Share Buybacks and Shareholder Equality

Analysing the 2026 Proposal to Allow Two Buybacks a Year Under Indian Company Law

AI Disclosure Statement

"The authors used an AI-assisted writing tool solely for language editing, grammar refinement, and formatting assistance. All legal research, analysis, case law interpretation, arguments, and conclusions presented in this manuscript are the authors' own work."

Abstract

This article looks at the conflict between corporate share repurchases, or buybacks, and the fundamental corporate governance principle of shareholder equality. Buybacks have replaced cash dividends as the main way to return capital to investors. This shift has changed the balance of power in equity markets. This analysis examines open-market repurchases, fixed-price tender offers, and Dutch auction systems to show how buybacks create systemic informational and financial imbalances.

Focusing on the Indian legal framework under the Companies Act, 2013, the article examines the key rules regulating capital redemptions and critiques the 2026 policy proposal to allow two buybacks within one financial year. Looking at the differing motivations of exiting shareholders, long-term investors, and corporate insiders, and Using case studies from different jurisdictions—including Tata Consultancy Services (TCS), Apple, Boeing, and Bed Bath & Beyond—along with global rules like the SEC's Rule 10b-18, the EU's Market Abuse Regulation, and SEBI's tender regulations, this study explores the changing legal protections for small investors. In conclusion, the paper presents a governance framework to maintain market integrity and protect minority capital providers in a fast-changing regulatory environment.

Keywords: Share Buybacks, Shareholder Equality, Companies Act 2013, 2026 Buyback Proposal and SEBI.

I. Introduction

The modern public corporation rests on a basic legal and economic commitment: equity capital must be treated fairly. Across most major jurisdictions, corporate law requires that shares of the same class carry identical rights, privileges, and economic claims. This principle of shareholder equality is what allows corporate wealth to be distributed in proportion to the capital risk each investor has taken on. When a company accumulates cash it cannot productively deploy – whether in operational growth, research and development, or value-accretive acquisitions – its board faces a genuine allocation problem: what is the fairest and most efficient way to return that surplus to the people who supplied the capital in the first place?

For much of the twentieth century, the default answer was the cash dividend. When a board declares a dividend, every shareholder receives the same per-share payment; no one is excluded, no one is forced into a transaction they did not choose, and the payout leaves ownership percentages and voting power untouched. The firm's value falls by exactly the amount distributed, and that value lands, pro rata, in every shareholder's account.[1]

Over the past several decades, however, corporate capital-return strategy has moved decisively away from dividends and toward buybacks. A buyback works differently: the company purchases and cancels its own stock, shrinking its equity base. Where a dividend treats every unit of capital identically, a buyback necessarily splits the shareholder base into two groups with divergent financial outcomes – those who sell and those who remain.

These two groups end up holding fundamentally different assets: cash on one side, concentrated corporate equity on the other. Any mispricing, manipulation, or timing advantage in how the buyback is executed will tend to benefit one group at the other's expense. If a company overpays for its own stock, it is effectively transferring corporate resources to short-term sellers at a premium the remaining shareholders must absorb.

India has historically kept this dynamic in check through the strict provisions of the Companies Act, 2013, which limit how much capital a company can retire in any given period. That is now changing: the Corporate Laws (Amendment) Bill, 2026 was introduced in the Lok Sabha on 23 March 2026 and has been referred to a Joint Parliamentary Committee.

[1] Companies Act, 2013, No. 18 of 2013, §§ 43, 47, 123 (India).

The bill permits two buybacks in a financial year, that is, only for prescribed classes of companies and with the second opening no earlier than six months after the first closes. This shift makes it necessary to reconsider how increased speed, frequency, and regulatory flexibility around capital reduction affect the safety, information access, and equitable treatment of minority retail investors.

II. Legal and Financial Framework Under Indian Company Law

Understanding how buybacks might erode shareholder equality first requires appreciating how tightly Indian law constrains them. A company in India cannot alter its share capital base at will; every buyback or capital reduction must comply with statutory limits on funding sources, capitalisation ratios, and accounting treatment, designed to protect creditors and minority shareholders alike.

The core provision governing a company's power to repurchase its own shares is Section 68 of the Companies Act, 2013.[2] It sets out the permissible sources of funds, the volume limits, and the corporate approvals a buyback requires. Under Section 68(1), a company may fund a buyback only out of its free reserves, its securities premium account, or the proceeds of a fresh issue of shares or other specified securities.

