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ENFORCEABILITY OF SHAREHOLDERS' AGREEMENT IN INDIA BETWEEN CONTRACT AND COMPANY LAW

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ABSTRACT

Shareholders' agreements are private contracts between company shareholders to set forth some of their mutual rights, duties, and obligations. These contracts usually feature the sharing of entry or exit rights, voting agreements, council composition, dispute resolutions, etc. Shareholders began playing an important role in modern corporate governance, especially in private equity, joint ventures, and startup investments, providing flexibility and protecting investors' interests, including those of minorities, beyond what is contained in the company's official documents. Still, in India, the application of shareholders becomes uncertain because of legal conflicts with the Statutes (AOA) and provisions of the Companies Law, 2013. The courts have held repeatedly that any clause in an agreement amongst the shareholders that contradicts the AOA or actual statutory law cannot be enforced. This conflict breeds confusion as to whether the contractual rights of shareholders are enforceable in law. This article aims to analyse this complex legal position, link it to recent judicial and regulatory developments, such as SEBI's 2023 changes, and propose workable solutions. In favor of a more transparent legal format that balances

Keywords: Shareholders' agreements, private contracts, modern corporate governance, contractual rights

CHAPTER 1: UNDERSTANDING AND PURPOSE

Shareholder agreements are private contracts between shareholders of a company or, occasionally, between shareholders and the company itself. In these contracts, the parties to whom the payment is subject will establish rights, duties, and responsibilities concerning matters such as transfers of shares, board composition, dispute resolution, and protection of minority interests. Unlike the Articles of Association, which are public and constitutional documents of the company, shareholder agreements are confidential and meant to reflect the particular intentions and expectations of the shareholders. The general view of these agreements is that they supplement the contractual governance obligations and offer the parties

a practical means of privately and flexibly resolving internal matters so that they can channel their business efforts.

EVOLUTION OF SHAREHOLDERS IN INDIAN CORPORATE PRACTICE

There was originally no statutory endorsement to protect shareholders, and thus, the driving force behind the spread of shareholder agreements was mainly business needs. With the rise of joint ventures, private equity investment, and startups, shareholders increasingly relied on investor governance and protection. They were formerly mainly used in family companies, but are now commonly used in more complex corporate structures. This evolution occurred without any dedicated legislation, under the basic principles of contract law, and with the gradual acceptance of such agreements in practice.

LEGAL VS. CONTRACTUAL FRAMEWORK

The main concern for India's shareholders lies in their applicability. Although they are valid contracts under the law of the Indian Contract Act, their provisions cannot always align with or reflect the AOA. In such cases, questions arise about whether SHA terms can replace or complement the statutory corporate structure established by the Company Law and AOA. Since AOA has formal constitutional status within the corporate structure, any contradiction or omission of SHA provisions can lead to disputes on which document prevails. This creates a legal gray area that challenges the certainty of Shas, especially when courts interpret the extent to which contract terms can influence corporate conduct.

RESEARCH QUESTIONS

This paper attempts to determine the nature of their relations with the legal admissions of shareholders in India and their relations with legal corporate documents. Primary objectives include understanding the role of Shaas in corporate administration, identifying legal barriers that obstruct their introduction, and analysing how these agreements interact with the company's legal principles.

Such questions direct research:

1. Can a shareholder's rights be applied if their terms are not part of the AOA?
2. What is the legal effect of a sha in the absence of specific law controlling it?
3. How can India's legal system balance contractual freedom with legal corporate administration?

