



## GENERAL MEETING AS A TOOL OF EFFECTIVE CORPORATE GOVERNANCE: A CRITICAL ANALYSIS

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### Abstract

The present paper seeks to critically analyse the role of general meeting as an effective tool of corporate governance. In the initial part the writers have briefly traced the emergence of company and corporate law in India, then the role of general meetings as an organ of the company is discussed. The significance of general meetings in the working of the company and in its governance is further elaborated with the help of the present company legislation in India. Two different perspectives prevailing in the corporate world regarding the role of general meetings are analysed viz., traditional view that the general meeting is an essential organ of the company as it ensures the accountability of directors, puts checks & balances upon their powers and works effectively as a tool of corporate governance; and the other emerging view that the general meeting has failed in discharging the main purpose for which it is convened, i.e., to ensure the accountability of the directors, and has become futile as an important organ, therefore, it should altogether be dispensed with. The question as to why general meetings' role is increasingly diminishing and it has become ineffective as an instrument of corporate governance is also tried to be answered. To know the actual state of affairs of the general

meetings functioning in India a practical analyses of shareholders participation in GMs is made using data of two major companies in India as a reference. No one can deny the importance of general meeting as an essential constituency of the company, therefore, instead of strictly adhering to either of the two extreme views it would be more apt if improvements aiming to make GMs more effective in the exercise of their functions are made within the existing framework of the companies and the present corporate law. In this direction certain suggestions are provided which can restore the general meeting to its originally assigned place.

### Introduction

Corporation has emerged as the most appropriate legal device for carrying on business in modern times. The other forms of business organisations that existed before corporation came into being were guilds of merchants, sole proprietorship and partnerships, but as in the aforementioned institutions only a few persons were involved huge investments and expanded production could not be done. Therefore, there was a need of a better alternative which could meet the increased consumer demand and provide for production at large scale. Company with its distinctive features, viz., a separate legal personality, perpetual succession, the easy transferability of shares, limited liability, centralized and democratic governance, was able to fulfil most of the aspirations of the people.

The Indian company legislation has its roots in English company laws. The first Indian law concerned with company was Joint Stock Companies Act, 1850 followed by the Companies Act 1913 (which was amended in



1936 and 1951), the Companies Act 1956 and finally by the present act governing company law in India i.e., The Companies Act 2013. Sec. 2(20) of the present act defines company as “a company incorporated under this act or any previous company law”.<sup>1</sup>

As the corporation became prevalent in the business world, the need of corporate governance was felt. Although the corporation in its ancient Anglo-Saxon view was developed to serve social and charitable purposes. Later, the eighteenth century onwards it began to be perceived as a profit maximizing agency whose sole aim was to increase profits of the shareholders as by that time the profit of the shareholders came to be identified with the profit of the company.

### General Meeting:

General meetings are meetings of shareholders of a company. There are mainly two kinds of general meetings: annual general meeting and extraordinary general meetings. With the growth of corporation, the subject of corporate governance came to have increased role to play. Corporate governance is the system of regulations, rules, guidelines, policies or processes which dictate corporate behaviour. It has two different approaches viz., shareholder primacy model and pluralist model.<sup>2</sup> The former model proceeds on the premise that shareholders are the owners and proprietors of a company as they have contributed to its capital therefore, not recognizing the interest of any other constituency, the directors of a company have the duty to act in such a way

which results in their capital appreciation and lead to the profits of a company. The latter model advocates taking into consideration the interest of various stakeholders involve in the corporation viz., employees, creditors, consumers, suppliers and communities at large along with the interest of shareholders. Although in theory India has adopted pluralist model but in practice it works upon shareholding primacy model in there can be found either passive dispersed shareholdings or concentrated shareholdings. As this study aims to analyse the role of general meeting it will take at its basis shareholders primacy: signifying the methods of supervision and control which assures that the company’s management act according to the interest of the shareholders. The company consists of two main organs viz., the Board of Directors and General meeting, although in recent years Managing Director has grown as a third organ of the company. The working and coordination of these three distinct units of a company forms the largest part of corporate governance as legislative powers are deemed to be held by the General Meeting and managerial powers are entrusted to the Board of Directors, the powers of which are co-extensive with that of the powers of the company (Sec. 179), which also has the power to delegate its managerial functions to management officers.

### Significance of General Meetings as an Effective tool of Corporate Governance (Conventional Aspect)

*‘The directors... being the managers of other people’s company than of their own. it*

<sup>1</sup> Sec. 2(20) of The Companies Act 2013

<sup>2</sup>Neha Sachdeva, *The Significance of The Annual General Meeting in Corporate Governance*, SEBI &

Corporate Laws-Magazine Vol. 64, November, 2005, p. 29.



*cannot be well expected that they should watch over it with the same anxious vigilance with which the partners in a private co-partnery frequently watch their own...negligence and profusion therefore must always prevail, more or less in the management of the affairs of such a company'. – Adam Smith*

The above-mentioned statement impresses upon us the idea that holding general meetings regularly is extremely important as they provide the effective means whereby 'other participants' could instil 'anxious vigilance' into the management of the company's affairs.<sup>3</sup> Company law requires certain decisions to be taken specifically by the shareholders in the general meeting. General meeting provides the platform to shareholders to ask questions to the Board of Directors and to call them to give account of company's financial health & other issues essential for the company.<sup>4</sup> It works as a mechanism of ensuring the accountability of managing authorities (B.O.D.) of the company to the stockholders of the company.

