

**ASSESSING THE EFFICACY
OF
RETAIL INVESTORS' PROTECTION REGIME IN INDIA**

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ABSTRACT

This article explores the strength of the retail investors' protection regime in India and verifies whether it can withstand vulnerabilities that put retail investors in a precarious position. Delving upon two major causes of vulnerabilities, i.e. concentrated shareholding pattern in the listed public companies and the passive nature of retail investors, this paper establishes the veracity of these claims through the use of data collected from a sample of BSE top thirty companies to establish the effect it brings. This article also evaluates the efficacy of borrowed legislative techniques from other corporate governance regimes to protect investors in companies incorporated in India. Finally, it concludes by highlighting the deficiency in the enforcement system and demonstrating how the Indian corporate regime has failed to plug the vulnerabilities that affect retail investors and provides recommendations to reform the system to safeguard their interests.

Keywords: Corporate Governance, Fraud examination, Retail Investor Protection, Company law.

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I. INTRODUCTION & DEFINITION OF RETAIL INVESTOR

Primary and Secondary markets¹ are considered to be the pillar of the economy; it gives companies a superpower². This power relates to raising finance in vast amounts, which are then utilized in endeavours like expansion. This happens through interaction between companies and investors in the form of Initial Public offers (IPOs)³ and other methods of raising finance like Rights Issue⁴, Composite Issue⁵, Bonus Issue⁶, Private Placement⁷, Preferential Allotment⁸, Qualified institutional placement (QIP)⁹ and Institutional placement programme (IPP)¹⁰. It bears noting that the foundation of this interaction lies within investor confidence¹¹.

¹ Financial markets are where securities are traded. These include stock, bonds, commodities etc. Financial markets are divided into two parts which are capital market and money market. Money market is for short term debt while capital markets are for long term debt. Capital markets are further divided into primary market and secondary market. Primary markets are those where securities are first traded and created. Secondary market are those where subsequent trading happens. See Malla PB, *Corporate Governance: History, Evolution, and India Story* 77-78 (Routledge India, Delhi, 2010); Yadav S, 'Stock Market Volatility - A Study Of Indian Stock Market' (2017) 6 *Global Journal for Research Analysis* 629. See also FAQ of SEBI on these markets available at https://www.sebi.gov.in/sebi_data/faqfiles/jan-2017/1485843476566.pdf and FAQ 2 available at <https://investor.sebi.gov.in/pdf/reference-material/primarymarkets.pdf>.

² Superpower relates to raising finance. This derives its base from the fact that single power entity has more credit worthiness than fractioned individuals. Malla PB, *Corporate Governance: History, Evolution, and India Story* 34-48 (Routledge India, Delhi, 2010)..

³ IPO stands for Initial public offer. In IPO shares of company are open for public to subscribe. SEBI ICDR Regulation 2018, chapter II part I provides eligibility conditions for IPO and SEBI ICDR s.2(w) defines it. Further Public offer (FPO) is when listed company seeks to issue more shares. SEBI ICDR s.2(q) defines it and SEBI ICDR chapter IV deals with it.

⁴ Rights issue is when existing shareholders are invited purchase additional shares and given preference. Companies act 2013 s. 62 r/w SEBI ICDR regulation 2018 chapter III deals with this and SEBI ICDR s.2(xx) defines it.

⁵ Composite issue is those which involve public issue and rights issue take simultaneously, SEBI ICDR s.2(h) defines this.

⁶ Bonus issue is when additional shares are allotted to existing shareholders. Companies Act, 2018 s.63 defines it and SEBI ICDR regulations 2018, chapter XI deals with it.

⁷ Private placement is where company allots shares to investors that are chosen by them. Companies Act 2013, s.42 r/w Companies (prospectus and allotment securities) rules 2014, rule 14 deals with it.

⁸ Preferential allotment is where shares are allotted to select group of people. SEBI ICDR regulations 2018, chapter V deal with it and SEBI ICDR regulation s.2(nn) defines it.

⁹ Qualified institutional placement (QIP) is done to avoid standard regulatory compliance and it assists company in raising finance faster than traditional methods like IPO etc. in QIP shares are offered to select investor groups like qualified institutional buyer (QIBs) and public is not involved. SEBI ICDR 2018, s.2(tt) defines QIP and chapter VI of this regulation provide eligibility conditions and applicable law.

¹⁰ Institutional placement programme (IPP) are those where additional securities are offered to select groups like QIBs and public is not involved. This is dealt as per SEBI ICDR 2009, chapter VIIIA.

¹¹ This derives its base from market-oriented governance models. The pillar of the stock market is its liquid nature. Liquidity attracts investors and companies are attracted by vast amount they can borrow. But market is liquid only if has a strong investor protection regime. If investors cannot cash out, then market will collapse. It won't attract that many investors and if investors are not their companies won't find raising finance lucrative. Malla PB, *Corporate Governance: History, Evolution, and India Story* 87-100 (Routledge India, Delhi, 2010), .

Hence investor protection regimes focus significantly on boosting investor confidence. Without investor confidence, the core objective of these markets will not be achieved.

Investors provide finance to the companies in the hope of reaping returns. Returns are viewed through the lens of risk but not from the lens of scams. Hence, theoretically, if multiple scams come to light and a trend of frauds is observed, investors might be reluctant to provide finance, which in turn affects how the markets function. That is the reason why temporary shocks are observed when financial frauds come to light¹². Thus, safety assurance through checks and balance mechanisms in the concerned legislations¹³, prescribed compliance mechanisms¹⁴ and enforcement measures¹⁵ are important to protect the investors' interests and boost their confidence.

With regards to the corporate finance, the public company satisfies its financial requirements by raising funds in the primary market from different investors- Qualified Institutional Buyers (QIBs)¹⁶, Anchor Investors¹⁷, Foreign Institutional Investors(FIIs)¹⁸, Non- Institutional Investors (NIIs)/High Net-worth individuals(HNIs)¹⁹, and retail investors²⁰. Though each of these investors has a common goal which relates to capital appreciation, the authors believe

¹² Hoffman shows through empirical analysis how investor confidence leads to more investment. Situations like fraud though don't stop the market but it evokes a cautious approach which forms a detrimental approach. But in theory continuous frauds could lead to collapse of market. hence significant of investor confidence cannot be overlooked. Hoffmann AOI and Post T, "How Does Investor Confidence Lead to Trading? Linking Investor Return Experiences, Confidence, and Investment Beliefs" (*Social Science Research Network 2016*) SSRN Scholarly Paper ID 2333419 <<https://papers.ssrn.com/abstract=2333419>> accessed 2 January 2022.

¹³ Companies Act (CA) 2013 s. 179 is an example of such mechanism. Under this scope of power of BOD is provided. It provides set criteria wherein BOD can themselves make a decision and where BOD requires shareholder's approval.

¹⁴ There are multiple examples of compliance mechanism like CA, 2013 s.134 wherein directors report has to be prepared or s.129 regarding preparation of financial statements etc.

¹⁵ Examples of such measures are CA 2013, s.210 wherein Central govt can initiate investigation into affairs of companies. Generally enforcements are of 3 types public, private and gatekeepers. Public enforcement can be found in provisions like CA 2013, s.248. Examples of private enforcement are s.241 and s.245. Gatekeepers' enforcement can be seen through s.143(2) and s.102 wherein role of auditors is important. See Chapter 12 of Afsharipour A and Paranjpe P, *Handbook on Corporate Governance in India 220-225* (2021 Edition, The Conference Board 2021). See also Armour J, Hansmann H and Kraakman R, "Agency Problems, Legal Strategies, and Enforcement" (*Social Science Research Network 2009*) SSRN Scholarly Paper ID 1436555, <<https://papers.ssrn.com/abstract=1436555>> accessed 4 July 2021>

¹⁶ DIP (disclosure and investor protection) guidelines of 2000, clause 2.2.2B (v) define qualified Institutional buyer. SEBI (ICDR) 2018 s. 2(ss) also defines it.

¹⁷ Anchor investors are those who make a bid before IPO and are generally QIBs. SEBI (issue of capital and disclosure requirements) 2018, s.2(c) defines it.

¹⁸ SEBI (FII) regulation 1995, s.2(f) defines these type of investors. See also FAQ of RBI <https://www.rbi.org.in/fiilist/index.html>.

¹⁹ SEBI (ICDR) regulation 2018, s. 2(jj)

²⁰ There is no fixed definition of such individuals, but they are generally individuals with more than 2-5 crores of investable surplus.

that retail investors belong to the vulnerable class, whose protection gets overshadowed due to their peculiar characteristics, which we shall discuss in the coming section.²¹

Retail investors are investors who buy shares with a bid amount of less than rupees two lakhs as per section 2(zf) of SEBI (ICDR) regulation 2018²². A peculiar characteristic of this group is that they are geographically dispersed²³ with limited technical know-how concerning the intricacies²⁴ of how the share market operates²⁵. This makes them vulnerable to sudden changes like corporate fraud in the securities market²⁶. Therefore, it becomes important to protect their interest, especially since corporate governance lapses have taken an upward

²¹ This term is defined in SEBI (ICDR) Regulation, 2018, s.2(zf)

²² According to SEBI(ICDR) regulation, 2018 s.2(zf). 25% minimum holding for Non promoter shareholders is mandated by law. Non-promoter holdings include retail investors. Securities and Contract regulations, 1956 rule 19A prescribe minimum public shareholding at 25%. See also, FAQ of SEBI on SAST regulations *available at* https://www.sebi.gov.in/sebi_data/faqfiles/mar-2022/1648620806406.pdf. Lately in 2013 govt tried to increase this to 35 Percent, but it was faced with a backlash from promoters and company Union. Now, Sebi has decided to lower this threshold and relax these rule. See Modak S, “Sebi Relaxes 25% Minimum Public Shareholding Norms, Deadline Postponed” *Business Standard India* (14 May 2020) <https://www.business-standard.com/article/markets/sebi-relaxes-25-minimum-public-shareholding-norms-deadline-postponed-120051401698_1.html> accessed 24 October 2021

²³ They usually maintain portfolio and follow the approach of not putting all their eggs in different basket meaning they invest in multiple stocks and investments.

