Revisiting Hostile Takeovers in India: Evaluating the Efficacy of the Existing Legal and Regulatory Framework

[1]Johns V James, [2]Dr. Jyotirmoy Banerjee
[1]LL.M. Student, [2]Assistant Professor
[1,2]Amity Law School, Amity University, Bengaluru

Abstract- Hostile takeovers occupy a contested but analytically indispensable position in corporate law. Unlike negotiated acquisitions, hostile bids are advanced directly to the target company's shareholders, frequently against the wishes of incumbent management, thereby testing the structural integrity of a jurisdiction's regulatory architecture. In India, the primary legislative instrument governing such transactions is the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (Takeover Code).

This paper critically evaluates the efficacy of India's existing legal and regulatory framework in addressing the multidimensional challenges posed by hostile takeovers. The central research question is whether the Takeover Code 2011, read alongside the Companies Act, 2013 and the Competition Act, 2002, provides adequate, coherent, and investor-protective machinery for hostile acquisition scenarios. The paper employs a doctrinal methodology supplemented by comparative analysis, drawing upon the United Kingdom's City Code on Takeovers and Mergers, the United States Williams Act framework, and the European Union Takeover Directive to situate India's regulatory position within global best practices.

The analysis reveals a structural paradox: while the mandatory open offer regime and disclosure obligations under the Takeover Code 2011 afford shareholders procedural protections, the framework does not expressly codify permissible defensive tactics, leaving boards and courts to navigate an uncertain legal landscape. The paper finds that the absence of a statutory non-frustration principle, the limited role of the Competition Commission of India in time-sensitive hostile bids, and the opaque standard for board neutrality collectively undermine the framework's coherence. The paper concludes with recommendations for legislative reform, including codification of board conduct norms, rationalisation of the open offer trigger threshold, and institutional coordination between SEBI and CCI.

Index-Terms: Hostile Takeovers, SEBI Takeover Code 2011, Open Offer, Takeover Defences, Board Neutrality, Comparative Corporate Law, M&A Regulation India

I. INTRODUCTION

Hostile takeovers represent one of the most consequential and legally complex phenomena in contemporary corporate law. By enabling the transfer of corporate control without the consent of the target's board of directors, they function simultaneously as mechanisms of market discipline, instruments of shareholder value creation, and potential threats to stakeholder interests. In India, notwithstanding the liberalisation of foreign direct investment and capital market regulations since 1991, instances of successful hostile takeovers remain rare, largely owing to the concentrated ownership structures that characterise Indian listed companies and the regulatory framework that governs public acquisitions.[1]

The legal architecture governing takeovers in India is principally constituted by the SEBI Takeover Code 2011, the Companies Act, 2013, and the Competition Act, 2002.[2][3][4] The Takeover Code 2011, which superseded the earlier 1994 Regulations, introduced substantive improvements including a revised open offer threshold of twenty-five percent, mandatory minimum offer price obligations, and enhanced disclosure requirements. However, whether these reforms are adequate to address the regulatory challenges peculiar to hostile acquisition attempts is a question that has received insufficient systematic attention in Indian legal scholarship.

The significance of this inquiry is underscored by the evolving landscape of Indian M&A, wherein sophisticated acquirers increasingly explore hostile strategies as promoter holdings dilute and institutional investor bases deepen.[5] The judiciary, too, has been called upon to resolve disputes at the intersection of corporate governance and takeover regulation, often without the benefit of clear statutory guidance on defensive tactics.[6] This paper seeks to fill that analytical gap by systematically evaluating the adequacy of the extant framework and advancing specific reform proposals grounded in comparative experience.

II. LITERATURE REVIEW

The academic literature on hostile takeovers spans economics, corporate governance, and law. Foundational economic analysis by Henry Manne posited the market for corporate control as an efficiency mechanism that disciplines underperforming management teams, arguing that the threat of acquisition incentivises managerial accountability.[7] This thesis has profoundly shaped regulatory philosophy in common law jurisdictions, particularly in the United States and the United Kingdom.