The shareholders are primary investors of the company and for this reason they always want that the affairs of the company must not be carried out in such a way so as to prejudice their interests. The chief source of capital formation is individual savings and these investments must be safeguarded<sup>5</sup>. General meeting is a forum of self-protection provided for by the Companies Act ,2013.

<sup>3</sup>Saleem Sheikh, Raees William Corporate governance & Corporate control, Cavendish Publishing Ltd. (2002) p. 221

<sup>4</sup> Padmaja Chakravarty, *General Meetings Versus Board of Directors: Battle for Control of Modern*

A general meeting enables the members of a company to attend in person so as to debate and vote on matters affecting the company. It provides an occasion to communicate ideas, opinions and information. It ensures the say of the shareholders in the policy decision making processes and keeps the legislative powers of the company in the hands of stockholders safe. The act provides that decisions to make changes on matters concerning a company may be taken only by the company's members. The fundamental issues that affects the company are to be taken through that forum.

Initially members used to manage the company in addition to the legislative powers which lies in them. It was the deed of settlement which for the first time put the management of the company in the hands of people called the trustees, responsible solely for management of company. After the decision taken in *Automatic self-cleansing Filter Syndicate v. Cunningham*,<sup>6</sup> popularly known as Cunningham's case, in which it was held that B.O.D. was an organ of the company exercising plenary powers in the areas assigned to it by articles and general meeting cannot interfere into that sphere, position was substantially changed and they were made equal and unique in their own fields.

Shareholders were made a distinct unit and separation of ownership and management took place. It was in the interest of corporation as so many shareholders would

*Corporation and Effective Corporate Governance*, company law journal, VOL. IV (2002).

<sup>5</sup> A Ramaiya, *Guide to the Companies Act*, Vol. No. 1, (18<sup>th</sup> Edi.), Lexis Nexis

<sup>6</sup>Court of Appeal of England and Wales 2 Ch. 34 (Eng. C.A. 1906)



not be able to manage the company efficiently.

The established concept is that a general meeting is provided for to retain checks and maintain balance in the affairs of the company and to guard against mismanagement and malfunctioning of the same. General meetings are considered in two main aspects viz., as an instrument where shareholders can properly exercise their rights and as a way by which B.O.D.'s control can be ensured.

Although in both annual general meeting as well as extra-ordinary general meeting important decisions regarding the company takes place but the former has its special place of importance since the latter can be resorted to only when some special issues are to be decided while it is a statutory requirement imposed upon the company to conduct annual general meeting every year.

#### **Provisions of Indian Law Constituting General Meetings as an Essential Part of Corporate Governance:**

The annual general meeting (AGM) is the ultimate corporate unit, a legal space to address conflict of interest between majority and minority shareholders, and between board of directors and shareholders, and among all the stakeholders involved inter se. There are three main functions of annual general meeting:

- Disclosure of financial and strategic information<sup>7</sup>

- Obtaining consent of shareholders in decision making process<sup>8</sup>
- To allow and promote discussion and debate between shareholders and managers. It gives shareholders an opportunity to question the board generally on the progress of the company and to express their views on the matter<sup>9</sup>.

The present act governing company law in India is the Companies Act, 2013. Chapter eight of the act which discusses management and administration of the company contains provisions pertaining to general meetings. Sec.96(1) says every company other than a one person company shall in each year hold in addition to any other meetings, a general meeting its annual general meeting and shall specify the meeting as such in the notices calling it, and not more than fifteen days shall elapse between the date of one annual general meeting and that of the next. It is mandatory for a company to convene its first AGM within a period of nine months from the date of closing of the first financial year and in any other case within a period of six months from the date of closing of financial year. The AGM is to be called during working hours i.e., between 9am to 6pm and to be held at registered office or some other place in which the registered office of the company is situate {sec.96(2)}. The tribunal in case of default of the officers in holding AGM (sec.97) or any other impracticability in holding the meeting (sec.98) is also empowered to call meeting. Thus, AGM is held every year and marks the importance of shareholders role and participation in corporate governance.

<sup>7</sup> Sec.136, The Companies Act, 2013

<sup>8</sup> Sec.180(1), The Companies Act, 2013

<sup>9</sup> Paul Lyndon Davies, Sarah Worthington, Laurence Cecil Bartlett Gower, Eva Micheler, *Gower and*

*Davies, Principles of Modern Company Law, (8th). Sweet & Maxwell, London (2008) p.437*



There is a provision for convening an extraordinary general meeting in case any special business or when some urgent matter has to be decided either upon the call of the board or requisition of the shareholders (Sec.100), so shareholders by resorting to requisition can compel the board to hold general meetings. Before convening the meeting at least twenty-one day's clear notice is to be given to the shareholders by the board which must contain a statement of business to be transacted at such meeting (Sec.101). In order to ensure the effective and useful shareholder's participation the statements related to the special business and interests of BOD, key managerial personnel and relatives of these two have to be disclosed. Any other information and facts which enable members to understand the meaning, scope and implications of the items of business shall also be given (Sec.102). the afore-mentioned provisions make sure that shareholders play a vigilant and vital role in the important decisions of the company as after being notified of the matter to be transacted they can will be able to understand the agenda and come prepared in the meeting. Every member of the company is entitled to attend (either in person or through proxy), vote and take part in the meetings of the company.

