"It's better to be alone than in bad company"
-George Washington, Rules Of Civility.

CHAPTER-I
INTRODUCTION

The company law is not a complete code in itself so the provisions of company Law as to “protection to oppressed minority shareholders” are founded on the three fundamentals, namely, (1) the Rule of Supremacy of Majority and how it yields to prevent oppression and mismanagement by the majority, (2) the “just and equitable” ground to wind up to company to end oppression and mismanagement, and (3) the express statutory provisions in the Companies Act to end or prevent oppression and mismanagement of the company. And as these statutory provisions being relatively of recent origin rest on the shoulders of the first two fundamentals and are rather reinforced by them, it is worthwhile to see the growth pattern and contribution to company law of all these fundamentals relating to our topic. These are, therefore, being discussed in this Chapter, before we can delve into our study concerning the protection afforded by the Companies Act in cases of oppression and mismanagement which would be dealt with in the succeeding Chapters.

1: THE RULE OF SUPREMACY OF THE MAJORITY

The common law position regarding “protection to oppressed minority shareholders” as one of the exceptions to the rule of supremacy of the majority in foss v. harbottle

Although a company at common law has the same legal capacity as a human being yet it being an artificial legal person must of necessity act through human agency in its two vital organs: (i) the shareholders in general meeting and (ii) the Board of Directors. The Board is elected by the ‘general meeting’ and hence a majority of shareholders can elect majority of directors and thus carry the board with them. Similarly, a majority with 75% voting power can carry the general meeting with it in all matters. The abuse of authority by these two organs of the company may result in the oppression of the company may result in the oppression of the minority by hitting the minority shareholders alone, or mismanagement of the company by

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1 Case of Sutton’s Hospital (1612) 10 Co. Rep. 23a; 77 E.R. 960
hitting the company as a whole. Besides the minority, the creditors of the company will also be affected by this abuse.²

**THE COMMON LAW RULE OF SUPREMACY OF THE MAJORITY:**

This was laid down in *Foss v. Harbottle.*³ In that case, a bill (suit) was failed by two shareholders on behalf of themselves and all other shareholders, except the defendant who were the promoters and directors (three out of five of whom had become bankrupt), charging the defendants with "concerting and effecting various fraudulent and illegal transactions", and praying that the "defendants might be decreed to make good to the company the losses and expenses occasioned by the acts complained of".

Sir James Wigram, V.C., allowing the demurrers and dismissing the bill held that "the facts alleged in this case did not justify a departure from the rule which, prima facie, would require that the corporation should sue in its own name and in its corporate charters⁴; that the majority of the shareholders at a special general meeting assembled, independently of any general rules of law upon the subject, by the very terms of the incorporation in this case, has power to bind the whole body, and every individual shareholders must be taken to have come into the corporation upon the terms of being liable to be so bound⁵; that the very fact that the governing body of shareholders assembled at the special general meeting may so bind even a reluctant minority is decisive to show that the frame of this suit cannot be sustained whilst that body retains its functions⁶; that where a wrong has been done to the company, normally only the company can sue; that therefore, the plaintiffs could not sue in their private capacity in the form adopted in the bill.

Thus, according to this Rule of Supremacy of the Majority, the company can sue in its own name only when it decides acting through the majority of its directors or shareholders that it should so sue. The rule was further stressed upon in Mozley v. Alston⁷, in which two shareholders of an incorporated railway company filed a bill, in their individual characters, against the company and 12 other shareholders who were

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³ (1843) 2 Hare 461: 67 F.R. 189.
⁴ (1843) 2 Hare 461, at p. 491.
⁵ Ibid., at p. 494.
⁶ Ibid., at p. 494.
⁷ (1847) 1 PH. 789 (Ch.) 41 E.R. 833.
alleged to have usurped the office of directors, and to be exercising the functions thereof as a majority of the governing body (general meeting) injuriously to the interests of the company, praying that those 12 defendants be restrained from acting as directors, and be ordered to deliver the common seal, and the property and books of the company in their possession to six other persons who were allege to be the only duly constituted directors. The Vice-chancellor of England allowed the bill. On appeal, Lord Chancellor Cottenham, adopting with full approval the rule in Foss v. Harbottle and dismissing the bill held that, the rule, that a suit by individual shareholders in an incorporated company complaining of an injury to the company cannot be maintained if it appears that the plaintiffs have the means of procuring a suit to be instituted in the name of the company itself, applied equally whether the subject matter of complaint be an act or transaction which is merely avoidable at the discretion of a majority of shareholders, or an act or transaction absolutely illegal, and incapable of being confirmed by such majority.

Thus, Mozley v. Alston made the rule in Foss v. Harbottle further stringent and harsh to the minority in that the shareholders could not file a suit in their individual capacity to redress those wrongful acts of the majority towards the company which were not only merely avoidable but also the acts which were illegal and absolutely void and which, therefore, could not be confirmed by a majority of shareholders however large. The Rule of Supremacy of the Majority thus made absolute was explained and applied in a large number of latter cases. It is thus a basic principle of company law that the affairs of the company are regulated by a majority vote.

In Macdougall v. Gardiner, the articles of association of a company provided that the chairman could adjourn the general meeting with the consent of the general meeting that a poll will be held about it if demanded by 5 shareholders. At a general meeting of the company the adjournment of the meeting was moved, and, on being put, was declared by the chairman who was one of the directors, to be carried. A poll was duly demanded, but the chairman ruled that there could not a poll on the question of adjournment, and left the room. One of the shareholders field a bill on behalf of himself and all other shareholders except the directors, against the directors and the

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9 Core Brown, Companies, 42nd ed., at p. 513, quoted in (1973) L.Q.R. 107, 110; see also Attorney General v. Davy, (1741) 2 Atk. 212 (Ch.): 26 E.R. 531, in which it was held that a majority of the corporators may do any corporate act.
10 (1875-76) 1 Ch. D. 13 (C.A.)
company, stating these facts and praying for a declaration that the conduct of the chairman was illegal and improper and for an injunction to restrain the directors from carrying out the proposed arrangements without submitting them to the shareholders for their approval. Malins, V.C. allowed the bill. On appeal to the Chancery Division, it was held that the bill could not be sustained as it violated the rule of supremacy of the majority. Mellish L.J. said:

“In my opinion, if the thing complained of is a thing which in substance the majority of the company are entitled to do, or if something has been done irregularly which the majority of the company are entitled to do regularly, or if something has been done illegally which the majority of the company are entitled to do legally, there can be no use in having a litigation about it, the ultimate end of which is only that a meeting has to be called, and then ultimately the majority gets its wishes.... And that, as I understand it, is what has been decided by the cases of Mozley v. Alston and Foss v. Harbottle. In my opinion that is the rule and that is to be maintained.”

In *Burland v. Earle*¹², the shareholders sued the directors and the company to compel them to distribute in dividends the fund which had since accumulated and to account for the profit made by Burland (a director) out of the resale of a plant to the company. The Privy council allowed the appeal and dismissed the section. Lord Davey said:

“No mere informality or irregularity which can be remedied by the majority will entitle the minority to sue, if the act when done regularly would be within the powers of the company and the intention of the majority of the shareholders is clear. This may be illustrated by the judgement of Mellish L.J. in MacDougall v. Gardiner.”

In *Edwards v. Halliwell*¹⁴, Jankins L. J. restated the two aspects of the Rule in *Foss v. Harbottle*¹⁵ that in case of a wrong done to the company, the proper plaintiff is prima facie the company; and that where the alleged wrong can be made binding on

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¹¹ Ibid., at p. 25.
¹² (1902) A.C. 83 (P.C.)
¹³ Ibid., at p. 94.
¹⁴ (1950) 2 All E.R. 1064, at p. 1066.
¹⁵ (1843) 2 Hare 461.
the company and on all its members by a simple majority of the members, no individual member can bring an action in respect of that matter.

The cumulative effect of the foregoing decisions following Foss v. Harbottle\textsuperscript{16} resulted in a great hardship to the minority shareholders who could not ventilate their grievances against the majority in respect of their corporate membership rights without the consent of the majority itself. Thus the majority became a judge in its own cause and did not allow any leaf to be stirred against its wishes. This was because of the principle that by reason of a person becoming a shareholder, an agreement was implied to abide by the decision of the majority and that the decisions in the company's organs are to be valid only if the majority therein votes for them. Also, in matters of internal management the rule of supremacy of the majority prevailed and the courts were considered to have no jurisdiction to interfere in such matters.

