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Padam Chand Marg, Daryaganj,
New Delhi, Delhi 110002
Phone: +91 98 11 66 62 16 (M)
Phone: +91 70 11 60 56 18 (M)

Bengaluru

Jallahalli East
Bengaluru, Karnataka. India.
Phone: +91 98 11 66 62 16 (M)
Email: publisher.integrity@gmail.com

USA

New Jersey
14 Grandview Ave, Upper Saddle River,
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Phone: +14805226504 (M)

London

37 Degree Media
64, Hodder Drive, Perivale, London UB68LL.
United Kingdom
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Shareholder Agreements in Venture-Capital and Startup Fundraising – Enforceability, Drag-Along/Tag-Along Rights, and Minority Protection

Author

Bintu

Ms. Priyanka Dhiman



Shareholder Agreements in Venture-Capital and Startup Fundraising – Enforceability, Drag-Along/Tag-Along Rights, and Minority Protection

Bintu

Rayat Bahra University, Mohali

Ms. Priyanka Dhiman

Assistant professor

Rayat Bahra University, Mohali

Abstract

This study examines shareholder agreements (SHAs) in venture-capital and startup fundraising in India with a focus on enforceability, drag-along and tag-along rights, and minority shareholder protection in private limited companies. It analyses how SHAs operate as private contracts while simultaneously depending on statutory corporate processes for effective implementation. The research highlights that SHA clauses are most reliably enforceable when they are valid under general contract principles and are aligned with the company's Articles of Association, which bind the company and all members, enabling company-facing obligations to operate through internal governance and share transfer procedures. The study evaluates drag-along rights as exit-certainty mechanisms and identifies the need for procedural safeguards—clear trigger events, parity of consideration, disclosure obligations, conflict controls, and defined timelines—to reduce coercion risk and prevent unfair prejudice to minorities. It further assesses tag-along rights as minority exit protections, emphasising their effectiveness when drafted as transfer conditions that the company can apply at the registration stage, supported by workable notice, election, and allocation rules. The study also maps the most effective enforcement pathways in investment disputes, particularly interim measures and register-based remedies, and explains how statutory minority remedies function as an essential backstop when contractual protections fail. The research concludes with drafting-focused recommendations to ensure venture-style clauses remain implementable within India's corporate and regulatory framework, including cross-border compliance considerations.

Keywords: *Shareholder Agreements; Venture Capital; Enforceability; Drag-Along Rights; Tag-Along Rights; Minority Protection*

1 Introduction

Shareholder agreements (SHAs) have become central to venture-capital and startup fundraising in India because they allow founders and investors to privately allocate control, economics, and exit outcomes beyond what standard corporate constitutional documents usually capture. In a typical venture-backed company, the SHA sits alongside the investment instruments and the company Articles of Association (AoA) to govern board control, information access, transfer restrictions, exit rights, and downside protection, often in a way calibrated to rapid growth, successive funding rounds, and uncertain business models. This contracting practice operates within the statutory architecture of the Companies Act, 2013, which establishes the company core governance framework, while leaving significant room

for private ordering—subject to statutory limits and the requirement that essential company-facing obligations ultimately function through the AoA and corporate processes.¹ At the foundation, enforceability of SHAs in India draws heavily from general contract law principles under the Indian Contract Act, 1872. Parties rely on Section 10 (what agreements are contracts) to satisfy validity requirements such as free consent, lawful consideration, and lawful object, and must also avoid invalidity under Section 23 where the object or consideration is unlawful or opposed to law/public policy. Consequently, investor-style clauses—such as veto rights, information rights, reserved matters, and exit arrangements—are drafted to remain within lawful bounds and to avoid being framed as arrangements that would defeat statutory provisions governing companies. In venture transactions, parties also pay close attention to how contractual obligations are framed: whether they are purely inter se (binding among signatories) or intended to bind the company and be operational through corporate acts like board approvals, member resolutions, and register updates.

A key Indian-law challenge in SHA enforceability is the contract–company interface: while the SHA is a contract, the AoA is the company constitutional document that statutorily binds the company and its members. Section 10 of the Companies Act, 2013 gives the AoA (and memorandum) binding force as if covenants were signed by the company and each member, which makes the AoA the primary vehicle for obligations meant to operate at the company level (for example, transfer restrictions that require the company to refuse registration, or voting arrangements that must be implemented through formal member decisions). Further, Section 14 governs alteration of articles by special resolution, which is practically relevant because VC investors commonly require that critical SHA protections be mirrored in the AoA at signing or closing. In addition, Section 6 underscores that statutory provisions override the memorandum/articles and any agreements to the extent of inconsistency—so SHA clauses are enforceable only insofar as they can coexist with the Act and validly operate within company law processes.²

1.1 Meaning and Nature of Shareholder Agreements

A shareholder agreement (SHA) in the venture-capital and startup setting is a private contract among shareholders (typically founders, investors, and sometimes key employees) that allocates governance rights, economic rights, and exit rights in a manner tailored to the investment bargain. Its contract character is grounded in the Indian Contract Act, 1872, because enforceability begins with satisfaction of Section 10 (what agreements are contracts) and continues to be tested against Section 23 (lawful object and consideration), especially when clauses affect corporate decision-making or constrain share transfers. In practice, an SHA is drafted not merely as a relationship document but as an operational manual: it specifies who controls the board, which matters require affirmative votes, what information must be delivered, when shares can be transferred, and how exits will be implemented, all within the boundaries of lawful contracting.³ At the same time, the corporate nature of an SHA in India is shaped by the Companies Act, 2013 because the company is a statutory creature and its

¹ Sharath, “SHAREHOLDERS’ AGREEMENT (SHA) – NECESSITY OF THE TIMES” *Professional Services Tailored for Businesses*, 2026 available at: <https://thestartupzone.in/investment-advisory/shareholders-agreement-sha-necessity-of-the-times/> (last visited May 13, 2026).

