

## Judicial Interventions In Shareholder Inspection and Access Rights – Beyond Companies Act 2013

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*While recent judicial precedents have significantly expanded the scope of shareholder inspection and access rights (particularly in the context of activist shareholders, and oppression and mismanagement actions), the legislative framework for shareholder inspection rights under Indian Company Law remains largely ineffective and inadequate. The article demarcates the current legislative scope of the shareholder inspection rights and how recent judicial decisions have been able to expand the scope to provide some much-needed relief to aggrieved shareholders.*

### I. Background

Lack of corporate transparency and information symmetry remain persistent challenges in Indian corporate governance for minority shareholders, particularly in unlisted private entities. As we detail further, the statutory framework under the Companies Act, 2013 (“**Companies Act**”) presents an interesting dichotomy – while certain inspection rights are broadly accessible without any qualifying thresholds, critical corporate documents remain outside the reach of the shareholders, regardless of shareholding.

### II. What are Shareholder Inspection Rights?

Shareholder inspection and access rights form a part of the foundational corporate governance mechanism that enables shareholders to access non-public company information, broadly serving three critical functions:

- enhancing corporate monitoring capabilities (particularly for unlisted / private companies that are not governed by extensive securities market disclosure norms);
- facilitating evidence-based remedial actions against potential misconduct or mismanagement; and
- enabling accurate valuation assessment of shareholding interests.

These rights are particularly relevant for unlisted entities, which are not subject to the public disclosure norms. Indian listed companies must comply with Regulation 4 and Regulation 30 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“**LODR Regulations**”), which mandates disclosure of material events to stock exchanges and also provides the general principles of disclosure to be made by listed companies. In unlisted entities, Companies Act mandates inspection rights providing minority shareholders with vital tools to protect their interests through informed decision-making regarding a company’s affairs.

### III. Statutory Framework: A Tale of Two Extremes

The inspection rights framework under the Companies Act presents an interesting contrast.

#### Inclusions under the scope of inspection:

The Companies Act demonstrates remarkable accessibility for shareholders – requiring no (i) minimum shareholding threshold, (ii) timeframe for exercise of inspection rights, or (iii) purpose requirement, to conduct inspection of some documents.

Some of these access rights available to shareholders are captured below:

Section / Rule of the Companies Act along with related rules and the Secretarial Standards	Documents available for inspection	Particulars
Section 17 and Rule 34 of Companies (Incorporation) Rules, 2014	A member has the right to inspect and obtain copies of memorandum of association, articles of association and copies of specified agreements and resolutions.	Memorandum, Articles, and certain filed resolutions are separately available to the public on the MCA portal for a nominal fee.
Section 46 and Rule 6 of Companies (Share Capital and Debentures) Rules, 2014	Register of renewed and duplicate share certificates.	The register is to be kept at the registered office of the company or at such other place where the register of members is kept and it shall be preserved permanently.
Section 77 read with Section 85 and Rule 11 of the Companies	<ul style="list-style-type: none"> <li>▪ Instrument creating the charge</li> <li>▪ Register of charges, reflecting all charges</li> </ul>	The register of charges and the instrument of charges shall be open for inspection by: <ul style="list-style-type: none"> <li>▪ any member or creditor (of the</li> </ul>