The rule applied only in the case of corporate membership rights. Happily, it did not apply to personal or individual membership rights. A distinction was evolved by the courts between corporate and individual membership rights of a shareholder.\textsuperscript{17} Corporate membership rights are the rights which the shareholder by his contract with the company has agreed to submit to the will of the majority, provided that will is expressed in accordance with the law and the articles of association.\textsuperscript{18} Individual membership rights are all other rights of the shareholder which, according to his contrast with the company, cannot be taken away from him unless he consents or statute expressly permits; and if such a right is in question, a single shareholder can, on principle, defy a majority consisting of all the other shareholders. Examples of individual membership rights are: the right to maintain himself in full membership with all the rights and privileges appertaining to that status\textsuperscript{19}, the right to have his vote recorded if his share carries a vote\textsuperscript{20}, the right to petition for a compulsory winding up of the company\textsuperscript{21}, the right to petition for remedy for oppression, mismanagement or unfairly prejudicial treatment\textsuperscript{22}, etc. In \textit{Pender v. Lushington}, Sir Jessel M.R. said\textsuperscript{23}:

\begin{itemize}
\item \textsuperscript{16} Ibid.
\item \textsuperscript{17} Pender v. Lushington (1877) 6 Ch.D. 70; Pullbrook v. Richmond Consolidated Mining co. (1878) 9 Ch. D. 610; Edwards v. Halliwell (1950) 2 All E.R. 1064; Hayes v. Bristol Plant Hire Ltd. (1957) 1. W.L.R. 499.
\item \textsuperscript{18} Palmer's Company Law, 25th ed. (2005) Para 58-08.
\item \textsuperscript{19} Per Jankins L.J. in Edwards v. Halliwell (1950) 2 All E.R. 1064, 1067.
\item \textsuperscript{20} Section 284 of the English Companies Act, 2006; sec. 433 of (Indian) Companies Act, 1956.
\item \textsuperscript{21} Ibid.
\item \textsuperscript{22} Section 994 of the English Companies Act, 2006; Sec.; Sections 397, 398, 408 and 409 of the (Indian) Companies Act, 1956.
\end{itemize}
“He is a member of the company, and whether he votes with the majority or the minority he is entitled to have his vote recorded – an individual right in respect of which he has a right to sue. That has nothing to do with the question like that raised in Foss v. Harbottle and that line of cases.”

Distinguishing personal rights from corporate membership rights, Jenkins L.J. observed in Edwards v. Halliwell, as:

“... the personal and individual rights of membership of each of them have been invaded by a purported, but invalid, alteration... In those circumstances, it seems to me the rule in Foss v. Harbottle has no application at all, for the individual members who are suing sue.... In their own right to protect from invasion their own individual rights as members.”

Further, individual membership rights are different from the rights available to qualified minorities which can be exercised not at the discretion of a single shareholder but only by the co-operative act, within the body corporate, of a membership group of statutorily defined size, i.e., one-tenth of the paid up capital carrying voting rights. The rule in Foss v. Harbottle also does not apply in the case of such qualified minority rights.

Thus the rights of the majority extend only to corporate membership rights of the shareholders, while those of the minority extend of the shareholders, while those of the minority extend both to individual membership rights and the qualified minority rights. Each, the majority or the minority, is supreme in its own domain. A proper balance of the rights of majority and minority shareholders is essential for the smooth functioning of the company.

Exceptions to the Rule in Foss V. Harbottle at Common Law

To establish the balance between the interests of the majority and the minority in respect of the corporate rights, exceptions to the rule in Foss v. Harbottle have been
grafted thereon at common law by the courts and also by statute. In addition to the special statutory provision\(^{29}\), it is well established that in certain circumstances, at common law, an individual shareholders or group of shareholders can institute proceedings as plaintiff(s) to enforce their corporate membership rights, instead of those proceedings having to be instituted in the name of the company. The following schematic exceptions to the rule in Foss v. Harbottle are admitted:\(^{30}\)

1. An act which is ultra vires the company or illegal.

2. An act which constitutes a fraud on the minority, and the wrongdoers are themselves in control of the company; or

3. A resolution which requires a qualified majority (special resolution) but has been passed by a simple majority.

However, certain authorities\(^ {31}\) list the above schematic exceptions in a different order and even include the personal or individual rights as one of the very exceptions to Foss v. Harbottle which inclusion is contrary to the holding\(^ {32}\) that the personal or individual rights of the shareholder are completely outside the general ambit of the rule in Foss v. Harbottle. And after such an inclusion and re-arrangement of the order, they call the “Fraud on the minority” as the fourth or “true” exception\(^ {33}\) to the rule in Foss v. Harbottle. But here in this study the exceptions as in the aforesaid\(^ {34}\) schematic range would be adopted and discussed below:

**The first exception: Illegal or ultra vires acts:**

The rule in Foss v. Harbottle does not apply in the case of an act which is illegal\(^ {35}\) or ultra vires the company\(^ {36}\). A shareholder can therefore sue against such acts of the majority in respect of his corporate rights.

**The second exception: “Fraud on the minority”:**

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\(^{29}\) See note 22, ante.


\(^{32}\) See notes 23 and 25, ante.


\(^{34}\) See note 30, ante.

\(^{35}\) Northwest transportation Co. v. Beatty (1887) 12 App. Cas. 589.

Again, the rule in Foss v. Harbottle does not apply where the act complained of is a fraud on the minority of shareholders and the company is prevented from taking action against the wrongdoers by the votes controlled by the latter. A resolution constitutes a fraud on the minority if it is not passed “bona fide for the benefit of the company as a whole”, or if its effect is “to discriminate between the majority shareholders and the minority shareholders so as to give to the former an advantage of which the latter was deprived.” As to the expression “bona fide for the benefit of the company as a whole”, it was held that it was sufficient if the proposed resolution was, in the opinion of the majority of the company, bona fide for the benefit of the company as a whole. In Estmanco (Kilner House) Ltd. v. greater London Council, Sir Robert Megarry stated:

“Fraud’ in the phrase ‘fraud on a minority’ seems to be being used as comprising not only fraud at common law but also fraud in the wider equitable sense of that term, as in the equitable concept of a fraud on a power.”

Thus this exception although said to be “vague” has a wide scope because the concept of “wrongdoer control” now is held to include even a de facto control.

The third Exception: Special Resolution:

—The rule in Foss v. Harbottle does not apply in case of a resolution which requires a qualified majority as per the statute but has been passed by a simple majority.

A Further general exception: The interest of justice:

It has been suggested that a further general exception should be admitted in cases in which justice requires that the court should intervene to assist an otherwise helpless minority shareholder. This general exception was recognized by Wigram,

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37 Meiner v. Hooper’s Telegraph works (1874) L.R. 9 Ch. 350; Birch v. Sulliven (1957) 1 W.L.R. 1247.
38 Per Lindley M.R. in Allen v. Gold Reefs of West Africa (1900) 1 Ch. 656, 671.
40 Sidebottom v. Kershaw Leese & Co. Ltd. (1920) 1 Ch. 154; also see Evershed M.R. in Greenhalgh v. Arderne Cinemas Ltd. (1950) 2 All E.R. 1120, 1126.
V.C. in Foss v. Harbottle itself.\textsuperscript{43} And in Russell v. Wakefield Waterworks Co., Jersel M.R. speaking of the rule in Foss v. Harbottle said:\textsuperscript{44}

"As I have said before the rule is a general one, but it does not apply to a case where the interests of justice require the rule to be dispensed with."

This exception was recognized in many latter cases.\textsuperscript{45} However, the court of Appeal has observed in Prudential Assurance co. Ltd. v. Newman Industries Ltd. (No.2)\textsuperscript{46} that the "interest of justice" exception is not a convincing practical test. But the fact remains that it is still the last, general, exception to Foss v. Harbottle as the Court of Appeal did not express any concluded view\textsuperscript{47} on the proper scope of the exceptions to Foss v. Harbottle. Certain authorities would call it the "fifth" exception to the rule in Foss v. Harbottle.\textsuperscript{48}

**OPPRESSION AND MISMANAGEMENT AS EXCEPTIONS TO THE RULE IN FOSS V. HARBOTTLE, AT COMMON LAW**

It was held in Macdougall v. Gardiner\textsuperscript{49} that the rule in Foss v. Harbottle did not apply if the act complained of was "oppressive". James L.J. said that the rule in Foss v. Harbottle should be always adhered to:

"unless there be something illegal, oppressive or fraudulent – unless there is something ultra vires on the part of the company qua company, or on the part of the majority of the company, so that they are not fit persons to determine it; but that every litigation must be in the name of the company, if the company really desire it."\textsuperscript{50}

Again, in Edwards v. Halliwell\textsuperscript{51} which arose from an act prior to the enactment of statutory provisions on oppression in section 210 of the English Companies' Act, 1948, "Oppression" and "Unfairness" were held to be exceptions to the Rule in Foss v. Harbottle. Asquith L.J. said:

\textsuperscript{43} (1843) 2 Hare, 461: 67 E.R. 189, at p. 203.
\textsuperscript{44} (1875) L.R. 20 Eq. 474, at p. 480 and 482 (underlining added)
\textsuperscript{46} (1982) 2 All E.R. 354 (C.A.), at p. 366 be.
\textsuperscript{47} Ibid., at p. 365 b.
\textsuperscript{48} See note 31, ante.
\textsuperscript{49} (1875) 1 ch. D. 13 (C.A.)
\textsuperscript{50} Ibid., at p. 22 (emphasis added)
\textsuperscript{51} (1950) 2 All E.R. 1064 (C.A.).
"I confess I should have thought the action complained of here was strongly tinctured, not, indeed, with Fraud, but with "oppression" and "unfairness"...... To call this a mere informality or irregularity without any element of oppression or unfairness would be an abuse of language."\(^{52}\)

The above two cases concerned individual membership rights which in themselves are excepted\(^{53}\) by the rule. In respect of corporate membership rights, the "fraud on the minority" exception in its wider context should also cover cases of oppression and mismanagement when fraud amounts to discrimination against the minority\(^{54}\) or abuse of power.\(^{55}\) Even the last, general, "interest of justice" exception should also cover cases of oppression and mismanagement as the rule can be relaxed where necessary\(^ {56}\) in the interest of justice. As we shall see in Chapter VIII, a minority shareholder can bring a derivative action in respect of corporate wrongs done to the company under these exceptions to the rule in Foss v. Harbottle. But there is no clear cut exception to cover cases of oppression or mismanagement in companies.\(^ {57}\)

