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**TRACING THE GROWTH OF SHAREHOLDERS' ACTIVISM IN
USA AND INDIA IN LIGHT OF JUDICIAL PRONOUNCEMENTS
AND EVENTS**- Abhigyan Srivastava¹**ABSTRACT**

Shareholder activism has emerged as a crucial mechanism for corporate governance, influencing board decisions and enhancing accountability in the USA and India. In the United States, shareholder activism gained momentum in the late 20th century, with hedge funds and institutional investors playing a significant role in shaping corporate policies. Judicial pronouncements, such as *Business Roundtable v. SEC* and *AFSCME v. AIG*, have clarified shareholder rights, reinforcing their influence on corporate decision-making. Events like the shareholder revolts at Apple and ExxonMobil further highlight the growing assertiveness of investors in corporate affairs. In India, shareholder activism has evolved gradually, driven by regulatory reforms and judicial interpretations under the Companies Act, 2013, and the Securities and Exchange Board of India (SEBI). Cases like *Tata Sons v. Cyrus Mistry* underscore the increasing role of minority shareholders in challenging corporate misconduct. Indian courts and regulatory bodies have upheld shareholder rights, fostering transparency and accountability. While the USA has a long history of shareholder activism backed by legal precedents, India is witnessing a rising trend, with courts playing a pivotal role in balancing corporate interests and shareholder rights. The comparative analysis of both jurisdictions highlights the growing legal recognition of shareholder activism as a cornerstone of corporate governance.

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I. STATE LAW

Each company gets its incorporation in the state of its choice. In the U.S. the law within the realms of states established the fiduciaries duties of Directors. Also the powers and authority of the same is also governed by the states laws. This duty, power and authority of the before said at the instance of the state legislature holds good not only to privately held companies but also to publicly traded companies. As already discussed more than half of the Public Companies in the United States of America are formed in a single state by the name Delaware. Delaware is a small state but since it has got specialized in the field of business law and also together developed a sophisticate judiciary, as a result it has given a body of good number of case laws.

II. FEDERAL LAW

For the purpose our research, the federal laws are to be more focused on because the same are related to shareholders' activism and engagements. The one governing securities trading like the Securities Act of 1933, the Security Exchange Act of 1934, the Sarbanes Oxley Act 2002, and the Dodd Frank Act of 2010 are the example of federal laws which have given rise to shareholders' activism. The federal laws particularly the one relating to the protection of competition also has a significant impact on activism.

III. CASES OF SHAREHOLDERS' ACTIVISM IN UNITED STATES

The present wave of shareholders' activism which is seen now a days, has not been constituted in a day. It's a common saying that "Rome was not built in a day", it took not only years but decades to reach this level of shareholders' activism of the date. The foundation of the same dated back to the year 1942 with the introduction of SEC. Later on the events were followed by an appreciable number of land mark cases which paved the way for shareholders' activism and consequent corporate governance in U.S. These cases have been dealt with hereinafter.

IV. BEN GRAHAM VERSUS NORTHERN PIPELINE (1928)

This case marked as a pioneer in modern shareholders' activism², as it introduced a very novel concept of new era shareholders' activism. At the first time when Benjamin Graham came face to face with the management of Northern Pipelines in the year 1926, it was a path which was till date very much less headed to, because at that time³ the intervention of shareholders in normal course involved the disputes between minority owners or at most it could be the case of a strategic buyers who desired of taking control. Now the question may arise as to why shareholders' activism was so rare in the early period of twentieth century. So the answer is obvious that the ownership at Public Companies was mainly centered into a few hands, be it the ones who founded the company, their family members or at the most the entrepreneurial financiers. As a result it was tough for any outside shareholders to exert any sort of influence. It was Graham who at the first time noticed both of these forces in action at Northern Pipeline. It was also not surprising that none of the others shareholders were aware about the fact that the company was hoarding a large amount of capital and at the same time the Rockefeller Foundation was in effective control of the management of Northern Pipeline and the same was through a 23% equity stake.

