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Critical Analysis of the Law Governing the Restriction of Transfer of Shares in Indian Private Company

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ABSTRACT

This paper examines the regulation of share transfers in Indian private companies under Section 2(68)(ii) of the Companies Act, 2013, which allows for specific restrictions on such transfers. The study critically assesses the scope of these restrictions, ranging from partial limitations to outright bans, and their alignment with the broader regulatory framework. It focuses on the impact of these restrictions on the liquidity of shares and the rights of minority shareholders, particularly when company boards deny share registration, creating barriers to share transfer. This denial raises significant concerns about fairness in corporate governance and transparency.

To provide a comprehensive analysis, the paper also explores global regulatory practices regarding share transfers in private companies, specifically comparing India's approach with those in jurisdictions like the UK and the US. These comparisons highlight the diverse mechanisms employed internationally to regulate share transfers and shed light on alternative regulatory strategies.

The study employs a doctrinal analysis complemented by a comparative approach, enabling a deeper understanding of the effectiveness of different mechanisms governing share transfers. By juxtaposing India's regulatory framework with international practices, the paper identifies potential gaps and offers insights into the impact of these regulations on corporate governance, particularly with regard to minority shareholders.

The paper concludes by proposing well-founded policy recommendations aimed at reforming the current regulatory framework in India. These recommendations focus on enhancing corporate governance, improving transparency in share transfer processes, and safeguarding the rights of minority shareholders, ensuring a more equitable and effective system for regulating share transfers in private companies.

***Keywords**: Minority Shareholders, Share transfers, corporate governance, Transparency, Indian Private companies.*

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I. INTRODUCTION

In Indian private companies, the dynamics of share transferability are determined by the intersection of regulatory openness, corporate governance, and minority shareholder rights. A prevailing regulatory framework seemingly allows restrictions on share transferability as per Section 2(68)(ii) of the Companies Act of 2013, barring complete bans, yet the implications of this stance remain enigmatic. Despite the fact that these restrictions aim to limit minority shareholders' ability to exit investments and participate actively in pivotal decisions, they can have far-reaching consequences. Further compounding the issue is the potential adversity faced by minority shareholders due to boards' denial of share registration.

It is crucial to understand the intricate interplay between regulatory policies, share transfer mechanisms, and minority shareholder rights in order to achieve equitable corporate governance. In order to comprehend these facets comprehensively, you must analyze India's regulatory approach as well as compare it with other countries' regulatory principles. This broader perspective serves as the cornerstone for the development of effective policy recommendations that nurture corporate governance and protect shareholder rights.

(A) Research Questions

1. Whether the transferability of shares in Indian Private companies is subject to an open framework that permits restrictions, except for complete bans, and how this approach affects share transfers in India?
2. Whether minority shareholders are disproportionately impacted by restrictions on the transferability of shares and the denial of registration of shares by the board of directors?
3. How do different jurisdictions regulate and facilitate share transfers in private companies?

(B) Research Objectives

- To examine the existing regulatory framework in India regarding the transferability of shares in Indian private companies and identify the disproportionate effect on minority shareholders.
- To analyze the impact of this regulatory approach on the ease of share transfers.
- To investigate cases where the denial of registration of shares by the board of directors has affected minority shareholders and explore the consequences.
- To collect and analyse data on regulatory mechanisms governing share transfers in

private companies from a variety of countries and understand their implications on business operations and minority shareholder rights.

(C) Scope and limitation

The research will primarily focus on the regulatory frameworks and practices related to share transferability in private companies in India and a selection of other countries. The countries selected for comparison may not fully represent the global diversity of regulatory approaches and the study's analysis might lean towards qualitative insights rather than quantitative analysis. This study aims to provide valuable insight into the regulatory landscape surrounding share transferability in private companies and the impact it has on minority shareholders.

(D) Research Methodology

The research methodology employed in this study is doctrinal in nature. Both Primary and secondary sources are used to collect the data, such as statutes, books, journals, articles, web sources, etc. Both critical and exploratory thinking will be involved.

II. REGULATORY FRAMEWORK FOR RESTRICTION OF SHARE TRANSFERABILITY IN INDIA

A company is classified as a 'private' or 'public' company mainly on the touchstone of transferability of its equity shares. [2] Shares, debentures, or any other interests owned by a company member shall be deemed to be movable property under Section 44 of the Companies Act, 2013 (referred to as "The Act"). As specified in the company's Articles of Association, these holdings may be transferred.[3]According to The Act, Section 2 subsection 68 (i) and (iii) defines the private company as companies having a minimum paid-up share capital as may be prescribed, and which by its articles, i) restricts the right to transfer its shares[4]; iii) prohibits any invitation to the public to subscribe for any securities of the company[5]. It mandatorily requires private companies to impose restrictions on the transfer of shares through its Article of Association. However, the Act is silent and doesn't prescribe the nature or mode of restrictions to be imposed on the transfer of shares. However, restrictions on the transferability of shares in a Private Company can be divided into 2 categories: Class 1 restrictions – Blanket restrictions on all the shareholders present and future; Class 2 Restrictions- Restrictions imposed between specific shareholders in relation to the transfer of specified shares.[6]

