

**PREVENTION OF OPPRESSION
AND MISMANAGEMENT UNDER
COMPANIES ACT 2013**

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- Meaning of Oppression & Mismanagement
- Difference between Oppression & Mismanagement
- Protection of Minority Shareholders
- Section 241-246 of Companies Act 2013
- Procedure of filling case
- Punishment

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What is Oppression?

- Case Law Foss vs. Harbottle- MAJORITY RULE
- According to Lord Keith “Oppression” means, lack of morality and fair dealngs in the affairs of the company, which may be prejudicial to some members of the company.

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What is Mismanagement?

Instances which can be termed as Mismanagement :

1. Preventing Directors from functioning
2. Violations of Statutory provisions.
3. Violations of provisions of MoA & AoA of the Company
4. Misuse of funds etc.

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Difference between oppression and Mismanagement

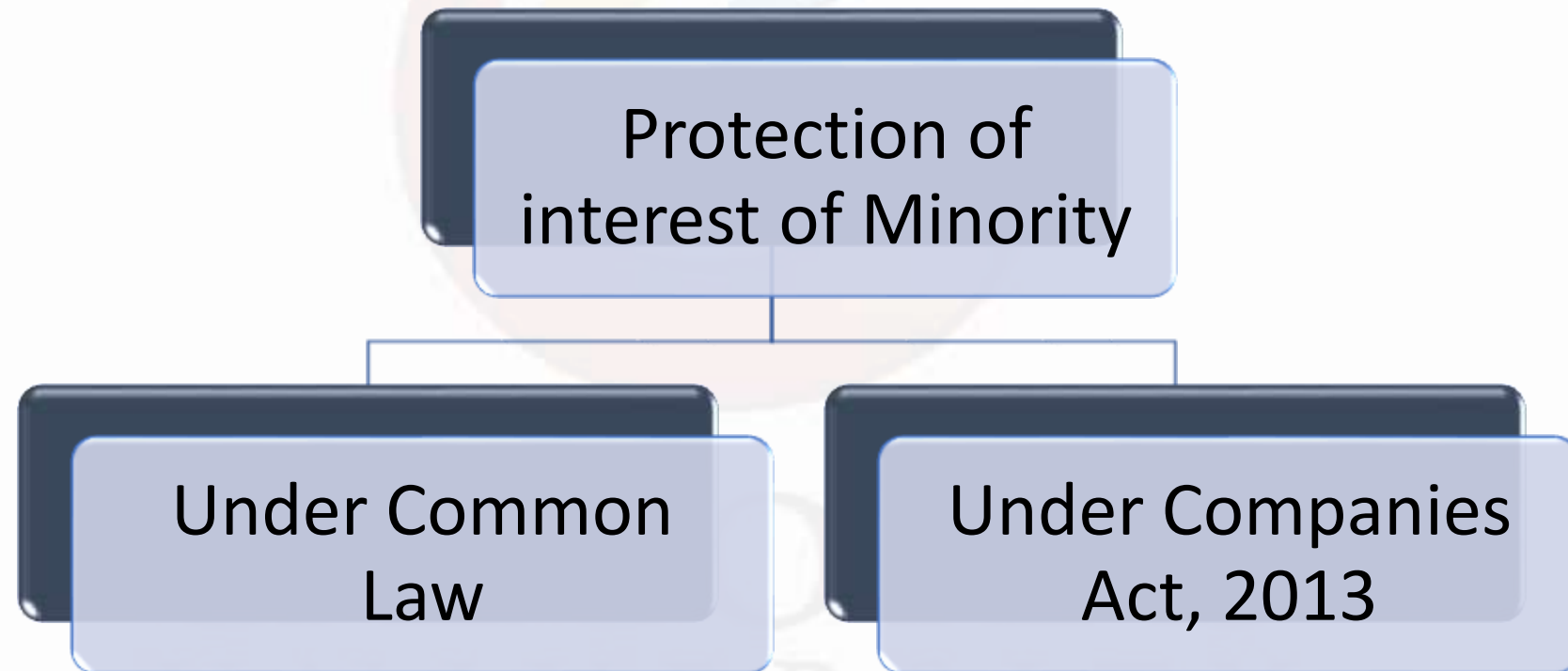
1. Relief against oppression runs favor of individual member of the Company.