²⁴ It is observed that retail investors are cautious in their approach, especially in high-risk transactions due to their limited technical know-how of stock market. It is seen from the fact that SEBI annual reports focusing on increasing investor knowledge by running various program to empower retail investors. They realise that retail investor has some hesitation with stock markets. So counter these hesitations they run these program to offer knowledge to them so that they can reap benefits of stock markets. With advent of Demat Account process being shifted online this aspect has reduced. The fact is that retail investors are careful in investing and have a fear of stock market is due to high risk factor. They think twice before buying shares. We can understand this through a simple proposition if you have scarcity of money then you think twice before spending especially if takes heavy chunk of your budget. This is the reason why companies break shares into low prices thereby making it affordable for retail investors. An investor is likely to buy 10 rupee share but hesitate when buying 100 rupee share if he has budget of 500 rupees. Smith G, “Stock Splits: A Reevaluation” (2019) 28 *The Journal of Investing* 21 <<https://joi.pm-research.com/content/28/4/21>> accessed 10 June 2022

²⁵ Technical knowledge limitations stem from managerial class i.e. BOD spreading misinformation through asymmetries and expropriate shareholder value. See, Malla PB, *Corporate Governance: History, Evolution, and India Story* 87-100 (Routledge India, Delhi, 2010)..

²⁶ See speech given by Peter Driscoll who works at office of compliance inspections and examinations. This speech was published at website of SEC and talked about protecting retail investors from frauds. It was stated that frauds are front runners on creating vulnerability for retail investors as class. “SEC.Gov | How We Protect Retail Investors” <<https://www.sec.gov/news/speech/speech-driscoll-042919>> accessed 10 June 2022.

For Indian Context see, Sharma D and Verma R, “Reaction of Stock Price to Frauds’ Announcements: Evidence from Indian Banking Sector” (2020) 16 *Asia-Pacific Journal of Management Research and Innovation* 157 <<https://doi.org/10.1177/2319510X20930879>> accessed 16 June 2022

trajectory. For example, in the recent decade, we have seen scams like Vijay Mallaya²⁷, Nirav Modi²⁸, Yesbank Scam²⁹, and many more³⁰.

In light of the points mentioned above, the authors believe that examining the efficacy of measures used to reduce corporate governance failures and protect retail investors is critical. Furthermore, there is an urgent need to not only focus on the root causes behind the issue but also remodel the trajectory Indian corporate governance undertakes, especially by heeding to troublesome areas.

The article proceeds as follows. In the second part, it discusses the vulnerabilities that arise in case of retail investors. It identifies key issues and problems that affect them and utilises recent

²⁷ Vijay Mallya took multiple loans to finance his airlines known as kingfisher airlines. There were critical concerns raised on credit worthiness of various credit rating organization. This scam resulted in massive losses to shareholder. During the aftermath of the scandal, he left India for UK. India is still trying to extradite him. See “Corporate Governance Failures in India” (*International Journal of Law Management & Humanities*) <<https://www.ijlmh.com/paper/corporate-governance-failures-in-india/>> accessed 10 June 2022

²⁸ Nirav Modi took multiple letter of credit from PNB bank without providing requisite collaterals. This series of transaction were done with the connivance of the bank and from one particular branch. It resulted in massive shocks for banking industry. See “Corporate Governance Failures in India” (*International Journal of Law Management & Humanities*) <<https://www.ijlmh.com/paper/corporate-governance-failures-in-india/>> accessed 10 June 2022

²⁹ In yesbank scam, investor money was used to siphon of the funds and launder money In this scam public money was used to fund DHFL and the co-founder’s received kickback for approving and authorizing those transaction. Under the corporate governance regime, if it were to function as per theory then such a transaction shouldn’t have received approval of shareholders. On this , see “Rs 5,000-Crore Fraud By Yes Bank’s Rana Kapoor, Wadhawans: Probe Agency” (*NDTV.com*) <<https://www.ndtv.com/india-news/yes-bank-fraud-rs-5-000-crore-fraud-by-yes-banks-rana-kapoor-wadhawans-probe-agency-2913012>> accessed 10 June 2022

³⁰ On this, see SEBI Report 2018 or 2019 available at https://www.sebi.gov.in/reports/annual-reports/jul-2019/annual-report-2018-19_43670.html. Every year there is a mention of investor awareness programmes and the extreme need of it. Not only their financial knowledge is limited but their knowledge on rights of investor is also limited. Further there are other scams that coming to light which impact investors. IL&FS there were issues with accounting and external auditors were found to be conniving with management to present financially sound company records. But it was later found that it wasn’t the case. Read more at Rathod T and Tiwari H, “Analysis of Indian Laws in the Wake of IL&FS Crisis” (2020) 3 *Journal on Corporate Law and Governance* 218 <<http://gov.nlujodhpur.ac.in/wp-content/uploads/2021/02/Volume-3-Issue-2-2020.pdf>> Tata Mistry case is another controversy wherein Cyrus Mistry was dismissed against the wishes of investors by promoters. This led to a huge controversy where class action suits were filed but they were stricken since investors were not part of one class. Read more at Kaswa H and Pandey S, “A RECURRENT QUEST FOR CORPORATE GOVERNANCE IN INDIA: REVISITING THE IMBALANCED SCALES OF SHAREHOLDERS” PROTECTION IN TATA-MISTRY CASE” (2021) 4 *Journal on Corporate Law and Governance* 121 <<http://jclg.in/wp-content/uploads/2021/11/JCLG-Volume-IV-Issue-2.pdf>>. In Infosys crisis, Former CEO Sikka was overpaid, and investors were not happy with management decision. With subsequent constraint on financial position demand for reduction in his compensation was raised. Subsequently a huge controversy broke out and Companies Act 2013 learnt from this and put a cap on compensation offered to managerial personnel of the company. Read more at Kothari S, “THE INFOSYS CRISIS: WHO ENDED UP PAYING THE “PRICE”?” (2020) 3 *Journal on Corporate Law and Governance* 127 <<http://gov.nlujodhpur.ac.in/wp-content/uploads/2021/02/Volume-3-Issue-2-2020.pdf>> .

trends/ happenings in the corporate governance sphere to substantiate the findings further. The third part examines the commonality between the issues that affect retail investors. This assists the authors in focusing on problems that the retail investors face and how could these problems be addressed. The fourth part focuses on the legal framework within India and evaluates how it tackles the issues that affect retail investors. It analyses the current legislative framework to find the key reason for its ineffectiveness. The fifth part firstly emphasises SEBI's policy decisions that focus on retail investor protection and then turns to assess the shortcomings of SEBI's policy decisions to highlight how and why these decisions are ineffective in providing adequate retail investor protection. The sixth part evaluates the recent measures that were brought in India to protect the retail investors from different vulnerabilities, finding a commonality between past measures and recent legislative trends, which ultimately leads to an ineffective retail investor protection regime.

II. KEY PROBLEMS AND MAJOR VULNERABILITY

Retail investor protection is predominantly affected by three significant issues: information asymmetry, conflict of interest between the board of directors and shareholders³¹, and conflict of interest between majority shareholders and minority shareholders. These problems concerning the conflict of interests find their origins within the concept of the agency problem. There are three kinds of agency problems. The first kind of agency problem relates to the Board of directors and the executive management promoting their own interests at the cost of the shareholders³². The second agency problem is the conflict between owners who possess majority shares and thus have substantial control over the company's affairs and the non-controlling shareholders. The third agency problem is the conflict between companies and

³¹ Berle, Adolf and Gardiner Means (1932): "The Modern Corporation and Private Property, New York": The Macmillan Company, available at https://edisciplinas.usp.br/pluginfile.php/106085/mod_resource/content/1/DCO0318_Aula_0_-_Berle__Means.pdf

³² We see a fading significance of effective corporate governance regime in modern times. Corporate governance is not working as per the vision imagined by drafters. As per theoretical understanding, effective management is that management which involve shareholders to appoint BOD which results in BOD appointing other key managerial personnel. But promoter have gained the ability to misuse this vision. Promoter group misuse the powers and use various techniques like disarmament which results in appointing puppet directors. They effectively take control of all the three arms within the regime thereby appointing both BOD and key managerial positions. This affects the independent structure of board of directors and its functions. As per theoretical foundation of companies Act 2013, a person can be on all three positions which are BOD, Promoter and KMP. If we analyse this in light of substantial control over shares by promoters, it can be easy to control each arms. See, Balasubramanian N, *Leading from the Top: Directors Who Make the Difference* (2016)

third-party stakeholders like creditors, employees and other intermediaries that interact with company and its functioning.

It is submitted that the first and the second kind of agency problems are relevant for investor protection regimes; therefore, a detailed analysis of the third kind is outside the purview of this research work. Since this paper deals with retail investor protection the scope of other intermediaries/functionaries and their conflict with the company is outside the purview. While explaining the agency problems, several scholars³³ highlight the risk of potential instability that a company can face due to these agency problems, and thus put a premium on the importance of robust corporate governance policies to tackle the agency problems. The authors agree with the view that retail investors face the brunt of the agency problem as they are at the bottom of the corporate ladder³⁴. This stems directly from the fact that in a public company, they are highly dispersed and have no coordination amongst them³⁵. Further, due to their passive nature, they generally do not participate in corporate governance measures made for them³⁶, making it difficult to protect their interest. For example, not attending meetings like annual general meetings³⁷. Let us collect empirical data to test the claims of low attendance by retail investors. Following table would illustrate the attendance by promoter groups and other shareholders in top 30 companies as per BSE.

