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Voting Rights in Companies under the Companies Act, 2013

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ABSTRACT

Voting rights have been a basic way in which the shareholders are required to be involved in the corporate decision making and the shareholders have the power of control over the company management. The Companies Act, 2013 brought about a major overhaul in the law that applies to the voting rights in India by increasing the corporate democracy, improving the transparency process and offering more protection to the minority shareholders. Voting rights and their exercise have been experiencing a considerable change over the last one decade with legislative amendments, regulatory intervention by the Securities and Exchange Board of India (SEBI), judicial interpretation and technological development like electronic voting. In this paper, a thorough examinations has been done in the voting rights in companies as per the companies act 2013, and especially on the developments between the years 2015 and 2025. It looks into the statutory clauses which regulate the rights of voting, such as the equity and preference shareholders rights, the variation and restriction of the right to vote and the legal aspect of the latter (the differentiation of voting rights). The paper also assesses how electronic voting, shareholder activism and increased disclosure requirements enhance corporate governance. The paper evaluates whether the recent reforms put in place have helped to balance shareholder empowerment with managerial control by critically evaluating the current challenges that prevail and trending in the context of reforms that have been undertaken in this regard. The study makes the final observation that though there has been big step towards encouraging shareholder participation and accountability, a continuous control regulation and revamp is imperative in seeing the proper working of corporate democracy in India.

Keywords: Voting Rights, Companies Act 2013, Corporate Democracy, Differential Voting Rights, E-Voting, Corporate Governance

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Introduction

The rights to vote constitute the key of corporate governance and shareholder decision-making in the running of businesses. They facilitate the ability of the shareholders to control the corporate business by inflating important decisions made by the shareholders including appointment and removal of directors,

approval of the financial statements, declaration of dividends, restructuring of share capitals, mergers and acquisition among other profound change that influence the company. Voting rights in essence can be the main tool that achieves the principle of corporate democracy, which makes the management accountable to the company owners.

Voting rights in India have been legalized and they have been improved in conjunction with the corporate law. Traditional shareholding concepts dominated the aspect of voting rights under the Companies Act, 1956, which did not pay much attention to the minority protection and shareholder participation. The adoption of the Companies Act, 2013 was a major break with this tradition because it led to a new and more modernist shareholder-focused view to formulate the creation of transparency, fairness, and responsible corporate governance. The 2013 Act has acknowledged the right to vote as not only a procedural right of the shareholders, but also a substantive right to protection and accountability, forms part of shares in the company.

The voting rights are codified by a complex statutory framework of companies act 2013 that balances the interests of the various classes of shareholders. The voting rights under the portions like 47 makes them a necessary incident of holding equity shares and the portion like 48, 106 controls the variation and restriction of the voting rights to prevent dilution and misappropriation on voting rights . As well, the Act involves flexibility in commerce since it allows the opportunity to have unequal voting rights, nevertheless taking into account the changing demands of the contemporary corporations, especially start-ups and innovative undertakings.

In the last ten years, there has been an immense reform in the way voting rights are exercised in Indian companies; owing to the changed regulations and the use of technology. Among the most remarkable changes, electronic voting with the introduction and growth of Section 108 of the Companies Act, 2013, has to be mentioned. Avoidable e-voting of listed companies and large listed firms has significantly contributed to the improvement in the turnout of shareholders, particularly dispersed and the minority stockholders . Digital involvement in corporate decision-making has become further institutionalised through the implementation of the electronic general meetings and remote voting mechanisms, especially during and after the COVID-19 pandemic.

The other significant change that has affected voting rights has been on a changing regulatory model on the differentiated voting rights (DVRs). Changes in the regulatory framework presented by the Securities and Exchange Board of India (SEBI) in 2019 and the amendments made to the Companies (Share Capital and Debentures) Rules, 2014 could be seen as a change in favor of accommodating founder-led and technology-focused companies alongside the introduction of some safeguards, including sunset clauses and increased disclosure obligations. Such reforms have sparked a lot of debate on whether they have contributed to democracy in companies, protection of minority shareholders and concentration of control.

