Himachal Pradesh National Law University, Shimla (India)
HPNLU JOURNAL OF LAW, BUSINESS AND ECONOMICS (HPNLU JLBE)

JOURNAL ARTICLES *ISSN: 2584-0436* **HPNLU JLBE**

Volume III (2024)

SHAREHOLDER ACTIVISM AND THE NEED TO REVAMP THE BUSINESS JUDGEMENT RULE

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This article can be downloaded from:
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Recommended Citation:
Zoya Siddiqui, "*Shareholder Activism and the Need to Revamp the Business Judgement Rule*", III HPNLU JLBE 218 (2024).

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SHAREHOLDER ACTIVISM AND THE NEED TO REVAMP THE BUSINESS JUDGEMENT RULE

Zoya Siddiqui*

Abstract

This paper examines the complex role and scope of the business judgment rule in the context of Indian corporate law. Originating from Anglo-American legal traditions, the business judgment rule was primarily established to protect company directors from personal liability arising out of bona fide business decisions. The Indian corporate landscape, characterised by concentrated ownership and promoter-led corporate governance, presents a distinct challenge. Unlike Western jurisdictions, where ownership and control are typically segregated, India often sees the overlap of managerial control and majority ownership, leading to heightened risks of minority oppression. This essay argues that while the protective intent behind the business judgment rule remains relevant, its wholesale transplantation into Indian law is imprudent without contextual adaptation.

The paper evaluates legislative and judicial developments in India, including derivative actions, class suits, and evolving judicial attitudes, to propose a modified, codified version of the business judgment rule that accommodates Indian corporate realities while preserving its core function, encouraging responsible risk-taking by directors.

Keywords: Business Judgement Rule, Corporate Governance, Judicial Review, Company Law, Board of Directors, etc.

The Business Judgement Rule

Directors of a company or the managers are all expected to perform certain duties, and while discharging these duties, they are all expected to make business-related decisions. The test of a good business decision often lies in the fact that all such decisions should be taken while keeping in mind that every such director is under a fiduciary duty towards all the stakeholders of the company, especially for the shareholders. It is a matter of fact that sometimes some of these business decisions may go wrong, and the company, along with the shareholders, may suffer a loss. And thus, a related dispute may arise before the courts, which often revolves around an alleged breach of the said fiduciary duty towards the company. However, where the director takes a decision that leads to an avoidable loss, and no justified reason is found for said decision, it is then contested and disputed by the shareholder, as

being an unfair or malicious decision, and a demand for accountability arises naturally. In all such cases, the director's intention is often challenged, and the director is left with no defence except one, i.e. a *prima facie* defense, contending that his decision was *bona fide,* and argues that the decision was a natural outcome of the prevailing business conditions.

The above defence is known as the '*Business Judgement Rule*' (hereinafter referred to as BJR), a common law doctrine, specifically evolved for such matters. BJR is a well-articulated defense mooted by corporate directors and managers and accepted by the courts defence accepted by the courts to protect the decision makers from liability.[1] The BJR applies only to the completion of a certain set of preconditions laid down by courts, such as the duty of care, an informed decision, etc.

Judicial Development: UK & USA

The courts of the United Kingdom and the U.S.A. have evolved a traditional and a modern interpretation of the rule. The traditional interpretation of the rule has always been adopted with the primary purpose of protecting the directors.[2] The BJR is invoked only when specific foundational conditions are met: (1) the contested action must qualify as a business decision undertaken by an individual acting in their official capacity as a director; (2) the decision must have been made following adequate discussion and deliberation, reflecting the duty of care; (3) the director must not have had any personal or financial interest in the matter; and (4) the action must have been taken in good faith.

