AFFIRMATIVE VOTING RIGHTS AND CORPORATE CONTROL: LESSONS FROM THE TATA-MISTRY CASE

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"Power tends to corrupt, and absolute power corrupts absolutely."

— Lord Acton

ABSTRACT

Affirmative voting rights provide certain investors, typically minority shareholders, with the ability to veto or influence major corporate decisions. These rights may be exercised either directly by investors (through authorised representatives at shareholders' meetings) or indirectly through their nominated directors on the board. This paper examines the impact of these rights on corporate control through the lens of the *Tata Sons v. Cyrus Mistry case*. While affirmative voting rights are typically used as a minority protection tool, the Tata case presents a unique scenario where they were exercised by majority shareholders to retain control over board decisions. In that conflict, Tata Trusts employed affirmative voting rights in the Articles of Association to maintain substantial control over board choices, which created concerns for minority shareholders such as the Shapoorji Pallonji Group. Although the Supreme Court upheld these rights, its decision has set off controversies regarding their implications on board autonomy, corporate democracy, and minority interest protection in Indian company law. This article contends that the Court overemphasized contractual freedom and underemphasized more general governance values such as fairness and accountability. It concludes with a query whether India's legal system requires reforms, either judicial or legislative, to prevent these rights from being used as instruments for accumulating power and not good governance.

Introduction

In corporate governance, affirmative voting rights have drawn significant interest, especially in nations such as India where ownership of corporate assets is concentrated in the hands of a few individuals. Such rights, usually offered in articles of association or shareholder agreements, grant certain shareholders, or their nominee directors, the authority to make significant corporate decisions, even to veto board decisions. Though initially considered to safeguard the interests of key stakeholders like family founders or institutional investors, such rights in some situations are in fact adverse to the interests of board autonomy and against corporate democracy principles. The case of *Tata Consultancy Services Ltd. v. Cyrus Investments Pvt. Ltd.* [1]is a much-publicized case wherein such problems have come into sharp focus. There, the company's controlling shareholder Tata Trusts, utilized affirmative voting rights to make crucial decisions in Tata Sons, and that triggered questions of a bitter war with minority shareholders, especially the Shapoorji Pallonji Group. Such an uproar generated serious questions regarding the effect of such rights on the exercise of power within a company and safeguarding minority shareholder interests.

Although the Supreme Court decided in favor of contractual freedom and enforceability of affirmative voting rights, it left such fundamental questions unanswered as fairness and corporate board governance standards. This article is a critical analysis of the Court's approach in the sense that by giving more importance to contractual freedom, the decision undermines key elements of equality and accountability. Pondering on academic research and comparative consideration of law, this article reflects on the extent to which Indian corporate legislation reaches towards maximizing the potential of abuse of such rights. Finally, the paper urges the adoption of necessary reform so that differences of power at the board level may be attuned to other social values of equality, openness, and equality of power.

Literature review

Affirmative voting rights tend to be presented in terms of being devices to protect the interests of dominant shareholders. Recently though, they have been challenged on their impacts on board governance and on minority shareholders' rights. *Afsharipour* warns that in India's highly concentrated ownership-based corporate setting, these rights can be employed as a device by

[1] *Tata Consultancy Services Limited v Cyrus Investments Pvt Ltd & Ors (2021) 9 SCC 449.*

which controlling shareholders entrench themselves.[2] *Balasubramanian* supports this concern by highlighting that nominee directors with veto power may undermine the independence of the board and interrupt the balance of control.[3]Yet another complexity is the vagueness in identifying what will constitute as 'control' under the Indian law. *Sethi, Dhir and Agarwal,* identify inconsistencies among the Companies Act, the SEBI Takeover Code and the Competition Act, which make it difficult to determine when positive rights constitute control.[4] In contrast, writers like *Varottil* note that UK and US jurisdictions have better definitions of control, reducing uncertainty and regulatory overlap.[5]Together, these analyses suggest that while affirmative voting rights may be thought of as protective policies, they can be used instead for marginalising minority shareholders and entrenching power at the top. This article builds on these criticisms by examining the *Tata-Mistry dispute* in detail- a situation where such rights were applied by the judiciary in disregard of their overall governance implications. With the theory now in place, the next section discusses how such issues unfolded in practice.