CHAPTER 2: NATURE AND LEGAL STATUS OF SHAREHOLDERS' AGREEMENT IN INDIA

SHAREHOLDERS A CONTRACTUAL DOCUMENT (INDIAN CONTRACT ACT, 1872)

In Indian corporate jurisprudence, a shareholder agreement is recognized as a contractual document governed by the provisions of the Indian Contract Act, 1872. It is not a statutory or constitutional document of the company, but a private agreement between shareholders and the company. As such, it derives its applicability from general principles of contractual law, such as offering, acceptance, legal consideration, and legal object. As long as these essential items are met and shareholders are not contrary to public policies or existing statutory provisions, it is considered a valid and binding contract between the parties. However, the challenge arises when the terms of the SHA seek to regulate corporate affairs in a way not allowed by the company's law, mainly whether they differ from the Articles of Association (AOA).

DIFFERENCE BETWEEN SHAREHOLDERS AND ARTICLES OF ASSOCIATION

While shareholders and AOA regulate corporate governance, their legal nature, purpose, and applicability differ significantly. AOA is a public document and is part of the company's constitution under the Companies Act, 2013. It links the company and its members under Section 10 of the law and describes internal governance rules, including capital, voting rights, council meetings, and other procedural matters. On the other hand, a Shareholders' Agreement is a private, usually confidential contract, and is not filed with the company registrar unless voluntarily disclosed. Unlike AOA, which is changed only through a special resolution and subject to regulatory scrutiny, the PHS can be flexibly and altered to meet the commercial needs of specific stakeholders. However, suppose the terms of the Share conflict with AAA or are not incorporated into it. In that case, Indian courts often maintain that AOA will prevail, as it enjoys constitutional authority within the corporate structure.

TYPES OF CLAUSES IN SHAREHOLDERS' AGREEMENT

The shareholders typically include a wide range of strategic and protective segments, usually not covered by AOA. This includes:

1. **Management Rights:** Representation of the board, quorum requirements, agreements on reserved matters that require some shareholder consent, and veto rights.
2. **Transfer restrictions:** such as the right to the First Refusal (ROFR), the right to the first offer (ROFO), and the estoppel rights, which aim to control how the shares are transferred between the existing shareholders and third parties.

3. Exit Rights: These may include procurement-back system, put/call option, and preliminary public offer (IPO) exit provisions.
4. Tags with rights: Enable minority shareholders to "tag" with majority shareholders. When they sell their stake, ensure similar treatment.
5. Drags with rights: Allow majority shareholders to "drag" minority shareholders to sell their shares in the event of complete acquisition or purchase, which provides smooth exit facilities.
6. Privacy and non-perfect segments: to protect commercial mysteries and prevent competitive conflict. Such sections help in corporate administration, tailoring to the commercial realities and specific goals of investors and promoters.

ROLE OF SHAREHOLDERS IN PRIVATE EQUITY, JOINT VENTURES AND STARTUPS.

Using shareholders has significantly boosted investment in India's private equity, joint ventures, and startup ecosystems. Investors, especially risk Capital and private equity companies, insist on a well-designed shareholders' agreement to ensure economic interest, board rights, output mechanisms, and investor protection rights. For example, in startups where the prosecutor can retain significant operational control, shareholders are used to apply checks and balances, including reserved issues and supervision. In joint ventures, shareholders are essential in defining partners, capital commitments, profit sharing, and impasse resolution mechanisms. This helps to avoid ambiguity and ensures that national and foreign partners have explicit contractual protections. In addition, in startups at an early stage, shareholders are used to clarify the responsibilities of the founders, the acquisition of shares, the protection of dilution, and the transfer of restrictions. Since startups' AOA usually remains generic or modified, the PHS provides a personalized governance structure suitable for each investment relationship. In essence, shareholders offer flexibility, confidentiality, and adaptability - the questions that are not always possible through statutory documents such as the AOA. However, its legal applicability still depends widely on the consistency of its terms with the company's law and the absence of any conflict with AAA.

CHAPTER 3: JUDICIAL RECOGNITION AND ENFORCEABILITY

In the case of V.B. Rangaraj v V.B. Gopalakrishna (1992), the Supreme Court has established a fundamental principle: any restriction on the transfer of action must be specified in the Association Articles (AA) to be executable. The shareholders in question restricted a

shareholder from transferring shares to anyone outside the family. Still, as this clause was not included in the AOA, the Court considered it was not binding on the company or other shareholders. This decision has established a precedent with which shareholders must align or be incorporated into the AOA to be applicable.