The development of this doctrine can be observed through several key judicial precedents. For instance, in '*Percy v. Millaudon,*[3] the Louisiana Supreme Court ruled that a director would not be held personally liable for a *mistake* if it was one a reasonably prudent individual might have made. Similarly, in the United Kingdom, the Lord Chancellor emphasised that directors should not face liability for decisions made in *good faith* and within the bounds of their authority, even if those decisions led to adverse outcomes, provided they acted with "*fidelity and reasonable diligence*". The general attitude of the courts has been to support the directors, unless the contrary is strongly proved. Later in the landmark judgement of '*Aronson v. Lewis,*[4] the issues left unanswered in '*Zapato Corp v. Maldonia* ' were answered by the Delaware Supreme Court. It laid down the essential foundations and clarifications for the application of the rule. On the topic of '*futility of demand*', the court held that

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[1] Merriam Webster, Business judgment rule, *available at* https://www.merriam-webster.com/legal/business%20judgment%20rule (last visited 10th September, 2025).

[2] D. Gordon Smith, *The Modern Business Judgment Rule*, in *Research Handbook on Mergers and Acquisitions* 83 Steven Davidoff Solomon & Claire Hill eds., Edward Elgar Publ. 3 (ed. 2016).

[3] *Percy v. Millaudon*, 3 La. 568 (La. 1832).

[4] *Aronson v. Lewis*, 473 A.2d 805 (Del. 1984).

the stockholders can directly approach the court for relief when it is proved through facts and particularity by the plaintiff that an uncertainty exists as to the protection of directors under the rule. It is important for the directors to tread lightly so as to avoid the risk-taking and adventurous spirit of the directors, which is essential for a company's growth. In the U.S.A., different states are subject to their own specific guidelines on derivative litigation; in Delaware, the stockholders can bring an action against the directors only after making a demand for change in front of the directors. But this trend evolved as the Delaware courts slowly allowed the shareholders to demand action directly from the court on preconditions in relation to material personal benefit of directors, a meaningful risk that the allegations forming the basis of the litigation demand may expose the directors to legal responsibility, etc.[5] *Ergo*, if the shareholder proved that any demand presented before the directors was futile, they could directly bring the action to the court. Further, in the case of '*Dodge v. Ford'*[6], the minority shareholders had sued Henry Ford i.e., the '*controlling stockholder'* for breach of his fiduciary duties, the business judgement rule was utilized by the court in this case for ordering the directors to rectify the situation and not the *controlling shareholder itself,* the court claimed that according to the business judgement rule it would not interfere with intra-corporate disputes with absent concerns about self-dealing and fraud.

This precedent was important as under the authority model of corporate governance, derivative actions do not proceed until and unless permitted by the board of directors itself.[7] The court had thus introduced a *'prima facie*' element for the plaintiff to prove, this 'abstentious'[8] quality of the rule, which states that the court shall not delve into the substantive merit of the disputed business decision, if all of the preconditions of the rule are proved to apply by the defendant. The U.S.A courts have accepted a broader defence of BJR.

The Dynamics of Decision in the Indian Corporate Landscape

The Indian corporate landscape, characterised by concentrated ownership and promoter-led corporate governance, presents a distinct challenge. Unlike Western jurisdictions, where ownership and control are typically segregated, India often sees the overlap of managerial control and majority ownership, leading to heightened risks of minority oppression. In this reference, the very legal framework of corporate

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[5] Skadden, *Delaware Courts Simplify Rules for Derivative Actions, Analyze SPAC Fiduciary-Duty Review and Clarify Books-and-Records Obligations* (Jan. 19, 2022) , *available at* https://www.skadden.com/insights/publications/2022/01/2022-insights/litigation/delaware-courts-simplify-rules (last visited June 30, 2025).

[6] *Dodge v. Ford Motor Co.*, 204 Mich. 459 (1919).

[7] Michael P. Dooley, *Two Models of Corporate Governance*, 461 *Bus. Law.* 47 (1992).

[8] Stephen M. Bainbridge, *The Business Judgment Rule as Abstention Doctrine*, 57 Vand. L. Rev. 83 (2004).

governance becomes pivotal, and the role of minority shareholders becomes extremely important. Though the minority shareholder is not explicitly defined in the Companies Act, 2013, it is the shareholder with less than 50% of shares with no direct or indirect power in the control of the company who is often referred to as a minority shareholder. This can include institutional investors, mutual fund groups and retail investors, etc. Their involvement is very important for maintaining corporate governance in a company.

