



YourLawArticle

Open Access Law Journal

Editor-in-Chief – Prof. (Dr.) Amit Kashyap; Publisher – Reet Parihar

Comparative Analysis of Hostile Takeovers in India: Insights from The United Kingdom

Preksha Jayaswal

LL.M (1st Year Student), Amity University, Noida

Published 14 October 2024

Abstract

This Research Paper aims to explore the dynamics of hostile takeovers in India by comparing and contrasting the regulatory framework, strategies, outcomes, mechanisms and market conditions with the United Kingdom. By Analysing the differences and similarities, the study aims to provide insight into how legal and market environments in both countries affect the strategies and outcomes of hostile takeovers, potentially improving an understanding of implications for corporate governance and investor relations. Case studies and legal frameworks are applied to try to understand the implications.

Keywords: Globalisation of Companies, Hostile Takeovers, India, United Kingdom, Regulatory Framework, Companies Act 2013

INTRODUCTION

A hostile takeover refers to a situation where an acquiring firm seeks to acquire ownership rights of a target firm without the target firm's management consent or approval. It is carried out by direct approaches that are normally taken against shareholders, through tender offers or proxy battles, without the permission and consent of the board of directors of the target firm. The legal framework in India and the UK governs such specific kinds of transactions by seeking transparency and protecting shareholder rights.

BACKGROUND

Corporate Environment in India

It has undergone a sea change, commencing with economic liberalization at the beginning of the early 1990s. It marked the movement from a highly regulated economy to a market-oriented one, which in turn positively contributed to increased M&A activities.¹ There is also a change in the regulatory setup with the introduction of the Companies Act, 2013, and the SEBI Takeover Code for protecting the interest of the minority shareholders and increasing transparency. A hostile takeover was relatively rare in India because of cultural resistance against such practices, although they are increasingly favoured with increased foreign investments and better corporate governance.²

Corporate Environment in the UK

Hostile takeovers have a long history in the UK, and as of now, the country has a City Code on Takeovers and Mergers enacted in 1968 that addresses such occurrences. The UK market is considered to be relatively permissive, with an easy-going approach, which can spur control changes, and shareholders are allowed to drive policy decisions.³

SCOPE

1. Statutory and Regulatory Framework Analysis: The study will conduct a thorough examination of the existing legal and regulatory framework governing hostile takeovers in India. This includes an in-depth review of laws like the Companies Act, of 2013, SEBI Regulations, the Competition Act, of 2002, and the City Code on Takeovers and Mergers in the UK.
2. Mechanism of Hostile Takeovers: The various strategies employed in hostile takeovers, such as tender offers and proxy contests, and how these are regulated and executed in both jurisdictions.

¹ Economic liberalization in India: Kumar, R. & Reddy, C. S. (2016). *Mergers and Acquisitions*.

² Cultural resistance to hostile takeovers: Kumar, V. (2018). "Hostile Takeovers: A Comparative Study of India and the UK." *Journal of Business Law*.

³UK takeover permissiveness: Financial Times. "Hostile Takeovers in the UK: An Overview" (2022). www.ft.com.

3. Case Studies: Case analyses of important hostile takeover cases in both countries. Legal challenges facing the stakeholders' response and outcome to hostile takeover

OBJECTIVES:

1. Comparative Legal Analysis: An Examination to Compare the Legal Regimes of Hostile Takeovers in India and the UK for Aiming at Identifying Differences and Similarities in Regulatory Approaches.
2. Understand Market Dynamics: This analytical exercise will examine how legal conditions differentially affect corporate behaviour, the rights of shareholders, and market forces for corporate control in both countries.
3. Impact on Stakeholders: It further looks at how the effects of hostile takeovers on the overall determinations of various stakeholders such as shareholders, management, and regulatory bodies are affected.
4. Policy Recommendations: The UK experience should be used as a basis to propose legal and regulatory reforms in India that would improve hostile takeover practices in terms of effectiveness as well as fairness.

