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Minority Shareholder Protection in Indian Takeovers: A Critical Analysis of the SEBI Takeover Regulations

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Abstract

Minority shareholders occupy a vulnerable position when control of a listed company changes. Unlike a controlling shareholder, they generally lack the bargaining power to negotiate the acquisition price, influence the identity of the new controller, or determine the future direction of the company. The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("SAST Regulations") respond to this vulnerability through mandatory open offers, minimum offer-size requirements, pricing rules, disclosure obligations, escrow arrangements, independent-director recommendations, and restrictions on the target company during the offer period. This article examines whether these mechanisms provide effective protection to minority shareholders in Indian takeovers. It adopts a doctrinal and critical methodology based on the SAST Regulations, the Securities and Exchange Board of India Act, 1992, relevant company-law principles, regulatory materials, committee reports, and judicial decisions. The article argues that the SAST Regulations establish a strong procedural framework for investor protection. In particular, the obligation to make an open offer upon the acquisition of 25 per cent or more voting rights or control gives public shareholders a regulated exit opportunity. The pricing framework and disclosure requirements also reduce the possibility of clandestine or unequal acquisitions. However, the protection remains incomplete. The minimum mandatory offer of 26 per cent does not guarantee a full exit to all public shareholders. The offer-price formula may provide a statutory floor without necessarily reflecting the economic value of control. Disclosure-based protection may also be ineffective for retail shareholders who lack the information and expertise to evaluate complex takeover documents. Further, independent-director recommendations may not always provide sufficiently independent or substantive scrutiny. The article proposes reforms including enhanced disclosure of control premiums, independent fairness opinions in specified transactions, stronger standards for board recommendations, improved investor communication, and periodic review of the minimum offer size. The article concludes that Indian takeover regulation should preserve its market-oriented and disclosure-based character but supplement it with stronger substantive safeguards to ensure that minority shareholder protection is not merely formal but effective.

Keywords: Minority Shareholders; Takeovers; Open Offer; Sebi Sast Regulations; Corporate Governance; Securities Regulation

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1. Introduction

1.1 Research background

A takeover is a transaction through which a person or group acquires a substantial shareholding, voting rights, or control over a company. In a listed company, a takeover may substantially alter the identity of the controlling shareholder, the composition of the board, the company's business strategy, and the manner in which corporate resources are managed. Although takeovers may generate efficiency, unlock hidden value, improve management, and facilitate the reallocation of capital, they may also expose minority shareholders to significant risks.

Minority shareholders ordinarily do not participate in negotiations between the acquirer and the existing controlling shareholder. In a negotiated acquisition, the controlling shareholder may receive a control premium or other commercial benefits that are not directly available to public shareholders. Minority shareholders may also be left holding shares in a company whose controlling shareholder, board composition, business strategy, or risk profile has changed without their consent. This creates a central regulatory question: when control of a listed company changes, should minority shareholders be required to remain invested under a new controlling shareholder, or should they receive a fair opportunity to exit?

Indian takeover regulation answers this question primarily through the mandatory open-offer mechanism. Regulation 3(1) of the SAST Regulations prohibits an acquirer, together with persons acting in concert, from acquiring shares or voting rights that entitle them to exercise 25 per cent or more of the voting rights in a target company unless an open offer is made. Regulation 4 separately requires an open offer where control is acquired, irrespective of the percentage of shares or voting rights acquired (SEBI 2025a).

The open offer is therefore not merely a mechanism for completing an acquisition. It is an investor-protection device intended to provide minority shareholders with an opportunity to tender their shares at a regulated price. The Supreme Court has recognised that the takeover framework seeks to protect small investors by giving them a choice to exit at a price determined in accordance with the regulations or remain shareholders under the new management (*Nirma Industries Ltd v SEBI* 2013).

1.2 Research questions, scope and methodology

This article examines the protection of minority shareholders in takeovers of Indian listed companies. It addresses the following questions:

1. Does the mandatory open-offer framework provide an effective exit right to minority shareholders?
2. Are the 25 per cent trigger and 26 per cent minimum offer size adequate?
3. Does the pricing mechanism ensure fair treatment between controlling shareholders and public shareholders?
4. Are disclosure requirements and independent-director recommendations sufficient for informed decision-making?

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5. What reforms are necessary to strengthen minority shareholder protection without unnecessarily obstructing legitimate acquisitions?

The article adopts a doctrinal and critical methodology. It analyses the SAST Regulations, the SEBI Act, relevant provisions of company and securities law, judicial decisions, regulatory materials, and the recommendations underlying the Indian takeover framework. The article focuses on listed companies governed by the SAST Regulations. Protection of minority shareholders in unlisted companies under the Companies Act, 2013 is considered only where it assists the analysis.

The central argument is that the SAST Regulations provide a substantial procedural framework but do not always ensure substantive fairness. The framework is effective in requiring transparency, regulating the timing of acquisitions, and providing a partial exit mechanism. Nevertheless, it requires reform because the 26 per cent offer size, pricing formula, disclosure model, and independent-director process may not adequately reflect the interests of dispersed public shareholders.

2. Minority shareholders and takeover regulation

2.1 Vulnerability of minority shareholders

Minority shareholders may be vulnerable in a takeover for four principal reasons.

First, they usually lack bargaining power. A controlling shareholder may negotiate directly with an acquirer and determine the commercial terms of the transaction. Public shareholders, by contrast, are dispersed and generally unable to negotiate collectively.

Second, minority shareholders may suffer from an information disadvantage. The acquirer and selling shareholder may have access to information concerning the company's future prospects, strategic plans, pending negotiations, and expected synergies. Public shareholders may receive such information only after the public announcement and through lengthy offer documents.