The power dynamics in a corporation in India and in the other comparative jurisdictions are dissimilar; both countries struggle with different issues in corporate governance. Primarily, the issues that arise between the shareholders and the board of directors, in the U.K. and the U.S.A., are that ownership and management are separate, due to which issues of agency costs arise.[9] Hence, the focus of shareholders and the authorities is often to prevent agency costs, i.e. align the interests of the directors with those of the shareholders, and to prevent decisions that are otherwise. The 'shareholder primacy theory' prioritises the shareholders' gains as the priority of the business activities and everything else as secondary. But in contrast, Indian companies have different power dynamics and corporate governance problems. Indian corporations are often family-led, with related family members and friends sitting on the board of directors and simultaneously owning most shares.

For example, in the multibillion-dollar corporation, 'Reliance Industries', the shareholding, i.e. 51%, is owned by the members of the Ambani family in individual capacity and with promoters. While the direct family members collectively own 0.84% in fully paid-up shares, along with the promoter groups, they own 51% of the total paid-up shares.[10] The Securities and Exchange Board of India (SEBI) has elaborated that a 'promoter group' is a group related to the promoter, in such a capacity that the promoter has an influence on them,[11] and the direct family occupies four positions in the board of directors as managing director, non-executive director and an executive director.[12] Hence, one entity/person is playing a dual role as a director as well as shareholder; this is bound to create a concentration of power among a few people and therefore prejudice the minority, which lies in disagreement.

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[9] Michael C. Jensen & William H. Meckling, *Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure*, 3 *J. Fin. Econ.* 305 (1976).

[10] Reliance Industries Ltd., *Shareholding Pattern as on March 31, 2025* (March 31, 2025), *available at* https://www.ril.com/sites/default/files/2025-04/SHP31032025.pdf (last visited August 30, 2025).

[11] Securities and Exchange Board of India, *Discussion Paper on Re-classification of Promoters as Public, available at* https://www.sebi.gov.in/sebi_data/attachdocs/1419934886654.pdf. (last visited July 5, 2025).

[12] Reliance Industries Ltd., *Board of Directors*, *available at* https://www.ril.com/about/board-of-directors (last visited Aug. 4, 2025).

Interestingly, the U.S.A. and the U.K., where the BJR has primarily evolved, don't have the same kind of problems, in context to shareholders' rights and primacy as India does. Here, there are two different kinds of difficulties that arise. First, there is the issue of the alignment of incentives and decisions of the majority and minority shareholders and second, the exclusive activism by minority shareholders.

Compliance-related liability should be assessed within the context of the country's prevailing common law framework, taking into account the diverse ownership models, including family-owned, promoter-controlled, and other closely held corporate structures.[13] Hence, the minority shareholders may not align with the majority shareholder in terms of incentives. India does not follow the custodian model, where the promoters are held to be trustees of minority shareholders.[14]

But this doesn't imply that minority shareholders are completely powerless without the support of the majority. A significant instance of successful minority shareholder activism in India took place in 2016, centred around the Aditya Birla Group. The management suggested a merger between two of its publicly traded companies, Aditya Birla Nuvo and Grasim Industries. Many minority shareholders viewed the merger as skewed in favour of the Birla family, the dominant shareholders, at the expense of minority interests. This case underscores the vital importance of minority shareholders actively expressing their concerns to ensure fair corporate governance.[15]

Shareholders' Activism and BJR

If a step-by-step approach is taken, firstly, shareholders will try to oppose or address the decision of the board through the internal redressal system established by the company and the powers given under the articles of association. The case of *Life Insurance Corporation v. Escorts,*[16] serves as a cornerstone on this issue. In its judgment, the Supreme Court drew a parallel between a company and a state institution, such as the Government. It emphasised that shareholders can influence the decisions of the board only through democratically amending the articles of

[13] Ministry of Corporate Affairs, *Management and Board Governance: Report on Company Law Reform, available at* https://www.mca.gov.in/content/mca/global/en/data-and-reports/reports/other-reports/report-company-law/management-and-board-governance.html. (last visited July 7, 2025).