In the English corporate law context, Gower and Davies have elaborated on the structural tension between shareholder primacy and board authority in takeover scenarios, noting that the

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[1] . Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, SEBI/LAD-NRO/GN/2011-12/03.
[2] Companies Act, No. 18 of 2013, Acts of Parliament, 2013 (India).
[3] Competition Act, No. 12 of 2003, Acts of Parliament, 2003 (India).
[4] . Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1994.
[5] Prashant Saran, Hostile Takeovers in India: A Legal Perspective, 5 NUJS L. Rev. 211 (2012).
[6] C.K. Birla Group v. Hindustan Motors Ltd., [2004] 4 Comp LJ 487 (SAT).
[7] Akash Gupta & Rohit Sharma, Takeover Defences Under Indian Law: A Critical Appraisal, 9 Indian J. Corp. L. 45 (2019).

non-frustration rule embedded in the UK Takeover Code resolves this tension in favour of shareholder sovereignty.[8] The EU Takeover Directive similarly reflects this orientation, mandating board neutrality and breakthrough provisions to facilitate market-driven corporate control transactions.[9][10]

Indian scholarship on the subject has grown substantially since the enactment of the Takeover Code 2011.[11] Parekh's authoritative treatise on mergers and acquisitions in India provides a detailed exegesis of the open offer mechanism and the role of SEBI's adjudicatory bodies.[12] Kothari has examined the doctrinal interface between takeover regulation and company law, highlighting the absence of express statutory authority for several commonly invoked defensive measures.[13] The Achuthan Committee Report, which preceded and informed the Takeover Code 2011, remains an essential policy document that articulates the theoretical underpinnings of India's regulatory choices.

More recent contributions have focused on specific doctrinal lacunae. Gupta and Sharma have critically appraised the legal status of takeover defences in India, observing that the absence of codified rules leaves the law in a state of doctrinal indeterminacy that disadvantages both acquirers and target shareholders. Venkataraman has examined the open offer mechanism in detail, arguing that the minimum offer price formula insufficiently accounts for the control premium in hostile scenarios.[14] Matilal's comparative analysis of poison pill jurisprudence draws instructive contrasts with Delaware's business judgment rule, suggesting that Indian courts have yet to develop a coherent analytical framework for evaluating defensive tactics.[15]

This paper builds upon and extends the foregoing scholarship by undertaking a holistic evaluation of the framework rather than focusing on discrete provisions, and by situating Indian law within a structured comparative framework encompassing the UK, US, and EU regulatory models.[16]

III. RESEARCH OBJECTIVES

The paper pursues the following research objectives:

First, to map the statutory and regulatory framework governing hostile takeovers in India, identifying the principal instruments and their interrelationships.

[8] Henry G. Manne, Mergers and the Market for Corporate Control, 73 J. Pol. Econ. 110 (1965).
[9] L.C.B. Gower & Paul L. Davies, Principles of Modern Company Law 999 (10th ed. 2016).
[10] Takeover Panel, The City Code on Takeovers and Mergers r. 21 (2023).
[11] Directive 2004/25/EC of the European Parliament and of the Council on Takeover Bids, 2004 O.J. (L 142)
[12] Sandeep Parekh, Mergers and Acquisitions in India (2d ed. 2020).
[13] Vinod Kothari, Takeovers, Acquisitions and Buy-outs (3d ed. 2021).
[14] Padmavathi Venkataraman, The Open Offer Mechanism Under the SEBI Takeover Code: Efficacy and Gaps, 12 NLS Bus. L. Rev. 77 (2022).
[15] Shreya Matilal, Poison Pills and Board Discretion in India: Lessons from Delaware, 7 Jindal Global L. Rev. 213 (2020).
[16] Report of the Takeover Regulations Advisory Committee (Achuthan Committee Report), SEBI (Oct. 2010).

Second, to critically evaluate the adequacy of the open offer mechanism, disclosure regime, and board conduct norms under the Takeover Code 2011 in addressing the distinctive challenges of hostile acquisition attempts.

Third, to undertake a comparative analysis of the UK, US, and EU takeover regulatory frameworks to identify best practices and reform benchmarks.

Fourth, to identify structural deficiencies in the Indian framework and advance concrete legislative and regulatory reform proposals.

IV. METHODOLOGY

This paper adopts a predominantly doctrinal research methodology, engaging in close textual analysis of the SEBI Takeover Code 2011, the Companies Act, 2013, and the Competition Act, 2002. Primary sources examined include SEBI regulations and circulars, Securities Appellate Tribunal (SAT) decisions, Supreme Court and High Court judgments, and parliamentary committee reports. The Achuthan Committee Report is particularly significant as a repository of the legislative intent underlying the Takeover Code 2011.