Background to the Tata-Mistry Dispute

The corporate structure of Tata Sons reflected a strong concentration of control because two Tata charitable trusts collectively owned a combined 65.89% of the shares in the company. On the contrary, the Shapoorji Pallonji (SP) Group, even though holding a significant 18.37% stake, had minimal impact due to the presence of affirmative voting rights according to *Article 121 of the Articles of Association.* These rights required approval of Tata Trusts' nominee directors for such crucial board decisions, in a de facto exercise of vetoing powers. Such governance structure attracted controversy in 2016 when Cyrus Mistry, backed by the SP Group, was suddenly removed as Executive Chairman. SP Group challenged his removal under *Sections 241[6] and 242[7] of the Companies Act, 2013,* based on grounds of oppression and mismanagement. Although their effective voting rights had shrunk to 2% with the exclusion of preference shares, the NCLAT granted them a *Section 244* [8]waiver and the case proceeded. The

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[2] *Afra Afsharipour, 'Corporate Governance and the Indian Private Equity Model' (2015) National Law School of India Review Vol. 27 No. 1, 34-35.*
[3] *N. Balasubramanian, 'Some Inherent Challenges to Good Corporate Governance' (2009) Indian Journal of Industrial Relations Vol. 44 No. 4, 554-556.*
[4] *Rajat Sethi, Simran Dhir and Dhruv Agarwal, 'Defining Control: A Study of the Jet-Etihad Case' (2015) National Law School of India Review Vol. 27 No. 2, 186-188.*
[5] *Umakanth Varottil, 'Comparative Takeover Regulation and the Concept of 'Control''(2015) Singapore Journal of Legal Studies, 214-216.*
[6] *The Companies Act 2013, s 241.*
[7] *The Companies Act 2013, s 242.*
[8] *The Companies Act 2013, s 244.*

event demonstrated how affirmative voting rights may lead to concentration of power among majority shareholders' hands against minority interests.

The Supreme Court, however, dismissed arguments that affirmative voting rights in Tata Sons' Articles of Association (AoA) are oppressive and tantamount to mismanagement. It also contended that these provisions were a legitimate component of a contract of the shareholders and relevant in maintaining the status of the governance structure of the company.[9] However, the move has been criticised for not addressing abuse of control deeply enough, and not properly safeguarding minority shareholders. Affirmative voting rights, for instance, could be employed to centralise power and neglect minority interests. While the Court also mentioned that nominees' directors duty is the interest of the company, it also acknowledged that this can mean their duties to the shareholders who appointed them, subject to the condition that these duties do not conflict with the provisions of the law.

Such an interpretation is in conformity with *Section 2(27) of the Companies Act, 2013*[10] whereby 'control' has been defined to be the ability to control the management or policy decisions. Yet, such an expansive definition has created legal ambiguity, as was the case in the *Subhkam Ventures case*, where SEBI and the tribunals were in disagreement about whether affirmative voting rights represented control. [11]The Court, here, made clear that possessing affirmative voting rights doesn't necessarily taint board autonomy but rather shows the legitimate presence of majority shareholders in corporate choice-making. Even so, the absence of an even legal norm for determining 'control' within Indian corporate legislation still causes confusion and regulatory uncertainty.

Affirmative Voting Rights and Governance Integrity in the Tata-Mistry Case

The question of affirmative voting rights during the *Tata sons v. Cyrus Mistry dispute* is about reaching a balance between shareholder contracts and ideals of equable corporate administration. At its centre was *Article 121* within Tata Sons' Articles of Association, which included the right, vested in the majority shareholders in Tata Trusts, to approve or veto board decisions of cardinal importance. Although these rights are equally enforceable, their exercise in this instance created issues of fairness and the impartiality of board. The Shapoorji Pallonji

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[9] *Tata Consultancy Services Limited v Cyrus Investments Pvt Ltd & Ors (2021) 9 SCC 449.*
[10] *The Companies Act 2013, s 2(27).*
[11] *Subhkam Ventures (I) Private Limited v SEBI (2010) SCC OnLine SAT 35.*

(SP) Group initially contended that these voting rights were discriminatory against minority shareholders. Their stance changed later, and they subsequently requested similar rights for their own nominated directors. This change seemed inconsistent, since the SP Group was no longer resisting the presence of affirmative voting rights, but the fact that Tata Trusts were the only ones who possessed them. The supreme Court employed this inconsistency to reject their arguments, saying that when both sides had already agreed upon these rights within the Articles of Association, it would not be sensible to oppose them on the grounds of oppression.