The judicial interpretation has also been quite critical in influencing the extent and implementation of the voting rights under the Companies Act, 2013. The Indian courts have always laid stress on the issue of oppression and mismanagement of the minority shareholders due to the misuse of majority power of voting. The legal questioning on disparities on the rights of classes, voting limitations and shareholder

redress has helped uphold the rule that statutory voting rights ought to be executed in an equitable and open method within the statutory security provisions.

Voting rights in this regard have become one of the main themes in the modern-day corporate governance discussions in India. High levels of shareholder activism, the rise of institutional investors and proxy advisory companies, and improvement of disclosure standards all have intensified the role that shareholders play in corporate decision-making. Meanwhile, competition issues remain as promoter dominance, reduced shareholders involvement in retail, and the abuse of a differentiated voting structure. This paper aims to examine the legislative environment of the voting right, consider the effect of regulatory and technological changes, and find out how successful the existing processes are in enhancing corporate democracy and good governance. Through a critical analysis of the emerging issues and challenges, the paper will also contribute to the current debate on enhancing shareholders rights and providing a balanced equitable corporate governance regime in India.

2. Concept and Nature of Voting Rights in Companies

2.1 Meaning of Voting Rights

Voting rights are the statutory and proprietary right granted to the shareholders to make decision concerning the company through joining the decision making process of the company by casting votes at resolutions brought before the general meeting. Such rights allow the shareholders to show their consent or dissent of proposals that may influence the management, structure, and operations of the company. The voting rights can be done on ordinary business, special business, change of share capital, appointment or removal of directors, approval of financial statements, merger, amalgamation, and other essential changes in a company.

The Companies Act, 2013 provides that the voting rights form an important incident of the ownership of the shares under particular instances but mainly the ones of equity shareholders. The Act formalizes the conditions of exercise, limitation or diversification of voting rights, which in turn gives its statutory flavor thereby giving a balance between participation of the shareholders and the efficiency of the corporation. In contrast to a contractual right, voting rights are legally based and they may be enforced in respect to the rules stated in the Act and the articles of association of the company and the rules of different regulations.

2.2 Voting rights as an Incident of Share ownership.

Through corporate law, voting rights are identified as a natural sanction of shareholding especially with equity shareholders. A share is a package of rights and liabilities, one of the major rights being the right to vote. A shareholder when he purchases shares of a company not only attains economic interest in the company profits but also gets the right to the participation in corporate decision-making by exercising the voting right. This is an exclusive property that allows the voting rights not to be a simple contractual right, but at the centre of shareholder rights.

This is reaffirmed by the Companies Act, 2013 where voting rights are statutorily linked to shareholding. Section 47 is very categorical that in all cases all members with a vested interest in the equity shares shall be at liberty to vote on all resolutions before the company that their shareholding will be the ordinary rule in all cases. The basis of such proportionality is the basic principle of corporate governance that control in a company should reflect a broad proportionality to the amount of capital contribution hence association of economic risk to decision making power.

The implication of voting rights being an incident of share ownership is that this type of rights cannot be canceled or diluted arbitrarily without statutory protection. A change or limitation of voting rights has to comply with the procedures that are laid down under the Companies Act, 2013, especially, the Sections 48 and 106, along with articles of association set up to that of the company. This guarantees the immune effect against any unwarranted

interference with the proprietary interests of the shareholders and allows the majority to exercise its power to an abusive extent.

2.3 Corporate Democracy

Corporate democracy derives its basis on the concept that shareholders as proprietors of the company have the right to be given a voice in corporate decision-making in proportion to their economic interest. The classical theory of corporate democracy is reflected in the principle of one share one vote, which provides that the capital contribution is properly reflected in the voting power. The aim of this principle is to enhance transparency, accountability and fairness through eliminating concentration of power on a number of individuals who are not commensurate to financial risk.

