ARTICLES OF ASSOCIATION AND SHAREHOLDERS' AGREEMENTS: THE LIMITS OF PRIVATE ORDERING IN INDIAN COMPANY LAW

(*Corporate Governance in Private Companies, Part V – April 08, 2026)*

In a typical investment round in a private company, the most intensely negotiated aspects of the transaction seldom relate to the statutory filings or the form of the company's constitutional documents. Instead, they centre around control, economics, and exit i.e., board composition, affirmative voting rights, transfer restrictions, and liquidation preferences. These rights are almost invariably articulated in detailed shareholders' agreements, negotiated between founders and investors as part of the commercial bargain.

This reflects a broader and unmistakable shift in Indian corporate practice, from statutory governance, anchored in the company's Articles of Association, to contractual governance, shaped by privately negotiated arrangements between shareholders. While the Articles of Association (the "**Articles**") continue to serve as the formal constitutional document of a company under the Companies Act, 2013 (the "**Companies Act**"), they are increasingly complemented, if not functionally supplemented, by shareholders' agreements (each, a "**Shareholders' Agreement**" or "**SHA**"), which set out bespoke governance frameworks tailored to the commercial expectations of the parties.

This phenomenon is often described as **"private ordering"**, the ability of shareholders to structure the internal governance of a company through contractual arrangements rather than relying solely on default statutory rules. In the context of India's evolving venture capital and private equity ecosystem, private ordering has enabled a high degree of flexibility in allocating control rights, protecting minority interests, and structuring exit pathways. However, such contractual freedom does not operate in a legal vacuum.

The Companies Act establishes a structured framework for corporate governance, within which the Articles assume a position of statutory primacy. Section 10 of the Companies Act accords the Articles a binding effect as between the company and its members, effectively treating them as a statutory contract.[1] In contrast, a Shareholders' Agreement derives its enforceability from general principles of contract law under the Indian Contract Act, 1872. This creates an inherent tension: while shareholders may agree inter se to a particular governance arrangement, the company itself is bound to act in accordance with its Articles and the Companies Act.

This tension lies at the heart of a recurring legal question in Indian corporate jurisprudence: to what extent can shareholders, through private contracts, alter, supplement, or override the statutory and constitutional framework governing a company? The answer has evolved through judicial interpretation, most notably from the strict position adopted in *V.B. Rangaraj v. V.B. Gopalakrishnan*[2] to the more nuanced approach reflected in subsequent decisions.

[1] Section 10(1), Companies Act, 2013
[2] (1992) 1 SCC 160

This article examines this evolving intersection between the Articles and Shareholders' Agreements, and seeks to delineate the limits of private ordering in Indian company law. It analyses the statutory framework, traces the judicial evolution on enforceability of shareholder arrangements, and provides practical guidance on structuring governance rights in a manner that is both commercially effective and legally robust.

The Articles of Association: Statutory Primacy and Corporate Constitutionalism

The Articles derive their legal character directly from the Companies Act. The Companies Act defines "articles" to include the articles of association of a company as originally framed or as altered from time to time.[3] Section 5 of the Companies Act further provides that the Articles contain the regulations for the management of the company, thereby positioning them as the principal instrument governing its internal affairs.

In the context of private companies, the importance of the Articles is further accentuated. The statutory definition of a private company itself hinges on restrictions, such as limitations on transferability of shares, being contained in its Articles.[4] The legislative scheme thus embeds the Articles at the core of corporate governance, not merely as a matter of form, but as a matter of substantive legal design.

1. The Articles as the Company's Constitutional Document

Beyond their statutory recognition, the Articles perform a function that is often described, both in jurisprudence and practice, as constitutional in nature. They establish the internal governance architecture of the company by allocating powers between shareholders, the board of directors, and management, and by prescribing the procedures through which such powers are exercised.

The Supreme Court has recognised that the Articles regulate the internal management of the company and define the powers of its officers.[5] In this sense, the Articles operate as the company's internal rulebook, structuring decision-making and mediating relationships among its stakeholders in their capacity as members of the corporate entity.