2: WINDING UP ON THE "JUST AND EQUITABLE" GROUND

The judicial remedy of compulsory winding up of the company by the Tribunal on the statutory "just and equitable" ground, as a relic of the Partnership Law, to end oppression or mismanagement:

A company is born on its incorporation under the Companies Act\(^ {58}\), and its existence as such an artificial legal person then cannot be terminated except through the machinery of winding up\(^ {59}\) which precedes its dissolution. One of the 9 statutory grounds for compulsory winding up of the company is the "just and equitable" ground u/s 433 (f)\(^ {60}\) of the (Indian) Companies Act, 1956 which\(^ {61}\) is verbatim the same as

\(^{52}\) Ibid., at p. 1065, 1066 (emphasis added).
\(^{53}\) See notes 17, 23 and 25, ante.
\(^{54}\) As in Greenhalgh v. Arderne Cinemas Ltd. (1950) 2 All E.R. 1120, 1126.
\(^{56}\) See notes 31 to 36, ante.
\(^{57}\) These exceptions are discussed again in Chapter VIII, post, from the aspect of bringing a derivative action under them.
\(^{58}\) Sec. 34 of the (Indian) Companies Act, 1956, cf. Sec. 13 of English Companies Act, 1948.
\(^{60}\) Sec. 433 Reads:
"433.Circumstances in which company may be wound up by Tribunal:
A Company may be wound up by the Tribunal,
(f) if the tribunal is of opinion that it is just and equitable that the company should be wound up."
section 222(f)\textsuperscript{62} of the (English) Companies Act, 1948. This power of the Tribunal to wind up on the “just and equitable” ground is a relic of English Partnership Law.\textsuperscript{63} The Indian Partnership Law\textsuperscript{64} draws totally upon the English Partnership Law (statutory\textsuperscript{65} and general) regarding dissolution of partnership. The English Partnership Law, until 1890 was only a Judge made law. It was consolidated and codified for the first time in the current Partnership Act, 1890, which is not a complete code of Partnership law, as it self provides by section 46 that existing rules of equity and of common law shall continue in force except so far as they are inconsistent with the express provisions thereof. The Indian Partnership Act, 1932 which is the first and current Indian statute on the subject is totally based on the English Act of 1890.\textsuperscript{66}

Under the Partnership Law, the Court’s power to act u/s 35 (f) of the English Act of 1890 is virtually unlimited.\textsuperscript{67} Lindley, which is an authoritative English Text on the Law of Partnership since 1860 and has been relied upon throughout by the Courts including the House of Lords, states\textsuperscript{68} about Section 35 (f) as:

“The Court ought not to fetter itself by any rigid rules; and any case in which it is no longer reasonably practicable to attain the object with a view to which the partnership was entered into or to carry out the partnership contract according to its terms will, it is apprehended, be within this section.”

Thus, in the partnership law, the court in its sole discretion can dissolve a firm on the “just and equitable” ground for any act or misconduct of the defendant partner which amounts to oppression of the plaintiff partner or mismanagement of the firm, or is calculated to affect injuriously or prejudicially the carrying on of the partnership business, even if that act or misconduct does not squarely fit in the strict judicial definitions (as we shall come to latter) of “oppression” or “unfairly prejudicial” or

\textsuperscript{61} cf. section 162 (vi) of the Indian Companies Act, 1913.
\textsuperscript{62} cf. section 168 (6) of the English Companies Act, 1929.
\textsuperscript{64} Section 44 (g) of the Indian Partnership Act, 1932 which reads as:
\textsuperscript{44. Dissolution by the Court-}
At the suit of a partner, the court may dissolve a firm on any of the following grounds, namely:
(a) to (f) xx xx xx
(g) On any other ground which renders it just and equitable that the firm should be dissolved.”
\textsuperscript{65} Section 35(f) of the (English) Partnership Act. 1890
\textsuperscript{67} Re Amalgamated Syndicate Ltd. (1897) 2 Ch. 600.
\textsuperscript{68} Lindley on the Law of Partnership, 14th ed. (1979), p. 627, 628.
"mismanagement" under the statutory provisions enacted, to end oppression or mismanagement, in the Companies Acts.\textsuperscript{69} It is the fundamental foundation of a partnership that the good faith of the partners is pledged mutually to each other that the business shall be conducted with their actual personal interposition, subject to the agreement of partnership, so that each may see that the other is carrying it on for their mutual advantages.\textsuperscript{70} The court can dissolve the partnership on the "just and equitable" ground for misconduct of a partner who willfully or persistently commits a breach of the partnership agreement, or so conducts himself in matters relating to the partnership business that it is not reasonably practicable for his co-partners to carry on business in partnership with him. While applying the analogy of partnership law for winding up a "quasi-partnership" company on the "just and equitable" ground, the following classical passage\textsuperscript{71} in Lindley as to the degree of misconduct required to dissolve a partnership is often quoted with approval by the courts\textsuperscript{72}:

"It is not necessary, in order to induce the court to interfere, to show personal rudeness on the part of one partners to the other, or even any gross misconduct as a partner. All that is necessary is to satisfy the court that it is impossible for the partners to place that confidence in each other which each has a right to expect, and that such impossibility has not been caused by the person seeking to take advantage of it"

Thus the theory of the "old law" prior to the House of Lords decision in Ebrahimi v. Westbourne Galleries Ltd.\textsuperscript{73} Was that when a company is a "quasi partnership", i.e., is in substance a partnership even though operating in corporate form, it should be wound up if the facts put before the court would give grounds for dissolution of a partnership on the "just and equitable" ground under partnership law.\textsuperscript{74}

\textsuperscript{69} Sec. 210 of the English Act, 1948, Sec. 75 of English Companies Act, 1980\textsuperscript{1} Secs. 397, 398, 408 or 409 of the (Indian) Companies Act, 1956.
\textsuperscript{72} In Re Yenidje Tobacco Co. Ltd. (1916) 2 Ch. 426, 430 (C.A.); Loeb v. John Blackwood Ltd. (1924) A.C. 783 (P.C.), at 791; Re Lundie Bros. Ltd. (1965) 1 W.L.R. 1051, 1056; Re Westbourne Galleris Ltd. (1970) 1 W.L.R. 1370, 1384; Ebrahimi v. Westbourne Galleris Ltd. (1972) 2 II L.R. 192 (H.L.), at 501.
\textsuperscript{73} (1972) 2 All E.R. 492 (H.L.); (1973) A.C. 360 (H.L.).
\textsuperscript{74} M.R. Chesterman, the "just and equitable" winding up of small private companies, (1973) Mod. L.R 129, at 131.

In exercising the powers conferred by the said section 222 (f) of the English Act or section 433 (f) of the Indian Act, the courts have not limited their discretion to matters ejusdem generic as those enumerated in sub-section (a) to (i) thereof but have felt free to consider in the widest possible terms what justice and equity requires. Despite Lord Wilberforce's warning that it is wrong to create categories under which cases must be brought it sub-section (f) is to apply, the cases in which the courts have dissolved companies on this ground have been divided into a number of generally agreed upon categories. These judicially laid down categories are: deadlock; lack of confidence; disappearance of substratum; fraud or illegal business; a company being a "bubble", and where the shareholdings in a company are so distributed or its affairs are so conducted as would amount to oppression or mismanagement if the company is a "quasi-partnership" and the circumstances would justify the dissolution of a partnership on the "just and equitable" ground, and finally the cases of mismanagement in companies.

CASES WHERE COMPANY WAS WOUND UP TO END OPPRESSION OR MISMANAGEMENT ON THE "JUST AND EQUITABLE" GROUND

The first case in which a winding up of a "quasi-partnership" was ordered on the "just and equitable" ground was in Re Yenidje Tobacco Co. Ltd., in which the voting shares of a company were equally divided between W and R, who were also the sole directors. The articles of association of the company provided for the settlement of all disputes between W and R by arbitration. Use was made of this arbitral procedure but R refused to abide by its outcome. Relations between W and R eventually deteriorated to the point where they refused to communicate with each other directly, and so only through the company's Secretary. W petitioned for winding

75 Section 222 (f) of the English Cos. Act, 1948; Sec. 433 (f) of the (Indian) Companies Act, 1956.
77 In Ebrahimi v. Westbourne Galleries Ltd. (1972) 2 All E.R. 492 (H.L.) at p. 496.
78 See McPherson, "Winding up on the just and equitable grounds", (1964) 27 M.L.R. 282.
79 (1916) 2 Ch. 426 (C.A.).
up on the “just equitable” ground. Allowing the petition and dismissing the appeal, the court of Appeal held that W and R were in substance partners, the litigation was in substance an action for the dissolution of the partnership80 and as a partnership would be dissolved in the circumstances alleged in W’s petition, an order to wind up the company had to be issued. The House of Lords had an occasion to comment on this case as: “It is sometimes said that the order in that case was made on the ground of ‘deadlock’. That is not so81. So, this case was decided on the ground of misconduct arising out of lack of good faith and mutual confidence, which in partnership law amounts to oppressive conduct.

