# SHORT-TERMISM IN INDIA: TOWARDS A SUSTAINABLE CORPORATE GOVERNANCE MODEL

*Abhinav Gupta & Madeeha Arshad**

## ABSTRACT

*The principles of corporate governance have over the years been embedded in the legal framework of India. A long-term approach towards the management of the company is arguably an essential element of corporate governance. On the other hand, short-term governance or short-termism, focuses unduly on the quarterly profits of the company at the cost of a sustainable long-term development. In this paper, we explore the concept of short-termism from an Indian perspective. The paper proceeds with the analysis of the relationship between short-termism and corporate governance. Thereafter, it engages in an empirical study in order to assess the presence of short-termism as well as its level of penetration in the Indian market. The consequences of such a presence of short-termism are then explored by the paper. Lastly, the paper suggests various legislative and policy-oriented recommendations, which can serve to bolster long-termism in the Indian corporate law structure.*

**Keywords**: corporate governance, short-termism, listed companies, director's duties.

## TABLE OF CONTENTS



* The authors are fourth year students at West Bengal National University of Juridical Sciences.

## I. INTRODUCTION

The idea of sustainable economic development is based on the rapid degradation of the environment and the drainage of natural resources.[1] It has rapidly become the primary objective of various nation-states and the international community – most famously through the passage of the United Nations Sustainable Development Goals.[2] In this regard, the corporate sector arguably plays a vital role in the development of such a sustainable ecosystem.[3] The notion of sustainable development, therefore, requires the corporate sector to channel funds and resources that align with the vision of such a sustainable economy.[4] Thus, a policy towards sustainable corporate governance finds immense importance in this regard.[5]

---

[1] Edward B. Barbier, *The Concept of Sustainable Economic Development*, 14(2) ENVIRONMENTAL CONSERVATION 101, 102 (1987).
[2] Department of Economic and Social Affairs, *The 17 Sustainable Development Goals*, UNITED NATIONS https://sdgs.un.org/goals.
[3] Steven N. Kaplan, *Are US Companies Too Short-Term Oriented? Some Thoughts*, 18 INNOVATION POLICY AND ECONOMY 107, 107-108 (2018).
[4] Malgorzata Janicka et al., *Does Short-Termism Influence the Market Value of Companies? Evidence from EU Countries*, 13(11) JRFM 272, 273 (2020).
[5] *Id.* at 272-273.

Short-termism, which refers to the objective of the company to obtain immediate profits at the cost of its long-term functioning, [6] has been widely argued to be inconsistent with the objectives of sustainable corporate governance.[7] The earliest work and the identification of this problem can be traced back to an article authored by Martin Lipton in 1979.[8] The problem of short-termism has been identified worldwide in countries such as the United States of America,[9] the United Kingdom,[10] and Singapore.[11] Hence, no nation-state has been effective in tackling and overcoming this issue of short-termism.

The objective of this paper is to throw light on, and recommend certain policy measures that can assist in alleviating short-termism in India. Short-termism in the Indian context is almost completely unaddressed by scholars and the available literature on the same is limited.[12] Therefore, in order to bridge this research gap, we analyze the concept of short-termism in the Indian context, and extensively cover its evidence of existence, consequences, causes as well as possible solutions to the same. Herein, it is also important to highlight that short-termism

---

[6] Beatriz Pessoa de Araujo, *The Modern Dilemma: Balancing Short and Long-Term Business Pressures*, HARVARD LAW SCHOOL FORUM ON CORPORATE GOVERNANCE, (Jun. 20, 2019) https://corpgov.law.harvard.edu/2019/06/20/the-modern-dilemma-balancing-short-and-long-term-business-pressures/ [hereinafter, Araujo].
[7] *Id.*
[8] Martin Lipton, *Takeover Bids in the Target's Boardroom*, 35(1) THE BUSINESS LAWYER 101 (1979).
[9] Razeen Sappideen, *Focusing on Corporate Short-Termism*, SING. J. L. S. 412 (2011).
[10] Department for Business Innovation & Skills, *A Long-Term Focus for Corporate Britain: A Call for Evidence*, GOV. UK (Oct. 25, 2010) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/31563/10-1225-long-term-focus-corporate-britain.pdf.
[11] Ivan Tan Ren Yi, *The Future of ESG in Singapore*, 11 SINGAPORE LAW REVIEW 1 (2019).
[12] For literature on short-termism in the Indian context, *see also* Atul Pandey & Satish Padhi, *Governance of Corporations: Long-Term Approach vs. Short-Term Approach*, FORTUNE INDIA (Aug. 21, 2018) https://www.fortuneindia.com/opinion/governance-of-corporations-long-term-approach-vs-short-term-approach/102300; R. Shankar Raman, *Quarterly Earnings, Short and Long-Termism: A Fine Line*, BLOOMBERG (Aug. 31, 2018)https://www.bloombergquint.com/opinion/quarterly-earnings-short-and-long-termism-a-fine-line.

should not be conflated with the shareholder theory. It is argued that shareholder theory only focuses on giving primacy to the shareholders over other stakeholders, and motivates the corporations to maximise the profits accruing to their shareholders.[13] Though shareholder theory may be an element of short-termism, the latter concept is wider and focuses on the short-term profits and policies of the company that can also result from short-term investments and other measures.[14]

In Part II of this paper, we will focus on the basic concepts of corporate governance and short-termism. After identifying the elements of these concepts, we will proceed to analyze the relationship between the two. Thereafter, under Part III, the paper undertakes a preliminary inquiry regarding the existence of short-termism in India. Though certain committee reports have in the past have recognized that short-termism indeed is present in the country, the paper offers an empirical assessment of the most recent trends in short-termism. This actively contributes by examining the growth and the penetration of short-termism in the country's corporate sector.

The consequences of such short-term practices are then highlighted in Part IV of the paper. Herein, we will focus on the economic, social and the environmental impact that short-termism has in India as well as the world in general. The paper thereafter under Part V will focus on the core recommendations that we will make for dealing with the crucial issue of short-termism. It, herein, will provide legislative and policy-oriented recommendations with respect to the duty of the directors, the boards of

---

[13] Accounting Tools, *Shareholder Theory Definition*, AT (May 9, 2022) https://www.accountingtools.com/articles/shareholder-theory#:~:text=Shareholder%20theory%20is%20the%20view,possible%20return%20on%20their%20funds.

[14] Eunsup Daniel Shim, *Sustainability, Stakeholder Perspective and Corporate Success: A Paradigm Shift*, 4(5) INTERNATIONAL JOURNAL OF BUSINESS, HUMANITIES AND TECHNOLOGY 64, 65-66 (2014).

the companies, institutional investments, and sustainable corporate governance in India. Part VI of the paper offers concluding remarks.

## II. CORPORATE GOVERNANCE AND SHORT-TERMISM

In this part, we intend to discuss the concepts of short-termism and corporate governance, and thereby highlight the relationship between them.

### A. CORPORATE GOVERNANCE

With the advent of the 19th century, registered companies developed the ability to accommodate large scale investment while subjecting investors to minimum risk.[15] In India, the apace nature of globalization and liberalization prompted companies to introduce effectual corporate governance policies.[16] This evolution in the corporate sector warranted the need for a special team of corporate managers who were independent of the shareholders in order to incorporate and ensure accountability and responsibility in the framework.[17] The requirement for separate ownership and management arose primarily due to the fact that management would otherwise be cumbersome for large-scale companies, owing to its vast number of shareholders.[18]

Furthermore, given that companies resort to public offering of shares to meet their capital needs, this could lead to situations where the shareholders do not have the requisite understanding and expertise to operate a large-scale company.[19] Thus, it is this separation of the

---

[15] Shreeparna Dutta, *Emergence and Development of Corporate Governance in UK, USA and India*, 6(2) INDIAN JOURNAL OF LAW AND JUSTICE 72, 72 (2015) [hereinafter, Dutta].
[16] Ananyaa Jha & Aayush Kanojia, *Globalisation and Corporate Governance in Indian Context*, 3(5) INTL J. LAW MAN. & HUMAN. 482, 485-486 (2020).
[17] Dutta, *supra* note 15 at 74.
[18] *Id.* at 72.
[19] *Id.*

management from the shareholders which gave rise to concerns of accountability and thereby became the premise of modern day corporate governance.[20] The Organisation for Economic Co-operation and Development ("**OECD**") defines corporate governance as "a set of relationships between a company's management, its board, its shareholders and other stakeholders and provides the structure for setting objectives, determining means of attaining them and monitoring performance of the company".[21] Therefore, good corporate governance safeguards the interest of all the stakeholders involved such as the shareholders, creditors, consumers, the government and the society at large, by ensuring that the management fulfils its responsibility.[22]

It was recognized that implementing good corporate governance can help the company minimize the risk of malpractices, improve accountability and expedite the decision-making process within the company, thereby increasing operational efficiency. Importantly, it aims to further the interests of various stakeholders through principled and transparent means, so as to establish the organisation as a responsible corporate citizen.[23] This promotion of interest is regardless of whether it leads to an improvement in financial performance or not.[24] In other words, the duty of the directors and the management is not to achieve the maximum profits, but to balance the interests of various stakeholders.[25] This idea is termed as corporate social responsibility which forms an

---

[20] Vivek Sadhale, *Corporate Governance. The Situation in India Compared to Other Countries with Specific Reference to Corporate Governance in the UK*, 2(6) INTERNATIONAL IN-HOUSE COUNSEL JOURNAL 675, 675 (2009).
[21] Organisaiton for Economic Co-operation and Development, *G20/OECD Principles of Corporate Governance*, OECD (2015) https://www.oecd.org/daf/ca/Corporate-Governance-Principles-ENG.pdf.
[22] Dutta, *supra* note 15.
[23] Atul Mehrotra, *Corporate Governance, SEBI & Corporate Laws*, 90(4) THE CORPORATE LAWS WEEKLY157, 157 (1997).
[24] Martono Anggusti et al., *Corporate Governance for Employee's Welfare*, 3(3) INTL SOC. SCI. STUD 257, 258 (2015).
[25] *Id.*

integral component of corporate governance.[26] A good corporate governance model can also be beneficial in ensuring compliance with the applicable provisions of law and thus averting exorbitant litigation fee.[27] Moreover, for an emerging market like India, corporate governance is especially significant as it can not only reduce financial instability but also positively impact a company's reputation thereby making it more appealing to investors.[28]

