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Institutional Investors and Corporate Governance: A Comparative Legal Analysis of India and the United States

SHREYA BANSAL[1] AND MS. RAMYA R[2]

ABSTRACT

The changing face of corporate governance across the world has been impacted by the growing importance of institutional investors in capital markets. Such organizations, which include mutual funds, pension funds, insurance companies, and hedge funds, own large chunks of shares in corporations and, therefore, have considerable power over corporates. This study addresses the role of institutional investors in developing the corporate governance system in India and the United States, two jurisdictions with differing but mutually reinforcing regulating approaches. India has certainly gone through a legislative cataclysm with the Companies Act, 2013, and the stewardship principles of SEBI, while the USA possesses a more developed governance system under the Sarbanes Oxley Act 2002, Dodd Frank Act 2010, and widespread shareholder activism.

This paper views to assist in understanding the problem, the study uses comparative research to describe the most important similarities and differences regarding the systems of regulations, rights of shareholders, obligations of stewardship, and mechanisms of enforcement. The analysis shows that both countries accept in principle institutional investors have a role in improving governance, but the legal systems in those countries differ greatly in their level of responsiveness, activism, and openness. The recommendation presented seeks from USA best practices and contextual relevance suggest practical steps to bolster the legal and regulatory framework in India. This is one more effort in the policy debate concerning corporate governance and the protection of investors.

Keywords: *Institutional Investors, Corporate Governance, SEBI, SEC, Shareholder Activism, Comparative Law*

I. INTRODUCTION

The 21st century has witnessed breathtaking changes to the ownership and control of corporations as institutional investors have emerged on the scene.[3] Corporate governance is the

[1] Author is an LL.M. (Com) Student at CMR University, School of Legal Studies, Bengaluru, Karnataka, India.
[2] Author is an Assistant Professor at CMR University, School of Legal Studies, Bengaluru, Karnataka, India.
[3] Bernard S. Black, Shareholder Activism and Corporate Governance in the United States, in The New Palgrave Dictionary of Economics and the Law 459 (1998)

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system by which companies are directed and managed, covering almost all the spheres that lead to the company, notably relations with the shareholders and other stakeholders. To ensure that corporate behaviour meets basic standards of transparency, accountability, fairness, and integrity, good corporate governance is needed. The impact of institutional investors has significantly changed over the last few decades when it comes to corporate governance. This seems to be a problem everywhere, but there are two regions that standout because of their peculiar market practices and regulatory systems: the USA and India. The United States developed a sophisticated system of shareholder activism which is backed by an unwavering system of disclosure obligations, fiduciary duties and enforcement by the SEC.[4] The USA institutional investors actively use their voting rights, submit shareholder resolutions, and is to interact directly with boards to promote better performance and governance. On the contrary, India shows forth an emerging market scenario where investment and governance practices are at development stage. India started implementing active corporate governance with The Companies Act in 2013. The Act was followed by many other regulatory steps such as the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and also the Stewardship Code which was introduced in 2019.

This research intends to perform a comparative legal analysis of the activities of the institutional investors as stakeholders in corporate governance in India and the United States. Its primary purposes are to study the laws and policies of the system concerning the institutional investors for each country, analyse how these policies are implemented so that the investors behaviours and the governance results are produced at desired levels, and take corrective actions especially in the Indian system. This paper aims to explain how institutional investors can be better incorporated through the analysis of the differences between the two jurisdictions which include structural, legal as well as cultural factors. The value of this comparison lies in the fact that it can provide policy-oriented information because of the interdependence of nations in the world financial system. With the increasing globalization of capital markets and the emerging convergence of governance frameworks, it becomes imperative to diagnose legal systems and use their strengths and weaknesses to propose adequate reforms to domestic systems intended for efficient corporate monitoring.