In the case of *Vodafone International Holdings v. Union of India* (2012), the court acknowledged that although the PHSs are valid contracts, their terms should not conflict with the AOA. The Court has stated that "shareholders may enter into any agreement in the best interests of the company," as long as these terms do not contradict the AOA. Notably, the trial has clarified that the provisions not mentioned in the AOA, but not in conflict with it, can still be applicable.

In the case of *Western Maharashtra Development Corporation Ltd v. Bajaj Auto Ltd* (2010), the High Court of Bombay confirmed a clause in the board's composition, maintaining it applicable against the parties involved because the company was part of the contract. This case showed that if the company is a signatory to shareholders, contractual provisions may bind it, regardless of whether the AOA includes them.

In the case of *World Phone India Pvt. Ltd. V. WPI Group Inc.* (2013), the High Court of Delhi trial reaffirmed the doctrine of Rangaraj. He maintained that a statement clause in a shareholder agreement was not executable, as it was not incorporated into the AOA. The Court rejected the previous decision of the Company's Law Council that tried to give contractual effect to the SHA clause. This stressed that any clause affecting the company's internal management should be part of the AOA to be applicable.

In this recent High Court decision, *Shri Satya Narayan v. Vardhman Homes Pvt. Ltd.* (2023), the court has adopted a more pragmatic view, deciding that shareholders' clauses do not contradict AOA or corporate law and can still be enforceable, even if they are not expressly mentioned in AOA. The court recognized the growing commercial importance of the PHS and the need to identify them as long as they are not beyond the company's powers. This marks a potential change in judicial thinking towards the greater applicability of SHA.

DOCTRINE OF SUPREMACY OF AOA OVER SHAREHOLDERS' AGREEMENT

The Indian legal position has long adhered to the doctrine that AOA replaces shareholders in

cases of inconsistency. The AoA, Being a Statutory Document Filed with the Register of Companies, Binds the Company and All Its Shareholders Under Section 10 of the Companies Act, 2013. On the other Hand, a Private Contract that derives its force from the Indian Contract Act, 1872. That Limit or Contradict Rights Under the Ao or the Companies Act, Courts Have Generally Favored the AoA, as Seen in Rangaraj and World Phone Decisions of India cases.

POSITION WHEN SHAREHOLDERS ARE NOT INCORPORATED IN AOA

A recurring issue in the applicability of shareholders is the absence of incorporation into the AOA. The courts varied in their approach:

- When shareholders are aligned with AOA and do not contradict the statutory provisions, the courts are more inclined to apply it.
- When shareholders introduce new governance mechanisms (e.g., board veto rights, action transfer restrictions), without being reflected in AOA, the contract may be unenforceable against the company, even if it is valid among shareholders.

Section 58 (2) of the 2013 Companies Law offers some relief to public companies, stating that "any contract or agreement between two or more persons regarding the transfer of securities must be applicable as a contract." However, this provision does not apply to private companies, keeping uncertainty intact.

CONFLICT BETWEEN CONTRACT LAW AND COMPANY LAW PRINCIPLES

The central tension between shareholders and AOAS lies in contractual freedom versus the hierarchy of corporate law. The contract law allows the parties to enter into any legal agreement, including Shas. However, company law, primarily through the lenses of business law and AOA, imposes restrictions on governance and the transfer of shares. This conflict becomes more pronounced when:

- Shareholders' clauses seek to modify the voting rights or structures of the Council.
- Shareholders impose restrictions on transferability that are not found in the AOA.
- The company is not a shareholder that limits the application, even under the contract law.