Prior to the implementation of Companies Act, 2013 ("**the Act**"), corporate governance was primarily being governed by Clause 49 of the Listing Agreement.[29] However, with the introduction of the Act several provisions and regulations have been put in place to ensure smooth and effective corporate governance. For instance, the Act has codified the duties of the directors under §166. Other significant changes include the amendments to the composition of the board of directors, and the discontinuation of treating nominee directors as independent directors, to name a few.[30] Moreover, the Act mandates that directors of a company to promote the objects of the company in good faith for the betterment of its stakeholders – the company, its shareholders, employees, the society and the environment.[31]

---

[26] Mauricio Andres Latapi Agudelo, *A literature review of the history and evolution of corporate social responsibility*, 4(1) INTL. J. CORPORATE SOC. RESPONSIBILITY1, 1-2 (2019).
[27] Afra Afsharipour, *The Promise and Challenges of India's Corporate Governance Reforms*, 1 INDIAN JOURNAL OF LAW & ECONOMICS 33, 61 (2010).
[28] Dr. QaziMohd. Usman, *Corporate Governance and its Efficacy in Present Era*, 2 JAMIA LAW JOURNAL 61, 62-63 (2017).
[29] *Id.*
[30] Nishith Desai Associates, *Companies Act, 2013: Greater Emphasis on Governance through the Board and Board Processes*, LEXOLOGY (Jun. 4, 2014)https://www.lexology.com/library/detail.aspx?g=259ba402-8b1d-48ee-837e-63261752aef1 [hereinafter, Desai Associates].
[31] The Companies Act, No. 18 of 2013, §166(2) (Ind.).

### B. SHORT TERMISM

For almost half a century, the general trend had been to laud and reward corporations for generating profits for their shareholders.[32] However, in the recent times, there has been a paradigm shift in the views of significant members of the corporate sector, whereby the idea that maximizing profitability and returns may be contradictory to the interests of the company in the long haul has been propounded.[33]

The Chartered Financial Analyst Institute ("**CFA**") has defined corporate short termism as "an excessive focus on short-term results at the expense of long-term interests".[34] As per the suggestions of CFA, a company endangers its strength as well as its shareholder returns by targeting shorter terms. In its 2020 report 'Short-Termism Revisited', the CFA has observed an inter-linkage between poorer returns in a span of over three to five years and underinvestment in Research and Development ("**R&D**") in addition to other general, capital and administrative expenditures.[35] The report encourages companies to adopt a long-term oriented approach wherein there is active engagement with investors and the environmental, social and governance ("**ESG**") standards are observed.[36]

Certain reasons for curbing short-termism have been identified. The Principles of Responsible Investment along with the United Nations

---

[32] David A. Katz et al., *The Long Term, The Short Term, and The Strategic Term*, HARVARD LAW SCHOOL FORUM ON CORPORATE GOVERNANCE (Sept. 27, 2019) https://corpgov.law.harvard.edu/2019/09/27/the-long-term-the-short-term-and-the-strategic-term/ [hereinafter, Katz].
[33] *Id.*
[34] Chartered Financial Analyst Institute, *Report on Short Termism*, CFA, https://www.cfainstitute.org/en/advocacy/issues/short-termism#sort=%40pubbrowsedate%20descending.
[35] Matt Orsagh et al., *Short Termism Revisited – Improvements Made and Challenges Ahead in Investing for the Long Term*, CHARTERED FINANCIAL ANALYST INSTITUTE (Sept. 2020) https://www.cfainstitute.org/en/advocacy/policy-positions/short-termism-revisited.
[36] *Id.*

Global Compact released a report wherein they observed that the practice of short-termism deviates from the established UN Sustainable Development Goals.[37] It also concluded that the same could divert the attention of the corporate leaders from the integral corporate governance principles, and in turn distract them from the ESG considerations, while also curtailing innovation and limiting market opportunities.

## III. ASSESSING THE EXISTENCE OF SHORT-TERMISM IN INDIA

The Narayana Murthy Committee Report on Corporate Governance, 2003, was arguably the first authoritative source that highlighted the presence of short-termism in the Indian corporate governance structure.[38] Thereafter, the Uday Kotak Committee Report on Corporate Governance, 2017, ("**the Report**") further implored on this crucial issue.[39] The Report states that the excessive emphasis on short-term performance instead of a long-term performance of a company, is a global trend that is also present in India.[40] Herein, as per the Report, many companies and their boards devote huge resources in order to fulfil their quarterly goals, instead of chasing long-term plans.[41] The Report noted that the fulfillment of long-term goals is one of the major roles of a company and essential to structure a resilient corporate governance framework.[42]

However, there is a lack of evidentiary basis with respect to an empirical assessment of the presence of short-termism in India. To the

---

[37] The United Nations, *Principles of Responsible Investment, Coping, Shifting, Changing 2.0*, UN(2017)https://www.unglobalcompact.org/library/5421.

[38] Securities and Exchange Board of India, *Consultative Paper on Review of Corporate Governance Norms in India*, SEBI (Mar. 21, 2003)https://www.sebi.gov.in/sebi_data/attachdocs/1357290354602.pdf.

[39] Securities and Exchange Board of India, *Report of the Committee on Corporate Governance*, SEBI(Oct. 5, 2017)https://www.sebi.gov.in/reports/reports/oct-2017/report-of-the-committee-on-corporate-governance_36177.html.

[40] *Id.* at 5.

[41] *Id.*

[42] *Id.* at 6.

date of writing, there is a lacuna in the statistical and empirical assessment of the extent of short-termism in the country. Resultantly, the paper in this part attempts to bridge this research gap as done below.

### A. RESEARCH METHODOLOGY

The paper analyses the publicly available data of thirty listed companies to identify short-termism. The companies are selected from the Sensex 30 list which is based on the objective performance of the companies in the market and includes factors such as a healthy balance sheet, revenue margins, and market share.[43] Hence, it also becomes more crucial for these companies to follow long-term corporate governance goals in order to further grow their organization. The full list of these thirty companies has been displayed under Annexure-I in Part VII.

The research methodology adopted in this part is of statistical analysis. This methodology is used to investigate trends, patterns, and relationships through the use of qualitative data.[44] Statistical analysis a tool used by governments, scientists, and other organisations, and is viewed as an important research methodology.[45] Similarly, legal scholars have also utilised this methodology to provide empirical analysis regarding legal texts such as cases and other decisions, to name a few.[46]

In this paper, we will analyze the dividend pay-out of said thirty companies, over the course of the last five financial years beginning from

---

[43] Equity Master, *List of BSE Sensex 30 Companies*, EQUITY MASTER(Feb. 25, 2022) https://www.equitymaster.com/india-markets/bse-replica.asp; For an assessment of the factors of the Sensex 30 list, *see also* Corporate Finance Institute, *Sensex*, CFI(Sept. 10, 2016) https://corporatefinanceinstitute.com/resources/knowledge/trading-investing/sensex/.

[44] Scribbr, *The Beginner's Guide to Statistical Analysis*, SCRIBBR, https://www.scribbr.com/category/statistics/#:~:text=Statistical%20analysis%20is%20the%20main,characteristics%20of%20a%20data%20set.

[45] *Id.*

[46] For instance, *see* Jonathan Kastellec, *The Statistical Analysis of Judicial Decisions and Legal Rules with Classification Trees*, 7(2) J. EMPIRICAL LEGAL STUDIES 202, 202-230 (2010).

FY 2016-2017 to FY 2020-2021. Herein, the interpretative method of content analysis permits us to examine hundreds of decisions based on hypothesis that could not have been achieved with other methodologies. To calculate the dividend payout, we rely on the secondary data method, by finding information from Equity Master – a webpage collecting various market related data of Indian companies since 1996.[47] Herein, we look at the factsheet of the companies to collate data from the last five financial years.[48]

There are certain limitations to our study that need to be highlighted. *First*, the study ranges for only the immediately preceding five financial years and does not cover prior years due to the lack of available data. However, such a limitation in our opinion is inconsequential since our broad goal is to showcase the rise in short-termism in India – which can be achieved from a five-year dataset. *Second*, with respect to the sectoral wise analysis that has been conducted, it is important to note that the said analysis only comprises the companies that are there under the Sensex 30 list; and a specific analysis on other companies falling under these sectors has not been conducted.

### B. FACTORS FOR ASSESSING SHORT-TERMISM

Over the years, scholars have provided different indicators for assessing the existence and the extent of corporate short-termism in the corporate sector. One of the widely utilized indicators is the assessment of the evolution, with respect to the amount of the net corporate funds utilized for the pay-outs to the shareholders in the form of dividends, as contrasted with the change in the amount used in investments by the

---

[47] Equity Master, *Equity Master – The Investor's Best Friend*, EQUITY MASTER (1996) https://www.equitymaster.com/.

