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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **WHY HOSTILE TAKEOVERS SHOULD BE BANNED: ECONOMIC, ETHICAL AND SOCIETAL PERSPECTIVE**

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## **Abstract**

Hostile takeovers, a controversial event in corporate finance, have been widely debated for their economic, ethical, and societal consequences. This study makes the case that hostile takeovers should be outlawed because their negative effects outweigh any potential advantages. In terms of corporate sustainability, hostile takeovers threaten businesses' long-term survival, cause market instability, and deter long-term investment. They tend to exploit legal loopholes, violate minority shareholder rights, and destroy organizational culture, which is accompanied by the loss of jobs and psychological distress among employees. Moreover, such takeovers encourage speculative behavior in capital markets and burden companies with unsustainable debt through leveraged buyouts.

This paper will also explore the wider social and environmental implications of hostile takeovers, which range from consequences to local communities to disregard for sustainability goals. The case studies on successful and unsuccessful hostile takeovers empirically shows their adverse consequences. The comparative analysis of existing global regulatory frameworks identifies considerable gaps, while policy recommendations propose alternative scenarios: collaborative acquisition models, strengthened stakeholder governance, and tax reforms to discourage speculative gains.

This paper argues for the banning of hostile takeovers through comprehensive regulatory reforms, by urging a shift toward stakeholder-driven governance and long-term value creation in order to ensure economic stability, ethical corporate practices, and societal well-being.

## 1. Introduction

Hostile takeover usually takes place when the acquirer does not offer the target listed company the proposal. Rather the acquirer continues to acquire silently to have control over the target listed company. Unlike Friendly Takeover, this type of takeover takes place without consent between the management of both. Acquirer and target listed company<sup>1</sup>, but it has been a controversial topic in corporate governance. Hinged on the aggressive approach of mergers and acquisitions, hostile takeovers usually circumvent the management of a target company by exploiting legal loopholes. Although these takeovers are hailed as means of increasing shareholder value and guaranteeing market efficiency, they have elicited wide debates because of their economic, ethical, and societal implications.

Historically, the **Vodafone-Mannesmann takeover**<sup>2</sup> and **Kraft-Cadbury acquisition**<sup>3</sup> are examples of hostile takeovers that are disruptive. In addition to shareholders' short-term financial gains, these transactions often result in job losses and organizational instability; corporate culture slowly withers away. The pursuit of short-term financial returns at the expense of long-term innovation and sustainable growth is often destructive and creates waves of impacts on local communities and stakeholders well beyond the corporate realm.

This paper calls for prohibiting hostile takeovers because of their adverse economic effects, exploitation of gray areas in legal and ethical provisions, and the consequences to society. By exploring the economic disruptions caused by these transactions, the psychological and cultural toll on employees, and their encouragement of speculative market behavior, this research attempts to show that hostile takeovers cause more harm than benefit. The paper will support its case with case studies, comparative analysis of regulation, and views from other disciplines in calling for more viable models of acquisitions and strong corporate governance mechanisms for sustainable and fair corporate practices.

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<sup>1</sup>The Institute of Company Secretaries of India, *Securities Laws and Capital Markets* 180 (2021), available at [https://www.icsi.edu/media/webmodules/16112021\\_Final\\_SLCM.pdf](https://www.icsi.edu/media/webmodules/16112021_Final_SLCM.pdf). (last visited Jan. 3, 2025)

<sup>2</sup> Rachit Garg, Largest Merger in History: Vodafone-Mannesmann, iPleaders (May 4, 2021), <https://blog.ipleaders.in/largest-merger-history-vodafone-mannesmann/>.

<sup>3</sup> Shoronya Banerjee, Kraft Cadbury Takeover: Restructuring and Challenges, iPleaders (July 10, 2021), <https://blog.ipleaders.in/kraft-cadbury-takeover-restructuring-and-challenges/>.

## 2. Understanding Hostile Takeovers

A hostile takeover denotes an aggressive corporate buy-out of a business wherein the acquiring company tries to take over a target company without the consent of its board of directors or management. This section describes what hostile takeovers are, their mechanics, their historical development, and their motive in order to understand the broad role they play in contemporary business.

### Definition and Mechanisms:

A hostile takeover is a type of acquisition wherein an acquirer bypasses the target company's management and approaches the shareholders directly, or uses some other means of gaining control<sup>4</sup>.

