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# **RETHINKING THE 10% THRESHOLD IN INDIA: A PATH TO STRONGER SHAREHOLDER ACTIVISM**

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## **ABSTRACT**

Shareholder activism is a vital tool for enhancing corporate governance, ensuring transparency, and holding management accountable. However, in India, shareholder activism faces significant hurdles due to the high 10% shareholding threshold required under Section 100 of the Companies Act, 2013, to call an extraordinary general meeting (EGM). This threshold is substantially higher than in countries like the United Kingdom (5%), the United States (no fixed threshold), and Singapore (5%), making it difficult for minority shareholders to influence corporate decisions. The dominance of promoter-led businesses further restricts shareholder activism, as promoters often hold controlling stakes, limiting the ability of retail and institutional investors to push for governance changes.

A comparative analysis of global best practices highlights that lower thresholds, strong proxy advisory mechanisms, and institutional investor stewardship play a crucial role in fostering shareholder engagement. In jurisdictions such as the US and UK, shareholders with minimal stakes can propose resolutions, increasing accountability and board responsiveness. However, in India, even institutional investors such as mutual funds and insurance companies rarely engage in activism due to regulatory and business constraints. Moreover, the lack of a strong proxy advisory influence and legal ambiguities further discourages shareholders from taking an active role in corporate governance.

This paper examines the legal, regulatory, and institutional challenges affecting shareholder activism in India, particularly the 10% threshold issue, and explores potential reforms. It argues for lowering the threshold to 5% or lower, in line with international standards, to facilitate greater shareholder participation. Additionally, it proposes enhanced SEBI oversight, stronger proxy advisory frameworks, and the adoption of digital voting platforms to increase transparency and accessibility. By analyzing successful and failed cases of shareholder activism in India, including the Cyrus Mistry-Tata Sons dispute, this paper highlights the urgent need for legislative and regulatory reforms to create a more inclusive and investor-friendly

corporate governance ecosystem.

**Keywords:** Shareholder activism, corporate governance, Companies Act 2013, proxy advisory firms, minority shareholders.

## INTRODUCTION

Shareholder activism refers to the efforts of investors, particularly minority shareholders, to influence corporate decision-making, ensuring transparency, accountability, and ethical business practices. It serves as a critical tool in corporate governance, allowing shareholders to challenge management decisions, propose policy changes, and push for long-term value creation. Activism can take various forms, including engaging in discussions with the board, proposing shareholder resolutions, voting against management decisions, filing lawsuits, and launching proxy battles. Traditionally, large institutional investors and hedge funds have been at the forefront of shareholder activism, but with increasing awareness and regulatory support, retail investors and smaller institutional investors are also participating in governance matters. The significance of shareholder activism lies in its ability to strengthen corporate governance by holding boards and executives accountable. A well-governed company is more transparent, efficient, and aligned with shareholder interests, reducing the likelihood of mismanagement and unethical business practices. Activism plays a crucial role in bridging the **agency gap**, where company executives or controlling shareholders prioritize personal gains over broader shareholder interests. Global trends indicate that activist shareholders have successfully influenced **dividend policies, board independence, executive compensation, and ESG (Environmental, Social, and Governance) practices**, leading to improved investor confidence and sustainable corporate performance. However, for shareholder activism to be effective, a supportive regulatory framework and accessible legal mechanisms are essential.

In India, shareholder activism is still in its early stages compared to developed economies like the **United States and the United Kingdom**, where activism has been a well-established force for decades. India's corporate sector is **dominated by promoter-driven businesses**, where a small group of controlling shareholders wields significant influence over decision-making, often sidelining minority shareholder interests. The **Companies Act, 2013**, under **Section 100**, requires shareholders to hold at least **10% of the paid-up share capital** to call for an **extraordinary general meeting (EGM)**—a threshold significantly higher than the **5% requirement in the UK and Singapore**, or the **even lower thresholds in the US**. This

regulatory barrier makes it difficult for minority shareholders to exercise their rights and challenge corporate mismanagement.

