# HOSTILE TAKEOVERS UNDER INDIAN LAW: IS THIS A POSSIBILITY?

Om Radheshyam Nishad, Pursuing Post Graduation - GLC, Mumbai
BLS LLB Graduate from Adv. Balasaheb Apte College of Law

## ABSTRACT

This paper examines the question of whether hostile takeovers are really possible under the Indian law. The paper contends that it is not only about legal barriers that the limited number of hostile takeovers can be explained. It points out that Indian takeover law is mainly a set of rules for acquisition but does not go so far as to endorse hostile bids as a device of governance.

The paper, through doctrinal investigation, historical development, and comparative study, shows that a few factors, such as concentrated promoter ownership, limited public float, passive shareholding patterns, financing constraints, regulatory timelines, and information asymmetries, have together made it very difficult for hostile takeovers to become a reality. The paper arrives at the point that even though Indian law allows hostile takeovers, they cannot be successfully implemented in India's current corporate and regulatory environment, and thus, to a great extent, their existence remains only a theoretical possibility.

**Keywords:** Hostile Takeovers, Indian Corporate Law, Takeover Regulation, Corporate Control, Promoter Ownership, Corporate Governance

## I. Introduction

From the very beginning of human civilization, the main feature has always been organized economic behavior of a community in pursuit of expansion of land, resources, and influence. A hostile takeover can thus be considered the most raw and straightforward expression of this desire: it involves the acquisition of corporate control without the consent of the target's management, typically through direct shareholder engagements.[1]

The essential concept of a hostile takeover is that an external acquiring company attempts to take control of the target company against the will of its board. The acquirer makes an offer to the shareholders directly, for instance, an off-market public buyout.[2] Shareholder empowerment forms the bedrock of hostile takeovers: the notion that shareholders hold the ultimate power in the corporation rather than the existing management.[3]Indian corporate law presents a more restrained and complex relation. While hostile takeovers are not expressly prohibited under Indian law, they are very rare in the Indian context.[4]

The primary legal framework governing the acquisitions of shares and control in India is the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (SEBI Takeover Code). The Code regulates substantial acquisitions by mandating disclosures, prescribing open-offer obligations, and protecting minority shareholders.[5] Notably, the Code does not distinguish between friendly and hostile takeovers, nor does it expressly address the legitimacy of the board or its resistance to unsolicited bids. Instead, it regulates the process of acquisition while remaining largely silent on the governance contest that hostile takeovers represent.[6]

This regulatory design raises the central question that this paper seeks to address: *does Indian law merely regulate the consequences of hostile takeovers, or does it meaningfully permit them as a mechanism for reallocating corporate control?* Recent transactions, most notably the hostile takeover of Mindtree by Larsen & Toubro in 2019 and the acquisition of NDTV by the Adani Group in 2022, demonstrate that hostile takeovers can occur under Indian law, but only

[1] Shaun J Mathew, 'Hostile Takeovers in India: New Prospects, Challenges and Regulatory Opportunities' (2007) 3 *Columbia Business Law Review* 800.
[2] Ibid.
[3] Frank H Easterbrook and Daniel R Fischel, *The Economic Structure of Corporate Law* (Harvard University Press 1991).
[4] Pallavi Arora, 'Evaluating the Prospects of Effectuating a Hostile Takeover in the Indian Corporate Landscape' (2014) IV NLIU Law Review 22.
[5] SEBI, Report of the Takeover Regulations Advisory Committee (2010)
[6] Pallavi Arora (n 4).

under limited and exceptional circumstances.[7] Their rarity suggests that while hostile takeovers are conceptually recognized, their practical viability under Indian law remains uncertain.

Hence, this paper analyses the notion of hostile takeovers under the Indian corporate law framework and governance perspective, while it investigates through a critical approach whether such takeovers are really a genuine possibility at the ground level.

## II. Research Problem and Scope

From the corporate governance perspective, hostile takeovers are one of the mechanisms corporate owners use to check management and change the ownership control. Nevertheless, Indian corporate law is based on the promoter ownership model, which makes it difficult in this regard. While the SEBI Takeover Code is there to regulate changes in shareholding and transfers of control, the law does not expressly identify hostile takeovers as a phenomenon of the governance continuum, and at the same time, it leaves the governance implications of 'hostility' undertheorized.