² “Section 10.Effect of memorandum and articles.,” *Companies Act Integrated Ready Reckoner/Companies Act 2013/CAIRR* available at: <https://ca2013.com/effect-of-memorandum-and-articles/> (last visited May 13, 2026).

³ “International Handbook on Shareholders’ Agreements: Regulation, Practice and Comparative Analysis 9783110517026, 9783110501568 - DOKUMEN.PUB,” *dokumen.pub* available at: <https://dokumen.pub/international-handbook-on-shareholders-agreements-regulation-practice-and-comparative-analysis-9783110517026-9783110501568.html> (last visited May 13, 2026).

internal governance is anchored in the Memorandum and Articles of Association (AoA). Section 10 of the Companies Act, 2013 confers binding force on the memorandum and articles as if they were covenants executed by the company and each member, which makes the AoA the primary instrument through which company-facing obligations are expected to function. Section 6 clarifies that the Act overrides the memorandum, articles, and any agreements to the extent of inconsistency, meaning an SHA cannot be enforced in a manner that defeats mandatory statutory provisions. For venture deals, this creates a dual structure: the SHA governs inter se rights, while critical governance and transfer mechanics are typically mirrored into the AoA so that corporate action—board approvals, member resolutions, and register updates—can lawfully give effect to the bargain.

1.2 Growth of Venture-Capital and Startup Investment in India

The rapid expansion of venture-capital and startup investment in India is closely linked to the creation of a policy-and-regulatory ecosystem that reduces transaction friction and formalises investor participation in unlisted growth companies. The Startup India framework institutionalised DPIIT recognition and made startup status relevant for compliance and incentives; the DPIIT notification on recognition and allied conditions illustrates how the state has attempted to standardise eligibility and recognition processes. This formal recognition environment indirectly increases the use of sophisticated investment documentation—especially SHAs—because VC and growth investors require enforceable governance and exit protections in companies that are scaling quickly and raising successive rounds.

The growth of VC funding is also enabled by the legal structure for pooled investment vehicles under securities regulation. The SEBI (Alternative Investment Funds) Regulations, 2012 provide the regulatory home for AIFs, including Category I funds commonly used for venture capital strategies, shaping how domestic and offshore-linked funds are formed, marketed, and deployed into startups. Once institutional capital becomes structurally organised through regulated vehicles, negotiation intensity increases and investments are commonly conditioned on detailed governance packages (board rights, reserved matters, information covenants) embedded in SHAs. In other words, as regulated fund structures become the primary conduit for venture financing, SHAs become the contractual mechanism through which those funds manage control risk, information risk, and exit uncertainty in portfolio companies.

1.3 Objectives of the study

1. To examine the legal basis and enforceability of shareholder agreements in Indian venture-capital and startup fundraising.
2. To analyse how drag-along rights are structured and the safeguards required to prevent unfair prejudice to minority shareholders.
3. To evaluate tag-along rights as a minority exit-protection mechanism and identify common implementation challenges.
4. To assess statutory and contractual remedies available for minority protection when shareholder agreement rights are breached.
5. To develop drafting-oriented recommendations for aligning shareholder agreements with company law requirements and corporate constitutional documents.

1.4 Research Questions

1. What is the enforceability status of shareholder agreements in India when their terms conflict with, or are not reflected in, the Articles of Association?
2. How can drag-along rights be structured to ensure procedural fairness and protect minority shareholders in exit transactions?
3. To what extent do tag-along rights effectively secure equal treatment and liquidity for minority shareholders in private companies?
4. What are the most effective legal remedies for enforcing shareholder agreement rights relating to governance and share transfers?
5. What drafting practices best ensure that venture-capital shareholder agreement clauses remain implementable within Indian corporate and regulatory frameworks?

1.5 Research Methodology

The study adopts a doctrinal research methodology, focusing on the systematic analysis of legal rules, statutory provisions, subordinate legislation, and regulatory frameworks governing shareholder agreements, venture-capital investments, and shareholder rights in India. The methodology involves identifying the relevant legislative instruments applicable to startups and private companies, mapping the statutory provisions that regulate share capital, voting rights, variation of rights, share transfers, and shareholder remedies, and then evaluating how these interact with contractual arrangements typically contained in shareholder agreements. The study also analyses the legal character of shareholder agreements under general contract principles, including legality and enforceability constraints, and examines the remedial framework for enforcing contractual and corporate rights through statutory mechanisms and equitable relief. Secondary legal materials such as regulatory guidance, policy documents, standard market documentation practices, and authoritative commentaries are used to interpret how the law is applied in venture transactions and to assess practical implications for drafting and enforcement.