Despite these challenges, shareholder activism in India has been gradually gaining momentum, driven by the increasing role of **institutional investors, proxy advisory firms, and legal reforms**. Large institutional investors like **LIC, mutual funds, and foreign institutional investors (FIIs)** are becoming more active in governance matters. Additionally, proxy advisory firms such as **Institutional Investor Advisory Services (IIAS), Stakeholders Empowerment Services (SES), and InGovern Research** provide independent recommendations on shareholder resolutions, encouraging better governance practices. Some notable cases of shareholder activism include the **Cyrus Mistry vs. Tata Sons dispute**, where concerns over **corporate mismanagement and board independence** were raised, and the activism against **Raymond Ltd.**, where institutional investors successfully opposed an unfavorable **related-party transaction** that could have eroded shareholder value. These instances highlight the **potential impact of shareholder activism in India**, despite the structural and regulatory limitations.

For shareholder activism to be more effective in India, **regulatory reforms** are essential. Lowering the **10% threshold** for calling EGMs to **5% or lower**, in line with global standards, would allow minority shareholders greater participation in corporate governance. SEBI should **mandate greater transparency** in institutional investor voting patterns, ensuring that mutual funds, insurance firms, and pension funds **prioritize shareholder interests over corporate relationships**. Strengthening the **role of proxy advisory firms, digitizing voting mechanisms**, and encouraging **collective action among minority shareholders** can further enhance activism. While shareholder activism in India is evolving, with the right legal and regulatory support, it can become a **powerful force for corporate governance reform**, leading to a more transparent and investor-friendly corporate environment.

### **Legal Framework Governing Shareholder Activism in India**

The legal framework governing shareholder activism in India is primarily shaped by the Companies Act, 2013, the Securities and Exchange Board of India (SEBI) regulations, and judicial interpretations that define corporate governance norms. While these laws provide a structure for shareholder rights, certain regulatory barriers, such as the high 10% threshold for calling an Extraordinary General Meeting (EGM), continue to limit the effectiveness of

shareholder activism.

The Companies Act, 2013, plays a crucial role in defining the rights and mechanisms available to shareholders seeking to influence corporate decisions. Section 100 allows shareholders holding at least 10% of the paid-up share capital to request an EGM to discuss governance concerns. This provision provides one of the few direct avenues for shareholders to question management, demand transparency, and push for corrective action. However, the high threshold compared to global standards—such as the 5% requirement in the UK and Singapore—makes it difficult for minority shareholders to exercise this right effectively. In cases of oppression and mismanagement, shareholders can seek remedies under Section 111 (previously Section 241-242), which allows them to approach the National Company Law Tribunal (NCLT) if they can demonstrate that the affairs of the company are being conducted in a manner prejudicial to their interests or the public interest. While this provision has been instrumental in several shareholder disputes, litigation delays often limit its effectiveness as a tool for activism.

Recognizing the influence of institutional investors in corporate governance, SEBI introduced the Stewardship Code in 2020, which mandates mutual funds, insurance companies, and pension funds to actively engage with investee companies and disclose their voting policies. This regulation aims to enhance institutional shareholder participation in governance matters, ensuring that they act in the best interests of their investors rather than aligning solely with management. SEBI has also introduced stricter norms for corporate governance, mandating greater transparency in board independence, related-party transactions, and shareholder voting mechanisms. However, institutional investors in India have traditionally remained passive compared to their Western counterparts, often avoiding direct confrontations with management. Strengthening the enforcement of the Stewardship Code and increasing transparency in institutional voting decisions could encourage greater shareholder activism.

Proxy advisory firms have become important players in promoting shareholder activism in India. Firms such as Institutional Investor Advisory Services (IIAS), Stakeholders Empowerment Services (SES), and In Govern Research provide independent analysis and voting recommendations on corporate matters, enabling shareholders, especially institutional investors, to make informed decisions. These firms influence key corporate resolutions, including board appointments, executive compensation, and mergers & acquisitions, by

offering governance ratings and critical assessments of corporate policies. While proxy advisory firms have gained prominence, their influence remains limited compared to the United States and the UK, where they significantly impact investor voting behavior. Indian companies often resist their recommendations, and institutional investors do not always act on their guidance. SEBI has implemented regulations requiring proxy advisors to disclose their methodologies and potential conflicts of interest, but further strengthening their role could enhance shareholder engagement.