In Loch v. John Blackwood Ltd.82, the company was registered in Barbados under a section similar to the present section 222 (f) of the English Companies Act 1948. The Company took over the family business of the testator under a will by which the trustees were to act as the directors. The shareholders petitioned for winding up on the “just and equitable” ground alleging that the statutory conditions as to general meeting were not observed, the balance sheets and accounts were not submitted, requirements as to audit were not complied with, and a preponderance of voting power lay with the managing director due to which it was impossible for the petitioners to obtain any relief by calling a general meeting of the company. The Privy council found truth in all these allegations and that it was a domestic and family concern, and allowing the appeal, it observed:

“It is undoubtedly true that at the foundation of applications for winding up, on the “just and equitable” rule, there must lie a justifiable lack of confidence in the conduct and management of the company’s affairs. But this lack of confidence must be grounded on conduct of directors, not in regard to their private life or affairs, but in regard to the company’s business. Furthermore the lack of confidence must spring not from dissatisfaction at being outvoted on the business affairs or on what is called the domestic policy of the company. On the other hand, wherever the lack of confidence is rested on a lack of probity in the conduct of the company’s affairs, then the former is justified by the

80 Ibid., at p. 434, per Warrington, L.J.
81 Ebrahimi v. Westbourne Galleries Ltd. (1972) 2 All E.R. 492 (H.L.) at p. 503h per Lord Cross.
82 (1924) A.C. 783 (P.C.).
latter, and it is under the statute just and equitable that the company be wound up.\textsuperscript{83}

It is thus clear that following the partnership analogy (it being a "domestic and family concern), the winding up of the company was allowed by the Privy Council on the "just and equitable" ground because of the circumstances of the case which amounted to oppression of the minority and even "mismanagement"\textsuperscript{84} of the company not only under partnership law but also under the definitions of "oppression" which were latter judicially prescribed under s.210 of the English Companies Act, 1948.\textsuperscript{85}

In the celebrated case of \textit{Ebrahimi v. Westbourne Galleries Ltd.}\textsuperscript{86} E and N, who had originally carried on their business of selling oriental carpets as a partnership, incorporated it with 500 (1) shares issued to each. Subsequently, N’s son, G, was admitted to the company as a shareholder and appointed director. As a result E held 400 of the Company’s shares, while N and his son G held 600 shares between them. The company made good profits all of which were distributed as directors’ remuneration. No dividends were ever paid, differences arose between Ebrahimi (E) and N, with whom G sided, about the running of the business. At a general meeting, N and G, by an ordinary resolution which was legally effective u/s 184 of the English Companies Act, 1948 and the company’s articles, removed the appellant, E, from the office of the director and then excluded him from any share in the conduct of company’s business. E petitioned for an order u/s 210 of the 1948 Act that N and G purchase his shares in the company and, in the alternative, for an order u/s 222 (f) of the 1948 Act for winding up the company on the "just and equitable" ground. The trial judge Plowman J.,\textsuperscript{87} held that the complaint did not reveal a course of oppressive conduct within the meaning of section 210 because the oppression was in his capacity as director and not as shareholder, but that N and G had done him a wrong in the sense that it was an abuse of power and a breach of the good faith as per partnership law. He therefore ordered the winding up of the company on the "just and equitable" ground u/s 222 (f) of the 1948 Act. The court of Appeal allowed an appeal by N and

\textsuperscript{83} Ibid., p. 788 (emphasis added).
\textsuperscript{84} In Rajahmundry Electric Supply Corpn. v. A. Nageshwara Rao. AIR 1956 S.C. 213, in para (8) at page 216, the S.C. held that Loch v. John Blackwood Ltd. pertained to "mismanagement".
\textsuperscript{85} cf. Secs. 397, 398 of Indian Companies Act, 1956; cf. Section 135 of the English Companies Act, 1980.
\textsuperscript{86} (1972) 2 All E.R. 492 (H.L.); (1973) A.C. 360 (H.L.).
\textsuperscript{87} (1970) 2 All E.R. 374.
G holding that E had failed to establish, as was incumbent on him, that the action of N and G in removing him had not been taken ‘bonafide’ in the interest of the company. But on appeal, the House of Lords reversed the Court of Appeal and held that the expulsion of E as director although legally proper under section (u/s) 184 of the Act was a branch of good faith and confidence under the partnership law. Lord Wilberforce observed:

“The ‘just and equitable’ provision does, as equity always does, enable the court to subject the exercise of legal rights to equitable considerations; considerations, that is, of a personal character arising between one individual and another, which may make it unjust, or inequitable, to insist on legal rights, or to exercise them in a particular way”.

As to the articles of the company which allowed such expulsion, Lord Wilberforce disapproving Re Cuthbert Cooper and Sons Ltd. Decision of Simonds J. said:

“I am unable to agree as to the undue emphasis he puts on the contractual rights arising from the articles, over the equitable principles which might be derived from partnership laws.”

The importance of Ebrahimi v. Westbourne Galleries Ltd. in providing protection against oppression for minority shareholders in incorporated partnership cannot be over-estimated. The power of the majority is now circumscribed by a rule which proscribes the exercise of that power in a way underlying the formation of the incorporated partnership. Thus where remedy for oppression under section 210 of the English Companies Act, 1948 was not available the winding up remedy on the “just and equitable” ground u/s 222 (f) of the same act was granted to end oppression on the partnership analogy.

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89 (1973) A.C. 360 at p. 379.
90 (1937) 1 Ch. 392, Simonds J. refused to wind up the company on the ground that the directors’ behaviour was fully authorized by the articles of association, saying that; “I must be governed by the legal rights of the parties as determined by the bargain into which they entered” (at p. 398.)
91 (1972) 2 All E.R. 492 (H.L.), at p. 498.
In India also, the courts/CLB have been holding that is “just and equitable” to wind up the company in cases of oppression or mismanagement.

In R. Sabapathi Rao v. Sabapathi Pres Co. Ltd., the managing director outvoted the minority shareholders and retained the profits of the business between the members of the family, and there were several complaints of mismanagement of the affairs of the company also. The court following Loch v. John Blackwood Ltd. Passed an order for winding up the company on the “just and equitable” ground under the similar section 162 (vi) of the Indian Companies Act, 1913.

Again in Rajahmundry Electric Supply corporation Ltd. v. A. Nageshwara Rao and others, the petitioner, a shareholder of the company, had filed a petition u/s 162 (v) and (vi) and section 153-G of the Indian Companies Act, 1913, for winding up the company or, in the alternative, for taking action u/s 153-C, alleging oppression and mismanagement by the majority group. Under section 153-C, one of the requirements to end mismanagement and oppression was that the facts would otherwise justify winding up on the “just and equitable” ground u/s 162 (vi) of the Indian Companies Act, 1913, and that to wind up the company would unfairly prejudice the company. The trial judge held that on the facts of the case the court could so wind up the company but that it would unfairly prejudice the company. He therefore passed an order u/s 153-G to end mismanagement, appointing 2 administrators for a period of 6 months who were vested with all powers of the board of directors. This order of the trial judge was upheld by the High Court and the Supreme Court. In this case the company was not actually wound up but it was held that the facts justified winding up of the company on the “just and equitable” ground to end mismanagement. The Supreme Court observed that:

“If... Circumstances exist which render it desirable in the interests of the shareholders that the company should be wound up, there is nothing in section 162 (vi) which bars the jurisdiction of the court to make such an order. Loch v. John Blackwood Ltd. was itself a case in which the order for winding up was asked for and granted on the ground of mismanagement by the directors.”

94 A.I.R. 1925 Mad. 489.
95 (1924) A.C. 783 (P.C.)
97 (1924) A.C. 783 (P.C.), at p. 788.
Although oppression was alleged in this case, it was held that the facts constituted mismanagement of the company which was held as a valid ground for winding up order on the “just and equitable” ground.

In the case of Eastern Linkers Pvt. Ltd., v. Dina Nath Sodhi, a company was floated in 1949 by B and S. It was run by them jointly till 1969 on equal participation of responsibility as well as enjoyment of equal remuneration and other benefits. Both were directors of the company till 1970. Serious differences arose between B and S in 1969. B and his group held 21 preference shares but contended that S and his group did not hold 21 preference shares. The matter went up to the court which held that S and his group did hold such 21 shares. S group offered to transfer the shares to B, but B did not accept the decision of the court and did not deposit the price fixed for the shares. In an annual meeting called by B in 1970, S was not elected as director. Further, B allotted 1000 equity shares to himself and his nominees. S filed a petition under sections 397 and 398 of the Companies Act, 1956 to end oppression and mismanagement and thereafter u/s 433 (f) of the Act for winding up the company on the “just and equitable” ground to end the said oppression and mismanagement. The single Judge of the Delhi High Court held that it was just and equitable to wind up the company. The appeal was dismissed by the Division Bench of the Delhi High Court which, following Re Yenidje Tobacco Co. case and the Ebrahimi decision of the House of Lords, and citing Gore Brown, held that on the face of record the company was in reality a partnership and that in the instant case it was just and equitable that the company should be wound up u/s 433 (f) to end oppression and mismanagement by B who “was destroying the basis which was the foundation of the company” and as “in that state of affairs the business of the company can hardly be attended to.”

The foregoing study of the cases reveal the judicial attitude that where the company is in fact a “quasi-partnership”, the courts/CLB are quite inclined to extend the judicial remedy of compulsorily winding up of the company on the statutory “just and equitable” ground under section 433 (f) of the Companies Act, 1956 to end oppression or mismanagement in the company, where such oppression or mismanagement would have justified the dissolution of a partnership on the “just and equitable” ground.

