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THE NEW INVISIBLE HAND: SHAREHOLDER ACTIVISM AND REGULATORY CONVERGENCE IN INDIAN M&A

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ABSTRACT - Shareholder activism is quietly transforming India's mergers and acquisitions landscape. Though not formally recognised in law, institutional investors and proxy advisors are increasingly shaping deal outcomes, often acting as an informal counterweight to promoter dominance. Recent cases such as *Zee–Sony* and *Fortis Healthcare* highlight how investor dissent and regulatory scrutiny can alter or delay major transactions. Drawing parallels with global markets, this article argues that activism in India has evolved into a stewardship driven movement rather than a hostile one. It concludes that India's regulatory framework must adapt by strengthening disclosure norms, clarifying stewardship duties, and refining procedural safeguards to channel shareholder influence toward transparency and constructive engagement.

Key words : Corporate Governance | Shareholder Activism | Institutional Investors | SEBI Regulations| Hostile Takeovers | Mergers and Acquisitions

Shareholder activism has reshaped mergers and acquisitions in many markets around the world. It is basically the use of ownership stakes to influence corporate decision making. In mature markets like the USA and the UK, it has been regularly noted how some Institutional investors and proxy advisors influence managerial choices on deal pricing, structure and composition of boards. Indian capital markets are showing similar signs. Public investors, large mutual funds, big wealth management institutions and proxy advisors can and often do alter the course of high stakes transactions by withholding approval for schemes, opposing fundraising that dilutes public shareholdings, or pressing for better governance safeguards during restructuring. This article argues that while the Indian law doesn't yet recognize activist shareholders as a formal part of the takeover architecture, shareholder activism is becoming a powerful and informal constraint on promoters and managers in M&A transactions. This trend has been demonstrated

by the growth of stewardship, SEBI's regulations concerning proxy advisors, and various high profile controversies in the recent years. India must respond by taking appropriate measures to reduce the risk of predatory activism.

Hostile Takeovers and Shareholder Activism in India - India's corporate structure is resistant to hostile takeovers due to promoter heavy ownership. Nevertheless, shareholder activism functions as an indirect avenue for contesting management control, often achieving outcomes comparable to takeovers without triggering an open offer obligation. Hostile takeovers are governed by the SEBI (SAST) Regulations, 2011 which ensure that any acquirer gaining control of a listed company does so transparently and with exit options for minority shareholders[1]. Yet, because control is defined broadly in Regulation 2(1)(e), including rights to appoint directors or influence policy decisions, activist investors often operate just below the acquisition threshold. They leverage reputational and voting power rather than ownership concentration. The case of Life Insurance Corp. of India v. Escorts Ltd., (1986)[2], is important in this context. The Supreme Court held that shareholders are entitled to exercise their voting rights in any manner they see fit, as long as it complies with the law. This principle now underpins activist voting strategies, where institutional investors coordinate to oppose or influence resolutions relating to mergers, remuneration, or board appointments.

A glance at the recent cases – Some cases from years 2020-2025 are being discussed here to understand the current dynamics. The Zee Entertainment–Sony transaction is one such example. The composite scheme proposed to combine Zee Entertainment Enterprises Ltd. and Culver Max Entertainment (formerly Sony Pictures Networks India) generated multiple objections before the National Company Law Tribunal. The subsequent appellate intervention by the National Company Law Appellate Tribunal and further procedural contests delayed and complicated the transaction. The NCLT (Mumbai Bench) initially approved the scheme in August 2023, after rejecting various objections, but the process spawned multiple appeals and interlocutory proceedings. Later developments including shareholders blocking certain fundraising measures and the failure of preferential warrant issuance proposals in 2025 show us that shareholder disapproval can be decisive even after court or tribunal rulings. The Fortis Healthcare Ltd. Vs IHH Healthcare Bhd., (2019)[3] is another example. The Supreme Court's