The doctrine of corporate democracy is statutorily implemented under the law of Indian companies according to which the partaking in the rights to vote is associated with the partaking in the equity shareholding. This democratic structure is strengthened under the Companies Act, 2013 which gives shareholders of the equity the right to vote on any issue that is brought before the general meeting, hence, making them have say in the make up of the board, in important managerial decisions and in other basic corporate undertakings. In this regard, the right to vote is considered as the main tool with which corporate democracy is served.

Nonetheless, modern-day corporate institutions are beginning to realise that strict compliance with the principle of one share, one vote might not necessarily comply with business realities and economic goals. The rise of start-ups, technology based business, and founder-led businesses have brought about the need to adopt alternative models of governance that would enable promoters to have strategic control but to be able to obtain outside capital. To comply with these new demands, the Companies Act, 2013 allows nonconformance with the traditional democratic paradigm by issuing equity shares with varying voting rights.

Differentiated voting shares allow firms to apportion voting rights disproportionately with respect to shareholding, by giving shareholders with higher voting rights, or by issuing shares with low or no-voting rights. Although this type of structures can create the innovation, long term vision and stability in the managers, they also compromise the issue of shareholders democracy dilution and possible marginalisation of the minority shareholders. Acknowledging the existence of these risks, the Indian law provides statutory protection, such as disclosure and voting limits, and regulating control, while the Securities and Exchange Board of India exercises regulatory control.

3. Statutory Framework under the Companies Act, 2013

3.1 Section 47 – Voting Rights

Section 47 of the Companies Act 2013 establishes the general principle of voting power of the Indian firm shareholders. It lays the demarcation between voting rights of equity shareholders and that of preference shareholders and constitutes the essence and direction of diversified classes of shareholding.

Business Articles, under Section 47(1)(a), the company can vote on all resolutions brought before the company because every member with equity shares in the company can vote. This clause reiterates the fact that equity shareholders, since they are residual claimants and bear the risk, have extensive participatory rights over corporate decisions. The equity shareholders have their voting rights, which are usually proportion to the number of shares they own unless otherwise the shares have different voting rights which can be conferred by the Act. This legislative acknowledgment strengthens the principle of corporate democracy because equity shareholders can assure a veto in decision making concerning the running of the business and its course.

Section 47(2) regulates the rights to vote of preference shareholders and is more narrow in its approach. Ordinarily, preference shareholders have a right to vote only in those questions that directly impact on their right without necessarily the winding up of the company, reduction of share capital, or the variation of terms of

preference shares. Moreover, the preference shareholders gain the right to vote on any resolution in case the dividend due on such shares has not been paid within the span of two years and above. This conditional right to vote is a guard mechanism whereby the preference shareholders can interfere with the company management, where their economic interests have been impaired.

The differentiation made in titled Section 47 is an appreciation of the balances of interest. Although equity shareholders receive full voting rights due to the exposure to both profits and losses, preference shareholders are mostly treated as investors who want to get constant returns and participatory rights become operational under certain conditions. Simultaneously, Section 47 protects the rights of the preference shareholders so that in the cases of long-term non-doubling of dividends the right translates into a greater ability to vote.

3.2 Section 48 -Variation of Shareholders Rights.

Section 48 of Companies Act, 2013 regulates that the variation of the rights associated to a specific group of shares such as voting rights, dividend rights and capital rights may be achieved under the Companies Act, 2013. This is an essential provision that will protect the shareholders against wrongful or unilateral modification of their proprietary interests by the company or by majority shareholders.

The rights conferred on any category of shares under Section 48(1) can only be altered following the conditions in the memorandum or the articles of association of the company and by the approval of the shareholders of that particular category. Such approval has to be either by a special resolution of a separate meeting of the class of shareholders affected or by the written approval of at least three-fourths of the number of holders of the issued shares of the same class. This legal condition is important so that any alteration of the voting rights has to be done democratically and with the aware consent of those whose interests it has a direct effect.