The fundamental question that this paper revolves around is:

*"Whether hostile takeovers, though conceptually recognized under Indian law, are realistically possible in practice given India's regulatory framework and ownership structure"*

## III. Research Objectives and Questions

### A. Research Objectives

1. To examine the concept of hostile takeovers within Indian corporate governance and analyze the legal framework governing such acquisitions in actual practice.

2. To determine whether Indian law acts as a facilitator or a barrier to hostile takeovers in actual practice.

3. To analyze landmark Indian transactions to evaluate the practical feasibility of hostile takeovers.

[7] Sachin Singh and Veer Mayank, 'Indian Approach to Hostile Takeovers' (2024) 30 Educational Administration: Theory and Practice 6555.

**B. Research Questions**

1. What acts as a basis of a hostile takeover according to Indian law?

2. Is the SEBI Takeover Code acknowledging hostile takeover as an acquisition method?

3. Given the current ownership structures and regulatory limitations, are hostile takeovers practically feasible in India?

**IV. Research Methodology**

This paper is written mainly on the basis of law as a source of information or by way of using the doctrinal research method through statute and adopts a structural and governance orientated critique of the SEBI Takeover Code, 2011, the Companies Act, 2013, and the Competition Act, 2002, together with SEBI committee reports, regulatory decisions and references in first-hand material from law texts. The secondary sources section is composed of peer-reviewed journal articles, SSRN publications, and authoritative academic critiques. Certain case studies at the end illustrate a few hostile takeovers' practical operations under Indian law.

**V. Historical Evolution — Why India Never Became a Hostile Takeover Jurisdiction**

To understand if hostile takeovers are possible in India, we have to see its background. This is because a legal possibility without a historical habituation is just words on paper, not what happens in the market. India's regulatory history reveals a pattern: laws for takeovers were formulated, but a market for control, which is the breeding ground of hostility, never came into existence.

**A. Pre-Liberalization (Before 1991): An Economy Designed Against Contest**

Before 1991, India's legislation and economy were making hostile takeovers impossible. Both the MRTP Act and FERA created obstacles for businesses to get funds and expand.[8] The Industrial licensing system was designed to protect the existing players and give promoters trump cards through regulatory power. People regarded corporate control as something that

[8] MRTP Act 1969; FERA 1973

could be inherited, not as something that could be bought and sold. In such an environment, hostility was a non-starter since there was no market for control that could be challenged.

### A. Early Liberalization (1991–1994): Markets Opened, But Control Did Not

The 1991 reforms unleashed the capital market and gave SEBI the ground to regulate effectively.[9] However, the policy-drafters were rather short-sighted. Liberalization was all about investor rights and full disclosure, not a change in the structure of corporate power. India threw open the doors to investment but not to combative control battles. The law, at this time, saw takeovers as simple contracts, not as governance tools that could be used to keep management "in line".

### B. 1994–1997 Takeover Codes: Structural Evolution Without a Shift in Control Philosophy

The 1994 Takeover Code was a set of rules that reflected a regulatory philosophy which was mainly focused on controlling and limiting takeovers rather than facilitating corporate control battles. Under the code, shareholder protection was limited to a right of exit in the event of a change in control, and the code did not consider unsolicited or competing bids. Therefore, this was effectively a codification of India's non-contest corporate culture in the takeover framework. The 1997 reforms gave the takeover framework a structural coherence through the introduction of an integrated open-offer regime, creeping acquisition norms, and better sequencing, thus formally setting up a takeover process, but essentially the philosophy did not change: the regulators still saw disclosure and fairness as the main priorities, rather than making the corporate control market genuinely contestable.

### C. 2011 Code: Procedural Perfection, Substantive Indifference

The 2011[10] Code elevated thresholds (15% → 25%), widened open-offer size (20% → 26%) and made Regulation 26 the codification of board neutrality. Yet once again, the revamp did not breathe a word about the possibility of a contest. The corporate control was still a matter of promoter shareholding concentration that is, from an economic point of view, of private

[9] SEBI Act 1992
[10] SEBI Takeover Regulations 2011

architecture rather than public market forces. At present, the law is technically geared up for hostility, but it is the socio-legal terrain that has never supported such growth.