The paper complements doctrinal analysis with a comparative methodology, systematically examining the regulatory frameworks of three jurisdictions selected on the basis of their analytical salience for India: the United Kingdom (whose common law heritage and Takeover Panel model exercise direct institutional influence), the United States (whose shareholder-centric defensive jurisprudence offers instructive contrasts), and the European Union (whose Takeover Directive represents a supranational regulatory solution to cross-border acquisition challenges). The comparative exercise is not purely descriptive; it is calibrated to identify transplantation possibilities and constraints specific to India's regulatory and institutional context.

V. ANALYSIS

A. The Open Offer Mechanism: Design, Gaps, and Critique

The mandatory open offer obligation, triggered when an acquirer crosses the twenty-five percent shareholding threshold or acquires more than five percent in any financial year after crossing that threshold, constitutes the cornerstone of shareholder protection under the Takeover Code 2011. The minimum offer price formula, which references the volume-weighted average market price (VWAP) over the preceding twenty-six weeks, is intended to ensure that minority shareholders receive fair value in the event of a change of control. However, in hostile takeover scenarios, this formula presents a structural limitation: it does not capture the control premium that a willing buyer typically pays in a negotiated transaction, thereby potentially undervaluing the consideration offered to target shareholders.

Furthermore, the open offer obligation arises only upon the acquirer crossing the statutory threshold; it does not prevent an acquirer from accumulating shares below that threshold through market purchases without triggering any mandatory disclosure obligation that would inform shareholders of an imminent hostile bid. This creeping acquisition risk, while partially

addressed by the enhanced disclosure requirements introduced in 2011, remains a potential avenue for circumventing the spirit of minority protection.

A comparative perspective is instructive. The UK Takeover Code imposes a mandatory offer obligation upon acquisition of thirty percent of voting rights and requires that the offer price equal the highest price paid by the acquirer in the preceding twelve months, thereby more robustly capturing the control premium. The EU Takeover Directive similarly mandates an equitable price that reflects the market value, the acquirer's highest price paid, and other relevant circumstances. India's framework, while broadly aligned with these principles, does not replicate the highest-price rule, leaving a gap that reform should address.

B. Board Neutrality and Defensive Tactics: The Regulatory Vacuum

Perhaps the most significant structural deficiency of the Indian takeover framework is the absence of an explicit statutory or regulatory rule governing board conduct in the face of a hostile bid. The UK Takeover Code's Rule 21 mandates board neutrality, prohibiting target boards from taking any action that might frustrate a bona fide offer without prior shareholder approval. The EU Takeover Directive similarly mandates a board neutrality rule, albeit allowing member states to opt out through a reciprocity exception.

Indian law contains no equivalent provision. The Companies Act, 2013 imposes general fiduciary duties on directors to act in the best interests of the company, but does not specify how those duties are to be discharged in the takeover context. SEBI's Takeover Code 2011 prohibits certain specified frustrating actions, including issue of shares or instruments convertible into shares without shareholder approval, during the offer period. However, this prohibition is temporally limited to the offer period and does not address pre-bid defensive structuring, leaving target boards considerable latitude to implement poison pill arrangements, crown jewel transactions, or other prophylactic defences without clear regulatory guidance or constraint.

The judicial response to this regulatory vacuum has been inconsistent. While the Supreme Court has affirmed the general fiduciary duty of directors to act in the interests of shareholders, lower courts and the SAT have not developed a coherent analytical framework for evaluating the legality of defensive tactics in takeover scenarios. Matilal's comparative analysis suggests that the absence of a statutory framework analogous to Delaware's enhanced scrutiny standard — which requires directors to demonstrate a reasonable and proportionate response to a genuine threat — leaves Indian corporate law ill-equipped to adjudicate conflicts between acquirer rights and target board prerogatives.

