Center for Management Science Research
ISSN: 3006-5291 3006-5283 Volume 4, Issue 3, 2026

MINORITY SHAREHOLDER PROTECTION IN PAKISTAN: A CRITICAL, CONTEXTUAL ANALYSIS

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DOI: https://doi.org/10.5281/zenodo.21702244

Keywords
Minority Shareholder Protection, Corporate Governance, Companies Act 2017 (Pakistan), Companies Act 2006 (UK), Derivative Claims, Unfairly Prejudicial Conduct, Separate Legal Personality

Article History
Received: 19 January 2026
Accepted: 04 March 2026
Published: 18 March 2026

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Abstract
This essay critically examines minority shareholder protection in Pakistan's corporate law against the backdrop of the global neo-liberal free-market paradigm. It surveys the doctrinal foundations of separate corporate personality before analysing the principal remedies available to minority shareholders in Pakistan and the United Kingdom – just and equitable winding up, the unfairly prejudicial conduct remedy, and the derivative claim – alongside the supervisory role of the Securities and Exchange Commission of Pakistan. Adopting a socio-legal and comparative lens, the essay argues that Pakistan's post-colonial corporate structures, dominated by 'Seth' culture and blurred lines between ownership and shareholding, demand a contextual rather than a transplanted approach to reform. It concludes that codifying derivative action and director's duties, and revisiting the 10% locus standi threshold, are necessary steps toward a shareholder protection regime suited to Pakistan's own realities.

I. Introduction

Minority shareholder protection is widely regarded as a cornerstone of corporate governance in any country (OECD, 2015). The balancing act between the rights of an individual and that of the business is what is at the crux of such a discussion. The global neo-liberal order stands at a crossroads: to protect the self-actualised, liberated individual with the freedom to contract in a free-market world, or to protect business interests and allow for better efficacy that will result in a trickle-down of wealth? The whole concept of minority shareholder protection then becomes a debate between the protection of moral individual rights, or the practical considerations of business.

Pakistan, with its post-colonial heritage, carries a lot of burdens. Pakistani society's corporate sector is clearly not the same as that of England – its ex-colonial master. The structure of joint-stock companies in Pakistan is convoluted – the distinction between member (shareholders) and directors/employees is extremely blurred, in both private and public listed companies. The author of a leading study takes a critical approach to family-owned private companies and politically motivated hirings in public companies, arguing that such a system mixes the concept of shareholding with ownership, as both are almost always overlapping in practice (Khan, 2016). Couple this with Pakistan's colonial history, and the law then seems to be a palimpsest – written over something that already

existed, where the inherited colonial law does not quite fit the society and the way business is actually run here. Almost all struggle in our corporate legal (and generally) has been to reform/re-evaluate the law, rather than develop – an example of which would be the inclusion of the term "unfairly" before the term "prejudicial" in s.286 of the CA 2017, discussed by Justice Jawad Hassan in Nadeem Kiani v American Lycetuff (Pvt) Limited [2021] CLD 7 (Lahore High Court).

This essay takes a critical approach against the deeply embedded notions of neo-liberal free-market business efficacy. It establishes that Pakistan's corporate law exists in a different context, and calls for a contextual approach. The World Bank states that Pakistan currently performs as the best country for minority shareholder protection in the region, ranking 28th in the world (World Bank, 2020), but this paper seeks to analyse and then criticise such claims under the global neo-liberal framework.

II. Methodology

The methodology of this paper is literature-based, coupled with a socio-economic analysis of ground realities. The paper has four parts. Part III works as an introduction to the concept of separate legal personality for a company; Part IV enunciates the already-existing remedies, and their drawbacks, within the law in Pakistan and the UK for minority shareholders; Part V takes an international comparative approach, coupled with a contextual critical lens, in analysing the viability of the existing remedies; Part VI presents recommendations and concludes the arguments.