[48] Equity Master, *Indian Stock Market Research*, EQUITY MASTER, https://www.equitymaster.com/stock-research/?utm_source=submenu.

company.[49] This is based on the rationale that increasing expenditure on dividend pay-outs indicate the approach of the company to engage in short-term goal achievement, instead of a long-term corporate sustainable approach that is indicated from investments.[50] It is important to note that there exists no strict threshold on the basis of which a person can state that there is an excessive focus on short-termism. Instead, the concept is measured over a period of time with an upward rise stipulating a growth in short-termism.[51]

A hypothesis herein exists under this approach. Many scholars such as William Lazonick and Mary O'Sullivan have proposed that companies either utilise their net income to invest in the future or fund its shareholders, thereby indicating that an increase in the shareholder pay-outs results in the decrease of the available resources to invest.[52] Lazonick and O'Sullivan have suggested that the rise in the obsession towards shareholder value has led to the strategy of "downsize and distribute", instead of "retain and invest".[53] In other words, when companies distribute large amounts towards their dividend, they are left with little resources for investments in research and development.[54] Therefore, we can observe that there exists an inverse relationship between the amount spent on dividend pay-outs and the amount utilised for investments.

In the current study, we analyse the corporate pay-outs to the shareholders in the form of dividends, which are the sums paid to the

---

[49] Beate Sjafejell et al., *Shareholder Primacy: The Main Barrier to Sustainable Companies* in B. RICHARDSON & BEATE SJAFEJELL, COMPANY LAW AND SUSTAINABILITY: LEGAL BARRIERS AND OPPORTUNITIES 75(Cambridge, 2015); Heitor Almcida et al., *The Real Effects of Share Repurchases*, 119 Journal of Financial Economics 168, 168-185 (2015).
[50] *Id.*
[51] *Id.*
[52] William Lazonick & Mary O'Sullivan, *Maximising Shareholder Value: A New Idealogy for Corporate Governance*, 29(1) ECONOMY AND SOCIETY13, 13-35 (2000).
[53] *Id.*
[54] William Lazonick, *The US Stock Market and the Governance of Innovative Enterprise*, 16(6) INDUSTRIAL AND CORPORATE CHANGE 983, 983 (2007).

shareholders from the profits. Resultantly, based on the above discussion, any form of increase in the aggregate dividend pay-out would indicate the decrease in the funds available for investments, and thus highlight the rise in short-termism.

Hence, we analyse the development of dividend pay-out of the thirty identified listed companies in Annexure-I, over a course of five years. The dividend pay-out is analysed in ratios in order to eliminate any effect of inflation and the individual growth of an organisation over a period of time. Thus, the analysis is based on the dividend pay-out ratio ('DPR'). The most common method to determine DPR is to divide the total paid dividends by the net income of the company.[55] However, due to the lack of publicly available information about the same for all the thirty companies, we have resorted to another method to calculate DPR which is by dividing the dividends per share by the earnings per share of the company.[56]

### C. FINDINGS OF THE STUDY

The dataset with respect to the DPR for five financial years for the thirty identified companies is compiled under Annexure-I. It can be viewed that there has been an increase in the pay-outs for shareholders from FY 2016-2017 to FY 2020-2021, with the companies showing an upward trend. Individually, the companies have showcased an increase in the DPR over the years as shown below in Figure 1.

---

[55] Investopedia Team, *How to Calculate the Dividend Payout Ratio from an Income Statement*, INVESTOPEDIA (Apr. 29, 2021) https://www.investopedia.com/ask/answers/012015/how-do-i-calculate-dividend-payout-ratio-income-statement.asp.

[56] Corporate Finance Institution, *Dividend Payout Ratio*,CFI,https://corporatefinanceinstitute.com/resources/knowledge/finance/dividend-payout-ratio-formula/.

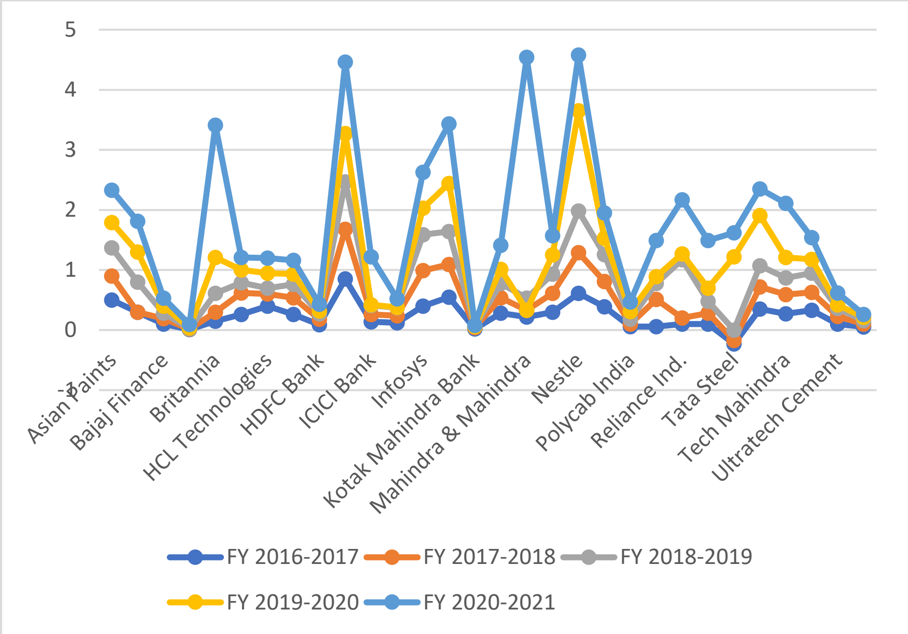


***Figure 1: Company Wise DPR Growth***

In addition to this individual increase, the total average DPR in terms of the percentage of revenue has increased exponentially from 23.7% in FY 2016-2017 to 61.1% in FY 2020-2021, as highlighted in Figure 2 below. Significant increase in the DPR of certain companies such as Mahindra & Mahindra, Britannia, Tech Mahindra, and Reliance Ind., to name a few, are the primary drivers behind this growth. There is a noticeable rise in the growth during the FY 2020-2021 which can be attributed to the COVID-19 pandemic wherein companies resorted to higher dividend pay-outs and the DPR increased dramatically to 61.1%.

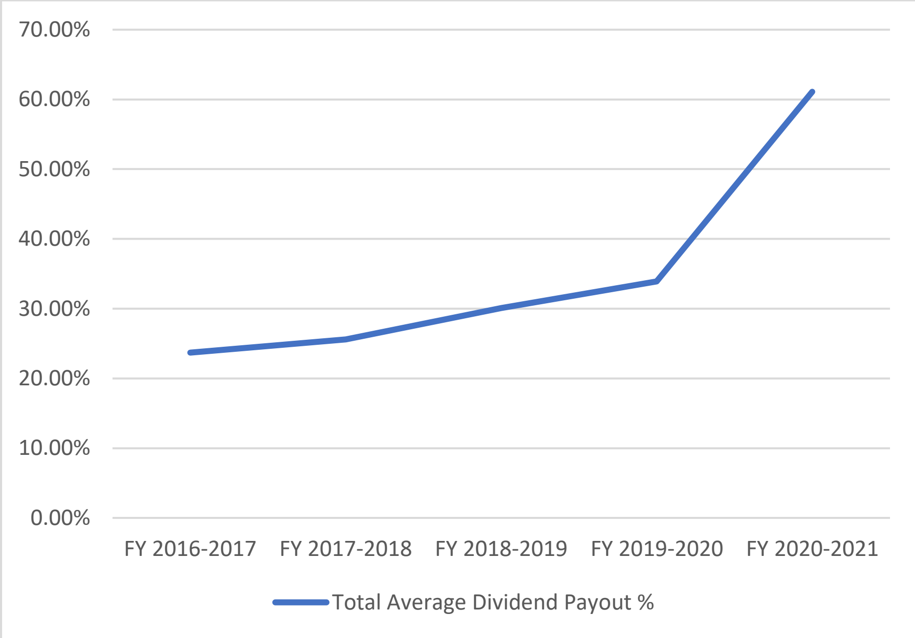


***Figure 2: Growth in Total Average Dividend Payout (%)***

The evolution of the DPR indicates the high penetration of short-termism pattern amongst the listed companies in India. The DPR during FY 2019-2020 stabilized to a certain degree before increasing steeply again in FY 2020-2021 during the pandemic.

Under the sector wise analysis as conducted under Figure 3, all sectors have shown an increase in the DPR over the years. Notably, the Food & Beverage, FMCG, and the Pharma sectors have showcased a steep rise in the DPR. The Food & Beverage sector has witnessed the most sustained increase over the last half a decade. Further, though the Auto sector has also seen a steep rise, in FY 2020-2021, the same is attributed to only one company, i.e. Mahindra & Mahindra.