2. Binding Effect: The Statutory Contract under Section 10 of the Companies Act

The distinctive legal force of the Articles arises from Section 10 of the Companies Act, which provides that the Articles bind the company and its members as if they had been signed by each member. This statutory formulation elevates the Articles beyond a mere consensual arrangement, they constitute a statutory contract.

The binding effect operates in two principal dimensions: first, between the company and its members; and second, among members inter se, in relation to rights and obligations arising out of membership. However, this contractual effect is not unbounded, it is confined to

[3] Section 2(5), Companies Act, 2013
[4] Section 2(68), Companies Act, 2013
[5] *Naresh Chandra Sanyal v. Calcutta Stock Exchange Ass'n Ltd.*, (1971) 41 Comp Cas 51 (SC)

matters that fall within the scope of the Articles and remains subject to the provisions of the Companies Act.

3. Statutory Hierarchy: Subordination to the Companies Act

While the Articles occupy a position of primacy in the internal governance of the company, they are not supreme in an absolute sense. Section 6 of the Companies Act provides that the provisions of the Act override anything to the contrary contained in the Articles or in any agreement or resolution.

Accordingly, the authority of the Articles is derivative of, and subordinate to, the statute. Any provision in the Articles that is inconsistent with the Companies Act is void to the extent of such inconsistency. This statutory hierarchy ensures that while companies enjoy flexibility in structuring their internal governance, such flexibility operates within the boundaries prescribed by law.

4. Controlled Flexibility: Amendment of the Articles

The Companies Act also recognises that corporate governance structures must evolve over time. Section 14 of the Companies Act permits a company to alter its Articles by passing a special resolution, subject to compliance with the Act and the memorandum. Once duly altered, the Articles have effect as if the alteration had been originally contained therein.

This mechanism reflects a balance between constitutional stability and commercial adaptability. While the Articles are foundational, they are not immutable; they may be recalibrated to reflect evolving commercial arrangements, provided that such changes are effected through the statutorily prescribed process.

5. Judicial Perspective: Articles as the Authoritative Governance Instrument

Judicial decisions have consistently underscored the centrality of the Articles in corporate governance. In *S.P. Jain v. Kalinga Tubes Ltd.*, the Supreme Court noted, in substance, that arrangements between shareholders do not acquire operative force within the company unless they are reflected in its constitutional framework.[6]

This reinforces a foundational principle: the Articles remain the authoritative source of the company's internal governance norms. While parties may arrive at independent arrangements, it is the incorporation of such arrangements into the Articles that confers upon them corporate legitimacy and operational effect within the company.

Shareholders' Agreements: Evolution from Suspicion to Recognition

In contemporary private company transactions, particularly those involving venture capital and private equity investments, governance is rarely left to the default framework of the Articles alone. Instead, parties increasingly rely on Shareholders' Agreements to articulate

[6] *S.P. Jain v. Kalinga Tubes Ltd.*, (1965) 35 Comp Cas 351 (SC)

detailed rights and obligations that reflect the commercial understanding between founders and investors.

This development is driven by practical considerations. Investment transactions typically require a calibrated allocation of control, protection of minority interests, and clearly defined exit mechanisms, matters that are often too granular, dynamic, or commercially sensitive to be exhaustively captured in the Articles. The SHA thus emerges as a bespoke governance instrument, enabling parties to structure their relationship with a level of precision that statutory documents may not readily accommodate.

1. Nature and Legal Character: A Contractual Governance Framework

Unlike the Articles, which derive their authority from the Companies Act, an SHA is fundamentally a contractual arrangement. Its enforceability flows from the Indian Contract Act, 1872, and it operates as an agreement between some or all of the shareholders, and often the company itself, setting out rights that supplement the statutory baseline.

The Supreme Court has recognised the legitimacy of such arrangements in structuring commercial relationships. In *Vodafone International Holdings B.V. v. Union of India*, the Court acknowledged that shareholders may enter into agreements governing their rights and obligations, including matters relating to shareholding, control, and exit, as part of legitimate commercial structuring.[7]

In this sense, the SHA represents a layer of contractual governance, co-existing alongside the statutory framework established under the Companies Act.

