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INSTITUTIONAL INVESTORS: CONTEMPORARY ISSUES IN INDIA AND REFORMS

AUTHORED BY - POOJA SHREE A

ABSTRACT

In recent times, there has been a discernible shift among institutional investors from passive to active engagement with the companies in which they hold shares. This transition has been attributed, in part, to the implementation of the Stewardship Code, which mandates active participation by institutional investors, and the emergence of corporate governance intermediaries, such as proxy advisory firms. These firms facilitate the voting process by supplying essential information and formulating voting recommendations. This paper aims to explore the manner in which the introduction of regulatory reforms and corporate governance intermediaries have impacted the manner in which institutional investors vote, and then finds that they are either ineffective or create a new set of issues, which it makes an attempt to resolve through suggesting reforms. Section 1 deals with the role of institutional in corporate governance and discusses the contemporary issues that exist with respect to their activism, it argues that underlying most of these issues are cost considerations and investor passivity. Section 2 outlines the stewardship code and presents arguments on its unsuitability to the Indian context. It undertakes a limited empirical study to assess the impact of the stewardship codes and finds the influence of these codes to be negligible and attributes such minimal efficacy to the transplantation of Western-centric codes without suitable modifications. Finally, Section 3 suggests reforms with respect to various participants such as institutional investors, companies, and advisory firms.

INTRODUCTION

Institutional investors are legal entities that manage and invest other people's money. They have a fiduciary duty towards their clients and aim to invest the funds that they receive from their clients in companies with good corporate governance and high performance, in order to maximize the returns, they earn on their behalf. Traditionally, the norm has been for these entities to remain passive and apathetic. However, in recent times there has been a normative

shift to active participation, institutional shareholders are not only voting, but also challenging the management preferences in some instances¹. The sudden rise can be attributed in part to novel governance reforms and the rapid proliferation of Proxy Advisory Firms (PAF). However, structural issues such as investor short termism, lack of collaboration and inefficiency, and robo-voting still exist and hamper activism. At this critical juncture, having already carried out various reforms to improve governance, it is vital to pause to take stock of the existing concerns surrounding these matters and discuss possible future reforms to correct them, in order to decide where we go from here.

The paper aims to explore the manner in which the introduction of regulatory reforms and corporate governance intermediaries have impacted the manner in which institutional investors vote, and then finds that they are either ineffective or create a new set of issues, which it makes an attempt to resolve through suggesting reforms. Section 1 deals with the role of institutional in corporate governance and discusses the contemporary issues that exist with respect to their activism, it argues that underlying most of these issues are cost considerations and investor passivity. Section 2 outlines the stewardship code and presents arguments on its unsuitability to the Indian context and proceeds to consider its effectiveness with the aid of empirical data. Finally, Section 3 suggests reforms with respect to various participants such as institutional investors, companies, and advisory firms.

ROLE OF INSTITUTIONAL INVESTORS AND ISSUES

Some scholars are of the opinion that institutional investors with larger stakes in their investee companies have a duty towards monitoring and higher incentives due to their higher influence and benefits. They are placed in such a way that they can maximize their monetary gain in a manner that also improves the corporate governance and benefits the other minority shareholders. However, these entities are mindful of the cost considerations while deciding to engage with the investee companies, which, when coupled with other structural issues, prevents activism from achieving its full potential.

¹ Umakanth Varottil, *Emergence of Shareholder Activism in India*, 1 QUARTERLY BRIEFING: NSE CENTRE FOR EXCELLENCE IN CORPORATE GOVERNANCE (2013).

INEFFICIENCY OF THE INSTITUTIONAL INVESTORS

Although institutional investors are becoming increasingly active, the instances of successful activism are limited. The high costs of activism and the existence of the free rider problem leads to institutional investors refraining from voting or unthinkingly voting in the managements favor². The concentrated shareholding pattern prevalent in India, with the promoter groups holding the majority stake in most companies, coupled with the lack of collaboration amongst the institutional investors, divergences in voting, and underwhelming participation has dampened most activism efforts. This has been dealt with in more detail later.