1.6 Literature Review

Ronald J. Gilson (2003)⁴ explains why venture capital thrives when legal and market institutions support credible exit and disciplined contracting. He links VC growth to stock markets, enforceable private ordering, and repeat-player governance tools that reduce information asymmetry and agency costs. The article is useful for Indian SHA analysis because it clarifies why control rights, staged financing, and exit clauses are central to efficient startup funding.

Bernard S. Black and Ronald J. Gilson (1998)⁵ argue that strong stock markets, more than bank-centered finance, enable venture capital by providing reliable exit routes (especially IPOs). They connect exit feasibility to VC willingness to invest and actively monitor, shaping governance terms in financing contracts. For startup fundraising, the article helps justify why drag/tag rights, liquidity planning, and minority protections become critical where public exits are uncertain.

⁴ Ronald J. Gilson, “Engineering a Venture Capital Market: Lessons from the American Experience”, 55 *Stanford Law Review* 1067 (2003). Available at: <https://law.stanford.edu/publications/engineering-a-venture-capital-market-lessons-from-the-american-experience/>

⁵ Bernard S. Black and Ronald J. Gilson, “Venture Capital and the Structure of Capital Markets: Banks versus Stock Markets”, 47 *Journal of Financial Economics* 243 (1998). Available at: <https://ideas.repec.org/a/eee/jfinec/v47y1998i3p243-277.html>

Steven N. Kaplan and Per Strömberg (2003)⁶ empirically map how real VC contracts allocate cash-flow rights, control rights, and liquidation rights across contingencies. They show staged financing, contingent control shifts, and detailed covenants are not theoretical ideals but common practice to manage risk and incentives. For Indian SHAs, this supports structured reserved matters, board rights, anti-dilution, and exit mechanics as standard risk-governance architecture.

Thomas Hellmann (1998)⁷ explains why VC contracts allocate control dynamically: founders keep control when performance is strong, while investors gain stronger control when performance weakens or risk rises. The model clarifies the economic logic behind board seats, vetoes, and milestone-based rights. In Indian documentation, it helps rationalise affirmative voting and reserved matters as performance-contingent governance, not mere investor dominance.

William A. Sahlman (1990)⁸ describes VC as an institution built around intensive monitoring, staged investment, and contractual control, with the VC incentives and reputation disciplining behavior. He highlights why governance provisions—board involvement, covenants, and reporting—are essential due to uncertainty and information gaps. The article is especially relevant to startup SHAs because it frames investor protections as mechanisms to reduce agency costs, not to obstruct entrepreneurship.

Paul A. Gompers (1995)⁹ explains staging as a rational response to uncertainty: smaller early tranches preserve option value and strengthen investor monitoring incentives, while later funding depends on performance signals. This supports why VC deals include milestones, information covenants, and rights to withhold future funding. For Indian practice, the article strengthens the justification for staged consents, reporting obligations, and structured investor control rights across rounds.

1.7 Research Gap

Existing Indian legal writing on shareholder agreements in venture-capital and startup fundraising often treats enforceability as a broad doctrinal question, but gives limited, practice-facing analysis of how specific clauses—particularly drag-along and tag-along rights—are operationalised through statutory transfer machinery and corporate records in private companies. A recurring gap is the lack of integrated treatment of (i) contract enforceability principles, (ii) Companies Act processes on transfer registration, refusal, and rectification, and (iii) the practical sequencing of aligning shareholder agreements with Articles of Association to make exit clauses company-operable. Further, the literature frequently discusses minority protection in general terms, but insufficiently maps the interaction between contractual safeguards (reserved matters, anti-dilution, tag rights) and statutory remedies (oppression/mismanagement and class action) as complementary tools rather than alternatives.

⁶ Steven N. Kaplan and Per Strömberg, “Financial Contracting Theory Meets the Real World: An Empirical Analysis of Venture Capital Contracts”, 70 *Review of Economic Studies* 281 (2003). Available at: <https://academic.oup.com/restud/article/70/2/281/1586768>

⁷ Thomas Hellmann, “The Allocation of Control Rights in Venture Capital Contracts”, 29 *RAND Journal of Economics* 57 (1998). Available at: <https://ideas.repec.org/a/rje/randje/v29y1998ispringp57-76.html>

⁸ William A. Sahlman, “The Structure and Governance of Venture-Capital Organizations”, 27 *Journal of Financial Economics* 473 (1990). Available at: <https://ideas.repec.org/a/eee/jfinec/v27y1990i2p473-521.html>

⁹ Paul A. Gompers, “Optimal Investment, Monitoring, and the Staging of Venture Capital”, 50 *Journal of Finance* 1461 (1995). Available at: <https://ideas.repec.org/a/bla/jfinan/v50y1995i5p1461-1489.html>

2 Legal Status and Enforceability of Shareholder Agreements

2.1 Binding Force among Signatory Parties

As between signatories, the binding force of an SHA is primarily contractual: the agreement binds the parties who have executed it, and courts/arbitral tribunals generally enforce it like any other commercial contract, subject to legality and enforceability limits. The basic binding force flows from Section 10 of the Indian Contract Act, 1872, while performance and breach are governed through ordinary contractual principles. Since venture SHAs often involve complex, continuing obligations over multiple years (consents, information covenants, transfer restrictions, exit cooperation), parties usually draft explicit performance duties, breach consequences, and survival clauses to reduce uncertainty. However, these contractual obligations remain vulnerable if a clause is drafted in a way that triggers illegality under Section 23—for example, if it is framed to defeat a mandatory statutory rule or to impose an unlawful restraint.