[1] Regulation 3,4, The Substantial Acquisition of Shares and Takeovers Regulations, 2011
[2] *Life Insurance Corp. of India v. Escorts Ltd. & others*, (1986) 1 SCC 264
[3] *Fortis Healthcare Ltd. v. IHH Healthcare Bhd.*, (2022)

repeated interlocutory orders and eventual forensic and regulatory scrutiny over the sale process show how multi-vector resistance (public investors, creditors, regulatory bodies) can stall takeover efforts. Fortis is instructive not only because of the legal complexity, but because a matrix of stakeholders exerted competing pressures. Post-2020, the Religare Enterprises Ltd. v. Burman Family dispute (Delhi High Court, 2024)[4] further illustrated the rising trend of activist led legal challenges to promoter dominance, where minority shareholders resisted a promoter group's alleged attempt to consolidate control through board appointments. In addition, the Yes Bank Ltd. reconstruction (2023) and Paytm Payments Bank Ltd. governance crisis (2024) reflected how regulatory activism initiated by SEBI and the Reserve Bank of India aligns with shareholder expectations for accountability. The convergence of shareholder vigilance and regulatory scrutiny suggests a slow but steady institutionalization of activism in India. Activism in India is not yet dominated by hedge funds launching hostile bids. Instead, the current generation of activism is organized, largely, through institutional voters, mutual funds, and proxy advisors. SEBI's Stewardship Code (2019 circular) institutionalised expectations that mutual funds and AIFs engage investee companies on material governance and performance issues. The agency's proxy advisor guidelines (2020) established minimum transparency and grievance mechanisms for proxy firms whose voting recommendations can flip shareholder outcomes. The practical effect is visible in how institutional investors assisted in blocking certain transactions and managerial proposals they judged unfavourable. The 2024–2025 public record shows mutual funds and large institutional holders voting against management recommendations on high-stakes questions, and proxy advisories amplifying such dissent. Platforms that aggregate institutional votes and publish position papers now have real bite; their guidance can influence whether promoters secure the majorities necessary for preferential allotments, special resolutions, or scheme sanction.

The current laws and provisions – The statutory framework disperses the shareholder powers across several loci: the Companies Act, 2013, SEBI's takeover, disclosure, and listing regulations, and judicial review through the Company Law Adjudicatory mechanism. These instruments provide the formal levers which shareholders like institutional ones, may use to influence deals. Under the Companies Act, shareholders exercise fundamental corporate controls. It includes convening general meetings, passing ordinary and special resolutions, and

[4] *Religare Enterprises Ltd. v. Securities & Exchange Board of India,* W.P.(C) 6949/2024 & CM Appl. 46121/2024 (Delhi High Court, Aug. 12, 2024)

consenting to schemes of compromise or arrangement under sections 230–232. Shareholders may also bring minority-relief petitions under sections dealing with oppression and mismanagement (Sections 241–242), and courts retain equitable powers to supervise related-party transactions and schemes that prejudice minority interests [5]. SEBI's regulatory architecture complements the Companies Act. The Substantial Acquisition of Shares and Takeovers (SAST) Regulations, 2011 create mandatory disclosure and open offer obligations when acquirers cross statutory thresholds [6]. The Listing Obligations and Disclosure Requirements (LODR) Regulations, 2015 specify disclosures and shareholder approval thresholds for material related party transactions and certain corporate actions [7]. SEBI's stewardship initiatives, most notably its 2019 Stewardship Code circular for mutual funds and AIFs, encourage institutional investors to engage actively with investee firms on governance and transactions.

The regulations in major markets - The global landscape of shareholder activism offers critical lessons for India's evolving corporate governance model. The United States, particularly Delaware, has long been the intellectual home of corporate control contests. Courts there have been reluctant to prohibit activism outright. Instead, they made doctrines to balance managerial discretion with shareholder rights. In Unocal Corp. v. Mesa Petroleum Co.[8], the Delaware Supreme Court held that directors may adopt defensive measures against hostile takeovers, but only if they can show good faith and proportionality of response. This was refined in Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.[9], where directors owed a duty to maximize shareholder value above all else once a sale became inevitable. The rise of activist hedge funds, from Carl Icahn to Elliott Management, has further blurred the line between traditional ownership and strategic influence. While activism in the U.S. often culminates in negotiated settlements rather than full takeovers, it remains a legitimate and even celebrated form of shareholder democracy. In the United Kingdom, this is controlled by the UK Takeover Code. The principle of shareholder primacy, as seen in the Howard Smith Ltd. v. Ampol Petroleum Ltd.,[10]prevents directors from exercising their powers primarily to block takeovers. Here, shareholder activism is often collaborative rather than adversarial and is often supported

[5] Sections 230-242, Companies Act, No. 18 of 2013
[6] Regulation 3(1), 3(2), 4, The Substantial Acquisition of Shares and Takeovers Regulations, 2011
[7] Regulation 23(1), 23(4), 23(1)(a), 30(1), The Listing Obligations and Disclosure Requirements Regulations, 2015
[8] *Unocal Corp. v. Mesa Petroleum Co.*, 493 A.2d 946 (Del. 1985)
[9] *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc*., 506 A.2d 173 (Del. 1986)
[10] *Howard Smith Ltd. v. Ampol Petroleum Ltd.*, [1974] A.C. 821 (P.C.)

