

DOI(Journal): 10.31703/gssr
DOI(Volume): 10.31703/gssr.2025(X)
DOI(Issue): 10.31703/gssr.2025(X.I)

p-ISSN: 2520-0348

e-ISSN: 2616-793X



GSSR

GLOBAL SOCIAL SCIENCES REVIEW

HEC-RECOGNIZED CATEGORY-Y

www.gssrjournal.com

Global
Social Sciences Review
exploring humanity

Volum X, ISSUE I WINTER (MARCH-2025)

Article Title

Enforcement of Shareholders' rights: Assessing the Efficacy of Two-Tier Board Structure for Pakistan

Abstract

This article challenges those arguments that suggest a two-tier board structure for improving the enforcement mechanism as an alternative to the private enforcement mechanism for the protection of the rights of shareholders in Pakistan. The corporate ownership structure in Pakistan is controlled by majority shareholders who, by their majority shareholdings in corporations, control Executive boards by appointing their friends and family members as board members. A two-tier board structure, which is supposed to monitor Executive boards, is composed of the representatives of shareholders, employees, and independent directors. Also, the representatives of employees, being trade union leaders and under the threat of being replaced, would serve the interests of the majority shareholders. Independent directors are supposed to monitor the Executive boards, but their independence is questioned when controlling shareholders appoint their friends and family members as independent directors. This article emphasises the need for an effective statutory remedy for shareholders' protection.

Global Social Sciences Review

p-ISSN: [2520-0348](#) e-ISSN: [2616-793X](#)

DOI(journal): [10.31703/gssr](#)

Volume: X (2025)

DOI (volume): [10.31703/gssr.2025\(X\)](#)

Issue: I Winter (March 2025)

DOI(Issue): [10.31703/gssr.2025\(X-I\)](#)

Home Page

www.gssrjournal.com

Volume: IX (2025)

<https://www.gssrjournal.com/Current-issue>

Issue: I-Winter (March-2025)

<https://www.gssrjournal.com/issue/10/1/2025>

Scope

<https://www.gssrjournal.com/about-us/scope>

Submission

<https://humaglobe.com/index.php/gssr/submissions>

Keywords: Corporate Governance, Private Enforcement, Two Tier Board Structure, Challenges to the Supervisory Board.

Authors:

Aamir Abbas: Assistant Professor, College of Law, Government College University Faisalabad, Punjab, Pakistan.

Muhammad Waqas Sarwar: (Corresponding Author)
Lecturer, College of Law, Government College University, Faisalabad, Punjab, Pakistan.
(Email: mwaqassarwar@gcuf.edu.pk)

Muhammad Babar Shaheen: Lecturer College of Law, Government College University, Faisalabad, Punjab, Pakistan.

Pages: 343-348

DOI: [10.31703/gssr.2025\(X-I\).29](#)

DOI link: [https://dx.doi.org/10.31703/gssr.2025\(X-I\).29](https://dx.doi.org/10.31703/gssr.2025(X-I).29)

Article link: <http://www.gssrjournal.com/article/enforcement-of-shareholders-rights-assessing-the-efficacy-of-twotier-board-structure-for-pakistan>

Full-text Link: <https://gssrjournal.com/article/enforcement-of-shareholders-rights-assessing-the-efficacy-of-twotier-board-structure-for-pakistan>

