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Contesting Control: Hostile Takeovers and the Governance Implications in India

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ABSTRACT

Hostile takeovers, a hallmark of dynamic corporate markets, pose significant challenges to the traditional notions of shareholder protection. Hostile takeovers occur when acquiring company seeks to gain control over target company without a consent of its management, represent a significant challenge to corporate governance and shareholder democracy. In these scenarios the intersection of minority shareholders often takes a backseat to the strategic objective of management and acquiring entity. While India's legal and regulatory framework primarily embodied and the Company's act, 2013 and the SEBI Takeover Code, 2011 offer some protection for shareholders, these safeguards are more geared towards voluntary takeovers or friendly mergers. The complexity arises from hostile acquisitions where control is contested and management is often resistant, expose several gaps in the existing framework that undermine shareholders rights. The research problem stems from the fact that, in a hostile takeover situation shareholders are frequently placed in a vulnerable position where they may have limited options to resist or even be informed of the transaction particularly when faced with management entrenchment tactics coercive offers or inadequate disclosures. Minority shareholders, who typically lack the voting power to influence corporate decisions, may find themselves on the losing side of the acquisition facing unfair valuation, coercive buyouts, or strategic decisions taken without their consent. In India, while the regulatory framework has progressively evolved, major gaps remain in protecting minority shareholders and ensuring equitable treatment during such corporate battles. This research analyses the impact of hostile takeovers on shareholders rights from a doctrinal perspective, highlighting deficiencies within current legal frameworks like SEBI Takeovers Code, Companies Act, 2013, and judicial precedents. The independent variable identified is the current Indian legal framework regarding shareholder protection during the hostile takeovers, and the dependent variable is the effectiveness of enhanced legal remedies and rights in protecting shareholders' interests. The study argues for a more robust statutory intervention and a balanced model that ensures corporate flexibility while safeguarding shareholder democracy and rights. Through doctrinal analysis of cases, strengthening shareholder protection amidst hostile takeover in India.

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I. INTRODUCTION

A hostile takeover represents the situation in corporate acquisitions where the acquiring company, commonly referred to as the “bidder” attempts to assume control over a target company without any approval and often against the wishes of the target company’s management and Board of directors. In such instances, the bidder, circumvent the board and directly appeal to the shareholders, typically by making a public tender offer, encouraging them to sell their shares at a premium. Alternatively, bidder may attempt a “proxy fight” wherein they persuade existing shareholders to vote out the current management in favour of directors more amenable to the acquisition. Unlike friendly mergers or negotiated acquisitions, where both parties engage cooperatively, hostile takeovers are marked by resistance defensive strategies and heightened regulatory and judicial scrutiny.

In India the concept of hostile takeover demand largely theoretical for a significant part of its corporate history. Several structural factors contributed to this rarity. Chief among them was the promoter driven ownership model predominant in Indian corporations wherein founding families or promoters retained substantial equity stakes and strong control over the management decisions, effectively insulating the companies from unsolicited takeovers attempts. Additionally, legal and regulatory frameworks, while robust in areas such as disclosures and tender offers, lacked specialised provisions facilitating or addressing hostile takeovers situations. Moreover, cultural factors emphasising relationship driven business practises also discouraged overtly adversarial corporate tactics.

However, with the liberalization of the Indian economy post-1991 and the consequent opening up to global capital flows, the corporate landscape began to evolve. The rise of institutional investors both domestic and foreign coupled with the dispersal of shareholding patterns in some of the larger listed entities, diluted traditional promoter control to an extent. This created an environment where hostile bids, though still uncommon compared to Western Jurisdictions, became increasingly feasible.