[2] N.Ramanathan, 'Free transferability of shares and Joint venture agreements', (2011) 109 SCL 63 (MAG)
[3] The Companies Act, 2013, Sec.44.
[4] The Companies Act, 2013, Sec.2(68)(i)
[5] The Companies Act, 2013, Sec.2(68)(iii)
[6] Rushab S. Dhandokia, 'Enforcement of Contractual Restrictions on Transfer of Shares', (2013) 40 taxmann.com

Cases such as V.B. Ranagaraj vs. V.B. Gopalakrishnan and Others, Court observed that under both the Companies Act and the Transfer of Property Act of 1882, shares possess transferability akin to other movable assets. The sole limitation on share transfers within a company are those mentioned in the Articles of Association (AOA) and it is binding not only on the company but also its shareholders. Any restrictions not present in the AOA hold on legit weight, compelling neither the company nor its shareholders. Hence, a purchaser of shares is entitled to registration without any obstacle, unless it aligns with the provisions of AOA.[7] A share agreement is not binding and it cannot be enforced if neither the AOA were amended to include the essence of agreement nor the resolutions passed refer to it.[8] Shares in a company are an item of property that is freely alienable and prima facie the shareholder has the right to transfer his shares when and whom he/she pleases but in the absence of explicit restrictions under its AOA.[9] When evaluating the extent of such transfer restrictions, a strict interpretation should be adopted, result of it when a restriction is capable of dual meanings, the less restrictive interpretation will be taken into consideration by the Court.[10] The restriction must be explicitly stated or arise out of necessity and any ambiguous clause in the AOA is construed in Favor of the shareholder's intent to transfer.[11]

With regards to, the Class 2 restriction on shares, the M.S. Madhusoodhanan & Anr vs Kerala Kamumudi Pvt. Ltd plays a key role. Distinguishing these from the Class 1 restrictions,[12] the Supreme Court held that when an agreement is made among specific shareholders regarding the transfer of identified shares, it doesn't inherently impose a restriction on the transferability of shares. Most significantly, it was established that neither the company nor the other shareholders need to be involved as parties to the agreement when there is a contractual limitation on the transfer of shares stipulated in agreements among specific shareholders pertaining to the transfer of designated shares. Also, this category of restrictions can be legally enforced even if they aren't explicitly included in the company's AOA. [13]

The provisions outlined in the Articles of a Company to uphold the core characteristics of a private company as defined in Section 3(1)(iii) of the Companies Act, 1956 (currently Section

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417.

[7] V.B. Rangaraj vs. V.B. Gopalakrishnan and Others, AIR 1992 SC 453.

[8] S.P. Jain v. Kalinga Tubes Ltd, 1965 AIR 1535.

[9] Re Swaledale Cleaners Ltd, (1968) 1 All ER 1132 & Tett v. Phoneix Property and Investment Co. Ltd and Ors. 1986 2 BCC99, 140.

[10] Penington, 'Company Law' (6th Ed.).

[11] Gore-Browne, 'Chapter 16 on Companies'(43rd Ed.); Palmers's 'Company Law' (24th Ed.)

[12] Rushab.S Dhandokia, ' Enforcement of Contractual Restrictions on Transfer of Shares', (2013) 40 taxmann.com 417.

[13] M.S. Madhusoodhan & Anr vs Kerala Kaumudi Pvt.Ltd & Ors (2013) 46 SCL 695 (SC).

2(68)(i) of the Companies Act, 2013) will persist in governing the company's operations, even if it operates as a subsidiary of a public company. The Delhi Company Law Board affirmed that a subsidiary's status as a public company, as per Section 3(1)(iv)(c) of the Companies Act, 1956 (now Section 2(71) Proviso of the Companies Act, 2013), does not automatically alter the fundamental attributes of a private company as defined in Section 2(68)(i) of the Companies Act, 1956 (now Section 2(68)(i) of the Companies Act, 2013)[14]. Therefore, as a well-established principle, "what is not there in the law cannot be imported into the law". [15]Therefore, even when a private company becomes a public company by virtue of being a subsidiary public company may continue to operate under the restrictions outlined in its AOA, remaining legally a private company, name it as a private company, not entitled to the privileges of a private company because of its parent company's public interest status. Also, 200 is the absolute maximum number of members.[16]

The restriction on the transfer of shares should not be interpreted as a complete ban on the transfer. Restrictions as held by the Court of Law means any reasonable restriction that would provide control to the company over share transferability. The restriction that puts up a total ban upon the transfer of shares or altogether rules out a shareholder from transferring his/her shares is invalid and could be struck down.[17] A total ban on the transferability of shares is violative of Article 44 of the Companies Act, 2013,[18] and Section 6[19] of the Transfer of Property Act.