The following powers of the AGM puts the shareholders at the centre of corporate governance:

- To appoint directors of the company through election<sup>10</sup>;
- To re-appoint the existing directors<sup>11</sup>;

<sup>10</sup> Sec.152(2), The Companies Act,2013.

<sup>11</sup> Sec.152(6)(e), The Companies Act,2013.

<sup>12</sup> Sec.161, The Companies Act,2013.

<sup>13</sup> Sec. 169, The Companies Act,2013.

- To confirm the appointment of additional, alternate and nominee director<sup>12</sup>;
- To remove a director by an ordinary resolution<sup>13</sup>;
- To appoint the Auditor of the company<sup>14</sup>;
- To approve the appointment of managing director, whole-time director or manager by resolution<sup>15</sup>;

Apart from the above-mentioned powers the following decisions can be taken only after obtaining the consent of the company by special resolution:

- To sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company
- To invest otherwise in trust securities the amount of compensation received by it
- To borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid-up share capital, free reserves and securities premium
- To remit, or give time for the payment of, any debt due from a director<sup>16</sup>

Thus, a serious attempt of taking care of the interest of the shareholders and of making them the pivot of the corporate governance has been made by the present act.

**Why general meeting's role is increasingly diminishing and it has become ineffective as a tool of corporate governance?**

There is a steady development of another view regarding the general meetings which is just opposite of the traditional view that the general meetings play effective role in corporate governance. It maintains that in

<sup>14</sup> Sec.139, The Companies Act,2013.

<sup>15</sup> Sec.196(4), The Companies Act, 2013.

<sup>16</sup> Sec.181(1), The Companies Act, 2013.



modern times general meetings have lost their utility and unable to discharge the basic function for which it came into existence i.e., to make the directors accountable to the members of the company and therefore it should be totally removed from the company legislations. Prof. Gower's statements on general meetings, after noting that<sup>17</sup>:

*'general meetings are intended to be the means whereby the members exercise control over the management'*

He concludes that<sup>18</sup>:

*'general meetings have proved a singularly ineffective way of making directors answerable to the general body of members and the boards of widely-held public companies are self-perpetuating oligarchies which control the general meeting rather than it controlling them.'*

But, again Gower notes that<sup>19</sup>:

*'the legislature seems to assume the contrary by adding ever more circumstances where the consent of a general meeting is required.'*

The statements of Gower are operative in Indian context as well. Because although the company legislation in theory has assigned ample powers to GMs but neither are these practically exercised nor implemented. The various reasons for the failure of GMs to act as an effective means of governance are:

- **Lack of interest among the shareholders to take part in the management of the**

**company (Passive Shareholding)<sup>20</sup>:** The shareholders invest their money in the company with the primary aim of their capital appreciation. They do not have any personal interest in the management of the company as long as they are having their share of profits or dividends. For this reason, except some substantial issues in respect of the company, every policy decision is taken by board of directors. It is the board of directors which is responsible for the management of the affairs of the company. The study of two companies mentioned in Table A and Table B reveals the indifference of shareholders in active participation in the affairs of the company. this phenomenon diminishes the role of the general meeting in corporate governance. That's why they fail to make the directors accountable for their management exercises. Consequently, the management holds itself to be increasingly autonomous, which further leads to greater apathy among shareholders who began thinking that they can't influence events.<sup>21</sup> In corporate law, shareholders' control rights are in fact so weak that they scarcely qualify as part of corporate governance.

Some institutional investors prefer quiet, private negotiations with the portfolio business management<sup>22</sup>. They resort to more adversarial activism techniques, if at all, only if negotiations fail.

- **Large size of the company:** Corporate as a business organisation came into existence because there was no other

<sup>17</sup> Saleem Sheikh, Raees William, Corporate governance & Corporate control, Cavendish Publishing Ltd, (2002), p. 221.

<sup>18</sup> Id., p.229.

<sup>19</sup> Id., p.229.

<sup>20</sup> Padmaja Chakravarty, *General Meetings Versus Board of Directors: Battle for Control of Modern*

*Corporation and Effective Corporate Governance*, (2002)4CompLJ, p.1.

<sup>21</sup> Id., at 2

<sup>22</sup> Stephen M. Bainbridge, *The future of corporate governance: Director or Shareholder Primacy*, at 219(2008)



legal device which could ensure large investments and the involvement of large number of persons. It is impractical for large companies to include shareholders in every meeting of the company as participation of shareholders who come from diverse backgrounds and live in faraway places is not plausible. Hence, the powers of the management company are assigned to the board of directors which is a small group of persons with professional skills and requisite competence. This reduces the importance of shareholders as their authority is confined and the distribution of ownership and management in corporate world has established B.O.D. as a pivotal organ of the company. The reality is that where each shareholder only holds a tiny portion of share capital of the company none of the shareholders will avail themselves of the powers given to them to monitor the management, the attempt to revitalize shareholder democracy in this fashion is doomed to failure in large public company.<sup>23</sup> If the shareholders are allowed large-scale intrusion in decision making process of the corporation it would disrupt the very mechanism that make Berle-Means corporation practicable; namely the centralization of essentially non-reviewable decision making authority in Board of Directors.<sup>24</sup>

- **Expenditures are to be incurred in case of use of special notice:** The members who make proposals for resolution to be taken in the annual general meeting have to face difficulty as the notice has to be given to every member, and in large public companies with widely dispersed shareholding, this entails expenses and

probably impractical. There is just not sufficient time left with the company or shareholders to make rational and well-informed decisions, as a supplementary information to the director /auditor proposed to be removed has also to be given within time frame.