100 2 Ch. 426.
101 360 (H.L.).
102 Gore Brown on Companies, 42nd ed., p. 908, 909.
103 55 Comp. Cas. 462, at p. 484.
equitable" statutory ground under the partnership law. In other words, in such circumstances of quasi-partnership, the courts/CLB have judicially created a recognized category of "oppression or mismanagement" under which relief of winding up to company on the "just and equitable" ground under the statute shall be granted where the facts and merits of a given case warranted such a relief as per the principles of partnership law imported, by the aforesaid long line of cases, into the company law. But before he can get this remedy of winding up the company for ending oppression or mismanagement, the petitioner has to pass through the dense cob-webs of partnership law to the full satisfaction of the court as a test of his stamina to fight against oppression or mismanagement in the company of which he is a member. He must satisfy the tribunal that indeed it is just and equitable that the company should be wound up and he must further satisfy all other requirements of the partnership law pertaining to dissolution on the "just and equitable" ground such as he has a tangible interest in the winding up.

WINDING UP REMEDY TO END OPPRESSION OR MISMANAGEMENT ON THE "JUST AND EQUITABLE" GROUND IS NOT A PROPER REMEDY:

By now may be convinced that this remedy to end oppression or mismanagement which lies at the sole discretion of the court, if at all granted, is too cumbersome and drastic as it ends the company itself. It is, therefore, undesirable from the point of view of the shareholders who might wish the company to continue in existence. In the U.K., the courts, prior to the Companies Act, 1948, even used to refuse winding up on the "just and equitable" ground if some other remedy was available to the petitioner. But now, section 225 (2) as enacted in the English Companies Act, 1948, provides that the order u/s 222 (f) of that Act to wind up the company on the "just and equitable" ground shall not normally be refused. This no doubt makes such a winding up more easily attainable and clearly makes the threat of such proceedings a more potent one, but killing the company is a singularly clumsy method of ending oppression or mismanagement and may be suicidal for the petitioner himself. As M.R. Chesterman has said.

104 In Re Cuthbert Cooper and Sons Ltd. (1937) 1 Ch. 392, this remedy was refused on the ground that the remedy for improper dismissal lay elsewhere in a civil court (at p. 399, 400).
105 cf. Section 443 (2) of Companies Act, 1956, in India.
"The reason why section 222 (f) has considerable practical importance as a shareholder’s remedy is not that its use will inevitably bring the company into liquidation; it is instead the threat of liquidation. He can stand beside the barrel of gun power with a lighted match in his hands, so to speak demanding that he gets what he wants – which in most cases is simply good price for his shares – or else everyone including himself, perishes swiftly and dramatically”.

Obviously therefore, due to its fatal nature towards the minority shareholder, this extreme remedy is less attractive for obtaining relief in cases of oppression or mismanagement, and is rarely pursued to the end. Therefore, the Cohen Committee in the U.K. suggested a less drastic alternative remedy which was enacted in section 210 of the English Companies Act, 1948. Now this winding up remedy is regarded as a residual and a general one as compared to the said statutory provisions enacted for ending oppression or mismanagement (when it amounts to oppression) in companies. But the irony remains that still the foregoing law of winding up on the “just and equitable” ground under section 433(f) of the (Indian) Companies Act, 1956 is of extreme importance and rather indispensable for deciding the cases of oppression. This is because, unfortunately, the statutory provision in the (Indian) Companies Act, 1956, for relief in cases of oppression are inextricably interwoven with a pre-requisite to be satisfied under section 433 (f) thereof. The courts and the shareholders in India will continue to be haunted by this law of winding up on the “just and equitable” ground, based mostly on partnership analogy, for the enforcement of the statutory remedy to end oppression. It will continue to be so till the sledge hammer blow of the legislature severs it from “winding up” as has been done in the U.K. by section 75 of the Companies Act, 1980.

108 e.g., in Re Lundie Brothers Ltd. (1965) 2 All E.R> 692, the winding up order was subsequently rescinded at the request of all parties, having served its purpose in bringing about a satisfactory settlement.
109 (1945) Cmnd. 6659; See Part (3) of this Chapter I, page 39 note 5, for details.
110 cf. Sections 153-C and 153-D of Indian Companies Act, 1913 inserted in 1951; Section 397 of the (Indian) Companies Act, 1956; section 75 of the English Companies Act, 1980 (Repealing section 210 of the 1948 Act).
111 Ibid.
112 Based on the case law under section 222(f) of the English Companies Act, 1948.
113 Section 397.
114 Ibid.
3: STATUTORY PROVISIONS

THE STATUTORY REMEDY FIRST EVER ENACTED AS AN ALTERNATIVE TO THE "WINDING UP ON THE 'JUST AND EQUITABLE' GROUND" REMEDY, FOR THE PROTECTION OF OPPRESSED MINORITIES IN COMPANIES.

The old English Companies Act, 1929 (repealed by the current English Companies Act, 1948) and the old Indian Companies Act, 1913 (repealed by the current Companies Act, 1956) did not contain any remedy alternative to "winding up on the 'just and equitable' ground" under what is now section 222 (f) or section 433 (f) respectively, to end oppression or mismanagement. However, the courts would refuse winding up on this ground to end oppression or mismanagement in companies if some other relief was available to the petitioner, as said earlier. This made it a less effective weapon to prevent oppression or mismanagement in companies.

The Cohen Committee in the U.K. suggested far-reaching reform of the company law, and in particular, devoted its first two Recommendations to the prevention of oppression of minority shareholders, which read as:

"Recommendations:

We recommend that:

I. Section 168 be amended by

(a) Substituting for the words 'A company may be wound up by the court if' a provision to the following effect:

'Notwithstanding the existence of an alternative remedy available to the petitioner, a company may be wound up the Court if the Court is of opinion that it is just and equitable that the company should be wound up; without prejudice to the

115 cf. Sec. 168 (6) of the English Companies Act, 1929.
116 cf. Sec. 162 (vi) of Indian Companies Act, 1913.
117 The Committee appointed by the U.K. Govt. (Board of Trade) on 26th June, 1943, under the chairmanship of Mr. Justice Lionel L. Cohen, "to consider and report what major amendments are desirable in the companies Act, 1929, and, in particular, to review the requirements prescribed in this regard to the formation and affairs of companies and the safeguards afforded for investors and for the public interest."
118 (1945) Cmd. 6659.
119 Ibid., page 95.
generality of these words, the Court may wind-up a company on any of the following grounds, namely, if;

(b) Omitting the existing subsection (6) (paras. 60 and 152).

II. There be a new section under which, on a shareholder’s petition, the Court, if satisfied that a minority of the shareholders is being oppressed and that a winding-up order would not to justice to the minority, should be empowered, instead of making a winding-up order, to make such other order, including an order for the purchase by the majority of the shares of the minority at a price to fixed by the Court, as to the Court may seem just (paras. 60 and 152).”

RECOMMENDATIONS OF THE COHEN IMPLEMENTED

The recommendations of the Cohen Committee were enacted in the Companies Act, 1948 and a new section 210 implementing the recommendation No. II provided, for the protection of minority shareholders, the first ever statutory remedy alternative to “winding up on the ‘just and equitable’ ground” to end oppression of the shareholders. This section 210 which became the founding stone and standard for the current Indian legislation for “prevention of oppression or mismanagement in companies”, read in its sub-sections (1) and (2) as

“210. Alternative remedy to winding up in cases of oppression:

(1) Any member of a company who complains that the affairs of the company are being conducted in a manner oppressive to some part of the members (including himself) or, in a case falling within subsection (3) of section one hundred and sixty nine of this Act, the Board of Trade, may make an application to the court by petition for an order under this section.

(2) If on any such petition the court is of opinion –

(a) that the company’s affairs are being conducted as aforesaid; and
(b) that to wind up the company wound unfairly prejudice that part of the members, but otherwise the facts would justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up:

the court may, with a view to bringing to an end the matters complained of, make such order as it thinks fit, whether for regulating the conduct of the company’s affairs in future, or for the purchase of the shares of any members of the company by other members of the company or by the company and, in the case of a purchase by the company, for the reduction accordingly of the company’s capital, or otherwise.”

Section 225 (2) of the English Act of 1948 which in substance implements recommendation No. I of the Cohen committee\(^{120}\) without amending section 168 (6)\(^{121}\) of the 1929 Act, reads as\(^{122}\)

“225. Powers of Court on hearing petition

(1) xx xx xx

(2) Where the petition is presented by members of the company as contributories on the ground that it is just and equitable that the company should be wound up, the court, if it is of opinion,

(a) that the petitioners are entitled to relief either by winding up the company or by some other means;

(b) that in the absence of any other remedy it would be just and equitable that the company should be wound up;

shall make a winding up order, unless it is also of the opinion both that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.” (emphasis added).

\(^{120}\) Ibid.

\(^{121}\) cf. Section 222 (f) of the English Companies Act, 1948.

Due to some weaknesses of section 210, need was recognized to implement Jenkins Committee recommendations so as to provide an effective means of remedying minority oppression.

THE JENKINS COMMITTEE REPORT (U.K.)