III. Corporate Legal Personality and the Veil

The provisions of a company's constitution bind the company and its members to the same extent as if there were covenants on the part of the company and of each member to observe those provisions (Companies Act 2006 (UK), s.33). The birth of all company law is in contract, and the freedom thereof. It is the contract between the shareholders (read: members) amongst themselves that forms the company itself, and then the covenants between the members and the company that form the constitution and the articles of association of the company.

Two concepts are extremely important to understand from the outset. Firstly, shareholding does not constitute a proprietary interest in the company: the UK's Companies Act 2006 defines a share as personal property rather than an interest in the company's real estate or assets (Companies Act 2006 (UK), s.541), and Pakistan's Companies Act 2017 defines a share as movable property, meaning the shareholder enjoys sole and despotic dominion to buy, sell, and/or discard the share itself, rather than any ownership of the company's underlying assets (Companies Act 2017 (Pakistan), s.61). Secondly, the rights and obligations created under the articles of association and the constitution are mainly enforceable against the company itself, not its members. What this entails is that the members of the company only have an interest (not a right) in the profit that the company generates through dividends, and that once capital has been invested it ceases to belong to the investor and becomes the collective property of the company. Hence, only the company is owed duties and can owe duties under the articles of association, as members (shareholders) do not possess the company in any shape or form whatsoever.

These concepts give rise to a more novel concept, upon which the basis of the debate surrounding shareholder protection lies: the concept of separate legal personality for a company. Legal personhood for the company basically entails that the company can sue and be sued. It is, some might say, a fiction of the mind (Dignam & Lowry, 2012), but one with very real effects on the real world. The creation of a corporate legal personhood allows the company to be the only valid forum for legal action. This means that if the company has been wronged, or has wronged someone, it will be separated from the members, directors, or employees that constitute it, and will appear in court as the company itself. It is something of a conundrum: the members do make up the company, but they are considered distinct from it. For example, a decision to build a new factory on agricultural land will be taken by the members in a general meeting through a vote, but once sued, the company will be tried, not the members who voted for the factory.

This concept finds its basis in the concept of proprietorship rights. The members, as mentioned earlier, do not possess any form of property in the company; they hold only an economic interest in its profits, and have a say in how it is run, depending on the amount of shares they hold. The courts have ruled that such a say does not amount to owning the company, and have maintained that the veil of separate corporate personality must be preserved for the company to function properly (Salomon v Salomon & Co Ltd [1897] AC 22). The veil of separate legal personhood is, in effect, another name for the limited liability of members: although members do act on behalf of the company, they cannot be held personally liable for those acts. This protects members' property — a liquidator cannot seize a member's personal assets to offset the company's debts — and preserves business efficacy, since risk-taking is a necessary part of company growth and a member would refrain from taking risks if the threat of personal legal action loomed over them. But it also opens the door for majority shareholders to make decisions that disadvantage minority shareholders on behalf of the company, and to get away with them. The courts have, time and again, lifted this veil of separate legal personhood (see e.g. Gilford Motor Co Ltd v Horne [1933] Ch 935; Jones v Lipman [1962] 1 WLR 832; Adams v Cape Industries plc [1990] Ch 433; Prest v Petrodel Resources Ltd [2013] UKSC 34). While the majority of such cases arise when a third party is involved, the courts have also lifted the veil to protect minority shareholders from the majoritarianism of majority shareholders within the company. The lifting of the veil, and the mechanisms through which the courts protect minority shareholders under that umbrella, is what this paper now turns to.

A brief overview of the existing remedies provided under law to minority shareholders in the United Kingdom and Pakistan follows.

Section 33(1) of the Companies Act 2006 in the UK provides that the company's constitution is a covenant on the part of the company and each member. While it does not directly establish that a minority shareholder could move to court on this basis, the courts have held that a clause in the constitution creates rights and obligations on the company and its members, so that a violation of the articles of association will allow for a claim under those articles. Section 17(1) of the Companies Act 2017 in Pakistan delineates the same principle.