Table 1- Analysis of Top 30 Companies by Market Capitalisation

S. NO	COMPANY NAME	SHAREHOLDING PERCENTAGES	ATTENDANCE BY RETAIL INVESTORS	REMARKS
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³³ See Armour J, Hansmann H and Kraakman R, “Agency Problems, Legal Strategies, and Enforcement” (Social Science Research Network 2009) SSRN Scholarly Paper ID 1436555 <<https://papers.ssrn.com/abstract=1436555>> accessed 4 July 2021. See also, Gompers P, Ishii J and Metrick A, “Corporate Governance and Equity Prices” (2003) 118 *The Quarterly Journal of Economics* 107 <<https://www.jstor.org/stable/25053900>> accessed 24 June 2022; Leora Klapper and Inessa “Love, Corporate Governance, Investor Protection, and Performance in Emerging Markets”, 10 *Journal Of Corporate Finance* 703 (2004)

³⁴ On this, see Balasubramanian N, *Leading from the Top: Directors Who Make the Difference* (2016)

³⁵ Few exceptional cases have presented themselves. But those cases are very rare and disperse nature of retail investors hampers collective shareholder activism here. Cases like Tata Mistry have seen shareholders coming together. But these cases dwindle especially on closer look and tracing the origin of movements. On analysis shareholder activism would drop if you remove the cases involving promoters who started the activism. Hardly any big cases have come up over the years. In Tata Mistry case though shareholders especially retail came together but the action was initiated by Sharpooji Paloonji promoter group etc. See for more information, Varottil U, “Case-Study Evidence of Shareholder Activism” (*IndiaCorpLaw*, 24 February 2016) <<https://indiacorplaw.in/2016/02/case-study-evidence-of-shareholder.html>> accessed 24 October 2021.

³⁶ Refer to empirical data in table 1. We can see that attendance is low. It is seen paucity of time is reason for attendance. For more see also, Solomon D and Soltes E, “What Are We Meeting For? The Consequences of Private Meetings with Investors” (2015) 58 *The Journal of Law & Economics* 325 <<https://www.jstor.org/stable/10.1086/684038>> accessed 24 October 2021

³⁷ Attendance rate is low if we analyse Table 1 data present in appendix.

1.	Reliance Industries Ltd	<p>Promoter and Promoter Groups hold 50.58 %, which is divided among 48 people</p> <p>Public Holds 49.42% divided between 30 Lakh plus people</p>	<p>AGM Held on 15th July 2020 – Attendance of Promoter group was full and Public was 3 Lakh</p>	<p>Less than 10 per cent of the public attended.</p>
2.	Tata Consultancy Services	<p>Promoter and Promoter group holds 72.19%, which is divided among 5 people.</p> <p>The public holds 27.81%, divided between 10 Lakh plus</p>	<p>AGM held on 11 June 2020- Attendance of Promoter and Promoter group was full, and Public was 1 thousand plus</p>	<p>Less than 0.1 per cent attended of public attended</p>
3.	HDFC Bank	<p>Promoter and Promoter group holds 25.97%, which is divided among 3 people</p> <p>The public holds 74.03% , which is divided among 13 Lakh plus people.</p>	<p>AGM Held on 18 July 2020, attendance of the promoter and Promoter group was full, and the public was 596.</p>	<p>Less than 0.1 per cent attended of public attended</p>
4.	Infosys	<p>Promoter and Promoter Group holds 12.95%, which is divided among 23 people.</p> <p>The public holds 86.69%, which is divided among 14 lakh plus people</p>	<p>AGM Held on 27 June 2020 attendance of Promoter and Promoter Group was 3 and Public was 1804.</p>	<p>Less than 0.1% of the public attended</p>
5.	Hindustan Unilever	<p>Promoter and promoter group holds 61.90% divided among 7 people</p> <p>The public holds 38.10% divided among 7 Lakh plus people</p>	<p>AGM held on 30 June 2020 attendance of Promoter and Promoter group was full, and the public was 328.</p>	<p>Less than 0.1% of the public attended</p>

6.	Housing Development Finance Corp	Public Holds 100% of shares divided among 5 Lakh plus people	AGM held on 30 July 2020 public attendance was only 388	Less than 0.1% of the public attended
7.	ICICI Bank	The public holds 100 per cent of the shares divided among 13 Lakh people	AGM held on 14 August 2020 public attendance was only 305	Less than 0.1% of the public attended
8.	Kotak Mahindra Bank	Promoter and Promoter groups hold 26.03% among between 8 people The public holds 73.98% divided among 4 Lakh plus people	AGM held on 18 August 2020 Promoter and Promoter group attendance was 1, and public attendance was 177	Less than 0.1% of the public attended
9.	State Bank of India	Promoter and Promoter group holds 57.63% divided between 1 person. The public holds 42.37% divided among 26 Lakh plus people	AGM Held on 14 July 2020 Promoter and Promoter group attendance was full, and public attendance was 106	Less than 0.1% of the public attended
10.	Bajaj Finance Ltd	Promoter and promoter group holds 56.12%, divided among 16 people The public holds 43.71% divided among 4 Lakh plus people	AGM held on 21 July 2020 promoter and promoter group attendance was 10 and public attendance was 301	Less than 0.1% of the public attended
11.	Bharti Airtel	Promoter and promoter group holds 55.86% divided among 4 people The public holds 44.08% divided among 7 Lakh plus people	AGM held on 18 August 2020 promoter and promoter group attendance was full and public attendance was 252	Less than 0.1% of the public attended
12.	WIPRO	Promoter and promoter group	AGM held on 13 July 2020	Less than 0.1% of the

		holds 73.02% divided among 10 people	promoter and promoter group attendance was 5 and public attendance was 269	public attended
13.	Asian Paints	Promoter and promoter group holds 52.79 % divided among 81 people The public holds 47.21% divided among 4 Lakh plus people	AGM held on 5 August 2020 promoter and promoter group attendance was 34 and public attendance was 307	Less than 0.1% of the public attended
14.	ITC	The public holds 100% divided among 21 Lakh plus people	AGM held on 5 August 2020 public attendance was 1471	Less than 0.1% of the public attended
15.	HCL Technologies	Promoter and promoter group holds 60.33 % divided among 7 people The public holds 39.67% divided among 5 Lakh plus people	AGM held on 29 September 2020 promoter and promoter group attendance was full and public attendance was 172	Less than 0.1% of the public attended
16.	Axis Bank	Promoter and promoter group holds 13.58 % divided among 7 people The public holds 86.42% divided among 6 Lakh plus people	AGM held on 31 July 2020 promoter and promoter group attendance was 2 and public attendance was 123	Less than 0.1% of the public attended
17.	Maruti Suzuki	Promoter and promoter group holds 56.37 % owned by 1 person. The public holds 43.63% divided	AGM held on 26 August 2020 promoter and promoter group attendance was full and public attendance was 180	Less than 0.1% of the public attended

		between 4 Lakh among people		
18.	Larsen and Turbo	The public holds 100% divided among 13 Lakh plus people	AGM held on 13 August 2020 public attendance was 712	Less than 0.1% of the public attended
19.	Avenue Supermarkets	Promoter and promoter group holds 74.99 % divided among 12 people The public holds 25.01% divided among 3 Lakh plus people	AGM held on 1 September 2020 promoter and promoter group attendance was 4 and public attendance was 146	Less than 0.1% of the public attended
20.	Ultratech Cement	Promoter and promoter group holds 59.96% divided among 20 people The public holds 39.97% divided among 3 Lakh plus people	AGM held on 12 August 2020 promoter and promoter group attendance was 2 and public attendance was 147	Less than 0.1% of the public attended
21.	Bajaj Finserve	Promoter and promoter group holds 60.80% divided among 61 people The public holds 39.02% divided among 1 Lakh plus people	AGM held on 21 July 2020 promoter and promoter group attendance was 20 and public attendance was 103	Less than 0.1% of the public attended
22.	JSW Steel	Promoter and promoter group holds 44.07% divided among 45 people The public holds 55.45% divided among 5 Lakh plus people	AGM held on 23 July 2020 promoter and promoter group attendance was 26 and public attendance was 90	Less than 0.1% of the public attended
23.	Adani Green Energy	Promoter and promoter group holds 56.29%	AGM held on 25 June 2020 promoter and promoter group	Less than 0.1% of the public attended

		divided among 7 people	attendance was full and public attendance was 117	
		The public holds 43.71% divided among 1 Lakh plus people		
24.	Nestle India	Promoter and promoter group holds 62.76% divided among 2 people	AGM held on 07 May 2021 promoter and promoter group attendance was full and public attendance was 238	Less than 0.1% of the public attended
		The public holds 37.24% divided among 1 Lakh plus people		
25.	Sun Pharmaceutical Industries	Promoter and promoter group holds 54.48% among between 14 people	AGM held on 27 August 2020 promoter and promoter group attendance was 9 and public attendance was 223	Less than 0.1% of the public attended
		The public holds 45.52% divided among 7 Lakh plus people		
26.	Adani Port and Special Economic Zone Ltd	Promoter and promoter group holds 63.74% divided among 10 people	AGM held on 6 April 2021 promoter and promoter group attendance was 8 and public attendance was 49	Less than 0.1% of the public attended
		The public holds 36.26% divided among 4 Lakh plus people		
27.	Oil and Natural Gas Corporation	Promoter and promoter group holds 60.41% owned by 1 person.	AGM held on 9 October 2020 promoter and promoter group attendance was 1 and public attendance was 228	Less than 0.1% of the public attended
		The public holds 39.59% divided among 11 Lakh plus people		
28.	HDFC Life Insurance	Promoter and promoter group holds 58.86%	AGM held on 21 July 2020 promoter and promoter group	Less than 0.1% of the public attended

		divided among 2 people	attendance was 1 and public attendance was 204
29.	Tata Steel	The public holds 41.11% divided among 7 Lakh plus people Promoter and promoter group holds 34.41% divided among 10 people	AGM held on 20 August 2020 promoter and promoter group attendance was 8 and public attendance was 615
30.	Adani Enterprise	The public holds 65.59% divided among 8 Lakh plus people Promoter and promoter group holds 74.92% divided among 8 people	AGM held on 26 June 2020 promoter and promoter group attendance was full and public attendance was 62
		The public holds 25.08% divided among 1 Lakh plus people	Less than 0.1% of the public attended