However, the restriction on the transfer of shares in an Indian Private Company is not applicable if a member transfers his/her shares to his/her representative/s and legal heirs or representative may acquire the registration of shares in their name in case of death of the shareholder. The restriction is on the shares and transferability is one of its properties. Therefore, the restriction will not apply to shares in the death of the shareholder.

The two usual forms of Restriction on the share transfer by the company are as follows-

- Right of Pre-Emption
- Powers of the Board of Directors to refuse to register a transfer of shares

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[14] Hillcrest Reality Sdn. Bhd. Vs Hotel Queen Road Pvt. Ltd. And Ors, 2006 71 SCL 41 CLB, para 36.
[15] CS Divesh Goyal, ' Deemed Public Company-Subsidiary of Public Limited Companies', https://taxguru.in/company-law/deemed-public-company-subsidiary-of-public-limited-companies.html?cv=1.
[16] Divesh Goyal, 'Deemed Public Company- Subsidiary of Public Limited Companies', pp 3, https://taxguru.in/company-law/deemed-public-company-subsidiary-of-public-limited-companies.html
[17] Chiranji Lal Jasrasaria and Anr v. Mahabir Dhelia and Ors, AIR 1966 Gau 48.
[18] The Companies Act, Sec.44, 2013.
[19] The Transfer of Property Act, Sec.6, 1882.

The right of pre-emption means that a pre-emptor has two rights, i.e., i) inherent or primary right to the offer of a thing about to be sold[20] and ii) a secondary or remedial right to follow the things sold[21] and it is basically a claim of substitution in place of the initial buyer. Therefore, it is not a right to the thing sold but a right to the offer of a thing about to be sold.[22] This clause generally denotes that when a member wishes to sell the person's shares (full or a portion) the member shall first offer the co-members of the company for purchase of the shares, at a price calculated with a formula mentioned in the AOA or at a fair and reasonable price which are valued by the competent officers such as Company Auditor or by Board of Directors. The transferor shall transfer the shares to the proposed transferee only if the other members do not exercise their right of pre-emption. This creates an ambiguity on who has the upper hand in the right of pre-emption. The preference being the core essence of this right, the proposed transferee must have a superior right to that of the transferor or the other members substituted in the place.[23]

The pre-emption clause serves a crucial role in preventing the transfer of shares to unsuitable individuals. It grants existing shareholders the primary opportunity to acquire shares that are being transferred, thereby safeguarding the control and authority over shares. Various forms of pre-emption clauses exist, including offering shares to current shareholders first, allowing the transferor to choose the recipient shareholder, and other similar scenarios.

Legal decisions have consistently upheld the validity of pre-emption clauses within the articles of private companies. In English Courts, it's been established that by-laws imposing unreasonable restrictions on share transfers are generally deemed invalid unless explicitly sanctioned by specific legislation.[24] Conversely, reasonable restrictions outlined in by-laws tend to be considered valid.[25]

An example of a reasonable restriction is a by-law that requires shares to be offered to existing shareholders[26] or the company itself before being sold to external parties. This practice has gained recognition from authorities as reasonable[27]. Even if such a by-law is challenged as an improper exercise of corporate authority, it remains binding as a contract on the stakeholders

[20] Dhani Nath v. Budhu 136 P.R. 1894, p.5ii.
[21] Gobind Dayal v. Inayatullah
[22] Bishan Singh & Others vs Khazan Singh & Anr, 1958 AIR 838,pp 5.
[23] Bishan Singh & Others vs Khazan Singh & Anr, 1958 AIR 838,pp 6.
[24] 18 C.J.S., Corporations, Sec. 39IC, d (1939).
[25] 8 FLETCHER, Cyc Corp., Sec. 4205 (1931).
[26] Oppenheim Collins & Co., Inc v. Beir (1946).
[27] Barrett v. King, 181 Mass; Chafee v. Farmers Co-op, Elevator Co; Baumohl v. Goldstein.

who collectively adopted it.[28]