2. Early Judicial Approach: Caution and Structural Sensitivity

Notwithstanding their commercial utility, early judicial treatment of shareholder arrangements in India reflected a degree of caution. Courts were mindful that such agreements, if given unqualified effect, could potentially disrupt the statutory and constitutional framework governing companies.

This caution is reflected in decisions such as *S.P. Jain v. Kalinga Tubes Ltd.*, where the Supreme Court, while considering disputes among shareholders, noted that arrangements outside the company's constitutional framework do not automatically acquire operative force within its governance structure.[8] Similarly, judicial reasoning in subsequent High Court decisions indicated reluctance to allow external agreements to alter or override internal corporate mechanisms without appropriate constitutional grounding.

The underlying concern was not the validity of shareholder agreements per se, but the risk of permitting private bargains to unsettle the statutorily regulated structure of corporate governance.

[7] *Vodafone International Holdings B.V. v. Union of India*, (2012) 6 SCC 613
[8] *S.P. Jain v. Kalinga Tubes Ltd.*, (1965) 35 Comp Cas 351 (SC)

3. Doctrinal Evolution: From Skepticism to Qualified Recognition

Over time, Indian courts have adopted a more commercially attuned approach, recognising the central role of SHAs in modern corporate practice. This evolution reflects an increasing willingness to uphold negotiated arrangements between shareholders, particularly in closely held companies.

In *K.K. Modi Investment & Financial Services Pvt. Ltd. v. Apollo International Inc.*, the Delhi High Court treated the SHA as a substantive contractual instrument governing the relationship between the parties.[9] Similarly, in *Western Maharashtra Development Corporation Ltd. v. Bajaj Auto Ltd.*, the Bombay High Court engaged with shareholder arrangements in a manner that acknowledged their commercial significance in structuring governance rights.[10]

The doctrinal shift finds its most articulate expression in *Messer Holdings Ltd. v. Shyam Madanmohan Ruia*, where the Bombay High Court recognised that shareholder agreements are not inherently invalid and may be enforceable between contracting parties, even where they do not form part of the Articles.[11]

4. The Contemporary Position: Contractual Legitimacy with Structural Boundaries

The modern position in Indian company law reflects a balanced recognition of SHAs. They are no longer viewed with inherent suspicion; rather, they are accepted as legitimate instruments through which shareholders structure governance, allocate control, and protect economic interests.

At the same time, this recognition is not absolute. The SHA operates within a broader legal ecosystem shaped by the Companies Act and the company's constitutional framework. Its role is therefore best understood as supplementary rather than substitutive, a contractual layer that enhances, but does not displace, the statutory architecture of corporate governance.

This evolution, from caution to qualified acceptance, forms the foundation for examining the more complex question that follows: the extent to which such private arrangements can shape, or are constrained by, the company's constitutional framework.

The Core Conflict: AoA vs SHA — A Structured Legal Test

In practice, both the Articles and the Shareholders' Agreement often address overlapping aspects of corporate governance, ranging from control rights to share transfers and exit mechanisms. Conflict arises not merely when the two instruments contain inconsistent provisions, but also where a right exists exclusively in one and not the other.

[9] *K.K. Modi Investment & Financial Services Pvt. Ltd. v. Apollo International Inc.*, (2009) 149 Comp Cas 281 (Del HC)
[10] *Western Maharashtra Development Corporation Ltd. v. Bajaj Auto Ltd.*, (2010) 154 Comp Cas 593 (Bom HC)
[11] *Messer Holdings Ltd. v. Shyam Madanmohan Ruia*, (2010) 159 Comp Cas 29 (Bom HC) (DB)

The legal inquiry, therefore, is not whether one instrument prevails in the abstract, but how a particular right is situated within the company's statutory and contractual framework.

1. Nature of Conflict

For analytical clarity, conflicts may broadly arise in three forms:

(a) **Silence**: a right is provided in the SHA but absent in the AoA;

(b) **Inconsistency**: the SHA and AoA prescribe conflicting positions;

(c) **Partial Reflection**: the AoA incorporates only a subset of the SHA arrangement.