Flowing from the above-mentioned provisions, the courts in the UK and Pakistan have focused on three main remedies for minority shareholders: the winding-up remedy, the unfairly prejudicial treatment remedy, and the derivative claim.

Under s.122(1)(g) of the UK's Insolvency Act 1986, the court could order a company to be wound up. It has ordered companies to be wound up where reasonable to do so, but in the modern day this is virtually impossible in the majority of cases, especially where companies have dispersed shares — that is, held by numerous shareholders, as with most public listed or stock-market companies. Pakistani law is similar: just and equitable winding up is a provision under s.268 of the CA 2017. For the reasons above, the courts usually move such a plea towards an order under the oppression remedy in s.286, or towards the common law derivative claim, which does not formally exist in Pakistan's statutes.

Sections 994–996 of the Companies Act 2006 in the UK — formerly s.210 of the CA 1948, known as the 'oppression remedy' — allow a minority shareholder to seek the court's redress against 'unfairly prejudicial conduct'. This has been amended from the original version in the CA 1948 and now covers broader themes of mismanagement and unfair, prejudicial, and/or fraudulent conduct. The Pakistani counterpart of this provision is found in ss.268 and 286 of the CA 2017 read together. In essence, when the courts deem the just and equitable winding up of a company under s.268 unreasonable, they resort to the oppression remedy under s.286. Two major differences between the English and Pakistani provisions are that the Pakistani provision allows creditors to sue under s.286, and it imposes a minimum requirement of either 10% of shares or 10% of capital investment in the company, as set out in the section itself: any member or members holding not less than ten percent of the issued share capital, or a creditor or creditors having an interest equivalent to not less than ten percent of the paid-up capital, may complain to the Court by petition where the affairs of the

company are conducted unlawfully, fraudulently, oppressively, or in a manner unfairly prejudicial to the public interest (Companies Act 2017 (Pakistan), s.286).

If actions under the former provisions failed, the minority shareholder in the UK historically resorted to the common law derivative claim. This rule was a way for the courts to bypass the strict requirements set under s.996 of the CA 2006 and the just-and-equitable winding-up provisions of the English Insolvency Act. The core concept behind the original common law derivative claim was to let a minority shareholder bring a claim against a wrongdoer in control — that is, when the wrong could not be sorted through a mere vote, because the wrongdoer enjoyed the majority. This was later codified in the CA 2006 (ss.260–265), and the scope was vastly expanded to allow suits even when the wrongdoer was not necessarily in control. No such provision exists in Pakistan's CA 2017, but the courts have folded the original common law derivative claim into the provisions of ss.268 and 286 (see Mst Sakina Khatoon and others v S.S. Nazir Ahsan and others (2010) CLD 963).

The Securities and Exchange Commission of Pakistan provides an added layer of protection to minority shareholders under s.256 of the CA 2017 — discussed further below. We now explore, and critically analyse, all the provisions for minority shareholder protection in detail, comparing their development and application in the UK and Pakistan.

IV. Existing Remedies under Law

A. Just and Equitable Winding Up

Section 122(1)(g) of the English Insolvency Act allows for the 'just and equitable winding up' of a company upon a complaint or investigation. Section 268(a) of the CA 2017 is similar. But such a power has rarely been exercised by the courts in either jurisdiction. Where a company acts as a 'quasi-partnership' — meaning a small number of members and few parties affected by the winding up — the courts have found it just and equitable to wind the company up (Re Westbourne Galleries Ltd [1973] AC 360). Section 268(c) of the CA 2017 allows the court to move an application thereunder into an application under s.286 — more commonly known as the oppression remedy.