Section 68(2) sets out the approval requirements. A buyback is unlawful unless it is authorised by the company's Articles of Association. Where the proposed buyback does not exceed 10% of total paid-up equity capital and free reserves, a simple Board Resolution passed at a directors' meeting suffices; anything larger requires a Special Resolution adopted by shareholders in a general meeting. Even with shareholder approval, two hard ceilings apply: the buyback cannot exceed 25% of the company's total paid-up capital and free reserves in any financial year, and the buyback of equity shares specifically cannot exceed 25% of total paid-up equity capital in that year.

Section 68(2)(d) adds a further creditor safeguard by capping the post-buyback debt-equity ratio: total secured and unsecured debt cannot exceed twice the company's paid-up capital and free reserves. This 2:1 ceiling stops a company from hollowing out its liquid equity to the detriment of bondholders, lenders, and trade creditors.

[2] Companies Act, 2013, No. 18 of 2013, § 68(1)–(2) (India).

Section 69 imposes a related discipline: when a company funds a buyback from free reserves or the securities premium account, it must transfer an amount equal to the nominal value of the shares purchased into a dedicated reserve, the Capital Redemption Reserve (CRR).

Section 68(6) then provides a further safeguard for creditors and investors: the mandatory Declaration of Solvency. Before any buyback, the board must file Form SH-9 with the Registrar and SEBI, supported by an affidavit confirming that the board has fully investigated the company's affairs and concluded that it can meet its liabilities and will remain solvent for at least a year from the date of the declaration.[3]

These provisions sit alongside outright prohibitions in Section 70 aimed at preventing systemic abuse. Section 70(1) bars a company from buying back its shares through any subsidiary or investment company. Section 70(1)(c) blocks a buyback outright where the company has defaulted on repaying deposits, interest, debentures, or preference shares, on paying dividends to any shareholder, or on repaying a term loan. Section 70(2) refers to sections 92, 123, 127 and 129, which have failed to comply with Sections 92 (Annual Return), 123 (Declaration of Dividend), 127 (Failure to Distribute Dividends) or 129 (Financial Statements).[4]

Accounting-wise, buybacks are usually analysed through their effect on Earnings Per Share (EPS), calculated as:

EPS = (Net Income - Preferred Dividends) ÷ Weighted Average Outstanding Shares

Because the denominator shrinks, EPS mechanically rises even where the underlying business – net profit, operating revenue, actual performance – has not improved at all. Return on Equity (ROE) rises for the same reason: cash leaves the balance sheet, and total equity falls. These shifts can make a company look more efficient or profitable to automated screening tools, even when nothing about the business has actually changed.

How a buyback affects everyday investors depends heavily on which method a company chooses. Three broad approaches dominate in practice:

• Open Market Repurchases: The company engages a broker-dealer to buy its own shares on the exchange over an extended period, blending the purchases into ordinary trading activity. Retail sellers typically have no way of knowing that the buyer on the other side of their trade

[3] *Id.* §§ 68(6), 69; Companies (Share Capital and Debentures) Rules, 2014, r. 17, Form SH-9 (India).
[4] Companies Act, 2013, No. 18 of 2013, § 70 (India).

is the issuer itself, while institutional funds are often better equipped to detect these buying patterns.

• Fixed-Price Tender Offers: A more direct and, arguably, fairer method. The company announces publicly that it intends to buy back a specific number of shares at a stated price above the prevailing market rate. The offer stays open for a statutorily mandated period, giving every shareholder a genuine opportunity to weigh the terms and decide whether to participate. If the tender is oversubscribed, securities regulations require pro-rata allocation to preserve fairness.

• Dutch Auction Tender Offers: A hybrid between flexibility and fairness. Shareholders submit bids stating the minimum price they would accept and the number of shares they are willing to sell. Once bidding closes, the company identifies the lowest price at which it can acquire its target number of shares – the clearing price – and every shareholder whose bid was at or below that price receives the same clearing price.

III. Judicial Interpretation and Investor Imbalance

A closer look at these mechanics shows that buybacks tend to create divergent outcomes across investor classes, which sits uneasily with the fairness principles courts have long insisted on. Indian courts, the National Company Law Tribunal (NCLT), and appellate bodies in other jurisdictions have repeatedly held that corporate conduct must not oppress minority shareholders, distort stock values, or engineer unfair wealth transfers.[5]

The gap between institutional and retail investors widens considerably during open-market buybacks. Retail investors more often sell for reasons unconnected to the company's fundamentals – funding education, buying a home, preparing for retirement – rather than out of any informed view on valuation.

Because a buyback is, at its core, a zero-sum exchange between sellers and those who hold on, its fairness depends entirely on whether the stock is accurately priced at the time. If the market undervalues the stock, the buyback quietly transfers wealth from sellers to the shareholders who remain; if the stock is overvalued, remaining shareholders receive an unearned windfall while the company overpays for its own equity, eroding the value of the business those long-term holders actually own.