Common mechanisms include:

1. **Tender Offers:** These are usually direct offers by the acquiring company to purchase the shares from the shareholders, normally at premiums above the prevailing market price to persuade them to sell without the approval of the management.<sup>5</sup>
2. **Proxy Fights:** This is where the acquirer persuades the shareholders to replace the board with new candidates friendly to a takeover.<sup>6</sup>
3. **Creeping Takeovers:** A creeping takeover is one in which the acquirer acquires shares in a gradual manner in the open market to take over control.<sup>7</sup>
4. **Leveraged Buyouts (LBOs):** The buyer depends on large loans to pay the purchase price, and the assets of the target company are usually used as collateral.<sup>8</sup>

These mechanisms circumvent the normal course of negotiations and thus always lead to tension between management and shareholders, often raising ethical and financial concerns.

### Historical Development

Hostile takeovers became a visible feature of the corporate restructuring wave in the United States in the 1980s. Names like T. Boone Pickens's Mesa Petroleum and Carl Icahn's

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<sup>4</sup>Patrick A. Gaughan, *Mergers, Acquisitions, and Corporate Restructuring* 103 (6th ed. 2017)..

<sup>5</sup> Corporate Finance Institute, Hostile Takeover (July 12, 2024), <https://corporatefinanceinstitute.com/resources/valuation/hostile-takeover/>.

<sup>6</sup> Corporate Finance Institute, Hostile Takeover (July 12, 2024), <https://corporatefinanceinstitute.com/resources/valuation/hostile-takeover/>.

<sup>7</sup>TIOmarkets, Creeping Tender Offer: Explained, TIOmarkets, [https://tiomarkets.com/article/creeping-tender-offer-](https://tiomarkets.com/article/creeping-tender-offer-guide) guide (last visited Jan. 9, 2025).

<sup>8</sup> J. Fred Weston, Mark L. Mitchell & Harold J. Mulherin, *Takeovers, Restructuring, and Corporate Governance* 145 (4th ed. Pearson, 2004).

investment campaigns became synonymous with hostile acquisition strategies. The growth of leveraged buyouts along with the shareholder primacy that went with it continued this trend, and hostile takeovers became an instrument commonly used by corporate raiders.

However, this trend soon started facing serious opposition as its economic and social consequences became more pronounced. In reaction, anti-takeover mechanisms were legislated such as "poison pill" strategy or staggered boards amongst others, to help firms fend off hostile takeovers<sup>9</sup>. After some time, hostile takeovers spread to Europe and later Asia, taking on specific dimensions depending on the local regulatory environments but their basic principles of sidestepping management and leveraging shareholder discontent remained the same.

### Common Motivations For Hostile Takeovers

The common motivations, as usually advanced in hostile takeovers, are centered on efficiency enhancement or the need to unlock shareholder value. Some of the main motives include:

1. **Undervalued Assets:** An acquirer usually targets those firms whose market value is perceived as below their intrinsic worth to restructure and bring out the hidden potential.<sup>10</sup>
2. **Management Inefficiency:** Hostile acquirers justify their intervention on the grounds of poor management and claim that they could improve the performance by infusing better leadership or strategic changes.<sup>11</sup>
3. **Market Power:** Some takeovers are motivated by the acquirer in order to eliminate competition or attain a dominant position in the market.
4. **Speculative Gains:** Some acquirers only initiate hostile takeovers for short-term gains, realised by asset stripping or selling off parts of the company or driving up stock prices and then getting out.<sup>12</sup>

Although these reasons apparently are valid, most of them do not consider the wider impact, such as job losses, cultural upheaval, and financial instability for the target company.

In a nutshell, hostile takeovers are a potent and controversial tool in corporate acquisition. The section sets the grounds for analyzing economic, ethical, and societal implications of hostile

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<sup>9</sup>Dale A. Oesterle, *Mergers and Acquisitions in a Nutshell* 67 (West Academic Publishing, 2021).

<sup>10</sup> Chris Pike et al., *Start-ups, Killer Acquisitions and Merger Control*, OECD 1 (2020), [https://www.oecd.org/content/dam/oecd/en/publications/reports/2020/05/start-ups-killer-acquisitions-and-merger-control\\_201583e4/dac52a99-en.pdf](https://www.oecd.org/content/dam/oecd/en/publications/reports/2020/05/start-ups-killer-acquisitions-and-merger-control_201583e4/dac52a99-en.pdf).

<sup>11</sup>Bryan Burrough & John Helyar, *Barbarians at the Gate: The Fall of RJR Nabisco* 120 (HarperBusiness, 1990).