REGULATORY FRAMEWORK

In India:

- A. Companies Act, 2013: Important Provisions Contained in the Companies Act, 2013. A good number of provisions have been included in the Companies Act, 2013 to govern Indian corporate governance. Such provisions include mergers and acquisitions. The act lists the procedures for approvals, disclosures, and shareholders' rights during takeover offers. Certain sections relate to the holding of board meetings, disclosures to be made with its shareholders, and requisites for obtaining shareholder approval.⁴
- B. SEBI Regulations of Securities and Exchange Board of India, Takeover Code: The SEBI Takeover Code was introduced in the year 2011. According to the takeover code, any acquirer who crosses over the 25% threshold in an Indian company's equity shares must make a public offer to all other existing shareholders to buy their shares.⁵

IN UK:

- A. City Code on Takeovers and Mergers: The City Code, a set of rules that govern takeover bids in the UK, is administered by the Panel on Takeovers and Mergers. Established in

⁴ Companies Act, 2013. Government of India. www.indiacode.nic.in.

⁵ Securities and Exchange Board of India (SEBI) Takeover Regulations, 2011. www.sebi.gov.in.

1968, it regulates behaviour in any takeover to which the parties are or become subject as they conduct their affairs and ensures fairness throughout the entire process.⁶

COMPARATIVE ANALYSIS OF HOSTILE TAKEOVERS IN INDIA AND THE UNITED KINGDOM

ASPECT	INDIA	UNITED KINGDOM
<u>Regulatory Oversight</u>	The prescriptive framework of the Companies Act, 2013, and SEBI regulations govern M&A activities. SEBI plays a very important role in monitoring compliance and enforcement	City Code on Takeovers and Merger: It is based on the principles-based framework. It has a panel for takeovers acting as the arbiter in providing guidelines that must follow the Code with flexibility.
<u>Protection of Minority Shareholders</u>	Mandatory open offers are to be mandatorily made when acquirers breach or cross the 25% ownership threshold. Disclosures required in-depth so that the minority shareholders are kept well informed.	Principle of Equal Treatment Therefore, there is equity treatment of all shareholders and providing equal information. It is protection based on general principles and market dynamics rather than as definite compulsory actions.
<u>Procedural Requirements</u>	Complex and time-consuming, with the involvement of multiple steps in such forms as the revealing of fine information to regulatory bodies. Wide compliance requirements might delay the takeover process.	-A simplified and time-advantageous process allows quicker communication with shareholders. An offer of restructuring flexibility takes the market into an even more dynamic environment.

⁶ City Code on Takeovers and Mergers. Takeover Panel, United Kingdom. www.thetakeoverpanel.org.uk.

MECHANISM OF HOSTILE TAKEOVER

1. Tender Offers: A tender offer is when a firm publicly invites existing shareholders of the target company to tender their shares at a premium for acquisition by an acquirer.

- Indian Employment Offers in India are regulated by SEBI, which requires the level of disclosure to be quite comprehensive and transparent. Acquirers often have to confront the regulatory authorities of these target companies⁷ Who would sometimes actively try to convince the shareholders at large not to accept the offer.
- UK Employment: The UK also uses tender offers, but this operates within the City Code, which upholds the concepts of transparency and fairness. In this area, the acquirer can communicate with shareholders more effectively because there is a forgiving corporate culture towards such tactics.⁸

2. Proxy Battles: When the acquirer seeks to wrest control from the target by petitioning shareholders to vote in a new board of directors or approve other major changes.

- India Employment: Proxy contests are relatively not very common in India as Indians love consensus culture and relationship-driven business practices. But with time, as corporate governance⁹ Matures, and proxy contests are more gradually being adopted, particularly by institutional investors.
- UK Employment: proxy battles are more common in the UK, due to a competitive market environment that forces institutional investors to remain proactive in voting and board composition. It is an easier contest in the UK's regulatory framework, which permits vigorous shareholder activism.¹⁰

CASE STUDIES

Hostile Takeover in India: Tata Steel and Corus (2007)

The acquisition of Corus Group by Tata Steel was a landmark event in the Indian business scene. As a first step, Tata Steel initiated a hostile takeover battle with other players worldwide to acquire the British steelmaker Corus Group.