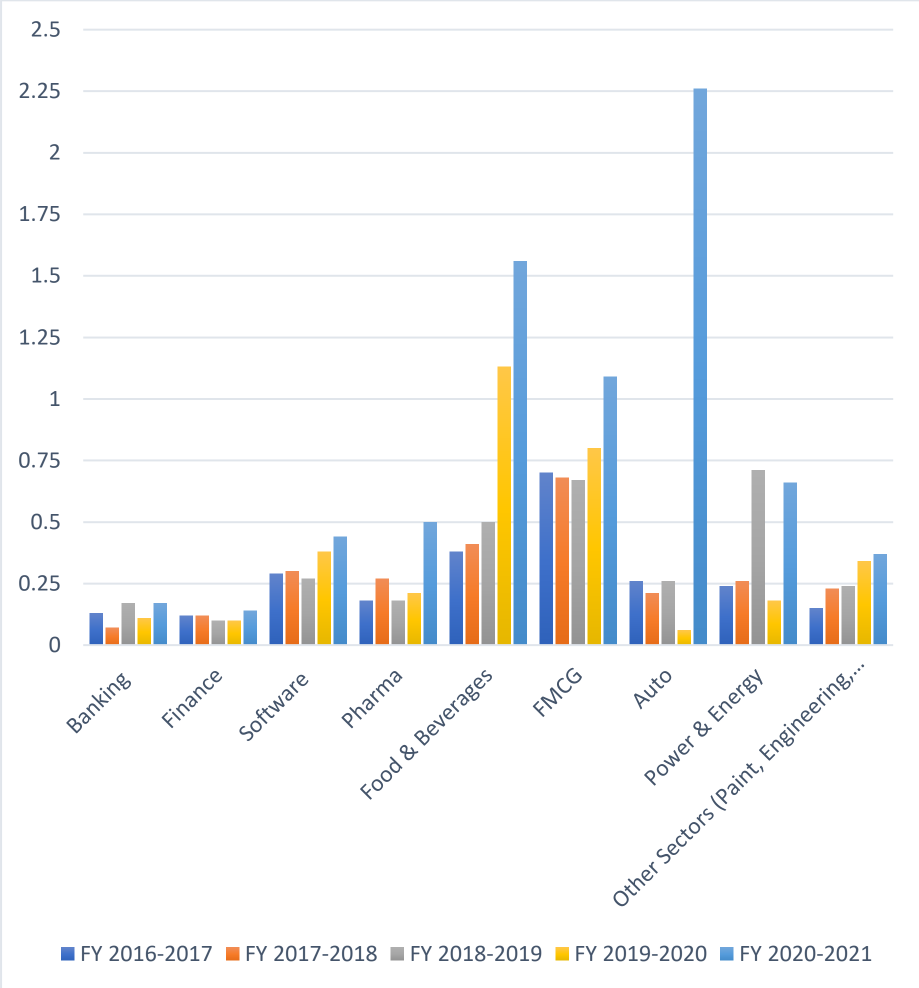


***Figure 3: Sector Wise DPR Growth***

The study has therefore showcased that the DPR amongst the thirty listed companies has increased significantly on average during the last five FYs. As per the hypothesis presented earlier, this indicates that the companies have less funds for long-term investments. These indicators fulfil the requirement of short-termism, and the study highlights a steep increase in the same. Thus, the companies are increasingly becoming more focused on satisfying the short-term profits for the company, instead of making rationalised long-term investments that enable the proper operation of corporate governance. Hence, despite the limitations highlighted before, our study contributes by highlighting the sectoral and overall increase in short-termism in the Indian corporate governance framework.

## IV. CONSEQUENCES OF SHORT-TERMISM UNDER THE INDIAN LANDSCAPE

This part focuses on the adverse results that are caused due to the short-term practices of the company, with respect to the environment, the economy, and the social sphere. Herein, consequences from both the Indian and the general worldwide perspective are highlighted.

### A. ENVIRONMENTAL

The correlation between corporate short-termism and sustainability issues of a company has been recognised in corporate jurisprudence.[57]Further, there has also been a direct identification of the connection between short-termism and climate change.[58] The important factor for this is attributed to the practice of shareholder primacy.[59] In a study conducted by Professor Beate Sjåfjell, it was discovered that despite the scope provided by company law to incorporate environmentally conscious considerations while making business decisions, boards usually refrain from the same.[60] In fact, conversely, it has been seen that the operation of the board is restricted by the pervading standard of

---

57 Araujo, *supra* note 6.
58 N. Slawinski et al., *The Role of Short-Termism and Uncertainty in Organisationsal Inaction on Climate Change: Multilevel Framework*, 56(2) BUSINESS AND SOCIETY 253, 253-254 (2017).
59 *Id.*
60 Beate Sjåfjell, *Beyond Climate Risk: Integrating Sustainability into the Duties of the Corporate Board*, 23 DEAKING LAW REVIEW 1, 8 (2018).

shareholder primacy.[61] This is because the norm of shareholder primacy postulates that the board and members of senior management are 'agents' of the shareholders and thus obligated to maximise returns to them.[62]

In the context, it is important to note the 'planetary boundaries' proposed in 2009, that characterise "safe operating space" for mankind on Earth.[63] Out of these nine specified planetary boundaries, four of them – biodiversity, biogeochemical cycles of phosphorus and nitrogen, land system change and climate change – have been violated or are at the risk of being violated as a ramification of human production and consumption.[64] These violations could culminate into a situation where the planet would be transformed into an inhabitable place for humans. Furthermore, two of the aforementioned boundaries – biodiversity and climate change – are regarded as crucial boundaries, and therefore, a violation of either of them is sufficient to disturb the stability of the ecology.[65] As per the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services,[66] these violations are an outcome of the undertakings of certain sectors, like the practice of intensive agriculture, which entails extensive use of agrochemicals that poorly affects the natural and semi-natural habitats. The violations can also be attributed to hydropower plants and water abstractions that affect the biodiversity of freshwater bodies.[67]

---

61 IncNow, *What is Shareholder Primacy, and Why does it Matter?*, INCNOW (Jan. 5, 2022) https://www.incnow.com/blog/2022/01/05/what-is-shareholder-primacy/.
62 *Id.*
63 Johan Rocktrom, *Planetary Boundaries: Exploring the Safe Operating Space for Humanity*, 14(2) ECOLOGY AND SOCIETY472, 472-473 (2009).
64 Will Steffen, *Planetary Boundaries: Guiding Human Development on a Changing Planet*, SCIENCE (Jan. 15, 2015) https://www.science.org/doi/10.1126/science.1259855.
65 *Id.*
66 IPBES, *Intergovernmental Science- Policy Platform on Biodiversity and Ecosystem Services for Europe and Central Asia*, IPBES (2018) https://ipbes.net/assessment-reports/eca.
67 *Id.*

Furthermore, the production of premium quality goods like coffee, cotton and cocoa exerts an immense amount of pressure on land as well as water resources and leads to a spike in the usage of agrochemicals and fertilisers.[68] The chemical pollution caused as a consequence of these industrial practices exposes the health of man and the environment to toxicities thereby jeopardising their life. It is worth noting that according to the projections of the OECD,[69] the consumption of raw materials in the world is expected to almost double by 2060 considering the expansion of the economy and improvements in the standard of living.[70] Thereby placing an increased pressure to produce which in turn would further deteriorate the ecosystem and aggravate the scarcity of natural resources.

### B. SOCIAL

Short-termism is known to aggravate inequalities in the society. This is primarily because share ownership is often accumulated by the richest households achieving higher share prices and larger dividend pay-outs.[71] Corporations are mainly focused on the shorter terms and this approach serves only a minor chunk of a country, i.e. the shareholders. As a result, the existing socio-economic disparities are only exacerbated.[72] This is applicable to the shareholding structures globally. It is intriguing to note that the disparity status when compared to that of the world, revealed that the global tendency for the shareholding of the top one percent and the

---

[68] United Nations Environment Program, *International Resource Panel, Global Resources Outlook 2019: Natural Resources for the Future We Want*, UN (2019) https://www.resourcepanel.org/reports/global-resources-outlook.

[69] Organisation for Economic Co-operation and Development, *Report on Global Material Resources Outlook to 2060*, OECD (2019) https://www.oecd.org/env/global-material-resources-outlook-to-2060-9789264307452-en.htm.

[70] *Id.*

[71] Robert Gebeloff, *Who Owns Stocks? Explaining the Rise in Inequality During the Pandemic*, NEW YORK TIMES (Jan. 26, 2021) https://www.nytimes.com/2021/01/26/upshot/stocks-pandemic-inequality.html.

[72] Thomas Clarke, *Why Shareholder Value Drives Income Inequality*, THE CONVERSATION (Jul. 26, 2018) https://theconversation.com/why-shareholder-value-drives-income-inequality-100324.

ten percent increased between the period of two decades, i.e. 1980-2000, and in following two decades witnessed a depletion. Whereas in the Indian context, the spike for the period of 1980-1990 was slow but picked up pace after the liberalisation of the economy and the trends for the last two decades suggest that the fraction placed on top had more income than the global average.[73] Further, the share of the bottom half has depicted a varied pattern. For India, the same has fallen only in the last four decades. On the contrary, the international average, while still lower than India, has experienced a hike during the said period.[74]This disparity and concentration of share ownership translates to the fact that short-termism is essentially the concept of serving a wealthy fraction, across the globe.

Executive compensation schemes that are greatly inclined towards stock-linked aspects also play a role in the increasing social inequalities. Due to the stock-based remuneration, there has been a staggering rise in the inclination of the executive compensation to the stock market.[75] In India, during the peak pandemic period, i.e. FY 2020-2021, the annual reports of companies indicate that several CEOs and board members experienced a hike in their salaries while their employees did not.[76] For instance, the CEO of Mindtree, Debashis Chatterjee's salary was increased to Rs. 11.3 crore and saw a growth of 131 percent while the average raise in the employees' salary was ten percent for the same financial year. On an

---

73 Madan Sabnavis, *India's Unequal Growth Journey*, THE HINDU BUSINESS LINE(Dec. 14, 2021) https://www.thehindubusinessline.com/opinion/indias-unequal-growth-journey/article37954982.ece.

74 *Id.*

75 Lawrence Michel& Julia Wolfe, *CEO Compensation has Grown 940%Since 1978*, ECONOMIC POLICY INSTITUTE (Aug. 14, 2019)https://www.epi.org/publication/ceo-compensation-2018/#:~:text=CEO%20compensation%20continues%20to%20be,using%20the%20options%2Dgranted%20measure.