Source: Top 30 Companies Selection is Based on Market Capitalisation-
<https://www.bseindia.com/markets/equity/eqreports/topmarketcapitalization.aspx> ;
Information on shareholding Patterns and Voting has been taken from the same site

Low attendance of the retail investors in members' meetings is extremely problematic in India, especially in light of the concentrated shareholding pattern witnessed in the listed public companies. In Table 1, one will find the empirical data collected about the top 30 BSE-listed companies, which shows that out of all the retail investors less than 1 percent attend the shareholders' meetings. The negligible participation by retail investors coupled with substantial shareholding which helps the majority shareholders get the decisions in their favour. Refer to table 1 and one can see that promoter group attendance within those companies is close to 100 percent. The data indicates strong participation of promoter groups but that is not so for retail investors. This (Non-attendance) adds an extra disadvantage since the minority voices are not being heard. This data reflects why corporate governance measures like class-action suits or derivative suits are rarely successful from the retail investor's side. The chances

of forming a unity are negligible³⁸, which indicates retail investors' passivity³⁹ thereby affecting other measures invoked by retail investors like class actions as discussed above. The immediate issue that this brings is the election of the directors. With negligible participation of the retail investors, the chances of majority shareholders and promoters appointing their marionettes as directors become significantly higher, as majority shareholders become the masters of AGM⁴⁰.

One may argue that act of puppeteering AGM's can be countered through the intervention of the nomination committee. As per Section 178 of Companies Act 2013, every public company has an obligation to establish nomination committee. Within the committee 1/3rd directors are independent directors. The objective of nomination committee to oversee that company is following all corporate governance guidelines and competent board of director are elected without any influence from promoters. Varottil⁴¹ explains that the nomination committee's role is to appoint independent directors that can work for the interests of shareholders and make sure that their interest is present in the board meetings but this objective that nomination committee seeks to achieve never happens. Varottil⁴² explains that in India, since there is a prevalence of concentrated shareholding, independent directors that are usually appointed by the nomination committee work in favour of these controlling shareholders. Varottil⁴³ states that controlling shareholders occupy significant influence over the decision of the nomination committee. How? Once the nomination committee appoints a director that needs to be voted in, controlling shareholders vote in favour of the candidates who they prefer, since most of the time, as we see, retail investors are absent from the AGM. Further, the nomination committee considers it their failure if any of their nominees doesn't get voted in.

³⁸ Malla PB, *Corporate Governance: History, Evolution, and India Story* 158-160 (Routledge India, Delhi 2010).

³⁹ Even RBI is concerned about Institutional investors taking over and miniscule participation. Based on 2003 report and other factors govt had decided to raise retail investor shareholding in a company from 25 percent to 35 percent. But govt. has dropped recently due to active conflict from companies. See, Acharya, Amarendra. "Corporate Bond Market in India: Issues and Challenges", 2011, RBI Occasional Papers, Vol.32, No.3, Social Science Research Network *available at* <https://rbidocs.rbi.org.in/rdocs/content/PDFs/3ARCO100114.pdf>. See also RBI Annual Report Dated, August 27, 2003, *available at* <https://www.rbi.org.in/scripts/AnnualReportPublications.aspx?Id=338>.

⁴⁰ Singh G, "Corporate Governance: An Insight into the Imposition and Implementation of Gender Diversity on Indian Boards" (2020) 13 *Indian Journal of Corporate Governance* 99 <<https://doi.org/10.1177/0974686220930839>> accessed 24 October 2021

⁴¹ Varottil U, "Evolution and Effectiveness of Independent Directors in Indian Corporate Governance" (2010) 6 *Hastings Business Law Journal* 281 <https://repository.uchastings.edu/hastings_business_law_journal/vol6/iss2/1>

⁴² Varottil U, "Evolution and Effectiveness of Independent Directors in Indian Corporate Governance" (2010) 6 *Hastings Business Law Journal* 281 <https://repository.uchastings.edu/hastings_business_law_journal/vol6/iss2/1>

⁴³ Varottil U, "Evolution and Effectiveness of Independent Directors in Indian Corporate Governance" (2010) 6 *Hastings Business Law Journal* 281 <https://repository.uchastings.edu/hastings_business_law_journal/vol6/iss2/1>

Hence, they feel that they must make sure the candidates they choose are appropriate, and thus control over the decision making of the nominee committee falls on appeasing controlling shareholders since they are at the end of voting these directors in. Hence these two agency problems thus become the building block of the problem, and once it manifests and diverges, other issues like information asymmetry and conflict of interest come into the picture. What is more interesting is that these issues formulate the backbone of various scandals that have come into the picture. Let us explore how.

Retail investors have peculiar/similar widespread problems throughout the globe, which are related to a lack of information and technical know-how of disclosures⁴⁴. This happens due to the issue of retail investors not attending or being part of AGM and EGM, wherein significant affairs of the company are discussed⁴⁵. These discussions are important as they help the shareholders make an informed decision on the affairs of the company and plan their future exit options. But since they are neither attending nor have time or expertise to analyse the various documents and affairs of the company carefully. This thus hampers the ability of the retail investor to timely exit the market in an apt manner⁴⁶, thereby putting them in vulnerable problems that further cultivate into newer issues that we see today. For example, these issues become the root of the majority of issues like frauds, mismanagement, or insider trading⁴⁷ that happens within the company, which can lead to heavy losses for retail investors. There are other vulnerabilities that retail investors can get entrapped with. Let us discuss them further.

⁴⁴ Malla PB, *Corporate Governance: History, Evolution, and India Story* 58-75 (Routledge India, Delhi 2010).

⁴⁵ One can argue that proxy votes are way to tackle it. But not many votes are received through mail in box or proxy voting etc. The possibility of success is limited due to internet issues and lack of technical information. Retail investors are distant from managerial aspect of business and its implication and thereby they prefer to stay away from it. Further covid has seen continuous internet issues among many regions in India excluding metropolitan cities. Due to the pandemic, internet connectivity has increased yet time as concept also needs to be appreciated. See, Varottil U, "The Advent of Shareholder Activism in India" [2012] SSRN Electronic Journal. <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2165162>

⁴⁶ Liquidity is primary focus of security markets like stock exchange. Most of the security market offer immediate liquidity in terms of trading of shares. Hence timely exit plays a key role to protect oneself from excessive price fluctuations. But timely exit relies heavily on information/analysis of financials of company. See, Malla PB, *Corporate Governance: History, Evolution, and India Story* 65-78 (Routledge India, Delhi, 2010).

⁴⁷ These type of situation like frauds, mismanagement, insider trading leads to heavy price fluctuations and reduction in price of stocks thereby causing heavy losses to retail investor without fault of their own.

Vanishing company⁴⁸ is another significant vulnerability that agencies like SEC⁴⁹ and SEBI⁵⁰ keep a check on. Vanishing companies take advantage of loopholes in the system, float IPOs, etc., and procure funds from the public, subsequently disappearing without a trace. This type of vulnerability was quite prevalent in India in the 1990s, and SEBI had failed miserably at tracing the people responsible in 30 per cent of cases despite a lapse of 10 years⁵¹. Price rigging is another common practice that affects investors heavily. Price rigging signifies artificial manipulation of stock prices that induces the investors to buy/sell stocks which can lead to a significant drop in investor confidence and smooth functioning of the security market. Then there are other fears like expropriations⁵², improper disclosures/fine print, credit rating influencing, etc., which need to be looked out for. All these problems create a heavy burden on retail investors who not only receive this information at last but don't inherit the necessary skills to decipher these things from various disclosures prescribed by enforcement agencies.

III. THE CORE SOLUTION

The divergence and manifestation of the agency problems lead to a lack of interest by retail investors. We have seen that retail investors' lack of knowledge and technical know-how to understand the affairs of the company or things that might potentially affect them. Thus a need arises to create an inclusive environment for retail investors so that they participate in the affairs of the company. One could observe that corporate governance measures aimed at them have that object in mind, but one could also argue that despite the measures being present retail investors continue to be excluded. This stems directly from location problem that makes them highly dispersed coupled with lack of interest, thereby providing a potential reason for non-attendance. This issue leads to the lack of unity, explaining the scarcity of instances where unity is created. Take, for example, the Tata Mistry case⁵³ we see that most of the shareholders argued against Cyrus Mistry's dismissal. One could say that unity is seen. But in a closer analysis, we will find that Sharpooorji Pallonji Promoter groups are the umbrella wherein the retail investors and other shareholders united. Hence, we can club these kinds of situations as

⁴⁸ Bose, Suchismita, "Securities Market Regulations: Lessons from US and Indian Experience" (2005). The ICRA Bulletin, Money & Finance, Vol. 2, No. 20-21, Jan-Jun 2005, <https://ssrn.com/abstract=1140107>

⁴⁹ Security exchange commission of America. American equivalent of SEBI, an enforcement agency that regulates security market.

⁵⁰ Security Exchange Board of India- Regulatory agency that regulates security market in India.