II. Conceptual framework

A. Institutional Investors: Meaning and Categories

Invests are the legal entities which are termed as clients whose money are put together and

[4] Jill E. Fisch, The Destructive Ambiguity of Federal Proxy Access, 61 Emory L.J. 435, 440 (2012)

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make an investment in one or more investment services on their behalf.[5] Unlike other types of investors, institutional investors have deep pockets.[6] This gives them a lot of leverage on the companies that they invest in. Their decisions affect not only a single company, but also company policies and practices across industries as well as the general economic condition of the country and the world at large. As per Indian law, the term Institutional investors is not defined under one statute exhaustively. There are however regulatory mentions in SEBI's guidelines and the Companies Act of 2013. For example, SEBI classifies institutional investors into mutual funds, pension funds, insurance companies, and alternate investment fund (AIFs).[7] The Stewardship Code of 2019 by SEBI and the IRDAI recognized institutional investors in relation to the supervision of the companies that are invested into. In the USA, the term is more clearly defined by a number of federal legislations. These includes the Investment Company Act of 1940 and The Securities Exchange Act of 1934 which recognized institutional investors as active participants in the market.[8] The USA Securities and Exchange Commission (SEC) monitors large institutional investors through filing requirements.

The major types of institutional investors are:

- Mutual Funds: They are regulated by SEBI in India and the SEC in the USA. They collect money from different investors and use it to purchase diversified portfolios.[9]
- Pension Funds: They are long term investment funds that manage a retiree's corpus. India's EPFO and the PERS system of USA are examples.[10]
- Insurance Companies: These companies invest the income from premiums in securities and have a responsibility to policyholders.[11]
- Sovereign Wealth Funds: Funds owned by governments, for example, India's National Investment and Infrastructure Fund (NIIF) and the Alaska Permanent Fund in the USA.[12]

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[5] Investment Company Act of 1940, 15 U.S.C. § 80a-1

[6] John C. Coffee, Jr. & Darius Palia, The Wolf at the Door: The Impact of Institutional Investors on the Market for Corporate Control, 105 Colum. L. Rev. (2) pp. 470 (2005)

[7] SEBI (Mutual Funds) Regulations, 1996, rr. 2(e), 10

[8] Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(1)

[9] A. Sundaram & S. Das, Mutual Funds in India: Regulation and Performance, 22 NALSAR Stud. L. Rev. (1) pp. 101 (2017)

[10] Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1002(37)

[11] IRDAI (Insurance Regulatory and Development Authority of India) Guidelines on Investment of Funds, 2019

[12] National Investment and Infrastructure Fund, Government of India, About NIIF, NIIF.gov.in (last visited Apr. 15, 2025)

- Hedge Funds and Private Equity Firms: Their level of regulation is lower than that of mutual or pension funds, and they tend to be much more intrusive with governance practices, primarily in the USA.[13]

The increasing size and diversity of these investors make them major stakeholders in governance issues, enabling them to implement accountability systems beyond just regulatory safeguards.

B. Corporate Governance: Definition and Principles

Corporate governance is concerned with the system under which companies are directed and controlled. In the words of OECD, "Corporate Governance its self encompasses a set of relationships between a company's management, its board, shareholders and other stakeholders."[14] It offers a framework for a company's objectives and monitoring as well it's performance. Cadbury Committee (1992) defined corporate governance as "the system by which companies are directed and controlled, focusing on boards and their accountability as well as integrity."

An appropriate corporate governance system recognizes the rights of a company's various stakeholders including shareholders, employees, customers, suppliers, financiers, regulators and the society at large. It promotes sustainability as well as ensures accountability and transparency. In India, the Companies Act of 2013 along with the SEBI (Listing Obligations and Disclosure Requirements) Regulations of 2015 provide the almost comprehensive governance framework.[15] Such laws focus on the appointment of independent directors, establishment of board committees (audit, nomination, and remuneration), and public availability of sensitive but necessary information related to participatory transactions and board activity. India's framework, on the other hand, has focused primarily on top-down governance reforms, implemented through legislative action following corporate scandals, such as Satyam.[16] On the other hand, in the USA, corporate governance is controlled by a hybrid of laws such as the Sarbanes-Oxley Act of 2002 and is regulated by the Securities and Exchange Commission (SEC) as well as listing requirements of the stock exchanges NYSE and NASDAQ. Compared to other countries, corporate governance in the USA relies more on