by institutional investors following the UK Stewardship Code (2020). Notably, in cases like Re Rexel S.A. (2008) and subsequent disputes, British regulators have emphasized disclosure and market transparency over restrictive defense tactics. Continental Europe historically resisted activism due to concentrated ownership and state involvement as it has traditionally been influenced by civil law values. However, post COVID reforms and the rise of ESG oriented funds are changing that. In France, the Loi Pacte of 2019[11] encouraged stakeholder centric governance but simultaneously increased institutional investor scrutiny of management decisions. In Germany, following the Thyssenkrupp AG shareholder rebellion (2023), regulators began considering disclosure norms akin to the EU's Shareholder Rights Directive II.

The way forward - The Companies Act, 2013, through Sections 100–111 and 245, provides shareholders procedural tools like calling extraordinary general meetings (EGMs), class action suits, and requisitioning information. But lacks substantive clarity on "activist intent." Similarly, the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (SAST) define the disclosure and trigger thresholds for acquisitions, but remain silent on activism as a distinct form of market behavior. In Tata Consultancy Services Ltd. v. Cyrus Investments Pvt. Ltd., (2021)[12], the Supreme Court reaffirmed the board's supremacy in strategic decision making but recognized the importance of minority shareholder protections. The Court, while rejecting Cyrus Mistry's reinstatement, subtly signaled that boardroom decisions cannot escape judicial review if found oppressive or prejudicial. Similarly, in LIC of India v. Escorts Ltd., (1986), the Court had long ago framed the principle that shareholders may legitimately seek to influence corporate conduct, provided they act within the bounds of law and transparency. As seen in the Fortis Healthcare Ltd., courts and SEBI increasingly acknowledge activism's role in cleansing managerial complacency. However, India still lacks an institutional framework akin to the Stewardship Codes of the U.K. and Japan.

SEBI's stewardship circular should be upgraded into a formal code with reporting obligations for large institutional investors like mutual funds, pension funds etc., on their voting policies, engagement activities, and conflicts. Such reporting increases accountability and allows market

[11] Loi Pacte, Law No. 2019-486 of 22 May 2019
[12] Tata Consultancy Services Ltd. v. Cyrus Investments Pvt. Ltd., (2021) 9 SCC 449

participants to distinguish constructive stewardship from opportunistic block voting. SEBI should also standardize essential disclosures on stewardship engagement outcomes. Borrowing from the US Schedule 13D/13G model, India could ask shareholders who accumulate stakes with an express intention to influence corporate policy or effect control changes to disclose such intent within a short window. This regulation could create transparency about activists' motives, protect other shareholders, and improve price discovery. SAST thresholds already create some transparency, but a behavioural disclosure regime would address the campaign dimension of activism. Courts should preserve their current caution about second guessing board business judgment, but tribunals must remain accessible for shareholders presenting cogent evidence of prejudice, fraud, or procedural unfairness in schemes of arrangement. We should add a short form preliminary test at the NCLT stage where objectors must show prima facie evidence of prejudice before triggering full blown evidentiary contests. This protects genuine objectors and discourages hold up tactics. A common complaint in contested mergers is process opacity and time unpredictability. Regulators should mandate clearer timelines for scheme objections, require disclosure packs for shareholders that include independent fairness assessments in large transactions, and offer expedited review windows where public interest or financial stability concerns exist. Better process disciplines reduce the advantages of surprise campaigns and encourage informed voting.

Conclusion - Shareholder activism is no longer a Western import but a native evolution of India's maturing capital markets. From Fortis Healthcare to Zee Entertainment, the last five years have seen activism reshape not just corporate ownership, but also how control itself is conceptualized. It will not replicate foreign models overnight. The promoter led nature of many Indian firms, concentrated ownership, and cultural norms against open hostility mean that activism will evolve along local lines. Much of it will be institutional and stewardship driven, exercised through votes, proxy advice, and carefully timed litigation. That evolution is healthy. Institutional engagement can deter value destroying deals and bring better governance to M&A processes. Law and policy must respond not by criminalising activism nor by reflexively defending managerial discretion, but by crafting a framework that clarifies disclosure, enhances stewardship accountability, streamlines judicial review, and tightens procedural transparency for schemes. Those moves will channel shareholder power toward constructive engagement, and ensure that the next generation of Indian M&A is both efficient and accountable.