

**OVERVIEW OF THE TAKEOVER CONVERGENCE IN INDIA:
UNDERSTANDING THE EPITOME OF NEW & CONTEMPORARY
TAKEOVERS**

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ABSTRACT

The takeover mechanism is important as a way of external corporate governance. There exists an extensive argument on the convergence of mechanisms aimed at ensuring investor protection. These are complex practices that ensure the continuous growth of the corporate sector; however, in lieu of the nature of these activities, the aspect of protection of their malpractices being developed is one of high importance. Thus, considering the situation, multiple governments and allied regulatory authorities around the world, have started doing the same action. The same is indeed true for the Indian regime as well.

With the Liberalization and the influx of foreign companies entering the nation. The action of corporate greediness and crony capitalism is on the rise. The takeover code has undergone major modifications to safeguard the returns of investors and the general public. These changes were a direct consequence of the worldly aspects that were occurring at the time in the nation and the world and now, because of the same, a semi-structured form of the code has been created. However, even with these multiple changes, multiple loopholes and implementation issues remains. The primary of these, for the Indian corporate regime, remains the aspect of a hostile takeover. As the same is comparatively new to the Indian system and the understanding of the same is minimal.

The paper shall conduct an in-depth comparative analysis of these aspects. The national and individual understanding of the same needs to be looked upon in great detail for aiming to grasp the solution for the issues being presented in the system. The ultimate aim shall be the determination of the most vulnerable sections of the national infrastructure on an individual level and finding the solutions for the same. Concludingly, multiple suggestions and recommendations for the present identified issue and its problems shall be provided in the present paper.

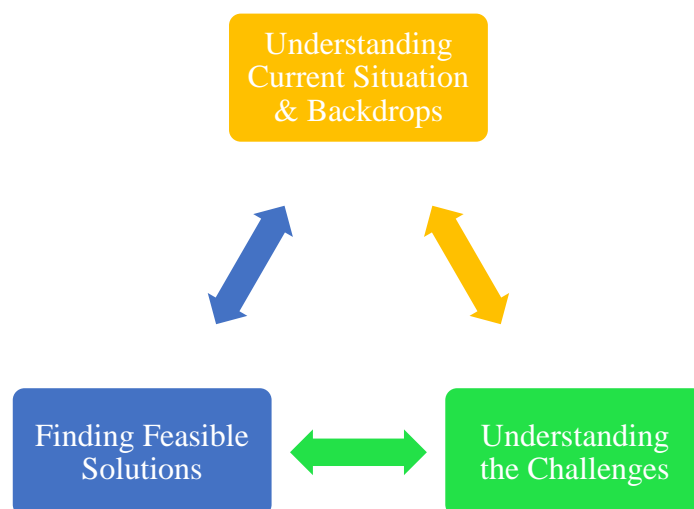
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RESEARCH OBJECTIVES

The Research Objectives formulate the back of the present paper, these are the guiding lines upon which the research initiative shall be derived from. The researcher in the present paper has the following objectives which form the backbone of the present research:

1. To understand the Current Situation & Backdrops in the Takeover Infrastructure in India and abroad whilst deliberating upon the solution for the same. The recent updates on the same, especially during the pandemic shall be focused upon.
2. To understand the challenges being faced in the more effective implementation of a better takeover regime in India and abroad vis-à-vis a proper system for implementation of the same. Along with an understanding of the contemporary hostile takeover system.
3. To understand and correlate the international and Indian Takeover systems and the probable implementation of the same on a national and possibly international level. With the Ultimate Intention to the creation of a uniform regime for the same, cross-country takeover would be more regulated as well as smoother.
4. To Propose feasible solutions which could be utilized by the courts, the government, and the allied regulatory authorities in the long term for the implementation and correction of the present Issues in the Takeover regime in India, primarily that of the feasible creation of a more effective protection regime within the national boundaries of India. With the Far-feathered goal of an international system as well.

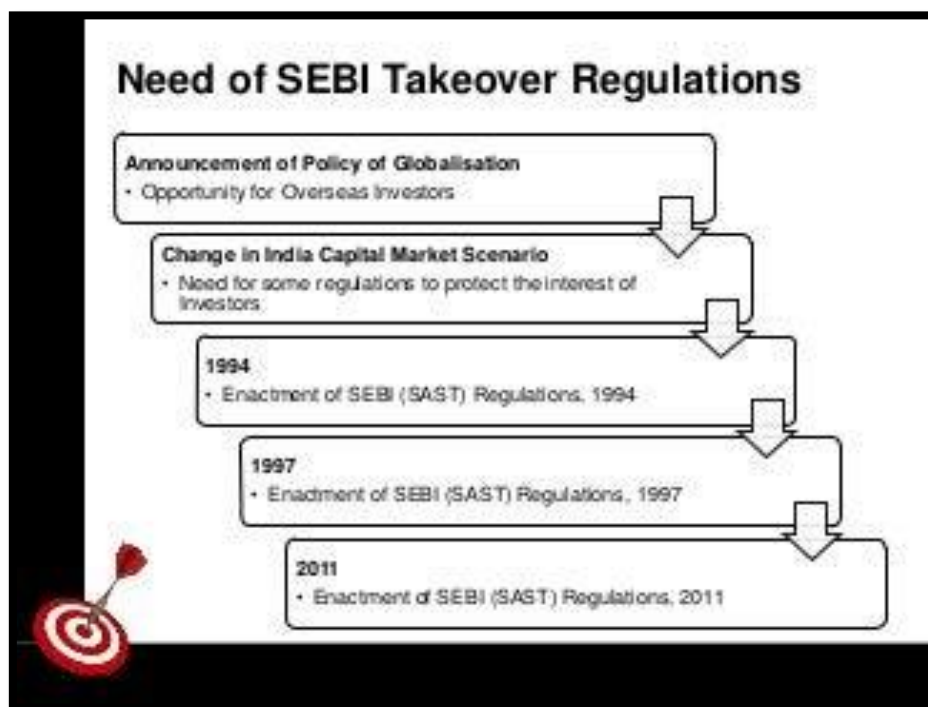


“Interconnected Research Objectives in the Present Paper”