⁵¹ Bose, Suchismita, "Securities Market Regulations: Lessons from US and Indian Experience" (2005). The ICRA Bulletin, Money & Finance, Vol. 2, No. 20-21, Jan-Jun 2005, <https://ssrn.com/abstract=1140107>.

⁵² Insiders stealing profits by selling output, assets of company etc to another firm they own at below market price. La Porta R and others, "Investor Protection and Corporate Governance (2000) 58 Journal of Financial Economics" 3 <<https://linkinghub.elsevier.com/retrieve/pii/S0304405X00000659>> .

⁵³ *Tata Mistry Case*, 2021 SCC OnLine SC 272

a rare occurrence. We hardly find class-action suits or other similar measures being utilized by the retail investors solely without assistance from anyone. This creates an impression that enforcement or motivation factors are the key problem that corporate governance needs to focus on for the protection of retail investors.

All these problems have a common solution which is related to the enforcement of investigative and detection techniques. Usually, throughout the globe, every investor protection regime focuses on disclosures and less on enforcement of legal measures that are in place⁵⁴. The Indian regime is one such example that has the most robust framework with respect to investor protection/corporate governance laws. Chakrabarti⁵⁵, in his article, states that India has the best investor protection laws. It is usually believed that India suffers from a peculiar problem of over-regulation; the general technique that India follows is passing a legislative law that will assist in preventing the loopholes that are seen in the form of scams or information brought forward. This situation has created a complex corporate governance structure in India. Let us analyse the legal framework that exists in India with respect to Retail investor protection.

IV. ANALYSIS OF LEGAL FRAMEWORK

SEBI (Security Exchange Board of India), MCA (Ministry of Corporate Affairs), Department, Department of Economic Affairs, etc., are part of the legal framework that governs investor protection/corporate governance in India. Not only that, special tribunals like Securities tribunals & National Companies Law Tribunals are part of the judicial framework of investor protection. Several laws like the Companies Act, 2013, Companies Incorporation Rules, 2014, DIPG (Disclosure and investor protection guidelines) 2009 & SEBI regulations, 2003 are forerunners of Investor protection. They offer a wide range of measures revolving around disclosures, complaints, investigation/detection, and penalties. For example, in

⁵⁴ It is pertinent to note that information disclosures success depends on enforcement. Enforcement depends on three prongs – depth of disclosure, timely manner of information submitted and lastly access to that information. Information disclosure fail in India despite the disclosures being in depth and extensive. This is because retail investors are passive and timely access to information can never happen with them. Further an empirical research was conducted to understand the efficacy of information disclosure. It was seen that mandated disclosures of any kind fail due to the fact that the one who has to disclose information would file or disclose such information in a manner that is incomplete or misleading. Further in this study it was seen the disclosures efficacy is directly proportional to simple-mindedness of the disclosure and portrayal of information. A perfect example for this is prospectus. In recent times prospectus have vast amounts of disclosures and run on an average of 200-300 pages in India. These are worded and termed in legal jargon which is hardly understood by any layman investor. See Ben-shahar, Omri, and Carl E. Schneider. “THE FAILURE OF MANDATED DISCLOSURE.” *University of Pennsylvania Law Review* 159, no. 3 (2011): 647–749. <http://www.jstor.org/stable/41149884>.

⁵⁵ Chakrabarti, Rajesh, and Yadav, Pradeep K. and Megginson, William L., “Corporate Governance in India”. *Journal of Applied Corporate Finance*, Forthcoming, <https://ssrn.com/abstract=1012222>

companies' law 2013⁵⁶, disclosures are given under chapter 9 of the act, which provides details of financial records of the company, which shall be kept open for inspection at the registered office and specify that accounts must be kept according to accounting standards of ICAI⁵⁷. It has detailed instructions related to accounts of the company, and at every step registrar of companies is involved; they must know where financials are, and if there are repugnant, then necessary approvals must be undertaken before the voluntary revision of financial statements and specify reasons for the same. The Board of directors is required to prepare a report on the financials. Chapter X signifies audits of a company that lays down rules from the appointment of auditors to the duty of auditors. Section 145 puts a check balance on auditors that their reports are true and fair, and further, it imposes a duty that auditor's reports must be read in general meetings. Section 34-36 of the Act deals with prospectus disclosures and criminal liability/penalties for non-compliance with any kind of delays. There are other rules like under DIPG and incorporation of companies rules that project different compliances and disclosures that companies must adhere to. While raising finance from the public, SEBI rules come into the picture, and more stringent measures are levied.

An important measure under the Companies Act, which forms the pillar of the investor protection regime, is Oppression and mismanagement. Section 241-245⁵⁸ aims to empower and address the second agency problem that we discussed before. In *Foss vs Harbottle*⁵⁹, the court had stated that a company is like a democracy. The majority rule stands in it. The minority cannot stall the wishes of the majority just because they are against the decision. Further, they established a proper plaintiff rule wherein they stated that in case of wrong done to the company, only the company has the right to bring the suit through its representative, the Board of Directors. But we can see an obvious flaw that then there are chances wherein in extreme situations, minority won't be heard at all. Hence statutory exceptions, personal rights, breach of fiduciary duty, and fraud⁶⁰ became exceptional situations to these rules and construed these rules in a balanced form wherein greater common good can be achieved. They allowed members to sue in the above situations, thereby avoiding the proper plaintiff rule. Oppression and Mismanagement is one such measure under statutory exceptions to protect minorities from oppressive acts of the majority. It is stated that despite having a majority of 50 per cent or 75

⁵⁶ Companies Act, 2013

⁵⁷ Indian Accounting Standards issued by Institute of Chartered Accounts of India.

⁵⁸ Indian Companies Act 2013, Section 241- 245.

⁵⁹ *Foss v Harbottle*, (1843) 2 Hare 461

⁶⁰ *Mernier vs Hooper*, (1874) 9 C App. 350, perpetuation of fraud by majority was construed to be oppressive and the act done can be reversed despite having majority backing.

per cent, as the case may be dependent upon ordinary and special resolution, the acts of the majority can be undermined if they are deemed oppressive. In the Rajamundry case,⁶¹ majority backing was considered to be the backbone of the decision. And acts with majority backing couldn't be deemed oppressive unless the acts of directors were ultra-vires. Oppression is an act that harms the company, and owners might face a loss due to the decision. Further, to construe oppression and mismanagement, it was stated that acts must be continuous. Shanti Prasad's case⁶² held oppression and mismanagement as a harsh, burdensome, and wrongful act. A mere lack of confidence between minority and majority is not enough. Section 241 of ICA states that prejudicing the interest of minorities is an element of oppression and mismanagement. It gives not only members powers to sue but also the central government. We can construe then the scope of Oppression and mismanagement is huge. This could be taken as a rejoicing moment for retail investors. But section 244 creates an issue for a motivational aspect that we were discussing before. The fact that retail investors don't have the motivation; they have arrows (measures) but no bow (enforcement/motivation) to fire them. It states that a minimum of 100 members or 1/10th of total members or 1/5th value of total share capital members is eligible to apply. Further, it is for corporate membership rights and cannot be used for individual rights. Only for corporate membership like notice for AGM not sent etc., could be taken into account, and individual can bring the suit for that. Investors who are not attending the meetings, which take place twice a year, are hardly going to be motivated to file a suit that takes years to go on. They would rather exit than use these mechanisms. Further, the bar for oppression is also taken to be high, which is not only continuous but also extremely harsh. Usually, in a practical sense, when the court sees that majority has given a backing and the said act is not ultra-vires, and within the power of directors, then the court comes to a fix and looks at it through the angle of the best interest of the company⁶³. In the Tata Mistry case,⁶⁴ we also see that the court siding with the majority when the acts in question are not that oppressive. But one could argue prima-facie that the Tata Mistry Case was a clear-cut case of oppression and mismanagement. Further, there is deep underutilization of oppression and mismanagement; most of the cases are brought by promoter and promoter groups hardly it is seen that cases are brought from retail investors' point. These things become determinant

⁶¹ *Rajamundry vs electric Supply co vs Nageshwar roa*, AIR 1986 SC 213

⁶² *Shanti Prasad Jain vs Kalinga*, AIR 1965 SC 1535

⁶³ See *Needle vs Needle*, (1981) 3 SCC 333

⁶⁴ *Tata vs Cyrus Mistry*, 2021 SCC OnLine SC 272

factors that demotivate retail investors. The second limb of the retail investor protection regime is SEBI.

The securities exchange board of India (SEBI) forms the pillar of investor protection. It has wide-ranging powers, and since its institution in 1992, there has been an expansion of the powers of SEBI. It can not only conduct investigations and inquiries, but it can prosecute as well. Its incorporation is only for investor protection and market regulations. SEBI undertakes three major activities: surveillance activity, investigation/detection⁶⁵ techniques, and SCORES (SEBI complaints redressal system) that register investor complaints to create transparency between investors and their protection⁶⁶. SEBI Act of 1992⁶⁷ has wide-ranging powers that are not limited to restraining/suspending⁶⁸, regulating, and prohibition of prospectus⁶⁹ & investigate in affairs of companies but prescribe the powers to initiate proceeding/issue adjudication orders and take appropriate action⁷⁰ in case of non-compliance of investor protection rules. Apart from these, other steps like disgorgement and investor education/protection funds are present to provide knowledge and additional protection. But are these measures effective and efficient becomes food for thought?