Now coming to the other part of the story which concerns Standard Oil which was an American oil producing Company and its business was not limited to oil production rather it also extended to the transportation, refining and even the marketing of oil. Here also John Rockefeller was the Founder, Chairman and majority shareholder, as a result Rockefeller Foundation here also was in effective control. Viewing the same ,i.e., the standard oil as a monopoly, the U.S. Government under the provisions of Shaerman Anty Trust Act, split standard oil into smaller functioning parts. The same was not paid that much heeds to buy the Wall Street. The thing which needed to be paid attention to was that a very little was within the cognizance about the finances of the Company in the public domain, reason being the fact that they did not provide the balance sheets in detailed form. Frankly, it could be said that no one in reality cared to give a damn to this fact. But there was an exception also and this exception was Benjamin Graham. Time and

⁶ ²Shareholders' activism & Engagement available on <https://gettingthedealthrough.com/area/84/jurisdiction/23/shareholder-activism-engagement-2019-united-states/> visited on 26 april2024.

³Dear Chairman, Board room battles and the rise of Shareholders' activism, JEFF GRAMM

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again he used to look through the data provided by the commission for inter states commerce. Interstates Commerce Commission was a regulatory body that used to over sea the rail roads. Benjamin Graham came across some data which was made available by the pipeline companies. The same was accompanied by a note which read “taken from their annual report to the commission”. Mr Graham wanted to know more about the same so he left for Washington with the sole aim of examining the filings of the company in full length at the record room of the commission. He came across the fact that most of the pipeline companies owned a large amount of money in the form of finest rail road bounds. He also noted that these companies in comparison were doing small gross business but the same was coupled with a large profit margin. But even then also they did not carry any inventory. As a result they had no need for these investments in bonds. Benjamin Graham focused more on northern pipeline because it has huge amount of securities in ratio to the share to its market price.

V. ROBERT YOUNG VERSUS NEW YORK CENTRAL (1954)

The story of the case dates back to the year 1938 when Robert R. Young, an inhabitant of Texas who was always of the conscious effort to rail against the bankers of the Wall Street. The bankers have been referred in the case with a specific term “God Damn Bankers”. The use of the specific term “God Damn Bankers” is obvious of the fact that the bankers were worthy to be damned by the God. Mr. Young found himself in a bitter feud for the control over the Chesapeake and Ohio Railways. His opponent on the other side was guarantee trust. It was a “God Damn Bankers” acting in trust of \$80 million of debt which was secured by Young’s stock. As a result of the declaration by the Guaranty about the value of Young’s collateral having been fallen below desired level, the bank started action to impound the stock and at the same time by the use of its voting power it initiated the removal of Young from the C&O Board. Though Young had been in active control of the C&O only for a brief period of 1 year but during that short span he was able to alienate both rail-road community as well as primary lenders thereof. He was convinced with the fact that GuarantyTrust was in a conspiracy with some “God Damn Banker” like J.P. Morgan⁴, so that he could be pushed out of the industry.

⁴Young v. New York City Transit Authority, 903 F.2d 146 (2d Cir. 1990)

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It is also worthy to be mentioned here that a few weeks before the C&O meeting of the shareholders, an order by the Federal Court had been issued which temporarily restrained both the GuarantyTrust and also Young from casting vote for the contested share. When the fact became clear that the issued order is going to remain in effect for long, both the sides, i.e., GuarantyTrust and Young were forced to initiate the campaign so as to secure their side through proxies of the C&O's shareholders. Initially it was within the expectation of both Guaranty and Young that a legal battle will ensue over securing voting control of a block of shares. But as the time would have it they had to compete but for the exercise of loyalty of 60,000 shareholders of C&O over a smaller shareholdings. In the beginning Young fought his bankers adroitly and the same was his first ever proxy fight. Due to his sheer populist charm, he won over the news media due to the fact that he appealed to the public's prevailing resentment of the Bank of Wall Street. In the line of his strategy, Young released a series of letters which were vicious, to the Guaranty Trust and this all had been done publically. It was also the part of the strategy to address these open letters to the opponents of Young but it was written more for the purpose of influencing the smaller shareholders of C&O and as it was anticipated, in reality also it proved to be a powerful weapon in the course of the campaign. Young won for a land sliding percentage of 41 of common stock C&O. This in effect was representing far more than 70% of the constituent share which had not been restrained by the injunctive order of the court.