RESEARCH QUESTIONS/ISSUES/HYPOTHESIS OF THE PRESENT RESEARCH

The present research is a sincere attempt to answer the following questions which form the core of the present study are:

1. The Present Situation of the Takeover regime in India vis-à-vis the implementation of a better & more international-orientated system for the same.
2. Understanding the issues being faced by the present system and the creation of plausible solutions for the elimination of the same.
3. Understanding the history of the takeover regime vis-à-vis the current situation in India and the effects of ensuring that proper enhancement in the present and allied systems are made which are effectively implementable as well.
4. Addressing the new solutions which need to be implemented and how the same will have a positive effect on the takeover regime vis-à-vis the aspect of a hostile takeover regime and solutions for the same.

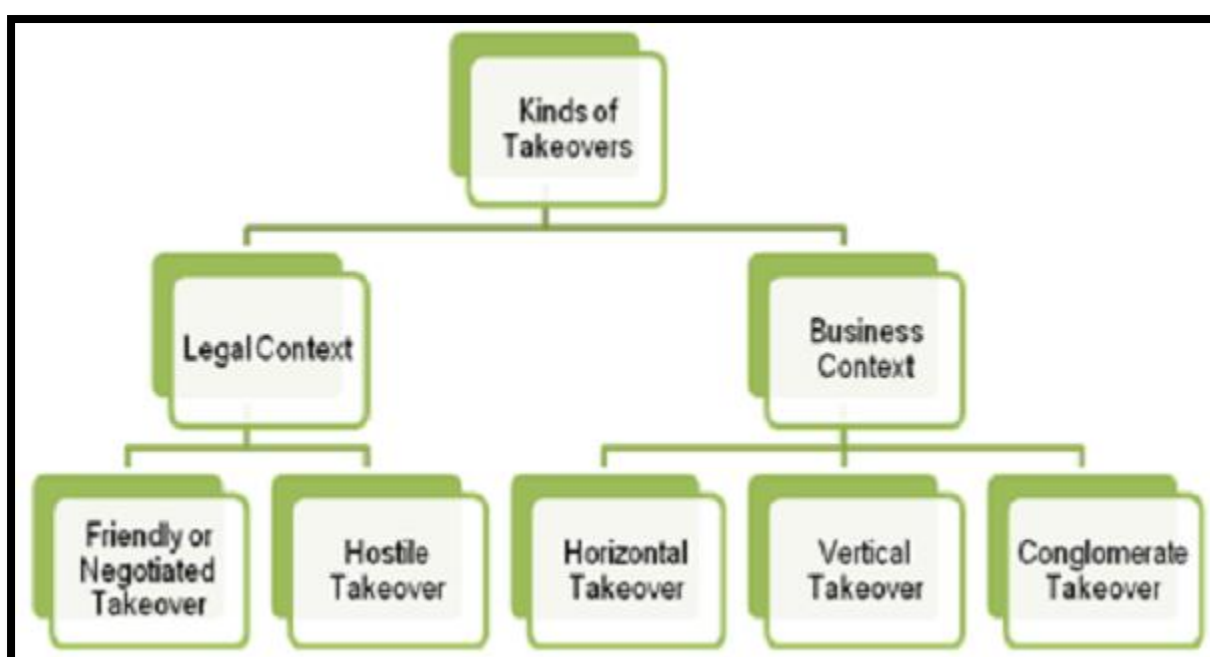


“Need of SEBI takeover regulations in India: an Overview”

RESEARCH METHODOLOGY UTILIZED IN THE PRESENT

RESEARCH

The study of the critical paper has been conducted with the use of the dynamic research method including Bibliometric research and analytical and doctrinal methods; furthermore, an empirical study has also been conducted to the same extent. The present research paper shall be a collective analysis of the multiple types of doctoral and allied research conducted. Concludingly, several suggestions, and recommendations, based on the above system, shall be encapsulated under the aegis of the present research work.



“Types and Varieties of Takeovers: an overview”

LITERATURE REVIEW: UNDERSTANDING PRECEDENTS ON THE PRESENT ISSUE

The present paper is a multi-disciplinary work from legal, socio-economical, and other allied fields of study that combined the work done in various disciplines to present an effective solution to present the lack of an effective takeover regime in India vis-à-vis the aspect of a hostile takeover, whilst grasping the effects of the Pandemic and the current market & larger situation upon the same. The new and unique aspect of hostile takeover shall formulate the aegis of the present system. The following papers have been reviewed for this:

1. **Review, rewriting, and impact of the Indian takeover code:** The present paper aims at understanding the overall situation of the takeover code in the Indian regime and the allied system of the same. The present paper conducts an overall analysis of the takeover regime in India, intending to arrive at the tip of the iceberg of the issues and allied problems associated with the current regime. Concluding, multiple suggestions and recommendations from the current knowledge about the subject have been provided by the author.
2. **Investor protection: effects of takeover convergence:** The Present paper tries to get an understanding of the takeover situation, from the perspective of the investor present therein. The exact situation of the investor in cases of a takeover is analyzed and the situation wherein the investor finds themselves have been looked upon in the present paper. The investor's investment and its situation have been explored as well. Concluding, multiple suggestions and recommendations for the same end have been looked upon.
3. **Nature of Hostile takeovers in India:** This paper conducts a microscopic study of the hostile takeover in the Indian regime. The experience of the international takeovers vis-à-vis the corporate situation of the same is studied in the present paper, concludingly, the issue in the Indian-specific scenario has been studied. In the end, multiple Indian-specific suggestions and changes in the takeover code have been suggested as well.
4. **New takeover code by SEBI:** The present paper aims at analyzing the new takeover code created by SEBI for India, in the recent past. The paper aims at understanding the multiple perspectives and different angles as have been explored by SEBI in the creation of the present code. The issues and allied complexities enumerated in the same have been a constant debate in the present paper.
5. **India's Takeover Code-How to Define Change in Control:** In the present paper, the most important aspect of "Control" has been defined and explored. The aspect of takeover is referred to from an in-depth perspective in the present paper. Concludingly, the paper looks into the various and multiple different plausible solutions for the same, with the ultimate intention of creating a plausible understanding.

6. **Corporate governance in India:** The purpose of this article is to perform an examination of the takeover code in the Indian regime from the standpoint of corporate governance. The history of the takeover regime has been well researched, as have the numerous fallacies involved in the matter. The origins and the need for such an in-depth and elaborate takeover code have been looked upon and analyzed.
7. **Critical Analysis (M&A): Takeover Code:** The present paper conducts a critical analysis of the concept of takeover code and its associated mechanism in great depth and detail. The multiple angles and perspectives involved in the same are analyzed in great depth and the issue arising from the same has been looked upon. The present paper conducts a thorough analysis of the takeover code and the allied stakeholders in the whole transaction as well.

LACUNA IN THE PRESENT RESEARCH

Multiple research papers and other pieces of literature have been created which have focused upon the individual aspects of the Takeover Regime or that of the multiple new situations arising in the takeover regime vis-à-vis the understanding of the concept of specific types of takeovers either from a legal or regional perspective, however, combined research of the same, to provide some viable solutions to the multiple issues has not been carried out yet. Therefore, in light of this, there is a lacuna in finding the overall solutions to the issue. Concludingly, the present paper shall specifically focus on understanding the combined legal issues of the takeover regime & procedure along with a specific focus on the concept of hostile takeover in the Modern Indian State & from an International perspective as well.

Highlights of
SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2021
- applicable w.e.f. May 06, 2021

<p>I. General:</p> <ul style="list-style-type: none"> ▪ 'Institutional Trading Platform' rechristened as 'Innovators Growth Platform' (IGP) 	<p>III. Enhanced limits for entities listed on IGP</p> <p>☐ Entities having listed their specified securities on IGP:</p> <ul style="list-style-type: none"> ▪ Limit of acquiring shares or voting rights requiring public announcement of an open offer enhanced to 49% (reg. 3) <ul style="list-style-type: none"> • Existing requirement: 25% ▪ Limit of holding shares or voting rights requiring voluntarily public announcement of an open offer enhanced to 49% (reg. 6) <ul style="list-style-type: none"> • Existing requirement: 25% ▪ Requirement of disclosure of aggregate shareholding/voting rights by the acquirer will be triggered on holding of 10% or more shares <ul style="list-style-type: none"> • Existing requirement: 5% or more ▪ Requirement of disclosing change in shareholding/voting rights of the acquirer will be triggered only if such change exceeds 5% of total shareholding/ voting rights in the target company <ul style="list-style-type: none"> • Existing requirement: 2%
<p>II. Disclosure of Voting Pattern of Committee of Independent Directors (IDs) [reg. 26 (6)]</p> <ul style="list-style-type: none"> ▪ Committee of IDs formed by the target company to not only provide and publish reasoned recommendations on the open offer but also ▪ disclose the voting pattern of the meeting in which the proposal was discussed 	

“SEBI: Understanding the SEBI Takeover Regulations”

EXPECTED OUTCOMES OF THE PRESENT RESEARCH PAPER

The Present study is multi-layered. The herculean effort put into the collection of the data gathered for the present research paper shall effectively result in several conclusions being reached in the present research framework. The Primary expectations from the present study are as follows:

1. The Undue advantage provided to certain KMP and Promoters at the cost of the small investors ought to be minimized and all the stakeholders should be ought on the same level. In lieu of the same, the present paper shall provide a system, one which shall be multi-layered in itself.
2. The overwhelming control of the government in the corporate business along with the overpowered situation of the government needs to be brought under control. The process and the specific sections, upon which deliberations need to be done and how shall be looked upon by the present paper.
3. The situation of the Financial Investors shall be emphasized along with their interests and the effects of takeovers especially that of hostile takeovers shall be explored.