Let us try to take this framework of rules and regulations and apply them from starting till the end of the security issuance process. We will begin with a prospectus and end at the secondary market; this exercise will also help us encompass the vulnerabilities that were discussed above and provide us with an insight into the competency of the Indian investor protection regime. This will further give us a brief holistic view of how investor protection laws work and how dynamic they are. The first important step is the listing of a company and making it a public limited. Here LODR⁷¹ (listing obligation and disclosure requirements) requirements, DIPG 2009, and companies act 2013 come into the picture, which states the different requirements for public & private companies. Registrar of Companies maintains these records and analyses any discrepancies that can arise. Then Prospectus has a different set of rules, which encompass the major companies act 2013, ICDR 2018 & SEBI act 1992. Then the

⁶⁵ SEBI ensures that corporate governance rules are being followed by companies and disclosures and auditing is done in proper manner without any malpractices. It ensures transparent and clean environment is followed in the market.

⁶⁶ATR (Action Taken Report) is one of the ways that SEBI makes sure companies are responding correctly and properly towards Investor grievances.

⁶⁷ SEBI Act 1992

⁶⁸ SEBI Act 1992 s.11(4).

⁶⁹ SEBI Act 1992

⁷⁰ SEBI Act 1992 s.30. It prescribes power of SEBI to create regulations so as to carry its objective properly.

⁷¹ Securities and Exchange Board of India (LODR requirements) 2015.

secondary market encompasses the regulations of the SCRA Act 1956⁷² & SEBI regulations and guidelines. Within these acts, various provisions were discussed in brief above with the help of chapters within the act, which creates an obligation of hundreds of requirements that need to be taken care of before issuing shares and raising finance from the public. Within these acts, some provisions can track the vulnerabilities like Vanishing companies, Price rigging, expropriation, incomplete disclosures, insider trading, etc., that were mentioned above. For example, in insider trading matters, surveillance activities of SEBI come into play, for vanishing companies, LODR regulations play an important role, DIPG act, companies act, and financial soundness in accordance with accounting standards of ICAI help curbs these incomplete disclosures or company not answering shareholder grievances have measures like Registrar of company powers/SCORES/Criminal liabilities at play. So with this brief view of the structure, we can see that the Indian legislative framework is capable enough to handle various contingencies that can arise in the past and future. But this raises a significant question if this legislative framework is capable enough, then where does the problem lie? Let's understand this by scrutinizing details within the investor protection regime. We shall place special emphasis on SEBI and take a look at data presented by them in their annual general report. Following tables present snippets of SEBI annual general report and data present within them that concerns retail investor protection.

V. ANALYSIS OF SEBI MEASURES

Table 2- Investigations by SEBI- Record Rate

Year	Cases Taken up for Investigation	Cases Completed
2010-11	104	82
2011-12	154	74
2012-13	155	119
2013-14	108	120
2014-15	70	122
2015-16	133	123
2016-17	245	155
2017-18	117	145
2018-19	194	110

⁷² Securities Contract and regulation Act 2018.

Source: SEBI Handbook of Statistics 2019

Table 3 – Investigation taken up by SEBI 2019

Year	Market manipulation and price rigging	Issue related manipulation	Insider trading	Takeovers	Miscellaneous	Total
2010-11	56	6	28	4	10	104
2011-12	73	35	24	2	20	154
2012-13	86	43	11	3	12	155
2013-14	67	6	13	6	16	108
2014-15	41	3	10	3	13	70
2015-16	84	9	12	2	26	133
2016-17	185	8	34	3	15	245
2017-18	40	1	15	1	60	117
2018-19	84	2	70	6	32	194

Source: SEBI Handbook of Statistics 2019

Table 4 – Investigation completed by SEBI 2019

Year	Market manipulation and price rigging	Issue related manipulation	Insider trading	Takeovers	Miscellaneous	Total
2010-11	51	2	15	4	10	82
2011-12	37	4	21	2	10	74
2012-13	41	52	14	2	10	119
2013-14	73	12	13	6	16	120
2014-15	86	3	15	3	15	122
2015-16	60	20	20	2	21	123
2016-17	118	5	15	4	13	155
2017-18	120	9	6	0	10	145
2018-19	60	1	19	3	27	110

Source: SEBI Handbook of Statistics 2019

Table 5 - Investor Redressal Rate

Year	Complaints Received		Complaints Redressed		Pending Complaints	Cumulative Redressal
	Year-wise	Cumulative	Year-wise	Cumulative	Cumulative	Rate (%)
2007-08	54,933	26,16,980	31,676	24,27,571	56,055	92.76
2008-09	57,580	26,74,560	75,989	25,03,560	49,113	93.61
2009-10	32,335	27,06,895	42,742	25,46,302	37,880	92.14
2010-11	56,670	27,63,565	66,542	26,12,854	28,653	94.55
2011-12	46,548	28,10,113	53,841	26,66,695	23,725	94.9
2012-13	42,411	28,52,524	54,852	27,21,547	11,410	95.41
2013-14	33,550	28,86,074	35,299	27,56,846	9,147	95.52
2014-15	38,442	29,24,516	35,090	27,91,936	5,736	95.46
2015-16	38,938	29,63,454	35,145	28,27,081	5,452	95.39

Source: Compiled from SEBI Annual Reports

Source: Bhavana S, 'Analysis of the Impact of Investor Protection Measures by SEBI on Retail Investors' [nd] University
<http://shodhganga.inflibnet.ac.in:8080/jspui/handle/10603/190231>

Table 6 – Surveillance Activities of SEBI in Securities Market

Nature of Action	NSE		BSE		MSEI	
	2017-18	2018-19	2017-18	2018-19	2017-18	2018-19
Scripts shifted to Trade-for-Trade segment	384	257	875	435	322	246
Number of scrips in which price bands were imposed(2 per cent, 5 per cent & 10 per cent)	1,157	2,206	1,866	1,603	743	642
Preliminary investigation taken up (Snap)	54	56	1,202	825	6	7
Rumours verified	273	222	294	235	3	1
Letter to Trading Members based on Price/Volume Variation	0	121	300	366	0	0

Source: SEBI Annual Report 2018-2019

Table 7- Conviction Record/ Adjudication order.

Year	Cancellation	Suspension	Warning issued/Warning letter issued/Deficiency observations issued/Advice letter issued	Prosecutions Filed	Convictions by courts	Prohibitive directions issued under Section 11B of SEBI Act	Adjudication orders passed	Total
2010-11	5	36	17	67	Na	268	63	456
2011-12	0	16	951	60	Na	487	32	1,546
2012-13	6	61	43	150	Na	392	522	1,174
2013-14	1	9	537	652	Na	270	619	2,088
2014-15	5	19	274	157	Na	310	685	1,450
2015-16	3	6	4	268	Na	175	567	1,023
2016-17	0	7	383	237	Na	563	296	1,486
2017-18	2	1	705	407	31	1,136	2,410	4,692
2018-19	5	2	638	399	19	672	2,099	3,834

Source: SEBI Handbook of Statistics 2019

Table 8- Type of Enforcement action undertaken

Type of enforcement action taken	Number of entities against whom regulatory action was taken	
	2017-18	2018-19
Prohibitive directions issued under Section 11 of the SEBI Act, 1992	1,136	672
Adjudication Orders	2410	2099
Cancellations / Deemed Cancellation	2	5
Suspension	1	2
Warnings issued	43	3
Administrative warnings/ warning letters issued	524	481
Deficiency observations issued	116	100
Advice letters issued	22	54
Prosecutions filed	407	399
Convictions by courts	31	19
Total	4,692	3,834

Source: SEBI Annual Report 2018-2019

We are now in a position to analyse the performance of retail investor protection in India over the years. Table 2,3 & 4 shows the investigation record of SEBI, cases taken up and completed over the years, and its track record according to SEBI data appears to be impressive. As explained above, there is a system known as SCORES, which empowers any investor to file complaints with SEBI and acts as a grievance redressal mechanism. The investors are empowered to file complaints on wide-ranging topics not limited to grievances but also related

to information collection. Table 5 projects the efficiency of investor complaints and their redressal. This data reveals an impressive track record of 90 per cent, which has increased every year. SEBI annual reports⁷³ provide a detailed report on Surveillance measures, enforcement activities, etc., that SEBI undertakes. These measures help analyse rumours & suspicious price fluctuation that are related to malpractices like insider trading that happens within the market and punish wrongdoers accordingly. Table 6 highlights the surveillance activities undertaken by SEBI in 2019 and investigations filed on the same⁷⁴. All these things explained above show that the Indian legislature with respect to investor protection is robust, and SEBI's track record is excellent, but certain problems within these frameworks projects a dark reality. The biggest loophole within the legal framework is the enforcement mechanism, in our opinion, and the following examples will elaborate on why it is so.

The Satyam scam is a perfect example of the failure of India's legislative framework. Varottil⁷⁵ cites this example wherein US and Indian retail investors were defrauded by Satyam computers ltd through falsification of financial documents. It is important to note the plight of all the investors was similar, yet US retail investors filed a proceeding and forced Satyam to settle for hundreds of dollars, whereas Indian investors got nothing despite approaching relevant authorities. This projects the system's inadequacies that show that the legal framework is not enough; it needs efficient working machinery. Tables 7 & 8 further elucidate this point by projecting an interesting part of the SEBI report, which showcases that conviction rates are almost negligible in 2019, which creates an inference that SEBI as an independent authority cannot sanction convictions effectively.