This classification is relevant because the legal consequences may differ depending on the nature of the divergence.

2. The Structured Legal Test

The resolution of such conflicts is best approached through a structured inquiry:

(a) **Nature of Right**: Whether the right relates to control, transfer, economic participation, or procedure;

(b) **Target of Enforcement**: Whether enforcement is sought against the company (in its corporate capacity) or against shareholders inter se;

(c) **Constitutional Embedding**: Whether the right is reflected in the AoA, thereby forming part of the company's governance framework;

(d) **Statutory Compatibility**: Whether the right is consistent with the Companies Act, which overrides contrary provisions in any instrument.[12]

3. Corporate vs Contractual Operation

A key distinction emerging from judicial decisions is between corporate operation and contractual operation. While the AoA governs the company's internal functioning, an SHA may operate independently as a contract between shareholders.

Thus, a right may not necessarily acquire effect at the corporate level, yet remain enforceable between contracting parties, a position that finds support in decisions such as *V.B. Rangaraj v. V.B. Gopalakrishnan* and its subsequent judicial treatment.

This structured framework underpins the analysis that follows. Its application to specific categories of rights, and the resulting limits of private ordering, will be examined in subsequent sections.

[12] Section 6, Companies Act, 2013

Transfer Restrictions: Judicial Battlefield of Private Ordering

Among the various rights negotiated in a Shareholders' Agreement, transfer restrictions occupy a uniquely sensitive position. They directly affect the alienability of shares, the entry and exit of investors, and the balance of control within the company. Recognising this, the Companies Act accords primacy to the Articles in governing share transfers, particularly in the context of private companies.

Transfer restrictions thus sit at the intersection of proprietary rights and corporate governance, making them the most litigated aspect of private ordering in Indian company law.

1. The Foundational Position: Constitutional Embedding

The starting point of Indian jurisprudence is the Supreme Court's decision in *V.B. Rangaraj v. V.B. Gopalakrishnan*, where the Court held that restrictions on the transfer of shares, if not contained in the Articles, cannot bind the company or be enforced as part of its corporate functioning.

The decision underscores a critical principle: transfer restrictions must find expression in the company's constitutional framework to operate at the corporate level. This approach was subsequently echoed in decisions such as *Mafatlal Industries Ltd. v. Gujarat Gas Co. Ltd.*, reinforcing the importance of constitutional embedding in matters affecting share transferability.[13]

2. Judicial Moderation: Context and Incorporation

Subsequent decisions have refined, rather than displaced, this principle. In *Western Maharashtra Development Corporation Ltd. v. Bajaj Auto Ltd.*, the Bombay High Court clarified that where a restriction is incorporated in the Articles, its enforceability does not attract the limitations articulated in *Rangaraj case*.[14]

Similarly, courts have recognised that the relevance of incorporation is tied to whether the restriction is intended to operate through the company's internal processes, such as refusal to register transfers, thereby reaffirming the centrality of the Articles in such contexts.

3. The Evolving Position: Contractual Recognition

A significant doctrinal shift is reflected in Messer Holdings Ltd. v. Shyam Madanmohan Ruia, where the Bombay High Court acknowledged that consensual arrangements between shareholders relating to share transfers are not inherently invalid merely because they are not incorporated in the Articles.[15]

[13] *Mafatlal Industries Ltd. v. Gujarat Gas Co. Ltd.*, (1999) 97 Comp Cas 301 (Guj HC)
[14] *Western Maharashtra Development Corporation Ltd. v. Bajaj Auto Ltd.*, (2010) 154 Comp Cas 593 (Bom HC)
[15] *Messer Holdings Ltd. v. Shyam Madanmohan Ruia*, (2010) 159 Comp Cas 29 (Bom HC) (DB)

This marked a move towards qualified recognition of contractual arrangements, particularly where enforcement is sought between contracting parties rather than against the company.

4. Narrow Takeaway

The jurisprudence on transfer restrictions reflects a calibrated balance. While such restrictions are most robust when embedded in the Articles, their absence from the constitutional framework does not necessarily render them void in all contexts.