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[13] Securities and Exchange Commission, Private Funds Statistics, SEC.gov (2024)

[14] OECD, G20/OECD Principles of Corporate Governance 9 (2015), https://www.oecd.org/corporate/principles-corporate-governance.htm

[15] Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, Gazette of India, available at https://www.sebi.gov.in

[16] Sandeep Parekh, Corporate Governance in India: The Satyam Scandal, 2 Int'l J. Disclosure & Governance 264 (2009)

market forces and institutional shareholder participation to ensure accountability, especially regarding proxy voting, board appointment processes, and disclosures related to risk management.

III. Legal framework in India

A. Role of SEBI in Regulating Institutional Investors

Given that the primary governing authority SEBI has been and is actively controlling the activities of institutional investors, in India, Securities and Exchange board of India has instituted a system for the supervision of mutual funds, portfolio managers, AIFs, and foreign participatory investors, who together comprise the most important structure of Indians institutional investments. This institutional investment system is regulated through The SEBI (Mutual Funds) Regulations 1996, SEBI (Alternative Investment Funds) Regulations 2012, SEBI (Portfolio Managers) Regulations 2020, SEBI (Foreign Portfolio Investors) Regulations 2019, and SEBI (Investment Advisers) Regulations 2013, such system control activities of managers through registry, compliance, disclosure, and fiduciary duties which are allocated to the institutional investors ensuring systems integrity and accountability.[17] SEBI has mandated mutual funds to embrace stewardship obligations, the USA embedding a proactive governance participation regime for investors through regulatory patronage.[18]

B. The Companies Act, 2013 and Governance Mandates

The anchor of corporate governance in India is The Companies Act, 2013. The Act supersedes the Companies Act of 1956 by adopting a more advanced approach focused on increasing transparency, protection of investors, and accountability of corporations. The Institutional investors are quite affected by a number of provisions under the Act. As an example, Section 149 requires that public companies listed have a minimum one third of their board comprised of independent directors.[19] This is a mark that is used by institutional investors to measure the level of corporate governance accompanying the firm. There is also Sections 177 and 178 which collectively state a need for audit and nomination committees in some prescribed class of companies.[20] Also, Section 90 mandating the disclosure of beneficial ownership ensures there is increased transparency regarding who controls the shares of businesses, enabling those investors to actively participate in governance matters.[21] Through these mechanisms, the

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[17] SEBI (Alternative Investment Funds) Regulations, 2012, r. 4
[18] SEBI, Report of the Committee on Stewardship Code (2020)
[19] Companies Act, 2013 S 149(4)
[20] Companies Act, 2013 S 177–78
[21] Companies Act, 2013 S 90

Companies Act, 2013 plays a vital role in shaping an environment conducive to responsible and informed institutional investment.

C. SEBI (LODR) Regulations, 2015

Every corporation governing listed entities in India has to follow the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. This is referred to as the LODR regulations. The LODR regulations focus on governance issues such as board makeup with one woman director and a requisite number of independent directors to ensure balanced decision making and oversight. In addition to this, entities are required to provide comprehensive and indisputable information pertaining to financial statements, shareholding structures, and voting results which empowers institutional investors to make informed decisions. These regulations also enable active institutional participation in the entity's decision making via use of electronic voting. Crucial corporate decisions require approval from shareholders. This institutional investor's tool enables adequate sponsorship governance beyond fiscal powers granted by LODR making it simple for institutional investors to track orchestrate placed in the investee companies and hence justify proxy voting that propels active participation for annual general meetings.