Binding force among signatories becomes particularly important for voting agreements and consent undertakings, where shareholders agree to vote in a particular manner on specified matters. Such arrangements are commonly used to implement investor reserved matters, founder control protections, and governance deadlock solutions. As a matter of contractual commitment, signatories can undertake to vote in a specified way, but enforceability in practice depends on whether the obligation is structured as a lawful contract and whether a breach can be effectively remedied without compelling an outcome contrary to the Companies Act, 2013. Where contractual voting obligations are meant to shape company actions (appointment/removal of directors, alteration of articles, approval of issuance), they must be capable of being implemented through valid shareholder resolutions under the Companies Act framework, with the Articles of Association as the operational base.¹⁰

2.2 Enforceability against the company

Enforceability against the company is the most contested dimension of SHAs in India because company action is governed by statute and the company constitution. The Companies Act, 2013 gives the Memorandum and Articles of Association binding force under Section 10, meaning the company and its members are bound by the articles as if there were covenants executed by each. This statutory binding force is distinct from a purely private contract: even if shareholders agree among themselves in an SHA, the company internal decision-making, share transfer registration, and governance processes are primarily expected to follow the AoA and the Act. Section 6 reinforces statutory supremacy by providing that the provisions of the Companies Act override any inconsistent arrangement in the memorandum, articles, or any agreement. Consequently, for a clause to be enforceable against the company in a reliable and transaction-ready manner, it is usually necessary that the clause is reflected in the AoA and implemented through valid corporate action.¹¹

Where the company is itself a signatory to the SHA, enforceability against the company is more direct because the company has contractually undertaken obligations. However, even then, the company cannot contract out of mandatory provisions of company law; Section 6

¹⁰ Rachit Garg, “Breach of a company director’s duties” *iPleaders*, 2023 available at: <https://blog.iplayers.in/breach-of-a-company-directors-duties/> (last visited May 13, 2026).

¹¹ “NCLT possesses the jurisdiction to adjudicate allegations of fraud, coercion, and manipulation when such allegations are integral to claims of oppression and mismanagement under the Companies Act, 2013,” *IBC Laws* available at: <https://ibclaw.in/mr-t-p-anilkumar-and-ors-vs-indus-motor-company-pvt-ltd-and-ors-nclt-kochi-bench/> (last visited May 13, 2026).

continues to operate as a ceiling. Practically, therefore, company-signature does not eliminate the need to align key governance/transfer obligations with the AoA; it mainly improves contractual privity and eases enforcement of operational duties like providing information, convening meetings, or implementing agreed processes—provided those actions are lawful under the Act and within the company powers. In venture deals, this is why the SHA often contains covenants requiring simultaneous amendment of the AoA (under Section 14) and maintenance of such provisions as long as specified investors remain shareholders.

2.3 Restrictions on Transfer of Shares Under Indian Law

Restrictions on transfer of shares are central in startup fundraising because founders and investors both want controlled entry/exit: founders want stability and protection from hostile acquisitions of control, while investors want predictable liquidity pathways and protection against value leakage. Indian law recognises that shares are movable property (Section 44 of the Companies Act, 2013), but it also differentiates private companies by requiring restrictions on transfer as part of their defining characteristics. Section 2(68) defines a private company and includes a requirement that its articles restrict the right to transfer its shares, which provides statutory legitimacy for transfer restrictions in private company structures commonly used by startups. This statutory context explains why venture deal transfer restrictions are typically embedded into the AoA rather than only being left in an SHA.¹²

Transfer restrictions must also be drafted with the procedural and record-keeping rules of the Companies Act in mind. Section 56 governs transfer and transmission of securities and prescribes the basic statutory mechanism for registering transfers. Section 58 is particularly important for private companies because it regulates refusal of registration of transfer and provides a statutory pathway for appeal against refusal; it becomes relevant when a transfer is attempted in breach of AoA/SHA restrictions and the company refuses to register it. Section 59 adds a rectification mechanism, empowering the Tribunal to order correction of the register where entries are wrongfully made/omitted or where there is delay. In practice, this statutory triangle (Sections 56, 58, 59) shapes whether contractual restrictions (ROFR, lock-in, tag/drag enforcement) can be operationalised through corporate records.¹³

2.4 Validity of Affirmative Voting and Reserved Matters Clauses

Affirmative voting and reserved matters clauses are among the most commercially important investor protections in venture deals because they control downside risk by preventing unilateral action by founders or a bare majority on matters that can materially change the investment value or risk profile. From a legal standpoint, the basic validity of such clauses begins under the Indian Contract Act, 1872: parties can agree that certain shareholders will vote in a specified way or that certain actions will require their prior written consent, provided the agreement satisfies Section 10 and does not fall foul of Section 23. However, because these clauses are designed to shape company decision-making, their effective enforceability depends on whether the clause is also implemented through lawful corporate processes and aligned with the AoA.¹⁴ Under the Companies Act, 2013, corporate power is allocated between the board and shareholders, and reserved matters frequently aim to pull up certain decisions to

¹² Rohit Arora, “Part 2 - Keeping everyone aligned: Lock-ins, Transfers & Founder Restrictions at FoodSwift” *Lawsikho Blog*, 2025 available at: <https://lawsikho.com/blog/lock-ins-transfers-founder-restrictions/> (last visited May 13, 2026).