<b>Section / Rule of the Companies Act along with related rules and the Secretarial Standards</b>	<b>Documents available for inspection</b>	<b>Particulars</b>
(Registration of Charges) Rules, 2014	and floating charges affecting a company's assets or property or any of its undertakings.	company), without fees <ul style="list-style-type: none"> <li>▪ any other person, on payment of fees.</li> </ul>
Section 88 of the Act read with Section 94, Rule 7 and Rule 14 of the Companies (Management and Administration) Rules, 2014	<p>Register of:</p> <p>(a) members indicating separately for each class of equity and preference shares held by each member residing in or outside India;</p> <p>(b) debenture-holders; and</p> <p>(c) any other security holders.</p> <p>If so, authorised by its articles, a foreign register of members, debenture holders and other security holders, in any country outside India.</p>	<ul style="list-style-type: none"> <li>▪ The registers, except when they are closed under Companies Act, shall be open for inspection by: → <ul style="list-style-type: none"> <li>○ any member, debenture - holder, other security holder or beneficial owner, during business hours without payment of any fees; and</li> <li>○ any other person on payment of such fees as may be prescribed.</li> </ul> </li> <li>▪ For foreign registers, identical inspection protocols apply, except that the advertisement before closing the register shall be published in at least 2 newspapers circulating in the place where the foreign register is kept.</li> <li>▪ Any member, debenture holder, security holder, beneficial owner, or other authorized person can request copies of register entries or returns by paying a fee (not more than INR 10).</li> </ul>
Section 90 and Rule 5(1) of the Companies (Significant Beneficial Owners) Rules, 2018	Register of significant beneficial owners.	<ul style="list-style-type: none"> <li>▪ Subject to certain privacy related carveouts, the register is required to be open for inspection for any member of the company during business hours, at such reasonable time of not less than 2 hours, on</li> </ul>

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		<p>every working day as the board may decide.</p> <ul style="list-style-type: none"> <li>▪ For each inspection, the company may require payment of a fee not exceeding INR 50.</li> </ul>
Section 92 read with Section 94 and Rule 14 of the (Management and Administration) Rules, 2014	Annual returns, reflecting particulars around shareholding pattern, the registered office, principal business operations, information relating to shares, debentures and other securities, promoters, directors and key managerial personnel of the company, indebtedness, remunerations, meetings etc.	<ul style="list-style-type: none"> <li>▪ Annual return of companies shall be displayed on the company's website and web-link to be disclosed in board report.<sup>1</sup></li> <li>▪ The register and copies of returns is open for reasonable time during business hours for inspection by any member, debenture-holder, other security holder or beneficial owner, without payment of any fees.</li> <li>▪ A shareholder is entitled to take extracts from any register, or index or return without payment of any fee.</li> </ul>
Section 102 (3) and Paragraph 1.2.5 of Secretarial Standards - 2	Shareholders can inspect the documents referred to in the notice along with explanatory statement calling general meeting.	Shareholders can inspect any documents (like contract, agreement, MOA, AOA), in physical or electronic form, specified in the explanatory statement of the shareholders' meeting, during the business hours at the registered office of the company.
Section 105 (8) and Paragraph 6.8 of Secretarial Standards – 2	List of shareholder proxies, during the specified time-period.	<ul style="list-style-type: none"> <li>▪ Shareholders are required to requisition for inspection of proxies at least 3 days prior to the date of meeting.</li> <li>▪ Proxies shall be made available for inspection from beginning of 24 hours before the time fixed till end</li> </ul>

<sup>1</sup> Private companies and unlisted public companies which are not required to maintain a website may be exempted.

<b>Section / Rule of the Companies Act along with related rules and the Secretarial Standards</b>	<b>Documents available for inspection</b>	<b>Particulars</b>
		<p>of the meeting.</p> <ul style="list-style-type: none"> <li>▪ Inspection will be allowed during business hours.</li> <li>▪ This applies to private companies as well, unless otherwise specified in the AOA.</li> </ul>
Section 119 and Paragraph 17.6 of Secretarial Standards – 2.	Minute-books of general meeting (including resolutions passed by a postal ballot).	Shareholders can inspect minutes of shareholders' meetings during business hours, without payment of any fees, as per terms of the AOA or in the general meeting.
Section 120 read with Rules 27, 28 and 29 of Companies (Management and Administration) Rules, 2014	Documents, records, registers maintained in electronic form.	<ul style="list-style-type: none"> <li>▪ The electronic records must be readable, retrievable and reproducible in printed form.</li> <li>▪ The company shall provide copies of those records containing a clear reproduction of the whole or part thereof, as the case may be, on payment of not exceeding INR 10 per page.</li> </ul>
Section 136	Audited financial statements including consolidated financial statements, if any, auditor's report and every other document required by law.	<ul style="list-style-type: none"> <li>▪ Shareholders, debenture holders, trustees for debenture holders shall have the right to receive copy of financial statements, auditor report and every other document required under law, not less than 21 days before the date of the meeting.</li> <li>▪ Documents sent less than 21 days before the meeting will still be considered duly sent if shareholders holding at least 95% of the voting rights consent to the shorter notice period.</li> </ul>