WALL STREET WALK AND INVESTOR MYOPIA

Institutional investors have a fiduciary duty to protect the interests of their beneficiaries and secure the highest possible return on their investments. However, they also conduct a cost benefit analysis in deciding how to engage with the investee company. Shareholders may regulate the activities of the company either by engaging and voicing their concerns or by exercising their “exit” right³. Passive activists simply sell their shares and exit the company if they are unhappy with the controlling shareholders, this is famously referred to as the Wall Street Walk⁴. This is done when the cost of activism exceeds the benefits of the outcome, provided there is enough liquidity in the market. The entities often have diversified portfolios as it is not in their interest to be “locked-in” to any one investment, making exit relatively easy. This leads to flighty investors who do not undertake meaningful engagement, due to their impending exit from the company.

Further, some alternate investment funds, such as hedge funds, may place their client’s interests over than of the company’s, leading to concerns of short-termism. Ignoring the interests of other stakeholders and selling assets, in order to focus on short term stock prices and returns, would adversely affect the company in the long run. The entity may also not have the economic incentive to make investments in areas where the effects are not immediately apparent, such as setting up governance committees and research and development⁵.

² Lucian Arye Bebchuk, *The Case of Increasing Shareholder Power*, 118 HARVARD LAW REVIEW 833 (2005).

³ Albert O. Hirshman, *Exit, Voice, and Loyalty* (1970).

⁴ Jayne Elizabeth Zanglein, *From Wall Street Walk to Wall Street Talk: The Changing Face of Corporate Governance*, 11 DEPAUL BUSINESS LAW JOURNAL 43 (1999).

⁵ Lisa M Fairfax, *From Apathy to Activism: The Emergence, Impact, and Future of Shareholder Activism as the New Corporate Governance Norm*, 99 B.U. L. Rev. 1301 (2019).

OPAQUE VOTING AND OUTSOURCING

When institutional investors do vote there is a degree of opaqueness surrounding the specific rationale for their decisions. The voting policies are unclear and the degree and level of monitoring of the investee companies by these entities is known. Further, they may also outsource their voting activities to third party intermediaries, such as Proxy Advisory Firms, as conducting their own extensive research in-house may be cost-heavy, in such a case the entity may blindly follow the recommendations given without doing their own assessment, which poses a problem.

STEWARDSHIP CODE

Stewardship codes are tools for increasing transparency and enhancing investor participation in governance, by envisioning the institutional investors as the stewards of the company. The stake held by Institutional Investors in Indian companies has gone from 21% in 2001 to 34% in 2018⁶, with such increase it became necessary for the regulator to step in to mandate the active involvement of these entities in the governance. The Financial Stability and Development Council (FSDC) formed a committee to consider the introduction of a Code in India, in 2016⁷. Although, an umbrella code has not come to be yet, several others have been formulated.

At present there are three Stewardship Codes in India, the first formulated by IRDAI for insurance companies, the second by PFRDA for pension funds, and finally by SEBI for mutual funds and all categories of Alternative Investment Funds. All three substantially resemble the UK Stewardship Code of 2012⁸. They attempt to address many of the issues mentioned above, by mandating voting policy disclosures, reporting, monitoring, and engagement. While attempts to facilitate activism and strengthen the governance framework are commendable, their effectiveness has been called into question. Umakanth Varottil critiques that these Codes

⁶ OECD, *Ownership Structure of Listed Companies in India*, OECD <https://www.oecd.org/corporate/ownership-structure-listed-companies-india.pdf>.

⁷ Guy R. Jubbs & Nirmal Mohanty, *An Indian Stewardship Code: Imperatives and Challenges*, 19 QUARTERLY BRIEFING: NSE CENTRE FOR EXCELLENCE IN CORPORATE GOVERNANCE (2017), https://www1.nseindia.com/research/content/res_QBOctober17.pdf (last visited Jan 10, 2023).

⁸ Umakanth Varottil, *Shareholder stewardship in India: The Desiderata*, NUS LAW WORKING PAPER NO. 2020/005, NUS CENTRE FOR ASIAN LEGAL STUDIES WORKING PAPER 20. https://law.nus.edu.sg/cals/wp-content/uploads/sites/4/2020/10/005_2020_Umakanth.pdf (accessed 10th January, 2023).

are ineffectual as they have been transplanted from other jurisdictions without taking into consideration the specific circumstances that exist in the Indian corporate landscape⁹.