### D. Institutional Investors (2014–2025): The Power That Never Activated

Starting in 2014, institutional investors (both local and foreign) became a major force.[11] In theory, this should have led to the disciplining of the market: these funds would be able to confront promoters, acquire blocks, and demand elections. In reality, the publicly available percentage of shares was so low, the cultural attitude was against confrontation, and the preference was for negotiated exits, so shareholder activism remained at a very low level. Even though the market matured, the participants still did not have the mindset of a contest.

## VI. Meaning and Legal Action of Hostile Takeovers

Hostile takeovers, as a phenomenon in the market, are recognized in Indian corporate law; however, they are not presented as a legal category. Neither the Companies Act, 2013, nor the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("Takeover Code") provide any definition or criteria that determine what a "hostile" takeover is [12]. The perception of a takeover being hostile depends only on the actions: a bid is regarded as hostile if the acquirer is seeking to gain control against the wishes or without the consent of the management. By abstaining from differentiating friendly and hostile acquisition, Indian law, in effect, prioritizes acquisition strategies over the aspect of willing consent, thereby pointing to a regulatory philosophy according to which the legitimacy of an act is secured by means of compliance, disclosure, and pricing rather than by corporate sentiment.[13]

For instance, in Delaware, hostility is a reason for courts to increase their scrutiny in cases applying the Unocal and Revlon doctrines; this reflects the understanding that hostile bids serve as governance mechanisms. In India, there is no such separation: the law merely does not regard hostility as either a risk of poor governance or a solution to good governance.

## VII. India's Governance Landscape: Why Ownership Structure Determines Feasibility

More than the law, the ownership structure shapes the feasibility of hostile takeovers in India.

---

[11] AMFI Report (2022)
[12] Ibid
[13] Harshita Kaul, 'Open Offers and Guarded Gates' (2024)

In the past, Indian corporate structure gave the promoter families or founding entities major control, and these individuals regularly held the majority of the shares, mostly between 55 and 65 per cent.[14] Such a concentration of shares implies that the public float, the shares available for purchase, is so limited that a bidder cannot realistically obtain a controlling stake by market purchase even if all non-promoter shareholders offer.[15]

Corporate identity in India is so closely linked to promoter identity that managers are frequently promoters themselves or the promoter appointees, and the boards of directors rarely operate independently of the controlling shareholders. The cultural factor here is that control is considered a position one has by virtue of the role, not a thing that can be bought and sold.

**VIII. The Takeover Code: A Procedural Avenue, Structurally Controlled**

The only legal means for a hostile attempt in India is the SEBI Takeover Code. Regulation 3 states that an acquirer who crosses 25 % voting rights shall make a mandatory open offer for a minimum of 26% additionally.[16] The Code also imposes pricing rules, thus enabling a fair exit for shareholders, and requires disclosure, making takeover attempts theoretically clear and contestable.

But this system is theoretically neutral yet practically ineffective. Given promoter concentration (discussed in Section VII), the open offer serves as procedural recognition rather than a competitive mechanism. Secondly, the concept of "control" in Regulation 2(1)(e) is so extensive that it can set off obligations even at relatively low levels of influence,[17] thus opening the interpretation problem, which is especially hard for hostile bidders, who cannot get board comfort or negotiate structured exceptions.

In addition, creeping acquisition rules theoretically allowing incremental purchases up to 75 per cent under certain conditions theoretically create slow and strategic takeover paths, but in India, they favor incumbents instead of challengers. Creeping acquisition rules, rather than facilitating challenges to control, enable further promoter entrenchment. Similarly, exemptions under Regulation 10 including inter-se promoter transfers and acquisitions through corporate

---

[14] Rajesh Chakrabarti, 'Corporate Governance and Economic Reform in India' (2005)
[15] Singh & Mayank, 'Hostile Takeovers in India' (2024)
[16] SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 2011, reg 3.
[17] Umakanth Varottil, *The Concept of Control in Indian Takeover Law* (2016).

restructuring, facilitate the strengthening of the existing control block but do not provide outsiders with equivalent strategic tools.

Besides, time acts as another silent barrier. A hostile strategy depends on a quick positioning, often by surprise. The Takeover Code's fixed-period processes announcement, offer opening, closing and settlement cycles reduce this advantage, which gives incumbents room to find allies, make use of media to their advantage, negotiate a white-knight defense, or start shareholder-loyalty campaigns. Hence, even if there are no overt defensive moves, the framework itself can be considered a defense.