IV. LEGAL FRAMEWORK IN THE UNITED STATES

A. Role of the Securities and Exchange Commission (SEC)

The SEC is one of the most important agencies in charge of regulating the activities of security markets and the activities of institutional investors in the United States. The SEC was created because of the Securities Exchange Act of 1934. These include publicly traded companies, investment advisors, mutual funds, hedge funds, and even pension funds. The essence of its activities is to promote transparency and informed decisions by requiring regular disclosures of financial and operational data which are filed with the Commission. The SEC has a guarantee of instilling discipline to corporate entities in allied financial markets which are crucial and at the same time offers a favourable arrangement for clients especially for institutional investors who heavily rely on the timely disclosures for appropriate portfolio management and engagement with. These disclosures automatically give clarity on how the investment is gauged on by the major players in the market.

1. The Sarbanes-Oxley Act (SOX), 2002

The Sarbanes-Oxley Act (SOX) was created to enhance governance and accountability standards in the USA (following the prominent scandals involving Enron and WorldCom). It made significant changes like requiring audit committees to be independent which protects the financial reporting oversight from being self-referential and negates possible conflicts of interests. The Act also imposes strict limitations on relationships between companies and their external auditors to prevent biases, injustices, or perverse motivations from sapping objectivity. In addition, it secures unjust discrimination against whistleblowers who unveil falsification gem owing Andara while providing robust protections for staff. For institutional investors, the mitigative measures under SOX and the tightening of regulations audits justify the increase in confidence in internal company controls.

2. The Dodd-Frank Act, 2010

Designed in light of the 2008 financial crisis, the Dodd-Frank Wall Street Reform and Consumer Protection Act sought to accommodate a corporate risk system while reinforcing shareholder value and responsibility. Another significant change is proxy access which allows institutional shareholders exceeding specific ownership levels to propose the election of directors on the company's proxy form, thus altering its governance structure and oversight. The Dodd-Frank Act added more responsibilities to corporate law by requiring companies to disclose certain information related to the business such as the ratio of the remuneration of the company's chief executive officer to that of the average employee and the conflict minerals disclosure regarding the company's ethical and supply chain policies.[22] These changes strengthened the influence of institutional investors in member firms' corporate governance structures as they worked more actively with the management as a result of these reforms.

B. Shareholder Rights and Activism

The corporate paradigm in the USA is characterized by an advanced system of shareholder activism, largely propelled by key institutional investors like BlackRock, Vanguard, and State Street Global Advisors.[23] These institutions engage in corporate governance through proxy voting. With their large shareholding, they determine whether to accept proposals regarding the appointment of boards, mergers, ESG, that is, environmental social governance policies, and executive pay. Moreover, institutional investors with voting power often submit shareholder proposals which tackle fundamental matters like climate change, board diversity, and political spending as well as sustainability of corporations. Unlike the relatively calmer and less pronounced engagement observed in India, USA institutional investors display a far bolder application of their influence, including the orchestration of proxy battles and the use of

[22] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 953(b), 124 Stat. 1376 (2010)
[23] Lucian A. Bebchuk & Scott Hirst, The Specter of the Giant Three, 99 B.U. L. Rev. 721 (2019)

public voice and press to campaign for change.

C. Governance Standards and Listing Rules

The New York Stock Exchange (NYSE) and NASDAQ are perhaps the most prominent USA stock exchanges, and they monitor governance compliance through their listing policies. In particular, these policies ensure there is a substantive presence of impartial directors on the boards of listed companies which is a crucial indicator of board-level surveillance and impartiality. These governance standards are very pertinent to institutional investors who actively monitor their compliance and more often than not, these standards serve as the benchmarks against which the governance endeavours of the companies in which they invest are adjudged. Combating passiveness in publicly traded corporations is enabled by these combined rules and voluntary measures which allow institutional investors to promote strong governance practices in the United States.

V. COMPARATIVE ANALYSIS OF INDIA AND THE UNITED STATES

The governance of a corporation is impacted principally by its institutional investors who affect managerial responsibility, openness, long-range planning, and other strategic choices. Nonetheless, their impact and method of interaction is largely determined by the laws and rules, the environment of the market, and the culture of the area in question.