In many cases, although shareholders may be a valid and executable contract between the parties under the 1872 Indian contract law, it does not automatically become binding on the company unless the terms are incorporated into the AOA or the company is a signatory. The courts pointed out that contractual clauses that limit statutory corporate rights are generally not applicable, as public policies and obligations infringe.

Indian courts have evolved from strictly demanding AOA alignment (Rangaraj) to a more balanced and pragmatic approach (Vodafone, Shri Satya Narayan). However, without clear statutory reforms, applicability remains uncertain and strongly dependent on facts. This reinforces the practical need to integrate shareholders' provisions in the AOA whenever possible. Although the judiciary has shown signs of recognizing the commercial importance of shareholders, especially when they do not contradict the statutory law or the company's constitutional documents, there is no uniform rule to determine applicability. Contrasting judicial approaches to strict contractual interpretation in business with flexible reasoning and aligned with business in Vodafone and the main hockey league, there is a continuous tension between contractual autonomy and corporate statutory governance. Until India promotes lighter legal standards or alters the laws of companies to recognize and regulate them explicitly, stakeholders are advised to ensure consistency between PHS and AOAS and include the company as part of the SHA whenever possible. This would help mitigate the risks of applicability and ensure that intended rights and obligations can support legal scrutiny.

CHAPTER 4: STATUTORY FRAMEWORK: COMPANIES ACT, 2013 AND RELATED REGULATIONS

The applicability of shareholder agreements (PHS) in India cannot be understood in isolation from the statutory structure that governs companies. Business Law, 2013, forms the backbone of corporate regulation, as additional rules established by regulatory agencies, such as Securities and Exchange Board of India (SEBI) and Reserve Bank of India (RBI), through the Exchange Management Law (FEMA), also play significant papers specially in the context of listed and transmission transactions.

RELEVANT PROVISIONS OF THE COMPANIES ACT, 2013

1. Section 10: Binding force of MOA and AOA

Section 10 of the Companies Law, 2013, establishes that the Memorandum of Association and the Articles of Association constitute a binding contract between the company and its members. This statutory contract replaces any external agreements, including SHAs, in case of conflict. Thus, unless shareholders are consistent or incorporated into the AOA, they are not applicable against the company. This provision is often cited in court decisions to justify AOA supremacy on the Shareholders Agreement in the case of conflicting provisions.

2. Section 58(2): Transferability of shares in the private companies

Section 58(2) states, "any contract or agreement between two or more persons regarding the transfer of securities must be applicable as a contract." This changed from the previous legal position under the Companies Act 1956, which was introduced to recognize private contractual agreements, such as shareholders. However, this provision explicitly applies only to public companies, leaving its implications for ambiguous private companies. Consequently, while transfer restrictions governing the PHS can be contractually executed among shareholders, their applicability against the company remains doubtful unless incorporated into the AOA.

3. Sections 188: Related Party Transactions

Shareholders usually include provisions equally related to the parties, such as preferential board representation or voting rights to investor shareholders. Section 188 requires the board's approval, sometimes for shareholders or transactions involving related parties. This section becomes relevant when the Shareholders' agreement clauses are implemented in practice, as these actions can fit their regulatory scope and require compliance to avoid becoming null and void.

4. Sections 242: Oppression and Management:

Section 242 enables the National Company Law Court (NCLT) to intervene in cases of oppression and mismanagement. SHA provisions that protect minority shareholders, such as veto rights or special governance protections, usually form the basis of claims in this section when violated. Although PHS is not automatically applicable under this section, it can serve as evidence of shareholders' expectations, helping the courts to assess whether the majority conduct was oppressive or harmful.

ROLE OF SEBI (LODR) REGULATIONS FOR THE LISTED COMPANIES

For the companies listed, SEBI regulations (Listing obligations and dissemination), 2015 (LODR) play a crucial role in determining the execution obligations and disclosure of shareholders.