Pdf link: <https://www.gssrjournal.com/jadmin/Author/31rvl0lA2.pdf>



Visit Us



Citing this Article

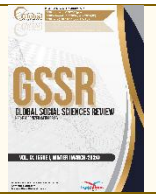
23	Enforcement of Shareholders’ rights: Assessing the Efficacy of Two-Tier Board Structure for Pakistan		
Authors	Aamir Abbas Muhammad Waqas Sarwar Muhammad Babar Shaheen	DOI	10.31703/gssr.2025(X-I).29
		Pages	343-348
		Year	2025
		Volume	X
		Issue	I
Referencing & Citing Styles			
APA	Abbas, A., Sarwar, M. W., & Shaheen, M. B. (2025). Enforcement of Shareholders’ rights: Assessing the Efficacy of Two-Tier Board Structure for Pakistan. <i>Global Social Sciences Review</i> , X(I), 343-348. https://doi.org/10.31703/gssr.2025(X-I).29		
CHICAGO	Abbas, Aamir, Muhammad Waqas Sarwar, and Muhammad Babar Shaheen. 2025. "Enforcement of Shareholders’ rights: Assessing the Efficacy of Two-Tier Board Structure for Pakistan." <i>Global Social Sciences Review</i> X (I):343-348. doi: 10.31703/gssr.2025(X-I).29.		
HARVARD	ABBAS, A., SARWAR, M. W. & SHAHEEN, M. B. 2025. Enforcement of Shareholders’ rights: Assessing the Efficacy of Two-Tier Board Structure for Pakistan. <i>Global Social Sciences Review</i> , X, 343-348.		
MHRA	Abbas, Aamir, Muhammad Waqas Sarwar, and Muhammad Babar Shaheen. 2025. 'Enforcement of Shareholders’ rights: Assessing the Efficacy of Two-Tier Board Structure for Pakistan', <i>Global Social Sciences Review</i> , X: 343-48.		
MLA	Abbas, Aamir, Muhammad Waqas Sarwar, and Muhammad Babar Shaheen. "Enforcement of Shareholders’ Rights: Assessing the Efficacy of Two-Tier Board Structure for Pakistan." <i>Global Social Sciences Review</i> X.I (2025): 343-48. Print.		
OXFORD	Abbas, Aamir, Sarwar, Muhammad Waqas, and Shaheen, Muhammad Babar (2025), 'Enforcement of Shareholders’ rights: Assessing the Efficacy of Two-Tier Board Structure for Pakistan', <i>Global Social Sciences Review</i> , X (I), 343-48.		
TURABIAN	Abbas, Aamir, Muhammad Waqas Sarwar, and Muhammad Babar Shaheen. "Enforcement of Shareholders’ Rights: Assessing the Efficacy of Two-Tier Board Structure for Pakistan." <i>Global Social Sciences Review</i> X, no. I (2025): 343-48. https://dx.doi.org/10.31703/gssr.2025(X-I).29 .		



Global Social Sciences Review

www.gssrjournal.com

DOI:<http://dx.doi.org/10.31703/gssr>



Pages: 343-348

URL: [https://doi.org/10.31703/gssr.2025\(X-I\).29](https://doi.org/10.31703/gssr.2025(X-I).29)

Doi: 10.31703/gssr.. 2025(X-I).29



Cite Us



Title

Enforcement of Shareholders' Rights: Assessing the Efficacy of Two-Tier Board Structure for Pakistan

Authors:

Aamir Abbas: Assistant Professor, College of Law, Government College University, Faisalabad, Punjab, Pakistan.

Muhammad Waqas Sarwar: (Corresponding Author)

Lecturer, College of Law, Government College University, Faisalabad, Punjab, Pakistan.

(Email: mwaqassarwar@gcuf.edu.pk)

Muhammad Babar Shaheen: Lecturer, College of Law, Government College University, Faisalabad, Punjab, Pakistan.

Abstract

This article challenges those arguments that suggest a two-tier board structure for improving the enforcement mechanism as an alternative to the private enforcement mechanism for the protection of the rights of shareholders in Pakistan. The corporate ownership structure in Pakistan is controlled by majority shareholders who, by their majority shareholdings in corporations, control Executive boards by appointing their friends and family members as board members. A two-tier board structure, which is supposed to monitor Executive boards, is composed of the representatives of shareholders, employees, and independent directors. Also, the representatives of employees, being trade union leaders and under the threat of being replaced, would serve the interests of the majority shareholders. Independent directors are supposed to monitor the Executive boards, but their independence is questioned when controlling shareholders appoint their friends and family members as independent directors. This article emphasises the need for an effective statutory remedy for shareholders' protection.

Contents

- [Introduction](#)
- [Corporate Governance and Two-Tier Board structure](#)
- [Cultural Concerns in the Corporate Sector of Pakistan](#)
- [Problems and Challenges to the Supervisory Board Structure in Pakistan](#)
- [Private Enforcement Mechanism and Corporate Governance](#)
- [Conclusion](#)
- [References](#)

Keywords:

Corporate Governance, Private Enforcement, Two-Tier Board Structure, Challenges to the Supervisory Board

Introduction

Corporate Governance and Two-Tier Board Structure

In a tier board framework of corporate governance, two separate boards, namely the executive board and a supervisory board, i.e, a two-tier board structure, function at the strength of a corporation.