Relief against mismanagement is granted to the company as a whole.

2. To get grant against oppression necessary to ensure there are facts to justify making of a winding up order.

It is enough if the affairs of the company are conducted in a manner prejudicial to the interests of the company or the public interest.

Protection of interests of Minority



Protection of minority interest under Companies Act 2013

- Chapter XVI of Companies Act, 2013
- Section 241 to Section 246

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- Application to Tribunal for Relief (Sec. 241)
- Application can be filed if it is likely that the affairs of the company will be conducted in a manner prejudicial to
 - its interests or
 - its members or
 - any class of members
- The Central govt in its own opinion apply to the tribunal.

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Application to Tribunal for Relief

Relief against;

any affairs have been/ being conducted in a manner;

- prejudicial to public interest,
- Prejudicial or oppressive to any member or
- Prejudicial to the interest of the Company.
- Material change, not being a change brought about by or interest of creditors (incl. debenture holders or any class of shareholders)

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Application to Tribunal for Relief

- Change may be through; an alteration in the board of directors or manager or in the ownership of the company's share, if it has no share capital, in its membership, or in any other manner,
- Which will be prejudicial to the interest of Company/ members.

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Who can file application to Tribunal(Sec. 244)?

Company having
share capital

- Not less than **100 members or 1/10th of total members**, whichever is less **OR**
- Any member/ members **holding not less than 1/10th of issued capital** subject to no dues in respect of those shares held.

Company not
having share
capital

- Not less than **1/10th of total members**

Who can file application to Tribunal?

- Tribunal may, on application, waive all or any of the requirement specified.
- Where any members of a company are entitled to make an application 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.

Powers of Tribunal (Sec. 242)

1. If the tribunal found that the affairs of the company is being conducted in a manner prejudicial to the interests of the Company/ its members/ to public interest and
If wind up is unfairly prejudice to such member/ members and the facts would justify that it is just and equitable to wind up the company
Tribunal may make such orders as it thinks fit.

Powers of Tribunal

2. Other than the general powers specified, an order may provide for;
 - Regulation of the conduct of affairs of the company in future
 - Purchase of shares/interests of any members of the company by other members
 - If any shares purchased its consequent reduction of share capital
 - Restriction on the transfer/allotment of shares
 - Termination, setting aside or modification of any agreement between the company and its Managing director, any other director or manager

Course Code :

Course Name:

- Termination setting aside or modification of any agreement between the company and any other person.
- the setting aside of
 - any transfer, delivery of goods,
 - Payment, execution or
 - other act relating to property

Made/ done by/ against the Company within 3 months before the date of the application which would if made/ done by/ against an individual, be deemed in his insolvency to be a fraudulent preference.

- Removal of managing director, manager or any of the director of the company

▶ Powers of Tribunal

- Recovery of undue gain made by any Managing Director, manager or director and the manner of utilization of the recovery.
- Manner of appointment of managing director or manager of the company may subsequent to an order removing.
- Appointment of such no of persons as directors.
- Imposition of costs as may be deemed fit by the tribunal.
- Any other matters which the tribunal thinks it is just and equitable.

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Contravention of Section 242(5)

Company

- Fine of Rs. 1,00,000 to Rs. 25,00,000

Every officer in Default

- imprisonment up to 6 months
- Fine of Rs. 25,000 to Rs. 1,00,000

- References
- Avtar Singh, Majority Powers and Minority Rights, Ch 15 Company Law 17th Ed. (2015)
- Foss v Harbottle (1843)2 Hare 461
- V. N. Bhajekar v K M Shinkar
- Kanika Mukherhi v Rameshwar Dayal Dubey (1996)1 Comp LJ 65