<b>Section / Rule of the Companies Act along with related rules and the Secretarial Standards</b>	<b>Documents available for inspection</b>	<b>Particulars</b>
Section 145	Auditor's report.	Any qualifications, observations or comments on financial transactions or matters, which have any adverse effect on the functioning of the company mentioned in the auditor's report shall be read before the company in general meeting and shall be open to inspection by any member of the company.
Section 170 and Section 171 read with Rule 17 of Companies (Appointment and Qualification of Directors) Rules, 2014	Register of directors and key managerial personnel and their shareholding.	The register shall be open for shareholders' inspection during business hours. Shareholders shall have the right to extract copies without payment of any fees.
Section 186	Register maintained by company giving out loan, guarantee, providing security or making an acquisition.	The register shall be open for shareholders' inspection and extracts can be taken by shareholders upon payment of applicable fees.
Section 187 read with Rule 14 of the Companies (Meetings of Board and its Powers) Rules, 2014	Register of shares or securities in which company has made investment, but are not held in its own name.	<ul style="list-style-type: none"> <li>▪ The register shall also record the shares in which company has investment but not held in its name and also record reasons for not holding in its own name and details regarding investment and whose name the investment is being held.</li> <li>▪ Register shall also record whether investment is held in third-party's name.</li> <li>▪ Shareholders and debenture holders may inspect the register during business hours free of charge, subject to reasonable restrictions set</li> </ul>

Section / Rule of the Companies Act along with related rules and the Secretarial Standards	Documents available for inspection	Particulars
		out in the articles of association or approved by general meeting.
Section 189 read with Rule 16 of the Companies (Meeting of boards and its powers) Rules, 2014.	Register all contracts or arrangements with respect to a director, directly or indirectly, interested in it or related party transactions.	<ul style="list-style-type: none"> <li>▪ The register shall be kept at registered office and shall be open for inspection during business hours. The register shall be preserved permanently.</li> <li>▪ The shareholders can take extracts from such register upon request and subject to payment of fees mentioned in AOA (not exceeding INR 10 per page).</li> </ul>
Section 190 <sup>2</sup>	Contract of service with a managing or whole-time director.	<ul style="list-style-type: none"> <li>▪ A copy of written memorandum setting out terms service shall be kept at registered office where companies do not have a contract in writing.</li> <li>▪ Such contract or memorandum shall be open for inspection of shareholders of the company, without any fee.</li> </ul>

Although seemingly expansive, most of these documents are also available on MCA's web portal and are of little operational relevance, particularly for a shareholder who holds a sizeable interest. Naturally, shareholders rarely exercise these statutory rights to inspect and access documents.

Exclusions from the scope of inspection:

The statutory framework excludes critical documents, such as board papers, agendas, notices and minutes of board meetings, books of accounts and other granular financial records from the ambit of shareholder inspection rights. The inspection and access rights do not differentiate based on a shareholder's 'holding' – theoretically, majority shareholders are treated on par with a shareholder holding a single share. While the law provides all shareholders with the same limited rights, majority shareholders typically circumvent these

<sup>2</sup> Not applicable to a private company.

limits through board control:

- The majority shareholders exercise inspection and access rights through their nominee directors on a company's board. Through these board nominees, the majority shareholders maintain unrestricted information rights, including access to financial records and operational information that are not publicly available.<sup>3</sup> This is further enabled by the fact that a director is entitled to the widest scope of inspection and access rights, over and above those available to shareholders. Leading to instances, where the lines between controlling shareholder group and 'company' gets blurred, particularly in the context of family-owned companies. Contrastingly, minority shareholders have limited statutory entitlement and must approach courts (with the associated uncertainty of outcome) to access non-public documents, as highlighted below.
- Assuming the absence of a negotiated shareholders' agreement incorporated in the articles of a company which specifically provides for inspection and information rights for a shareholder, a non-majority shareholder (i.e., any shareholding less than 50%) could be precluded from accessing any of the company's operational documents – being on par with a shareholder who may be holding a single share.
- In extreme scenarios, despite governance structures around conflict of interest and related party transactions, controlling shareholders often deliberately operate companies as private fiefdoms and restrict the rights of minority shareholders.
- This information asymmetry concern has recently gained regulatory attention. SEBI, the capital markets regulator, told the Hon'ble Bombay High Court that material information affecting a company's governance or control must be disclosed to all shareholders, stating that "non-disclosure creates information asymmetry".<sup>4</sup> As part of proceedings where provisions of LODR Regulations have been challenged, SEBI iterated that shareholders must be informed of any pact that could affect a listed company's management, control, or business, whether the company is a party to it or not.

#### **IV. Judicial Intervention: Bridging the Gap**

Judicial protection of minority rights is enabled through oppression and mismanagement petitions under Sections 241 and 242 of Companies Act. When minority shareholders seek

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<sup>3</sup> For instance, Section 128 of the Companies Act grants directors unrestricted access to books of account, including the underlying transaction-level records, invoices, vouchers, and supporting documentation, during the day-to-day business hours, with the right to make copies. This is starkly different from shareholders' rights under Section 136 of the Companies Act, which are limited to audited financial statements provided once annually.

<sup>4</sup> SEBI Disclosure Norms: SEBI Affidavit in Bombay High Court Kirloskar Family Settlement Case Livemint (Mumbai) <https://www.livemint.com/companies/sebi-disclosure-norms-sebi-affidavit-bombay-high-court-kirloskar-family-settlement-case-sebi-vs-kirloskar-group-11757657058013.html>.

company records beyond the statutory framework, they often get stuck in a circular loop: they must first present evidence of oppression or mismanagement to gain access to said documents, yet these documents are precisely what they need to substantiate their claims. While the law protects minority shareholders through Sections 241 and 242, such minority shareholders remain locked out of the very information they need to substantiate claims against oppressive majority shareholders, effectively nullifying their primary legal remedy.

Without initial access to corporate information, the protection intended to be accorded through the Indian inspection rights framework (and subsequently, by judicial intervention) somewhat fail.

However, certain recent judicial interventions have been able to bridge this imbalance of access rights between majority and minority shareholders by providing minority shareholders with access to documents beyond the statutory scope:

1. In *Ashok Dayabhai Shah and Others v. Securities and Exchange Board of India [SEBI] and Others*, the Hon'ble Bombay High Court ruled that 'minority shareholders', not akin to general 'public' vis-à-vis a company, have the right to access certain non-public documents – such as regulatory investigation reports that may be made available to a company.<sup>5</sup> In this case:
  - a. the minority shareholders of Bharat Nidhi Limited, a publicly listed entity, sought access to certain documents (i.e., SEBI's investigation report, show-cause notices and other order / communications) and information related to a settlement agreement between SEBI and Bharat Nidhi Limited, which were available with the company and its directors (in extension, to the majority shareholders).
  - b. SEBI argued that confidentiality regulations, under Regulation 29 of the SEBI (Settlement Proceedings) Regulations, 2018, prevented disclosure of these documents to the petitioner minority shareholders (being classified as 'public', per SEBI).
  - c. The Hon'ble Court, in allowing inspection access to the minority shareholders, noted that:
    - i. the term "public" in Regulation 29 cannot be applied to shareholders of Bharat Nidhi Limited (including the petitioner minority shareholders), as shareholders have an "inextricable concern and interest" in company management. The court categorically recorded that minority shareholders, being part owners of the company, are integral to the company and have "an inextricable concern and interest in the

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<sup>5</sup> 2023 SCC Online Bom 2306.