[14] Divya Khanwani & Suneel Kumar, *Why Indian Corporate Promoters Should Be Immune from Fiduciary Duties toward Minority Shareholders*, NLS Bus. L. Rev. (October 13, 2025), *available at* https://www.nlsblr.com/post/why-indian-corporate-promoters-should-be-immune-from-fiduciary-duties-towards-minority-shareholders (last visited August 4, 2025).

[15] LegalMantra.ne, *The Dynamics of Shareholders Democracy: An Indian Perspective on Corporate Governance*, *available at* https://www.legalmantra.net/blog-detail/The-Dynamics-of-Shareholders-Democracy-An-Indian-Perspective-on-Corporate-Governance. (last visited July 4, 2025).

[16] *Life Insurance Corporation of India v. Escorts Ltd. & Or*., (1986) 1 S.C.C. 264.

association to limit the board's powers moving forward. Consequently, any internal activism by minority shareholders must be carried out through democratic means, which inherently requires the backing of the majority. The principle of minimal interference from the judiciary in internal corporate matters was upheld. Therefore, such efforts can succeed only if the majority shareholders align with the concerns of the minority. Hence, when in disagreement with the majority, the minority shareholders can avail themselves of the rights granted to them under Chapter XIV of the Companies Act, 2013.

Under S. 241[17] of the Act, any shareholder or member of the company has the right to approach the tribunal if they believe that the company's actions are harmful to their interests or contrary to the public good. The wording of the section includes terms such as fraud, persistent negligence, breach of trust, breach of obligations and misfeasance. It also goes as far as to include sound business principles and prudent commercial practices. Section 244[18] also laid down the basic numerical limitations for a company without share capital of whose members want to file an complaint under section 241 includes at least 100 members of the company or 1/10 of the total number of its members whichever is less and foreign company without share capital at least 1/5 of the total, accordingly in the case of '*Cyrus Investments Pvt. Ltd. v. Tata Sons*'[19], Although Cyrus Investments held 18.37% of the equity shareholding, it did not meet the statutory threshold under the section, as its holding constituted only 2.17% of the total issued share capital. Later, the power of the majority shareholders and their right to make decisions was upheld by the court. The judiciary ruled that the ousting of Cyrus Mistry from his role as Executive Chairman of Tata Sons did not unjustly harm the minority shareholders' interests, The Tata Trusts possess a dominant 65.89% shareholding, granting them considerable influence, whereas the Shapoorji Pallonji Group (SP Group) holds a notable yet minority 18.37% stake. The board's decision to remove Mistry was deemed legitimate, falling within its authority, with seven out of nine directors voting in favor, indicating a clear erosion of trust.[20]

Further, Section 245 of the Companies Act 2013 contains provisions for initiating class action suits, which may be filed before the National Company Law Tribunal either by a minimum of one hundred members of the company or by five per cent of the total number of members, whichever is lower. In addition, any individual member or group of members holding not less than five per cent of the issued share capital in the case of an unlimited company, or not less than two per cent in the case of a limited company, is also entitled to initiate such proceedings. The legal basis for

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[17] Companies Act, 2013, § 241.

[18] Companies Act, 2013, § 244.

[19] *Cyrus Investments Pvt. Ltd. & Anr. v. Tata Sons Ltd. & Ors.*, Company Appeal (AT) No. 254 of 2018.

[20] *Tata Consultancy Services Limited vs Cyrus Investments Pvt Ltd,* (2021) 9 SCC 44.

class action suits in India originates from the recommendations of the J. J. Irani Committee Report. The report acknowledged that in circumstances where those in control of the company engage in fraudulent conduct that adversely affects minority shareholders and prevents the company from initiating legal proceedings in its own name, courts have recognised the legitimacy of derivative actions. Such actions are instituted by shareholders on behalf of the company, rather than in their personal capacities, to address corporate misconduct that cannot be ratified.