Section 48(2) extends more protection to the minorities with a statutory compensation of dissenting shareholders. In such cases whereby holders having not less than ten per cent. of the issued shares of the affected class fail to consent to the variation, they are entitled to take to the National Company Law Tribunal in order to object to the variation. In case the variation is determined to be unequal or unduly biased towards the interests of the shareholders of that type, the Tribunal has the right to disallow the variation. This is an important checkpoint on the abuse of majority power and strengthening the principle of fair treatment of shareholders.

Section 48 has a special importance in the context of voting rights. Any proposal to dilute, increase or otherwise change the voting rights which accrue to a kind of share e.g. introducing different voting rights or changing the existing voting rights, must be carefully directed and observed by the procedural protective provisions set forth under this provision.

3.3 Section 106 -Limit on voting rights.

Companies Act, 2013, section 106 authorizes a company to limit the voting rights of the members under certain conditions including cases when a member shareholder has not met up his or her financial commitments to the company. This provision acknowledges that even though voting rights represent a significant incident of share ownership the exercise thereof is subject to the contravention of contractual and statutory demands upon rights of ownership.

Section 106(1) History According to the articles of association of a company, no member can exercise the voting rights of any shares on which calls or other sums currently payable have not been disbursed. This entails unpaid calls on shares, interest on the same or any other amount that is due under the issue of the shares. The restriction acts as an effect of default and is an instrument to place financial discipline on the shareholders.

The justification of Section 106 was based on the contractuality of shareholding. Share is not only conferred that one has rights but also responsibilities and the exercise of the voting rights will depend on fulfilment of both the financial obligations that go with the shares owned. The provision restricts uncooperative shareholders to affect corporate decision making since they can be suspended of voting rights in default, which means that the uncooperative shareholders will not affect decision making in the company to the disadvantage of other attentive members.

Meanwhile, under Section 106 there is no automatic or blanket prohibition on the right to vote. It has to be explicitly set in the articles of association, thus necessitating transparency and giving warning to the shareholders. In addition to that, the limitation is temporary and limited to the payment of the outstanding amounts which reinstates the full voting right of a shareholder.

3.4 Section 108 – Electronic Voting

Section 108 of the Companies Act, 2013 came about to provide the idea of voting electronically, and this is a notable reform to conduct the shareholder vote rights in India. This provision gives the Central Government the authority to enact regulations to oblige some groups of companies to give its members the power to participate in the voting rights electronically upon matters of resolutions put across to them by general meetings.

In regard to this provision, e-voting has already been compulsory on listed companies and prescribed methods of public companies. Implementation of e-voting is a transition to the old system of voting based on attendance to the adoption of a more inclusive process where the policy of shareholders can be involved in the corporate decision-making regardless of their geographical limitations.

Transparency and accountability have been upheld through the introduction of electronic voting since it has led to proper registration of votes and minimized chances of manipulation that is seen in physical methods of voting. Electronic voting, virtual general meeting have become an essential part of the COVID-19 pandemic and, as a result, were widely accepted and are used even at the post-pandemic stage.

3.5 Section 109 – Demand for Poll

The Companies Act 2013, section 109, gives the option of voting by poll to the members, so it guarantees that the vote based on voting is the actual voting power of the shareholders and not a simple numerical majority of those present in a meeting. A poll, unlike showing hands as a method of voting, peers the voting to the proportional shareholding.

This is subject to the rule of a poll requested either by the chairman or by the members possessing a pre-determined percentage of voting power or shares. The power to require a poll amount to a check-and-balance mechanism against a situation whereby the shareholders vote on resolutions which do not necessarily reflect the economic interest in the company.

4. Evolution of Voting Rights: Key Developments

4.1 Introduction and Expansion of E-Voting

The most recent use of electronic voting took place during 2015-2020, when it became one of the key instruments of improving shareholder involvement in corporate decision-making in India. The statutory basis of electronic voting has been established by Section 108 of the Companies Act, 2013, the foliate implications of which became clear following the release of the rules and regulatory prescriptions outlining how listed companies and other large corporations must carry out electronic voting by this Act. These requirements saw the shareholders served with the facility of remote e-voting on the resolutions lodged ahead of general meetings that greatly curtailed reliance on the physical attendance.