⁷ Tender offer regulations in India: Kumar, V. (2018). *Journal of Business Law*.

⁸ Tender offers in the UK: Financial Times. "Hostile Takeovers in the UK: An Overview" (2022)

⁹ Proxy battles in India: Kumar, V. (2018). *Journal of Business Law*.

¹⁰ Proxy battles in the UK: Financial Times. "Hostile Takeovers in the UK: An Overview" (2022).

Analysis:

1. **Strategies:** The Company Adopted Tata Steel adopted a multi-dimensional approach wherein it made a direct tender offer to all the shareholders of the company. In this regard, the company explained and described the benefits¹¹ that would arise from the acquisition, including synergies, enhanced global presence¹², and other competitive advantages.
2. **Regulators Issues:** While Tata Steel Company confronted extreme regulations of the SEBI Takeover Code, it also needed disclosure and open offer regulation compliance. In addition to this, the deal faced a lot of different stakeholders who were concerned about the security of jobs and the possibility of changes in management levels.
3. **The outcome** of this deal was a resounding takeover of Corus by Tata Steel at about \$12 billion, which made it one of the largest steel producers in the world. Acquisitions through this deal enabled Tata Steel to expand operations in Europe and expand products. However, the integration of the operations into the company and cultural differences were found to be challengingly and tough to manage.

Hostile Takeover in the UK: Kraft Foods and Cadbury (2010)

The best-known hostile takeover in recent UK history involved Kraft Foods and Cadbury. The actual takeover started on September 8, 2009, when Kraft Foods proposed that Cadbury accept a cash bid for this UK-based company's purchase.

Analysis:

1. **Approach Shown:** Kraft first came up with an unsolicited offer for Cadbury at \$10.2 billion. The strategy¹³ Used was to factor in the brand value and market position of Cadbury, but at the same time, indicate shareholder benefits from the merger. This would convince shareholders of Cadbury that it's a strategic fit and will give scope for expansion.
2. **Regulatory Hurdles:** The takeover was governed by the City Code on Takeovers and Mergers. The regulation required Kraft to follow rigid requirements of disclosure and timing regulations. The management of Cadbury rejected the takeover, which was claimed to undervalue the company and threatened its heritage.

¹¹ Tata Steel and Corus acquisition: Kumar, R. & Reddy, C. S. (2016). Mergers and Acquisitions.

¹² Acquisition cost and significance: Kumar, V. (2018). Journal of Business Law.

¹³ Kraft Foods bid for Cadbury: Financial Times. "Hostile Takeovers in the UK: An Overview" (2022).

3. Response from Target Company: The company released several defence mechanisms, including communications to its shareholders, in which it urged its shareholders to vote against the offer and come up with alternative strategic ideas. While responding to Kraft's offer, Kraft once again bid and finally acquired Cadbury for £11.5 billion.
4. Outcomes The buying spree enabled Kraft to significantly expand its portfolio across geographies and enter the confectionery market much more forcefully. It, however, did face protests from the loyal customer base of Cadbury and fears about job losses¹⁴ and brand value dilution. It also generated public debate on issues of corporate governance and shareholder rights in the UK.

MARKET CONDITIONS

In India:

Market Maturity: Indian markets are still in the developmental stages, with gradually changing structures of regulation thus increasing foreign direct investment in this country. Such an extent of market maturity holds both opportunities and challenges because companies grow to adapt themselves to the global competition of other countries.

Investor Behaviour: For instance, historically, domestic investors tend to prefer stable long-run investments and hence often showed hostility towards hostile takeovers¹⁵. However, recent patterns signify that M&A activities are no longer resisted as they once used to.

In UK:

Market Maturity: The UK market is mature as corporate activity is high and the regulatory framework is well-established. This maturity opens up a strong setting for hostile takeovers.

Investor Behaviour: The UK investors are especially the institutional investors who go aggressive with hostile takeovers as they believe it gives them a chance to increase shareholders' returns. It creates a more aggressive.¹⁶ The mindset among companies.