¹³ Rohit Arora, “Part 2 - Keeping everyone aligned: Lock-ins, Transfers & Founder Restrictions at FoodSwift” *Lawsikho Blog*, 2025 available at: <https://lawsikho.com/blog/lock-ins-transfers-founder-restrictions/> (last visited May 13, 2026).

¹⁴ Labdhi Kochar, “Raising Fund in Private Limited Company – Sources & mandates” *LegalWiz.in*, 19 March 2025.

shareholder approval or to require class consent in addition to statutory thresholds. Section 179 sets out the general powers of the Board of Directors, while Section 180 lists restrictions on the board powers in specified circumstances where shareholder approval is required. In venture practice, reserved matters often cover actions that may already be statutorily regulated (e.g., certain borrowings or disposals) and many that are not statutorily restricted but are contractually made conditional on investor consent (e.g., issuing new securities beyond agreed limits, altering business plan, related-party arrangements, changes to key management). The legal sustainability of reserved matters clauses improves when the AoA is amended under Section 14 to incorporate the consent/quorum/class vote mechanics, enabling the company to treat them as internal governance rules rather than merely contractual expectations.

2.5 Case Laws

V.B. Rangaraj v. V.B. Gopalakrishnan¹⁵ The Supreme Court held that restrictions on transfer of shares agreed privately between shareholders are not enforceable against the company or shareholders unless such restrictions are incorporated in the Articles of Association, because shares are transferable in the manner provided by the articles and company law framework; therefore, any additional restriction dehors the articles cannot bind.

World Phone India Pvt. Ltd. v. WPI Group Inc¹⁶ The Delhi High Court emphasised that even if a shareholder agreement clause (such as affirmative voting) is not contrary to the Companies Act, it does not automatically become enforceable against the company unless incorporated into the Articles of Association; the company powers and internal decision-making must be ascertained with reference to its articles and the statute.

Messer Holdings Ltd. v. Shyam Madanmohan Ruia¹⁷ The Supreme Court examined enforceability of share transfer restrictions and recognised that, in private companies, transfer restrictions are legitimate when they are properly structured within the corporate framework; the Court dealt with the interplay of contractual arrangements and the enforceability of restrictions through company law mechanisms, reinforcing that private company share transfers are not free in the public-company sense and must operate through the statutory and constitutional structure.

Shanti Prasad Jain v. Kalinga Tubes Ltd¹⁸ The Supreme Court oppression/mismanagement analysis in these early landmark highlights that not every corporate dispute or disagreement amounts to oppression; the remedy requires meeting statutory thresholds and a showing of conduct that justifies intervention beyond ordinary corporate democracy.

Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd.¹⁹ The Supreme Court examined oppression/mismanagement in the context of rights issues and control dynamics, underscoring that directors must act for proper corporate purpose and good faith when issuing shares, and that fairness in corporate actions matters even when formal powers exist.

¹⁵ V.B. Rangaraj v. V.B. Gopalakrishnan, (1992) 1 SCC 160; (1992) 73 Comp Cas 201

¹⁶ World Phone India Pvt. Ltd. v. WPI Group Inc., USA, 2013 SCC OnLine Del 1098; (2013) 178 Comp Cas 173 (Del)

¹⁷ Messer Holdings Ltd. v. Shyam Madanmohan Ruia, (2016) 11 SCC 484; AIR 2016 SC 1948

¹⁸ Shanti Prasad Jain v. Kalinga Tubes Ltd., AIR 1965 SC 1535; (1965) 35 Comp Cas 351

¹⁹ Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd., 1981 AIR 1298; (1981) 3 SCC 333

*Dale & Carrington Invt. (P) Ltd. v. P.K. Prathapan*²⁰ The Supreme Court treated wrongful dilution and manipulative issuance as oppressive conduct and stressed that share issuances must be bona fide and for the benefit of the company, not for entrenchment or personal gain.

*Hanuman Prasad Bagri v. Bagress Cereals Pvt. Ltd*²¹ The Supreme Court explained the nature and limits of oppression/mismanagement jurisdiction and the need to satisfy statutory conditions (including the just and equitable winding-up underpinning in the older framework), which continues to influence how minority petitions are evaluated.

3 Venture-Capital Deal Structures and Shareholder Rights

3.1 Stages of startup financing and investor participation

Startup financing typically progresses from seed and pre-seed to Series A/B/C and growth rounds, with investor participation shifting from angel or early-stage funds to institutional VCs and later-stage growth investors. Each stage increases the sophistication of rights demanded because the quantum of capital and valuation exposure rises, and governance risk becomes more consequential. While the Companies Act, 2013 does not classify funding stages, it provides the statutory mechanisms through which each round is executed—most commonly private placement and preferential allotment style issuances that must comply with the statutory issuance routes, board/shareholder approvals, and corporate record-keeping requirements, ensuring that every stage of investor participation is embedded in formal corporate actions rather than informal understandings.²²

At early stages, investors frequently invest through issuances to identified persons rather than public offers, which makes Section 42 (private placement) central in venture fundraising. Section 42 governs offers or invitations to a select group and requires compliance with prescribed procedures and allotment rules, which is why term sheets and definitive documents commonly treat compliance steps as conditions precedent. In parallel, Section 62 (further issue of share capital) becomes relevant because it governs additional issuance of shares, including rights issue structures and other permissible routes, shaping how follow-on rounds and pro rata participation rights are implemented. These provisions create the legal issuance grammar around which early-stage and growth-stage participation is structured.