This fight for the proxy in C&O railway was successful in sending a clear warning and that too through the board rooms of the Public Company. Not only this the daring gesture of young man by the name Young had also been recognized by the Saturday Evening Post. In its words the man had bested both Guaranty Trust⁵ and also allegedly J.P. Morgan. And this feat was not achieved with the mere supplies of capital but by merely lobbying the ultimate beneficiaries i.e. the public shareholders.

This mark of events was also not far from catching the attention of an appreciable no. of young men who were desirous of beginning to establish their own empires of business and that too during the great depression. The campaigns of Young for the C&O were

⁵ibid

successful in teaching them a strategy to win in the war of seeking control of the corporations, i.e., Public Companies with the help of proxy votes.

VI. WILLIAMSHLENSKY, ON BEHALF OF AND AS A REPRESENTATIVE OF CHICAGO NATIONAL LEAGUEBALL CLUB (INC.), PLAINTIFF-APPELLANT V. PHILIP K. WRIGLEY, ET AL.,AND CHICAGO NATIONAL LEAGUE BALL CLUB (INC.), DEFENDANTS-APPELLEES. (1966)

The case in this court was preferred by way of an appeal. The appeal was from the dismissal of plaintiff's complaint (which was amended) at the behest of the defendants. The case was concerned with the negligence and mismanagement by the directors of the company⁶ as a result the corporation was also made the defendant in the case. The plaintiff prayed for damages and also sought an order for causing the installation of lights as well as for the purpose of organizing baseball games in Wrigley Field.

Plaintiff in the case was a minority shareholder in the corporation (defendant in the case) by the name Chicago National League Ball Club the same was a corporation registered in Delaware but its principal place of business was in Chicago Illinois. The story of the defendant corporation was that it owned and operated the major part of the professional baseball team playing leagues with the name of Chicago Cubs. Along with the same the corporation was also engaged in the operational works of the Wrigley Field which was also the Cubs; Home Park, the sales which used to happen during the cubs home games as well as the television and radio etc. broad cast of the home games. The corporation also used to deal in the business of giving the field on lease for the organising football games and in return it received its share.

The individual defendants in the case were the Directors of the Cubs who had served for varying period's years. One of the individual defendants Philip K.Wrigley was also the President of the Corporation as well as the owner of shares extending to 80% of the shareholdings. It was the allegation of the plaintiff that right from the inception of the

⁶237 N.E.2d 776, 95 Ill. App. 2d 173

night baseball in 1935 nineteen of the total twenty major league teams have time and again scheduled night games. For example in the year 1966 out of a total no. of 1620 games in the major leagues, 932 were played at night time. It was the allegation of the plaintiff that every member of the league except the Cubs used to schedule substantially most of its home games in the same year at night. Though the exclusion was provided for the opening days, Saturdays, Sundays, holidays etc., and all this had been done only for the specific purpose of more and more maximizing attendance and thereby increasing revenue and income many a folds. It was also unknown fact that the Cubs in the years ranging from 1961 to 1965 have to face operating losses from its operations⁷ of direct Baseballs. The plaintiff related those losses as a direct consequence of the inadequate attendance of the game lovers. He directly connected this non-attendance with the non-installation of lights at Wrigley Field due to the continued refusal of the Directors. The plaintiff also contended that if the situation is allowed to continue as it is then it is not far fact that it would sustain comparable losses, thereby deteriorating the financial condition of the company.