- Regulation 31 requires the disclosure of any special right granted to shareholders, such as the veto power, affirmative votes, or rights of appointment of the board.
- Changes introduced by 2023 require these rights to be ratified by shareholders through a special resolution and opened every five years. Not doing this makes these rights inexhaustible.

- SEBI also requires disseminating any material agreements involving significant promoters or shareholders, including SHAs.

These resolutions aim to ensure transparency and protect minority interests in listed entities. Failure to comply with disclosure or shareholders' approval requirements may result in regulatory penalties and weaken the applicability of the PHS.

ROLE OF FEMA AND FDI NORMAL

The transactions of SHAs involving Foreign investors are subject to FEMA regulations governed by the Reserve Bank of India (RBI). The main problems include:

- Foreign investors may not have fixed returns or an exit price above the fair market value. Therefore, put options or return clauses guaranteed in SHAs can be considered FEMA violating if they are not carefully structured.
- CAPS and Specific Conditionalities of the Sector: Foreign investment is restricted or regulated in specific sectors. SHAs containing provisions contrary to sectoral standards may not be applicable under Indian Law.
- Any transfer of shares or rights exercised under SHA resulting in change of control or property must be reported to the RBI and comply with the foreign investment rules.

Given these factors, the PHS involving foreign investors must be examined so that FEMA compliance is legally valid and applicable. Any violation can attract penalties and even cause the agreement to be annulled. Although the PHS is a valuable instrument for customizing governance and protecting stakeholders' interests, its applicability is subject to strict scrutiny under the Indian statutory structure.

CHAPTER 5: COMPARATIVE JURISPRUDENCE

Understanding how other jurisdictions deal with shareholders' agreements offers a valuable view of corporate governance's evolution and helps shape more coherent policies in India. Countries such as the UK, Singapore, Hong Kong, and the USA have developed robust legal structures that balance contractual autonomy with the company's statutory Law, offering a useful comparative lens.

POSITION IN THE UNITED KINGDOM: SHAREHOLDER RIGHTS AND DERIVATIVE ACTIONS

The PHS is treated as a private contract among shareholders in the United Kingdom. In 2006,

business law established the structure for corporate governance, which does not prohibit shareholders from entering into separate agreements, provided that these agreements do not violate public policy or statutory rights. It is important to note that the PHS need not be incorporated into association articles to be applicable among the contracting parties. However, where SHAs' terms directly affect the company, they must be reflected in the AOA or ratified by the company to be applicable against it. The United Kingdom courts confirmed this principle, distinguishing between the purely internal rights of shareholders and the relevant rights against the company. A remarkable aspect of the United Kingdom Law is the availability of derivative actions, where a shareholder can sue on behalf of the company if directors violate their fiduciary duties. This serves as an indirect means of applying specific provisions of SHA, especially where minority shareholders are affected. The UK approach respects contractual autonomy, but recognizes the supremacy of statutory provisions and corporate constitutional documents when a conflict arises. However, the courts usually favour commercial certainty and do not disregard the terms of a light mood.

SINGAPORE AND HONG KONG

In Singapore, the PHS are considered legally binding contracts and are widely used, especially in private companies and joint ventures. The Singapore Companies Act allows considerable flexibility in corporate structuring, and the courts have adopted a pro-application posture, provided that the SHA does not replace the statutory obligations or the constitution of the company. A historical principle in Singapore is the approach to "double governance"-the Constitution (articles) governs the relationship between the company and its shareholders. At the same time, the Sha rules the contractual relationship between shareholders. The courts have clarified that where SHA is consistent with AOA, it can coexist and be applied independently as a contract. Hong Kong follows a similar approach. The PHS is common in private ventures and private equity transactions, and the courts have emphasized that although AOA rules internal governance, the shareholders' rules govern rights and obligations at the shareholder level. Hong Kong courts, as in Singapore, recognize the applicability of SHA, even if they are not part of AOA, provided that the provisions are not inconsistent with the company's law or public policies. In both jurisdictions, a conflict between the share and AOA is usually resolved in favour of AA when it cares about internal management. However, under the general contract law, contractual medicines remain available to shareholders, including performance and specific damages.