3.2 Equity, Preference Shares, and Convertible Instruments

VC deals in India typically use equity shares for baseline ownership and preference shares or convertible instruments for downside protection, priority economics, and negotiated control rights. The Companies Act, 2013 recognises kinds of share capital under Section 43, distinguishing equity and preference share capital, which provides the statutory base for issuing preference shares with preferential rights to dividend and/or repayment of capital. Preference shares are further governed by Section 55, which regulates issue and redemption of preference shares and requires compliance with statutory conditions and prescribed rules, making it a core provision for venture structures that rely on preference economics and structured liquidity pathways.

²⁰ Dale & Carrington Invt. (P) Ltd. v. P.K. Prathapan, (2005) 1 SCC 212

²¹ Hanuman Prasad Bagri v. Bagress Cereals Pvt. Ltd., (2001) 4 SCC 420

²² Brad Daiber, “Stages of Venture Capital Financing: Pre-seed to Series C” *Consero Global*, 2022 available at: <https://conseroglobal.com/resources/understanding-the-various-stages-of-venture-capital-financing/> (last visited May 13, 2026).

Convertible instruments are widely used because they can defer valuation, bridge financing gaps, and provide flexible conversion into equity upon defined triggers. Under company law, debentures and related instruments are governed by Section 71 of the Companies Act, 2013, which provides the statutory framework for issuing debentures and related terms, and the Companies (Share Capital and Debentures) Rules, 2014 operationalise conditions for various instruments in practice. In venture deals, conversion features are drafted to ensure they can be implemented through lawful corporate actions and consistent terms of issue, particularly because conversion typically results in share allotment, requiring the issuance route and approvals to be compliant with the Companies Act allotment and further issue framework.²³

3.3 Rights Attached to Different Classes of Shares

Rights attached to different classes of shares in venture deals generally include economic rights (dividends, liquidation priority), control rights (voting, class consents), and protection rights (anti-dilution, pre-emption, reserved matters). The Companies Act, 2013 provides the statutory anchors that make such class rights legally recognisable, especially Section 43 (kinds of share capital) and Section 47 (voting rights). Section 47 is significant because it sets the baseline for voting entitlements and thereby frames how investors design voting structures, including class-based voting and consent rights that operate as protective mechanisms in funding rounds and exits.²⁴

Variation of class rights is a key risk area in venture investing because future majorities may attempt to dilute or alter investor protections. Section 48 of the Companies Act, 2013 governs variation of shareholders' rights and prescribes the legal conditions under which rights attached to a class can be varied, typically requiring a consent mechanism consistent with the statute and the constitutional documents. In venture structures, class consent provisions in shareholder agreements are designed to mirror and operationalise Section 48 logic by requiring explicit class approval for actions that would vary economic priority or control protections, thereby giving investors a legally grounded veto against unilateral alteration of the bargain.

4 Drag-Along Rights in Venture-Capital and Startup Exits

4.1 Meaning and Purpose of Drag-Along Rights

Drag-along rights mean a contractual entitlement vested in a specified selling majority to require minority shareholders to participate in a sale of shares (or sale of control) so that the buyer receives the desired percentage—often 100%—of the company equity. The purpose is to prevent minority hold-out behaviour that can block a strategic exit and thereby undermine the liquidity expectations of investors and founders. From a legal standpoint in India, the clause must satisfy the Indian Contract Act, 1872 requirements for valid contracting (Section 10) and avoid unlawfulness (Section 23), because a drag clause compels an alienation of shares and must be framed as a lawful, conditional commercial mechanism rather than an arbitrary restraint.²⁵

²³ “Section 71. Debentures,” *Companies Act Integrated Ready Reckoner/Companies Act 2013/CAIRR* available at: <https://ca2013.com/debentures/> (last visited May 13, 2026).

²⁴ Mayashree Acharya, “Section 48 of Companies Act, 2013: Variation of Shareholders’ Rights” *ClearTax*, 17 January 2022.

²⁵ Shivani Pahuja, “Analysis of Section 10 of the Indian Contract Act, 1872” *iPleaders*, 2019 available at: <https://blog.ipleaders.in/analysis-section-10-indian-contract-act-1872/> (last visited May 13, 2026).

4.2 Commercial Rationale in Exit Transactions

The commercial rationale for drag-along rights in venture exits is that venture funds and growth investors operate on time-bound return cycles, and their value is realised primarily through liquidity events such as M&A and strategic sales. A drag clause ensures that once a qualifying majority agrees to a sale on defined terms, the transaction can close without being derailed by minority refusal, negotiation leverage, or strategic delay. This rationale is reinforced by the statutory hierarchy principle under Section 6 of the Companies Act, 2013: since private ordering is constrained by mandatory company law, the commercial design of drag clauses is oriented toward lawful implementability rather than purely theoretical coercion.