Remote e-voting solution was an introduction to issues that have long been a problem of shareholder involvement, especially in a company with a very dispersed shareholding . Since e-voting allowed shareholders to vote electronically in any geographical location, e-voting made the voting process more inclusive and boosted the attendance of minority and retail investors and the assertion of shareholder democracy. It also helped in enhancing the transparency and precision of the voting results as it gave a time-stamped and auditable voting process.

One of the most radical stages of the development of e-voting took place during the COVID-19 pandemic. The limitation of physical meetings required the organization of general meetings via electronic devices and thus general meetings became widely embraced as virtual and hybrid meetings with the aid of electronic voting tools. This was supported by the regulatory relaxations and circulars that MCA and SEBI released at this time and helped the smooth functioning of electronic general meetings and strengthened the authenticity of digital involvement in corporate governance.

The efficacy and embrace of electronic voting in the pandemic prompted its institutionalisation within a corporate governance in India to become a long-standing aspect . To guarantee a wider shareholder participation, avoiding high costs, and adherence to governance, electronic voting mechanisms have also been used by companies even in the post-pandemic period. Therefore, e-voting growth during 2015-2025 is one of the major shifts in the practice of voting rights that would introduce shareholder engagement not as an attendance-based, but rather as a technologically facilitated and active system in conformity with the corporate reality of the present.

DVRs differ in form because they may be either shares or preferred shares with voting rights or simply a share without voting rights, with the distinction that the former is a share that allocates a fixed share in the company, while the latter is a share that provides shareholders with voting power (Webster, 2007). The differing nature of DVRs of the target is that they can be in the form of either shares or preferred shares having voting rights or a simple share having no voting rights with the variations that the former is a share that gives the shareholders a fixed price in the

Statutory recognition of issuing equity shares with different and distinctive voting rights has been developed in section 43 of the Companies Act, 2013 thus allowing the defiance of the common principle that is one share one vote. This clause represents the recognition of the legislature of the changing corporate and business realities especially the necessity to raise capital without commensurate dilution of influence. Different voting rights enable businesses to issue equity shares with voting rights that are superior or inferior to other ordinary equity shares provided that they meet stipulated conditions.

During the years, after the adoption of the Companies Act, 2013, the real application of the concept of the differential voting rights was not as broad, as there are strict regulatory requirements. This changed considerably on 2019 when the Ministry of Corporate Affairs gave an amendment to the Companies (Share Capital and Debentures) Rules, 2014 . The amendments made in easing the former restriction are raising the maximum cap on amount of voting exercisable by shares with differentials voting power to seventy four per cent of all total voting power and the elimination of track-record requirements of profitability. Such reforms were meant to promote entrepreneurship and allow firms which especially start ups and firms with growth capabilities to tap external capital and remain in strategic control.

Concurrent with these legal developments, the Securities and Exchange Board of India came up with a regulatory domain, which regulates the issue and listing of shares of higher voting rights by technology-driven corporations. This system permits the founders and promoters of eligible companies to be subject to greater voting rights with their shares, though there are high volume safeguards, detailed specifics including mandatory sunset terms as well as occasion-based conversion events.

The control system embraced by SEBI is indicative of trying to strike a balance between competing interests. Although it encourages innovation and stability within the managerial process, it has protection mechanisms to ensure that minority shareholders are not subject to incessant concentration of voting power. Further strengthening the concept of transparency and accountability in companies implementing the use of differential voting structures, is the increased disclosure requirements and regulatory control. In 2020-2024, the Securities and Exchange Board of India rolled out a set of amendments to the SEBI (Listing Obligations and Disclosure Requirement) Regulations in the effort to enhance corporate governance transparency, accountability, and the involvement of shareholders. These reforms had a wide-impact on the exercising of voting rights by increasing the level of disclosure obligations on matters concerning shareholding patterns, voting power and control.