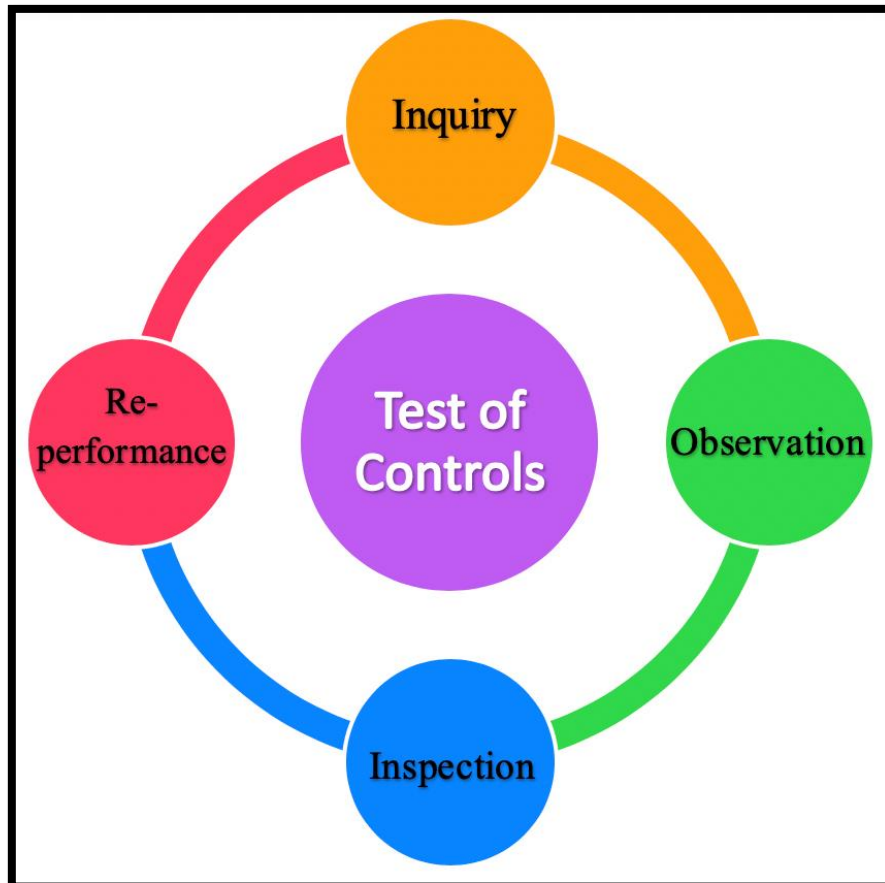
4. Public Information is another aspect that shall be focused upon. As the aspect of takeovers is one wherein, the rights and situation of the common investor are directly affected, thus a strong emphasis on the increment of the public information shall be carried out and the means for the same shall be provided for.
5. The situation of takeover from the aspect of both the acquirer and the acquired company shall be carried out. The aspect of the efficiency of both the parties and the situation of the same shall be looked upon in depth. The issues present therein shall be explored in-depth and the solutions for any issues shall be looked upon in detail.



“SEBI: Regulatory authority in India”

EXPECTED CONCLUSION OF THE RESEARCH PAPER

Foremost, it ought to be considered that the SEBI takeover code is not foolproof. Similar to the structure of any other legal legislation, the same lacks multiple loopholes and lacunas enumerated within itself. However, with the recent developments in the corporate world and its environment in India, it could be stated that the same is improving at a particular level and scale. The original 1994 document for the same, was simply a 2-3 pager document which was prepared and sent out in a rushed manner and is still in requirement of a major update for the same. However, the work carried out by the regulatory authorities, led by SEBI along with the Indian court of law, presents a very strong framework for the current work in progress.



“Tests of Control: The essence of Takeover in India & Abroad”

The concept of hostile takeovers in India is still mistaken for negative activities. One ought not to forget the benefits and the possibilities of the same, yet still, reasonable control over the exercise ought to be done by SEBI from time to time. The recent 2013 amendment brought multiple changes which resolved many issues in the M&A scenario. Concludingly, the rapidly evolving public M&A landscape is throwing up new challenges and questions for SEBI and the rest of the financial sector. Nonetheless, in the long term, it could be concluded that the present form of the code, is on par with the foreign codes, yet still, improvements in the specific hostile takeover mechanisms are required. Thus concludingly, the present paper shall amplify the existing knowledge of the takeovers specifically that of the hostile takeovers, and provide for improvements in the Indian regime.

INTRODUCTION: UNDERSTANDING THE BASIS OF THE TAKEOVER CODE

The ownership of corporate bodies alongside the restructuring of the same could potentially undertake multiple forms. The Traditional method has been mergers, which could be both horizontal and vertical in their forms. However, in the upcoming future, with the increment of the growth and development in the corporate sectors of the nations, the utilization of takeover is bound to take lead.¹ Thus, in lieu of this, a particular code should be in place, for ensuring that all the complexities present are dealt with within a reasonable time.² The entire critical procedure in India began in 1994, when it was decided that a new takeover code was required. The process could be successfully stated to be still an ongoing one, with major changes and improvements required. The convergence of the code with that of the international regimes also remains an issue, which the present paper, shall thrive to analyze.



“Takeover Mechanism: SEBI, Control and Money”

¹ Id.

² Id.

TAKEOVER: EFFECTIVE MECHANISM OR NOT?

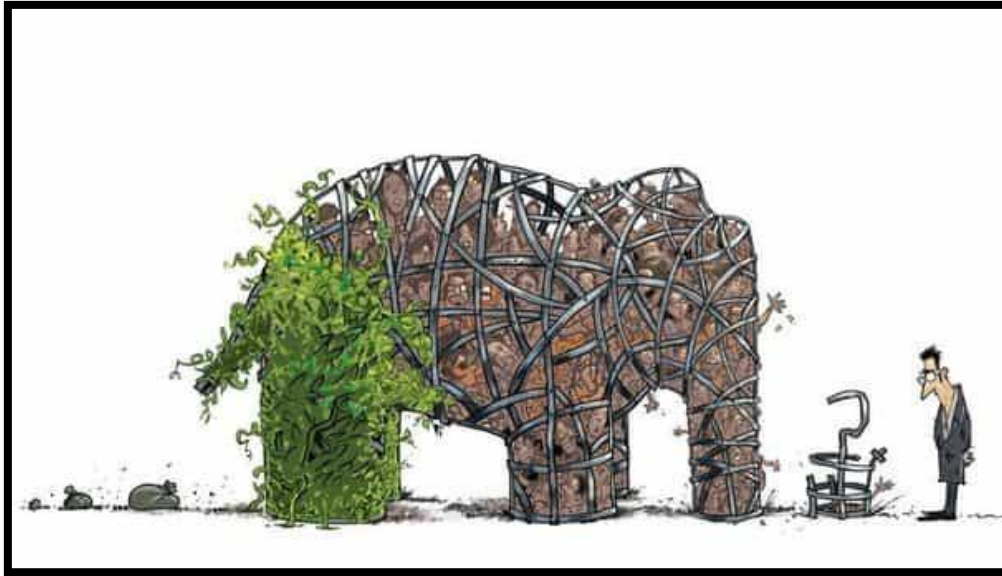
Foremost it must be noted, that even in situations, wherein, takeovers are not aimed at an increment of the synergy between corporations, they do end up benefiting the shareholders of both the concerned organizations. Thus, in totality, it could be stated that takeovers, in the longer term, assist in the advancement of the economic assets of the companies.³ However, in the same zone, multiple aspects ought to be looked upon and analyzed from multiple perspectives.⁴ Furthermore, the process of takeover itself has consisted of multiple parts and parcels, and for a perfect code to be created each of these must be individually analyzed and looked upon.