<sup>12</sup> Harvard Business School Faculty & Research, *Battle for the Soul of Capitalism: Unilever and the Kraft Heinz Takeover Bid* (A), <https://www.hbs.edu/faculty/Pages/item.aspx?num=52733> (last visited Jan. 1, 2025)

takeovers by reviewing the mechanisms, historical development of hostile takeovers, and the motives behind them. The basis of hostile takeovers needs to be fully comprehended if their compatibility with sustainable business operations and ethics is to be weighed. Although these reasons apparently are valid, most of them do not consider the wider impact, such as job losses, cultural upheaval, and financial instability for the target company.

### 3. Arguments Concerning Hostile Takeovers

Hostile takeovers, frequently lauded as means of enforcing corporate discipline, are fraught with complexities that render them a contentious method for corporate acquisitions<sup>13</sup>. Although advocates contend that these takeovers improve efficiency and yield benefits for shareholders, the actual implications of hostile takeovers uncover numerous detrimental effects that extend across economic, ethical, and societal spheres. This section explains why hostile takeovers should be banned, given their adverse effects on market stability, patterns of corporate governance, labor relations, and society as a whole.<sup>14</sup>

#### Economic Disturbances and Market Volatility

Hostile takeovers pose a challenge to market stability<sup>15</sup>. The takeover tends to create temporary disturbances that can be consistent for long. The process of a hostile takeover generally involves significant financial tactics, like leveraged buyouts, wherein the buying company uses borrowed money to complete the acquisition<sup>16</sup>. This can place a significant debt burden on the acquired company that may threaten its financial viability. A shock effect results when ownership changes abruptly and dramatically, leading to lost investor confidence and a steady decline in stock values.

The speculative character of hostile takeovers creates market instability. In fact, whenever hostile takeover attempts are announced, the stocks of the acquiring and target companies themselves typically make relative price movements in response. Those prices increase speculative investment, since speculative investors are most motivated by short-term gains rather than the long run viability of the firms being targeted<sup>17</sup>. Such speculation works to disrupt

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<sup>13</sup> Michael C. Jensen, *Takeovers: Their Causes and Consequences*, 2 J. Econ. Persp. 21, 21–48 (1988).

<sup>14</sup> Andrei Shleifer & Lawrence H. Summers, *Breach of Trust in Hostile Takeovers*, in *Corporate Takeovers: Causes and Consequences* 33, 33–68 (Alan J. Auerbach ed., Univ. of Chicago Press 1988).

<sup>15</sup> Randall Morck, Andrei Shleifer & Robert W. Vishny, *Do Managerial Objectives Drive Bad Acquisitions?*, 45 J. Fin. 31, 31–48 (1990).

<sup>16</sup> Steven N. Kaplan & Jeremy C. Stein, *The Evolution of Buyout Pricing and Financial Structure in the 1980s*, 108 Q.J. Econ. 313, 313–357 (1993).

<sup>17</sup> Andrei Shleifer & Robert Vishny, *Stock Market Driven Acquisitions*, 70 J. Fin. Econ. 295, 295–311 (2003).

the solid foundation underlying market stability and long-term investment, shifting resources out of productive economic endeavors.

Hostile takeovers are more about financial restructuring than operational efficiency. The acquirers usually strip the target firm of valuable assets in order to ensure immediate returns. The firm loses its competitiveness in the market place, and it will not benefit in the long run. It negates the prospects of sustainable value creation that is important for the development and stability of the organization and the entire economy.

### Exploiting Shareholders; Inequitable Treatment of the Stakeholders

One of the major concerns associated with hostile takeovers is the exploitation of shareholders. While majority shareholders are likely to benefit from increased offers made by the acquiring entity, minority shareholders are often left in a disadvantageous position<sup>18</sup>. Minority shareholders may find themselves holding worthless shares or face reduced voting rights following a takeover because the acquirer consolidates power in the firm. This unequal outcome underscores the inadequacies of the process as it fails to protect the interests of all shareholders fairly.

In addition to the shareholders, hostile takeovers have ignored the very broad category of stakeholders that contribute to the operational dynamics of running the corporation such as employees, customers, suppliers, and local communities. In focusing on wealth creation for shareholders, hostile takeover neglects other obligations that the corporation is obligated to meet its stakeholders. Therefore, hostile takeover dismantles the social contract between companies and communities<sup>19</sup> that are expected to benefit from the services they provide during their operations.