The improved disclosure rules on promoter shareholding, pledging shares and modification of voting power allowed the shareholders to have informed votes. Another initiative strengthened the norms associated with related party dealings, directors appointments and remuneration, and major managerial decision approvals, most of which can only be approved by voting by the shareholders.

During this time, institutional investors and the proxy advisory firms became powerful participants in the voting process. It is through their active involvement in activities that strengthened accountability of corporate management and boards as decisions made would be highly scrutinized. SEBI also implemented regulatory standards of proxy advisory firms to bring out transparency, accuracy and impartiality in voting recommendations.

Altogether, the disclosure and governance reforms that were launched by SEBI in 2020-2024 made the effectiveness of the voting rights in listed companies notable, and the Indian corporate governance practices are in line with global standards.

5. Voting Rights and Corporate Governance

The voting rights are of key importance in defining the board control and accountability of the directors and the management to the shareholders. Via the exercise of rights of voting, the shareholders are empowered to affect the composition of the board of directors, yielding or disapproving appointments and removals of the directors, and other vital aspects of corporate leadership. This power to influence the governing board of an organization is an indication of the ultimate principle of governance which dictates that the individuals entrusted with the management of a business entity should be accountable to the owners of the business.

The executive remuneration consent is one of the crucial elements of a board accountability. The voting of the shareholders on remuneration policy and compensation plan is a form of control over excess or conflict executive pay and to make sure that the incentives of the managers are in line with the long term corporate interest. This accountability has been reinforced through mandatory disclosure and voting requirements under the Companies Act, 2013 and regulation of the SEBI which have exposed remuneration decision-making to scrutiny by shareholders.

Shareholders also use voting rights to impact on strategic decisions that make a significant difference in the future of the company like mergers, acquisitions, restructuring and capital raising. The strengths of the minority shareholders in terms of participation in the decision making process of the companies have been boosted by the Companies Act, 2013, which when coupled with the regulations measures enacted by the Securities and Exchange Board of India has made the shareholders a lot more empowered. Voting rights form one of the main mechanisms on which the minority shareholders can ensure that their interests are not subdued by the majority/promoters contingents on shareholding.

Among the most important aspects of the improved voting structure, there are the prioritizing of informed and participatory voting. Electronic voting provisions, strict disclosures, and explanatory statements are necessitated

to guarantee that minority shareholder are not locked out because of geographical, information and logistical limitations. Particularly by remote e-voting minority shareholders have been able to exercise voting rights through the proxy without being physically present in the general meeting and so structural disadvantages in the past experienced by dispersion investors have been reduced.

The SEBI rules have also contributed to the protection of minorities by stipulating that a shareholder resolution is needed on important corporate activities such as related party transactions, appointment of independent directors, ratification of managerial compensation and benefit remuneration. SEBI has in a number of cases dictated that such resolutions be voted by majority of non-promoter shareholders stopping promoters to make self serving resolutions by using the influence of their voting rights. This practice has made minority stockholders more powerful during important decisions that influence the organization and improved accountability.

Besides participatory safeguards, the legal framework also has remedial mechanisms that can be used to curb abuse of the voting power. Articles that address opposition and abuse of the company, the change of the class rights and the control that are essential by the tribunal allow minority owners to question unjust, discriminatory or resolutions that do not have the good faith intent. This has been accompanied by the increasing use of a substantive connotation in judicial and quasi-judicial bodies to look into the issue of equity of output and not adherence to the procedure. Shareholder activism has also been institutionalized through the stewardship codes of SEBI and disclosure requirements which have encouraged institutional investors to reveal their policies and reasons to vote. This has brought in an accountability culture not only to corporate management but also to the investors themselves. Consequently, the results of voting become more influenced by the aspects of governance, rather than the aspect of dominance among promoters.

Although, shareholder activism has played a beneficial role in promoting transparency and accountability, it has also presented the issue of short-termism as well as, conflicts of interest. However, the increasing aggressive behaviors of the shareholders are good indicators of a rapidly developing corporate governance environment where the voting rights are an efficient method of control but not a right.

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