## IX. Target Boards and the Absence of a Contest Infrastructure

As per Regulation 26, once a public offer is made, the target board is limited in its ability to take any measure that may obstruct the offer, except if it gets the shareholders' approval.[18] Such a provision at a glance may be considered as pro-hostile, as it restricts the board from issuing new shares, selling assets or entering into dilutive contracts, etc. Shareholder approval becomes a mere formality when promoters control voting outcomes. Therefore, neutrality does not lead to a level playing field; it just puts one player out of action without giving any power to the other.

Looking at the situation from the viewpoint of world competition, it becomes clear how India lacks a formal structure. In the U.S. boards ask for poison pills, use litigation and staggered boards to defend their positions, and the courts intervene, reviewing the relevant standards of reasonableness. In the UK, the struggle for control of a company happens at the level of thousands of independent shareholders, who, collectively, have the final say. India has no defensive armor and no democratic contest. What it has is board inertia combined with promoter domination, which means there is no significant role left for either director strategy or shareholder will.

## X. Market Experience: Practice Shows What Law Alone Cannot

Market Experience: Practice Shows What Law Alone Cannot Market experience in India shows that the law is not the only element needed in a hostile takeover battle. In fact, the market rarely produces them. In the case of the NDTV buyout, the turning point was not a

[18] SEBI Code, reg 26.

change in SEBI's regulatory framework but the unlocking of private contractual rights that were embedded in the loan agreements, thus allowing for conversion rights amounting to nearly 29.18 per cent equity.[19]

The subsequent open offer only showed that the deal was predetermined. Likewise, Mindtree took the same course. When a promoter in distress was forced to sell a 20 per cent stake not due to takeover strategy but because of the promoter's liquidity problem, the purchaser got the stepping stone for a later creeping acquisition.[20] Again, the open offer was just a formal declaration of the takeover, not a contest. What is the most revealing is not how hostile takeovers have succeeded in India but how they have not.

## XI. Comparative Analysis: What India Never Built

India's history explains why hostility never arose; a comparison reveals what hostility actually requires. If one were to look at jurisdictions where contests have become normalized, India's Takeover Code seems almost like a paradox fully developed in text, yet not used at all in practice.

So, the comparative lens is far from being decorative; it reveals the ingredients that India lacks.

### A. Why Comparison Matters: Hostility Is a Philosophy, not a Mechanism

In the areas where they originated, hostility carries out pretty much three normative roles: giving managers a hard time when they slack off, handing over assets to the most efficient managers and reminding shareholders, not the boards, not the promoters, that they are the final source of power.

India's regulatory journey was never in line with that philosophy. It designed the takeover market machinery but never wondered what that machinery was for. That initial silence on the part of the architect influences everything that happens later.

### B. United States — Where Contest Became Constitutional to Governance

Throughout the United States, specifically in Delaware, hostile takeovers were not allowed to

[19] Kaul (n 16)

[20] Mistry, 'L&T–Mindtree Hostile Takeover' (2020)

be; rather, they were developed and engineered. Court rulings such as Unocal and Revlon do more than just set the limits to takeover behavior; they acknowledge that replacing management may be justified.[21] The whole framework of decentralized ownership, activist funds, and liquidity sufficient to sustain a bidding war makes sure that unsolicited bids are not just theoretical. They are a major threat and hence a constant disciplining force. In the States, the market is the main, if not the only, corporate regulator.

### C. United Kingdom: Where Shareholders Rule by Constitutional Design

If the U.S. turned the competition into a court battle, the U.K. made it part of their constitution. The City Code's no-frustration principle[22] immediately gets rid of defensive measures as soon as an offer appears. That is not a procedural rule; it is an ideological one. It embodies a quite simple yet, at the same time, very radical assumption: *control belongs to shareholders, not managers*. Because the system is based on the assumption of contestability, it leads to the creation of contestability through auctions, counterbids, and valuation battles. In the United Kingdom, hostility is treated as a routine mechanism for reallocating control rather than an exceptional disruption, reflecting a constitutional commitment to shareholder decision-making.

### D. Asia Legal Permission Without Cultural Will

Takeover laws are in place in most all big Asian markets; however, it is the culture that prevails.[23]. In these countries, corporate control is not something that can be freely traded; rather, it is the essence of one's existence; in many cases, it is family-related, historical or patriotic. India, even though it is cohesively backed up legally by the U.K, behavior-wise is more like Asia: its law permits a fight; its ecosystem does not.