(A) Powers of the Board of Directors to refuse to register a transfer of shares

This provides discretion to the BOD regarding the acceptance and registration of share transfers in a company. The nature of this power is fiduciary and shall be undertaken in good faith and benefit of the company and strictly not for ulterior purposes. The burden of proving lies on the alleging party who propounds that directors have wrongfully rejected or objected to transferring shares without any good faith. The correct maintenance of a share register is of paramount importance under the Companies Act, 1956 because the key determinant of a share ownership under Indian law is that a transferee receives beneficial title to any shares bought[29], only the person whose name is entered on the register is regarded as a member and receive the dividend, etc. It is binding on the company only upon entry into the register. Section 111 (which corresponds to Section 58 of the Companies Act 2013) pertains to both private companies and entities categorized as deemed public companies under Section 43A of the Companies Act 1956. Within Section 58, it is stipulated that if a private company declines to record a specific share transfer—whether via a power granted in its articles or through other means—it is obligated to furnish a notice of rejection to both the transferor and the transferee within 30 days. This communication should include the rationale behind the refusal. Should either party feel aggrieved, they possess the right to appeal to the Company Law Board (*now known as the NLCT). In many instances, the articles of a private company might confer complete discretion upon its directors to reject the registration of share transfer.

It was also held by the Court of Law that it is not advisable for the Court to substitute its opinion for the Board's because it's based on the belief that the Board of Directors will act in a Bonafede manner in the best interest of the company, hence court's intervention on the bona fide exercise of the Board's discretion isn't justified.[30] On the other hand, this notion cannot be left unchallenged. There is no guarantee that the Board of Directors will always act and exercise power of refusal under good faith or bona fide. It may abuse its power and refuse to register the transfer of shares based on personal biases such as close ties- family, friendship, personal hostility towards a transferee keeping the interest of the company as a defense.

Such acts will affect the interest and well-being of the company, stakeholders, and genuine transferees. Thus, Section 58 (Section 111 of the 1956 Act) ensures to prevention of this abuse

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[28] New England Trust Co. V. Abbott (1894); Model Clothing House v. Dickinson (1920); Sterling Loan & Investment Co. v. Litel (1924).
[29] LIC v. Escorts (1986) 1 SCC 264.
[30] Balwant Transport Company v. Deshpande

by directors and seeks to protect the interest of the genuine and bona fide transferees and shareholders. An appeal can lie to the Tribunal on the following grounds i) Whether the BOD in pursuance of exercising their power acted oppressively, capriciously, or in a malafide manner? ii) Whether BOD has disclosed sufficient reason to justify its refusal? iii) Whether the board has exercised its power of refusal based on irrelevant considerations or grounds that are not specified in the AOA.[31] The director must take only the relevant considerations into consideration on their true construction permit as mentioned in their Articles. A blanket ban on admission on 'example other companies' was beyond the authority vested in the Boards by the AOA wherein it is stated in the Articles to exclude only undesirable persons. The Court laid down the principle that if the BOD exceeds the power of refusal as granted in AOA the Court would strike the orders restraining the register of transfer of shares.[32]

Henceforth, it must be crucially observed that this Act doesn't specify the exact form of restriction rather it is kept open to the framers of the Article of Association to design these restrictions reasonably and make clear the scope and extent of the restriction to be imposed on the Articles.

III. MINORITY SHAREHOLDER'S DISPROPORTIONATE IMPACT

As discussed earlier in the previous chapter, Shareholders are persons who hold shares in a company by virtue of which are deemed to be a member of the company.[33] The Act does not specify the definition of majority shareholding and minority shareholding, it could be understood from the literal meaning that when a shareholder has a substantial portion of a share of the company (i.e., above 50 % wholly or jointly) and has exquisite power of decision making through influencing others and higher voting rights. Whereas minority shareholders are those shareholders holding not more than 10% shares for the limited purpose of agitating their right before the appropriate forum[34] voting rights in a company. The number of shares held, the voting rights, and the degree of control are considered a distinguishing factor between the two classes.[35]

The challenges faced by minority shareholders come to the forefront when the directors of Private companies contain significant discretionary power on the subject of approval and

[31] Harinagar Sugar Mills v. Shyam Sunder.
[32] Master Silk Mills Private Limited v. D.H. Mehta
[33] The Companies Act, Sec. 2 (55), 2013.
[34] Ministry of Corporate Affairs, 'Report of the Expert Committee on Company Law- Minority Interest', point 2.2. https://www.mca.gov.in/content/mca/global/en/data-and-reports/reports/other-reports/report-company-law/minority-interest.html
[35] Anirudh Grover, 'The agency problem of majority v. minority shareholders: the way forward in India', (2021) 127 taxmann.com 752 (Article).

register of transfer of shares. This becomes concerning as minority shareholders, who have contributed a sizeable portion of their capital to the company could find themselves unable to recover their investment without obtaining consent from the parties with whom they might be at loggerheads. While it is significant for BOD to have a certain degree of discretionary power, allowing them absolute authority is unadvisable as it would lead to misuse of power.[36] On the other hand, it's possible that the shareholder who disagrees may be adopting an irrational position. This shareholder could perhaps demand an inflated price for their shares or force an unfavorable new shareholder(transferee) on the company if the legal system permitted them to continuously sue the company's directors and scrutinize each and every board decision.