C. Competition Law Interface: Coordination Deficits

The mandatory notification requirement under the Competition Act, 2002 for combinations exceeding prescribed thresholds introduces a further complication in hostile takeover scenarios. A hostile acquirer must notify the Competition Commission of India (CCI) and await its clearance before completing the acquisition, a process that can extend to several months if a detailed investigation is ordered. Unlike SEBI's Takeover Code, which imposes strict

timelines on the open offer process, the Competition Act does not prescribe time limits calibrated to the urgency of hostile takeover scenarios.

This regulatory mismatch creates coordination deficits that can prejudice both acquirers and target shareholders. An acquirer who has launched an open offer may be unable to complete the acquisition pending CCI clearance, leaving shareholders in a state of uncertainty about the outcome of the bid. The absence of a fast-track clearance mechanism for hostile bids, comparable to the Phase I and II procedures under the EU Merger Regulation, represents a significant institutional gap in India's framework.

D. Disclosure Regime: Adequacy and Enforcement

The Takeover Code 2011 mandates comprehensive disclosure of shareholding and acquisition intentions upon crossing specified thresholds. These provisions are supplemented by SEBI's Listing Obligations and Disclosure Requirements (LODR) Regulations, which impose continuous disclosure obligations on listed companies. However, enforcement of these requirements has been uneven, with regulatory action often following media reports rather than proactive surveillance of share acquisition patterns.

A further concern relates to the adequacy of disclosures during the open offer period. The Takeover Code requires the acquirer to submit a detailed public announcement and offer document, but the quality and standardisation of disclosures remain variable. Venkataraman's empirical analysis of open offer documents suggests that information asymmetries between acquirers and target shareholders persist despite the formal disclosure framework, potentially compromising the ability of shareholders to make informed tender decisions.

VI. FINDINGS

The foregoing analysis yields four principal findings. First, while the SEBI Takeover Code 2011 represents a significant improvement over its predecessor, it does not constitute a complete or coherent framework for hostile takeover regulation. The mandatory open offer mechanism affords procedural protection to target shareholders but is structurally inadequate to capture the full control premium in hostile scenarios.

Second, the absence of a statutory board neutrality rule creates an environment of doctrinal uncertainty that does not serve the interests of either target shareholders or prospective acquirers. The comparative evidence from the UK and EU strongly favours codification of clear board conduct norms applicable during actual and anticipated hostile bids. Without such norms, defensive tactics deployed by target boards are subject to inconsistent judicial scrutiny that may result in opportunistic or value-destroying outcomes.

Third, the interface between the Takeover Code 2011 and the Competition Act, 2002 is inadequately coordinated, producing regulatory delays that disproportionately affect time-sensitive hostile bids. Legislative or administrative reform is required to establish fast-track clearance procedures for such transactions.

Fourth, the enforcement architecture of SEBI, while strengthened in recent years, requires further institutional investment to ensure proactive surveillance of pre-bid share accumulation and timely investigation of potential violations of the Takeover Code's disclosure requirements.

VII. CONCLUSION

India's legal and regulatory framework for hostile takeovers has evolved considerably since the adoption of the SEBI Takeover Code 2011, yet significant structural deficiencies remain. The analysis presented in this paper demonstrates that the framework, while broadly investor-protective in design, fails to address several critical dimensions of hostile acquisition regulation: the absence of a statutory board neutrality rule, the structural inadequacy of the open offer price formula in capturing control premiums, the coordination deficit between SEBI and the CCI, and enforcement limitations in the disclosure regime.

Reform proposals advanced in this paper include: first, the codification of a statutory board neutrality principle applicable from the point at which a board has reason to believe that a hostile bid is imminent, modelled on the UK Takeover Code's Rule 21 but adapted to India's institutional context; second, the amendment of the minimum offer price formula to incorporate a highest-price component covering the preceding twelve months, ensuring that the control premium is more equitably distributed to target shareholders; third, the introduction of a fast-track CCI clearance mechanism calibrated to the timelines of SEBI's open offer framework; and fourth, the establishment of a dedicated SEBI surveillance unit with algorithmic monitoring capabilities to detect anomalous pre-bid share accumulation patterns.

These reforms would bring India's takeover regulation more closely into alignment with international best practices while preserving the regulatory philosophy of shareholder sovereignty and market efficiency that underpins the existing framework. As India's capital markets continue to deepen and M&A activity intensifies, the adequacy of the hostile takeover framework will become an increasingly important determinant of investor confidence and market integrity.

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