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[5] *Needle Indus. (India) Ltd. v. Needle Indus. Newey (India) Holding Ltd.*, (1981) 3 SCC 333, 395 (India); *Dale & Carrington Invt. (P) Ltd. v. P.K. Prathapan*, (2005) 1 SCC 212, 229 (India).

The sharpest threat to fairness, though, arises where executives use buybacks to hit personal performance targets – a direct conflict of interest. Boards routinely tie executive cash bonuses and equity vesting to EPS benchmarks.

Executives also tend to hold substantial stock option packages. Because buybacks generally support or inflate share prices rather than depress them, executives have an obvious personal incentive to favour buybacks over dividends. That incentive lets insiders extract value from the company in a way that protects their own portfolios, while leaving retail investors without the dependable income stream a dividend would have provided.

IV. Comparative Analysis of Global Regulation and the 2026 Indian Proposal

A. Global Regulatory Standards

In the United States, the Securities and Exchange Commission regulates open-market buybacks under Rule 10b-18.[6] Introduced in the early 1980s to bring clarity to capital management, the rule offers companies a safe harbour from market manipulation claims under Section 9(a)(2) and Rule 10b-5 of the Securities Exchange Act of 1934,[7] provided their brokers observe four conditions:

• Manner of Execution: All purchases on a given trading day must go through a single broker-dealer, to avoid generating artificial buying momentum across multiple brokers at once.

• Timing Constraints: Rule 10b-18's timing condition bars purchases in the last 10 minutes for securities with an ADTV of at least $1 million and a public float of at least $150 million, and the last 30 minutes otherwise, so the company cannot artificially set the closing price.

• Price Limits: The company cannot pay more than the highest independent bid or the last independent sale price, keeping it a passive price-taker rather than a price-setter.

• Volume Limits: Daily purchases are capped at 25% of the stock’s average daily trading volume over the preceding four weeks.

[6] 17 C.F.R. § 240.10b-18 (2026).
[7] Securities Exchange Act of 1934 § 9(a)(2), 15 U.S.C. § 78i(a)(2) (2018); 17 C.F.R. § 240.10b-5 (2025).

The rule keeps corporate buying orderly, but critics note that it does little to close the information gap that leaves retail investors at a disadvantage during open-market transactions.

The European Union takes a stricter line through its Market Abuse Regulation (MAR). Rather than offering a voluntary safe harbour, MAR treats any corporate trading capable of affecting asset prices as potential market abuse unless it satisfies strict transparency and disclosure requirements. Companies must publicly disclose the full details of a buyback programme before trading begins, and every transaction must be reported to national regulators and published within seven days.[8]

B. The Historical Indian Stance and the 2026 Proposal

Indian regulators have traditionally run one of the world's most cautious buyback regimes, aimed squarely at preventing market manipulation, cash siphoning by promoters, and insider trading. The proviso to Section 68(2) imposed a cooling-off period: no buyback could commence within one year of the closing date of the previous one.[9] In practice, this limited companies to a single buyback per financial year, keeping share repurchases from becoming an ongoing, market-moving strategy.

SEBI has reinforced this caution by effectively phasing out open-market exchange buybacks for listed companies and steering issuers toward the Tender Offer Route instead.[10] Indian securities law also requires companies to set aside exactly 15% of the total buyback pool for small retail investors, guaranteeing them access to liquidity events without being crowded out by institutional participants.[11]

The 2026 policy proposal marks a genuine departure from this cautious tradition. The Bill permits up to two buyback offers within one year only for *prescribed classes of companies*, and requires that the second offer open no earlier than six months after the first closes. A change that has triggered considerable debate over its implications for investor equity, market volatility, and long-term corporate health.

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[8] Regulation (EU) No. 596/2014 of the European Parliament and , but only for *prescribed classes of companies*, and requires the second offer to of the Council of Apr. 16, 2014, on Market Abuse, art. 5, 2014 O.J. (L 173) 1; Commission Delegated Regulation (EU) 2016/1052, art. 2(2)–(3), 2016 O.J. (L 173) 34.

[9] Companies Act, 2013, No. 18 of 2013, § 68(2) proviso (India).

[10] Securities and Exchange Board of India (Buy-back of Securities) Regulations, 2018, Gazette of India, pt. III sec. 4 (India).

[11] *Id.* regs. 6, 7.

Supporters argue that a second annual buyback gives companies real flexibility in managing capital, offers retail investors more frequent liquidity if they want to exit, and lets cash-rich technology and services firms avoid sitting on unproductive reserves for a full year while the cooling-off clock runs.