### Ethical aspects of corporate governance

The ethical dimensions of hostile takeovers are quite disturbing. Hostile acquisitions are characterized by aggressive and, at times, coercive tactics that bypass the authority of the target company's management<sup>20</sup>. Proxy fights, for example, involve the acquirer persuading shareholders to replace the company's board of directors with candidates favorable to the

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<sup>18</sup> Lucian Arye Bebchuk, *Efficient and Inefficient Sales of Corporate Control*, 109 Q.J. Econ. 957, 957–993 (1994).

<sup>19</sup> Gerald F. Davis & Suzanne K. Stout, *Organization Theory and the Market for Corporate Control*, 37 Admin. Sci. Q. 605, 605–633 (1992).

<sup>20</sup> John C. Coffee, *Regulating the Market for Corporate Control: A Critical Assessment of the Tender Offer's Role in Corporate Governance*, 84 Colum. L. Rev. 1145, 1145–1296 (1984).

takeover. Although legal, such tactics often exploit shareholder vulnerabilities and undermine the integrity of corporate governance.

Hostile takeovers create a short-term culture whereby short-term financial gains are valued over long-term sustainability and ethical operations<sup>21</sup>. The pressure to achieve quick results often forces acquirers to adopt extreme measures such as demotions of employees, asset disposal or reductions in research and development expenses. This hurts the employees and other stakeholders besides being a violation of the moral responsibility of firms to operate responsibly and sustainably.

In addition, the secretive nature and lack of openness that normally pervade hostile offers for takeover raises serious questions on accountability. The underhand tactics of acquiring firms, where the latter are able to buy shares in the target firm at a gradual pace, almost clandestinely, will often undermine stakeholders' confidence and engender mystery and mistrust<sup>22</sup>.

#### Effects on Employees and Corporate Culture

Employees also bear a human cost for takeovers which is usually glossed over in the literature. Such mergers typically subject the personnel of the acquired organization to the immediate negative effects because acquisition organizations usually impose cutbacks measures to enhance their bottom lines. Downsizing, lay-offs, and organizational restructure have been among the regular results<sup>23</sup>, leading to uncertainty regarding their employment and economic security of the employees. The psychological shock inflicted on the employees, who feel less valued and disposable, intensifies the already formidable challenge posed by the labor force in a hostile takeover situation.

In addition to the loss that the company's specific employees of the acquired organization face, the company culture of the acquired organization usually sustains irreparable damage<sup>24</sup>. Hostile acquisitions typically lead to a clash in the corporate philosophies, goals, and work ethics between the acquiring and target corporations. The forced marriage of two different corporate cultures creates resentment and resistance to actually carry out the strategic objectives of the acquire. This cultural clash not only affects the operational effectiveness but also negatively

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<sup>21</sup> Jeremy C. Stein, *Efficient Capital Markets, Inefficient Firms: A Model of Myopic Corporate Behavior*, 104 Q.J. Econ. 655, 655–669 (1989).

<sup>22</sup> Lucian Arye Bebchuk & Jesse M. Fried, *Pay Without Performance: The Unfulfilled Promise of Executive Compensation* 1–50 (Harvard Univ. Press, 2004).

<sup>23</sup> Wayne F. Cascio, *Downsizing: What Do We Know? What Have We Learned?*, 7 Acad. Mgmt. Persp. 95, 95–104 (1993).

<sup>24</sup> Susan Cartwright & Cary L. Cooper, *Mergers and Acquisitions: The Human Factor* 1–256 (Butterworth-Heinemann 1992)

impacts employee morale and productivity.

The hostile takeover phenomenon often deters innovation and threatens long-term investments, particularly in industries where continuous research and development are necessary to succeed. The pressure to generate short-term financial returns forces acquirers to put aside long-term projects, labeling them as unprofitable or non-essential<sup>25</sup>. This short-sighted approach is particularly devastating for industries like technology, pharmaceuticals, and renewable energy, where innovation is the only way to move forward and stay ahead.

This phenomenon is vividly seen in the case of Kraft Heinz's<sup>26</sup> hostile attempt to acquire Unilever in 2017. Sustainability and long-term value generation have been the emphasis of Unilever, unlike Kraft Heinz, which was focusing on cost-cutting and operational efficiency. If the deal had gone through, the innovative efforts that Unilever has undertaken could have come under severe risk, thus depriving the market of much-needed innovations. Such cases highlight the need to protect companies from the short-term gains of hostile bidders.