The UK Stewardship Code is based on the assumption of institutional investor dominance and aims and is meant to regulate a dispersed shareholding pattern. In India, the prevalence of family owned companies has led to the shareholding pattern being concentrated and the agency problem is between the majority and minority shareholders¹⁰, here a similar code will be ineffective in increasing engagement¹¹.

The UK, used to soft law, has adopted a “comply-or-explain” mechanism in implementing stewardship. Along these lines the IRDAI too, has adopted a similar approach. And while SEBI and PFRDA Codes make compliance mandatory, they do not set out consequences or penalties for non-compliance. This is unsuitable for a jurisdiction that is used to a hard law approach and is likely to be futile¹².

Lastly, the difference in the basic underpinnings of the law in the two jurisdictions as they follow a shareholder v/s stakeholder approaches, makes it an unsuitable fit. The UK follows the Enlightened Shareholder Value Model, which solely promotes the welfare of the members of the company. Contrastingly, India follows the stakeholder approach which provides for the promotion of the best interests of all stakeholders, and mere transplantation would not help complement these broader goals¹³.

Umakanth Varrotil has argued for the adoption of a mandatory hard law approach that is founded on the pluralist stakeholder theory, along with robust implementation¹⁴. The current framework is, therefore, unlikely to have significant effects on the behavior of the investors.

DATA ANALYSIS

Data from the Top 7 NIFTY 50 companies, according to market capitalisation has been analysed for 4 years, starting 2019 to 2022. A similar study has been carried out for the years

⁹ *Ibid.*

¹⁰OECD, *Ownership structure of Listed Companies in India* OECD (2020), <https://www.oecd.org/corporate/ownership-structure-listed-companies-india.pdf> (last visited Jan 15, 2024).

¹¹ Varrotil, *supra* note 7.

¹² Varrotil, *supra* note 7.

¹³ Varrotil, *supra* note 7.

¹⁴ Varrotil, *supra* note 7.

2017 to 2020, from when the first stewardship code came into effect¹⁵. It found that the Code did not have a significant effect and that issues such as lack of unanimity in voting, cohesion, and participation renders any activism ineffective¹⁶. This current study aims to build upon the existing knowledge by analysing data for the period 2021 and 2022 as the SEBI Stewardship Code came into effect on July 1st, 2020, and observe if there have been any material changes since in the way these institutions vote.



¹⁵ Sakshat Bansal & Rusha Ghosh Dastidar, Promoting good corporate governance in India through institutional investors' activism: Concerns and steps forward Economic and Political Weekly (2022), <https://www.epw.in/engage/article/promoting-good-corporate-governance-india-through> (last visited Jan 10, 2024).

¹⁶ *Ibid.*

Name of the Company	Percentage of Institutional Investors that casted their votes in the Annual General Meeting				Percentage of Institutional Investors in opposition to the appointment and remuneration of Directors, in Annual General Meeting				Percentage of Institutional Investors in opposition to the appointment and remuneration of Auditors, in Annual General Meeting				Percentage of Institutional Investors in opposition to issuing dividends, in Annual General Meeting				
	2019	2020	2021	2022	2019	2020	2021	2022	2019	2020	2021	2022	2019	2020	2021	2022	
Reliance Industries	80.90 6- 86.76 3	84.25 - 86.34 5	86.93 6- 88.47 9	89.66 - 90.79 7	0.131 9- 24.00 5	0.754 - 13.20 4	11.16 4- 26.16 3	3.935 - 7.705	0	0.0	0.0	0	0	0.036	0.172	0	0
Tata Consultancy Services	82.15 7- 85.32 4	84.91 8- 86.98 4	87.95 87.95 6	88.66 88.66 8	0.916 - 22.744 5	10.53 10.53 6	17.66 17.66 8	20.63 20.63 8	NA	NA	NA	2.247	0.0	0.362	0	0	0.067
HDFC Bank	86.08 9- 87.97 1	86.37 9- 88.79 2	87.32 87.32 - 88.82	86.33 4- 88.26 3	0.148 - 0.451 3	0.251 - 17.5 3	0.027 - 2.534	7.413 - 2.443	0.037 - 0.591	0.17	0.182	0.0	0.0	0.0	0	0	NA
Infosys	70.23 5- 84.92 5	77.84 4- 82.05 3	86.44 9- 88.36 7	86.94 6- 89.15 7	0.536 - 30.39 2	0.079 - 0.233	0.217 - 4.414	0.787 - 2.568	NA	NA	NA	0.04	0.0	0.0	0	0	NA
ICICI Bank	72.85 2- 74.79 4	71.93 4 74.3	88.33 2- 89.98 9	91.72 7- 91.86 2	0.008 - 2.874 4	0.314 - 0.69 4	0.235 - 5.1	0.236 - 4.407	0.1 - 4.516	0.092 - 1.53	0.444	0.011	0.0	NA	0.109	0.018	