VI. ANALYSIS OF CONTEMPORARY DEVELOPMENTS

Enforcement problems can also be seen in the light of three new concepts that were introduced to empower retail investors. These were mentioned before Disgorgement, Investor protection fund, and Credit rating agencies. Disgorgement is a concept that is related to compensating the investors in cases of loss suffered by investors due to malpractices like fraud,

⁷³ SEBI Annual Reports 2018-2019 available at https://www.sebi.gov.in/reports/annual-reports/jul-2019/annual-report-2018-19_43670.html

⁷⁴ SEBI Annual Reports 2018-2019, available at https://www.sebi.gov.in/reports/annual-reports/jul-2019/annual-report-2018-19_43670.html

⁷⁵ Varottil U, "India: The Efficacy of India's Legal System as a Tool for Investor Protection" in Pierre-Henri Conac and Martin Gelter (eds), *Global Securities Litigation and Enforcement* (1st edn, Cambridge University Press 2019) <https://www.cambridge.org/core/product/identifier/9781316258118%23CN-bp-23/type/book_part>

scams, etc⁷⁶. It is new in India but gaining force steadily. This concept was developed only to empower investors and give them relief in cases of illegal happening. But there is a stark contrast in application with regards to the US & UK position and the Indian position. In the US & UK, the funds accumulated through proceeding are automatically transferred to the aggrieved investor's account, but in India, the funds collected first go to the consolidated fund of India, and those who appeal, receive the money, but the rest is transferred to the investor protection fund. Bhaskar⁷⁷ states that there is no statutory provision in SEBI with regards to disgorgement, and the Wadhwa committee⁷⁸ reinforced this position that awarding compensation in a timely and automatic manner should be an integral part of the Indian framework as well. There are views against the concept of disgorgement, which states that it leads to nepotism, favouritism, or requirement of new machinery, etc. But we are of the opinion that in the west, this system was to empower the investors, and Satyam Scam is an example of the use of disgorgement measures. Yes, it requires a new machine. No, it won't lead to nepotism, etc., if funds are distributed in a proportionate manner while treating each investor alike and keeping it fully independent. How can it be this position be achieved and create a piece of effective machinery? This can be achieved through proper enforcement and making it function like a private organization with high scrutiny and accountability while keeping it away from governmental and political influences.

Investor Protection Fund is maintained by SEBI with the sole purpose of teaching/educating the investors to empower them to make the proper decisions and also not fall into traps concocted by companies/brokers. This practice has been since 1956, now in the hands of SEBI, yet it is not enough to actually empower investors. Many scholars believe that funds of IEPF (investor education and protection fund)⁷⁹ are not utilized properly, and buffer

⁷⁶ Bhaskar, Amit, "Disgorgement in Indian Financial Markets – A Critical Study" [2013] 112 CLA (Mag.) 32

⁷⁷ Bhaskar, Amit, "Disgorgement in Indian Financial Markets – A Critical Study" [2013] 112 CLA (Mag.) 32

⁷⁸ Report of Wadhwa Committee titled "The committee on reallocation of shares in the matter of IPO irregularities" dated December 29, 2009. Can be found at:- <https://www.sebi.gov.in/reports/reports/dec-2009/justice-wadhwa-committe-report-on-reallocation-of-shares-in-the-matter-of-ipo-irregularities-annexures-not-made-public-for-confidentiality-reasons_2903.html>

⁷⁹ It is stated that less than 10 percent of retail investors are able to break or generate a CAGR that beats inflation value of 6-8% with stock market investments. This statement encapsulates and highlights how poor the financial literacy is in India. Despite the efforts of SEBI and various other agencies to teach the general public about stock market there is sense of fear within retail investors regarding stock market. Many choose to avoid it and invest in sources that are less risky. I think the issue and failure of investor training is related to experience. To understand the nuances of stock market one has to teach that through experience, and it cannot be encapsulated within a classroom or webinar teaching module. A study aimed at understanding crowdfunding phenomena tried to understand what an efficacious investor education program would look like. Apart from financial literacy and warning signals to identify fraudulent conduct or red signals in financials, experience based educational training is pertinent for its success. See Friesz, Cody R. "Crowdfunding & Investor Education: Empowering Investors to

value in them is through the roof. Bhaskar⁸⁰ says that almost every year, more than 500 crores are underutilized by SEBI in this, yet SEBI annual reports⁸¹ speak highly of the investor education activities that were undertaken. Several years ago, the credit rating agency concept was formulated to create transparency. The concept was to rate various companies and especially IPOs, based on financials and viability studies. Various agencies, governmental and private, undertook this job. In India, agencies like Credit Rating Information Services of India Pvt Ltd (CRISIL) and others like CARE⁸² or ICRA⁸³ exist that oversee credit rating. Kumar⁸⁴, in his article, states the origin of this system which is from the USA, and the objective was to provide reliable information to investors, especially those who are not literate to understand various financial information. This actually becomes beneficial both for investors and companies; for investors, their minds are at ease due to trustworthy information. For companies, this means more finance since this system instils investor confidence, which means more retail investors are likely to invest in stocks. Kumar⁸⁵ states that the disadvantage of this system is that with time outlook of companies can change, which may not translate with the score provided; hence it is important for credit rating agencies to allot new credits for each company every four months. This system looks like an amazing option on the bare reading, and India also incorporated it, which resulted in 2 major problems. First, Credit rating agencies and corrupt companies were seen to engage in the malpractice of corruption/bribery to raise their credit score to attract investors⁸⁶. Second, this practice was made optional, thereby revoking the statutory requirement of having it done⁸⁷. Though most IPOs still do it to project an excellent prospectus, corruption activities have created a situation wherein Indian investors don't believe in these scores⁸⁸. This signifies that credit rating agency have a 'conflict of

Mitigate Risk & Prevent Fraud.” *Suffolk University Law Review* 48 (2015): 131. <https://heinonline.org/HOL/Page?handle=hein.journals/sufflr48&id=145&div=&collection=>.

⁸⁰ Bhaskar, Amit, “Disgorgement in Indian Financial Markets – A Critical Study” [2013] 112 CLA (Mag.) 32

⁸¹ SEBI Annual Report 2018-2019 available at https://www.sebi.gov.in/reports/annual-reports/jul-2019/annual-report-2018-19_43670.html

⁸² Credit Analysis and Research Ltd

⁸³ Investment Information & Credit Rating Agency of India Ltd.

⁸⁴ Kumar, Naresh. “Credit Rating methodology and Agencies” [1994] 15 CLA (MAD) 50

⁸⁵ Kumar, Naresh. “Credit Rating methodology and Agencies” [1994] 15 CLA (MAD) 50

⁸⁶ Kumar, Naresh. “Credit Rating methodology and Agencies” [1994] 15 CLA (MAD) 50

⁸⁷ Kumar, Naresh. “Credit Rating methodology and Agencies” [1994] 15 CLA (MAD) 50

⁸⁸ Zomato was allotted a credit rating of ‘outperform’ by Credit Suisse. See Mudgill A, ‘After Jefferies, Credit Suisse Expects 100% Rally on Zomato! Should You Buy This Dip?’ *The Economic Times* (27 July 2022) <<https://economictimes.indiatimes.com/markets/stocks/news/after-jefferies-credit-suisse-expects-100-rally-on-zomato-should-you-buy-this-dip/articleshow/93158031.cms?from=mdr>> accessed 17 July 2023. Similarly, Nykaa has been given BBB+ (stable) rating on August 3, 2022 despite widening of losses and reduction in market share. This rating is unchanged since its IPO. See CRISIL rating history of Nykaa fashion at <<https://www.crisilratings.com/en/home/our-business/ratings/company-factsheet/archived-rating->

interest' problem as most of the countries like Europe and India follow 'issue-pay model' wherein the companies pay and provide information to these CRAs (crediting rating agency) to rate them⁸⁹. Further there is incentive for credit rating agency to be complacent with the ratings since that would mean longer relationship with the companies⁹⁰. This issue become difficult to solve especially due to low number of CRAs existing and operating within a particular jurisdiction. To solve this Europe introduced rotation mechanism, wherein lead analysts and other particular individuals cannot be involved with rating and analysis of a company for more than four years⁹¹. In US, SEC came up with a solution of establishing CRA board which would assign a CRA to rate a company and further allow transparency and cross-sharing of data between CRA so that non-hired CRAs can also issue ratings⁹². These solution though viable have not been adopted so far by America.

Recently the UK and Hong Kong have tried to adopt a new system wherein Institutional investors are roped in to act in favour of retail investors. This is achieved through an instrument called the Stewardship code (SC). Foundational SC has seven major principles. First, the duty of institutional investors is to disclose how they would discharge their stewardship responsibility. Second, institutional investors have to keep the interest of retail investors in mind while voting. Thirdly, it is the duty of institutional investors to monitor their companies regularly and make sure that the functioning of the company is as per the policies. This includes independent directors who are acting in accordance with their roles. Principle 4 states that institutional investors should present guidelines when they would interfere if they saw

[rationales.html?prodCategory=CGBLR&companyCode=NYBEPL](https://www.crisilratings.com/content/dam/crisil/our-businesses/capital-markets/ipo-grading-list/view-rationale/CRISIL-Research_ipo-grading-rat_One97-communications.pdf) >. Further, IPO grade of 3 out of 5 was allotted to Paytm's parent company one97communication by Crisil. Available at: <https://www.crisilratings.com/content/dam/crisil/our-businesses/capital-markets/ipo-grading-list/view-rationale/CRISIL-Research_ipo-grading-rat_One97-communications.pdf >. In these documents you can note a trend. When the company is in losses and in financial distress, these credit rating agency and prospectus of these companies focus on long-term prospective growth. This allows agencies to present a higher rating thereby leading to questionable ratings. The case of Amtek in 2016 is especially pertinent for this point. CARE and Crisil, the two biggest credit rating agency in India, removed the Amtek's Bonds rating and downgraded it immediately when Amtek was on verge of defaulting on its bond's repayment. Available at: Upadhyay JP, 'CARE, Crisil May Face Sebi Action in Amtek Auto Case' (*mint*, 22 June 2016) <<https://www.livemint.com/Money/wCOP9C63UmWFle4X6pgsyK/Amtek-Auto-case-Sebi-may-take-action-against-CARE-Crisil.html>> accessed 17 July 2023

⁸⁹ Payne J, *The Role of Gatekeepers* (Oxford Handbook of Financial Regulation (N Moloney, E Ferran and J Payne eds) (OUP 2015), Oxford University Press 2014) <<https://papers.ssrn.com/abstract=2428121>> accessed 17 July 2023

⁹⁰ Recital 11, Council Regulation 462/2013 of 21 May 2013 amending Regulation (EC) No 1060/2009 on credit rating agencies [2013] OJ L146/1.