Governance advocates and minority-shareholder groups take the opposite view: more frequent buybacks raise the risk of information asymmetry and market abuse, and sit uneasily alongside the SEBI (Prohibition of Insider Trading) Regulations, 2015. Because a contemplated buyback itself qualifies as Unpublished Price Sensitive Information (UPSI), allowing two buybacks a year could trap a company in near-continuous UPSI cycles, repeatedly triggering "trading window" closures for connected persons.[12]

There is also a governance risk around voting control. A multi-stage buyback structure could shrink the public float in stages, letting promoters accumulate voting power without ever crossing the thresholds that trigger a mandatory open offer under the SEBI Takeover Regulations[13] – a quiet erosion of the democratic balance within listed companies.

Tax treatment matters here too. Dividends have long been taxed immediately at ordinary income rates, while buybacks were taxed as capital gains, letting long-term investors defer tax indefinitely – one reason corporate insiders historically preferred buybacks. Several governments have since revised their tax codes to close this gap; the United States, for instance, introduced a flat corporate-level excise tax on net stock repurchases under the Inflation Reduction Act.[14]

India has taken a similar approach: from 1 October 2024, the entire consideration is a deemed dividend taxed in the *shareholder's* hands under Section 2(22)(f), with no company-level distribution tax; and from 1 April 2026, under the Income-tax Act, 2025, buyback consideration is taxed under capital gains in the shareholder's hands.[15] This removes the tax-deferral advantage promoters previously enjoyed and puts retail investors on a more level footing, regardless of their tax bracket. Even so, permitting two buybacks a year could let

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[12] Corporate Laws (Amendment) Bill, 2026, Bill No. 85 of 2026, cl. 29(a)(ii), Lok Sabha (India) (as introduced Mar. 23, 2026); Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015, reg. 2(1)(n) (India).

[13] Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, reg. 3 (India).

[14] I.R.C. § 4501; Inflation Reduction Act of 2022, Pub. L. No. 117-169, § 10201, 136 Stat. 1818, 1828.

[15] Income-tax Act, 1961, § 115QA (India) (repealed for buy-backs on or after Oct. 1, 2024); Finance (No. 2) Act, 2024, § 2(22)(f), Income-tax Act, 1961 (India); *But see* Income-tax Act, 2025 (India) (eff. Apr. 1, 2026) (recharacterising buy-back proceeds as capital gains taxable in the shareholder's hands).

companies adjust their liquid reserves and smooth tax liabilities across shorter, multi-stage intervals, changing the balance between capital returns and traditional dividends in ways the current framework was not designed for.

V. Conclusion

Share buybacks are a powerful capital-management tool, but they carry real governance risk. They let public companies optimise their capital structure, adjust debt ratios, and manage excess liquidity, yet their execution frequently sits in tension with the basic principle of shareholder equality. The 2026 proposal to permit two buybacks a year under Indian company law reflects a genuine appetite for market flexibility and operational speed. But relaxing the proviso to Section 68(2) widens the risks of information gaps, insider timing advantages, and promoter-driven manipulation of voting control – all at the expense of public minority investors.

If relaxing Section 68 under the 2026 proposal is not to come at the cost of minority protection and market integrity, any new buyback framework needs to be anchored to a strict governance model built around the following safeguards:

• Independent Value Testing: Boards should be legally required to obtain a joint valuation report from independent registered valuers confirming that the stock trades below its true intrinsic value before a buyback proceeds. A second buyback within the same financial year should require clear justification showing that a multi-stage redemption creates genuine long-term value for continuing investors, rather than functioning as an unexamined market intervention.

• Strict Preservation of Capital Reserves and Ratios: Companies should continue to observe the 25% volume caps, maintain the 2:1 debt-to-equity limit under Section 68(2)(d), and fully fund the Capital Redemption Reserve under Section 69. Regulators should also bar a company from launching a second buyback if it has simultaneously cut its internal R&D budget.

• De-Linking Executive Incentives from Financial Engineering: Compensation committees should revise executive incentive structures so that performance metrics exclude the artificial effects buybacks have on reported earnings.

• Overlapping Solvency Horizons and Mandatory Cool-Off Testing: Regulators should amend Section 68(6) so that, where two buybacks occur within one financial year, the second Affidavit of Solvency must account for the combined capital drain from both events.

• Perpetual UPSI and Insider Trading Firewalls: To close the information gap under the SEBI (Prohibition of Insider Trading) Regulations, announcing or planning a second buyback within a single financial year should automatically trigger an extended trading window closure for promoters, connected persons, and key managerial personnel.

Ultimately, capital liberalisation should not outpace minority protection. The 2026 proposal to permit two buybacks within a single financial year is a workable route to greater corporate liquidity, but without firm, legally binding safeguards, it risks turning a tool meant for capital optimisation into a source of inequality among shareholders.