B. Oppression / Unfairly Prejudicial Conduct Remedy

Historically known as the oppression remedy in the UK, s.996 of the CA 2006 provides an individual claim against members or directors for unfairly prejudicial conduct. This remedy is available to an individual, not to the company suing as a legal person, and it is only available to a member of the company, not an employee (Re Unisoft Group Ltd (1994)). The English law has developed considerably: it used to be an 'oppression' remedy under s.210 of the CA 1948, but the requirement has since broadened. It is now required that the impugned action be both unfair and prejudicial — satisfying only one requirement is not enough to make the application maintainable (Re Saul D Harrison & Sons plc (1995)). While stringent, doing away with the strict 'oppression' rule allowed the courts to broaden the definition of unfair and prejudicial conduct. Mere mismanagement was initially held insufficient, since risk-taking is a necessary part of business, but continuous and prolonged mismanagement was later held to amount to unfair and prejudicial conduct (Re Elgindata Ltd (1991); Re Macro (Ipswich) Ltd (1995)). Financial benefit to the majority at the expense of minority shareholders (Re Cumana Ltd (1986)), and the breach or misuse of rules with ill intent towards minority shareholders (O'Neill v Phillips [1999] 1 WLR 1092), are now classified as unfair and prejudicial conduct under s.996 of the CA 2006.

The Pakistani counterpart to the unfairly prejudicial conduct remedy exists in s.286 of the CA 2017, which is modelled on the old English s.210 of the CA 1948 and its 'oppressive conduct' rule (Hamid, n.d.), making the Pakistani text more restrictive than the English counterpart. Moreover, Pakistani law has two peculiar provisions: (a) it sets a minimum threshold of at least 10% of shares or capital funding for a claim to be maintainable; and (b) it allows creditors to file a claim under the same section, putting them on par with members. The courts have not been lenient with this provision, and have struck down cases where even a small difference in shareholding meant the minority shareholder fell below the 10% threshold (NP Waterproof Industries (Private) Limited v NP Spinning Mills Limited (2023) CLD 33). While the structural limit remains in place for

shareholders holding less than 10% of total shares, the provision has been expanded in another way: it allows a claim where an act, or a future act, of the majority or directors is deemed unlawful, prejudicial to the public interest, fraudulent, and/or oppressive to minority shareholders. The courts' interpretation here has been extremely unstable. At one instance the court ruled that mismanagement would qualify as oppressive conduct under s.286 (Nadeem Kiani v American Lycetuff (Pvt) Limited [2021] CLD 7), but at other instances it has ruled that mere mismanagement does not qualify (Dr Muhammad Imran Qureshi v Muhammad Asif [2020] CLD 1060 (Karachi High Court, Sindh); Muhammad Aijaz Tahir v Federation of Pakistan (2014) CLD 1683 (Lahore High Court)). Nonetheless, the courts have been clear that mere resentment of a majority decision does not constitute oppressive conduct under s.286 (Mian Waqaruddin and 3 others v Messrs United Industries Limited and 11 others (2017) CLD 696).

Looking at the case law under s.286, one becomes even more confused. In Nadeem Kiani v American Lycetuff (Pvt) Limited [2021] CLD 7, the court ruled that unfairness and illegality alone will not constitute a violation of the section, and defined a small set of parameters for a suit to be maintainable: it must be established that the respondent is conducting the company's business in an unlawful manner, a fraudulent manner, a manner not provided for in its memorandum, a manner oppressive to a member or creditor, or a manner unfairly prejudicial to the public interest (Hassan, 2022, citing Nadeem Kiani v American Lycetuff (Pvt) Limited [2021] CLD 7). Further, the courts have assumed broad discretionary powers in determining what qualifies as oppressive conduct, holding that there cannot be a hard-and-fast rule for invoking the provision, since it depends primarily on the individual facts of each case (Dr Muhammad Imran Qureshi v Muhammad Asif [2020] CLD 1060). The court, in effect, assumes this power and then fails to build a body of jurisprudence that properly defines the bar.