A Company Law Committee was appointed by the U.K. Government on 10.12.1959 under the Chairmanship of Lord Jenkins to “review and report upon the provisions and working of the Companies Act, 1948... and generally to recommend what changes in the law are desirable”. In its Report[123].this Committee observed that neither section 225(2) nor section 210 of the 1948 Act enacted to implement the Cohen Committee Report have produced the results expected of it.[124] Regarding section 210 (2) (b) which linked the alternative remedy to end oppression u/s 210 with winding up on the “just and equitable” ground, the Committee pointed out that” a case for winding up under the just and equitable rule at the instance of a contributary is difficult to establish and it is suggested that there is no sufficient reason for making the establishment of such a case an essential condition of intervention by the court.”[125] Secondly, the committee felt that the basic condition of relief under the section viz. “that the affairs of the company are being conducted in a manner oppressive” etc., indicated a course of conduct as distinct from an isolated act and that “oppressive” was too strong a word to be appropriate in all the cases in which applicants ought to be held entitled to relief under the section.[126] The committee gave its consolidated recommendations on section 210 in para 212[127] of its report which reads:

“212. We recommend that:

(a) Section 210 (2) (b) should be repealed;

(b) Section 210 should be amended to make clear that it covers isolated acts as well as a course of conduct;

(c) It should be made clear that section 210 extends to cases where the affairs of the company are being conducted in a manner unfairly prejudicial to the interests of some part of the members and not merely in an “oppressive” manner;

[124] Ibid., at p. 74, para 200.
[125] Ibid, para 201, page 75.
[126] Ibid., para 202., page 75.
[127] Ibid., page 78.
(d) Provision should be made enabling the court to restrain the commission or continuance of any act which would suffice to support a petition under section 210;

(e) Section 210 should be extended to give the court an express power, where it thinks fit, to authorize the bringing of proceeding in the name of the company against a third party on such terms as the court may direct;

(f) xx xx xx

(g) xx xx xx

JENKINS COMMITTEE RECOMMENDATIONS ENACTED

Following Jenkins Committee Recommendations in para 212 of its report, the English Companies Act, 1980 repealed section 210 of the Companies Act, 1948 and replaced it by a new section 75 of this Companies Act, 1980 whose sub-section (1) reads as:

"75. Power of Court to grant relief against company where members unfairly prejudiced

(1) Any member of a company may apply to the court by petition for an order under this section on the ground that the affairs of the company are being or have been conducted in manner which is unfairly prejudicial to the interests of some part of the members (including at least himself) or that any actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial"

Thus section 210 of the 1948 Act has ceased to have effect except in relation to proceedings on a petition presented before 22.12.1980. Section 75 of the 1980 Act, which introduces a remedy for unfairly prejudicial treatment, inherits the structure of section 210 of the 1948 Act but is different in several material respects. Section 75 is the current statutory remedy available to end oppression of minority shareholders

128 Ibid.
129 Vide section 88, sch. 4, Companies Act, 1980.
under the wider term of “unfairly prejudicial treatment” in favour of the shareholders. The English Companies Act, 1948 is still the principal statute on Company Law in all other matters which have not been repealed and that its section 225 (2) still remains unamended and operative as such.

**COMPARISON OF SECTION 75 AND 210: “OPPRESSION” v. “UNFAIRLY PREJUDICIAL”**

(1) “Unfairly prejudicial” conduct has not been defined in the section or anywhere in the U.K. Companies Acts 1948-81. But it is clearly **wider than “oppression”** under the repealed section 210 of the 1948 Act.

(2) It will be for the courts again to consider the distinction between “oppressive” and “unfairly prejudicial”, The intention is clearly to **move away from the various restrictive meanings given to “oppressive” u/s 210.**

(3) The requirement of section 210 that **the petitioner must have suffered in his capacity as a shareholder** is still present in the new section.

(4) The matters complained of still need to be related to the conduct of the **affairs of the company.**

(5) The previous requirement of a **continuous course of oppressive conduct has been removed** by the new words “the affairs of the company... or have been conducted” in section 75 (1)

(6) The alleged **conduct may be past, present or future.**

(7) But most of all, the **link with the winding up on the just and equitable ground totally severed.**

(8) **Unlike section 210, section 75 is independent** and the availability of any other alternate remedy to the petitioner would be no bar to the grant of relief under section.

(9) Unlike section 210, section 75 applies even to a person who is not a shareholder of a company but **to whom shares have been transferred or transmitted by operation of law.**

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132 See note 10, ante.
(10) Section 210 still applies to proceedings on petition presented before 22-11-1980.

Some other deficiencies are cured by 1985 Act by repealing the English Companies Act 1980:

**The English Companies ACT, 1985**

The English Companies Act, 1985 brought about three important changes to remove the barriers implicit in the old section 210 of the 1948 Act. These barriers included:

(a) The requirement that the facts before the court would justify the making of a winding up order on the ground that it was just and equitable to do so;

(b) That the applicant would have tangible interest in the company should it be wound up, so that instead of winding up the court should make the appropriate order; and

(c) There should be a continuous course of oppressive conduct and not one single such act.

**The English Companies Act, 2006**

The Companies Act 2006, which received Royal Assent on 8 November 2006, will bring major benefits to business by modernising and simplifying company law. As part of the implementation of the Act, some provisions are being commenced early in 2007.

**Position of Minority Shareholders under English Companies Act, 2006:**

The Companies Act 1985 (E-Communications Order 2000) facilitated the use of e-communications in certain contexts – namely, the circulation of the annual report & accounts (section 238), summary financial statement (section 251) and AGM notice (section 369) and the appointment of proxies (section 372). However, there was uncertainty whether other requirements to communicate information “in writing” required the use of paper.

The general principle of the Companies Act 2006 is that companies should, subject to shareholder approval, be able to default to using e-communications. Individuals however will retain the right to receive information in paper if they wish. The
company communications provisions set out in the Act applies to all companies, public and private.

Provision of English Companies Act, 2006 as mentioned below:

**PART 30**

**PROTECTION OF MEMBERS AGAINST UNFAIR PREJUDICE**

*Main provisions*

994 Petition by company member

(1) A member of a company may apply to the court by petition for an order under this Part on the ground—

(a) That the company’s affairs are being or have been conducted in a manner that is *unfairly prejudicial to the interests* of members generally or of some part of its members (including at least himself), or

(b) That an *actual or proposed act or omission* of the company (including an act or omission on its behalf) is or would be so prejudicial.

(2) The provisions of this Part apply to a person who is not a member of a company but to whom shares in the company have been transferred or transmitted by operation of law as they apply to a member of a company.

**POSITION OF MINORITY SHAREHOLDERS UNDER THE INDIAN COMPANY LAW:**

The Bhabha committee constituted: The Government of India vide the following resolution dated 28-10-1950 appointed a Company Law Committee under the Chairmanship of Sh. C.H. Bhabha for suggesting amendments to the Indian Companies Act, 1913:

“INDIAN COMPANIES ACT – REVISION: The Indian Companies Act, 1913, was extensively revised last in 1936. Several provisions of it were found to be not fully adequate to meet the altered conditions of the present day. These provisions were, therefore, examined successively by two lawyers and their recommendations were further improvement added.

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133 English Companies Act, 2006.
134 Published in Gazette of India, Part I, Section I, Extraordinary, dated 28-10-1950, p. 579.
examined by an officer who had been Registrar of Joint Stock Companies. The recommendations that emerged from these examinations were embodied in a Memorandum which was circulated in October 1949 to the State Governments and commercial and other interests concerned for eliciting comment. Having received various suggestions and proposals in this connection, the Government of India have decided to set up a committee to examine the question of revision of the Indian Companies Act..."

The Indian companies (Amendment) ordinance, 1951 Promulgated on 21-7-1951. This was done because the comprehensive amendment of the company law after receipt of the Report of the aforesaid Bhabha Committee was anticipated to take considerable time, and, mean while, evidence had accumulated showing that the malpractices in question had become very serious. It, by its clause 7, inserted new sections 153-C and 153-D forming a new group in part IV of the Indian Companies Act, 1913 with the heading; “Alternative remedy to winding up in cases of mismanagement or oppression” analogous to sec. 210 of the English Act of 1948. This Ordinance in the form of the Companies Bill, 1953 was introduced in parliament, and the note under clause 7, ibid., stated as:

“Clause 7. –Short of winding up, this clause provides a suitable remedy in cases where a company is managed in a manner prejudicial to the interests of the company or in a manner oppressive to some part of the members. The provisions of this clause are analogous to section 210 of the Companies Act, 1948 of the United Kingdom, and sufficient safeguards are provided so that the company in turn in not harassed by applications from individual shareholder.”

The Bill was referred to a Select Committee of parliament which in its Report with regard to sec. 153c, ibid., commented as:

135 Published in Gazette of India, Extra., Part II, sec. 1, page 283 dated 21-07-1951.
136 Statement of Objects and Reasons (S.O.R.) for Companies (Amendment) Act, 1951; (1951) 21 Comp. Cas. (Jour. Sec.) p. 60.
137 See (1951) 21 Comp. Cas. (Jour. Sec.) p. 41-44 (emphasis added).
138 Ibid. p. 81.
139 Ibid. p. 82.
“Clause 7 — We have made several changes in this clause. We think that the Central Government should also have the power to apply under this provision for setting right the affairs of the company. We have also provided that if any interested person applies to be made a party to any proceeding under this provision, the court shall be obliged to make him a party. We have also expanded sub-clause (5) to include provisions for termination or revision of agreements with persons other than managing agents, etc., after due notice to the parties concerned, and also for the setting aside of transaction in the nature of fraudulent preferences.”