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4.3 Trigger Events for Exercise of Drag-Along Rights

Trigger events define when drag-along can be exercised, and careful definition is crucial to enforceability and fairness. Common triggers include a sale of a specified percentage of shares (sale of control), a change of control transaction, an asset sale amounting to substantially all business, a merger or scheme of arrangement, or a structured secondary sale by key shareholders. In India, triggers must be drafted with attention to how corporate actions are legally executed: if the transaction is a share sale, it must comply with Section 56 transfer procedure; if it is a scheme-based merger or arrangement, the Companies Act compromise/arrangement framework under Sections 230–232 becomes relevant; and if it is capital restructuring, Section 66 may apply.

5 Tag-Along Rights and Minority Exit Protection

5.1 Meaning and Function of Tag-Along Rights

Tag-along rights are contractual rights granted to minority shareholders to participate in a proposed sale by a controlling or significant shareholder, enabling the minority to sell a proportionate number of their shares to the same buyer on substantially the same terms. The legal foundation in India is contractual: the validity of the tag obligation depends on Section 10 of the Indian Contract Act, 1872 (agreement becomes a contract when lawful and supported by consent and consideration), and the tag mechanism must not be unlawful or opposed to public policy under Section 23. Functionally, tag rights protect minorities against being left behind when control changes hands and also discourage controllers from negotiating private benefits that are not shared with the minority.²⁷

5.2 Tag Rights as a Safeguard for Minority Shareholders

Tag rights safeguard minority shareholders by ensuring they receive liquidity opportunities whenever a controlling shareholder monetizes control or sells a significant stake. In closely held startups, minorities often cannot force an exit and may face illiquidity for long periods; tag rights counterbalance this by tying minority liquidity to majority sale events. Because tag rights are contractual, enforceability depends on contract validity under Section 10 and lawful object under Section 23 of the Indian Contract Act, 1872, and the clause is drafted to appear as a fair co-sale mechanism rather than a coercive restraint. This contractual framing also helps

²⁶ “Section 6. Act to over-ride memorandum, articles, etc.,” *Companies Act Integrated Ready Reckoner/Companies Act 2013/CAIRR* available at: <https://ca2013.com/act-to-override-memorandum-articles-etc/> (last visited May 13, 2026).

²⁷ Shivani Pahuja, “Analysis of Section 10 of the Indian Contract Act, 1872” *iPleaders*, 2019 available at: <https://blog.iplayers.in/analysis-section-10-indian-contract-act-1872/> (last visited May 13, 2026).

show that tag rights are consistent with legitimate investment protection rather than an attempt to defeat company law.²⁸

5.3 Triggering Sale Events and Notice Requirements

Triggering events determine when tag rights arise and are typically defined as a proposed sale by founders, promoter group, or any shareholder above a specified threshold, whether the sale results in change of control or simply a significant stake transfer. Because Indian law requires transfers to be implemented through statutory process, tag triggers are drafted to activate before transfer execution so that the minority can exercise the right in time. The statutory transfer framework under Section 56 of the Companies Act, 2013 is central here because the sale cannot be completed in corporate records until transfer documents are lodged and registered, and Section 58 provides an enforceable lever in private companies if registration should be refused due to non-compliance with Articles-based tag conditions.

6 Minority Protection in Startup and Venture-Capital Governance

6.1 Position of Minority Shareholders in Venture-Backed Companies

Minority shareholders in venture-backed Indian startups typically include early angels, employees holding ESOP-derived equity, small strategic investors, and even institutional investors who remain minority holders despite strong contractual protections. Their position is shaped by the private company form because most startups are incorporated as private limited companies, where the Articles of Association (AoA) restrict share transfers by definition (Companies Act, 2013, Section 2(68)) and bind the company and all members with statutory force (Section 10). This structure gives minorities formal membership rights, but practical influence depends on how effectively the AoA and shareholder agreement embed voting, transfer, and information protections without conflicting with statutory supremacy (Section 6).²⁹

6.2 Risks of Dilution, Exclusion, and Opportunistic Conduct

Dilution is the most persistent risk for minorities because startups raise successive rounds and frequently issue new securities under private placement or further issue structures. Statutorily, new issuances must follow the Companies Act issuance routes—commonly private placement under Section 42 and further issue rules under Section 62—while contractual minority protections (pre-emption, anti-dilution, class consents) must be drafted to operate through these statutory processes. If minority protections are not integrated into the issuance decision pipeline (board and shareholder approvals), minorities can be diluted through lawful issuances that are commercially unfair yet procedurally compliant, making statutory-compatibility and AoA embedding crucial.³⁰

6.3 Statutory Remedies Available to Minority Shareholders

Indian law provides minorities a structured set of statutory remedies under the Companies Act, 2013 that operate independently of (and in parallel with) shareholder agreements. The primary remedies include oppression and mismanagement relief (Sections 241 and 242), eligibility

²⁸ Bhumika Indulia, “Analysing ‘Law’ under Section 23 of the Contract Act” *SCC Times*, 2022 available at:

<https://www.scconline.com/blog/post/2022/07/23/analysing-law-under-section-23-of-the-contract-act/> (last visited May 13, 2026).

²⁹ LawSikho, “Co-Founder Agreement in India 2026: Clauses, Cases, and a Drafting Guide That Survives a Fundraise” *LawSikho*, 27 April 2026.