A class action suit on a suit under section 241 are the two instances when the court gets to interpret or decide on the decisions made by a director, a class action is a little bit more complicated than a suit under section 241 due to the fact that a class action is made by a class of shareholders who filed a complaint, the court firstly decides on whether the said complaint is eligible to become a class action and grants a certificate as per Order I, Rule 8 of the Civil Procedure Code 1908 (CPC). There is also fear of agency costs related to the attorney in a class action suit; there is also another issue of the dominant minority shareholders not actively participating in a class action suit, which could lead to issues such as the decision of the representative shareholder, division of compensation, and overall quality of the class action suit. Although Section 245 of the Companies Act, 2013 introduced a specific provision for class action lawsuits effective from April 1, 2014, shareholder activist groups have, to date, largely refrained from initiating any such proceedings.[21]

Codification of the Rule in Indian Jurisprudence

The BJR serves as a protective doctrine that shields directors from judicial interference in their decision-making, provided certain conditions are satisfied. Courts generally exercise restraint in reviewing such decisions, acknowledging their own limitations in matters requiring corporate or managerial expertise. This deference, however, is not absolute. While the doctrine is well-recognised and often applied, its traditional interpretation, centred largely around the breach of fiduciary duty, may not be entirely suitable for the Indian legal landscape. In practice, fiduciary responsibilities extend beyond the boundaries contemplated by the business judgment rule, and thus, a rigid or conventional application of the rule may fail to address the broader obligations owed by directors under Indian corporate governance norms[22].

The BJR not only reinforces the decision-making authority of a company's board but also safeguards the deliberative process that underpins corporate governance. Its

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[21] Jonathan R. Macey and Geoffrey P. Miller, *The Plaintiffs' Attorney's Role in Class Action and Derivative Litigation: Economic Analysis and Recommendations for Reform*, 58 U. Chi. L. Rev. (1) at 19 (1991).

[22] Columbia Law School blog on Corporations, *The Unnecessary Business Judgment Rule*, (July 10, 2013), *available at* https://clsbluesky.law.columbia.edu/2013/07/10/the-unnecessary-business-judgment-rule/ (last visited July 13, 2025).

codification is crucial in promoting an environment where directors can undertake informed and strategic risks without the constant threat of legal liability. The doctrine effectively serves as a safe harbour for directors acting within the bounds of their duties. Notably, several principles underlying the business judgment rule are already reflected in the Companies Act, 2013. Section 166 outlines the statutory duties of directors, mandating that they act in accordance with the company's articles of association, in good faith, and in a manner that serves the interests of all stakeholders, including shareholders and the broader community, with due care, skill, and diligence. Additionally, Section 463 provides that if a company officer, including a director, is sued for negligence or breach of trust, the court may relieve them of liability upon finding that the individual acted honestly and reasonably, considering the specific circumstances.

The Indian Judiciary has, through various judgements, shown that the reasoning adopted by the judges has usually aligned in favour of the business judgment rule. Justice Saumitra Dayal and Vinod Diwakar re-emphasized the importance of the 'juristic personality' of a company, and that a routine and constant lifting of the corporate veil will lead to a disastrous result. Unless the circumstances are such in which a director is guilty of misfeasance or guilty of acting ultra vires of the memorandum, they cannot be held personally liable.[23] It was held that where a director has acted honestly and reasonably, and that when he didn't have any personal, financial or familial relationship with the company, he could be relieved of his liability, if he doesn't engage in deception or fraud.[24] '*Presumption of guilt*' of directors was also upheld as a principle, where it was said that if they had no role to play in the default, then the presumption of guilt would not be in their favour.[25] The SC, in *Miheer H. Mafatlal v. Mafatlal Industries Ltd.*[26], while laying down the jurisdiction of the Company Court for sanctioning a scheme of compromise and arrangement, *inter alia*, included ensuring that the decision is 'just, fair and reasonable from the point of view of prudent men taking a commercial decision beneficial to the class represented by them.