Watershed moment in India’s hostile takeover history was acquisition of Mindtree Limited by Larson and Turbo Limited End 2019. Mindtree, and information technology and outsourcing company founded by a group of entrepreneurs, had widely dispersed shareholdings without a dominant promoter group controlling a majority. L&T acquired a 20.32% stake in my entry

from a key investor, VG Siddhartha (of Café Coffee Day), and subsequently launched an open offer to purchase an additional 31% stake from public shareholders, thereby crossing the majority threshold. Despite vehement opposition from Mindtree's founders and Board of Directors, including efforts to launch a share buyback program and public appeals to shareholders to resist the bid, L&T succeeded in acquiring control. The Securities and Exchange Board of India plays a crucial role by monitoring compliance with a takeover code and ensuring procedural fairness, the Mindtree-L&T Episode is a significant not only for being India's first major hostile takeover but also for exposing gaps in corporate governance mechanisms aimed at protecting minority shareholders during such contests.

Another pertinent case highlighting the dynamics of hostile acquisition attempts in India is the battle for control over 40s health care limited. Following a delegation of corporate governance failures against its promoters, Fortis became a takeover target. Several suitors, including Malaysia's IHH Healthcare Berhad and a consortium led by TPG Capital and Manipal Hospital, aggressively competed for control. This led to a protracted bidding war, Regulatory numerous interventions by Security and Exchange Board of India, Supreme Court of India, and shareholder activism. Although the Context was not classical hostile takeover in the strictest sense, the aggressive and contested nature of the bids showcased the increasing importance of shareholders rights, transparent processes, and the role of regulatory oversights in India's evolving mergers and acquisitions (M&A) ecosystem.

Both the mind tree and Fortis the emerging trend of heightened takeover activity and the need for legal reforms to provide clearer more effective protections for shareholders, particularly minority shareholders in adversarial acquisition contexts. They also raise critical questions about the balance of power between shareholders and ports boards, the fiduciary duties of directors during unsolicited bids and their role of regulatory bodies in ensuring fair outcomes. Given India's aspiration to defend deepen its capital market and attract foreign investment, reassessing the regulatory framework governing hostile takeovers is not merely desirable, but necessary to enhance corporate governance standard form of reserve investment confidence, and promote market efficiency.

II. SHAREHOLDER RIGHTS UNDER CURRENT INDIAN LEGAL FRAMEWORK:

The protection of shareholders rights during corporate takeover scenarios including hostile takeovers is primarily anchored in two key legal frameworks in India, the company's act 2013 and the Securities and Exchange Board of India Regulation, 2011 (commonly referred to as "Takeover Code"). These statutes collectively aim to safeguard the interest of shareholders,

especially minority shareholders, by providing mechanism to ensure transparency, fairness, and procedural due process. However, a close examination reveals that significant lacunae still persist, particularly in context of hostile acquisition where shareholder interest may be at heightened risk.

Under the company's act of 2013, shareholders protection is embodied in several provisions. Section 241³ and Section 242⁴ Import shareholders to approach the national company lottery winners If they believe that the affairs of the company are being conducted in a manner prejudicial to public interest, oppressive to any number of numbers, or detrimental to the company's interest. Through such petitions, shareholders can seek a wide range of remedies, including the removal of directors, regulation of company affairs, and even the purchase of shares by other members. In the context of hostile takeovers, minority shareholders can potentially leverage these provisions if the incumbent management engages in oppressive defensive tactics or if the acquirers access led to mismanagement, post takeover. Nevertheless, reactive nature of these remedies often means that significant damage to shareholders interest may have already occurred before relief is granted.

Section 230⁵ of Companies Act further Provides for the possibility of a scheme of compromise arrangement between a company and its creditors or shareholders While theoretically available as a tool for corporate restructuring during a takeover scenario its utility in hostile takeovers remains circumscribed. The requirement of obtaining approval from a majority of shareholders and sanction by NCLT introduces procedural hurdles that are often impractical in fast based dynamics of hostile bids. The more targeted regulation of takeovers is governed by the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011. The takeover code sets out the stance of mandatory applications for acquirers when they cross specific threshold of ownership. For instance, upon acquisition of 25% or more of voting rights in the listed company and acquire must make an open offer to the remaining shareholders to purchase at least an additional 26% of the shares. This mechanism offers an exit option to shareholders who may not wish to continue under new management Furthermore the takeover code mandates detailed exclusion at various stages of the acquisition process, including disclosures about the acquirer's background intentions regarding the company's operation behind the acquisition, and the pricing methodology adopted for the open offer. These disclosures are intended to enable shareholders to make informed decisions.