A. Regulatory Institutions: SEBI vs. SEC

The infrastructure and regulation supervising securities markets and institutional investors in India and the USA focus on two prominent entities which are the Security Exchange Board of India (SEBI) and Securities and Exchange Commission (SEC). Both regulators have jurisdiction to regulate enforcement of the securities laws, supervision of the markets, the protection of investors and promotion of openness. SEBI established in 1992 is younger than the SEC which was formed in 1934 after the stock market crashed in the USA.[24] The SEBI system operates in a framework of a multi-agency system alongside the Ministry of Corporate Affairs (MCA), Reserve of Bank of India (RBI) and other regulative bodies like the Insurance Regulatory and Development Authority (IRDA) etc. In comparison to the other, benedict, the SEC has a centralized and developed institutional setting.[25] The SEC has sufficient funds to deal with and prosecute financial crimes and their many mal-practices. On the other hand, SEBI has made considerable progress over the last twenty years on matters relating to protection of

[24] Securities Exchange Act of 1934, 15 U.S.C. § 78d (1934); SEBI Act, No. 15 of 1992, § 3 (India)

[25] Troy A. Paredes, Comm'r, SEC, Remarks at the Symposium on Building the Financial System of the 21st Century (June 2009)

investors and the corporate governance framework. Therefore, despite some improvements, SEBI's enforcement is traditionally believed to be weaker than that of the SEC.

B. Shareholder Rights and Participation

One important aspect of the influence of institutional investors have is in the exercising of shareholder rights with respect to voting at Annual General Meetings (AGMs) and Extraordinary General Meetings (EGMs). The United States is the most advanced in enabling and allowing active shareholder participation. Institutional investors in the USA actively participate in governance by proxy voting, submitting management proposals, and engaging in dialogue with corporation directors concerning governance practices and other ESG issues. In the United States, proxy voting for institutional investors is a requirement rather than an opportunity. In contrast, India has relatively low participation among institutional investors.

C. Stewardship Practices and Fiduciary Duty

Stewardship has become more prominent as an asset's responsible management in the context of the willing beneficiaries and as a corporate governance mechanism for institutional investors to influence the behaviour of companies. Both India and the USA recognize fiduciary duties that compel institutional investors to act responsibly and with due care in the performance of investment functions. In India, SEBI has issued a stewardship code in the year 2019, which calls upon mutual funds and AIFs to more actively participate in corporate governance and disclose their stewardship activities. On the other hand, in the USA, the legal and customary aspect of incorporating stewardship is much more developed compared to other regions. USA pension fund managers face strict fiduciary responsibility under the Employee Retirement Income Security Act (ERISA), which requires placing the interests of beneficiaries first.[26] Some of the largest asset managers in the world, like Black Rock, Vanguard, and State Street, for instance, have formed dedicated stewardship teams to liaise with corporations on governance, strategy, and sustainability.

D. Legal Framework and Statutory Instruments

The statutes outlining corporate governance for institutional investors in India and the U.S. are significantly different, in structure and approach. India's governance system is primarily incorporated within The Companies Act of 2013, which prescribes rules regarding the structure of the board, appointment of independent directors, related party transactions, and disclosures.[27] Complying with the LODR Regulations of SEBI's listing obligations entails

[26] Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001–1461
[27] Companies Act, No. 18 of 2013, §§ 149, 177–178, 90 (India)

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measures on minority protection, participation at general meetings, voting rights, and continuous disclosure. There are other rules that govern the behaviour of investors such as industry-specific ones, but in general, the approach is prescriptive and rule-based compliance with duties defined in the law. On the contrary, the system in the USA comprises federal securities laws such as the Sarbanes-Oxley Act of 2002 and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 alongside state corporate laws.[28] The blend of laws at federal and state levels results in a stiff yet versatile system for governance which shifts with the nature of the market and investor activism. The USA framework is more detailed, focusing on disclosures and fiduciary accountability, thus empowering institutional investors to reshape governance effectively. Meanwhile, India's evolving framework continues to balance detailed regulatory mandates with gradually expanding stewardship responsibilities.