This extra board structure is purposed at monitoring managerial decisions of the Executive board to act in line with the interests of the companies. Some researchers believe that the German two-tier board structure can be a solution to the enforcement problems in the corporate governance of Pakistan. The supervisory board



comprises the representatives of employees, shareholders, and independent directors, which is supposed to protect shareholders and ensure managerial decisions are made in line with the interests of the corporation and shareholders (Dam, [2006](#)).

Dispersed corporate ownership jurisdictions have grown faster than jurisdictions where there are blocks of shares. In fact, this happens where investors, due to fear of being subjected to managerial abuses, invest in companies in the form of blocks, which, in return, promotes block-holding corporate ownership. This ownership phenomenon cannot be termed as an ineffective monitor of managerial decisions. However, a problem arises when these block-holdings start expropriating corporate assets and exploiting related party transactions, ignoring the interests of minority shareholders in the corporations (Tricker, [2012](#)).

Cultural Concerns in the Corporate Sector of Pakistan

Cultural concerns, such as the dominance of business groups and the state companies, further put impediments to minor communities in corporations to take action against dishonest managers. In family-owned businesses, family heads take control of businesses and hold significant power. This patriarchal hegemony is rarely questioned, and this mode of functioning is maintained by the heads of families. In state-owned companies, bureaucratic control over the dominant shareholdings tends to be more politically connected. For these reasons, although Pakistan is a relatively litigious society, there are few cases in courts against corporate managers. This is because the law does not provide adequate protection to shareholders in Pakistan. Unfair prejudice Remedy is available to shareholders to initiate proceedings when they are wronged by the managers, but the requirement for commencement of legal proceedings is to hold at least 10 percent shareholding of the company law of Pakistan (Hannigan, [2009](#); Allen, Kraakman & Subramaniam, [2009](#)) This threshold is too high for minority shareholders who normally possess shareholdings of less than ten percent to take actions against the oppressors in corporations. This means they would be left with no other option but to stay in corporations and be oppressed by the

managers. The common law remedy in the form of derivative action is also not free from problems and ambiguities, and it does not settle problems with the Foss v Harbottle Rule. Moreover, the cost of proceedings in common law derivative litigation is another impediment that disincentivizes shareholders in Pakistan to take actions against wrongdoing managers (Davies et al., [2003](#)).

Problems and Challenges to the Supervisory Board Structure in Pakistan

The two-tier board Model has been recommended by some researchers as a solution to the enforcement problems in Pakistan. However, there are multiple challenges and problems with the supervisory board structure that may be faced in running corporations in Pakistan. For example, the composition of the supervisory board structure is that of a structure that otherwise requires further caution to be made before adopting a two-tier board structure in block-holding corporate ownership. The representatives of the shareholders would definitely serve the interests of the majority shareholders in the corporate sector of Pakistan, as the representatives of shareholders on the supervisory board would be elected on a majority rule basis (Adnan et al, [2006](#), 2012; Linda, [2014](#))

In fact, agency problems in Pakistan's corporate sector do not exist between managers and the shareholders, but rather lie between majority and minority shareholders, and the control of management in corporations lies in the hands of majority shareholders due to their voting power. This means the minor communities in corporations would continue to be underprivileged and unrepresented on the supervisory board to protect them against majority abuses (Saima, [2012](#)).

Secondly, the representatives of the employees would act the same as they, under the political influences and being under the fear of being replaced by the directors, would follow the commands of the directors in corporations in Pakistan. Trade union leaders in corporations have political affiliations and connections, which leads to their being under the influence of management. In all three components of the supervisory board, independent directors being on the strength of the supervisory board can play a significant role for the enforcement of shareholders' rights, if appointed without bad motives and independently but their

efficacy to monitor Executive board may be compromised due to their status of being friends and family members of the majority shareholders in the corporate sector of Pakistan.