The plaintiff also alleged that except for the financial year of 1963, attendance far or less at Cub's home games had been substantially far below that as had been at their road games and many out of which were played at night time. It was the allegation of the plaintiff that the defendant in the case, i.e., Wrigley had refused to install lights. The refusal was not because of the fact that Wrigley was concerned about the interest in the welfare of the Corporation rather he was more concerned about his personal opinions like baseball is a day time sport and if lights are installed, then in that case the night baseball games will have a negative effect ,i.e., a deteriorating effect upon the surroundings.

It was also an allegation that the defendant had admittedly showed his disinterest in financial benefits which Cubs will get from such action due to his personal concern for the neighborhood and if at all he agrees or the night games then it should have been played at the new stadium to be built somewhere in Chicago along with the president of the corporation as alleged by the plaintiff, other defendant Directors had acquiesced in the policy framework which were laid down by the President of the Corporation himself.

⁷ibid

It was them who had permitted him to rein the Board of Directors particularly in the matters of the installation of the lights as well as the scheduling of night games.

So finally the charge was made out that the directors were in action or inaction for reasons which were contrary as well as unrelated to the interest of the business of the Corporation and thus were arbitrary and capricious and hence constituting mismanagement and waste of the assets of the Corporation. Also the Directors are equally to be held liable for the negligence as they failed to exercise reasonable care and prudence, which are necessary in the management of the affairs of the Corporation. Now coming to the question in the appeal, which was as to whether plaintiff amended complaint stated a cause of action. On the contrary, the defendants in the case argued that the courts cannot step in and thus interfere with the business judgements, which were honest unless it could be shown that it was a result of fraud, illegality or the conflict of interest.

**VII. ROSS PEROT VERSUS GENERAL MOTORS (1985)
GROBOW V. PEROT, 539 A.2D 180 (DEL. 1988) HON'BLE
SUPREME COURT OF DELAWARE**

It is not unknown that General Motors exercise⁸ mastery in auto mobile making. General Motors were the largest car maker in the world, but it was losing the battle to its competitors like Toyota and Honda and thus losing the market share. It is also worthy to be discussed here that General Motors when was in the control of a consumer goods company later moved into the hands of financial managers, the decline was inevitable this was due to the fact that the accountants had started preferring short term profits over and above quality products.

In the year 1981 Roger Smith became Chairman and also the CEO of General Motors. For the purpose of modernizing operations he focused on massive acquisition. It was in the year 1984 that the deals were signed by setting the sites on EDS and as a result Rose Perot became the largest shareholders and thus made his way to the Board of Directors. The inclusion of Rose Perot into the Board had ignited a fresh flame of enthusiasm in the

⁸ibid

mind of the investors and accordingly Smith elaborated that the style of Mr. Perot rightly fitted with what the Board was busy in trying to achieve at the General Motors.

VIII. CARL ICAHN VERSUS PHILLIPS PETROLUIM (1985)

Carl Icahn famous for his corporate ⁹raiding work within a brief period of seven years had become a symbol of corporate raid. On February 4th 1985, he penned down and sends for a letter to the management of the Phillips Petroleum with the offer to buythe Company. In the same letter he had blown his first salvo in the form of a threatening that if the bid was not accepted he shall be compelled to initiate a round of hostile tender proposal for securing the control. This gesture of confidence shown by Icahn was not ill informed (as Icahn was not a novice in this field) rather Philipps was the fifteenth target as a raider. Now the question arose before the management of Philips as to whether the threats in case of non-acceptance of the bid, should be ignored or should it be seriously considered. The tender offer of Icahn was of a whopping some of 8.1 Billion dollars for the acquisition of Philips and at the same time this threat attracted the attention of a few people and that to seriously also. And the reason of such heed being paid to was not surprising too as CarlIcahn's career during the decade of 1980s had set an example and it was more than that of any of the other raiders.

The fight of control which was started Carl Icahn was not a consequence of any short of misinformation rather it was based on his firm belief that whenever a fight for control is initiated, it generally leads to wind fall profits for the shareholders. ,i.e., why in the year 1980, wherein he wrote a memo for the purpose of making the prospective investors who were outlining the opportunity, he said “it is our contention that sizable profits can be earned by taking large positions in undervalued stocks and then attempting to control the destinies of the companies in question by :(a) trying to convince management to liquidate or sale the company to a white knight, (b) waging a proxy contest, (c) making a tender offer and/or,(d) selling backour position to the company.”