The Court in the case of Charles Forte Investments, Ltd v. Amanda[37] had made it clear that the court will intervene only if there is clear evidence of directors acting in bad faith or contrary to the AOA. In situations where the directors have a wide scope of discretion, as is the case here, the court will not use inquiries to uncover the reason behind the BOD choices. In this case, the minority shareholder threatened to petition the Court to winding up of the company. This may cause grave harm to the company by attacking its reputation, subsequently affecting its market share value. Henceforth, the petition presented not bonafide and as a means of putting pressure on the company was not entertained. Moreover, minority shareholders cannot call for the winding up of the company when there is just a mere lack of confidence between them.[38]

Minority shareholders often found themselves at a disadvantage as they couldn't take legal action on their own against decisions made by the majority shareholders or the BOD. Foss v. Harbottle established the rule that only the company itself, not individual shareholders can bring a claim in the instances where a wrong is meted out to the company. [39]known as the Proper plaintiff rule. The second principle established in this ruling is known as the Majority rule. According to this rule, the determinations made by the majority shareholders hold legal authority over the company, and the court would refrain from intervening in situations where an error could be rectified through the endorsement of the majority shareholders.[40]

The rule established in the Foss v. Harbottle case does not apply in the current context to measures made by majority shareholders with the intention of unfairly burdening, silencing, or harming minority shareholders. This means that the rule is not applicable in situations involving

[36] L.S. Sealey, 'Private Company. Restrictions on Transfer of Shares. Members' Remedies', Cambridge Law Journal, vol 21, No.2 (1963).
[37] Charles Forte Investments, Ltd. V. Amanda (1963) 2 All E.R. 940.
[38] Tata Consultancy Services Limited v. Cyrus Investment Pvt.Ltd.&Ors.
[39] Foss v. Harbottle (1843) 2 Hare 461, 67 ER 189.
[40] Varnika Taya,'Rule in Foss vs Harbottle and Personal Rights of members', taxguru.

"*beyond authorized powers and unlawful actions; violation of trust responsibilities; fraudulent or unfair treatment of minority shareholders; alteration of rights for specific groups; arrangements or settlements; unfair treatment and mismanagement; entitlements of shareholders who oppose takeover offers; and collective legal actions*."

In the case of Lee v. Lee's Air Farming Ltd, the concept of "fraud on minority was recognized" wherein the majority shareholder used his control to remove the minority shareholder from the board. Thereafter, a resolution for winding up the company resulted in a loss of investment for the minority shareholder. The Court found that the majority shareholder had breached his fiduciary duty and used his control for an improper purpose, leading to a decision that protected the rights of the minority shareholder.[41]

In both the cases of Daniels v. Daniels[42] and Greenhalgh v. Aderne Cinemas Ltd[43], the board refused to register the share transfers without proper justification. The court held that the board's decision was oppressive and unfairly prejudicial to the minority shareholders. The Court upheld that the board decision should be made in good faith, fair, and equitable manner along with proper reasons.

The Court in the case of Shanti Prasad Jain v. Kalinga Tubes[44] further highlighted that the refusal to register a transfer of shares would amount to oppression if its done unfairly and disregards the interest of the shareholders. The Court remarked that the majority shareholders and directors owe a duty not only to the company as a whole but also to the minority shareholders. The decision to refuse to register shares should be reasonable and objective. No means of arbitrariness or malafide intention to oppress minority shareholders should be present.

Application of drag and tag clauses: These two clauses serve as protective measures for shareholders when a company is being sold or wound up. The drag clause is designed to safeguard the majority shareholders within a private limited company, while the tag along clause (also referred to as co-sale rights) is aimed at safeguarding the interests of minority shareholders. Should the majority shareholders choose to sell the company,[45] this could potentially entail a requirement for minority shareholders to sell their shares as well, thus becoming part of the overall sale process. Conversely, in a scenario where majority shareholders

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[41] Lee v Lee's Air Farming Ltd (1960) UKPC 33.
[42] Daniels v. Daniels (1978)
[43] Greenhalgh v. Arderne Cinemas Ltd (1946)
[44] Shanti Prasad v. Kalinga Tubes Ltd (AIR 1965 SC 1535)
[45] Summer Slater, 'Restrictions and rules on how to transfer shares within a private limited company' https://seedformations.co.uk/articles/restrictions-and-rules-on-how-to-transfer-shares-within-a-private-limited-company/ (2022).

decide to sell their own shares, the tag along clause permits minority shareholders to align themselves with this decision, enabling them to sell their shares under the same terms and conditions as the majority shareholders.[46]

These clauses are essentially contractual in nature and are not governed by the Indian Companies Act. In the case of Vodafone International Holding BV v. The Union of India,[47] the Supreme Court underscored that both tag-along and drag-along rights hold legal significance as per contractual arrangements, irrespective of whether they are explicitly or implicitly mentioned in the company's Articles of Association. It is crucial to note that these agreements must not contradict any other provisions within the Articles of Association.