#### Social and Environmental Consequences

The social impact of hostile takeovers extends beyond the corporate governance arena. Communities, more often than not, suffer losses when such takeovers occur especially when the business acquired provides much-needed employment opportunities and economic security. Closings of operations, downsizing, and other activities that would reduce corporate citizenship activities disrupt the local economies<sup>27</sup> forcing communities to grapple with increasing levels of unemployment as well as lowered economic participation.

Hostile takeovers also throw up a contradiction to the increasing drive towards environmental sustainability. Acquirers guided by the profit maximization model may give a reduced role to activities and programs that provide ecological responsibility and sustainability as unnecessary cost items<sup>28</sup>. This short-term thinking hurts global efforts to deal with environmental challenges and calls for companies to adopt sustainable business practices.

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<sup>25</sup> Paul M. Healy, Krishna G. Palepu & Richard S. Ruback, *Does Corporate Performance Improve after Mergers?*, 31 J. Fin. Econ. 135, 135–175 (1992).

<sup>26</sup> Julie Jargon, Nicole Friedman & Annie Gasparro, *Unilever Bid Follows Familiar Playbook for Warren Buffett and 3G*, Wall St. J. (Feb. 17, 2017), <https://www.wsj.com/articles/unilever-bid-follows-familiar-playbook-for-warren-buffett-and-3g-1487371196>.

<sup>27</sup> R. Edward Freeman, *Strategic Management: A Stakeholder Approach* 1–275 (Cambridge Univ. Press, 1984).

<sup>28</sup> John Elkington, *Cannibals with Forks: The Triple Bottom Line of 21st Century Business* 1–402 (Capstone Publ'g, 1997).

### Market Speculation and Systemic Risks

Another consequence of hostile takeovers is that they facilitate speculative activities within capital markets. The announcement of a takeover bid often results in a rise in the stock price, attracting short-term investors seeking to benefit from the price changes created by the takeover bid. This speculation benefits a few individuals but destabilizes the market and distracts from the real purpose of investing in companies<sup>29</sup>, which is to foster growth and stability.

The risk issues posed by hostile takeovers are very serious systemic ones. A company with a huge debt burden after a leveraged buyout is more likely and vulnerable to financial collapse or even bankruptcy<sup>30</sup>. The risk involved does not only threaten the target company but has other implications on the creditor, investors, and, therefore, the entire economy as well.

## 4. Case Study

### Vodafone-Mannesmann (2000)

In the year 2000, Vodafone completed the largest hostile takeover in history when it acquired Mannesmann AG, a German telecommunications company, in a deal valued at \$183 billion<sup>31</sup>. The takeover was driven by Vodafone's ambition to dominate the European telecom market and expand its global footprint. Yet, there were some significant challenges associated with the acquisition. Initially, Vodafone's shares fell 20% in value due to the debt burden and shareholder equity dilution, while Mannesmann shares rose 120% in value to reflect the high premium that Vodafone paid. The deal was largely equity swap-financed, although Vodafone still took on substantial liabilities, adding €6.4 billion to its debt burden. Subsequent restructuring led to an estimated 10,000 job losses as Mannesmann's German operations were merged with Vodafone's UK operations. But over and above the financial and operational impacts, the acquisition made a cultural impact. Mannesmann was a symbol of German corporate success, and thus the object of public outcry over foreign influence in domestic industries. Critics noted that the takeover had placed short-term shareholder gains ahead of employees and local economic stability, highlighting the ethical and societal dilemmas of such

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<sup>29</sup> Eugene F. Fama, *Efficient Capital Markets: A Review of Theory and Empirical Work*, 25 J. Fin. 383, 383–417 (1970).

<sup>30</sup> Michael C. Jensen, *The Eclipse of the Public Corporation*, 67 Harv. Bus. Rev. 61, 61–74 (1989).

<sup>31</sup> Arnab, M&A Report: An Inside Look Into the Acquisition of Mannesmann by Vodafone in 2000, Quorica Cap. (Apr. 19, 2024), <https://quoricacapital.com/ma-report-an-inside-look-into-the-acquisition-of-mannesmann-by-vodafone-in-2000/>.

deals.<sup>32</sup>

### **Kraft-Cadbury (2010)**

A decade later, Kraft Foods launched a hostile takeover of Cadbury, a UK-based confectionery leader, in a \$19.6 billion deal<sup>33</sup>. Kraft offered a 14% premium on Cadbury's stock, which caused Cadbury's share prices to soar by 40% fueled by market speculation, while Kraft's shares fell by 4% amid investor worries over the \$7 billion debt the company took on to finance the deal. The deal pushed Kraft's debt-to-equity ratio up to 55%, and some worried about Kraft's financial stability. In addition, thousands of workers lost their jobs, with the announced closure of Cadbury's historic Somerdale factory in the UK, costing 400 jobs despite previous promises that the factory would stay open. All told, close to 7,000 employees were affected as Kraft proceeded with a series of redundancies and plant closures across the combined entity. Kraft destroyed Cadbury's history as a socially conscious company and especially its reputation for looking after workers. Kraft faced further criticism for misleading stakeholders about the number of jobs it would retain and future investments while cutting back on research and development spending to focus on cost efficiencies.<sup>34</sup>