76 Samiksha Goel, *Pandemic Conundrum: CEO Salaries Rise While Workers' Pay Remain Stagnant*, THE NEW INDIAN EXPRESS (Sept. 24, 2021) https://www.newindianexpress.com/business/2021/sep/24/pandemic-conundrum-ceo-salaries-rise-while-workers-pay-stays-stagnant-2363001.html.

average, the increase in the remuneration for management for FY 2020-2021 was noted to be around 55.22 percent whereas the median hike in the employee salary was 0.03 percent.[77]

The average ratio of CEO remuneration to that of an average employee for NSE500 companies in 2020 was 213:1 for promoter-CEOs and 152:1 for professional CEOs.[78] Our position is similar to that of the US, where the ratio was 299:1 for S & P 500 companies in 2020, up from 264:1 in 2019.[79] A juxtaposition of various countries for the year 2018 suggests that India lies second to the US in the said pay-ratio. Other countries such as China, UK and Canada have lower ratios.[80]

The short-term pursuit for immediate profits has produced immense pressure to disparage the wages of non-executive works, remodel employees as independent contractors so as to abstain from paying bonuses, pensions or other benefits and the introduction of outsourcing tasks to contracting companies, an industry which essentially competes to pay lower and lower wages.[81] Therefore, it is evident that short-termism is accompanied by a framework of benefiting its shareowners by jeopardising non-executive employee welfare and compensation schemes.

In addition to this, the human rights violations that take place in companies throughout their international supply and value chains is another grave cause damaging the interaction between corporations and society.[82] Parlous labour and human rights violations by the largest of

---

[77] *Id.*
[78] Sanjay Kallapu & Prasad Vemuri, *A Good Way Out of Our CEO Compensation Conundrum*, LIVE MINT (Oct. 11, 2021) https://www.livemint.com/opinion/online-views/a-good-way-out-of-our-ceo-compensation-conundrum-11633967646105.html.
[79] *Id.*
[80] *Id.*
[81] David Weil, *The Fissured Workplace: Why Work Became So Bad for So Many and What Can Be Done To Improve It*, 89(3) SOCIAL SCIENCE REVIEW 568 (2017).
[82] Elisa Giuliani & Chaira Macchi, *'Multinational Corporations' Economic and Human Rights Impacts on Developing Countries: A Review and Research Agenda*, 38(2) CAMBRIDGE JOURNAL OF ECONOMICS 479, 480 (2014).

companies, in developing countries such as India[83] is revealing of the ground realities of worker protection policies, and the corporate obsession with profit maximisation and executive compensation. The working conditions of the labourers working for apparel companies, or the production units of electronic devices[84], are almost devoid of human rights safeguards due to the enormous pressure of lower pricing from the companies to the suppliers in third world countries.[85]Therefore, the corporate culture of short-termism is closely intertwined with the pressure to deteriorate employee working conditions by incorporating hazardous contract clauses and poor wages.

Another notable factor curbing employee welfare is the desire to maximise short-term profits which diverts investments from long-term value creation through employee training.[86] Employee training is not just symbolic of a long-term strategy but also acts as a motorist of sustainability in itself. A training programme enables employees to develop and hone their skills which in turn can be regarded as a vital step in tackling sustainability challenges. In addition to that, improved skills

83 Martje Theuws & Pauline Overeem, *International Companies Linked to Forced Labour in India*, SOMO(May 27, 2021) https://www.somo.nl/international-companies-linked-to-forced-labour-in-indian-spinning-mills/.
84 Feza T. Azmi, *The Little Hands of Labour Behind your Smartphone*, THE WIRE (Jun. 16, 2021) https://thewire.in/rights/child-labour-unicef-mines-amnesty-international-ilo.
85 Jaakko Salminen & Mikko Rajavouri, *Transnational Sustainability Laws and the Regulation of Global Value Chains: Comparison and a Framework for Analysis*, 26(5) MAASTRICHT JOURNAL OF EUROPEAN AND COMPARATIVE LAW 602, 626 (2019); Annie Kelly, *Worst Fashion Theft*, THE GUARDIAN (Dec. 16, 2021) https://www.theguardian.com/global-development/2021/dec/16/worst-fashion-wage-theft-workers-go-hungry-as-indian-suppliers-to-top-uk-brands-refuse-to-pay-minimum-wage.
86 Jeremy Stein, *Agency, Information and Corporate Investment: Handbook of the Economics of Finance*, HARVARD UNIVERSITY (2003) https://scholar.harvard.edu/files/stein/files/agency-2003.pdf.

can also encourage investment, innovation in the market and increase competition which will ultimately benefit the society.[87]

### C. ECONOMIC

The practice of shareholder primacy within the framework of corporate governance, coupled with pressure from investors insistent on short-term market value of shares , collectively pressurises the board to give primacy to the market value of the firm and chase short-term returns.[88] This comes at the cost of improved employee compensation and lucrative investments that will pay off only in the long run, such as the capital expenditure and R&D of the company.[89]

As an extension of short-termism, some directors began to function under the impression that they were required to lower the companies' tax liability, so much so that this resulted in tax avoidance, as in the case of Luxleaks and the Panama Papers scandals.[90]The object behind this was to externalise the risk by lowering the tax quotation. As per the findings of The Tax Justice Network, India annually loses approximately $10.11 billion due to international corporate tax abuse by virtue of Outward Foreign Direct Investments.[91]Such acts increase the tax burden on the

---

[87] International Labour Organisation, *Report on World Employment and Social Outlook 2018: Greening with Jobs*, ILO (May 14, 2018) https://www.ilo.org/global/publications/books/WCMS_628654/lang--en/index.htm.

[88] J.W. Mason, *Disgorge the Cash: The Disconnect Between Corporate Borrowing and Investment*, THE ROOSEVELT INSTITUTE (Feb. 25, 2015)https://rooseveltinstitute.org/publications/disgorge-the-cash/.

[89] *Id.*

[90] Jim Brunsden, *Lux Leaks: Luxembourg's Response to an International Tax Scandal*, FINANCIAL TIMES (Jun. 23, 2017) https://www.ft.com/content/de228b90-3632-11e7-99bd-13beb0903fa3; Paul Gregoire, *The Panama Papers: A Lesson in Tax Avoidance*, LEXOLOGY (Feb. 14, 2019) https://www.lexology.com/library/detail.aspx?g=d25bda85-f2d3-48cd-85e8-45c26e758c00.

[91] Lubna Kably, *India losing over Rs.70,000 Crore in Taxes to Other Countries*, THE TIMES OF INDIA (Nov. 20, 2020) https://timesofindia.indiatimes.com/business/india-business/tax-abuse-results-in-countries-losing-over-427bn-in-tax-each-year-indias-tax-loss-is-pegged-at-10-3bn-study/articleshow/79320131.cms.

citizenry and local companies. Simply put, this is because the tax on the earning of multinational companies is to be paid from the pockets of the company's shareholders, who are a part of the wealthy fraction of the society. If this tax burden on corporate returns declines, the overall tax burden resultantly shifts towards the labour class.

The practice of tax avoidance also adversely affects the income tax collected by the governments and hinders their ability to make welfare investments such as developing infrastructure, improving education as well as R&D.

From the perspective of microeconomics, it has been observed that the violation of planetary boundaries will cause certain risks for the corporate sector. These include the disruption of the supply chain, dearth of raw materials for production, rise in costs and introduction of more stringent regulatory provisions.[92] A foreseeable ramification of the aforesaid impacts negatively on the costs of production, market competition, profitability and employment.[93]

Studies suggest that companies that incorporate sustainability aspects function and deliver better.[94] Therefore, companies that continue short-term practices will not just aggravate unsustainability, but will also not make long term-oriented investments that are essential to keep them buoyant, feasible and sustainable in the times to come.[95] As per a report by the World Economic Forum on Global Risks,[96] the most acute risks

---

[92] University of Cambridge Institute for Sustainability Leadership, *Linking Planetary Boundaries to Business: The First White Paper in Kering's Series on Planetary Boundaries for Business*, KERING (Jan. 15, 2019) https://www.kering.com/en/news/linking-planetary-boundaries-to-business.

[93] *Id.*

[94] Gunnar Friede et al., *ESG and Financial Performance: Aggravated Evidence from more than 2E000 Empirical Studies*, 5(4) JOURNAL OF SUSTAINABLE FINANCE & INVESTMENT 210, 226-227 (2015).

[95] *Id.*

[96] World Economic Forum, *The Global Risks Report*, WEF (Jan. 15, 2019) https://www.weforum.org/reports/the-global-risks-report-2019.

involved in business – climate change and natural calamities are closely linked to unsustainable practices.[97] It is pertinent to recognise the magnitude of risk that such practices pose. This is because it can lead to the dissolution of the companies due to the lack or erroneous identification of these risks, which in turn impacts the company's capability to serve the shareholders and create value for them in the long run.[98]

## V. RECOMMENDATIONS: TACKLING SHORT-TERMISM IN INDIA

The causes and the resulting issues that give rise to short-termism in India do not find any form of analysis by scholars. Such an investigation is essential to find the root of the issue of short-termism and thereafter form policies to address the said issue. Thus, in order to bridge this research gap, in this part, we seek to analyse the issues surrounding short-termism in India and the causes thereof, and simultaneously provide suitable recommendations.

### A. DUTY OF THE DIRECTORS

It is contended that the directors' duties under the Act are ill-defined and lack sufficient precision in order to enable corporate long-termism. The board of directors of a company are responsible for the control and superintendence of the company's affairs.[99] As noted by the Supreme Court in *Sunil Bharti Mittal* v. *Central Bureau of Central Investigation*,[100] the board of directors is considered as the mind and brain behind a company.

---

97 *Id.*

98 *Id.*

99 Seema Jhingan, *Roles and Responsibilities of a Director under the Companies Act, 2013 – Pitfalls and Safeguards*, MONDAQ (Jul. 18, 2016) https://www.mondaq.com/india/directors-and-officers/510724/roles-and-responsibilities-of-a-director-under-companies-act-2013-pitfalls-and-safeguards.

100 AIR 2015 SC 923 (Ind.).

The core duties of such directors are embodied under §166 of the Act.[101]Arguably, one of the core duties of the directors amongst the aforementioned is the duty to promote the 'interest' of the company.[102] However, under the Indian jurisprudence, the said phrase finds no further interpretation amongst courts or scholars.[103] This results in the lack of proper understanding as to what the interest of the company precisely entails. On one hand it is argued that the promotion of the interest of the company could simply entail a negative duty to not promote the personal interests of the directors and favour the company's interest. On the other hand, as has frequently occurred,[104] the promotion of the company's interest can be equated to furthering the shareholders' interests and thereby boosting their primacy. Therefore, such an approach arguably hampers the long-term sustainable evolution of a company and instead drives the company's resources towards the goal of maximising the short-term value of the shareholders.