It is also important to keep in mind that drag-along clauses may come with pre-emptive rights clauses, giving minority shareholders the option to purchase the entire business rather than being required to cooperate with a new third-party buyer.[48]

Delhi High Court[49] has categorically held that if a company's Article of Association does not address the presence of an affirmative vote, it's not feasible to establish that a provision in a shareholder agreement would be legally obligatory without being formally included in the AOA. Henceforth, the shareholder agreement doesn't hold significance until and unless the provision supporting the same is included in the AoA.

In conclusion, there are many complex issues that minority shareholders must deal with in the area of corporate management. The dynamic exchanges between majority and minority shareholders, as well as their rights and the board of directors' discretion, greatly influence shareholder interactions. Even though the Companies Act does not explicitly define majority and minority shares, their effects are significant. Although essential for preserving corporate stability, the board of directors' discretionary power over share transfers is subject to abuse, which could have a negative impact on minority shareholders. However, India's court system has attempted to find a balance by getting involved where there is oppression, bad faith, or disregard for the rights of minorities.

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[46] Ibid.

[47] Vodafone International Holdings BV v. The Union of India, (2012) 6 SCC 613.

[48] Sushil Kumar Antal, 'Drag Along and Tag Along provisions under shareholders' agreement and their enforceability', tax guru.

[49] World Phone India Pvt. Ltd v. WPI Group, (2013) 178 Comp Cas 173 (Del).

IV. Regulation of share transfers in private companies under different jurisdictions

(A) In the United States of America

Businesses have various methods of securing funding, one of which is by issuing investment instruments known as securities. The oversight of these securities, including those offered by private enterprises, falls under the jurisdiction of the U.S. Securities and Exchange Commission (SEC). According to federal securities regulations, any instance of offering or selling securities, even to a single individual, must adhere to either SEC registration or a registration exemption. This requirement applies universally, encompassing companies of any magnitude, whether they are privately held or publicly traded. Additionally, it involves transactions involving individuals from acquaintances to family members to angel investors to venture capital firms.[50]

In Singapore

In Singapore, shares and debentures hold the status of movable property, and their transferability is governed by the provisions outlined in the Companies Act and the company's established protocols. A distinctive attribute of a private limited company lies in the transferability of its shares. The process of transferring shares in a Singaporean private limited company involves various parties, including the initial shareholders (subscribers to the memorandum), legal representatives in cases of deceased shareholders, the transferor, transferee, and the company itself. Essential documents include an instrument of transfer, which constitutes an agreement between the transferor and transferee; a notice of transfer, submitted to ACRA for updating the electronic register of the company's members; a transfer request sent to the board to seek approval for the share transfer; and the issuance of a share certificate along with the payment of stamp duty.

The transfer of shares in a private limited company follows three key procedures:

Pre-Application Procedure: This initial step involves crafting a formal agreement for the share transfer, with both parties signing the instrument of transfer to initiate the process. When dealing with a corporate entity, the use of the common seal is customary for validation. Determining the sale price of the share is a crucial consideration. The transferor bears the responsibility of engaging with the board to ascertain any restrictions on share transfers between shareholders and to address pre-emptive rights if applicable.

[50] U.S. Securities and Exchange Commission, 'What does the SEC have to do with my private company', https://www.sec.gov/education/capitalraising/building-blocks/sec-have-do-my-private-company.

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Application Stage: During this phase, the transferor composes a transfer request to be submitted to the board of directors. The board has a 30-day window to approve or decline the request. In certain situations, the board retains the right to reject the request, such as instances involving conflicts or disagreements among company shareholders. Alternatively, share transfer authorization can be achieved by passing a resolution at the annual meeting instead of relying on board approval. Subsequent to this, stamp duty must be paid to IRAS within 14 days from the execution of the Instrument of Transfer.

Post-Application Stage: In this final stage, the transferor cancels the existing share certificate, updates ACRA through a notice of transfer, and subsequently receives a new share certificate within 30 days. The company secretary ensures these updates are accurately reflected.[51]

(B) In China

Article 138 of the Companies Law of the People's Republic of China states that "Shares held by shareholders may be transferred in accordance with the law".[52]

For a variety of reasons, shareholders frequently try to change the share structure of their Chinese subsidiary. This can entail changing how shares are distributed among current shareholders or giving ownership to a different party. Any modifications to the share structure in China must be submitted formally to the Administration for Industry and Commerce (AIC) in order to be valid. Share ownership issues may arise if these formalities are neglected, especially during share transfers. There are several circumstances in which transferring shares is permitted:

Transfer to Third Party: A shareholder needs the approval of the majority shareholders in order to transfer their firm shares to a third party. Other shareholders must receive written notice, and if they don't reply within 30 days, the transfer is deemed to have been granted. Majority Shareholders' Opposition: If the majority of shareholders are against the transfer of the shares, they must buy them. Failure to purchase the shares is interpreted as approval of the transfer. The shares may be purchased by other shareholders who exercise their right of first refusal. If more than one shareholder wants this privilege, they must agree on purchase percentages based on capital contributions or assume contributions will be made at the time of transfer.