Hindustan Unilever	75.47	80.97	86.72	83.84	0.0											
	8-	5-	5-	4-	-	0.25	0.09	1.117								
	77.47	83.30	89.40	84.22	17.9				2.527	NA	0.005	3.795	0.0	0.0	0.26	0.0
	5	7	7	2	21	1.082	0.191	17.17								
ITC	92.24	89.13	89.64	64.25		0.122		1.686								
	1-	-	4-	1-	0.713		0		0.0	0.0	0	1.57				
	93.61	89.4	90.04	64.47		1.42		16.42					0.0	0.129	0.0	0.129
	9	74	5	6	3.28	1	7.526	7	0.089	1.222	1.058	3.866				

Table A: Data of the voting patterns of institutional investors from top 7 NIFTY 50 companies, sourced from the BSE website based on the official disclosures made by the companies.

From 2009 to 2022, the DII share has gone up from 11.38 per cent to 14.06 percent and the share held by domestic mutual funds is currently at 7.95 per cent¹⁷. The shares held by domestic investors has hit an all-time-high of 23.53 per cent in the June quarter of 2022¹⁸. In the June 2022 quarter, top 10 per cent of companies by market capitalisation account for 90.68 per cent of FPI holding, 85 per cent of DII holding, and 82 per cent of MF holding, therefore, these companies have high levels of institutional investor holdings and are most likely to show the impact of the Stewardship Code. However, despite such high absolute numbers, nearly all resolutions are decided in the managements favour.

Across the board we can see that voting turnout has increased when compared to the previous years, with the exception of ITC. However, such steady increase has been the norm for the past few years and cannot be attributed solely to the implementation of the stewardship codes. Over the years, ICICI Bank had the most dramatic increase from 72% in 2019 to 91.8% in 2022. ITC's turnout plunged from 93.6% in 2019, the highest among all, to 64.4% in 2022, low participation rates are concerning considering ITC has had a stellar year¹⁹. This could maybe

¹⁷ *Ibid*

¹⁸ Sunaina Chadha, All-time high: Domestic investors pip foreign investors in ownership of stocks in June quarter - Times of India The Times of India (2022), <https://timesofindia.indiatimes.com/business/india-business/all-time-high-domestic-investors-pip-foreign-investors-in-ownership-of-stocks-in-june-quarter/articleshow/93322058.cms> (last visited Jan 10, 2024).

¹⁹ Asit Manohar, ITC share price hits 52-Week high amid company's AGM Mint (2022), <https://www.livemint.com/market/stock-market-news/itc-share-price-hits-52-week-high-amid-company-s-agm-meeting-11658298573951.html> (last visited Jan 10, 2024).

point towards the fact that these institutions become complacent when the company performs well and refrain from interfering.

The trend of concentrated shareholding pattern in listed companies still continues, with the promoters holding over 50 per cent stake in nearly 65 per cent of the top 500 listed companies in India, in 2018²⁰. The companies have passed all the ordinary resolutions introduced in this period successfully, as they only need a simple majority, which they are able to easily achieve, despite varying levels of opposition by the institutional investors. The promoter group continues to have full participation and vote for decisions unanimously. However, the institutional shareholder's participation varies and it is observed that the voting in controversial resolutions is split, leading to any shareholder action being frustrated. This combined with the stake held by the promoters, means that they are able to render any voting by institutional investors useless.