Judicial interpretation has played a significant role in shaping shareholder rights in India. Landmark cases such as *Cyrus Mistry vs. Tata Sons* have highlighted the challenges faced by minority shareholders in promoter-led businesses and raised concerns about board independence and corporate governance transparency. While the Supreme Court ultimately ruled in favor of Tata Sons, the case underscored the growing importance of shareholder rights and the need for stronger governance frameworks. Courts have also reinforced the fiduciary duties of directors, emphasizing that they must act in the best interests of all shareholders rather than prioritizing promoter interests. Judicial precedents have gradually strengthened minority shareholder protections, but further legislative reforms are required to ensure a more balanced governance structure.

India's legal framework for shareholder activism has evolved, but structural barriers remain. The high 10% threshold for calling an EGM, passive institutional investor engagement, and limited enforcement of governance reforms continue to restrict shareholder influence. Strengthening SEBI's oversight, lowering the threshold for shareholder resolutions, and encouraging the role of proxy advisory firms can enhance shareholder activism. While judicial interpretations have provided some relief, legislative changes are necessary to align India's shareholder activism framework with global best practices.

### ***The 10% Threshold: A Major Roadblock***

The requirement for shareholders to hold at least 10% of the paid-up share capital to call an Extraordinary General Meeting (EGM) under Section 100 of the Companies Act, 2013, presents a significant challenge to shareholder activism in India. This threshold is one of the highest among major economies and limits the ability of minority shareholders to influence corporate decision-making. The rationale behind this requirement is to prevent frivolous shareholder interventions; however, it also has the unintended consequence of restricting

legitimate concerns from being raised. Given the concentration of ownership in many Indian companies, where promoters often hold a controlling stake, this high threshold effectively curtails the ability of minority and institutional investors to initiate discussions on governance issues, financial performance, or management decisions.

For minority shareholders, the 10% requirement serves as a major barrier to activism. Unlike promoters, who typically hold large stakes and can influence corporate decisions with ease, individual shareholders and even institutional investors such as mutual funds and pension funds often struggle to meet this threshold. Institutional investors, despite collectively holding substantial shares in listed companies, frequently remain passive due to regulatory and strategic constraints. Unlike in developed markets where institutional investors actively engage with management and challenge governance practices, the high threshold in India discourages such intervention, reinforcing promoter dominance. The result is a corporate environment where shareholders, despite being owners of the company, have limited avenues to question or rectify governance failures.

A comparative analysis with other jurisdictions highlights the restrictive nature of India's 10% threshold. In the United Kingdom, shareholders require only 5% of the shareholding to call an EGM, making it easier for minority investors to voice concerns and influence corporate policies. In Singapore, the threshold is also set at 5%, aligning with the UK's framework and promoting greater shareholder participation. The United States follows a different approach, where no fixed shareholding threshold is required to propose resolutions. Instead, activist investors can bring up governance issues through shareholder proposals at annual meetings with significantly lower ownership stakes. These lower thresholds in other jurisdictions encourage a more active shareholder base and foster better corporate governance practices.

India's relatively high threshold reflects a regulatory approach that prioritizes stability over shareholder participation. However, with the increasing importance of corporate governance and investor rights, revisiting this threshold is necessary. A lower threshold, such as 5%, would align India with global best practices and encourage a more balanced power structure between promoters and minority shareholders. Reducing the threshold would not only enhance corporate accountability but also strengthen investor confidence in Indian capital markets, ultimately contributing to a more dynamic and transparent corporate environment.

### ***Case Studies on Shareholder Activism in India***

Shareholder activism in India has seen both successes and failures, shaped by legal constraints, corporate governance structures, and the influence of institutional investors. While some shareholder-driven actions have led to significant corporate governance reforms, others have been undermined by legal and structural barriers.

One of the most notable cases of shareholder activism in India is the dispute between Cyrus Mistry and Tata Sons. Mistry, who was removed as the chairman of Tata Sons in 2016, alleged that the board's decision was unfair and that the governance framework within Tata Sons allowed for excessive promoter control. He argued that minority shareholders had little say in key decisions, despite their financial stake in the company. The legal battle that followed highlighted the challenges minority shareholders face in India, particularly when dealing with companies that have a strong promoter-driven structure. While the National Company Law Appellate Tribunal (NCLAT) initially ruled in favor of Mistry, the Supreme Court later overturned the decision, reinforcing the dominant role of promoters in Indian conglomerates. This case illustrated the difficulties minority shareholders encounter when challenging corporate decisions and emphasized the need for stronger shareholder protection mechanisms. Institutional investors, including Life Insurance Corporation of India (LIC) and mutual funds, have also played a role in shareholder activism, albeit with mixed results. While institutional investors hold substantial stakes in major Indian companies, they have traditionally been passive in engaging with management on governance issues. In some cases, however, they have exercised their voting rights to oppose excessive executive compensation, related-party transactions, and board appointments. For instance, institutional investors successfully pushed back against resolutions for exorbitant pay hikes for executives in companies such as Tata Motors and Eicher Motors. However, their activism remains sporadic, often limited by regulatory constraints and the reluctance to confront powerful promoters. Strengthening institutional investor participation through enhanced stewardship codes and regulatory incentives could improve corporate governance in India.