Moreover, the lack of relevant knowledge and expertise of shareholders and the corporate sector understanding of employees on the supervisory board would render it ineffective (Larcker & Tayan, [2020](#)). Cost overruns would be an issue to face, with a dual board structure in Pakistan. In the presence of Non-Executive Directors, another supervisory board structure would lead to an overlap of powers and functions of both boards in Pakistan. This can be evident from the experience of China, where this reform initiative failed to deliver as both board structures caused ambiguities and anomalies in their powers and functions. Therefore, it can safely be submitted that the two-tier board structure in Pakistan would not yield any positive results for the enforcement of shareholders' rights, which is a matter of concern, particularly the enforcement of minority shareholders' rights, in the corporate sector of Pakistan.

German researchers Lieser and Schoenbaum (Schoenbaum & Lieser, 1973) are of the view that a two-tier board structure may not be an effective enforcement mechanism for a corporate sector that is closely held. Since the corporate ownership structure in Pakistan is concentrated, therefore, the fate of the supervisory board structure would be as same as that of the executive directors to discipline directors in Pakistan, as both the Executive Directors and the Supervisory Board would be under the control of majority shareholders. Thus, it is submitted in this article that a private enforcement mechanism, if given place in the legal framework in the form of a statutory right of derivative suits to the shareholders, would address the enforcement problems of shareholders' rights in Pakistan. Many researchers have confirmed the utility of derivative litigation for enforcement purposes and for improving corporate governance. The supervisory board may be an extra board structure that would bring no fruitful results in disciplining wrongdoing executive directors and would lead to an extra cost overrun problem for corporations in Pakistan (Arad, 2007, Exception to the Foss v Harbottle, [1843](#) Rule, where a company is in the control of the wrongdoers).

Private Enforcement Mechanism and Corporate Governance

It is argued by some researchers that shareholders' power to elect and remove directors can be an accountability mechanism for the wrongdoers in corporations because they would be under pressure to be dislodged when found prioritising their interests over the interests of the company. The voting power of shareholders is a significant managerial disciplinary mechanism that can be a useful tool to address agency problems in corporate governance (Coffee, [1986](#)). However, in the context of corporate governance problem in Pakistan, the voting power mechanism is misconstrued as due to the collective action problem in largely held corporations, it does not effectively discipline managers to fulfil their fiduciary duties. Secondly, in closely held corporations, majority shareholders hold more voting power to prefer their interests over the interests of minority shareholders, and minority shareholders, due to their insignificant voting power, fail to protect themselves against majority abuses (Saunders, [2006](#)).

It is submitted in this regard that a private enforcement mechanism can be instrumental to improving corporate governance and reducing agency costs. Since directors are under a fiduciary duty to perform their duties in line with the interests of the corporations but where they are found ignoring or preferring their interests over the interests of the shareholders, these are the shareholders who are more concerned and ultimately the sufferers, to discipline the wrongdoers instead of relying on any other mechanism whether of the market forces or the public enforcement (Payne, [2002](#)).

Some researchers suggest a two-tier board structure as an enforcement mechanism for corporate governance problems in Pakistan (Adnan et al., 2012; Saima S, [2012](#)). They seek their inspiration and understanding from the reform initiatives of some civil law jurisdictions, which have in place two-tier board structures for enforcement purposes. The problem in Pakistan is not similar to that of Berle & Means' identification of the fundamental agency problems which inhibit governance problems, as the ownership and management are separated in this model, where it is quite probable that management may prioritise

their interests over the interests of the corporations (Porta et al., 1998)

The problem is the other way round in the corporate sector of Pakistan, as the problem between majority and minority shareholders is a matter of concern for the policy makers to address, instead of following solutions to the Berle and Means' agency costs issues, which are the challenges in the dispersed ownership structure. In fact, the majority shareholders in Pakistan place their friends and family members in managerial positions who, by getting control of the companies in this way, prioritise their interests over the interests of other minor communities in related party transactions and by exploiting corporate opportunities in corporations (Claessens, Djankov, & Lang, 2000).

It may be argued that Pakistan, being a common law jurisdiction, inherited its legal system from the United Kingdom and was also inspired by the UK corporate Governance model, devised its Code of Corporate Governance without taking into consideration the dissimilarities between the UK and Pakistan's corporate ownership structures. Both the ownership structures face different governance challenges and therefore, one-size solutions do not fit all. Moreover, the researcher opines that solutions to the governance problems in a dispersed ownership structure are not suitable in the context of Pakistan, where the ownership structure is concentrated. Therefore, he suggests looking at reform initiatives in civil law jurisdictions such as Japan and South Korea would be more useful to follow for future reforms and for addressing corporate governance problems in Pakistan.