³ Companies Act, 2013, § 241, No. 18, Acts of Parliament, 2013 (India).

⁴ Companies Act, 2013, § 242, No. 18, Acts of Parliament, 2013 (India).

⁵ Companies Act, 2013, § 230, No. 18, Acts of Parliament, 2013 (India).

Despite these safeguards, the takeover court falls short in adequately addressing the peculiar challenges posed by hostile takeovers. A key illustration of this limitation is the decision in *SEBI v. Shubhkam Ventures (I) Private Limited*⁶. In this case, Shubhkam Ventures acquired significant stake in MSK Project (India) Ltd. and sought certain protective rights. SEBI ruled that the acquisition of such rights triggered an obligation to make an open offer under the Takeover Code emphasising the importance of maintaining shareholders autonomy. However, the broader issue of coercive acquisition tactics, unfair pricing, and information asymmetries, all of which are particularly prevalent in hostile takeover context was left largely unaddressed. The regulatory framework focuses primarily on procedural compliance rather than substantive fairness or the quality of the decision making, environment available to shareholders under duress.

Additionally, at the constitutional level Article 19(1)(g)⁷ of the Constitution of India guarantees the fundamental right to practice any profession or to carry on any occupation, trade, or business. While this provision is sometimes invoked to uphold principles of corporate freedom and market operations it does not specifically cater to the rights of shareholders confronted with a hostile acquisition. The constitutional right remains broad and abstract offering little direct recourse to shareholders seeking protection from coercive or inequitable corporate control transaction.

III. REMEDIES AVAILABLE TO SHAREHOLDERS IN HOSTILE TAKEOVERS

In the context of hostile takeovers, Indian shareholders are not left entirely without protection, multiple legal remedies are available to assert their rights and challenge unfair conduct. However, a critical analysis reveals that these remedies are largely reactive, rather than preventive. By the time shareholders seek traditional intervention, significant strategic and operational changes may have already been effectuated, leading to irreversible dilution of shareholder value or corporate control.

The primary statutory recourses for the shareholders lie under the section 241 and section 242 of companies act 2013. These provisions empower Shareholders to approach the national company law tribunal on the grounds of oppression or mismanagement. A shareholder who believes that company's affairs are being conducted in a manner prejudicial to the interest of the company or its shareholders can seek appropriate relief, including suspension or removal of directors, regulation of the conduct of the company's affairs, or the cancellation of the decision made under

⁶ *Shubhkam Ventures (I) Private Limited v. SEBI*, MANU/SB/0007/2010.

⁷ INDIA CONST. art. 19, § 1, cl. (g).

oppressive circumstances. While not designed exclusively for hostile takeovers scenarios These sections have proven to be potent tools for minority shareholders. A seminal case in this context is *Cyrus Investment Pvt. Ltd v. Tata Sons Ltd.*⁸, where the allegations of minority shareholder were litigated before the Supreme Court. Although the dispute arose from the internal corporate governance issues rather than a hostile, acquisition, the case clarified the breadth of Section 241 by emphasising that shareholder interest, particularly those of minorities, warrant protection when corporate decisions are driven by unfair prejudice.

Secondly, shareholders have the option to lodge complaints with the Security and Exchange Board of India, under the Takeover Code, 2011. SEBI act as the principal regulator for ensuring compliance with the takeover obligations, particularly with respect to mandatory open offers, disclosure norms, and pricing obligations. If an acquirer feels to comply with these regulatory requirements, shareholders can file grievances with SEBI, prompting the regulator to impose penalties, demand rectification, or even direct corrective actions. For instance, in Subhkam's case, SEBI's regulatory intervention helped clarify the scope of acquisition-related rights that could takeover obligations, thereby reaffirming the need for transparency during acquisition process.