### ***Comparative Analysis: Global Best Practices***

In developed markets, shareholder activism is facilitated by lower ownership thresholds, stronger regulatory frameworks, and robust voting mechanisms. Countries such as the United

States, the United Kingdom, and Singapore provide a more conducive environment for shareholders to influence corporate governance.

In the United Kingdom, shareholders holding just 5% of the voting rights can call an Extraordinary General Meeting (EGM), making it easier for minority investors to raise concerns and demand accountability. Similarly, Singapore also sets the threshold at 5%, ensuring that shareholder activism remains an accessible tool for governance improvements. In contrast, the United States does not have a fixed shareholding threshold for shareholder proposals, allowing investors with even a small stake to put forth resolutions on key corporate issues. Shareholders in the US can also leverage proxy voting mechanisms more effectively, enabling broader participation in corporate decision-making. These frameworks promote transparency, encourage dialogue between shareholders and management, and ensure that corporate actions align with shareholder interests.

Another key feature of developed markets is the role of shareholder resolutions and proxy advisory firms. In the US, investors frequently use shareholder resolutions to influence corporate policies on executive compensation, environmental concerns, and governance structures. Proxy advisory firms play a crucial role in shaping voting decisions by institutional investors, ensuring that corporate actions align with shareholder interests. The UK's Stewardship Code mandates institutional investors to actively engage with investee companies, holding boards accountable for governance decisions. These mechanisms ensure that shareholders, regardless of their ownership stake, have a meaningful say in corporate governance.

India can learn from these global practices by lowering the threshold for shareholder activism, strengthening proxy advisory mechanisms, and encouraging institutional investor participation. Aligning Indian regulations with international standards would foster greater shareholder engagement, improve corporate governance, and enhance investor confidence in the market.

### ***The Need for Reform in India***

India's corporate governance framework has evolved significantly, but shareholder activism remains constrained by structural and regulatory barriers. The high 10% threshold for calling an Extraordinary General Meeting (EGM) is a key limitation that prevents minority shareholders and institutional investors from effectively influencing corporate decision-

making. To promote a more balanced corporate environment, it is essential to lower this threshold, strengthen the role of institutional investors, and enhance the influence of proxy advisory firms.

Lowering the 10% shareholding requirement to 5% or lower would align India with global best practices and make shareholder activism more effective. Countries such as the UK and Singapore have set the threshold at 5%, ensuring that even minority investors have a voice in corporate affairs. In the United States, there is no fixed shareholding requirement for proposing resolutions, allowing investors with even a small stake to push for governance reforms. Reducing the threshold in India would empower shareholders, improve board accountability, and promote better governance practices. Such a change would also encourage greater participation from a diverse range of investors, leading to a more transparent and dynamic corporate landscape.

The Securities and Exchange Board of India (SEBI) plays a crucial role in shaping shareholder engagement and corporate governance norms. While SEBI has introduced regulations such as the Stewardship Code to encourage institutional investor participation, more proactive measures are needed. SEBI could introduce reforms to lower the EGM threshold, mandate better disclosure of shareholder voting patterns, and enhance corporate governance reporting requirements. Additionally, strengthening enforcement mechanisms against non-compliant companies would ensure that shareholder rights are not merely theoretical but effectively enforced. By adopting global best practices, SEBI can foster a more shareholder-friendly regulatory environment.

Institutional investors, including mutual funds, insurance companies, and pension funds, hold substantial stakes in Indian companies but have traditionally remained passive. Encouraging institutional investors to actively engage in governance matters can significantly enhance shareholder activism. Regulatory incentives, such as tax benefits or compliance credits for active shareholder engagement, could motivate institutional investors to participate more actively. Furthermore, making voting disclosures more transparent and holding institutional investors accountable for their governance decisions would ensure they act in the best interests of their stakeholders rather than aligning with management.