### E. India: A Market Imagined on Paper, Not Built in Reality

If we draw a line through the different positions of these countries, India's will be unique: They have laid down a regulatory framework that presumptively contests mandatory tender offers, neutrality, and disclosure, but they have totally failed to develop a market enabling them to

---

[21] Unocal Corp v Mesa Petroleum 493 A.2d 946 (Del 1985); Revlon v MacAndrews & Forbes 506 A.2d 173 (Del 1986).

[22] UK Takeover Code, r 21.

[23] Hostile Takeover Regimes in Asia (2018).

hold such a contest. Promoter dominance, low public float, passive funds, thin public-shareholding liquidity, and lack of any judicial doctrine collectively make sure that hostility will be dead even before it is born.

### F. The Unavoidable Question: Should India Ever Want a Hostile Market?

When comparison undermines what India has, the next level of inquiry is raised: *Should India deliberately set up what history has failed to produce?* According to the reformist, yes, a competition would be able to keep corporations more efficient through disciplining, it would unlock capital that has been lying idle, and it would democratize the power of the shareholders.

On the contrary, a continuity-orientated stance would be against it, arguing that a conflictive removal of the promoter could lead to a breakdown of the long-term promoter-led business, unsettled labor and creditors, and a weakening of the national-industrial strategy. What stands out clearly is hostility will never come up accidentally. If India wants to be able to contest, it must choose this on purpose, through its institutions and its ideology.

## XII. The Operational Reality: How A Hostile Takeover Unravels in India

To determine whether hostile takeovers are a genuine possibility in India, it is not enough to study the law; one must instead walk the path a hostile acquirer would actually be forced to take. That path itself reveals the truth: although hostility is permitted in doctrine, the Indian corporate ecosystem ensures that it rarely matures into action. The hostile bid does not die at a single obstacle; it unravels gradually at each point where the system is designed for continuity rather than contest.

### A. Where a Hostile Bid Must Begin and Why India Makes That Beginning Fragile

A hostile bid in India begins not with a declaration but with strategic invisibility. Accumulation happens until 24.99%, because 25% triggers Regulation 3(1) of the Takeover Code 2011, compelling a mandatory open offer of at least 26% and immediate public disclosure.[24] In India, visibility immobilizes the bid. Once public, the takeover enters SEBI-regulated timelines, mandatory disclosures, and cooling period all of which suspend momentum.[25] Even at

[24] Regulation 3(1), SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.
[25] Takeover Code 2011 — Regulations 14–18

inception, therefore, the system shifts power towards continuity by slowing, not blocking, the challenger.

### B. When a Bid Needs Fuel, Finance and Information, Decide Who Even Gets to Try

Under Regulation 25(1) of the Takeover Code 2011, a bidder must demonstrate firm financial arrangements before making an offer.[26] Formally a safeguard; in practice, a gatekeeper: Indian banks rarely finance unsolicited acquisitions; institutional lenders demand promoter comfort; leveraged takeover financing (common in Delaware-style markets) is virtually absent. Information adds an additional filter. Hostile acquirers cannot access due diligence; valuation relies only on public disclosures, which in India typically lack operational depth.[27] The bidder must therefore overpay blindly or bid low and elicit no tenders; neither condition produces a market contest.

### C. Where the System Finishes What the Promoter Starts

Even if a challenger survived opacity, capital scarcity and promoter resistance, another layer awaits the architecture of the state itself. A hostile takeover cannot close without moving through a lattice of approvals: Competition Commission screening under Sections 5 and 6 of the Competition Act;[28] FEMA ceilings and sectoral limits restricting who may buy and how much;[29] RBI pricing controls dictating what may be paid;[30] and insider-trading restrictions that bar access to precisely the information a bidder would need to price rationally.[31]

Individually, these rules appear administrative. Collectively, they reveal the deeper logic of India's corporate design: power must not change abruptly. Corporate control is treated not as a fluid commodity but as a stability-bearing institution. A system that prizes continuity will not allow contests to determine outcomes. It will ensure quietly, efficiently, and without drama that there is never a moment when a hostile bid can move faster than law.