Courts have made it a point to not unnecessarily interfere in the domestic/internal affairs of a company, Justice Venugopal proclaimed in *Economy Hotels India Service (P) Ltd. v. Registrar of Companies*[27], that in dispute of 'domestic affairs' such as reduction of capital, the courts shall not interfere with decision of the majority stockholders. The appellant company challenged the National Company Law Tribunal's (NCLT) decision to dismiss its petition for capital reduction. It was

[23] *AS Solanki v. State of UP and Others*, Writ Tax No. 1499/2005.

[24] *Om Prakash Khaitan v Shree Keshariya Investment Ltd*, 1977 SCC OnLine Del 20.

[25] *Smt G Vijaylakshmi v SEBI*, (2000) 100 Comp Cas 726 (AP).

[26] *Miheer H. Mafatlal v. Mafatlal Industries Ltd*., (1997) 1 SCC 579.

[27] *Economy Hotels India Service (P) Ltd. v. Registrar of Companies*, 2020 SCC OnLine NCLAT 653.

concluded that capital reduction impacts creditors, the process involves stringent safeguards and extensive disclosure requirements. Courts should adopt a non-interventionist stance, avoiding invalidation of reductions supported by a majority, citing their limited expertise in commercial matters and the legislative intent to grant companies autonomy in internal decisions.

The appellant initiated legal action by filing petition before the Company Law Board (CLB), alleging oppression and mismanagement by the respondent. The oppression or mismanagement was not explicit in private contracts between the two entities; the tribunal was discouraged to interfere.[28] The Securities and Exchange Board of India (SEBI) also re-emphasized the BJR, as a judicial doctrine that reflects courts' commitment to respecting corporate self-governance and avoiding scrutiny of corporate directors and officers.[29] A very cautious approach is taken to BJR, the court only bypasses the rule in explicit evidence of malice, in the case of Majolica Impex (P) Ltd.[30], the petitioner, holding 87.50% of the promoter's share and his brother, R-2 (holding 12.50%) was appointed by petitioner to manage affairs while he was in USA. The respondent was to manage the company during his brother's absence in the USA from May 2013. The alleged non-delivery of board meeting and AGM notices, suspected forgery of his signature and claimed R-2 attempted to sell company land, exploiting his sole directorship in India. Due to clear malicious intent, the court permitted further scrutiny.

The Indian judiciary should, at least in principle, create a specific set of preconditions as laid out and inspired by the BJR, to decide whether a business decision by the director is eligible to be scrutinised. This is already being done by the courts, but it is all discretionary and scattered; it will be better for the judiciary and the directors to have a set of consistent preconditions that guide such litigations and provide a streamline approach to the courts for interpretation.

The business judgment rule should not be accepted exactly; it needs to be expanded to include more than just the fiduciary duties of a director. The business judgment rule is a doctrinal vessel of judicial review into which the fiduciary duties of care and loyalty are fitted and subsumed. As noted by the Delaware Supreme Court, the duty of care is but an "element of the rule" but fiduciary duties are broader in scope than the reach of the business judgment rule, which applies only if an identifiable business judgment is made. An example is a faulty oversight context where no business decision was made, and fiduciary duties apply to directors, whether their

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[28] *Chatterjee Petrochem (I) Private Limited vs Haldia Petrochemicals Limited*, MANU/SC/1258/2013.

[29] *Franklin Templeton Mutual Fund, In re*, 2021 SCC OnLine SEBI 839.

[30] *Fidaali Moiz Mithiborwala v Majolica Properties (P) Ltd. and Ors*, MANU/NC/0299/2017.

conduct is reviewed later in court. The more narrowly applicable doctrine should not serve as the unifying concept for the broader-reaching duties.[31]

Another example is a freeze out which is the practice of acquiring the shares owned by a minority shareholder without providing them proper compensation for such shares it demonstrates the enormous influence of the majority and the board of directors over the minority, Recently, an incident occurred at Eicher Motors (which is well-known for its brand Royal Enfield) where minority shareholders declined to support the reappointment of Mr. Siddharth Lal (a company promoter) as the Managing Director (MD) for a second term. Although the appointment had received the unanimous approval of the Board of Directors, the minority shareholder objected to a 10% increase in Mr. Lal's salary. They argued that this increment would make his remuneration disproportionate to the salaries fixed for other Managing Directors of the company.[32] In such cases, their directors would not essentially be under the purview of the business judgment rule, but still, the minority shareholder would be prejudiced.