DELAWARE (USA)

In the United States, particularly in Delaware, a leading corporate law jurisdiction, the PHS (usually called shareholder agreements) is considered an essential private instrument. Delaware's law emphasizes freedom of contract, allowing shareholders to adapt the governance, voting, and transfer mechanisms according to their needs. Notably, the Delaware Law will enable changes to the Certificate of Incorporation (analogous to AOA) to include or reflect the terms of the Sha. In addition, the courts of Delaware are usually contractual, which means they strongly favour the agreements voluntarily made between competent parties. The Courts of Delaware, especially the Chancery Court, repeatedly confirmed the provisions of SHA, even those that impose significant restrictions, provided they are not fraudulent, coercive, or contrary to the public interest. Clauses as drag mechanisms and the council's representation and exit are routinely applied. This emphasis on contractual holiness is further enhanced by the fact that Delaware Courts have robust jurisprudence on fiduciary duties, minority protection, and application of governance rights. It is important to note that Delaware recognizes the validity of sales/purchase options, anti-dilution rights, and other SHS investor protections.

SUGGESTIONS FOR INDIA

The comparative revision of the application of SHA among jurisdictions reveals several lessons for India.

1. **Recognition of Contractual Rights:** Like the UK and Delaware, India must adopt a more consistent and predictable position to recognize SHAs provisions, especially when they do not conflict with the statutory law or AOA.
2. **Coexistence of SHA and AOA:** The Singapore and Hong Kong Courts allow SHAs to coexist with AOA. Indian law should also adopt the double governance approach, distinguishing between shareholder levels and corporate constitutional governance.
3. **Statutory reforms:** The India Companies Act may be changed to explicitly recognize Shas in private companies to reduce dependence on judicial interpretation.
4. **Company as a part:** As seen in Western jurisdictions, including the company as part of the share application, greatly. Indian practice should make this a recommended standard.
5. **Applicability structure:** A SEBI legislative structure for dissemination, incorporation, or mandatory approval of PHS into listed companies (similar to SEBI's 2023 regulations) should also be developed even more for private companies. Although

Indian jurisprudence is evolving, the clarity and predictability observed in jurisdictions such as the United Kingdom, Singapore, Hong Kong, and Delaware are lacking.

These jurisdictions reach an attentive balance between corporate structure and contractual flexibility. If India adopts similar principles, particularly recognizing PHS as valid governance tools when not contradictory to public policies, it will increase investor confidence, reduce disputes, and modernize corporate governance practices.

CHAPTER 6: EMERGING TRENDS AND CHALLENGES

The following years of 2020 witnessed considerable changes in the design and applicability of shareholders' agreements in India, driven by the evolution of investors' priorities, judicial developments, and regulatory changes. The scenario is rapidly transforming from startup-oriented contractual innovation to the growing intersection of PHS with sustainability and insolvency laws.

RISE IN INVESTOR PROTECTION CLAUSES IN STARTUP SHAs POST 2020

With the outbreak of risk capital and investments in Private Equity in Post-2020 Indian Startups, there has been a significant increase in the Investor Protective clauses of PHS. These include

- Anti-dilution rights ensure investors' ownership is not unfairly diluted in future rounds.
- Settlement preferences ensure the payment of investors before the ordinary shareholders.
- Board appointment rights, offering greater influence on major strategic decisions.
- Reserved questions that require the investor's consent to crucial actions such as issuing actions, mergers, acquisitions, or changes in business models.

Such clauses are now considered standard in most Serie A and B financing rounds. They are structured to protect investors' economic and strategic interests, especially in high-risk and early-stage companies. However, the applicability of some of these provisions remains dependent on their alignment with the law and the incorporation of the company into the AOA.