## XIII. The Logic of Defense: Why Targets Seek to Resist

Defense in a takeover scenario is more than just a blocking move; it is a governance act. It

---

[26] Regulation 25(1), Takeover Code 2011
[27] SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 — Ch. IV
[28] Competition Act 2002, §§5–6 — combinations and prior CCI approval.
[29] Foreign Exchange Management Act 1999; Consolidated FDI Policy
[30] FEMA (Non-Debt Instruments) Rules 2019 — pricing guidelines for share transfer.
[31] SEBI (Prohibition of Insider Trading) Regulations 2015.

expresses a very basic issue: who has the authority to decide what is most beneficial for the company - the market, the board or the insiders?

In India, promoter and corporate identities are so often blurred that defense has less to do with economics and more to do with preserving a continuity-based vision of corporate stewardship. Whereas the West sees control as a liquid commodity, India considers it a trust. Thus, the defenses in India can be understood only by turning the normal analysis upside down: defenses here are not basically board instruments; rather, they are promoter instruments deeply ingrained in ownership structures, capital strategies, financing patterns, and litigation cultures.

**A. Staggered Board**

A staggered or classified board is a kind of governance mechanism in which the directors are split into several classes, usually three or five, with only one class being elected at each annual general meeting. Such a setup helps to maintain management continuity, as it limits the number of directors retiring each year to a very small fraction, which is quite different from a unitary board where the whole board is appointed at the same time.[32] In terms of a takeover, it is very hard for a hostile bidder to get corporate control if the board is staggered, because the real control means having the control of the board.

Indian Legal Position - Although section 152 of the Companies Act, 2013, does include, during the staggered directorship, a compulsory element of change at the board of directors of public companies by requiring the rotation of not less than two-thirds of directors, the defense based on staggered directors in India is essentially very limited.[33] By section 169, shareholders are empowered to remove directors by an ordinary resolution at one meeting, which thus has the effect of completely undermining the protective effect of staggered boards.[34] Once a hostile

---

[32] Lucian, Bebchuk, John, Coates &Subramanian Journal of Financial Economics, 2006.Classified boards, firm value, and managerial entrenchment.

[33] Companies Act 2013. § 152(6) states as follows: "(a) Unless the articles provide for the retirement of all directors at every annual general meeting, not less than two- thirds of the total number of directors of a public company, or of a private company which is a subsidiary of a public company, shall-(i) be persons whose period of office is liable to determination by retirement of directors by rotation; and(ii) save as otherwise expressly provided in this Act, be appointed by the company in general meeting."

[34] Companies Act 2013. § 169 on Removal of director's states as follows: "(1) A company may, by ordinary resolution, remove a director, not being a director appointed by the Tribunal under § 242, before the expiry of the period of his office after giving him a reasonable opportunity of being heard:
(2) A special notice shall be required of any resolution, to remove a director under this §, or to appoint somebody in place of a director so removed, at the meeting at which he is removed.

bidder obtains majority voting rights, changing the board members becomes a mere formality, and a staggered board in the Indian scenario is a figment of the imagination of the corporate lawyers.

**B. White Knight and White Squire**

The white knight defense refers to a friendly acquirer coming in to save the day and prevent a hostile takeover by either acquiring the target company themselves or making a better offer. White knights are usually the preferred option, as they keep the current management, protect the company's vision, and maintain operational stability.[35] [36] An intervention of this kind may be done through acquisition, buyout of the hostile bidder, or negotiated restructuring.[37]

The white squire defense is very similar to this, and here a friendly investor would acquire a large enough stake to be able to block the hostile bid, but it would be non-controlling and would not take away the target company's independence.[38]

**C. Poison Pill**

A poison pill, also known as a shareholder rights plan, serves as a takeover defense which discourages hostile bids by significantly diluting the bidder's economic interest once a specified shareholding threshold is crossed without the board's consent.[39] The dilution effect is implemented through either a flip-in, which allows non-bidder shareholders to buy shares at a discount, or a flipover, which gives them the right to purchase the acquirer's shares at a discount after the merger.

By substantially increasing the cost of the acquisition and taking away the value from the bidder, poison pills make hostile takeovers not financially viable and often result in their cessation.

(3) On receipt of notice of a resolution to remove a director under this §, the company shall forthwith send a copy thereof to the director concerned, and the director, whether or not he is a member of the company, shall be entitled to be heard on the resolution at the meeting."