Additionally, shareholders may seek remedies through civil suits alleging breach of fiduciary duties by directors Directors are obligated under section 100 sixty 6 of Companies Act 2013 to act in the best interest of the company and its shareholders. If directors collude with an acquirer or engage in self-serving defensive tactics that prejudice shareholders rights, they may be held liable for breach of duty. However, civil litigation in India is notoriously time consuming, procedurally complex, and often hampered by delays, making it less attractive remedy in the fast-paced context of hostile takeovers.

Further, where hostile takeovers involves schemes of compromise or arrangement under Section 230, dissenting shareholders possess a limited, but important right to object to restructuring plans. If they oppose a proposed merger that forms part of a hostile acquisition strategy, dissenting shareholders can demand a fair valuation of their shares. The NCLT can intervene to ensure that exit rates are not illusory, and the minority shareholders are compensated fairly First stop. Nevertheless, given the procedural timelines and the requirements for the majority approvals for such schemes the effectiveness of dissent rights are contingent upon timely and coordinated shareholder action.

Despite the availability of these remedies their practical effectiveness during hostile takeovers

⁸ Cyrus Investments Pvt. Ltd. v. Tata Sons Ltd, MANU/NC/0280/2017.

remained limited for several reasons. Firstly, timing is a critical aspect, the window for meaningful intervention often closes before courts or regulatory bodies can provide relief. Hostile acquisitions are designed to move swiftly, with acquirers leveraging market dynamics and regulatory compliance loopholes to gain control before significant opposition can be marshalled. Secondly, most remedies are based on after-the-fact redressal. Shareholders typically seek relief only after corporate control has changed hands, financial damages have been done, or strategic decisions detrimental to their interest have been taken. As a result, even if a code subsequently awards damages or issues corrective orders the laws of strategic corporate control which is often the real harm suffered cannot be effectively undone.

Thus, while the Indian legal frameworks provide a multi layered set of shareholders remedies through tribunal petitions, regulatory complaints, civil litigation, and decent rights these mechanisms largely suffer from delayed applicability and inadequate deterrent effect in hostile takeover context. This highlights the urgent need for pre-emptive regulatory measures and expedited adjudicatory process designed to the specific dynamics of hostile corporate control battles in India.

IV. DEFENCES AVAILABLE TO TARGET COMPANIES AND THEIR IMPACTS ON SHAREHOLDERS

In the face of hostile takeover attempts, target companies often deploy a range of defensive tactics to prevent or deter the acquisition. While such defences are designed to protect the company from perceived threats, they often have complex implication for shareholder rights and value. Prominent strategies include the “poison pill”, “white knight” arrangements and “golden parachutes” for executives.

The poison pill strategy involves issuing new shares or granting the rights to existing shareholders to purchase additional shares at the discount thereby diluting the state of the potential acquirers and making the takeover prohibitively expensive. Although not directly codified in Indian law element akin to the poison pill like preferential allotments and share buyback during hostile bids, have been used as defensive tactics. For example, in *Mindtree Ltd. v. Larsen & Turbo Ltd.* acquisition, Mindtree’s promoters proposed share buyback to consolidate ownership and discourage L and T’s hostile takeover. However, SEBI exercising its powers under, SEBI (Buyback of Securities) Regulation, 2018, and the Takeover Code, scrutinized and ultimately blocked the buyback proposal, noting that such defensive moves must not harm shareholders’ interest or bypass regulatory protections. SEBI’s intervention underlined that defences cannot be misused to entrench management at the cost of shareholder

value⁹.

Another major defensive tactic is seeking a white knight, a friendly third-party buyer who makes a competing bid more favourable to target company and its shareholders. Indian corporate history provides example of companies seeking white knights, although not always successfully. During the Fortis Healthcare Ltd. saga, the board initially recommended the bid from TPG-backed Manipal Hospitals, seen as a white knight, against bids from other suitors like IHH Healthcare. The prolonged battle led to confusion among shareholders, highlighting that while white knight bids can save a company from hostile acquisition, they can also create governance challenges and conflicts of interests if the board prioritizes managerial preferences over maximizing shareholder returns.