ROLE OF ARBITRAL TRIBUNALS IN SHAREHOLDERS AGREEMENTS DISPUTES

Arbitration emerged as the preferred mode of resolution of conflict disputes, especially in transformative transactions. The parts usually include arbitration clauses in PHS to resolve shareholders' disagreements about governance, evaluation, or exit. Arbitral courts - both in

India and internationally - were more willing than domestic courts to defend the provisions of shareholders' agreements, even when they are not part of the AOA, provided that the company is part of the arbitration or agreed to be linked. However, the challenges still appear in:

- Awarding, according to the New York Convention, regarding the company's governance (considered a domestic policy issue in India).
- Company source: where Sha is only among shareholders and not signed by the company, the application against the company becomes difficult. The courts are increasingly dealing with these procedural issues under the Arbitration and Conciliation Law, 1996, especially after the line of decisions Vidya Droia and Perkins Eastman.

INCREASING USE OF SHA IN ESG AND IMPACT INVESTMENT FRAMEWORKS

Another remarkable tendency is the integration of environmental, social, and governance (ESG) clauses into the shareholders' agreements, especially in impact-oriented funds and climate financing enterprises. Investors now routinely include provisions that require:

- Adherence to ESG reports,
- Anti-discrimination and gender diversity commitments,
- Periodic audits of third parties on environmental impact,
- Objectives of carbon neutrality and
- Community development financing.

These clauses transfer the shareholders' agreements from purely commercial tools to sustainable governance instruments. As they evolved, these ESG-oriented shareholders' agreements align with India's corporate social responsibility objectives and will probably grow in importance.

INSOLVENCY AND SHA ENFORCEABILITY (UNDER IBC)

The interaction between shareholder agreements and insolvency law is another emerging challenge. The Code of Insolvency and Bankruptcy (IBC), 2016, replaces all other contracts in case of conflict. When a company enters the corporate insolvency resolution process (CIRP), the board's powers are suspended, and control changes are made to the resolution professional (RP). During this period:

- The governance agreements (such as board appointment, veto powers, or affirmative vote) become ineffective.

- Options or repurchase clauses may not be applicable due to moratorium provisions under IBC section 14.
- Any contractual output rights that are equivalent to operational or financial debt may be claimed, but their applicability is subject to award by the National Company Law (NCLT).

Thus, although shareholders' agreements can continue with the contractual value, their practical utility decreases significantly when insolvency is initiated.

CHAPTER 7: BRINDING THE CONTRACT- COMPANY LAW DIVIDE

The interface between the contracted law and the company's law presents a persistent legal tension in the Indian corporate scenario, particularly about the applicability of shareholder agreements (PHS). These agreements, which are contracts between shareholders and, often, the company, provide critical terms on governance, control, action transfer, output mechanisms, and minority protection. While they were governed by the Indian contract law in 1872, they operated alongside the Association Articles (AOA), a statutory document of the 2013 Companies Law. Does this duality raise a fundamental question: in the case of conflict, should the shares always be subordinate to AOA?

WHETHER SHA SHOULD BE SUBORDINATED TO AOA ALWAYS

Indian courts have long faced this question. The Supreme Court decision in *V.B. Rangaraj v. V.B. Gopalakishnan* (1992) argued that any disposition in a Share that restricts the transfer of shares beyond what is declared in the AOA is unenforceable. The logic was clear: AOA is a public document that binds the company and all shareholders, while the PHS are private agreements. If a clause in a share is not incorporated into the AOA, it cannot be applied against third parties or the company. This approach, although doctrinally sound, creates practical impediments. In the complex corporate environment of today—specially startups, joint ventures and companies oriented to private equity, those shares serve as tailored instruments that capture specific commercial understandings. Requiring all material terms to be duplicated in AOA denies the flexibility and confidentiality that the SHAs offer. It also imposes a heavy load on private entities, which may prefer to maintain specific governance mechanisms outside public scrutiny.