Before convening a general meeting, a company has to give prior notice of at least twenty-one days' either in writing or through electronic mode {Sec.101(1)}. Along with the notice some important documents like a copy of the financial statements, including consolidated financial statements, if any, auditor's report and every other document required by law to be annexed or attached to the financial statements are to be sent. All the afore-mentioned documents are required to be sent twenty-one days before and since these documents are complicated, this period should be enhanced so that shareholders would be in a position to understand them better. This requirement is also diluted by proviso to Sec136 (1) of the Companies act which further increases shareholders' inconvenience. Both the Kumaramangalam Committee report on corporate governance and the Rahul Bajaj Committee on Corporate governance clearly outline the need for greater disclosure by Indian companies if they are to compete with foreign companies.

- **General meetings except AGMs can be held at remote places:** The present companies act provides the condition in respect of the conduct of annual general meeting prescribing that it has to be held either at the company's registered office or at some other place within the city, town or

<sup>23</sup>Chapter 9, Mary Stokes, Company Law and legal theory in: legal theory and common law at 97(1986)

<sup>24</sup> Id., at 233(2008).



village in which the registered office of the company is situated<sup>25</sup>. This helps ensuring the attendance of the shareholders in the meeting, but the Indian legislature has not prescribed such condition for other meetings like extra-ordinary general meeting. They can be held at any place in the latter case which creates difficulties for the shareholders and discourage them from attending the meetings. Consequently, it causes less attendance and ineffectiveness of the GM. Also, the work of convening the meetings is assigned to the board of directors whether it is AGM or EGM. Ordinarily, it doesn't make much difference but when shareholders make any requisition for holding of a meeting to discuss a matter which adversely affects the interest of the directors but on the whole is beneficial for the company, situation of conflict of interest arises and in such cases the directors remain reluctant to convene such meeting and use every alternative to postpone the meetings. That makes holding meetings difficult leading to the diminishing role of the GM.

Recently a new concept of virtual AGM has also begun to develop, it is risky as the members would be allowed to ask questions, but there is no surety that the questions would be answered. Removing the face-to-face element of any meeting may increase the potential for miscommunication<sup>26</sup> The chairperson is under no obligation to answer the questions as such and it will adversely affect the number of questions asked. This can be disastrous in terms of transparency and exclusion from participation online without cause could be legally questionable

given the right of members to attend the meeting, this could eventually lead to litigation.

- **Requirement of details and explanatory notes only in the case of special business<sup>27</sup>:** the present act makes the distinction between ordinary business and special business and it provides that it is only in the case of a special business that an explanatory statement is required. This can result in the company pursuing special business camouflaging it as ordinary business, giving no option of preparation to the shareholders to deal with the same.

- **Proxy advisory firms yet to develop properly in India:** Proxy advisory firms help institutional investors, which includes generally the large shareholders of a companies, in making informed decisions on how voting rights should be exercised at company shareholder meetings like AGMs, EGMs, postal ballots and court-convened meetings. As it is problematic for the institutional investors and the shareholders to analyse at their own every policy agenda thoroughly and realize its legal and managerial consequences, to effectively use their powerful vote and for proper engagement with the companies these institutional investors and shareholder outsource their voting decision to an independent voting research analyst. Proxy advisory firms assists institutional investors in reducing risk in their investments and also monitor the corporate governance mechanism of the companies. This institution was not developed in India for a

<sup>25</sup> Sec.96(2), The Companies Act,2013.

<sup>26</sup> *Going virtual the right choice for your company's AGM?* (oct. 10,2017) at: [www.jordancorporatelaw.com](http://www.jordancorporatelaw.com)

<sup>27</sup> Sec.102, The Companies Act,2013.





long time. In 1991 when the Indian government applied liberalization policy contemplation towards having such firms began, globalization was also an important factor. Proxy advisory firms were not even in existence in India till 2010. It is in that year that the first proxy advisory firm “Ingovern”<sup>28</sup> came to operate, other firms are IiAS and SeS. In a case that happened in connection with Lavasa, Ajit Gulabchand was drawing five times of the salary which the central government had sanctioned without any government approval, later he was made to refund excess amount. He was scrutinized by the proxy firm who brought into light the matter. The slow pace of development of proxy system in India also contributed so far towards the inefficacy of the GMs in corporate governance. But now they are developing which is although a positive sign in that direction. Henry Manne described proxy contest as “the most expensive, the most uncertain, and the least used of the various techniques” for acquiring corporate control. Proxy contest includes additional expenses as proxies are more often than not lawyers, accountants, financial advisors, printers and proxy solicitors. Costs include communication costs as well when it is to be made to a large number of shareholders e.g., in case of public corporations.

In the proxy voting system, control by the board of directors of the proxy machinery has vital strategic repercussions, since proxies represent shareholders. In smaller companies, where directors are sometimes identified with majority shareholders, it will

normally ensure that the appropriate resolution cannot be passed. Proxies might lead to illegitimate offering, sale and purchase of votes by the B.O.D. as whole machinery is inclined towards the managerial unit. This is because even the B.O.D. always strikes the first blow before the opposition group began getting proxies in its favour<sup>29</sup>. Moreover, proxies are not given the right to vote except in the case of postal ballot and they do not have the right to speak as well which further decreases their importance.