⁹¹ Council Regulation 1060/2009 of 16 September 2009 on credit rating agencies [2009] OJ L302/1, art. 7.

⁹² SEC, *Report to the Congress on Assigned Credit Ratings*, available at <<https://www.sec.gov/news/studies/2012/assigned-credit-ratings-study.pdf> > at 28-30.

something that is not up to the mark. Principle 5 states that a policy for collective action should be present. Principle 6 states that investors should decide on voting policy and disclosure of voting activity. Principle 7 adds a reporting clause that states institutional investors should periodically report on engagement/discharge of their stewardship responsibility. Ho⁹³ has performed an extensive survey into SC (Stewardship code) and found that it has been unsuccessful. He states that the primary reason for failure is due to institutional investors situated abroad, which creates distance issues, thereby fostering passive engagement. He further states that its failure in the UK and other countries like Hong Kong is due to a lack of clarity regarding when the accountability of institutional investors starts. It leaves a lot of room for interpretation and brings an important question of whether institutional investors can be held responsible towards retail investors. Keeping aside lack of incentives, and passive engagement, the stock market operates on making a level playing field for everyone, and it's a competition between investors. Based on this, it is our opinion that it is almost impossible to create an accountable regime for institutional investors while keeping practicalities aside.

VII. CONCLUSION

All these three novel techniques, disgorgement, IEPF & credit rating system, show a major concern and commonality concerning the Indian investor protection regime, which is related to enforcement mechanisms. The systems that work in the west fail in the Indian context only due to enforcement. Chakrabarti⁹⁴ shows, with the help of indices and ranking, that Indian laws are one of the best, but ranking falls drastically when it comes to enforcement mechanisms. This is one aspect; the other one is related to the motivation factor. To actually empower the retail investors to initiate actions. Section 245 of the companies Act 2013 gives a class of shareholders like retail investors to file a suit against the company in case there are any losses caused due to any omissions or misstatements within the prospectus/audits/financial statements; then a class action suit can be initiated. There are several conditions within this section, and subject to conditions, a remedy is available. There are two problems with class action suits, laws regarding class actions are still developing in India and are not so robust, and the other is related to the precondition of having the support of 10 per cent of shareholders⁹⁵.

⁹³ Ho JKS, "Bringing Responsible Ownership to the Financial Market of Hong Kong: How Effective Could It Be?" (2016) 16 *Journal of Corporate Law Studies* 437 <<https://doi.org/10.1080/14735970.2016.1191301>> accessed 30 January 2022

⁹⁴ Chakrabarti, Rajesh, and Yadav, Pradeep K. and Megginson, William L., "Corporate Governance in India." *Journal of Applied Corporate Finance*, Forthcoming, <https://ssrn.com/abstract=1012222>

⁹⁵ Varottil U, "India: The Efficacy of India's Legal System as a Tool for Investor Protection" in Pierre-Henri Conac and Martin Gelter (eds), *Global Securities Litigation and Enforcement* (1st edn, Cambridge University

This is done to avoid vexatious and frivolous litigation, but it brings an important question will a retail investor garner such support to actually make use of such provision. Our finding project that it might be present in exceptional circumstances, but a trend is rarely established. Despite these problems, a system of class actions suits is still not yielding the results as they were predicted. Using data collected from leading law firms like Linklaters, Clifford chance etc, Gamble⁹⁶ describes the failure within the class actions suit. He states that class actions rely heavily on third-party funding in the US and Australia, and then returns are disproportionate, especially after dividing the sums between the party. It seems to indicate the success of class actions depends on third party funding, and India is nowhere close to achieving this. India has the opposite trend, wherein third-party funding for class action suits is rarely seen. CAM⁹⁷, a leading law firm in India, cited this as one of the reasons for the lack of class action suits in India. It has talked about other issues like frequent roster changes and duration of cases to reach finality affect the risk assessment that third-party funders (TPF) do⁹⁸. Coupled with the lack of exemplary damages and regulations that disallow lawyers to fund litigation for a party that they are representing affects the willingness of TPF to fund class actions⁹⁹. It perfectly shows that Indian class action participation is not up to the mark, but also, the ecosystem to sustain class actions is not present¹⁰⁰.

The enforcement mechanism also falls short in India due to two other factors that are related to costs and time delays. It is a common fact that Indian legislations take many years to

Press (2019) <https://www.cambridge.org/core/product/identifier/9781316258118%23CN-bp-23/type/book_part>

⁹⁶ Gamble R, "Jostling for a Larger Piece of the (Class) Action: Litigation Funders and Entrepreneurial Lawyers Stake Their Claims" (2017) 46 Common Law World Review 3 <<https://doi.org/10.1177/1473779516677212>> accessed 29 January 2022

⁹⁷ "Third Party Funding in India" (Cyril Amarchand Mangaldas, June 2019) available at <<https://www.cyrilshroff.com/wp-content/uploads/2019/06/Third-Party-Funding-in-India.pdf>>

⁹⁸ "Third Party Funding in India" (Cyril Amarchand Mangaldas, June 2019) available at <<https://www.cyrilshroff.com/wp-content/uploads/2019/06/Third-Party-Funding-in-India.pdf>>

⁹⁹ "Third Party Funding in India" (Cyril Amarchand Mangaldas, June 2019) available at <<https://www.cyrilshroff.com/wp-content/uploads/2019/06/Third-Party-Funding-in-India.pdf>>

¹⁰⁰ The same problems that have been highlighted exist in different countries as well. In US, a study was conducted to understand the retail investors' concerns in class action suits. In this study it was seen that US laws favour institutional investors heading and leading the class actions rather than retail investors. Further it was observed that retail investors have no voice and institutional and other investors that have significant holding shadow the concerns of retail investors. It was seen laws frequently around the globe use terms like 'large financial loss' or 'biggest financial losses' to indicate a preference towards investors that hold significant stake in the company. Also, the legal and financial acumen of these investors that hold large shareholding overshadow the concerns and competitive edge that retail investors could offer. Hence more often than not even if class actions are initiated it is likely that retail investors would be overshadowed by these large investors. Apart from the claims these are some additional concerns that lead to failure of class-action suits. Webber, David H. "The Plight of the Individual Investor in Securities Class Actions." *Northwestern University Law Review* 106 (2012): 157. <https://heinonline.org/HOL/Page?handle=hein.journals/illlr106&id=163&div=&collection=>.

conclude. Even though SAT and NCLT are tribunals specifically created to handle investor protection and corporate governance issues, they are far from effective. Indian Judiciary still needs a robust mechanism actually to achieve desired levels of efficiency. Expecting a retail investor to bear these delays would actually cost him more and hence never approach the judiciary for these things. Even within SEBI, Score's redressal rate is far from effective. The annual report¹⁰¹ of SEBI shows that within the redressal rates, 75 per cent of satisfaction levels were achieved when conducting surveys. Within this 75 per cent, there were hardly any retail investors, so this shows that retail investors don't utilize the mechanism. Then there are judicial costs. Varottil¹⁰² states that Indian courts levy stamp duty and court fees that are paid Ad valorem, which can create a huge financial burden; even though Indian courts follow the English law system that the losing party pays for litigation, there is a direct disparity between costs awarded and costs incurred and returns almost negligible. This would further deter a retail investor who is already limited by financial resources and time.

We believe these inherent problems stem from the direct importation of legislation from international jurisdiction without applying minds and conducting relevant evaluations. Indian legislative framework has to stop focusing on disclosures that are objects of the most international investor protection act¹⁰³. Clause 49 of the listing agreement, which was held to be the most influential measure in Investor protection measure, closely resembles the Sarbanes-Oxley Act of 2002¹⁰⁴. It is imperative to understand that our framework is more than capable of handling all the scandals and issues that crop up, but judicial efficiencies hamper their effectiveness. SEBI has been given wide enough powers to create new regulations to tackle any new situation, so it is safe to assume that our framework is more than capable. We have our set of unique problems that won't resolve by borrowing from international jurisdictions. Retail investor protection focus should be on Motivations and enforcement mechanisms. Most empowering mechanisms like class action sit idle while Retail investors are duped by new

¹⁰¹ SEBI Annual Reports 2018-2019 available at available at https://www.sebi.gov.in/reports/annual-reports/jul-2019/annual-report-2018-19_43670.html

¹⁰² Varottil U, "India: The Efficacy of India's Legal System as a Tool for Investor Protection" in Pierre-Henri Conac and Martin Gelter (eds), *Global Securities Litigation and Enforcement* (1st edn, Cambridge University Press 2019) <https://www.cambridge.org/core/product/identifier/9781316258118%23CN-bp-23/type/book_part> t

¹⁰³ Choi S, "Regulating Investors Not Issuers: A Market-Based Proposal" (2000) 88 *California Law Review* 279 <<https://www.jstor.org/stable/3481225>>7

¹⁰⁴ Chakrabarti, Rajesh, and Yadav, Pradeep K. and Megginson, William L., "Corporate Governance in India." *Journal of Applied Corporate Finance*, Forthcoming, <https://ssrn.com/abstract=1012222>; Chakrabarti R, Megginson W, and Yadav PK, 'Corporate Governance in India' (2008) 20 *Journal of Applied Corporate Finance* 59 <<http://doi.wiley.com/10.1111/j.1745-6622.2008.00169.x>>

scandals every year like Yesbank Scams, Kingfisher Scam, etc., and investor confidence reaches a new low. Instead of fixing the situation, we borrow or enact measures that will be relevant but fall short due to ineffective utilization factors.

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