THE INDIAN COMPANIES (AMENDMENT) ACT, 1951:

The above bill after some changes and amendments finally became the Indian companies (Amendments) Act, 1951\(^{140}\), further amending the Indian Companies Act, 1913. Section 153C as enacted in this Act read in its principal provision as:

“Alternative remedy to winding up in cases of mismanagement or oppression:

153C. Power of court to act when company acts in a prejudicial manner or oppresses any part of its members. — (1) Without prejudice to an other action that may be taken, whether in pursuance of this Act or any other law for the time being in force, any member of a company who complains that the affairs of the company are being conducted —

(a) in a manner prejudicial to the interests of the company, of

(b) in a manner oppressive to some part of the members (including himself),

may make an application to the court for an order under this section.

(2) An application under sub-section (1) may also be made by the Central Government if it is satisfied that the affairs of the company are being conducted as aforesaid.

(3) \(xx\) \(xx\) \(xx\)

If on any such application the court is of opinion—

(a) that the company's affairs are being conducted as aforesaid, and

(b) that to wind up the company would unfairly and martially prejudice the interests of the company or any parts of its members, but otherwise the facts would justify the making of a winding up order on the ground that it is just and equitable that the company should be wound up,

the court may, with a view to bringing to an end the matters complained of, make such order in relation thereto as it thinks fit.\textsuperscript{141}

Section 153D related to the effect of termination of managing agency agreement, etc., in virtue of an order u/s 153C (5).\textsuperscript{142} It provided that the order shall not give rise to a claim for compensation for loss of office or otherwise, and that no manager, managing director, etc., shall be appointed or reappointed without the leave of the court or be entitled to act as such for a period of 5 years from the date of the order.

Thus, prior to the said Ordinance dated 21-07-1951, Indian Law as to prevention of oppression and mismanagement lagged behind the U.K. law.\textsuperscript{143} However, once section 153C was inserted "analogous to section 210 of the (English) Companies Act, 1948" based on the Cohen Committee Report, it went even further than section 210 of the English Act in its scope and grip in that it not only applied to oppression but also to mismanagement where the "affairs of the company are being conducted in a manner prejudicial to the interests of the company.\textsuperscript{144}" This provision as to "mismanagement" was purely an innovation of the Indian legislation, not being a brain child of the Cohen Committee or the Bhabha Committee but a unique creation of the labours and genius of the two Indian lawyers, M/s T. Dwarkadas and Thiruvenkatachari, who submitted their recommendations to the Central Government, on company Law Revision, during 1946-48, and of Shri N.K. Mazumdar, an Officer in the old Ministry of commerce and a former Registrar of Joint Stock Companies, West Bengal, who scrutinized those recommendations, resulting in the "Memorandum

\textsuperscript{111} See (1951) 21 Comp. Cas. (Jour Sec.), pages 74-75. (Underlining added).
\textsuperscript{142} See Ibid., page 77-78.
\textsuperscript{144} Sec. 153C(1) (a); see the portion underlined in sec. 153C reproduced, vide f. note 140, ante.
on the Amendment of the Indian Companies Act" which was circulated in October, 1949 to the State Governments and commercial and other interests concerned for eliciting comment. Shri Tircumdas Dwarkadas was latter also a member of the Bhabha Committee. So the scope of this provision was further destined to be expanded by the Bhabha Committee and latter by Parliament in the draft Bill, 1953, which became the Companies Act, 1956. What is most important to note here before we leave the Companies (Amendment) Act, 1951 is that this provision on "mismanagement" in Sec. 153-C was also inextricably linked to winding up on the "just and equitable" ground just as the provision regarding "oppression" was linked both in sec. 210 of the English Act, 1948 and in this section 153-C. To obtain relief u/s 153-C for "mismanagement", the petitioner must have satisfied the court under subsection (4) therefore both that there was "mismanagement" and also that to wind up the company would unfairly and materially prejudice the interests of the company or any parts of its members, but otherwise the facts would justify the making of a winding up order on the ground that it is just and equitable that the company should be wound up. This requirement of section 153-C(4) was common to cases of "oppression" and "mismanagement". This link with the winding up was but destined to be deleted in the corresponding provision in section 398 of the current (Indian) Companies Act, 1956 based on the Bhabha Committee Report and to be further reinforced by the requirements of "public interest" and a "material change in the management or control of the company". But this link with winding up in cases of "oppression", in what is now section 397 of the Companies Act, 1956 was to remain as such, as a relic of the link with section 210 of the (English) Companies Act, 1948. That is why, perhaps, the words "unfairly and materially prejudice" in section 153-C (4) (b) appear as "unfairly prejudice" in the corresponding section 397 of the succeeding Companies Act, 1956 (Indian) because they so appeared in section 210 (2) (b) of the English Act.

THE BHABHA COMMITTEE REPORT: This Committee dealt with "Minority interest and the Court's powers in case of oppression by majority or gross mismanagement" exhaustively and recommended as:

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145 See Bhabha Committee Report, paras 2 and 3; also see the Government resolution dated 28-10-1950 appointing the Bhabha Committee vide foot note 8 ante.
146 See note 140, ante.
147 See text of section 210 vide page 23, ante.
"(ii) the other recommendation of the Cohen committee has since been embodied in the well known section 210 of the English Companies Act (1948)... We have carefully examined the scope of this section and consider that not only can it be suitably adapted to the circumstances of this country, but its scope may be appropriately enlarged to cover not only the cases of oppression to a minority of shareholders, but also for gross mismanagement of the affairs of a company which cannot be otherwise suitably dealt with under the other provisions of the Act. We accordingly recommend the enactment of two sections:

i) to provide for a remedy for the oppression of minorities on the lines of section 210 of the English Act, 1948; and

ii) to provide for a remedy in cases of mismanagement of a company's affairs in a manner prejudicial to the interests of the company."\^\textsuperscript{150}

The Committee stated\^\textsuperscript{151} that it had departed from the provisions of section 210 "on which" its recommendations were "essentially based" in four respects: firstly, any material change in the control of the company should also justify the grant of alternative remedy for oppression: secondly, provisions of section 235 and 236 of the 1913 Act should apply to the proceedings under the proposed two section; thirdly the court should have power to pass an interim order under either of the two sections; and fourthly, the power to petition the court under the two sections should be given to not less than 50 shareholders or those holding not less than one-tenth of the issued share capital of the company.

It also suggested the delinking of winding up in cases only of mismanagement with respect to section 153-C of the Indian Companies Act, 1913 as inserted by the Indian companies (Amendment) Act, 1951.\^\textsuperscript{152} The Committee added the draft of its proposed sections 153-C, 153-D, and 153-E to its Report to implement its aforesaid recommendations.\^\textsuperscript{153} Finally, the Committee suggested that if "Government accept

\^\textsuperscript{149} Ibid., pages 147 to 151, paras 198 to 202, and pages 310 and 311 of the Annexure, and pages 426-431 of the Addendum thereto.

\^\textsuperscript{150} Ibid., para 199, page 148 and 149 (emphasis added).

\^\textsuperscript{151} Ibid., para 200, page 149 and 150.

\^\textsuperscript{152} Ibid., para 202, page 151.

\^\textsuperscript{153} Ibid., pages 310, 311 of the Annexure, and pages 426-431 (Items 24 to 26) of the Addendum to the Report.
our recommendations, they should form the basis of a consolidating measure and not merely an amending Bill."154

THE COMPANIES ACT, 1956 (ACT NO. 1 OF 1956):

The Companies Bill, 1953 based on the Bhabha Committee Report was introduced in Parliament, which after passing through the Joint Committee became the Companies Act, 1956 effective 1.4.1956. It repealed the Indian Companies Act, 1913 and three other enactments155. It is a mammoth156 and massive157 piece of legislation with 658 sections and XIII schedules.

It contains in part VI, a Chapter VI (secs. 397 to 409) headed as "Prevention of Oppression and mismanagement" divided in two groups: group A is headed as "Powers of Tribunal" and contains secs. 397 to 407; Group B is headed as "powers of Central Government" and contains two sections 408 and 409. Sections 153-C and 153-D of the Indian Companies Act, 1913 as inserted in 1951 were elaborated into 11 sections (397 to 407) based on a single section 210 of the English Companies Act, 1948. Section 408 was a further innovation of this 1956 Indian Act not found in any foreign legislation while section 409 corresponds to section 86J (2) and (3) of the Indian companies Act, 1913, as had been inserted by section 2 of the Indian Companies (Amendment) Act, 1951158, which had also inserted the said sections 153-C and 153-D by its section 7. Sections 397 to 407 are largely based on the Bhabha Committee Report which had not suggested any provisions regarding what became sections 408 and 409. The recommendation of the Bhabha committee that any material change in the control of a company may justify the grant of an alternative remedy instead of winding up in a case of oppression159 has not been implemented in sec. 307 of the 1956 Act.

Section 397 of the Companies Act, 1956 deals with oppression and reads as:

“397. Application to tribunal160 for relief in cases of oppression:

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154 Ibid., Conclusion, page 209.
155 See Section 644, Schedule XII, of this 1956 Act.
159 See note 25, ante.
160 Subs. By Act 11 of 2003, sec. 44 for “Company Law Board”. Earlier the words “Company Law Board” were substituted by Act 31 of 1988, sec. 67, for the word “court” (w.e.f. 31-5-1991).
(1) Any members of a company who complain that the affairs of the company (are being conducted in a manner prejudicial to public interest or) in a manner oppressive to any member or members (including any one or more of themselves) may apply to the tribunal for an order under this section, provide such members have a right so to apply in virtue of section 399.