A comparison of the two cases highlights several key impacts. Vodafone-Mannesmann, valued at \$183 billion, saw Vodafone's shares decline by 20% and Mannesmann's increase by 120%, while Kraft-Cadbury's \$19.6 billion deal led to a 4% drop in Kraft shares and a 40% spike in Cadbury shares. The debt burdens were significant in both cases, with Vodafone's debt increasing by €6.4 billion and Kraft's debt-to-equity ratio surging to 55%. Job losses were substantial 10,000 for Vodafone-Mannesmann and approximately 7,400 for Kraft-Cadbury. Both deals also had profound cultural implications, with Mannesmann's takeover provoking public outcry in Germany and Cadbury losing its reputation for ethical practices.

These case studies underscore the broader consequences of hostile takeovers. Economically, the significant debt burdens destabilized the acquirers and hampered their long-term financial health. Ethically, Mannesmann's national pride and Cadbury's socially responsible legacy

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<sup>32</sup> European Foundation for the Improvement of Living and Working Conditions, Mannesmann Agrees on Friendly Takeover by Vodafone, <https://www.eurofound.europa.eu/en/resources/article/2000/mannesmann-agrees-friendly-takeover-vodafone>

<sup>33</sup> ICMR India, Kraft's Takeover of Cadbury - Case Study, <https://www.icmrindia.org/casestudies/catalogue/Business%20Strategy/BSTR388.htm> (last visited Jan. 4, 2025).

<sup>34</sup> Ben Morris, The Cadbury Deal: How It Changed Takeovers, BBC News (May 2, 2014), <https://www.bbc.com/news/business-27258143>.

were undermined. Stakeholders bore the brunt of these deals, with widespread job losses and cultural disruptions creating lasting dissatisfaction. Finally, the speculative stock movements and short-term gains destabilized capital markets, raising concerns about the long-term value of such acquisitions. Together, these examples provide compelling evidence of the far-reaching consequences of hostile takeovers, both financially and socially. Let me know if you'd like to delve further into any specific aspect of these cases.

## 5. Regulatory Framework and Comparative Analysis

The regulation of hostile takeover varies significantly between jurisdictions, signifying different emphases and approaches toward reconciliation of the twin interests of corporate autonomy and shareholders' rights. This section articulates the comparative landscape of the regulation of hostile takeovers in the United States, the European Union, and India, and draws attention to the gaps in the current frameworks that demand reformulation with a view to rectifying the negative consequences of such takeovers.

### Overview of Global Regulations

Hostile takeovers are governed by a thicket of legal provisions and corporate governance norms. Though laws govern rules in terms of shareholder protection, transparency, and procedural safeguards, they fall woefully short of ameliorating the ethical, societal, and economic implications surrounding such transactions. Laws on hostile takeover often emphasize issues that deal with due process, disclosure, timelines, and procedural safeguards designed to protect shareholder interest, though such laws vary in their ability to prevent abusive practices.

Most jurisdictions require the acquirers to disclose their intentions and detailed information regarding their takeover bids. For instance, in the United States, the Securities Exchange Act of 1934 requires that an acquirer file a Schedule 13D once it acquires more than 5% of a company's shares<sup>35</sup>. The European Union's Directive 2004/25/EC on Takeover Bids also guides how to protect minority shareholders and treat them fairly in acquisitions.<sup>36</sup>

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<sup>35</sup> Patrick A. Gaughan, *Mergers, Acquisitions, and Corporate Restructuring* 205 (6th ed. 2017).

<sup>36</sup> Aline Hoffmann, *Takeovers With or Without Worker Voice: Workers' Rights Under the EU Takeover Bids Directive*, in *Workers' Rights in Company Law* (Jan Cremers & Sigurt Vitols eds., European Trade Union Institute 2016), <https://www.etui.org/sites/default/files/16-takeover%20bids-web%20version.pdf>.