⁹ibid

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With the growth of his fortune day¹⁰ by day Icahn had himself developed a philosophy about corporate governance. At public spaces time and again he used to talk about the situation of the lack of accountability which was prevalent in the Public Companies and the same was ultimately growing as a threat to the prosperity of the American economy.

The turning of events for controlling the Phillip Petroleum by Icahn started stemming in the late 1984. It was ripe time for doing so as the management was not at all concerned about as to what was happening at its back and thus it appeared as if it had back against the wall i.e., why Icahn was certain about the fact that Phillips if pressured would sweeten the recapitalization in favor of the shareholders. ,i.e., why it was the need of the hour to start a hostile raid. Though Icahn had already threatened the management of the Phillips with the threat to take action to start a proxy fight but before making the offer he had perhaps not enough of money to buy the entire Company. In order to remain prepared with the funds in case of acceptance of proposal to buy the Phillips petroleum, Icahn met with a number of people be it Michael Milken, Drecsell etc. before the Phillips episode, drecsell had been handy in lining of capital for two earlier hostile raids the first being Pickens versus Gulf and the second being Steinberg versus Disney.

IX. KARLA SCHERER VERSUS R.P.SCHERER (1988)

The beginning of the case hovers around the invention of a machine capable of producing in mass number the soft gelatin capsules. It was invented by Robert Pauli Scherer in the year 1933. This invention further led to the establishment of R.P.Scherer Corporation which around fifty years after the invention, had become the world's largest manufacturer dealing in soft gels. Other remarkable incident happened in the year 1984 when Robert Scherer's daughter, Karla joined as a Director in the Board of Directors in the Corporation. After joining the same she was disillusioned after coming across the fact as to how such a cash generating business was being run for the past two decades. For the last few years the Corporation was managed by none other than Karla's husband, Mr. Peter Finkas the CEO. It was the belief of Karla after assessing most of the facts that her husband was busy in perusing and continuing with an aggressive strategy for growth but

¹⁰Lessons from a famous shareholder activist battle available on <https://www.firstlinks.com.au/lessons-shareholder-activism-battles> last updated on 27 august 1917.

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the said anger of this fact was that the said strategy was not adopted keeping in mind the interest of the shareholders.

Karla Scherer was not far from realizing the fact that the venture which was pioneered by her father could have been more valuable, had it been separated from respective management team which was under peril. Even she was well aware of the fact as to what happened in the Northern Pipeline case. The same also had the lacking of the accountability to the ultimate beneficiaries ,i.e., shareholders. Even in the Scherer Corporation Boards were not in a direct way controlled by management, rather Directors were handpicked by her husband, the CEO. And whole case in question is the story of a proxy fight fought by Karla against her husband and the same is a lesion in such cases of entrenchment.

x. CONCLUSION

The concept of shareholders' activism in USA has been well established and now in maximum cases in which a problem occurs between the shareholders and management be sort out through proper dialog. The numbers of cases are very few in which they need to go to the court for the relief because the Board and management are ready to indulge in dialog. The question arise here how it is possible? the answer is the struggle done by the activist shareholders in past realized the board that they have to be more cautious for the overall functioning of the company because the shareholders are keeping eye on your activities and in case of any wrong move will take place they will react proactively. It was the Benjamin Graham who had shown the power of shareholders that how a single person without the much protection and right of statute can makes the difference. He was the person who is considered that as a trend setter in making use of the proxy voting so as to finally secure the rights of the shareholders. He just shown in his activism to the all shareholders community that if you are active enough no one can cheat you in the company and your money will be secured. The case of Robert Young versus New York Central is a fine example of securing the famous New York Central with a flair for the dramatic, turning shareholder communiques from formal legal documents into entertaining and irreverent missives. The case of Carl Icahn versus Philipps Petroleum is an appreciable example of corporate raid.

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