³⁰ “The Legal 500,” available at: <https://www.legal500.com/developments/thought-leadership/overview-of-the-corporate-governance-regulatory-framework-in-india/> (last visited May 13, 2026).

thresholds (Section 244), and class action remedies in specified circumstances (Section 245). These provisions are crucial because minority harm in startups often manifests as company-level conduct—improper allotments, exclusionary governance, diversion of assets—where contractual claims alone may be too narrow or slow, and where tribunal-backed corporate regulation can deliver structural relief.

6.4 Veto Rights and Reserved Matters as Protective Devices

Reserved matters and veto rights are protective devices that require minority investor consent for actions that can materially affect value, such as issuing new securities, altering capital structure, approving related-party transactions, changing business lines, or approving large borrowings. These rights are contractual in shareholder agreements (Indian Contract Act, 1872, Sections 10 and 23) but must be implemented through lawful corporate processes, because boards have general powers under Companies Act, 2013 Section 179 and certain actions require shareholder approval under Section 180. Effective protection therefore depends on drafting veto rights as additional internal requirements rather than attempts to override statutory approvals.

7 Conclusions and Recommendations

7.1 Conclusion

The enforceability status of shareholder agreements (SHAs) in India is best understood as layered: SHAs are enforceable primarily as contracts among their signatory parties under the Indian Contract Act, 1872, but clauses that require company action or affect corporate constitution and statutory processes are reliably enforceable only when they are consistent with the Companies Act, 2013 and are appropriately reflected in the Articles of Association (AoA). Section 10 of the Contract Act supplies the basic validity threshold for SHAs, while Section 23 limits enforceability where the object or consideration is unlawful or opposed to public policy.

This conclusion becomes more concrete when the contested SHA clauses relate to transfer restrictions and exit rights, because transfers and ownership changes are ultimately recorded through the company register and statutory transfer processes. Shares are treated as movable property under the Companies Act (Section 44), but a transfer is operationally effective only when executed and registered through the statutory mechanism in Section 56. In private companies, the refusal of registration and appeal pathway under Section 58 and the register rectification mechanism under Section 59 become crucial to enforcing transfer-related SHA clauses in practice.

Drag-along rights can be structured to ensure procedural fairness and minority protection in exit transactions by converting the drag from a bare coercive power into a regulated process with transparent triggers, parity protections, and enforceable safeguards that operate through lawful share transfer and corporate approval mechanisms. Because drag clauses compel minority alienation, their validity and defensibility must remain within contract law legality constraints under the Contract Act, especially Section 10 (valid contract) and Section 23 (lawful object/public policy).

A second fairness requirement for drag rights is the management of conflicts and controller self-dealing during exits, because coercive sale power can be abused when controllers extract

private benefits or side deals. Where founders or controlling shareholders are directors and participate in the sale process, statutory fiduciary and conflict standards become relevant in structuring safeguards. Tag-along rights effectively secure equal treatment and liquidity for minority shareholders in private companies to the extent they are drafted as enforceable transfer conditions that operate through the statutory transfer registration system and the private-company articles regime. Tag rights are less controversial than drag rights because they are optional and protective, but their effectiveness depends on timely notice, clear election periods, and proportionate participation mechanics.

However, tag rights do not automatically guarantee liquidity in every scenario, because their effectiveness depends on the existence of a sale by a controlling or significant holder and on the buyer willingness to purchase additional shares. Therefore, tag rights are strongest as an equal treatment mechanism rather than as an independent liquidity guarantee.

The most effective legal remedies for enforcing SHA rights relating to governance and share transfers in India are those that (i) preserve the status quo before irreversible corporate steps occur and (ii) directly address corporate records and governance outcomes rather than only awarding damages. In governance disputes, contractual enforcement begins with Contract Act validity (Section 10) and legality constraints (Section 23), but the practical remedy toolkit is shaped by the Specific Relief Act, 1963 and the Arbitration and Conciliation Act, 1996.

7.2 Recommendations

1. To adopt a strict AoA mirroring rule for all company-facing SHA provisions that require the company cooperation or that depend on corporate machinery. Since the AoA binds the company and all members by statutory force (Companies Act, 2013),
2. To draft exit rights (drag and tag) as complete statutory workflows rather than as single-line entitlements. Each exit clause should explicitly map triggers, notice, election mechanics, allocation rules, documentation requirements, escrow/payment mechanics, and registration steps to the Companies Act transfer regime (Section 56), and should expressly provide that the company will refuse registration of a non-compliant transfer in a private company context (Section 58), with rectification relief recognised as a remedy pathway (Section 59).
3. To strengthen fairness safeguards in drag-along clauses to reduce abuse risk and to preserve minority legitimacy. Drag clauses should require same price and substantially same terms parity, clear disclosure of transaction terms, reasonable timelines, and caps on minority warranty/indemnity exposure so that compelled sellers are not disproportionately burdened.
4. To design dilution protections around lawful issuance mechanisms and class rights, rather than relying on informal economic recalculations that may be hard to implement.
5. To draft remedies and dispute resolution as an urgency-first system because venture disputes are often time-critical. SHAs should include clear negative covenants (no issuance, no transfer, no AoA amendment, no major transaction without required consents) and explicit acknowledgment that breaches cause irreparable harm, improving the practical availability of injunction relief under the Specific Relief Act, 1963 and interim measures under Section 9 of the Arbitration and Conciliation Act, 1996 where arbitration is chosen.

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