As will be explored through the structured framework set out earlier, the legal effect of transfer restrictions ultimately depends on how, and against whom, they are sought to be enforced.

Governance Rights: Validity and Limits

Unlike transfer restrictions, governance rights negotiated under a Shareholders' Agreement are directed at how decisions are taken within the company, rather than whether shares may be transferred. These typically include affirmative voting rights (reserved matters), board nomination rights, quorum protections, and information rights.

Such rights are central to investment structuring, particularly in closely held companies, as they enable investors to participate in or influence key decisions without necessarily altering ownership.

1. Statutory Boundaries: Allocation of Corporate Power

Governance rights operate within a statutory framework under the Companies Act, which allocates powers among shareholders, the board, and individual directors. In particular:

(a) the board exercises general powers of management[16];

(b) directors are subject to fiduciary duties[17]; and

(c) the appointment and composition of the board are governed by statutory provisions[18].

Accordingly, governance arrangements cannot reallocate or override statutory powers, nor can they compel directors to act in a manner inconsistent with their fiduciary obligations.

2. Affirmative Voting Rights and Reserved Matters

Affirmative voting rights, often structured as vetoes over "reserved matters", are among the most significant governance protections negotiated in an SHA. Indian courts have

[16] Section 179, Companies Act, 2013
[17] Section 166, Companies Act, 2013
[18] Section 152 and 162, Companies Act, 2013

approached such rights with caution, particularly where they are not reflected in the Articles.

In *World Phone India Pvt. Ltd. v. WPI Group Inc.*, the Delhi High Court considered an affirmative vote arrangement contained in a joint venture agreement and observed, in substance, that such a provision cannot automatically operate at the corporate level merely because it is not inconsistent with the Companies Act.[19]

The decision underscores that governance vetoes intended to influence corporate action must be appropriately embedded within the company's constitutional framework.

3. Board Nomination and Management Rights

Board nomination rights are a common feature of SHAs and are generally permissible within the statutory framework governing appointment of directors. However, such rights do not displace the legal position that directors, once appointed, owe duties to the company as a whole, and not to the nominating shareholder.

Judicial and tribunal decisions, including *AES OPGC Holding (Mauritius) v. Orissa Power Generation Corporation Ltd.*, demonstrate that where governance structures, such as management control or board participation, are constitutionally embedded, they are more likely to be treated as operative and enforceable within the company's governance framework.[20]

4. Information and Procedural Rights

Information rights, such as access to financial statements, business plans, and operational updates, are generally less contentious. They function as transparency-enhancing mechanisms and do not typically interfere with statutory allocation of powers. As such, they represent one of the more stable forms of private ordering in corporate governance.

5. Narrow Takeaway

Governance rights are, in principle, compatible with private ordering under Indian company law. However, their validity depends on whether they supplement decision-making processes or impermissibly displace statutory governance structures or fiduciary obligations. Their effective operation at the corporate level, as with other rights, is ultimately shaped by their alignment with the Articles and the Companies Act.

Limits of Private Ordering: A Three-Layer Constraint Model and Enforcement Landscape

While the Shareholders' Agreement has emerged as a central instrument of negotiated governance, its operation is not unbounded. The effectiveness of any privately negotiated

[19] *World Phone India Pvt. Ltd. v. WPI Group Inc.*, (2013) 178 Comp Cas 173 (Del HC)
[20] *AES OPGC Holding (Mauritius) v. Orissa Power Generation Corporation Ltd.*, Company Appeal (AT) No. 160 of 2017 (NCLAT)

right depends not only on its commercial formulation, but on the legal limits within which it operates and the remedies available upon breach. These limits may be understood through a three-layered framework: statutory constraints, constitutional constraints, and remedial realities.

1. Layer One: Statutory Constraints

At the outermost level, private ordering is constrained by the Companies Act. Section 6 of the Companies Act provides that the provisions of the Companies Act override anything inconsistent contained in the Articles of Association, the SHA, or any other agreement.

Accordingly, shareholder arrangements cannot override statutory provisions governing, inter alia, board powers, appointment of directors, or fiduciary duties. Nor can they contractually exclude statutory remedies such as those relating to oppression and mismanagement under Sections 241 and 242 of the Companies Act.