Proposals for dividend are passed relatively easily, often with unanimous support of both promoters and institutional investors. This is followed by appointment of and remuneration to auditors. The proposal most commonly opposed by the institutional investors is appointment and remuneration to directors, the shareholders of Reliance in particular have consistently voted against the management. However, in 2021, even with around 26 per cent of institutional investors opposing the re-election of Nikhil R. Meswani as director, they were unsuccessful in stopping it. This is because only 88.47 percent of the institutional investors have voted, and within that there is a split in the vote with 73 percent of the investors voting in the managements favour. Further, with the larger stake held by the promoters and full participation, it is distressing to see that they are able to outvote them by 5.64 votes for every 1 opposition vote. A similar outcome occurred with HDFC's chairman Deepak Parekh's re-election in 2018.

The only transactions that the institutional investors are able to substantially affect the outcome of are related party transactions (RPT) and special resolutions. Under the SEBI Listing Regulations all material RPTs require the approval of the shareholder²¹. Further, the Companies Act, 2013 and the Listing Regulations prohibit interested related parties and all related parties respectively, from voting on a resolution for approval of material RPTs. Such

²⁰ *Ibid*, see 3 (OECD, 2020).

²¹ SEBI (Listing & Disclosure Requirements) Regulation, 2015.

exclusion of promoters gives the shareholders more power, for instance in 2018 the shareholders of Tata Sponge Iron Limited were able to defeat a related party resolution with a mere of 3.77 per cent votes. Recently the Special resolution, which needs a minimum of 75 per cent approval in order to pass, to reappoint Siddharth Lal of Eicher Motors as the managing director with an increase in remuneration, failed due to the non-promoter shareholder's voting 26 per cent in opposition²².

Besides such anomalies, there is no significant change and the issues that existed before still persist. Therefore, it can be concluded that the various Stewardship codes have not achieved what they sought to do. They must be reformed keeping in mind Indian circumstances.

REFORMS

ROBO-VOTING AND REGULATING PROXY ADVISORY FIRMS

Institutional Investors are increasingly turning to Proxy Advisory Firms, which are corporate governance intermediaries that conduct research and provide advice on the best voting strategy to shareholders, for recommendations or to outsource their governance decisions. SEBI does not prohibit such outsourcing; it only requires the investor to disclose it under the stewardship code.

Although, Indian companies primarily have a concentrated shareholding pattern, the holdings of many of the larger companies have become more dispersed, giving proxy advisors the prospect of swaying the resolutions through advising. In related party transactions too, they wield a considerable amount of influence when the promoter shareholders are excluded from voting on the resolution. In the past few years, these entities have had an immense impact on governance and the state of shareholder activism in India, however, it also comes with a set of issues. This created the need for greater regulatory reforms

The Working Group Report on Issues Concerning Proxy Advisors dated 24 May 2019, recommended various guidelines that increase the scrutiny of these entities and suggested

²² Krishna Gopalan, Shareholders' activism: Why the Siddhartha Lal Episode is a wake up call for all companies Business Today (2021), <https://www.businesstoday.in/auto/story/shareholders-activism-why-the-siddhartha-lal-episode-is-a-wake-up-call-for-all-companies-304816-2021-08-20> (last visited Sep 12, 2022).

registration and compliance requirements²³. Following this SEBI issued Procedural Guidelines for Proxy Advisors dated 3 August 2020²⁴, which will operate along with the SEBI (Research Analyst) Regulations, 2014. They require the firms to formulate voting recommendation policies, communicate them to clients and the company, disclose any conflict of interest, and disclose the methodology and processes followed.

Currently these regulations do not extend to the foreign PAFs. In 2019, the chairman of HDFC Ltd Deepak Parekh was almost not reappointed as the non-executive chairman, when shareholders opposed the special resolution by 24 per cent, following the recommendations of the US proxy advisory firms Glass Lewis and ISS²⁵. The resolution ultimately passed, but this brought attention to the increasing influence of US advisory firms and foreign institutional investors in corporate decision making. This is a cause for concern as these firms often follow methodologies and policies that are too general²⁶. Such a “check list” approach may not make accommodations for country or company specific issues while issuing recommendations. Further, being a foreign based firm, they may not have the requisite knowledge about the nuances or the ground realities the Indian corporate landscape. While these firms strive to provide highly technical and quality research in order to maintain their reputation, in the absence of regulation, it remains that mistakes or inaccuracies would not invite any consequences. Therefore, issues arise when the institutional investors follow the advice without conducting their own in-house research and applying their minds, in order to avoid increased costs and efforts on non-core functions.