[35] Barik, Nikhilesh, Takeover Defenses and Corporate Governance (April 15, 2012) [Online]. Available at https://ssrn.com/abstract=2039844, or http://dx.doi.org/10.2139/ssrn.2039844.

[36] Eleftheriadou, I. 2018. Hostile Takeovers and Defense Strategies. International Hellenic University, [online].

[37] The Guardian, White Knight. The Guardian.

[38] *Supra* note 18

[39] Dalal, 2020, Analysis of Takeover Defenses and Hostile Takeover. NALSAR Law Review, 6(1)

India Legal Position - Poison pills are scarcely useful in India because of regulatory restrictions imposed by the SEBI Takeover Regulations and the SEBI (DIP) Guidelines. Under Regulation 26 of the Takeover Code, no new shares can be issued without shareholder approval during the offer period, which makes it impossible for a quick and effective poison pill.[40] Since pricing regulations, among other things, disallow issuing of shares and warrants at a discount 26, the whole " economic" point of the strategy comes under threat.

However, there is some scope for the loosening of the limits. For example, Indian law does not forbid the issuance of non-convertible securities like debentures or preference shares. Thus, a somewhat different poison pill can be constructed through shareholders being granted rights to convert these securities, therefore increasing the leverage and the costs for the intruder.[41] [42]

**D. Crown Jewel Defense**

The crown jewel defense is essentially selling off the company's most valuable assets to discourage a hostile bidder because the firm becomes less attractive and strategically weaker. These assets can be very profitable divisions, patents, or essential operational units.[43] While it can work, companies usually save such a strategy as a last resort because it can cause serious harm to the corporate value in the long run.[44] Sometimes, the assets are given to a friendly third party with the promise that they will be bought back once the takeover threat has gone away.[45]

Indian Legal Position - As per Regulation 26 of The Takeover Code, disposal of assets post announcement of public offer is prohibited; thus the use of the crown jewel defense is restricted to the pre-bid level only.[46] Besides that, Section 180 of the Companies Act stipulates that the disposal of substantially the whole of an undertaking requires the approval of the

[40] Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. Regulation 26(2) states as follows: “the target company by way of a special resolution by postal ballot is obtained, the board of directors of either the target company or any of its subsidiaries shall not, —(a) alienate any material assets whether by way of sale, lease, encumbrance or otherwise or enter into any agreement therefor outside the ordinary course of business; (b)effect any material borrowings outside the ordinary course of business;(c) issue or allot any authorized but unissued securities entitling the holder to voting rights…”
[41] Senior securities are those that ranks higher in terms of pay out ranking. The value of these securities is determined by the board of directors
[42] The Economic Times, 2020, Can India Inc. swallow the ‘poison pill’?
[43] Supra note 23
[44] I*bid*
[45] Mergers and Acquisitions, Alan Auerbach, Published in 1987 by University of Chicago Press by the National Bureau of Economic Research
[46] Supra note 24

shareholders.[47] Boards only have marginal discretion in the sale of non-core assets; hence, the crown jewel defense in India is mainly limited by the procedural and fiduciary duties.

## XIV. Conclusion

This research explored if it is legally possible for hostile takeovers to happen in India. On paper, Indian takeover rules allow for unsolicited bids and offer a procedural framework for changes in control. However, this study points out that this legal allowance is operating in a vacuum, as there is no market designed for the takeover contest in India. Indian takeover law was developed to control the regulation of the transfer of control through disclosure, pricing norms, and minority exit without consent to hostility as a governance mechanism or a method of disciplining incumbent control.

The study reveals that a mix of factors like concentrated promoter ownership, low public float, passive shareholding behavior, lack of financing, regulatory delays, and information asymmetry jointly keep hostile bids from turning into real competitions for control. The paper shows that the transactions which appear hostile actually result from the lack of pre-existing vulnerabilities, while the regulatory mechanisms merely come into play after the control has been changed. Thus, the paper argues the position that hostile takeovers under Indian law are theoretically allowed but practically unattainable; they are permitted in the legal framework, but the very structure in which they exist ignores them in practice.

---

[47] Companies Act, 2013. § 180(1) states as follows "(1) The Board of Directors of a company shall exercise the following powers only with the consent of the company by a special resolution, namely:**(a)** To sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking, of whole or substantially whole of any of such undertakings."