INDIAN ECONOMY: WHY IMPROVEMENT REQUIRED, IF ANY

The Indian economy is one, which is filled with institutional voids, including that of an inactive takeover market, multiple legal loopholes, and underdevelopment capital along with a weak managerial market. The Indian firms showcase characteristics wherein the issue of concentrated ownership structures is present, among whom, a heavy stake is that of the family, firms alongside block holders as well. At the same time, howsoever the SEBI board was introduced in the Nation as one created on the lines of SEC in the US and the difference of the marketplace, thus naturally resulting in the creation of numerous issues. The SEBI SAST introduced and updated from time to time, has been effective in dealing with the shorttime irregularities in the code, the latest amendment in 2019, further solidifies the image of the code as an effective instrument, yet still, room for improvement is there, especially in the post covid world.

³Id.

⁴Id.



“Indian Economy: The Giant Growth Bubble within”

THE PRESENT ARTICLE: UNDERSTANDING THE NEED FOR THE SAME

Thus, the purpose of the present article is to perform a thorough analysis of the takeover law, with a focus on a few specific regulations, including those governing open offers, offer prices, offer sizes, and creeping acquisitions. The same provisions will then be compared to the laws of the US, UK, Singapore, & Australia, as well as an examination of the same behavior. India is one country that is gradually moving towards the English legal system in terms of overall legal norms.⁵ The takeover code's convergence will therefore constitute a step in the same direction.

CRITICAL ANALYSIS: GETTING AN IN-DEPTH UNDERSTANDING OF THE CODE

Understanding the Growth Phases of Takeover Regulations in India:

Takeover guidelines in India evolved within a short period with some noteworthy developments.⁶ Multiple definitions and deficiencies in the understanding of terms and situations which arose in the 1994 code were corrected with the subsequent amendments.⁷

⁵ Id.

⁶ Id.

⁷ Id.

The obligations of multiple allied parties such as that of the merchant banker, acquirer, board of directors, etc were defined and provided for.⁸ Multiple committees such as Bhagwati Committee among others paved the way for the necessary development in the sector. The primary phases of the growth of the takeover code in the nation are as follows:

Early Phase (1994-1997):

The first phase could also be termed the birth phase of the takeover regime. In this phase, the initial rules and regulations for the takeover code were created and developed.⁹ During the period of this regime, the regulatory authorities were protective and the rights & interests of the shareholders were prioritized above all.¹⁰

Middle Phase (1997-2010):

In this phase, the protection phase of the regulatory bodies was laid off and the focus was shifted towards increment in the effective utilization of the corporate resources alongside the protection of minority shareholders as well. Furthermore, SEBI (SAS&T) regulations 1997, were proposed and created for a more effective mechanism.

Parameters	Takeover codes – 1994	Takeover codes – 1997	Takeover codes – 2011
Initial trigger limit for mandatory open offer	Greater than 10%	The threshold requiring the acquirer to make a mandatory open offer is 15%	The initial trigger limit was revised to 25% of the shares of the target company
Creeping acquisition for consolidation of holdings	–	Acquirer or PAC who already hold voting rights between 15% and 55% can acquire additional 5% voting rights every financial year without triggering an open offer. In October 2008, the limit was extended from 55%–75%, to buy additional shares up to 5% in one year	Creeping acquisition limit was revised to 25%–75% to make it a single level bracket. The acquirer can acquire additional shares up to 5% in one financial year without triggering an open offer requirement SEBI amended takeover codes in 2020 temporarily, allowing promoters to acquire additional voting rights up to 10% through preferential issue of equity shares without triggering open offer requirements only for the financial year 2020–2021
Offer size	The acquirer should acquire a minimum of 20% of the total shares of the target company	The acquirer is obligated to make an open offer for a minimum of 20% of the “voting capital of target company”	The acquirer is mandated to make an open offer for at least 26% of the “total shares of target company”
Offer price	Under regulation 9 highest of <ul style="list-style-type: none"> the negotiated price or the average of weekly high and low of the closing prices of the shares during the past six months preceding the date of announcement whichever is higher Under regulation 10 highest of <ul style="list-style-type: none"> the highest price paid by the acquirer in the open market or the average of the weekly high and low of the closing prices of shares during the past six months preceding the date of announcement 	Highest of <ul style="list-style-type: none"> the negotiated price under the agreement price paid by the acquirer for acquisition during the 26-week period prior to the date of public announcement the average of the weekly high and low of the closing prices of the shares of the target company during the 26 weeks or the average of the daily high and low of prices of the shares during the two weeks preceding the date of public announcement, whichever is higher 	Highest of <ul style="list-style-type: none"> the negotiated price that attracted the open offer volume weighted average price paid by the acquirer during the preceding 52 weeks highest price paid by the acquirer or PAC during the preceding 26 weeks 60 trading days volume-weighted average market price

(continued)

“Detailed Analysis of Improvement in Takeover Regime in India: Part I”

⁸Ramanathan, S., 2018. A Controversial Case of Ajay Singh–Spice Jet takeover. Available at SSRN 3841061.