The locus standi requirement, and the inclusion of creditors within the oppression remedy, are the two major problems within s.286 of the CA 2017 (Hamid, n.d., p. 11), compounded by the fact that interpretation is left to the courts without a concrete, settled scope for the section and its remedies (Qureshy, 2023). Requiring a minimum of 10% shareholding makes it unnecessarily difficult for a person to seek redress, especially where the provision exists precisely to provide relief to minorities who have been defrauded or wronged. Moreover, including creditors within the same provision is a deeply rooted problem — it entrenches the idea that shareholding and ownership are synonymous, since both stem from investment in the company (Hamid, n.d.). This idea convolutes shareholding as an economic interest with financing as a legitimate means of acquiring some form of ownership right. Insolvency law already exists to cater to the issue a creditor might face if the company defaults.

C. Common Law Derivative Claims

Notwithstanding the remedies above, English law historically developed the common law derivative claim, whose basic concept was for the minority shareholder to sue on behalf of the company. It was a true exception to the proper-plaintiff principle laid down in Foss v Harbottle (1843), where the court held that when a company's interests are violated, only the company can sue. Exceptions existed — companies acting ultra vires, special majority rules, and violations of personal rights — but these were covered either by statutory provision or within the articles of association itself; the ultra vires doctrine was later laid to rest by s.31 of the CA 2006. The one situation that remained was the 'wrongdoer in control' problem: whether to sue is the company's decision, taken by its directors (Breakland Group Holdings Ltd v London and Suffolk Properties Ltd (1989)), but what if the wrongdoer is the majority? To address this, the common law derivative claim came into existence: if an issue could not be resolved through a majority vote because the wrongdoers were the ones in the majority, a minority shareholder could sue on behalf of the company for a wrong done to it. The derivative claim could never be used for an individual claim, and all damages recovered would go to the company, since the minority shareholder's economic interest in the company means that a benefit or loss accruing to the company trickles down to

them, giving them a stake in the company's interest when bringing the claim.

While the birth of the common law derivative claim was an exception to the Foss v Harbottle rule, it developed over time. At first, majority ratification was a hurdle against derivative claims reaching the court, but the courts disallowed ratification where fraud against the minority was perpetrated (Cook v Deeks [1916] UKPC 10). The question of whether a director who was directly involved, and who was also a member, should retain voting rights during a ratification meeting then arose; the Privy Council ruled that such a director was entitled to vote (North West Transportation Co Ltd v Beatty (1887)). This rule faced heavy criticism, as it nullified the very purpose of the derivative claim against a wrongdoer in power (Smith, 2011). Hence, s.239 of the CA 2006 in England now bars any interested director who is also a member, and any members connected to that director, from voting during ratification — though such directors and members may still sit at the ratification meeting and attempt to sway opinion (Khan, 2016). The courts also read a bona fide requirement into the derivative claim: the plaintiff must have only the company's benefit at heart (Portfolios of Distinction Ltd v Laird (2004)).

The derivative claim is now a statutory provision under s.260 of the CA 2006. The requirement for a ratification option has been removed, and a two-stage process is now in place: a court must first establish, prima facie, the grounds for a case (Companies Act 2006 (UK), s.263). Good faith, the possibility of ratification without defrauding the minority, and whether the impugned act lies in the future are among the many considerations under s.263. The courts have thus been given discretionary power to determine whether a derivative claim may be entertained, unlike the old common law principle, under which only the company — through ratification — determined whether the claim could be maintained.

No statutory provision for derivative claims exists in Pakistan. The courts, as a Commonwealth jurisdiction, have read the old common law derivative claim into s.286 of the CA 2017, entirely conflating the two. The Sindh High Court set out a few guiding principles for a common law derivative claim in Pakistani law: shareholders may bring a derivative action where (1) the company is under the control of majority shareholders who are abusing their position; (2) that abuse is intended to defraud the company; (3) the company is unable to bring the action itself because of majority control; and (4) the company is impleaded in the suit (Khan, 2016, citing Mst Sakina Khatoon and others v S.S. Nazir Ahsan and others (2010) CLD 963). These principles were enunciated even though the case itself was not about derivative claims at all; the court simply read them into the case before deciding it on other grounds. Moreover, reading the common law derivative claim into s.286 imports the section's existing problems, including the arbitrary 10% shareholding threshold: the Sindh High Court has read this requirement into the common law principle and denied a derivative claim where the plaintiff did not hold 10% of the shares (Mr Asif Mannaan & others v Mr Suleman Lallani (2020)). Even academic articles produced by local students have made the same mistake of equating s.286 with the derivative claim itself (Ali, Khuhro, & Muhmand, 2022).