Golden parachute prefers to lucrative exit Packages to top executive in the event of a takeover. While intended to maintain executive morale during uncertain times, Golden Parachute can sometimes misalign management's incentive with shareholders' best interest. In India, although not very widespread, provisions for high severance pay and special compensation packages have raised concerns, especially in cases where top executive benefits disproportionately compared to ordinary shareholders. Judicial oversight as seen in cases like *Sahara India Real Estate Corporation Ltd. v. SEBI*¹⁰, Though not strictly about Golden Parachutes, emphasise that corporate actions must adhere to principles of transparency, fairness, and shall protect the broader investor interest.

Moreover, Indian courts and tribunals, particularly the National Company Law Tribunal (NCLT) and the Securities Appellate Tribunal (SAT), have reiterated in multiple cases that any corporate action during a takeover must not prejudice the rights of minority shareholders. For instance, in *Kishore Chhabria v. Herbertsons Ltd.*¹¹, issues relating to shareholders rights during a contested acquisition highlighted the need for maintaining transparency and fairness, setting a precedent that defensive tactics must not obscure or nullify shareholder choices.

V. COMPARATIVE ANALYSIS OF SITUATION IN INDIA WITH UK AND USA:

Comparative study of takeover laws reveals that jurisdiction such as United States and the United Kingdom have developed more sophisticated mechanism to balance the need for corporate flexibility with shareholder protection during hostile takeover scenarios. In contrast

⁹ "Hostile Takeover in India: L&T-Mindtree case study from an Employment Law vantage, THE LAW BLOG, <https://thelawblog.in/2020/09/05/hostile-takeovers-in-india-lt-mindtree-case-study-from-an-employment-law-vantage/>."

¹⁰ *Sahara India Real Estate Corporation Ltd. and Ors. v. Securities and Exchange Board of India and Ors.*, (2012) 10 SCC 603.

¹¹ *Kishore Chhabria v. Herbertsons Ltd*, (2000) 102 BOMLR 269A.

India's regulatory framework remains relatively nascent and lacks the nuanced safeguard prevalent in these jurisdictions.

In United States, particularly under Delaware corporate law, directors owe stringent fiduciary duties to shareholders during takeover battles. Two landmark cases *Unocal Corp. v. Mesa Petroleum Co*¹². and *Revlon, Inc. v. MacAndrew & Forbes Holdings, Inc.*¹³ have shaped the contours of judicial oversight over directors' conduct during such events. In *Unocal*, the Delaware Supreme Court laid down the "enhanced scrutiny" test, requiring directors to demonstrate that defensive measures adopted in response to a takeover threat were both reasonable and proportionate to the perceived threat. This framework ensures that directors cannot indulge in self-serving strategies under the guise of protecting the company. In *Revlon*, the court held that once a company's sale or breakup becomes inevitable, the directors' duty shifts from preserving corporate independence to maximising shareholder value. These judicial principles ensure that shareholder interests, rather than managerial entrenchment, dominate decision-making during takeovers.

The United Kingdom adopts a different but equally rigorous approach through the City Code on Takeovers and Mergers, overseen by panel on Takeover and Mergers. This self-regulatory regime emphasises principles such as equal treatment of shareholders, mandatory bid obligations once acquirer crosses a certain threshold, and board neutrality during an offer period. The board of the target companies prohibited from taking any action that could frustrate a bona fide takeover bid Without prior shareholder approval. Moreover, the panel ensures swift and authoritative resolution of takeover disputes, minimizing the uncertainty that can arise during protracted hostile takeover battles.

In stark contrast, India's regulatory architecture while attempting to emulate aspects of these advanced systems lack comparable depth and enforcement strength. The SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("Takeover Code") provide for open offer and disclosure obligations but fall short in addressing director entrenchment, coercive defensive tactics, or ensuring equal shareholder treatment with the same rigor. The absence of dedicated adjudicatory body like the UK's Takeover Panel further increases enforcement challenges. Indian boards enjoy relatively greater discretion during takeovers, and mechanisms to hold directors accountable under fiduciary standards are weakly institutionalized compared to the U.S. model. As a result, minority shareholders often find themselves vulnerable to both

¹² *Unocal Corp. v. Mesa Petroleum Co.*, 493 A.2d 946 (Del. 1985).