It is submitted in this regard that Pakistan, being a former colony of the United Kingdom, inherited laws and a legal framework from the UK, while Japan and South Korea are civil law jurisdictions, so it would be more appropriate for Pakistan to follow the reforms initiatives carried out by the United Kingdom for the enforcement of shareholders' rights. This is evident from the study of Goulding and Miles (Miles & Goulding, 2010), which suggests that the Anglo-Saxon model addresses problems in the modern corporate world more effectively than that of civil law jurisdictions for the enforcement of shareholders' rights. Therefore, it is suggested that the Anglo-Saxon

model of corporate governance is a useful mechanism for improving corporate governance and protecting shareholders from the abuses of directors, as it not only addresses problems of dispersed ownership structures but also caters to individual corporate jurisdictions like Pakistan. Moreover, another study carried out by La Porta et al. established that the Anglo-Saxon model of enforcement of shareholders' rights offers more effective protection to shareholders against the tyrannical and unethical directorial abuses than that of the civil law jurisdictions' enforcement mechanism for shareholder protection (LLSV, 1998).

It may be argued that since Pakistan is a common law jurisdiction and inherited laws from the UK, then why was the corporate enforcement mechanism not adopted and updated in line with the enforcement model of the UK (CA, 2006)? It is submitted in this regard that one of the factors is that the government holds control over the powers of judges in matters of misappropriation of corporate assets by corporate managers in Pakistan. Thus, it is recommended in this article that the Anglo-Saxon model of private enforcement be introduced in Pakistan as long as it caters to the local needs. The common law private enforcement in the form of derivative actions needs to be incorporated in law as a statutory remedy in order to address anomalies in common law in the hands of shareholders to protect themselves against managerial abuses (CA, 2017 Pakistan). Moreover, the role of law to protect shareholders is also supported by the principles of equity and justice, which require a level playing field for the constituent communities of corporations to safeguard the larger interests of the companies. Although the argument in favour of legal intervention is against the principle of proper plaintiff rule and also against the business judgment rule, the case presented in this article is when a corporation is defrauded by someone who is in control of the company, then who will initiate litigation against the wrongdoers?

A distinct legal personality principle of a corporation gives rise to a problem when the same is wronged by someone who holds control of the company (*Salmon v A Salmon & Co Ltd*). This, in other words, would mean the wrong would go unredressed. Therefore, it's unjustified to deny

minority shareholders the right to commence litigation against wrongdoers merely because of their small shareholdings in corporations. Moreover, this is quite possible that so-called minority shareholders may be more in number than those of the majority shareholders, who are merely because of their majority holdings in corporations; thus, the constituent community of the corporations, which is more in number, deserves protection by any canon of justice and fairness (Wood, [2002](#); Duckett, [1995](#)).

Conclusion

In this article, the efficacy of a two-tier board structure has been analysed with a conclusion to reach a suggestion that the supervisory board structure is not suitable in the context of

concentrated corporate ownership in Pakistan. The current commercial environment of Pakistan calls for an effective legal framework that could strengthen the enforcement of shareholders to safeguard their interests and solve liquidity problems for the development of the capital market in Pakistan. This article presents an argument in favour of a robust legal framework to protect shareholders against majority abuses. The current legal framework does not appear to provide an adequate protection mechanism. It is not necessarily that the derivative proceedings alone can improve the enforcement of corporate laws in Pakistan; there may be other alternatives, such as different subsets of arbitration, which can be taken into consideration for the enforcement of corporate laws in Pakistan.

