, 1908**, for the signature and verification of a plaint in a suit by the Central Government.

➤ DIFFERENCE BETWEEN SUB-CLAUSE 1(a) & 1(b) of SECTION 241

Section 241(1)(a).	Section 241(1)(b).
Public interest is covered under Section 241(1)(a).	Public interest is not covered under Section 241(1)(b).