Articles of Association May Regulate Share Transfers: The articles of association of the firm may regulate share transfers, however not all provisions are recognized in actual transactions.

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[51] Transfer of Shares in Singapore Private Limited Company- A beginner's Guide, BBCIncorp, https://bbcincorp.com/sg/articles/transfer-of-shares-in-singapore-private-limited-company.

[52] Company Law of the People's Republic of China, Ch V, Sec 2, Transfer of Shares,2005.

These provisions must be "reasonable" and shouldn't disproportionately restrict or outlaw the transfer of shares to third parties. Share Transfer by People's Court: The People's Court has the authority to compel share transfers. The right of first refusal belongs to the other shareholders. This privilege shall be deemed waived if not utilized within twenty days.

The corporation is required to annul the original shareholder's capital contribution certificate and issue a new one to the new shareholder when share transfers are finished. In order to reflect new shareholders and their contributions, changes must also be made to the articles of association and the membership register. These changes must be reported to the AIC. Conflicts over share ownership may arise if these procedures are not followed. As a result, businesses must not shirk their administrative duties.[53]

V. Conclusion and suggestion

In conclusion, the findings pertaining to the first research question are that Section 2 (68) (ii) of the Companies Act, 2013, provides for mandatory restriction on the transfer of shares to be included in the Article of Association. The ambiguity arises as to what sort of restrictions could be imposed on the transferability of shares. It is clear from the purpose and wordings of the section that it doesn't uphold the idea of the prohibition on the transfer of shares but rather a reasonable restriction protecting the interest of the shareholders in a private company in order to facilitate confidentiality, cooperation, and efficient functioning overall. The two types of restrictions accepted in most jurisdictions are the pre-emption rights and rights of the Board of Directors in refusal of register of transfer of shares. As there is no clear-cut restriction propounded by the legislation, judicial decisions, and precedents evolved over the years and are used to assess the cases' facts by fact.

The finding to the second research question is affirmative that the minority shareholders are disproportionately impacted by the restriction on transferability of shares and discretionary power vested on the Board of Directors. It happens both ways. The majority shareholders along with the directors try to oppress and dominate the overall decision-making, and minority shareholder rights in the company. This eventually puts minority shareholders in a disadvantaged position as the recovery of their capital contributed is on the whims and fancies of the majority shareholder whose consent is of prime importance if needed to recover the amount. On the other hand, Minority shareholders are using the liquidation or winding up the process as bait to threaten the management of the company and its shareholders.

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[53] Roberto Gilardino, 'China: Share Transfer in China-What you need to know', Mondaq, 2022.

Finally, To regulate the transfer of shares in private corporations, several jurisdictions have created their own frameworks, each with its own needs and laws. This regulatory environment is essential for protecting the rights and interests of majority and minority shareholders while preserving the stability and integrity of the business. Although the legal frameworks in different countries, including the United States, Singapore, and China, vary, they all aim to ensure the transparency, equity, and effective governance of share transfers. Even with privately held businesses, the U.S. Securities and Exchange Commission monitors securities offers to verify compliance with registration or exemption criteria. The Companies Act, which governs transfer procedures in Singapore, stipulates that share transfers must be documented and approved by the board. Share transfers in China are subject to the approval of the majority of shareholders, compliance with the articles of organization, and, in some circumstances, possible involvement of the People's Court.

In summary, the regulation of share transfers achieves a delicate balancing act between giving businesses the flexibility they require to operate profitably and safeguarding the interests of shareholders, particularly the minority. To guarantee that transfers are carried out transparently, equitably, and in line with the company's best interests, a combination of legal clauses, contractual agreements, and judicial rulings is used. These rules will be crucial in preserving trust, accountability, and stability within private enterprises as the corporate landscape continues to change.

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VI. Bibliography

(A) Statute-

1. Companies Act, 2013
2. The Securities and Exchange Board of India Act, 1992

(B) Books-

1. Y.V. Chandrachud (2004), A. Ramaiya Guide to Companies Act, Lexisnexis Wadhwa, Nagpur.
2. Paul L. Davies and Sarah Worthington (2016), Gower and Davies Principles of Modern Company Law, Sweet and Maxwell, London.
3. A.A. Berle and G.C. Means (1991), The Modern Corporation and Private Property, Transactional Publishers.