• **Key managerial personnel are comparatively more interactive and open with the board than to the shareholders:**

Modern corporations consist of key managerial persons which are entrusted with fundamental powers of management of the company, they derive their authority from the Board of Directors in the first place, in fact B.O.D. acts as the supervisory board in respect to them in such a scenario it is likely that these KMPs are closely connected in their professional works and dealings with the B.O.D. So, it would be unusual for them to act against the wishes of the BOD. Conflict of interests between ownership and control often arises in the corporation and as the immediate authority over the KMPs is the board of directors it is unlikely that by setting aside the interests of the B.O.D. they will take decisions in favour of the shareholders which further weakens the role of the GM.

• **Diversification of investment:** It is a general assumption that being part of GM investors will monitor if monitoring

<sup>28</sup> Jubin Mehta, *India's First Proxy Advisory Firm: Ingovern*, Jan. 10, 2012, at [www.yourstory.com](http://www.yourstory.com)

<sup>29</sup> Paul Lyndon Davies, Sarah Worthington, Laurence Cecil Bartlett Gower, Eva Micheler, Gower and

Davies, *Principles of Modern Company Law, The Mechanics of Meetings*, (8th). Sweet & Maxwell, London (2008) p.437, p.579



increases their profits. But gradual development of public companies and security markets have resulted in “investment norm” which consists in the diversification of investors’ money due to holding of small stocks, so as to reduce the risk factor on their stock. Such diversified investors don’t find it worth to check institutional investors performances as it entails monitoring costs and for a small amount of their investments, they don’t want to incur those costs. This causes shareholders to forego monitoring activities<sup>30</sup> that would benefit them as a group, because no single shareholder can justify the expenses. It results in shareholder apathy and resulting inefficacy of the general meeting. The economic realities would continue to disfavour shareholders activism. Also, corporate management is in position to make personal deals with institutional investors to have the evaluation in their favour. For instance, banks are a class of institutional investors but not emerge as effective monitoring authority as generally their parent banks have or are looking to have business relationships with the companies they are supposed to monitor.

- **Appointment of the whole-time director, managing director and other key managerial personnel is made by the Board the GMs are to give the approval at the later stage<sup>31</sup>:** As mandated by the present companies act the appointment of the persons such as whole-time director, managing director and manager shall be made by the board of directors which essentially needs the approval by a resolution at the next general meeting. In the

process of selection of independent directors as well the board of directors have a paramount part because in India they are selected from a data bank that contains names, addresses and qualifications of persons who are eligible and willing to act as independent directors maintained by any body, institute or association, which the central government specify through notification. This selection is made by B.O.D. at the first instance which is later to be approved by the GM. Therefore, in the appointment of the main management officials of the company B.O.D. has a first say, they select a person of their choice or whom they deem fit for the post and then only in the cases where GM finds any substantial disqualification in the profile of persons it disapproves the person, thus in a way it has secondary function and acts only in cases of default.

- **Dominant role of the Board of directors in the management of the affairs of the company:** Directors are the brains of the company and other constituencies are considered as the limbs of the company. It has to run according to the decisions made by them, they play pivotal role in the governance of the company. the shareholders are there to maintain check and balances in the company through their rights of election and re-election, removal and participation in those matters in which their consent is mandatory. Large part of functioning of the company are carried out under the BOD, thus they exercise greater influence in the working of the corporation, which minimizes the shareholders’ power of control and the legislation has also confined

<sup>30</sup> Jill E. Fisch, *‘Relationship Investing: Will it happen?’*, (5) Ohio State Law Journal (55) at 1010, as

cited from Padmaja Chakravarty, *General meeting versus Board of Directors* (2002) 4 Comp LJ, at 4.

<sup>31</sup> Sec.194(6), The Companies Act,2013.



the authority of shareholders regarding subject matter by making those cases specific<sup>32</sup>. In small companies where shareholders and directors are the same people to require them to differentiate among the decisions they take as directors and those which they take as shareholders can seem unduly burdensome. They will tend in fact to take all decisions as directors, since the rules about board meetings are largely under their control whereas the act contains some mandatory rules about shareholder meetings, for instance, as to the length of the notice required.

- **B.O.D. a continuously functioning body while shareholders generally appear only in the GMs or when some issue relating to their interest comes into question:** The supreme executive authority of the company lies in the board of directors and it is the group of directors which is the primary decision-making body of the company. It looks after the day-to-day affairs of the company. Directors are more conversant with the internal functioning and policy decisions are taken according to their directions, shareholders come into picture only in the matters where their interests are involved or where the matter is such which is prescribed by the companies act to be decided only with the consent of the shareholders of the company. Therefore, the most active organ of the company is the board of directors and it in a way limits the role of the shareholders in the functioning of the company.

- **Lack of management skills and diligence on the part of shareholders:** In a country like India where one can find either passive scattered shareholding or concentrated shareholding, generally in case of private companies, people invest in companies either through the guidance of institutional investors, mutual funds, banks or other consultants, therefore, it is so much to expect from these ordinary investors to know about the actual working of the company and even if they want to play their part as an effective organ they sometimes are unable to do it because they lack management skills, in case they do have some idea regarding technical functions, they do not have an in depth knowledge of the level which board of directors possesses. So, they can't make themselves as effective in the exercise of their powers as board of directors.