Further, even domestic PAFs that are regulated, offer generalized advice that may ignore the unique circumstances of each case leading to homogenization. They also follow a one-size-fits all approach that does not distinguish between how different kinds of institutional investors

²³Report of Working Group on issues concerning proxy advisors-seeking public comments, SEBI (2019), https://www.sebi.gov.in/reports/reports/jul-2019/report-of-working-group-on-issues-concerning-proxy-advisors-seeking-public-comments_43710.html (last visited Jan 15, 2024).

²⁴ SEBI, Procedural Guidelines for Proxy Advisors, SEBI/HO/IMD/DF1/CIR/P/2020/147 Securities and Exchange Board of India (2020), https://www.sebi.gov.in/legal/circulars/aug-20issue20/procedural-guidelines-for-proxy-advisors_47250.html (last visited Jan 10, 2024).

²⁵ Shilpy Sinha, 22.64% HDFC shareholders vote against Deepak Parekh The Economic Times (2017), <https://economictimes.indiatimes.com/markets/stocks/news/22-64-hdfc-shareholders-vote-against-deepak-parekh/articleshow/65207077.cms> (last visited Jan 8, 2024).

²⁶ Chester Spatt, Proxy advisory firms, governance, failure, and regulation The Harvard Law School Forum on Corporate Governance (2019), <https://corpgov.law.harvard.edu/2019/06/25/proxy-advisory-firms-governance-failure-and-regulation> (last visited Jan 8, 2024).

should vote, as not all of them have a single unified objective. Therefore, while proxy firms themselves are a novel addition, the overly broad policies of the PAFs along with “robo-voting” on part of the institutional investors, wherein they uncritically accept the recommendations and vote, may have adverse effects on governance.

As a regulatory measure, SEBI may introduce a requirement for the domestic financial institutions to set up a committee that mandatorily reviews the recommendations provided by the PAF’s on a case-by-case basis and comment on it and make it public, before making the final voting decision, as opposed to simply outsourcing it.

The Working Group rejected the proposal for the foreign based PAFs to be brought within the ambit of the regulatory framework by requiring mandatory registration with SEBI and engagement by institutional investors being made conditional on such registration. However, implementing this, along with standardized imposition of compliance, disclosure and communication requirements would bring clarity about the methodologies and the processes of these firms and improve governance. Given the increasing activism in the country, the latent potential, and the large-scale economies these firms have, they are likely to invest the time and costs associated with compliance.

RECONSIDERATION IN THE FACE OF DISSENT

Voluntary guidelines may be introduced by the regulator, wherein when a substantial percentage of institutional investors, say 20 percent, oppose a certain resolution, even if it is possible to bull-doze through and pass it with the support of the promoters, the management must withdraw it and reconsider it upon its merits. The management must engage in dialogue with those opposing the move in order to fully understand their concerns, and then react accordingly. This would also create good faith and foster long-term relationships. While some may argue that this would amount to overregulation and burden the company, it would actually discourage shareholder exits and benefit the firm’s value in the long term.

INCENTIVIZING AND DISINCENTIVIZING

Some scholars have argued that the policy should be to encourage vote and discourage exit and have advocated for increasing the costs of exiting the firm for the institutional investors, such as through the introduction of capital gains lock ins or regulation similar to the Green Mail

statute, to discourage short termism and investor myopia²⁷. Large shareholders will be unable to exit unless they are willing to sell at a lower than market price, so their interests will converge with that of the management²⁸. However, if the potential costs of activism is greater than the expected benefits and if the stake is small enough to successfully liquidate, then exit becomes attractive. Therefore, increasing the cost of exit would lead to the investor not selling and choosing to engage with the company in a manner that increases long term growth. Some suggested reforms have been disgorging of profits earned by an institutional investor holding more than 20% stake in the company if they sell within 18 months of buying or imposing higher capital gains tax on such sales. However, this is a slippery slope as it would be foolhardy to suggest that they have absolute obligations to the company over maximising their economic gains. Further, it would also impinge upon principles of free ownership. A better alternative would be to encourage engagement through incentives such as by mandating that the fund managers also invest in the companies that the fund invests in and offering monetary benefits.