(C) Articles –

1. Grosboll, John E. "Corporations: Transfer of Shares: Restriction by Shareholders' Agreement." *Michigan Law Review*, vol. 45, no. 6, 1947, pp. 782–83. *JSTOR*.
2. "Restrictions upon the Transferability of Shares of Stock." *Harvard Law Review*, vol. 42, no. 4, 1929, pp. 555–59. *JSTOR*.
3. Sealy, L. S. "Private Company. Restrictions on Transfer of Shares. Member's Remedies." *The Cambridge Law Journal*, vol. 21, no. 2, 1963, pp. 211–13. *JSTOR*.

(D) Case Laws-

1. *CIT (Central), Calcutta Vs. Standard Vacuum Oil Co, as reported in AIR 1966 SC 1393*
2. *V. B. Rangaraj vs. V.B. Gopalakrishnan and Ors, as reported in CDJ 1991 SC 464*
3. *S.P. Jain vs. Kalinga Tubes Ltd, 1965 AIR (SC) 1535.*
4. *Bajaj Auto Ltd vs Western Maharashtra Development Corporation Limited*
5. *Greenhalgh v. Arderne Cinemas Ltd., (1950) 2 All ER 1120*
6. *Berry and Stewart v. Tottenham Hotspur Football and Athletic Co. Ltd., 1936-3 All ER 554 (E)*
7. *Hemanigiri Finance & Leasing (P.) Ltd v. Tamilnad Mercantile Bank Ltd. 1996 86 CompCas 875 CLB*
8. *Harinagar Sugar Mills v. Shyam Sunder reported in 1961 AIR 1969*

9. *Rathi vs. Annamalayar Textiles (P) Ltd, as reported in 1999 32 CLA 56*
10. *Cruickshank Co. Ltd vs. Stridewell Leather Pvt. Ltd, (1996) 86 CompCas 439 CLB*
11. *Tarlok Chand Khanna v. Raj Kumar Kapoor, (1983) 54 Com. Cas. 12 (Delhi) among others.*
12. Hillcrest Reality Sdn. Bhd. Vs Hotel Queen Road Pvt. Ltd. And Ors, 2006 71 SCL 41 CLB, para 36.
13. [1] Dhani Nath v. Budhu 136 P.R. 1894, p.5ii.
14. Gobind Dayal v. Inayatullah
15. Bishan Singh & Others vs Khazan Singh & Anr, 1958 AIR 838,pp 5.
16. C.J.S., Corporations, Sec. 39IC, d (1939).
17. 8 FLETCHER, Cyc Corp., Sec. 4205 (1931).
18. Oppenheim Collins & Co., Inc v. Beir (1946).
19. Barrett v. King, 181 Mass; Chafee v. Farmers Co-op, Elevator Co; Baumohl v. Goldstein.
20. New England Trust Co. V. Abbott (1894); Model Clothing House v. Dickinson (1920); Sterling Loan & Investment Co. v. Litel (1924).
21. LIC v. Escorts (1986) 1 SCC 264.
22. Balwant Transport Company v. Deshpande
23. Harinagar Sugar Mills v. Shyam Sunder.
24. Master Silk Mills Private Limited v. D.H. Mehta
25. Charles Forte Investments, Ltd. V. Amanda (1963) 2 All E.R. 940.
26. Tata Consultancy Services Limited v. Cyrus Investment Pvt.Ltd.&Ors.
27. Foss v. Harbottle (1843) 2 Hare 461, 67 ER 189.
28. Varnika Taya,'Rule in Foss vs Harbottle and Personal Rights of members', taxguru.
29. Lee v Lee's Air Farming Ltd (1960) UKPC 33.
30. Daniels v. Daniels (1978)
31. Shanti Prasad v. Kalinga Tubes Ltd (AIR 1965 SC 1535)
32. Vodafone International Holdings BV v. The Union of India, (2012) 6 SCC 613.

33. World Phone India Pvt. Ltd v. WPI Group, (2013) 178 Comp Cas 173 (Del).

(E) Websites-

1. https://www.mondaq.com/india/directors-and-officers/102852/restrictions-on-transferability-of-shares
2. https://www.mondaq.com/india/shareholders/603222/is-restriction-on-transfer-of-shares-valid-under-companies-act-2013
3. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2017313
4. https://corporate.cyrilamarchandblogs.com/2018/09/share-transfers-can-company-say-no/
5. https://kluwerlawonline.com/journalarticle/Business+Law+Review/35.3/BULA2014015
6. All Answers ltd, 'Restriction on Transfer of Shares within the Indian Companies Act 1956' (Lawteacher.net, August 2023) <https://www.lawteacher.net/free-law-essays/finance-law/restriction-on-transfer-of-shares.php?vref=1> accessed 6 August 2023

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