Yet, the court's decision has been criticised. It did not fully attend to the larger issue that affirmative voting rights, which are generally meant to safeguard minority shareholders, were being utilised here to strengthen Tata Trusts' control and undermine minority shareholder influence. The court uniformly regarded these rights as having no inherent bias, ignoring their possibility to destroy board independence and marginalise minority voices on important issues. Furthermore, the court did not inquire whether the nominee directors of Tata Trusts were discharging their statutory obligations under Indian Law. All directors, regardless of their nomination by a specific shareholder, must act in the best interests of the company. The fact that a director is appointed by a charitable trust does not exempt them from this fiduciary duty.[12] Thus, though affirmative voting rights are reasonable weapons for corporate control, the *Tata Mistry case* evidence how they may be abused. This case serves as a reminder to courts and legislature to very closely examine their use of such rights to avoid injuring minority shareholders or eroding equity in corporate management.

Board Independence and Control Issues

One of the key issues after the Tata-Mistry judgment is how affirmative voting rights affect board independence. Ideally, directors should decide on their own merit, free from excessive influence. But when nominee directors have excessive control with affirmative voting rights, there is a danger that board decisions will be in the interest of a few and not in the interest of the company and all its shareholders. *Balasubramanian* highlights this by cautioning that the absence of genuine independence in boards, particularly when nominee directors hold blocking rights, undermines objective decision-making and enables promoter interests to take precedence over the welfare of the company. This is amplified when regulatory agencies such as SEBI view such veto rights as evidence of control under takeover regulations, while courts

[12] *Tata Consultancy Services Limited v Cyrus Investments Pvt Ltd & Ors (2021) 9 SCC 449.*

and tribunals adopt a more restricted interpretation, thus weakening enforcement consistency. SEBI has also frequently treated veto rights, like affirmative voting rights, as a means of control under the takeover rules. But courts and tribunals have not necessarily agreed. They have made a distinction between positive control, in which a shareholder does actually influence company choices, and negative control, in which some action is prevented but no direct influence is exercised.[13] While independence of the board is essential, concentration of control through affirmative voting rights is a direct threat to protection of minority shareholders.

Minority Shareholder Protection and Corporate Democracy

Corporate democracy is based on the premise that equal voices for every shareholder must exist in matters of decision making. However, the reality that the veto powers lie with the nominee directors offers a major stumbling block to such a principle, particularly where the said powers provide room for the majority shareholder to impose control on decisions of central importance, facto marginalising minority shareholders.[14] In the *Tata-Mistry case*, the SP Group, despite owing 18.37%, could not oppose the moves of Tata Trusts' nominee-board. It is a serious reason to be apprehensive about whether affirmative voting rights will, to the disadvantage of minority shareholders, encourage unfair advantage to minority domination.[15]

Combined with this sophistication is regulatory differentiation. In the *Jet-Etihad case*, SEBI took the view that Etihad's 24% stake did constitute control due to lack of veto rights, while the Competition Commission of India took the view that Etihad had 'joint control' by virtue of its strategic influence.[16] Similarly, *ArcelorMittal* [17]and *Subhkam Ventures*[18]cases demonstrate that control may not be through shareholding, but through the ability to affect corporate policy. While SEBI originally perceived veto rights as indicative of control, tribunals later characterised them as protective, reflecting the residual doubt in regulatory interpretation. Such contradictory views reflect how affirmative voting rights can make de facto control possible