COLLABORATION AND KNOWLEDGE SHARING

Inefficiency being one of the primary concerns, institutional investors must make the most of their stake by collaborating with others and engaging in collective action. These investors, especially the larger funds, have access to resources and information that the other smaller institutional and retail investors may not have, so in order for the resolutions to go their way, there must be knowledge sharing and communication of the voting policies and recommendations. While the question of free riding remains, this would become a tolerable annoyance when the benefits of the outcome outweigh the cost, especially when the entity has a large stake²⁹. Such collective action would give them more leverage to engage with the management. However, there remains concern that such collaboration with the common intent of enhancing investment value may be seen 'persons acting in concert' under the SEBI Regulations, 2011 (Takeover Code)³⁰. The possibility of being classified as such may cause hesitancy among the institutions, therefore, like in other jurisdictions, the regulator must

²⁷ Sunaina Chadha, All-time high: Domestic investors pip foreign investors in ownership of stocks in June quarter - Times of India The Times of India (2022), <https://timesofindia.indiatimes.com/business/india-business/all-time-high-domestic-investors-pip-foreign-investors-in-ownership-of-stocks-in-june-quarter/articleshow/93322058.cms> (last visited Jan 10, 2024).

²⁸ John C. Coffee, *Liquidity versus Control: The Institutional Investor as Corporate Monitor*, 91 Columbia Law Review 1277–1368 (1991), <https://www.jstor.org/stable/1123064?origin=crossref> (last visited Jan 5, 2024).

²⁹ Edward B. Rock, *The Logic and (Uncertain) Significance of Institutional Shareholder Activism*, 79 Georgetown Law Journal 445–506 (1991); Benard S. Black, *Shareholder Passivity Re-Examined*, 89 Michigan Law Review 520–608 (1990).

³⁰ Supratim Guha et al., Yes Governance Matters Nishithdesai (2020), https://nishithdesai.com/fileadmin/user_upload/Html/Hotline/200605_YGM_M_Stewardship_governance_in_India.html (last visited Jan 15, 2024).

provide guidance and clarification on when such collaborative action would be regarded as ‘acting in concert’ and encourage it in other circumstances.

CONCLUSION

This paper set out to examine the various issues that have either persisted or newly emerged even after the various reforms undertaken by the regulatory authorities. It identified the persisting inefficiency of the institutional investors in opposing resolutions in AGMs, the various institutional investors harming governance either by refusing to engage by exiting the company or being focused on short term profits, and the lack of transparency in voting and robo-voting as some of the contemporary issues. It then examined the Stewardship Code and undertook an empirical analysis and found that there is no substantial difference and that issues of lack of collaboration, participation, and independent voting continue to persist.

Finally, it suggested reforms that may be undertaken. With the advent of the growth of proxy firms, there are pitfalls such as over-broad recommendations or the foreign firms failing to understand the nuances before making suggestions, therefore the firm must not blindly follow the advice but also apply its own analysis to it. This can be facilitated by requiring a mandatory review made public. Further, the foreign firms must be mandatorily registered with SEBI and made to comply and disclose, to put them on the same footing as the domestic firms. Voluntary guidelines that require the companies to reconsider a proposal that receives a substantial number of opposing votes from the institutional investors and engage with them before re-tabling it, would ensure that the mere lack of absolute numbers don't stifle these voices. Incentivization and encouragement to continue holding onto the stocks for the long term would reduce the problem of investor myopia and strengthen governance. Further, the regulator clarifying what kinds of collaboration between institutional investors would be cause for concern under the SEBI Takeover Code and encouraging knowledge sharing would help curb informational asymmetry and facilitate collective action. These reforms, along with suitable changes to the stewardship code, shall strengthen the legal framework and complement the efforts of the more vigilant institutional investors.