⁹ Id.

¹⁰ Id.

Parameters	Takeover codes – 1994	Takeover codes – 1997	Takeover codes – 2011
Public shareholding	Public shareholding should not be reduced to less than 20% of the voting capital of the company	Public shareholding should not be reduced to less than 20% of the voting capital of the company	Public shareholding should not be reduced to less than 25% of the voting capital of the company
Provision of Escrow	No provision of Escrow	25% should be deposited in Escrow Account for consideration up to 100 crores and 10% thereafter for the balance amount	25% should be deposited in Escrow account for consideration up to 500 crore and 10% thereafter for the balance consideration
Change in control	No concept of “change in control”	Any change in control of a listed company should be only after open offer. The takeover code provides for exemption from Open Offer for change in control through a special resolution by voting through a postal ballot process	Open offer is mandatory for any change in control of a listed company. The exemption available in SEBI takeover regulation 1997 from the open offer is withdrawn
Non-compete fee/ control premium	–	Non-compete fee paid to persons other than the target firm above 25% of the offer price should be added to the offer price	Non-compete fee or control premium should be included in the offer price so that public shareholders get the highest price

Source: Authors' compilation.

“A Detailed Analysis of the Improvement in the Takeover Regime in India: Part II”

Modern Phase (Post 2010):

This phase started with the Takeover regulations 2010. This phase consists of multiple new aspects, irregularities, and singularities occurring in the legal takeover environment in India. Multiple reports and allied inspections have further suggested a change in the regime.¹¹

Easier Rules for Speedy Resolutions

Under the takeover code, if an ARC invokes collateral pledge exceeding 25% of a distressed firm's equity value, then it will have to make an open offer to minority investors

However, 'scheduled commercial banks' and 'public financial institutions' are exempt from this norm

ARCs will have to be classified as 'public financial institutions' for the leeway

Experts say ARCs are strategic investors who do not run the company, while open offer norm implies they have control over it

BCCI

“Recent Improvement in the SEBI takeover code concerning ARCs and takeover code”

¹¹Hirani, A., 2003. India's Takeover Code-How to Define Change in Control. Int'l Bus. Law., 31, p.141.

CRITICAL UNDERSTANDING OF THE TAKEOVER PROVISIONS: GETTING AN OVERVIEW

The regulations concerning the takeover code take prime importance in cases concerning the protection of the investor and their assets in a company, alongside with protection of minority shareholders. Taking the case of an upcoming economy including India, the steps need to be carried out carefully and in a mixed manner.¹² The direct result of the takeovers alongside the M&A in the Indian Market is seen directly in the GDP of the elephant nation.¹³ In the early phases of 2020 & 2021, in lieu of the lack of events occurring in the market, the GDP growth was slow and estimations by the IMF and World Bank, also aligned. However now in 2022, the same has been improved and the effects are also visible in the growth rate and allied GDP of the nation.¹⁴

UNDERSTANDING PROVISIONS OF THE IMPORTANCE OF THE CODE: TAKEOVER REGIME IN INDIA

There are multiple specific provisions of the code, upon which specific attention ought to be provided. The primary of these aspects are as follows:

Initial Threshold:

Understanding the threshold: an overall analysis:

The initial offer threshold is one of the factors included in the law's definition of an obligatory open offer trigger. If an acquirer purchases more than this limit, the legislation requires the concerned to create a "open offer" for more shares amounting to an equal price, upon which offer was initially made to exert power over the shareholders. This cap is in place to ensure minority owners' rights are protected.

International Comparative Understanding:

However, this limit has been on a constant rise, since the 1990s. From 10%, the same limit has been increased to 25% in 2011. Thus, an acquirer could potentially acquire, shares upto 24.99% without any issues. This increment could directly be regarded as rendering the utilization of this protective mechanism useless.

¹²Id.

¹³Id.

¹⁴Id.

Creeping Acquisition: Parsimonious Acquisition:

Understanding Acquisition of a Company Step by Step:

This clause allows a company's promoters to progressively increase their shareholdings over a certain period of time.¹⁵The prime intention behind this ideology is to preserve the right of entrepreneurs from foreign investor groups. SEBI from time to time makes recent amendments the same for ensuring that the promoter's rights are protected, one such time, is that of the Covid-19 Pandemic. This practice also makes the hostile takeover exercise much more challenging, thus providing many more issues for the investor.¹⁶

The necessity behind the existence of the particular provision is an understandable one, yet the problems which arise from the same, are ones, upon which an expert analysis needs to be carried out.¹⁷Along with the same, the creeping acquisition method paves the way for the future wherein, promoters could also be controlled and become under the influence of foreign investors, thus the overall ideology behind the creation of the said provision would be eliminated.

International Comparative Understanding

In USA & UK, the percentage limitation for this is set at 1% & 3% respectively. In a just and fair corporate governance model, the Indian regime needs to eliminate this system and minimize the same, which is synonymous with the American and UK version.

Open Offer Size: A Minimize Requirement- Bone or Bane?