*functioning and management of the company*". Accordingly, minority shareholders cannot be considered of a different class to majority shareholders.

- ii. allowing the majority / controlling shareholders to use Regulation 29 to withhold information from other shareholders would create disharmony and damage company management, observing:

*"...It thus cannot be countenanced that some shareholders can take shelter under regulation 29 to plead confidentiality of settlement information, against a group of other shareholders, so as to bring about an effect that information in relation to settlement be not supplied to such persons of their own class who are similarly situated. No shareholder can take a position that he cannot disclose any information on the affairs of the company to other shareholders. This would bring about a situation of disharmony, distrust causing damage to the management and functioning of the company..."* and concluded stating "Once it is the entitlement of the petitioners [shareholders] in law to receive such documents, unless furnishing of these documents would stand prohibited in law..."

2. Judicial interventions have allowed shareholders to exercise inspection rights to access the books of accounts of a company, particularly when allegations involve financial misconduct.<sup>6</sup> This position was recently reinforced by a recent order of National Company Law Tribunal in *Yogesh Patel v. Arzoo.com India Pvt. Ltd.*,<sup>7</sup> in context of oppression and mismanagement proceedings and even observed that:

*"it is only with help of books of accounts that the matter can be investigated and the parties should in such a case be at liberty to look into books of accounts and substantiate their case".*

3. Further, judicially recognized inspection rights (outside the borders of the statutory framework) include: (i) right to inspect company records through agents (who commit to disclose information only to their principals),<sup>8</sup> and (ii) obtaining photocopies of examined documents.<sup>9</sup> Any denial of inspection has to be evidenced by establishing that the shareholder's requisition for inspection is fraught with "corrupt purpose", by

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<sup>6</sup> Rajdhani Roller Flour Mills Pvt. Limited v. Mangilal Bagri (1991) 70 Comp Cas. 788 (Del)

<sup>7</sup> MA 1329/2019 in CP 1306/2019. See also *Hemant Khandelwal v. NIHO Construction Limited* CP No. - 89/241/242/ND/2020, where the NCLT allowed the shareholders to inspect the books of account.

<sup>8</sup> N.V. Vakharia (1948); Sugrabhai Alibhai ((1948) 18 Comp. Cas. 34 (Bom)) read with Sugrabhai Alibhai v. Amtee Properties (P.) Limited (1984) 55 Comp. Cas. 734 (Bom).

<sup>9</sup> Sravya Finance and Investment P. Ltd. v. Kumar's Metallurgical Corporation Ltd. (2006) 134 Comp. Cas. 818 (CLB).

the company against whom the inspection rights have been sought.<sup>10</sup>

## V. Conclusion

The current framework under the Companies Act, and fragmented judicial precedents pose significant challenges for minority shareholders seeking to access company records to substantiate their claims, particularly under petitions of oppression or mismanagement. Revisiting shareholder rights, as suggested by Prof. Umakanth Varottill, could provide a more balanced approach.<sup>11</sup> For instance, permitting shareholders with a 25% or more stake to access further documents, subject to confidentiality agreements, could enhance transparency while protecting sensitive information. This reform could align shareholder rights more closely with their financial stakes.

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<sup>10</sup> Phillips Carbon Black Limited and Ors. v. Anil Kumar Poddar and Ors. (CS No. 67 of 2010) – Hon'ble Calcutta High Court observed: *"The test is not, as the plaintiffs suggest, that the requisitioner must have a justification for making the request; the test is for the company to demonstrate that the request is for a corrupt purpose."*

<sup>11</sup> Varottill, Umakanth, Shareholder Inspection Rights in India: Restricted Scope and Diminished Effect (November 18, 2023). in Randall S. Thomas, Paolo Giudici & Umakanth Varottill (eds), Research Handbook on Shareholder Inspection Rights: A Comparative Perspective (Edward Elgar, 2023), Available at SSRN: <https://ssrn.com/abstract=4636946> or <http://dx.doi.org/10.2139/ssrn.4636946>