References

- Adnan, A., et al. (2006). Corporate governance in Pakistan: Analysis of current challenges and recommendations for future reforms. *Washington University Global Studies Law Review*, 5(2), 323–344.
[Google Scholar](#) [Worldcat](#) [Fulltext](#)
- Allen, W. T., Kraakman, R., & Subramanian, G. (2009). *Commentaries and cases on the law of business organizations* (2nd ed.). New York, NY: Aspen Publishers.
[Google Scholar](#) [Worldcat](#) [Fulltext](#)
- Barrett v. Duckett [1995] BCC 362 (CA).
[Google Scholar](#) [Worldcat](#) [Fulltext](#)
- Tricker, B. (2012). *Corporate governance: Principles, policies, and practices* (2nd ed.). Oxford: Oxford University Press.
[Google Scholar](#) [Worldcat](#) [Fulltext](#)
- Claessens, S., Djankov, S., & Lang, L. H. P. (2000). The separation of ownership and control in East Asian corporations. *Journal of Financial Economics*, 58(1–2), 81–112. [https://doi.org/10.1016/S0304-405X\(00\)00067-2](https://doi.org/10.1016/S0304-405X(00)00067-2)
[Google Scholar](#) [Worldcat](#) [Fulltext](#)
- Coffee, J. C. (1986). Understanding the plaintiff's attorney: The implications of economic theory for private enforcement of law through class and derivative actions. *Columbia Law Review*, 86(4), 669–727. <https://doi.org/10.2307/1122505>
[Google Scholar](#) [Worldcat](#) [Fulltext](#)
- Hannigan, B. (2009). *Company law* (3rd ed.). Oxford: Oxford University Press.
[Google Scholar](#) [Worldcat](#) [Fulltext](#)
- Dam, K. W. (2006). *China as a test case: Is the rule of law essential for economic growth?* (University of Chicago Law & Economics, Olin Working Paper No. 275). University of Chicago Law School. <https://doi.org/10.2139/ssrn.880125>
[Google Scholar](#) [Worldcat](#) [Fulltext](#)
- Davies, P. L., & Gower, L. C. B. (2003). *Principles of modern company law* (7th ed.). London: Sweet & Maxwell.
[Google Scholar](#) [Worldcat](#) [Fulltext](#)
- Foss v. Harbottle (1843) 2 Hare 461, 67 ER 189.
[Google Scholar](#) [Worldcat](#) [Fulltext](#)
- Hannigan, B. (2009). *Company law* (3rd ed.). Oxford: Oxford University Press.
[Google Scholar](#) [Worldcat](#) [Fulltext](#)
- Benjamin, I. R., & Saunders, B. (2006). *Litigation by shareholders and directors: An empirical study of the statutory derivative action* (Research Report). Centre for Corporate Law and Securities Regulation, The University of Melbourne.
[Google Scholar](#) [Worldcat](#) [Fulltext](#)
- Johnson v. Gore Wood & Co [2002] 2 AC 1 (HL).
[Google Scholar](#) [Worldcat](#) [Fulltext](#)
- La Porta, R., Lopez-de-Silanes, F., Shleifer, A., & Vishny, R. W. (1998). Law and finance. *Journal of Political Economy*, 106(6), 1113–1155. <https://doi.org/10.1086/250042>
[Google Scholar](#) [Worldcat](#) [Fulltext](#)
- Larcker, D. F., & Tayan, B. (2020). *Corporate governance matters* (3rd ed.). Pearson.
[Google Scholar](#) [Worldcat](#) [Fulltext](#)
- Muswaka, L. (2014). The two-tier board structure and co-determination: Should South Africa follow the German example? *Mediterranean Journal of Social Sciences*, 5(2), 63–69. <https://doi.org/10.5901/mjss.2014.v5n2p63>
[Google Scholar](#) [Worldcat](#) [Fulltext](#)
- UK Companies Act 2006, c. 46. <https://www.legislation.gov.uk/ukpga/2006/46/contents>
[Google Scholar](#) [Worldcat](#) [Fulltext](#)
- Miles, L., & Goulding, S. (2010). Corporate governance in Western (Anglo-American) and Islamic communities: Prospects for convergence? *Journal of Business Law*, 2010(2), 122–126.
[Google Scholar](#) [Worldcat](#) [Fulltext](#)
- Payne, J. (2002). Clean hands in derivative actions. *The Cambridge Law Journal*, 61(2), 293–314. <https://doi.org/10.1017/S0008197302001590>
[Google Scholar](#) [Worldcat](#) [Fulltext](#)
- Saima, S. (2012). The role of institutional shareholders' activism in the corporate governance of Pakistan. *IOSR Journal of Humanities and Social Science*, 20(1), 1–12. <https://doi.org/10.9790/0837-2010112>
[Google Scholar](#) [Worldcat](#) [Fulltext](#)