Hence, this absence of a clear demarcation of the interests of the company under the domestic framework provides room for a liberal interpretation by the companies and often results in it being equated to the shareholder's interests.

Further, §166 does not mention the duty of the director to alleviate the long-term sustainability risks with respect to the social, economic and environmental impact. Such risks can have both an internal effect to the company in relation to its management, as well as external effect with

---

[101] The Companies Act, No. 18 of 2013, §166(2) (Ind.).
[102] Ministry of Corporate Affairs, *Related Party Transactions*, MCA, https://www.mca.gov.in/Ministry/reportonexpertcommitte/chapter5.html.
[103] *See generally* A. RAMAIYA, GUIDE TO THE COMPANIES ACT, CHAPTER XI, APPOINTMENT AND QUALIFICATIONS OF DIRECTOR3 (Vol. 2, 19th ed.2020).
[104] Mihir Naniwadekar & Umakanth Varottil, *Directors' Duties and Stakeholder Interests: Comparing India and the United Kingdom*, UNIVERSITY OF OXFORD, FACULTY OF LAW (Aug. 28, 2016) https://www.law.ox.ac.uk/business-law-blog/blog/2016/08/directors%E2%80%99-duties-and-stakeholder-interests-comparing-india-and.

respect to the company's furtherance of the overarching sustainable goals. Though, "protection of the environment" is an explicit duty of the directors,[105] the same has limited operation and cannot be equated with the broader goals of sustainable growth of the company.

Hence, in the absence of an explicit duty to mitigate the sustainability risks in the long-term, coupled with the excessive focus on shareholder primacy and the short-term market pressure as identified in Part III, the directors of the companies are motivated and driven to maximise the shareholder value and tackle short-term imperils, instead of undertaking a long-term sustainable approach. Such a narrow delineation of the duties of the directors arguably results in an adverse effect on the employees and the general public, such as the communities where the companies operate in and have their supply chain. Lastly, a narrow delineation of the interest of the company also undermines its very ability to contribute to sustainable corporate governance.

In light of the aforesaid issues faced with respect to the delineation of the duty of directors, we provide certain recommendations that can assist in limiting corporate short-termism. In this regard, we recommend that §166 of the Act be amended to specifically include the duty of the directors to achieve a proper balance between the interests of the shareholders and the accompanying interests of the employees, environment, and the society at large. Further, the duty to achieve such a balance should explicitly be clarified as an element of the 'company's interest' in the long-term, which can, in terms of duration, be defined to be somewhere between five to ten years. In our opinion, such a duration would motivate the directors to assess the future sustainable risks that the company may face in the subsequent years, instead of diverting all resources towards short-term output.

[105] The Companies Act, 2013, No. 18 of 2013, §166(2) (Ind.).

Such a legislative measure would fill the void in the express delineation of the director's liability that is connected with the fulfilment of long-term goals. It is acknowledged that such policy change may have effects on the company for a short period of time with respect to the restructuring of the internal policies and rise in costs. However, in the longer run, it is argued that the focus on long-termism would enable the company to achieve resilience against detrimental effects of climate change and health crises such as COVID-19, as well as boost corporate governance, which itself results in economic efficacy. This is in addition to the large-scale social and environmental impact that such a policy change enables. This is because it will motivate the directors to directly focus on the social risks and impacts of the functioning of the company. For instance, programmes could be set-up to increase workplace health and safety and augment the working environment.

Furthermore, it is argued that a possible solution to the issue of narrow directors' duties, through intensive awareness campaigns, would not be an ideal method. As per the above discussion and the analysis made in Part III, it is noticeable that the primary focus on the shareholders is deeply embedded in the Indian culture of governance. Hence, arguably, a mere awareness campaign is unlikely to have a large-scale impact that is required to deal with short-termism. There shall be various loose variables, such as the motivation of the directors and the effective nature of the awareness drives that will determine any positive result. Thus, a legislative method, in our opinion, is a strong, balanced, and a logical way forward to broaden the duties of the directors and drive companies towards a long-term sustainable growth.

### B. INSTITUTIONAL INVESTORS

Another cause of short-termism in India is, we argue, to be related to the parallel rise in institutional investors. Institutional investors are defined as organisations which, in the name of other people, invest capital in other organisations.[106] These include organisations that provide mutual funds, insurance, and pensions.[107] Institutional investors typically trade in large quantities and possess large amounts of shares and resultantly influence the stock market.[108] India has witnessed a substantial rise in institutional investments over the last decade.[109] In the first three quarters of 2021 alone, the institutional investments were over fifty billion dollars, which surpassed the total amount invested through such institutions in 2020.[110]

This growing rise in the institutional investments can be correlated to the simultaneous rise in short-termism. The institutional investors, together with the activist investors who possess hedge-funds tend to focus primarily on the short-term shareholder value.[111] This is because these activists only hold over one to two percent of the stocks and therefore have a natural short-term viewpoint.[112] Hence, such activists

---

106 James Chen et al., *Institutional Investor*, INVESTOPEDIA (Nov. 22, 2021) https://www.investopedia.com/terms/i/institutionalinvestor.asp#:~:text=An%20institutional%20investor%20is%20a,and%20insurance%20companies%20are%20examples.&text=The%20group%20is%20also%20viewed,subject%20to%20less%20restrictive%20regulations.

107 Corporate Financial Institution, *Institutional Investor*,CFI,https://corporatefinanceinstitute.com/resources/knowledge/trading-investing/institutional-investor/.

108 Barclay Palmer et al., *Institutional vs. Retail Investors: What's the Difference?*, INVESTOPEDIA (Dec. 6, 2021) https://www.investopedia.com/ask/answers/06/institutionalinvestor.asp.

109 Himani Goel & Vatsal Khullar, *A Year that was – Driving Institutional Investment in India*, INVEST INDIA (Jan. 12, 2022) https://www.investindia.gov.in/team-india-blogs/year-was-driving-institutional-investment-india#:~:text=As%20a%20result%2C%20the%20first,in%20the%20India%20growth%20story; For a review on institutional investors in India, *see also* Amiya Sahu et al., *Institutional Investments in India: A Review of Literature*, SSRN ELECTRONIC JOURNAL 1,1-10 (2013).

110 *Id.*

111 Robert C. Pozen, *Institutional Investors and Corporate Short-Termism*, HARVARD LAW SCHOOL FORUM ON CORPORATE GOVERNANCE(Aug. 24, 2015) https://corpgov.law.harvard.edu/2015/08/24/institutional-investors-and-corporate-short-termism/.

112 *Id.*

attempt to win support from the institutional investors, which usually they are successful in, and channel the company towards a short-term approach towards the stock prices and the value of the shareholders.[113] Naturally, the institutional investors also coerce the board in maximising the short-term value of the shares and quarterly returns, instead of a long-term sustainable growth.

Resultantly, the same can affect the shareholders possessing a long-term interest, the employees of the company as well as the society at large. The pressure from institutional investors to administer the company in a way to yield short-term profits comes at the expense of the long-term sustainable functioning of the company.

In light of this, it is proposed that mechanism be introduced at the national level so as to incentivise the shareholders to make long-term oriented investments. For instance, the mandate under Clause 41 of the LODR Regulations to make quarterly disclosures can be done away with. A shortcoming of this system could be its negative impact on the functioning of capital markets which would affect the monetary capacity of listed companies by lowering its liquidity and perhaps even diverting this capital to foreign markets.

That being said, alternatively, the implementation of such measures could also encourage longer shareholding spans, which in turn would nurture long-term investors and assist companies going beyond the short-term horizon, focus on long-term value creation and possibly improve the social aspects of employee, supply chain and community operations. The scope for improved long-term focus can also help the board make environmentally friendly strategies.

---

[113] Robert C. Pozen, *The Role of Institutional Investors in Curbing Corporate Short-Termism*, BROOKINGS (Aug. 11, 2015) https://www.brookings.edu/articles/the-role-of-institutional-investors-in-curbing-corporate-short-termism/; Hyun-Dong Kim et al., *Short-Term Institutional Investors and Agency Costs of Debt*, 95 EUROPEAN FINANCIAL MANAGEMENT ASSOCIATION 1, 25 (2019).

Overall, the proposed measures would allow a level play field and aid long term-value creation, bring about innovation, productivity and growth and therefore have positive macroeconomic impacts. The proposed framework provides companies with a more stable group of investors which would relieve the board from the pressure to deliver short-term returns, allowing them to pay attention to sustainable strategies and investments that will reap results in the long-term. Thus, increasing the companies' profitability, productivity, sustainability and innovation.

### C. THE BOARD OF DIRECTORS

With respect to the operation of the board of directors, we have two concerns to present. *First*, is regarding the method of remuneration for the board, and *second*, is related to the composition of the board itself. The same are discussed in the two parts below.