The powers of appointment and removal of directors are considered as the most important governance tools which lies with the GM. The removal of directors which are simply appointed under the articles or in the general meeting is determinable in this manner. But problems arise in the removal of those executive directors which have a service contract with the company<sup>33</sup>. If the term of the director is fixed in his service contract and the company seeks to remove him before the stipulated period, the latter becomes liable in damages to the former. The onus is upon the person wanting to remove the director to prove that the director has resorted to a clear case of fraud. This is likely to result in less shareholder control<sup>34</sup>.

<sup>32</sup> Sec. 179(3), The Companies Act, 2013.

<sup>33</sup> Padmaja Chakravarty, General meeting versus board of directors, Company law Journal (2002)4 Comp LJ.

<sup>34</sup> Arjun S. Kalra v Shree Madhu Industrial Estates Ltd. (1997)1Comp LJ 318(CLB)



Sometimes the cost of removing the director becomes so high that it becomes infeasible for the company to remove them, which in turn results in less shareholder control. It is apt to note the observation of Vice Chancellor Strine in *General DataComm Industries ,Inc. V. State of Wisconsin Investment Board*{731A.2d 818(Del.Ch.1999)}<sup>35</sup> :

While stockholders have unquestioned power to adopt bylaws covering a broad range of subjects, it is also well established in corporate law that stockholders may not directly manage the business and affairs of the corporation , at least without specific authorization either by statute or in the certificate or articles of incorporation .There is an obvious zone of conflict between these precepts: in at least some respects, attempts by stockholders to adopt bylaws limiting or influencing director authority inevitably offend the notion of management by the Board of directors. However, neither the courts, the legislators, nor legal scholars have clearly articulated the means of resolving the conflict and determining whether a stockholder – adopted bylaw provision that constrains director managerial authority is legally effective.

Postal ballot system of voting is an alternative to increase shareholder participation but, its authenticity can be deemed questionable, the quality of participation that it provides and the chances of its manipulation by the board of directors to suit their advantages. Shareholders are left

with a very minor role , typically the declaration of dividend, the election or re-election of directors and appointment of auditors- although even in these matters , there is little they can really do except rubber stamp the recommendations of the director<sup>36</sup>.

In respect to the election and re-appointment of directors in AGM it has been observed that in large companies, the existing management generally command the faith of the shareholders simply for being there in office<sup>37</sup>. Further the existing B.O.D. has all the resources of the company's at their disposal to organize an elaborate public relations exercise or program with respect to their re-election. Another tactic that has been used by the directors is to have special voting rights with respect to their shares in the articles of the company thereby defeating the very purpose of having a re-election. Hence, some authors are compelled to consider B.O.D. as a self-perpetuating body. With the development of the corporate world more and more authority has been entrusted to the board of directors and GMs have paled into insignificance.

In India passive shareholding is prevalent due to dispersed and small shareholding as a result of which GMs couldn't be seen as an effective tool of corporate governance because as is already observed shareholders sleep over their rights. But no one can deny that general meetings are the indispensable part of the functioning of the corporation. Therefore, altogether removing GMs from the Company's Act as is suggested by some

<sup>35</sup> Stephen M. Bainbridge, *The New Corporate Governance In THEORY and Practice*, Oxford University Press, *The future of corporate governance: Director or Shareholder Primacy*, (2008), p.218.

<sup>36</sup> Padmaja Chakravarty, *General meetings versus board of directors*, Vol. no. 24, *Company law journal* (2002)4Comp LJ, at 5.

<sup>37</sup> Neha Sachdev, *The Significance of Annual General Meeting in Corporate Governance*, Vol. no. 64, *SEBI & Corporate Laws- Magazine*, (2005), p.32.



staunch supporters of the view that GMs have lost all their utility is not apt. Instead, some substantial improvements can be made in the existing framework of the companies to ensure that GMs can work as an instrument of corporate governance in a better manner.

**Data Analysis of Two Major Indian Companies to Study Shareholders’ Participation in AGMs:**

**TABLE 1: WIPRO LIMITED**

Date of Annual general meeting	Total no. of shareholders on the date of AGM	Number of shareholders actually present either in person or through proxy
July 23, 2014	229325	290 <sup>38</sup>
July 22, 2015	213588	319 (295 in person ,24 proxy) <sup>39</sup>
July 18, 2016	226781	285 <sup>40</sup>
July 29, 2017	255762	366 <sup>41</sup>
July 19, 2018	287670	331 <sup>42</sup>

Source: Disclosure of voting results of AGM [Regulation 44(3) of SEBI (listing obligation and disclosure requirement) Regulations, 2015<sup>43</sup>

From the careful observation of the data provided it can be seen that in the Wipro Ltd. Company shareholders participation is not up to the mark which clearly conveys the lack of interest on the part of shareholders in India to participate in company affairs. Therefore, shareholders are unable to exercise that level of influence in the corporate governance which as is expected from them. It can be seen from Table A that in the year 2014, 2015, 2016, 2017 and 2018 the percentage of the shareholders who have actually attended the annual general meeting is 0.12%,0.14 %,0.12%,0.14% and 0.11% respectively. A that in the year 2014, 2015, 2016, 2017 and 2018 the percentage of the shareholders who have actually attended the annual general meeting is 0.12%,0.14 %,0.12%,0.14% and 0.11% respectively. It is also worth noting that there is no uniform pattern of shareholders’ participation in this company. It varies on yearly basis, with the years passing there is no guarantee that the participation will increase as it can be seen that the number of shareholders actually attending the meeting in the year 2016 (i.e., 285) is less than their strength in 2015 (i.e.,319), instead of increasing it has gone down. So, one cannot draw analogy regarding the ascending or descending pattern of participation.