### Comparative Analysis: USA, EU, and India

The *United States* has one of the most developed regulatory frameworks for hostile takeovers. Delaware corporate law, in particular, plays a pivotal role in shaping takeover defenses. Companies in the U.S. often adopt anti-takeover mechanisms such as “poison pills” and staggered boards to deter hostile bids.<sup>37</sup> These defenses empower boards to reject takeovers they deem detrimental to long-term value but are criticized for potentially undermining shareholder democracy.

The *European Union* focuses on shareholder protection and market transparency. The Takeover Directive promotes an open market for corporate control by limiting defensive measures that may hinder takeovers.<sup>38</sup> However, it also mandates takeover bids to respect the principles of transparency and equal treatment of shareholders, providing safeguards against coercive tactics.

*India's* regulatory framework is relatively stringent and is governed by the SEBI Takeover Code. The Takeover Code mandates open offers by an acquirer where its holdings in excess of a specific percentage (at present 25 percent) result in its control<sup>39</sup>. In doing so, minority shareholders will not be left stranded, having no means to get out at a reasonable price. Nonetheless, the Indian regime leaves largely unsaid the moral and social concerns in connection with hostile takeovers; its main preoccupation has been the procedural measures for their containment.

### Gaps in Existing Frameworks

Despite the existence of regulations, huge gaps remain. The current frameworks often focus on shareholder rights and market efficiency over the interests of employees, communities, and other stakeholders. For example, while the U.S. system allows for robust defenses, it does little to mitigate the broader societal impacts of hostile takeovers. Similarly, the pro-market approach of the EU often overlooks the long-term consequences for corporate sustainability and innovation.

The lack of clear provisions relating to the ethical and social aspects of hostile takeovers in

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<sup>37</sup> Harvard Law School Forum on Corporate Governance, The Harvard Law School Forum on Corporate Governance, <https://corpgov.law.harvard.edu/> (last visited Jan. 8, 2025).

<sup>38</sup> Aline Hoffmann, Takeovers With or Without Worker Voice: Workers' Rights Under the EU Takeover Bids Directive, in *Workers' Rights in Company Law* (Jan Cremers & Sigurt Vitols eds., European Trade Union Institute 2016), <https://www.etui.org/sites/default/files/16-takeover%20bids-web%20version.pdf>.

<sup>39</sup> Securities and Exchange Board of India, Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (last amended May 17, 2024), <https://www.sebi.gov.in/legal/regulations/may-2024/securities-and-exchange-board-of-india-substantial-acquisition-of-shares-and-takeovers-regulations-2011-last-amended-on-may-17-2024-69218.html>.

India severely restricts the scope of the framework to safeguard the interests of broader stakeholders. While the SEBI Takeover Code is very elaborate in terms of procedural fairness, it lacks mechanisms to analyze the long-term consequences of such acquisitions.

## **Conclusion**

Comparative analysis of regulatory frameworks worldwide brings out a significant need for reform to tackle the multifaceted challenges hostile takeovers present to the capital markets. While the current set of rules and regulations does indeed focus on procedural fairness and protection of the shareholders, they hardly take into account broader ethical, societal, and economic considerations. Strengthening these frameworks with stakeholder perspectives, sustainability considerations, and more stringent anti-abuse measures will ensure that control mechanisms in corporate governance are responsible and long-term value-creating.

## **6. Policy Recommendations**

Hostile takeovers have wide-ranging economic, ethical, and societal implications that require robust policy responses. The current regulatory frameworks, effective in protecting some shareholder interests, often fail to consider the more general implications of such acquisitions for stakeholders, corporate governance, and long-term sustainability. This section provides key policy recommendations to address the gaps in existing frameworks and foster a more balanced approach to corporate control.

### **Closing Loopholes in Takeover Regulations**

One of the top priorities in hostile takeover regulation is to address the legal loopholes that allow acquirers to exploit weaknesses in corporate governance systems. Regulations must be tightened to ensure greater transparency and accountability in the takeover process. For example, creeping acquisitions, whereby acquirers gradually accumulate shares to gain control without triggering regulatory thresholds, should be closely monitored and restricted. Legislators should require disclosure of all substantial share acquisitions well before they reach control levels.

Additionally, anti-takeover mechanisms like “poison pills” and staggered boards, while useful in protecting companies from hostile bids, should be regulated to ensure they are not abused to entrench poor management. Policymakers must strike a balance between granting boards the power to defend against coercive takeovers and protecting shareholder democracy.