#### 1. Remuneration to the Board

It is postulated that the present framework of the payment to the board of directors is unsuitable and a prime driver for short-termism in India. The remuneration to the board of directors is provided as per §197 of the Act and is based on the net profit registered by the company in the concerned financial year.[114] Herein, the total managerial remuneration can be to over eleven percent of the net profits,[115] with §198 laying down the methodology for the calculation of such profits.[116]

In this regard, such profit-based remuneration for the board instead can result in the pressurisation for maximising short-term profits and

[114] The Companies Act, 2013, No. 18 of 2013, §197 (Ind.).
[115] *Id.* §197(1).
[116] *Id.* §198.

shareholder value.[117] The same incentivises the board to concentrate on the management of the company's resources in such a manner so as to augment the share price at the cost of a long-term sustainable policy.[118]

Further, it is noticeable that the inclusion of considerations such as fulfilment of ESG standard and other non-financial sustainable measures are absent as factors for remunerations provided to the board of directors. The promotion of ESG practices has specifically taken a boost in India over the past decade.[119] In 2021, the assets under management (which are the total market value of investments that an entity manages on behalf of clients)[120] of ESG were calculated at over 123 billion rupees.[121] The same was over five times the assets under management from two years before.[122] The Act along with its accompanying rules and regulations embody various mandates regarding the disclosure of ESG practices for the companies.[123] The implementation of ESG practices and the disclosure of the same is highly attractive for the investors since it

---

117 Jonathan Pogach, *Short-Termism of Executive Compensation*, FEDERAL DEPOSIT INSURANCE CORPORATION 1, 2 (2015); Gregg D. Polsky & Andrrew C. W. Lund, *Can Executive Compensation Reform Cure Short-Termism*, 58 Governance Studies 1, 1-2 (2013).
118 Ira Kay et al., *Executive Pay, Share Buybacks, and Managerial Short-Termism*, HARVARD LAW SCHOOL FORUM ON CORPORATE GOVERNANCE (Jan. 26, 2016) https://corpgov.law.harvard.edu/2016/01/26/executive-pay-share-buybacks-and-managerial-short-termism/.
119 Shailesh Tyagi, *How ESG Reporting Landscape is Evolving in India*, EY (Aug. 26, 2021) https://www.ey.com/en_in/climate-change-sustainability-services/how-esg-reporting-landscape-is-evolving-in-india.
120 James Chen, *Assets Under Management*, INVESTOPEDIA (Oct. 6, 2020) https://www.investopedia.com/terms/a/aum.asp.
121 Indus Law, *ESG Reporting and its Framework in India*, LEGAL 500 (Feb. 2, 2022) https://www.legal500.com/developments/thought-leadership/esg-reporting-and-its-framework-in-india/.
122 *Id.*
123 *See generally* The Companies Act, 2013, No. 18 of 2013, §134(m) (Ind.); The Companies (Accounts) Rules, 2014, Gazette of India, pt. II sec. 3(i), Rule 8(3)(A) (Mar. 31, 2014); The SEBI (Listing Obligation and Disclosure Requirements) Regulation, 2015, Gazette of India, pt. II sec. 4, Reg. 34 (Sept. 2, 2015).

showcases the extent of the company's consciousness towards sustainability and its future financial stability.[124]

Hence, it implies that even though the ESG practices are carefully scrutinised and reported by various companies as per the relevant legislations, the same are not associated with the remuneration received by the board. Thus, there is a detachment between the sustainable performance of the company and the structures for remuneration of the board.

Therefore, in view of the impending concern regarding the mode of remuneration for the board, it is argued that the appropriate amendments are required in order to encourage long-term activities. Accordingly, we recommend that §197 of the Act should be amended to include non-financial factors such as the compliance with ESG standards and sustainable goals of the company should be included in the pay structure of the board.

Such an amendment is argued to positively impact the sustainable growth of the company by motivating the directors to implement such practices in lieu of financial incentives. Naturally, the same shall attract investors and also encourage directors to promote innovation and a sustainable framework for business, ultimately resulting in the economic growth of the company and the aversion of future sustainability-related risks. Further, in the social context, the companies shall be encouraged to provide broad ranging ESG targets such as employee and customer satisfaction, and the business impact on the local communities. Environmentally, the amendment would ensure further considerations to factors of climate change, preservation of eco-system, as well as improving the efficiency of resources.

---

[124] R. Boffo & R. Patalano, *ESG Investing: Practices, Progress and Challenges*, OECD (2020) https://www.oecd.org/finance/ESG-Investing-Practices-Progress-Challenges.pdf.

Moreover, a more lenient approach of conducting awareness campaign is unlikely to influence the short-term targets of the board and is unlikely, in our opinion, to result in any material change in the policy. Therefore, it is recommended that §197 of the Act should be amended as argued above in order to create financial incentives for the board to focus on long-term development of the company.

## 2. Composition of the Board

It is argued that the regulations behind the composition of the board of directors of the Indian companies are ill-suited for promoting long-termism. Scholars have highlighted how the experience, backgrounds, and the diverse background of the board are crucial factors for reducing corporate short-termism practices.[125] Hence, a diversified board possessing wide range of experience and skills is essential in order to defy the business-as-usual approach and question the short-term intent of the management.[126] This ultimately improves the economic efficiency of the company concerned.

In India, data showcases that the diversity of the companies' boards face a grim reality. In an important study that was supported by the National Stock Exchange of India, a scholar conducts a review of the board composition of over 500 top companies in India.[127] The report highlights that over a majority of the directors in the boards of these companies have an educational qualification in banking and finance, which is followed by management.[128] Other areas of prevalent expertise include law, administration, marketing, information technology,

---

[125] Angelica Gonzalez & Paul Andre, *Board Effectiveness and Short-Termism*, 41 JOURNAL OF BUSINESS FINANCE & ACCOUNTING 1, 1-2 (2012).
[126] *Id.*
[127] J. N. Gupta, *Report on Board Composition of Top 500 Companies*, STAKEHOLDERS EMPOWERMENT SERVICES(2018) https://www.sesgovernance.com/pdf/1523435610_Part-A--Board-Composition-Report.pdf.
[128] *Id.* at 41.

accountancy, amongst others.[129] Thus, it is evident that there is an absence of members in the board with experience in ESG and sustainability, with the increasing domination of purely business-minded directors.

Further, the age and gender-based diversity amongst the board members are also opined to be detrimental for corporate long-termism. Between the select 500 companies, the total number of women directors have increased from 11.5 percent to a mere 13.1 percent from 2014 to 2017.[130] Amongst the public sector undertakings, the number of women directors stand at 12.8 percent, while the same is 13.8 percent amongst the multi-national companies.[131] Further, this proportion is severely low for the executive director posts with a mere representation of 7.3 percent.[132] Hence, it can be observed that the board of the Indian companies are a highly male dominated arena with limited involvement of females. Moreover, with respect to age, the average age of a male director was calculated to be 57.8 years, while the same was 52.9 years for female directors.[133] Thus, this highlights a rigid domination of older generations in the post of directorship.

Coupled with this data which highlights the lack of diversity in the company boards in India, is the problem regarding the absence of any standardised regulations for the same. The only regulation dealing with the composition of the board for listed companies is Regulation 17 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirement) Regulation, 2015 ("**LODR Regulations**").[134] The aforesaid provision, with respect to the diversity factors highlighted above, merely states the requirement of a minimum of one woman

---

[129] *Id.*
[130] *Id.* at 39.
[131] *Id.*
[132] *Id.* at 40.
[133] *Id.* at 43.
[134] The SEBI (Listing Obligation and Disclosure Requirements) Regulation, 2015, Gazette of India, pt. II sec. 4, Reg. 17 (Sept. 2, 2015).

director in the boards of the listed companies. The remaining segment of the regulation only deals with the composition of non-executive and independent directors – which is a question of roles and not related to diversity.

Hence, the apparent lack of diversity – the initiative for which is lacking from both the legislature and the companies – casts doubt regarding the ability of such board of directors to undertake a measured long-term approach and the mindset to fully appreciate and understand the expectations of the various stakeholders of the company. Thus, this lack of diversity, as is evident in the Indian corporate environment further contributes to the growing menace of short-termism.

In lieu of the aforesaid concerns regarding the composition of the board, it is recommended that suitable policy measures be implemented in order to achieve a more diverse board composition in the companies. Resultantly, it is suggested that Regulation 17 of the LODR Regulations be amended to include sustainability considerations during the appointment of the directors. Herein, an increase in the minimum requirement of female directors to possibly fifty percent, as well as mandatory inclusion of at least twenty-five to thirty percent members with expertise in sustainability, environment, and related issues of ESG, would be the required adequate changes. Further, to formulate a young as well as experienced board for the companies, it is argued that a suitable requirement for the inclusion of younger directors should also be included under Regulation 17 of the LODR Regulations.

It is recognised that such a proposal for the changes in the board composition may impact the extra burden on the company to fulfil the requirements of the directors and thereby make it difficult for them to enlist. However, it is argued that the fulfilment of the same shall be in the long-term interest of the company and would attract potential investors, further build the reputation of the company, as well as ensure that reasoned and knowledgeable sustainability determinations are made by the board. Therefore, it will naturally possess a positive economic impact on the company. Additionally, the same would also have a positive social and environmental impact. In this regard, the institutionalisation of the notion of sustainability shall take place within the company itself, and as one may expect, issues such as climate change would find more importance and frequent mention within the board and its decisions for the company.

One can anticipate that without a regulatory amendment that mandates such obligations, a company would be unwilling to create an extra qualification for its board of directors. Hence, lenient approaches such as awareness campaigns or more advisories are unlikely to impact the composition of the companies' boards. Thus, it is recommended that in order to formulate a diverse board which focuses on the long-term sustainable functioning of the company, an amendment to Regulation 17 of the LODR Regulations as delineated above is required.