Understanding the offered size and legal issues behind the same

This is the minimum investment required for a shareholder to participate in mandatory offerings.¹⁸ The current pricing for this offer is 26% as of 2011. This bid size has been proposed to be 100% in accordance with SEBI TRAC 2010 rules to guarantee that all shareholders' interests are fully reflected and minority shareholders have exit choices.¹⁹ However, the existing ceiling of 26% in the statute was set in light of the likely financial challenges that takeover regimes in India would face.²⁰

¹⁵Id.

¹⁶Id.

¹⁷Id.

¹⁸Chauhan, S., 2021. Whether The Insolvency & Bankruptcy Code Has Achieved Its Objectives (Doctoral dissertation, School of Petroleum Management).

¹⁹Banks, I., Chapter III Financial Sector: Regulations and Developments.

²⁰Chatterjee, J., 2018. The Case for a Specialised Resolution Law for Financial Institutions. NLS Bus. L. Rev., p.43.

International Comparative Understanding

On a comparative understanding, this percentage in the US, UK, and Singapore revolves around 30%.²¹ A similar limitation needs to be placed in the Indian Jurisdiction as well so that relief can be provided to the bidders and the system be made at par with foreign jurisdictions.

Offer Price: Understanding the Price that is required to be paid:

Getting an Overall understanding

The offer price, according to the 2011 rules, is the acquirer's volume-weighted average price for previous 52 weeks.²² Otherwise, the highest volume-weighted average market price for the previous 26 weeks or 60 trading days is used to establish the price. Another critical element to consider is the high chance that the same pricing will be adjusted and easily manipulated through the execution of various activities.²³ This may result in high levels of speculative activity in the market price of troubled securities.²⁴

International Comparative Understanding

Regulation 8 of SEBI SAST 2011 is equivalent to the price being tied to a previous share price in the Australian, Singaporean, and British jurisdictions.²⁵ The prime anomaly in the Indian scenario is the linkage of the price between the announcement date and the period of 60 days. A situation of partial convergence is present in the offer price scenario.²⁶

²¹Id.

²²INDIA, I.I., 2019. NEW SOURCES OF DYNAMISM IN THE INDUSTRY. A Concise Handbook of the Indian Economy in the 21st Century, p.237.

²³Kumar, S. and Gupta, Y., 2020. Wings Clamoured Or Unhackneyed Flight: Insolvency & Phoenixing in India. Indian JL & Pub. Pol'y, 7, p.53.

²⁴Id.

²⁵Krishna, G.D. and Nag, B., 2021. Indian Corporate Bond Market. FROM OBSCURITY TO LIGHT, 56(20), p.67.

²⁶Id.

Variables	UK	Singapore	India	Australia	USA
Initial acquisition trigger for a mandatory offer	30%	30%	25%	20%	Only voluntary offers
Creeping acquisition	No provision	1% of the voting rights of the company over a period of six months Regulation is silent	5% over one financial year. Temporarily raised to 10% for the financial year 2020–2021	3% in every six months	No provision
Offer size	Balance shares		26%	All securities pertaining to a particular class or a specified proportion	5%
Offer price	The highest price paid by the bidder for shares in the 12 months prior to the offer period	The highest price paid for any shares carrying voting rights during the offer period and within the six months leading up to the beginning of the offer period	Highest of - the negotiated price that attracted the open offer - volume weighted average price paid by the acquirer during the preceding 52 weeks - highest price paid by the acquirer or PAC during the preceding 26 weeks - 60 trading days volume-weighted average market price	Higher than or equal to the maximum consideration provided by the bidder four months preceding the bid	No link to past prices paid by Bidder. All holders/best price rule

“Cross-Country Comparison of the Variables within the takeover code”

WAY AHEAD FOR THE GREAT INDIAN ELEPHANT: CONVERGENCE OR NOT?

The regulations concerning the takeover code take prime importance in cases concerning the protection of the investor and their assets in a company, alongside with protection of minority shareholders. Taking the case of rising economy, including India, the steps need to be carried out carefully and in a mixed manner. As per the analysis of the above-mentioned provisions of the SEBI SAST code, and the allied clause in other nations, the same showcases, multiple similarities, yet room for improvement is there as well, thus the situation of convergence comes into the picture.²⁷

Understanding the Reasoning for Convergence: Requirement for the Same:

India as a developing economy needs to fall in the legal line alongside the rest of the developed economic world. It is worth taking note that the same needs to be accomplished irrespective of the developmental stage of the economy. This will result in an increment in the support of the belief system of the Investor in the Indian Economy, alongside a stronger orientation of the shareholders and overall better management of the assets of companies around the nation.²⁸ This will also result in India, moving towards more improvised takeover regulatory mechanisms in the nation whilst covering the regulatory loopholes that may be in

²⁷Rangoonwala, N., The Legal Aspects of the Wilful Defaults in India: A Critical Study.

²⁸Gupta, V. and Nagpal, S., 2020. Case Analysis: "Ultra Tech Nathdwara Cement Ltd. (Formerly Known as Binani Cement Ltd.) vs. Union of India". Issue 5 Int'l JL Mgmt. & Human., 3, p.192.

existence in lieu of the development system.²⁹ Concludingly, if any such convergence were to occur the same would result in the furtherance of a uniform legal system around the world.³⁰

Understanding the expanse of the Convergence:

Given that judicial system in India has roots in both Common Law and the British legal systems, convergence is historically required.³¹ The current system also showcases a similarity to the same, such as the 25% offer price limitation, which is much closer in context to the common law countries rather than other nations, such as the USA. The similarity continues in the preparation of the offer price ones, under the umbrella of which, the Indian provisions are more aligned towards the British ones. Some stark difference is also present, which can be seen in the other legal situations, such as that of the creeping acquisition, wherein, the Indian situation is on a different side altogether, at 5%. Thus, it would be correct to state that the convergence is more or less, present within the Indian and the common law jurisdiction, and some minor changes need to be corrected to unite the system as a whole.³²

REQUIRED OR NOT: CONVERGENCE OF THE LEGAL SITUATION

According to the above research, it is correct to state that the development of convergence in Indian takeover norms is sluggish and limited. Foremost, it could be stated that the holding of power in the Indian regime is restricted to the promoters of the company³³ and thus a uniform takeover code, would become a complication to be created. Alongside the same, there are major differences in the ownership structure of the developed economies as well as that of India. Thus if convergence is taken just on the takeover code, the effects of the same shall be limited in its nature.