**TABLE 2: TATA STEEL LIMITED:**

Date of annual	Total no. of shareholders	Number of shareholders actually present
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<sup>38</sup> <https://www.bseindia.com/corporates/anncomp.aspx?curpg=32&scripcode=507685>  
<sup>39</sup> <https://economictimes.indiatimes.com/wipro-ltd/infocompanyagm/companyid-12799.cms>  
<sup>40</sup> <https://www.wipro.com/content/dam/nexus/en/invest>

or/news/2016/12943-Annual-General-Meeting-2016.pdf  
<sup>41</sup> <https://www.wipro.com/documents/investors/pdf-files/AGM-voting-results-2017.pdf>  
<sup>42</sup> <https://www.bseindia.com/xml-data/corpfiling/AttachHis/b0b5ba95-f9d0-458d-90be-0f014783674c.pdf>  
<sup>43</sup> [www.bseindia.com](http://www.bseindia.com), [www.capitalmarket.com](http://www.capitalmarket.com)



general meeting	on the date of AGM	in the meeting either in person or through proxy
Aug. 14, 2014	941024	1740(promoter & promoters' group-10, public-1730) <sup>44</sup>
Aug. 12, 2015	1026909	1409(promoter & promoters' group-6, public-1403) <sup>45</sup>
Aug. 12, 2016	959839	1591(promoter & promoters' group-4, public-1587) <sup>46</sup>
Aug. 08, 2017	837069	890 (promoter & promoters' group-3, public-887) <sup>47</sup>
July 20, 2018	1007383	648 (promoter & promoters' group-4, public-641) <sup>48</sup>

Source: Disclosure of voting results of AGM [Regulation 44(3) of SEBI (listing obligation and disclosure requirement) Regulations, 2015<sup>49</sup>

Tata steel is a very popular company in India, what is generally expected from such a company is the working of corporate governance in it in a very effective manner accompanied with the fundamental features of the corporate governance which includes considerable shareholders' participation,

which this company actually lacks. The total number of shareholders, if put against the no. of shareholders actually present in the meeting, it explicitly shows the lethargic character of the shareholders in matters of exercising the powers given to them and in discharging their governance functions. Table B shows that in the year 2014,2015,2016,2017 and 2018 the percentage of the shareholders who have attended the meeting is 0.18%,0.13%,0.16%,0.16% and 0.06% respectively.

**Suggestions:**

The re-structuring of the companies and their boards in such a way that ultimately result in the gain of shareholders.

The London Stock exchange introduced the principles and code of best practices in June ,1998, which provided the following proposals:

- A single tier system of one share, one vote, instead of the normal procedure of a show of hands should exist until a poll is called for;
- The level of information and discussion which takes place between the company and analysts could well be reflected in the general meeting;
- The calibre and number of the non-executive directors should be such that their independent decisions and ideas carry equal

<sup>44</sup><http://www.tatasteel.com/media/1732/agm-outcome-voting-results.pdf>

<sup>45</sup><https://www.thehindubusinessline.com/companies/announcements/results/tata-power-coltd-disclosure-of-voting-results-of-agm-regulation-443-of-sebi-lodr-regulations-2015/article24550956.ece>

<sup>46</sup> [www.tatasteel.com/media/1731/agm-outcome-voting-results-12th-august-2016.pdf](http://www.tatasteel.com/media/1731/agm-outcome-voting-results-12th-august-2016.pdf).

<sup>47</sup> [www.tatasteel.com/media/4472/voting-result.pdf](http://www.tatasteel.com/media/4472/voting-result.pdf)

<sup>48</sup> [www.tatasteel.com/media/7232/tata-steel-agm-2018.pdf](http://www.tatasteel.com/media/7232/tata-steel-agm-2018.pdf).

<sup>49</sup> <http://www.evoting.nsdl.com, www.thehindubusinessline.com>



importance to that of the executive directors on the board<sup>50</sup>;

- Effective audit committees comprising entirely of non-executive directors should be formed<sup>51</sup>;
- Greater time should be given to the shareholders to review reports and accounts so that resolution can be submitted in advance of the compulsory annual general meeting;
- A relaxation in the requirements of the resolution so that fewer members can validly requisition for a general meeting;
- Compulsory procedures to allow individuals who hold shares through nominees or custodians should be put in place;
- An updated trading statement should automatically be made at annual general meetings;
- Compulsory voting should be required from institutional shareholders;
- Executive directors should be encouraged to make presentations at the general meeting;
- Share prices should truly and evidently reflect underlying value of the company in an efficient market. Such markets will threaten inefficient management to become efficient or risk being taken over. Automatically the process will involve greater interaction with the general meeting to determine future policies of the company<sup>52</sup>;
- Currently proxies do not possess right to speak at the general meeting; they should be allowed to do so;
- Proxy forms should allow for abstentions;

• As the combined code states, the board's annual remuneration report which is submitted in the GMs to the shareholders need not be a standard item of business for it. But the board should consider each year whether the circumstances are such that the general meeting should be invited to approve the policy decision set out in the report and should record their conclusion.