### D. SUSTAINABLE CORPORATE GOVERNANCE

Under the Indian legal framework, it is postulated that the embedded aspects of sustainable long-term governance of the company and important measures required to avert economic and social risks are absent. Though, as highlighted above, there exist certain requirements for disclosure regarding ESG performance of the company, the same cannot be equated to a minimum standard of sustainable growth. Even the most recent introduction of the Business Responsibility and Sustainability Report, through an amendment to Regulation 34(2)(f) of the LODR Regulations, which aligns with the principles of National Guidelines for Responsible Business Conduct does not delineate a common minimum standard.[135] The said Guidelines provide further ESG mandates such as the disclosure of climate and social related issues, the disclosure of

---

[135] Security and Exchange Board of India, *Business Responsibility and Sustainability Reporting by Listed Entities*, SEBI (May 10, 2021) https://www.sebi.gov.in/legal/circulars/may-2021/business-responsibility-and-sustainability-reporting-by-listed-entities_50096.html.

policies which the company adopts to comply with ESG requirements, and the structuring of the disclosures into a more coherent manner.[136]

Therefore, apart from the mandatory requirements for disclosures, the actual implementation of the ESG goals and their compliance with the global goals of sustainable development is determined by the voluntary compliance and the disposition of the companies. The lack of such an approach towards sustainable governance directly affects the board itself, the shareholders of the company, as well as the society at largely, due to the likely absence of a long-term strategy and risk-mitigation policies.

In order to tackle the lack of incentives by companies to adopt sustainability in their business strategies, it is suggested that meaningful alterations be made to the regulatory framework of the country. While India was the first country to make Corporate Social Responsibility ('CSR') mandatory,[137] at present, the legal provisions do not mandate the directors of large-scale companies to incorporate sustainable practices into their business strategies, nor do they require demarcation of goals when adopting sustainability in the framework.

Currently, the existence of self-regulatory system of a recommendatory nature is for encouraging corporations to undertake sustainable practices, particularly in the environmental and social arena. However, the emerging trend mandating ESG norms are worth underlining but it is not sufficient.[138] A more level playing field can be expected to ensue as a result of the introduction of the proposed

---

[136] Tax Guru, *Business Responsibility and Sustainability Reporting by Listed Entities*, TAX GURU (May 10, 2021) https://taxguru.in/sebi/business-responsibility-sustainability-reporting-listed-entities.html.

[137] Deepa Krishnan, *Making Indian Businesses Sustainable*, STRATEGY BUSINESS (Sept. 11, 2019) https://www.strategy-business.com/article/Making-Indian-businesses-sustainable.

[138] Eshvar Girish, *ESG in Indian Companies: Thinking Through the Sustainable Lens?*, THE NATIONAL LAW REVIEW (Sept. 9, 2021) https://www.natlawreview.com/article/esg-indian-companies-thinking-through-sustainability-lens.

legislation, this is because these regulations will be applicable across the board, including large-scale companies.

The induction of concrete, fixed term, scientific, quantifiable and specified goals can also help companies set sustainability goals in consonance with their other broader targets, including the Sustainable Development Goals. Under the proposed framework, the flexibility to tweak requirements for different companies to suit the nature of their business and corporate culture would however cease in furtherance of uniformity. Consequently, it will raise the overall compliance cost to be incurred by the companies in the short-term. However, in the long-term, it would prepare the company to tackle risks associated with sustainability and shortage which might have endangered its smooth operation and even aid in keeping it afloat in times of crisis.

Additionally, the increased costs would have a positive impact on market competitiveness in the long-term as the company would be able to ward off expenditures due to early risk detection, differentiation from other companies which can improve trade flow and increased investment. Owing to the time-bound, specific and quantifiable nature of these sustainability goals, it would also allow improved assessment of the impact of the goals, particularly in sphere of working conditions – health and safety of the workers, mitigation of poverty and the wage gap along the supply chain. The disclosure of such data would aid trade unions, non-governmental organisations as well as government authorities to monitor companies resulting in better accountability and transparency.

From an environmental perspective, the proposed framework can be expected to bring about an efficacious effect as the sustainable practices will help the ecosystem, and improve resource efficiency and the economy at large. This includes India's commitment to contain its greenhouse emissions and use of coal in line with the Paris Agreement.[139]

## VI. CONCLUSION

"It is truly said that a corporation has no conscience. But, a corporation of conscientious men is a corporation with a conscience" said Henry D. Thoreau. Today, India is the six-largest economy in the world. We have grown in leaps and bound across sectors – textiles, information technology, pharmaceuticals, steel and several others. Resultantly, good corporate governance is more relevant than ever before. It should be weaponised towards social responsibility, safeguarding of the ecosystem, corporate social upliftment and value creation for all its stakeholders.

In keeping with that, short-term policies followed by companies are extremely detrimental to not only the companies but also the environment and society at large. They exacerbate environmental degradation aggravate inequality in the society while also endangering the companies' performance in the long haul. Therefore, it is argued that necessary reforms be made so as to aid directors in identifying and mitigating the sustainability risk faced by them and its impacts which affect the company's operation and stakeholders. A fine balance between the interests of the shareholders and the long-term interests of the company, its workers, supply chain, customers, local as well as universal ecosystem is the need of the hour.

In this paper, we have explored the relationship between corporate governance and short-termism. Further, we identified the rise of short-termism in the corporate sector of India at a rapid rate. Notably, the

---

[139] United Nations Climate Change, *The Paris Agreement*, UN, https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement; Urmi Goswami, I*ndia Set to Update 2030 Climate Change Targets under Paris Agreement*, ECONOMIC TIMES (Oct. 18, 2021)https://economictimes.indiatimes.com/news/india/india-set-to-update-its-2030-climate-targets-under-paris-agreement/articleshow/87098192.cmsaccessed.

Sensex 30 companies identified for the purpose of the study have multiplied their DPR over the last five financial years. This is the evidence of the presence as well as the rise of short-termism in India. Further, short-termism possesses an adverse impact on the economic, social and the environmental sphere.

The paper also highlights the root causes of short-termism in India and simultaneously provides recommendations to deal with these issues. Herein, recommendations are made with respect to the duty of the directors, the composition and the remuneration of the board of company, the institutional investments in the corporate sector, as well as the ESG obligations of the companies. It is however emphasised that such recommendations do not intend to push through a straightjacket formula and take away their independence in management. Instead, such policy changes are necessary to address the crucial policy of sustainable corporate governance that take primacy in the modern world. Further, as highlighted in Part V, less lenient and stringent measures are unlikely to bring about any significant changes to the current corporate practices.

Accordingly, it is argued that the recommendations help in achieving an ideal balance between the long-term and short-term interests of the companies in India. We hope that such an initiation on the issue of short-termism would assist in sparkling a debate in the corporate sector of the country.

## VII. ANNEXURE – I

| **Company Name** | **DPR for FY 2016-2017** | **DPR for FY 2017-2018** | **DPR for FY 2018-2019** | **DPR for FY 2019-2020** | **DPR for FY 2020-2021** |
|---|---|---|---|---|---|
| **Asian Paints** | 0.50 | 0.40 | 0.47 | 0.42 | 0.54 |
| **Axis Bank** | 0.30 | 0 | 0.50 | 0.50 | 0.51 |
| **Bajaj** | 0.10 | 0.09 | 0.09 | 0.12 | 0.13 |

| | | | | | |
|---|---|---|---|---|---|
| **Finance** | | | | | |
| **Bajaj Finserv** | 0.008 | 0.007 | 0.007 | 0.013 | 0.060 |
| **Britannia** | 0.15 | 0.15 | 0.31 | 0.60 | 2.2 |
| **Dr. Reddy Lab** | 0.26 | 0.36 | 0.17 | 0.21 | 0.21 |
| **HCL Technologies** | 0.40 | 0.20 | 0.10 | 0.25 | 0.25 |
| **HDFC** | 0.26 | 0.28 | 0.22 | 0.17 | 0.23 |
| **HDFC Bank** | 0.09 | 0.09 | 0.09 | 0.05 | 0.11 |
| **HUL** | 0.85 | 0.83 | 0.79 | 0.80 | 1.19 |
| **ICICI Bank** | 0.14 | 0.12 | 0.15 | 0.01 | 0.08 |
| **IndusInd Bank** | 0.12 | 0.12 | 0.13 | 0.01 | 0.14 |
| **Infosys** | 0.40 | 0.59 | 0.60 | 0.44 | 0.60 |
| **ITC** | 0.55 | 0.54 | 0.55 | 0.80 | 0.99 |
| **Kotak Mahindra Bank** | 0.02 | 0.02 | 0.02 | 0 | 0.02 |
| **Larsen & Turbo** | 0.28 | 0.26 | 0.24 | 0.23 | 0.40 |
| **Mahindra & Mahindra** | 0.22 | 0.11 | 0.20 | - 0.20 | 4.21 |
| **Maruti Suzuki** | 0.30 | 0.31 | 0.32 | 0.32 | 0.32 |
| **Nestle** | 0.61 | 0.68 | 0.69 | 1.67 | 0.93 |
| **NTPC** | 0.39 | 0.42 | 0.45 | 0.27 | 0.42 |
| **Polycab India** | 0.06 | 0.04 | 0.08 | 0.13 | 0.16 |
| **Ployplex Corporation** | 0.06 | 0.45 | 0.27 | 0.11 | 0.60 |
| **Reliance Ind.** | 0.10 | 0.10 | 0.97 | 0.10 | 0.90 |

| | | | | | |
|---|---|---|---|---|---|
| **Sun Pharma** | 0.10 | 0.18 | 0.20 | 0.22 | 0.79 |
| **Tata Steel** | - 0.23 | 0.06 | 0.17 | 1.22 | 0.40 |
| **TCS** | 0.35 | 0.37 | 0.35 | 0.84 | 0.44 |
| **Tech Mahindra** | 0.27 | 0.32 | 0.28 | 0.34 | 0.90 |
| **Titan** | 0.33 | 0.30 | 0.32 | 0.23 | 0.36 |
| **Ultratech Cement** | 0.10 | 0.13 | 0.13 | 0.06 | 0.20 |
| **Wipro** | 0.05 | 0.05 | 0.06 | 0.05 | 0.05 |
| **Total Average DPR** | 0.237 | 0.256 | 0.301 | 0.339 | 0.611 |
| **Total Average Dividend Payout %** | 23.7% | 25.6% | 30.1% | 33.9% | 61.1% |