Lastly, a structural difference — or a lack thereof — exists between the two jurisdictions. Under the CA 2006 it is clear that a derivative claim lies against a director who violates their duties to the company, whereas s.204 of the CA 2017 does an extremely poor job of delineating a director's duties (Hassan, 2022). It is therefore necessary for s.204 to be elaborated in greater detail for derivative claims to succeed.

D. The Securities and Exchange Commission of Pakistan

Lastly, the SECP provides protection to minority shareholders under s.254 read with s.256 of the CA 2017. Any person with a minimum of either 10% of shares or 10% of voting rights in a company may move to the SECP with a complaint against the majority shareholders for a violation of their shareholder rights (Hassan, 2022, pp. 17–20). The courts have granted extensive powers to look into a company's books under s.221 of the CA 2017, upon complaint by an aggrieved shareholder under s.256 or a registrar's report under s.221(5) (Depilex Smileagain Foundation v Securities and Exchange Commission of Pakistan). But the 10% shareholding benchmark has repeatedly

been upheld by the courts, and it does not provide any new or more effective remedy compared with the existing remedy under s.286 (Daewoo Pakistan Express Bus Service Ltd v Securities and Exchange Commission of Pakistan, where the court ruled that while s.221 allows the registrar to investigate a company without the 10% shareholding rule, an individual cannot move a plaint under s.221). Now that the remedies have been explained in detail, we turn to reflection and analysis.

V. Critical and Contextual Analysis

To understand this critically, it is imperative to take a socio-cultural approach to the issue. Pakistan is a highly litigious society with a post-colonial heritage. This entails two things: first, that the influx of suits in the courts is at an all-time high; second, that the majority of the development of legal principles in Pakistan is rooted in what the coloniser left behind.

A. Section 286 and the Problem of the Benchmark

Section 286 of the CA 2017 creates a benchmark of 10% shareholding for a claim to be filed under the oppressive conduct remedy. On its face, one may call this arbitrary, but a deeper analysis is required. Comparing this remedy to the English 'unfairly prejudicial conduct' remedy, it should be noted that the English provision used the same 'oppressive conduct' bar until 2006, and that the 10% benchmark itself was originally 20%, reduced to 10% in 1979 by an amendment to the Indian Companies Act 1913 (Hamid, n.d.). So it must be recognised that the direction the legislature has taken is towards modernisation of the law. Consider also s.263 of the English CA 2006, which establishes a two-step process for a derivative claim under s.260, intended to eliminate frivolous litigation (Khan, 2016). If we look at the 10% shareholding benchmark for s.286 under Pakistan's CA 2017, how is it any different from the provision under s.263 of the CA 2006? Both aim to reduce frivolous litigation and the burden on the courts. The Pakistani courts — already overburdened, under-resourced, and understaffed — cannot bear the two-hearing process that a genuine two-step derivative claim procedure would require. While this may seem prejudicial to minority shareholders, it is, for now, a viable and practical solution. Nonetheless, amendments are proposed below, since in the long run it would be best for Pakistan to move away from such a provision.