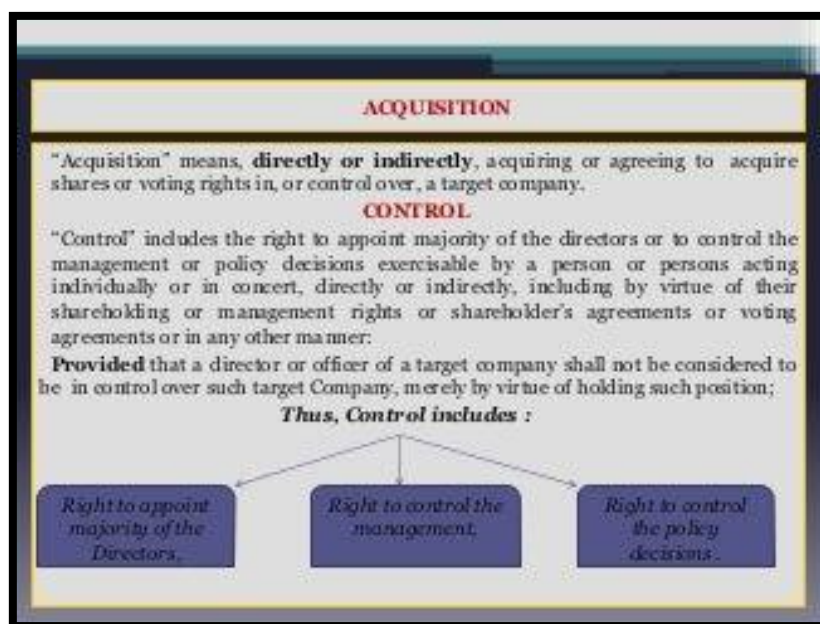
²⁹Id.

³⁰Id.

³¹Id.

³²Id.

³³Id.



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SUGGESTION & RECOMMENDATIONS: FOR A BETTER TAKEOVER REGIME IN INDIA

After a thorough and complete understanding and analysis, as carried out above, the following Suggestions & Recommendations are being suggested for effective improvement in the legal jurisprudence of M&A vis-à-vis the takeover regime in India. The Suggestions & Recommendations are as follows:

1. Specific legislation or specific regulations are to be created for this particular field of Mergers and Acquisitions law, which would encompass all the allied laws, regulations, and rules required.
2. Creation of a Uniform international legal system for the larger global economy and international takeover code regime.
3. Carrying out specific research and other in-depth research in this area of law, for ensuring that the government and the allied regulatory authority are aware of all the concerned perspectives associated.
4. Understanding the monumental failures in this particular field of law before and preparing and contemplating for the future based on that.

5. Understanding the loopholes in the present system and ensuring that the big issues and complexities are resolved are foremost.
6. Understanding the present issues from multiple perspectives, primarily that of the deeply involved stakeholders, such as the government, regulatory authority, and the individuals who will get directly affected by the rise of any issues in this arena of law.
7. Comparative analysis of the present takeover code, with that of the international system, suggests that multiple aspects are present and in consonance with the international system of the common law nations, thus an overall reform would be suggested. However, the non-common aspects, such as that of the overpowered promoters need to be looked upon as well.

CONCLUSION: SUMMARIZING THE ENTIRE ISSUE

In the 75 years of Independence that have passed now, the style of the Indian Economy has been as of a “PigWalk”³⁴, with minor improvements in the 1991 Liberalizations plan, the pigwalk has been modified into the “Buffalo Speed” along with “Elephant Size”, yet the huge scope of improvements remains therein.³⁵ A nation, such as India especially needs to understand the need for timely improvement in its legislation and regulation for the overall improvement of the larger national economy. The convergence of the Legal provisions is thus a necessity of the present time and must be effectively implemented as well by the Indian Bureaucrats.³⁶ Furthermore, the same would effectively result in an overall increase in the GDP accumulation of the nation.³⁷

³⁴mint, How India’s growth bubble fizzled out | Mint, mint (2019), (last visited Oct 29, 2022).

³⁵Tiwari, A., 2020. Cross Border Mergers in India in the IBC Era: A Legal Inquiry. Indian JL & Just., 11, p.286.

³⁶Id.

³⁷Id.



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The wealth of the shareholders is prioritized and as a direct consequence of the same, the M&A actions take place, which regularly results in a positive increment in the company value. In the longer takeover code, the company must thus, offer an open and first offer to the shareholders of the aimed enterprise, to warrant the effective utilization of the moment including the flexible reception for all the concerned shareholders, in all considerations. In the longer term, to survive and improvise upon the economic market situation of the nation, the authorities need to improvise and gradually change their legal provisions accordingly. Interestingly, the prime findings of the present study also results in the suggestion that the laws, in the nation, a large parcel of them, are not in a convergence mode as they ought to be.³⁸ Thus, on this particular aspect, future speculations, ought to be looked upon and the issue analyzed in greater depth.

³⁸Id.