The statutory framework thus defines the outer boundary of permissible private ordering.

2. Layer Two: Constitutional Constraints

Within the statutory framework, a second level of constraint arises from the company's constitutional structure. Rights that are intended to operate through the company's internal machinery, such as those affecting board decision-making or share transfers, generally require reflection in the Articles to attain corporate effect.

Judicial decisions, including *V.B. Rangaraj v. V.B. Gopalakrishnan* and *World Phone India Pvt. Ltd. v. WPI Group Inc.*, underscore that arrangements external to the Articles do not automatically bind the company in its internal functioning.

This layer reflects a fundamental principle: corporate enforceability depends on constitutional embedding.

3. Layer Three: Remedial Constraints and Enforcement Reality

Even where a right under an SHA is valid as a matter of contract, its practical value is shaped by the remedy available upon breach. Indian courts have recognised that shareholder arrangements may be enforced inter se through contractual remedies, including injunctions, declarations, and, in appropriate cases, specific performance.[21]

However, where enforcement is sought against the company, particularly in relation to its internal processes, the absence of constitutional support may limit the available relief. The jurisprudence, including *Messer Holdings Ltd. v. Shyam Madanmohan Ruia*, reflects this distinction between contractual enforceability and corporate operability.

[21] See generally principles under the Indian Contract Act, 1872 and the Specific Relief Act, 1963

In parallel, parties may also invoke statutory remedies where the conduct complained of rises to the level of oppression or mismanagement under the Companies Act.

4. **Practical Takeaway: Drafting for Enforceability**

The interaction of these three layers yields a clear practical insight: the strength of a shareholder right lies not only in its drafting, but in its enforceability pathway.

Rights intended to influence corporate action should be evaluated for constitutional alignment with the Articles, while rights that operate inter se may rely more heavily on contractual enforcement. In each case, parties must consider, at the stage of drafting, the forum, remedy, and legal basis through which such rights may ultimately be realised.

Practical Structuring and Conclusion

1. **Allocating Rights Across the AoA and the SHA**

Effective structuring in private companies requires a deliberate allocation of rights between the Articles and the Shareholders' Agreement. As the preceding sections demonstrate, the legal strength of a right depends not merely on its drafting, but on where it is housed and how it is intended to operate. The objective is not duplication, but alignment ,ensuring that each instrument performs the role for which it is best suited.

2. **Rights Requiring Constitutional Embedding**

Rights that are intended to operate through the company's internal machinery are generally most effective when reflected in the AoA. These include, in particular, transfer restrictions, affirmative voting mechanisms affecting shareholder or board decisions, and structural governance arrangements.

Given the binding effect of the AoA under the Companies Act, and the requirement that alterations be effected in accordance with Section 14 of the Companies Act, such rights acquire greater certainty when embedded within the company's constitutional framework.

3. **Rights That May Remain Contractual**

By contrast, certain rights may operate effectively at a contractual level within the SHA. These include inter se covenants, commercial undertakings, and information rights that do not require implementation through corporate processes.

Such provisions derive their enforceability from contract law and may continue to bind the parties even where they do not form part of the AoA, though their operation is correspondingly limited to the contractual sphere.

4. **Transaction Design and Implementation**

In practice, enforceability is often determined at the stage of transaction design. This underscores the importance of aligning AoA amendments with SHA execution, typically as a condition precedent or closing deliverable.

Careful attention must also be paid to internal approvals, consistency across governance documents, and the role of the company as a party to the SHA, where relevant. The structuring exercise is therefore as much procedural as it is substantive.

5. Conclusion

The evolution of Indian corporate jurisprudence reflects a calibrated acceptance of private ordering. Shareholders are free to negotiate governance frameworks through the SHA, but such arrangements achieve their fullest effect only when aligned with the statutory and constitutional architecture of the company.

Ultimately, the most robust governance structures are those in which contractual intent, constitutional design, and enforcement pathways operate in seamless alignment.

Contact Us: For any further information, please send an email at admin@synergialegal.com