Apart from that some other measures are to motivate curiosity of shareholders during the meeting and while submission of the agenda and documents; creating two kinds of resolutions viz., 'governance resolution' and a 'remuneration resolution', the results of which must be made public; making the provision of incentives for large shareholders to attend the meeting. While making transition in the corporate policies it is to be given paramount consideration that company must be managed in such a manner that leads to the benefit of every constituency but should not be detrimental to the interest of the shareholders. Conformity between the interest of the shareholders and the company should be made to the possible extent. Recognition and protection of the stakeholder interests is the most effective way to ensure long term sustainable growth for the corporation and is consistent with corporate governance best practice. However, corporate governance regulation (comprising those company law rules which deal with internal governance arrangements between directors, managers and shareholders, as well as corporate governance principles) should have primary focus on shareholders' interest.

<sup>50</sup> Vanessa Finch, 'Board Performance and Cadbury on Corporate Governance', Journal of business laws, 2007, p.581.

<sup>51</sup> Id.

<sup>52</sup> Alice Belchar, 'Regulation by the Market: The case of the Cadbury Code and Compliance Statement', Journal of business laws, at 321.



### Conclusion:

General meeting is an irreplaceable unit of corporate governance in fact the nineteenth century traditional approach held general meeting to be the most important and superior organ of the company, it is after Cunninghams' case<sup>53</sup> that a clear distinction began to be made between ownership of management and control. The necessity of assigning the regular affairs in the hands of skilled professional is of equal importance if a company has to work properly and in accordance with good corporate governance. As has been pointed out in the above-mentioned studies GM is losing its significance and steadily becoming ineffective as a tool of corporate governance, therefore, it is the need of the hour to restore the GM in its appropriate place i.e., as an authority ensuring accountability of the board of directors towards the stakeholders by providing such legal and structural changes which will be beneficial in good governance. but while doing so it is also to be kept in mind that too much of the enhancement in shareholders authority threatens the foundation of modern corporate governance; namely, the separation of ownership and control. In order to ensure that the principles of good governance are followed by the corporations a balance of authority has to be struck and it should be monitored that no constituency of the company become dominant upon the other constituency. The above-mentioned suggestions should be adopted and apart

from them the policy makers of the corporate world should undertake researches in this area because increasing authority of B.O.D., while decreasing role of the GMs is becoming an evident phenomenon.

At the AGM, the BOD should be required to obtain both 'governance resolution' and a 'remuneration resolution'<sup>54</sup>. The result of such a resolution should be made public making it an indicator of management of a company. This will force the BOD to take the shareholders, however small, into active consideration and use the AGM to communicate with them effectively. Significant shareholding should be re-defined taking as a frame of reference overall patterns of size of companies as well as shareholder arrangements and is to be determined on the basis of shareholders who have an enhanced obligation to ensure that corporations are managed properly, due to the fact that they have the power to influence the manner in which the company functions<sup>55</sup>.

Shareholder activism is crucially established by the rights of shareholders at general meetings. A complete theory of firm requires one to balance the virtues of discretion against the need to require that discretion be used responsibly<sup>56</sup>. Though mostly intervention by institutional investors takes place in private and will come into the public picture through the general meeting only if private pressure is not successful. Some suggests that making the institutional

<sup>53</sup> Automatic Self – Cleansing Filter Syndicate Co v. Cunninghame [1906]2Ch. 34, CA

<sup>54</sup> Sheikh and Rees (eds.), Donald Butcher, 'Reform of company meetings', *Corporate Governance and Corporate Control*, Cavendish Publishing Ltd., 1995 at 223.

<sup>55</sup> Neha Sachdeva, *The Significance of Annual General Meeting in Corporate Governance*, SEBI & Corporate Laws- Magazine ,64,2005 at 37.

<sup>56</sup> Stephen M. Bainbridge, *The Future of Corporate Governance: Director or Shareholder Primacy*, *The New Corporate Governance In Theory And Practice*, 2008 at 233.





investors the watch dogs of the company will solve the problem, but they act outside the company that's why they are not of much significance for internal governance. The solution could possibly lie in cultivating a culture within institutional investors where voting policies and patterns at AGMs are disclosed and they exercise their votes as far as possible and the AGM is looked upon as a means of improving governance of companies. The development of proxy advisory firm is a step in the right direction to achieve the desired corporate behaviour. General meetings should work as an effective forum of reconciliation of interest of various stakeholders of the company it has to enhance information flow, debate, discussions and constructive notions about the welfare and prosperity of the company. Good governance practice essentially requires effective functioning of the general meetings. Separation of ownership and control should not affect the GM in a way that it deviates from its vital role, if the separate legal personality of the corporation is to survive in the modern scenario GM requires resurgence. A positive sign in respect of the corporate governance in India is that government is recognizing the contribution of the corporation in the development of the nation and slowly becoming more concerned towards good governance, various committees, viz., Kumarmangalam Birla committee, Naresh Chandra Committee, Narayan Murli Committee, etc. have been constituted by the government for conducting studies in respect of it. One solution can be the formation of a new committee specifically for the purpose of defining the scope of powers and making the general meetings more effective as a tool of corporate governance.

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