Proxy advisory firms play an increasingly important role in shaping shareholder activism by providing independent governance analysis and voting recommendations. However, their influence remains limited due to resistance from corporate management and inconsistent regulatory oversight. Strengthening the role of proxy advisory firms by granting them greater regulatory backing, ensuring their independence, and promoting transparency in their recommendations could significantly enhance shareholder engagement. SEBI could introduce mandatory compliance measures requiring companies to disclose how they respond to proxy advisory firm recommendations, thereby ensuring that their insights are taken seriously.

Reforming India's shareholder activism framework is essential for fostering a more equitable and transparent corporate governance system. Lowering the 10% threshold, enhancing SEBI's regulatory role, strengthening institutional investor participation, and empowering proxy advisory firms would create a more balanced corporate ecosystem where shareholders can effectively hold companies accountable. Implementing these changes would not only bring India in line with international standards but also enhance investor confidence and improve overall corporate governance in the country.

### ***Recommendations and Policy Proposals***

To strengthen shareholder activism in India, a multi-faceted approach is needed, involving legislative amendments, regulatory reforms, institutional engagement, and technological advancements. These measures would empower shareholders, enhance corporate transparency, and align India's corporate governance framework with global best practices.

One of the most critical reforms is amending Section 100 of the Companies Act, 2013, to lower the shareholding threshold required to call an Extraordinary General Meeting (EGM). Reducing this threshold from 10% to 5% would enable minority shareholders to voice their concerns and influence corporate decisions more effectively. This change would bring India in line with the UK and Singapore, where a 5% threshold has successfully facilitated shareholder engagement. Additionally, amending the law to allow for collective shareholder petitions—where multiple small investors can pool their holdings to meet the threshold—would further strengthen shareholder rights.

Regulatory reforms by the Securities and Exchange Board of India (SEBI) are equally important in promoting shareholder activism. SEBI should introduce revised norms that

mandate greater transparency in shareholder voting and encourage corporate boards to respond to shareholder concerns more effectively. Enhancing disclosure requirements related to institutional investor voting patterns and strengthening enforcement against companies that disregard shareholder resolutions would create a more robust governance framework. SEBI can also introduce guidelines that incentivize companies to engage constructively with activist shareholders rather than resisting their demands outright.

Institutional investors, such as mutual funds, pension funds, and insurance companies, have a crucial role in shareholder activism. However, their engagement in governance matters remains limited. Encouraging institutional investors to take a more proactive stance through regulatory incentives and mandatory stewardship codes would enhance shareholder activism. SEBI could require institutional investors to disclose their voting rationales and actively participate in governance matters rather than passively aligning with management decisions.

Technological advancements can further improve shareholder engagement. Digital voting platforms and electronic proxy systems should be enhanced to facilitate broader participation, allowing shareholders—especially retail investors—to vote on key corporate matters more conveniently. Blockchain-based voting mechanisms could also be explored to ensure security, transparency, and efficiency in the shareholder decision-making process. Leveraging these technologies would eliminate logistical barriers and make shareholder activism more accessible to a wider range of investors.

## ***CONCLUSION***

Shareholder activism is a crucial element of corporate governance, ensuring that companies remain accountable to their investors. However, the high 10% threshold for calling an EGM, limited institutional investor participation, and regulatory constraints have hindered effective shareholder engagement in India. A comparative analysis with other jurisdictions highlights the need for reforms that empower minority shareholders and institutional investors.

Lowering the 10% threshold, strengthening SEBI's regulatory role, increasing institutional investor participation, and leveraging technological solutions would collectively create a more dynamic and transparent corporate governance ecosystem. These reforms would not only align India with global best practices but also enhance investor confidence in the corporate sector.

A balanced approach is necessary to ensure that shareholder activism strengthens corporate governance without leading to unnecessary disruptions. While reducing barriers to activism is essential, safeguards should also be in place to prevent frivolous or malicious shareholder interventions. By implementing well-structured reforms, India can create a corporate governance environment that balances corporate control with minority shareholder rights, ultimately fostering a more accountable and investor-friendly business landscape.