PUBLIC POLICY VERSUS FREEDOM OF CONTRACT

The central legal tension is between two competing principles: the primacy of statutory

corporate governance under the law of companies and the freedom of contract under Section 10 of the Indian Contract Law. The first promotes transparency and uniformity, while the latter allows private parts to define the contours of their relationship. Initiating SHA's provisions just because they are not in AOA, even when they do not violate statutory provisions or public policies, decreases the usefulness of the contract. For example, clauses addressing the rights of the board's appointment, quorum requirements, veto powers over major business decisions, or investor output options such as drag/label rights are not inherently inconsistent with business law. However, its applicability usually hangs from a wire without incorporation into AOA, thus undermining predictability in commercial agreements.

THE CASE FOR LEGISLATIVE REFORM

The 2013 Companies Law is silent on the legal status of the PHS. Consequently, the Indian courts have adopted inconsistent interpretations, with some higher courts supporting the shall clauses as binding parts between the parties and others refusing to apply them unless incorporated into the AOA. This ambiguity led to legal uncertainty and increased transactional risk. To fill this gap, legislative intervention is essential. Codifying the applicability of the SHA in business law or under the regulations of the Sebi (for listed entities) would bring clarity. A possible statutory reform may involve the introduction of a specific disposition - AKIN to section 58 (2), which deals with the restrictions of stock transfer in public companies, which recognize the PHS as executable as long as they are:

1. Not unlike the law of companies or other statutory provisions,
2. It is not inconsistent with public policies or minority protection rights,
3. Signed by the company or properly disclosed.

This provision would align the regulatory structure of India with jurisdictions such as the United Kingdom, Singapore, and Delaware (USA), where the PHS receive contractual holiness unless they replace the obligatory provisions of corporate law.

CHAPTER 8: ENHANCING ENFORCEABILITY OF SHAREHOLDERS' AGREEMENT IN INDIA

A potential solution for uncertainty around the applicability of shareholder agreements (PHS) in India is introducing an optional registration or notification mechanism with the ROC registrar. Although this registration did not elevate the PHS to the status of statutory documents such as Association Articles (AOA), it would serve several important purposes. First, it would

increase transparency, allowing regulators, potential investors, and minority shareholders to access important governance provisions confined to private agreements. Second, the registration would reduce disputes on PHS's existence, terms, or applicability, ensuring that a copy is verified in a public registration. Finally, it could create a presumption of applicability if the SHA does not contradict AOA or any statutory provisions. This mechanism would be particularly valuable for prominent private companies, where the PHS usually serves as the primary governance structure, but is documented informally or remains undisclosed. The optional notification of ROC reaches a balance between protecting contractual confidentiality and promoting legal certainty. In addition to procedural improvements, a convincing argument exists to establish a limited statutory replacement mechanism. Under this approach, specific provisions of a SHA could prevail in conflicting terms in AOA, provided they meet the main conditions:

- 1) are mutually agreed upon by all relevant parties;
- 2) they do not violate the law of companies or other statutory provisions; and
- 3) they do not infringe the public interest or dilute the protections of minority shareholders.

This model preserves contractual freedom without undermining the regulatory objectives of the Company Law. In addition, judicial clarity is essential

CONCLUSION

In the evolving world of corporate transactions, the PHS has become an essential instrument for regulating shareholder relations, structuring investors' rights, and providing personalized governance. However, its applicability in India remains ambiguous due to doctrinal tensions between the contract and company laws. To resolve this, a combination of reforms is required: Optional ROC registration with the ROC, the introduction of a limited statutory replacement, and judicial standardization by clarifying the Supreme Court or specialized adjudication mechanisms. These measures would ensure that Shars act as practical governance tools rather than legal vulnerabilities. Finally, these reforms would help harmonize the principles of contractual autonomy and corporate regulation, creating a more predictable and investor-friendly legal structure, aligned with global business