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[13] *N. Balasubramanian, 'Some Inherent Challenges to Good Corporate Governance' (2009) Indian Journal of Industrial Relations Vol. 44 No. 4, 554-556.*
[14] *Afra Afsharipour, 'Corporate Governance and the Indian Private Equity Model' (2015) National Law School of India Review Vol. 27 No. 1.*
[15] *Tata Consultancy Services Limited v Cyrus Investments Pvt Ltd & Ors (2021) 9 SCC 449.*
[16] *Rajat Sethi, Simran Dhir and Dhruv Agarwal, 'Defining Control: A Study of the Jet-Etihad (2015) National Law School of India Review Vol. 27 No. 2, 186-188.*
[17] *ArcelorMittal India Private Limited v Satish Kumar Gupta (2018) MANU/SC/1123/2018.*
[18] *Subhkam Ventures (I) Private Limited v SEBI (2010) SCC OnLine SAT 35.*

without triggering formal takeover rules, eroding minority shareholder protection and the transparency of the regulatory regime.

Need for Legal Reforms

The ambiguous legal status of affirmative voting rights under Indian company law is undesirable for corporate as well as investor interests. Though intended to protect minority shareholders and keep them involved in important decisions, the absence of these rights under statute has rendered their status a bit vague. Neither the *Companies Act, 2013* nor the *Companies (Share Capital and Debentures) Rules*, *2014* specifically classify affirmative or veto rights as valid protection measures. Hence, even if there exists such a clause in Shareholders' Agreements or Articles of Association, there remains doubt regarding the same being enforceable in law, particularly in view of *section 6 of the Companies Act*[19], whereby preference is granted to statutory provisions over conflicting contractual arrangements.

For purposes of stopping these contractual and regulatory uncertainties, legal reform is an urgent imperative. *First and foremost*, the Companies Act should be amended- namely *Section 43*[20]- to recognise shares carrying affirmative or veto rights as a distinct class of equity shares so that corporate practices are aligned with investor expectations. *Second,* enforceability of shareholder agreements in shareholder decision-making also must be clarified. A statutory provision providing preference to well incorporated and disclosed shareholder agreements would help in reducing litigation and contractual uncertainty. *Further*, affirmative voting rights tend to undermine decision making deadlocks. For avoidance of the same, companies need to be statutorily mandated to include deadlock-breaking provisions, such a third-party mediation, buy-sell arrangements, or escalation causes- that allow the company to continue business despite shareholder conflicts.[21]

Moreover, *Varottil's* analysis offers valuable insights by showing how countries like the US and UK use clear, objective standards, like ownership percentages and management influence, to define control, which helps avoid confusion in governance disputes. India could benefit from similar clarity. However, because Indian companies are often promoter-led and family-owned,

[19] *The Companies Act 2013, s 6.*
[20] *The Companies Act 2013, s 43.*
[21] *R&D Law Chambers, 'Affirmative Rights Clauses in Shareholder's Agreement and Enforceability' (2025) LEXOLOGY.*

directly adopting these foreign models might not work. A better approach would be to create a hybrid system that blends international best practices with rules tailored to India's unique corporate setup. This would help protect minority shareholders while also making business operations more predictable and efficient.[22]

Conclusion

The Tata-Mistry conflict highlighted the intricate nature of affirmative voting rights in determining control and governance within Indian companies. Although such rights are traditionally defended on the premises of contractual sovereignty and investor protection, the case shows how they can serve to entrench power and dilute minority interests. By enforcing such rights without adequately grappling with their wider governance implications, the Supreme Court arguably missed a chance to find a more balanced reading- one that balances fairness and accountability with contractual freedom. As Indian company law continues to develop, it needs to respond to the challenge posed by concentrated ownership and power asymmetry in companies. The lack of explicit statutory prescription for affirmative voting rights is fraught with uncertainty and enables dominant shareholders to wield influential control in the name of notional legality. Acknowledgment of such rights within the Companies Act scheme and more precise requirements of board autonomy and procedures to break shareholder stalemate would also ensure that company governance is both legally compliant as well as significantly equitable. In the end, even as affirmative voting rights may be democratic instruments in legitimate use, their unregulated application threatens to destroy the very transparency, fairness, and communality of decision making which corporate democracy seeks to enshrine. Legal reformation, both judicial and legislative, will be crucial to bringing them back into line with overall good governance in India's corporate sphere.

[22] *Umakanth Varottil, 'Comparative Takeover Regulation and the Concept of 'Control" (2015) Singapore Journal of Legal Studies, 214-216.*