### Mandating Stakeholder Consultation

One of the most significant errors in the existing takeover rules is that they have placed the shareholders in the center, overlooking the existence of employees, creditors, customers, and local communities as integral stakeholders. The lawmakers need to ensure that stakeholder involvement becomes an integral part of hostile takeovers. Before launching a takeover bid, the acquirer must submit a detailed plan stating the likely impact on employees, suppliers, and communities along with the mitigation strategies if the impact proves to be adverse.

Regulators should also establish an independent review board to assess the social and economic impacts of hostile takeovers. This board would act as a neutral arbiter to ensure that the interests of all stakeholders are considered and balanced against the financial objectives of the takeover.

### Corporate Governance Frameworks Strengthened

More effective corporate governance practices would have helped to alleviate the threat of hostile takeovers. Policymaking has to ensure that companies have governance structures that promote those underlying values of long-term value creation and also ensure stakeholder inclusivity. For example, it can demand that corporations' boards have stakeholders such as employees or independent advisors whose presence will bring diversified viewpoints regarding the firm's corporate strategy.

Companies should also be made to prepare and disclose long-term strategic plans with all relevant mergers and acquisitions. This would enhance the clarity of a company's direction to its shareholders and would reduce the possibility of opportunistic takeovers.

### Sustainable and Long-Term Investments Must be Encouraged

Hostile takeovers are more driven by short-term financial benefits, rather than any long-term focus. Governments may need to employ policies that stimulate sustainable and long-term investments. For example, acquirers with a demonstrated willingness to preserve employment, invest in innovation, or maintain environmentally responsible practices post-takeover would be offered favorable tax benefits.

In addition, sustainability assessments should be incorporated into the takeover approval process. Therefore, the acquisition proposed will have to be scrutinized for its effects on the environment and society in order not to compromise long-term corporate responsibility through the quest for short-term profitability.

### Increase Transparency in the Takeover Process

The main challenge to regulation of hostile takeovers is the lack of transparency. Acquirers often hide behind complex financial structures and tactics and shroud their true intentions, which makes it very difficult for regulators and stakeholders to have an objective appreciation of the real consequences of the takeover. In that regard, there should be greater disclosure by the acquirers, especially information on the source of funding for the takeover, strategic objectives post takeover, and plans post takeover.

Moreover, the acquirers should be forced to declare any previous corporate governance or ethical standards breaches. This would make the shareholders and regulators more aware when making decisions about the legitimacy and potential risks of the takeover.

### Encouraging Collaborative Acquisition Models

Instead of banning hostile takeovers, the authorities should support friendly acquisition models where the acquiring firm and the management of the target company can negotiate and come to an agreement. This will minimize the hostile nature of hostile bids and make way for mutually acceptable solutions in favor of all parties involved. For example, the government can offer mediation services that help the acquirer and the board of the target company to negotiate. In addition, policymakers should establish guidelines for “friendly takeovers” that outline best practices for ensuring transparency, fairness, and inclusivity during the acquisition process.

These guidelines would serve as a framework for balancing the objectives of both the acquirer and the target company while minimizing potential conflicts.

### Conclusion

Effective regulation of hostile takeovers requires a holistic approach that goes beyond protecting shareholder interests. Some of the policy recommendations include closing legal loopholes, stakeholder consultation mandate, strengthening corporate governance, promoting sustainable investments, increasing transparency, and collaborative acquisition models. All these policy recommendations aim to achieve a balance between market efficiency and the broader interests of stakeholders to ensure that mechanisms of corporate control are aligned with the principles of fairness, sustainability, and long-term value creation.

## 7. Conclusion

Hostile takeovers, often held up as instruments of efficiency enhancement and shareholder value, carry serious risks that far extend the metrics of finance. They throw markets into chaos, they exploit shareholders, they harm employees, and destabilize communities. This paper explored how the economic, ethical, and social implications of hostile takeovers outweigh benefits that may accrue. Prioritizing short-term financial gains undermines innovation, sustainability, and the long-term stability of the corporate sector, in the main.

The frameworks of the United States, the European Union, and India are comprehensive in many areas but have failed to focus on the general implications of hostile takeovers. Stakeholder-focused safeguards and an emphasis on long-term value creation are critical gaps within these frameworks.

These risks require corporate governance and takeover regulations to be overhauled completely. Strategic steps to achieve these goals include strengthening the protection accorded to stakeholders, greater transparency, and sustainable business practices. Acquisitions must be collaborative rather than hostile bids to balance market efficiency with corporate responsibility. This would ensure that corporate control mechanisms positively support economic growth, social stability, and, above all, ethical business practice.

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