(2) If, on any application under sub-section (1), the tribunal is of opinion—

a) that the company’s affairs (are being conducted in a manner prejudicial to public interest or) in a manner oppressive to any member or members; and

b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up;

the tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit”.

Section 398 of the Companies Act, 1956 deals with mismanagement and reads:

“398. Application to tribunal for relief in cases of mismanagement—

(1) Any members of a company who complain

(b) that the affairs of the company (are being conducted in a manner prejudicial to public interest or) in a manner prejudicial to the interests of the company; or

161 Substituted by the Companies (Amendment) Act, 1963, w.e.f. 1.1.1964.
162 Ibid.
163 Subs. By Act 11 of 2003, sec. 44 for “Company Law Board”. Earlier the words “Company Law Board” were substituted by Act 31 of 1988, sec. 67, for the word “court” (w.e.f. 31-5-1991).
164 Substituted by the Companies (Amendment) Act, 1963, w.e.f. 1.1.1964.
(c) that a 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 its Board of directors, or manager)\textsuperscript{165}, or in the ownership of the company’s shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company (will be conducted in a manner prejudicial to public interests or)\textsuperscript{166} in a manner prejudicial to the interests of the company;

may apply to the tribunal for an order under this section, provided such members have a right so to apply in virtue of section 399.

(2) If, on any application under sub-section (1), the tribunal is of opinion that the affairs of the company are being conducted as aforesaid or that by reason of any material change as aforesaid in the management or control of the company will be conducted as aforesaid, the tribunal may, with a view to bring to an end or preventing the matters complained of or apprehended, make such order as it thinks fit."

Section 399 deals with the right to apply under section 397 and 398, and reads as:

"399. (1) the following members of a company shall have the right to apply under section 397 or 398:—

(a) in the case of a company having a share capital, not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than one-tenth of the issued share capital of the company, provided that the applicant or applicants have paid all calls and other sums due on their shares.

\textsuperscript{165} Ins. By Companies (Amendment) Act, 1960.

\textsuperscript{166} Subs. By Companies (Amendment) Act, 1963, w.e.f. 1.1.1964.
(b) In the case of a company not having a share capital, not less than one-fifth of the total number of its members.

(2) For the purpose of sub-section (1), where any share or share are held by two or more persons jointly, they shall be counted only as one member.

(3) Where any members of a company are entitled to make an application in virtue or sub-section (1), any one or more of them having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them.

(4) The Central government may, if in its opinion circumstances exists which make it just and equitable so to do, authorize any member or members of the company to apply to the tribunal under section 397 or 398, notwithstanding that the requirements of clause (a) or clause (b), as the case may be, of sub-section (1) are not fulfilled.

(5) The Central Government may, before authorizing any member or members as aforesaid, require such member or members to give security for such amount as the Central Government may deem reasonable, for he payment of any costs which the able, for the payment of any costs which the tribunal dealing with the application may order such member or members to pay to any other person or persons who are parties to the application."

Section 400 provides that the Tribunal shall give notice of every application made under section 397 or 398 to the central Government, and shall take into consideration the representations, if any, made to it by that government before passing a final order under that section. Section 401 provides that the Central Government may itself apply to the tribunal for an order under section 397 or 398, or cause an application to be made to the tribunal for such an order by any person authorized by it in this behalf. Section 402 deals with the powers of the Tribunal on application u/s

167 Subs. By Act 11 of 2003, sec. 44 for “Company Law Board”. Earlier the words “Company Law Board” were substituted by Act 31 of 1988. sec. 67, for the word “court” (w.e.f. 31-5-1991).
168 Ibid.
397 or 398, and provides that without prejudice to the generality of the powers may provide for any of the matters as mentioned in subsections (a) to (g) of that section (402). Section 403 provides that the Tribunal may make an interim order for regulating the conduct of company’s affairs pending a final order u/s 397 or 398. Section 404 deals with the effect of alteration of memorandum or articles of company by an order u/s 397 or 398. Sec. 405 provides for addition of respondents to application u/s 397 or 398. Sec. 406 extends the application of sections 539 to 544, dealing with offences antecedent to or in the course of winding up as set forth in Schedule XI to the Act, to an application u/s 397 or 398. Section 407 deals with the consequences of termination or modification of certain agreement as per section 402 (d) and (e). Sections 408 and 409 comprised in group B deal with the powers of Central Government to end oppression or mismanagement in companies.

WINDING UP ON THE “JUST AND EQUITABLE” GROUND WHERE OTHER REMEDY IS AVAILABLE

Section 443 (2) of the (Indian) Companies Act, 1956 enacts the provisions of section 225 (2) of the English Act, 1948169 that the availability of some other remedy is normally no bar to winding up u/s 433 (f) of the 1956 Act.

THE LATEST STATUTORY POSITION IN INDIA

The Sachar committee, i.e. the “High Powered Expert Committee and M.R.T. Acts appointed by the Government of India 170 to consider and report on the changes necessary in the said Acts, in its report dated 29.8.1978 vide paras 7.9 to 7.13 thereof, suggested amendments of sections 397 and 398 of the Companies Act, 1956 to implement its recommendations for “Better and Quicker remedies for oppression and mismanagement”, mainly on the lines of the Jenkins committee of U.K., which in brief are:

(1) The twin proof of requirements in section 397, namely, a continuous course of oppressive conduct and circumstances justifying winding up of companies is onerous. Single Act of oppression should be sufficient. Provision for necessity of circumstances justifying winding up of the company be deleted.

169 See note 7a cf. page 148 of Bhabha Committee Report, op.cit.
(2) An additional avenue of relief be afforded u/s 397 in cases of acts of mismanagement.

(3) A single shareholder or the shareholder’s Association (in the case of public companies) should be entitled to apply to the court u/s 397 and 398 and not the central government to move a petition regardless of the prescribed percentage of members u/s 399 (1) (a) & (b).

All of the suggestions of the Sachar Committee with regard to Company Law are yet being “actively considered”\(^{171}\) by the Central Government for suitably incorporating them in the Companies Act, 1956. The Indian Law therefore lags behind, as usual, the U.K. statutory law for the prevention of oppression in companies.

The Companies (amendment) Acts 1988 and 2002 were made on the line of Sampth Singh case’s judgement of 1985, to lessen the burden of the ordinary courts and to transfer power to a tribunal. Just for speedy disposal of dispute with out determining the reasons of the dispute.

**MCA21 e-GOVERNANCE PROJECT**

The Ministry of Company Affairs is implementing an e-Governance Project, namely “MCA21 e-Governance Project”. Companies are required to file a number of documents with the Registrar of Companies (ROC) in compliance of the statutory provisions of the Act. Beginning with about 30,000 companies at work in 1956, the number of companies registered has now reached 6.83 lakhs as on 31st March 2005 and a large number of new companies are being incorporated every year. In order to provide prompt and efficient services to these companies, the MCA envisaged transferring the business processes of the office of the ROC to the e-governance mode.

**PROTECTION OF INTERESTS OF INVESTORS -**

The Ministry has adopted a responsive and action-oriented approach towards investor protection. Dedicated investor protection cells have been opened and made functional at three levels. An on-line Investors Grievances Redressal System has been developed and made fully operational. A dedicated website,

\(^{171}\) See statement of Sh. Jagan Nath Kaushal, Minister of Law, Justice and Company Affairs in the Rajya Sabha on 5.3.1984 in reply to Mr. Bhuvnesh Chaturvedi (cf. the Tribune dated 6.3.1984.)
http://www.watchoutinvestors.com, which is a national registry of defaulters, has also been launched. Investor Education & Protection Fund (IEPF) under the Companies Act, 1956 has been activated and reputed NGOs are contributing by taking up various programmes aimed at educating the investors. The investor protection measures are going to be strengthened in the proposed new company law.

EXPERT GROUP FOR STREAMLINING THE PROSECUTION MECHANISM UNDER COMPANIES ACT, 1956 (VAISH COMMITTEE)

The Ministry constituted an Expert Group on 4th May 2005 under the Chairmanship of Shri O.P. Vaish, Senior Advocate, to examine issues relating to streamlining the prosecution mechanism under the Companies Act, 1956. The Terms of Reference of the Expert Group were as under:

i) Identification of broad categories of offences for which cases filed for violations of Companies Act, 1956 are pending and the period thereof;

ii) The reasons for excessive pendency where relevant;

iii) Review of the steps taken in the past to expedite disposal of these cases, their outcome and the constraints;

iv) Identifying ways and means through which disposal of these cases could be expedited;

v) Ways and means for expeditious disposal of cases of purely technical nature and workable mechanism to enable this in a definite time frame

The Group has submitted its report on 19th October 2005 to the Ministry. The recommendations of the Expert Group are under examination.

INFRASTRUCTURAL REFORMS

In order to deliver the best services to the corporate world and other stake holders and to

Effectively administer the regulatory mechanism the following measures, among others,

Are high on agenda of the Ministry for the year 2005-06:
(1) Modernization of office buildings, purchase/construction of new office premises at the places wherever required.

(2) Cadre restructuring of the Indian Company Law Service (ICLS), which mans the core administrative machinery of the Ministry.

As to the statutory provisions concerning powers of tribunal or the Central Government to prevent mismanagement in companies, the Indian law as said earlier is unique and there are no parallel provisions in the U.K. Companies Acts, 1948 to 2006.