E. Transparency and Disclosure

As with good corporate governance, transparency allows investors to make informed decisions and hold management accountable. Both India and the USA require extensive corporate disclosure, but the scope, quality, and timeliness differ. Under the USA securities system, companies are required to submit periodic reports, including Form 10-K (annual), 10-Q (quarterly), and 8-K (current events) to the SEC. These filings are complete, uniform, and filed with the SEC's EDGAR database where the public can access them. India's disclosure regime, which is largely governed by SEBI regulations, requires periodic financial disclosure, share ownership disclosure, and voting outcome disclosure. As a result, Indian investors have more barriers to accessing real-time governance information variables unlike their USA counterparts.

F. Market Structure and Institutional Composition

The structure and the degree of institutional investors impact their governance capability in a systemically profound manner. As for India, the investor base constitutes of domestic mutual funds, insurance companies, pension funds and FPIs. Although this group possesses a substantial amount of wealth, their governance impact tends to be fragmented because of differing mandates, ownership patterns, and regulatory frameworks. In contrast, a large share of the market is dominated by a few asset managers in the USA market. Moreover, these asset managers are subject to intense scrutiny from aggressive regulatory regimes that uphold public interests, which in turn encourages these asset managers to adopt prudent governance policies. In any case, unlike Indian institutional investors who deal with direct political interference and

[28] Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745

ambiguity surrounding the fiduciary framework, more robust mechanisms for coordination tend to dilute potential governance agents.

G. Opportunities for Cross-learning and Harmonization

India and the USA have differences, but both can richly benefit from cross-jurisdictional learning.[29] From the USA side, India's governance proposals that seek to formalize the retail investor's role through ESG integration and actively shield emerging proxies come into consideration as a case study. The same can be said about India studying the USA proxy advisory ecosystem along with proxy shareholder stewards and activist shareholder protection policies. Neither country has found the perfect solution to the problem of regulatory capture vis-a-vis market forces, so there is room for discourse to form strategies for optimal practices. As institutional investors become more transnational, there is greater need for certain intersection policies that deal with unifying standards of governance on a cross-national level.

Thus, the comparative study of India and the United States brings to light the differences in the governance, engagement, and impact of institutional investors on corporations. The USA has an advanced, activist system supported by law, strong disclosure practices, and dependable legal frameworks, while India possesses an evolving system characterized by compliance, a softer approach consensus culture. Despite their differences, both jurisdictions have much to learn from each other, India can draw upon USA activism and stewardship experience, while the USA can look at India's ESG, governance, and retail investor relations, policies for regulatory insight. The collaboration and exchange of ideas between nations can improve governance for institutional investors as a whole.

VI. Conclusion

As a result of their participation in corporate governance, institutional investors are now regarded as important participants in promoting corporate social responsibility, transparency, accountability, and stakeholder value. This is a comparative legal study of India and the USA, where it is clear that both these jurisdictions simultaneously understand the relevance of institutional investors. However, their legal frameworks are quite different with differing levels of maturity, enforcement, and investor participation. The USA is more advanced in this regard as there is also a favourable environment for hostile takeovers, activism by shareholders, strong fiduciary duties, and extensive disclosure requirements. Institutional investors in the USA not only benefit from active, as well as supportive, regulatory structures through the Securities and

[29] OECD, Corporate Governance in Asia: A Comparative Perspective 221–27 (2001)

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Exchange Commission, but are also, legally and socially, bound to act as active managers of their funds. Unlike the United States of America, India's framework, more so after the Companies Act of 2013 and the gradual introduction of SEBI rules and regulations, is still a work in progress. Thus, the future of institutional investor governance lies in mutual learning. By balancing robust regulation with meaningful investor empowerment, both India and the U.S. can foster more inclusive, transparent, and sustainable corporate governance systems capable of adapting to global financial and ethical challenges.

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