B. Society

Social structures in Pakistani society are mostly based on 'Seth' culture — one family, person, or group invests, owns, and runs the company. This has been elaborated above as a stock-piling method, and it entails that the boundary between director and member is erased. The distinction between the director and the member is at the core of the derivative claim in the UK (Khan, 2016). If such a distinction does not exist, how could one bring a derivative claim against a director at all? The World Bank report establishes Pakistan as the 28th-best country in the world for minority shareholder protection (World Bank, 2020). A simple reading of the report leads to the inescapable conclusion that the data is skewed, the terms are not context-friendly, and the report is not a great representation of ground realities. The report suggests it is easy for a minority shareholder to file a claim against the majority in Pakistan — something that was never disputed in the first place. The problem is not the hurdle of filing a claim, since Pakistan is already a highly litigious society. The problem at the core is how business efficacy is measured against individual shareholder interests in Pakistan. Unfortunately, good data for such a thesis is scarce, but it remains important for research to recognise that the concepts of 'minority' and 'majority' as understood in English and Western legal academia do not translate neatly to Pakistan. The joint-stock company came into existence as early as the eighteenth century in the UK; the average Pakistani is still largely unaware of what a shareholder even is, let alone a minority shareholder in a public listed company. While criticisms exist, derivative claims do provide a viable remedy for minority shareholders in Pakistan. But the problem is that it is not codified as it is elsewhere. The Corporate Law Review Commission, established by the SECP in 2005 under Justice (Retd) Ajmal Mian to study corporate law and recommend reform, advised the SECP to deliberate further before codifying derivative claims in Pakistan,

but a finalised report on the point has never been submitted (Corporate Law Review Commission, 2005, p. 18). The Commission also established that the remedy is available in the UK, US, Australia, and New Zealand, and that China, Hong Kong, and Malaysia also enjoy statutory derivative claims (Corporate Law Review Commission, 2005). India, following its 2013 Companies Act, remains stuck with the common law derivative claim, much as Pakistan is. There have been several cases in the US legal system where directors have been held liable, and the same has been true in South Korea, where a claimant was awarded USD 12 million in damages for a derivative claim; the loser-pays-all rule in Korea, however, has disincentivised people from bringing such claims (Cheffins, Black, & Klausner, 2005). Ultimately, it is also important to revisit the concept of directors' duties in Pakistan's CA 2017, because the core of the derivative claim lies in the duties owed by the director to the company (Corporate Law Review Commission, 2005).

It is therefore unusual, and impractical, for an academic to argue that Pakistan should be held to the same standard as Western polities. Even Malaysia has only a 5% shareholding rule, and India still works under the common law principles of derivative claims (Corporate Law Review Commission, 2005). So rather than a blind, non-contextual trust in the market and business efficacy, studies should be guided by local context and individual-protection-based arguments suited to Pakistan.

VI. Recommendations and Conclusion

To conclude and to recommend, it is important for the state to recognise that more coherent legal frameworks are a necessity. While the SECP has announced reforms for a more comprehensive treatment of related-party transactions, these remain surface-level, and a more in-depth reform is needed. It is necessary for derivative action, and the duties of the director, to be codified in the CA 2017. Only through such codification would Pakistan get rid of the idiosyncratic decisions being made in the courts on a near-daily basis. Moreover, the 10% rule in ss.286 and 256 needs to be either done away with or further reduced. The remedy provided under s.286 is not an alternative to derivative action. Derivative action is necessary because it is a remedy for the company—without it, the company is left at the whims of the wrongdoer majority, even if the minority succeeds with a personal claim under s.286, s.256, or s.268, since a merely personal remedy indemnifies the directors and leaves director control largely untouched (Wahla, n.d.). Lastly, the creditor rule under s.286 needs to be re-evaluated and revised. It is imperative for Pakistan's legal academy to differentiate between ownership rights and shareholding privileges in a company—the conflation of the two leaves the waters murky.

To conclude, it would be sound to say that Pakistan's company law is currently in its developmental stages. It needs to change its perspective, look at its own context, and analyse the situation and reforms from its own lens. It is important to keep business efficacy in mind, as shareholder protection is one of the core metrics investors weigh when deciding whether to invest, but the state and its regulatory bodies remain a necessary evil, needed to stop the invisible hand of the market from violating individual liberties.

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