The provisions of S.241 and 245 allow the minority shareholders to go over the majority head, to lead with a complaint against the directors, and hence, the business judgment rule should reasonably cover more ground and leave space for interpretation, if necessary, by the courts to protect the shareholders and the directors in a balanced way.

The BJR has been codified in the Australian corporate law[33], the classic adoption of the business judgement rule also made the Australian companies suffer with loopholes and increased oversight. India need not repeat the same mistakes and learn from the mistakes of our counterparts. Australian legislature struggled with creating a proper balance between director accountability and to encourage them to take healthy risks. Hence, in their proposed reforms they have suggested adding a broader base for 'honest directors', including in scope common law principles to support the 'honesty' of the director. The Austin/Miller proposal presented reforms to prevent default liabilities of directors and to give them the benefit of the doubt.[34]

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[31] Dr. Niladri Mondal & Victor N. et al., *The evolving role of minority shareholders in corporate decision making: navigating the tensions between unsettling concerns and reassuring outcomes*, 9 NUJS Journal of Regulatory Studies, 78, 78-82 (2024).

[32] LiveMint, *Eicher Motors' Minority Shareholders Oppose Appointment of Siddhartha Lal as MD*, *available at* https://www.livemint.com/companies/people/eicher-motors-minority-shareholders-oppose-appointment-of-siddhartha-lal-as-md-11629451616344.html (last visited August 5, 2025).

[33] The Corporations Act 2001, § 180(2)

[34] Corporate law teachers association, *Re-assessment of the statutory business judgment rule in Australia* (October 27, 2014), *available at* https://www.aph.gov.au/DocumentStore.ashx?id=d5ef7ac3-cd5a-4ba3-acf2-41d2a10519a3&subId=301402 (last visited September 12, 2025).

An example of a shortcoming is that the Australian business judgment rule functions as a defence that must be made out by a defendant director; in contrast, under the Canadian rule, the business judgment rule functions as the doctrine of judicial abstention, which is also the trend in India. Under Canadian law, even though the business judgment rule is not verbatim mentioned, they have a similar provision; the rule is robustly applied by Canadian courts and effectively protects the authority of directors to make bona fide commercial decisions about corporate policy and strategy.[35] Hence, from Delaware to Australia, the strictness and application of the rule by the judiciary vary respectively according to the policy goals of each country.[36] Therefore, it is for the Indian legislature to decide its policy goal in concurrence with the policy needs of the Indian corporate regulatory environment, in what form the business judgment rule needs to be adopted.

Conclusion

The BJR, in its current Western form, offers vital protection to directors against excessive judicial scrutiny, but it cannot be blindly applied in the Indian context. Indian corporate structures, often driven by promoter-led ownership, give rise to a unique imbalance of power that places minority shareholders at a structural disadvantage. Despite provisions under the Companies Act, 2013, such as Sections 241, 244, and 245, minority shareholder remedies remain procedurally burdensome and often inaccessible. This paper asserts that while the business judgment rule provides a valuable framework for evaluating directorial discretion, its implementation in India must go beyond safeguarding fiduciary conduct to addressing systemic issues of concentrated control. Acknowledging a version of the BJR tailored to Indian jurisprudence, with clear preconditions and scope for judicial review in cases of minority oppression, would strike a more equitable balance between board autonomy and shareholder protection. Such a reformed rule could promote both effective governance and corporate accountability, enabling directors to make bold decisions while ensuring minority voices are not marginalised.

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[35] Bone, Ed Waitzer & Johnny Jaswal, '*Peoples, BCE, and the Good Corporate "Citizen*", 47 Osgood H. Law Journal 439 (2009).

[36] Australian Institute of Company Directors, *Advice regarding the business judgment rule* (December 3, 2020), *available at* https://www.aicd.com.au/content/dam/aicd/pdf/news-media/research/2021/advice-regarding-business-judgment-rule.pdf (last visited 13th September, 2025).