¹³ *Revlon Inc v. MacAndrews & Forbes Holdings Inc*, 506 A.2d 173 (Del. Supr. 1986).

acquirer overreach and management self-preservation strategies.

VI. PROPOSALS FOR REFORMS

Recognising the gaps in India's regulatory system, several reforms are proposed to fortify shareholders rights and promote equitable outcomes during hostile takeover scenarios.

First, it is imperative to introduce mandatory shareholder approvals thresholds before a company's board is allowed to deploy a defensive mechanism such as poison pills asset sales or dilution strategies. Such thresholds would ensure that defensive tactics reflect the collective will of shareholders rather than the interest of incumbent management, seeking to protect their positions. This reform would align Indian practise with Revlon duty principle in United States of America and the board neutrality rule under the United Kingdom Code.

Second, there is a pressing need to augment SEBI's powers to independently vet the pricing and disclosure quality of open offers particularly in hostile builds. Presently acquires often structure offers in way that strategically undervalue the target company, Exploiting information asymmetries. Granting SEBI proactive powers to scrutinise offer terms would enhance fairness and transparency, which will enable shareholders to make better informed decisions. Third, Mandatory minority shareholders appraisal rights should be introduced during acquisitions who stop inspired by Delaware General Corporation law, this mechanism would allow dissenting shareholders to demand a judicial determination of fair value for their shares if they disagree with the terms of transaction. Such a right would act as a powerful cheque against coercive acquisition ensuring that minority shareholders are not unfairly squeezed out at distressed prices.

Finally, establishing a dedicated Takeover Panel similar to United Kingdom's Panel on Takeovers and mergers, would provide a specialised forum for speedy and authoritative resolution of disputes arising during takeover bid. This panel could be empowered to issue binding direction on procedural compliance, enforce shareholders rights swiftly and monitor adherence to principle of fairness and transparency.

Collectively, these reforms would substantially rebalance the power asymmetry between acquirers, boards, and shareholders in India's corporate landscape. They would encourage greater corporate dynamism by facilitating legitimate acquisitions while simultaneously safeguarding shareholder democracy and reducing the incidence of opportunistic hostile takeovers. In an era of growing global integration and sophisticated corporate strategies, such regulatory modernization is no longer optional but essential for India's evolving economic ecosystem.

VII. CONCLUSION

Hostile takeovers, though a sign of the maturation of India's capital markets, introduce significant risks to the principle of shareholder democracy. They often represent the intersection of corporate ambition and shareholder rights, where the interests of minority shareholders are particularly vulnerable. In the face of such corporate events, the existing Indian legal framework, although robust in terms of general shareholder protection, lacks the specific mechanisms required to address the unique complexities that arise in hostile acquisitions. This failure is particularly evident in how the current laws insufficiently safeguard shareholders from the coercive tactics, self-serving management actions, and information asymmetry that characterize hostile takeovers. Despite the provisions under the Companies Act, 2013 and SEBI Takeover Code, 2011, which regulate voluntary takeovers, these legal structures fall short of providing comprehensive protection to shareholders in hostile takeovers. In these scenarios, shareholders often face an imbalance of power, where management entrenchment tactics and unfair valuations compromise their decision-making autonomy. The lack of mandatory safeguards, such as mandatory shareholder approval for defensive measures, independent valuation mechanisms, and minority shareholder appraisal rights, further exacerbates the situation, leaving shareholders without adequate tools to challenge or contest such takeovers effectively.

In light of this, it is clear that the Indian legal framework needs to evolve to better protect the rights of shareholders in hostile takeovers. This can be achieved through the introduction of pre-emptive measures that enable greater shareholder influence over takeover defence tactics, provide for enhanced transparency, and ensure fair treatment of all shareholders, particularly minorities. Adopting reforms such as mandatory shareholder approval for defensive strategies, empowering SEBI to more rigorously vet open offers, and instituting mandatory appraisal rights for dissenting shareholders would align Indian practices with global best standards and ensure that shareholders are not at the mercy of coercive tactics or managerial self-preservation.

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