Impact on Stakeholders

¹⁴ Cadbury's management response: Financial Times. "Hostile Takeovers in the UK: An Overview" (2022).

¹⁵ Market maturity in India: Kumar, V. (2018). Journal of Business Law.

¹⁶ Market maturity in the UK: Financial Times. "Hostile Takeovers in the UK: An Overview" (2022).

For Companies: The Indian companies vulnerable to hostile takeovers should focus on strategic defences in the form of better corporate governance, and increased transparency.¹⁷, and solid relations with institutional investors to gain trust and invest.

For Investors: Foreign investors who are willing to enter into the Indian market should face not only the positive but also the negative sides. Growth is there, but cultural sensitivities and regulatory issues can also pose a challenge.¹⁸ To their investments.

Policy Recommendations

Greater shareholder protection in India can best be achieved by adopting more of a principles-based approach, such as that with the UK: that is, allowing for flexibility while maintaining fairness.¹⁹ and transparency. While other ways that can enhance the protection of shareholders include investor education, plus promotion of shareholder activism, it is only through proper corporate governance²⁰ that the fundamental force backing all these measures will be validated.

Critical Analysis

Strengths

1. **Comprehensive Regime Analysis:** The paper clearly articulates the differences in both countries' regimes-the UK is described as a principles-based jurisdiction and India as prescriptive. This allows for an explanation of how the settings of regulations shape the hostilities of hostile takeovers.
2. **Cultural Discourses:** A notable strength is in the analysis of cultural attitudes toward takeovers. It captures how cultural norms in India-the emphasis on relationships and stability differ from the UK, where there is acceptance of aggressive acquisition strategies. This adds depth to the understanding of market behaviour.
3. **Market Dynamics:** The paper puts these differences in takeover activity against the backdrop of market maturity and investor behaviour. Insights for interested stakeholders would reveal contrasts, such as how significantly different institutional investor roles seem between the UK and the much more cautious attitude in India.

Scope for Improvement

¹⁷ Corporate governance in India: Kumar, R. & Reddy, C. S. (2016). Mergers and Acquisitions.

¹⁸ Cultural sensitivities for foreign investors: Kumar, V. (2018). Journal of Business Law.

¹⁹ Principles-based approach for India: Kumar, R. & Reddy, C. S. (2016). Mergers and Acquisitions.

²⁰ Shareholder activism in India: Kumar, V. (2018). Journal of Business Law.

1. Depth of case study: While discussing case studies like Tata Steel and Corus, Kraft and Cadbury, more recent examples from both countries would enhance the study. This would place the analysis within a contemporary perspective about changing practices and strategies.
2. Quantitative Analysis: It may also avail a data-based takeover frequency, success rates, and financial results of both jurisdictions to present more strength to the arguments and provide some empirical underpinnings to the qualitative results.
3. Policy Recommendations: Even though the paper suggests the areas of regulatory improvements in India, concrete policy suggestions would make the recommendation more practical. The following are examples of specific measures that can be implemented to streamline processes and encourage a more facilitative environment for takeovers.
4. Future Trends: Lastly, the paper could give more detail on future trends about hostile takeovers, especially about globalization and technological advancement. A forward-looking look may be given at how these two factors may affect both markets.

Conclusion

Summary of Findings: This comparative study reflects on the marked cultural and market differences between India and the UK regarding the hostile takeover. India and Indian management still entertain traditional views and deeply ingrained relationship-oriented approaches to thinking, which are far from being acceptable in the UK. Even takeovers are treated as a part of competitive strategy in the UK.

Future Trends: Economic progress in India may alter this attitude towards permitting higher penetration of hostile takeovers. It could generate more dynamic conditions.²¹ for the market based on globalization and changes in investor attitudes.

Suggestions for Future Study: Future research might also explore how the growth in technology empowers M&A strategies, and the use of digital platforms in takeovers, as well as comparisons between takeover defences in emerging markets with those in mature markets

²¹ Future dynamics of hostile takeovers: Kumar, R. & Reddy, C. S. (2016). Mergers and Acquisitions.