Third, a takeover may alter the company's risk and governance profile. A new controller may change the board, modify the business strategy, undertake related-party transactions, restructure assets, or pursue delisting. A shareholder who invested under the previous controlling structure may not wish to remain invested under the new structure.

Fourth, the value of control may not be reflected in the ordinary market price of the shares. A controller may be willing to pay a premium because of the ability to appoint directors, influence management, determine corporate policy, or access synergies. A minority shareholder who sells in the market may not receive a share of that control value.

These concerns justify a legal framework based on equality of treatment, disclosure, exit rights, and restrictions on conduct that may prejudice shareholders during the takeover process.

2.2 Development of the Indian takeover framework

Indian takeover regulation developed in response to the growth of the securities market, ownership concentration, and the need to prevent secret accumulation of control. The SEBI (Substantial

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Acquisition of Shares and Takeovers) Regulations, 1994 were followed by the 1997 Regulations and subsequently replaced by the 2011 Regulations.

The modern framework reflects several principles associated with the Bhagwati Committee's approach to takeovers. These include equality of treatment and opportunity for shareholders, protection of shareholder interests, fair and truthful disclosure, sufficient time for informed decision-making, responsible consideration before making an offer, professional standards for advisers, and restrictions on frustrating actions by the target company (India 1997).

The 2011 Regulations apply to direct and indirect acquisition of shares, voting rights, or control over a target company whose shares are listed on a stock exchange. The definition of "control" includes the right to appoint a majority of directors or to control management or policy decisions, whether through shareholding, management rights, shareholders' agreements, voting agreements, or other means (SEBI 2025b).

The inclusion of control as an independent trigger is important. A person may acquire effective control without crossing the 25 per cent voting-rights threshold. If the law focused only on percentage ownership, an acquirer could obtain decisive influence through contractual rights, board-appointment rights, or voting arrangements without providing an exit opportunity to public shareholders.

3. The SAST Regulations and minority protection

3.1 Open-offer triggers and offer size

3.1.1 The 25 per cent threshold: Regulation 3(1) provides that an acquirer cannot acquire shares or voting rights which, together with shares or voting rights held by persons acting in concert, entitle them to exercise 25 per cent or more voting rights in a target company unless the acquirer makes a public announcement of an open offer.

The threshold performs two functions. First, it identifies a level of shareholding at which an acquirer may acquire significant influence over the company. Second, it prevents an acquirer from obtaining a substantial position without offering public shareholders an opportunity to exit.

The concept of persons acting in concert is central to the effectiveness of this rule. If related parties could divide acquisitions between themselves to remain individually below the threshold, the mandatory offer mechanism could easily be circumvented. The Regulations therefore aggregate holdings of persons sharing a common objective or purpose of acquiring shares, voting rights, or control.

3.1.2 Creeping acquisition: Regulation 3(2) applies where an acquirer and persons acting in concert already hold 25 per cent or more but less than the maximum permissible non-public shareholding. Such an acquirer may not acquire more than 5 per cent additional voting rights in a financial year without making an open offer.

The creeping-acquisition rule balances two competing interests. A controlling shareholder should be permitted to increase its stake gradually without being required to make an open offer for

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every small acquisition. At the same time, unchecked incremental acquisitions could progressively reduce public participation and strengthen control without providing an exit opportunity.

The rule therefore recognises that an acquisition of 5 per cent or less may not independently justify a mandatory open offer, while a larger annual increase may materially affect shareholder influence and market liquidity.

3.1.3 Acquisition of control: Regulation 4 requires an open offer where an acquirer acquires control, irrespective of whether the acquirer crosses the 25 per cent threshold. This is an important protection because control is an economic and governance concept rather than merely a numerical shareholding concept.

The control trigger protects shareholders in transactions involving:

- Rights to appoint a majority of directors.
- Veto or affirmative rights over management and policy decisions.
- Shareholders' agreements.
- Voting agreements.
- Contractual arrangements that confer decisive influence.

The Supreme Court has recognised that a takeover may be friendly or hostile and that an open offer can be used by an acquirer to approach shareholders directly where the existing management is unwilling to negotiate (*Pramod Jain v SEBI* 2016). The recognition of hostile takeovers is relevant to minority protection because an independent offer may provide shareholders with an alternative to the existing management.

3.1.4 The 26 per cent minimum offer: Regulation 7 requires an open offer under Regulations 3 or 4 to be for at least 26 per cent of the total shares of the target company (SEBI 2025b). The offer size is intended to provide a meaningful exit opportunity while allowing the target company to remain listed and retain public shareholders.

The 26 per cent requirement is linked to the ownership structure of Indian listed companies. The acquirer may obtain substantial control through a combination of shares acquired from the existing controller and shares tendered by public shareholders. However, the offer does not cover all public shares.

This gives rise to a significant limitation. If more than 26 per cent of public shareholders wish to exit, their shares may be accepted proportionately. A shareholder may therefore tender all shares but have only part of the holding accepted. The remaining shares continue to be held under the new controller.

The open offer is consequently a partial exit mechanism rather than a guaranteed full exit. This may be justified on the basis that a takeover should not automatically result in delisting or impose an unlimited financing obligation on the acquirer. Nevertheless, the partial nature of the exit should be acknowledged as a structural limitation on minority protection.

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3.2 Pricing and equal treatment

3.2.1 The purpose of minimum pricing: Regulation 8 establishes the minimum price for an open offer. The price is based on specified benchmarks, including the negotiated acquisition price, the highest price paid by the acquirer during the prescribed period, and relevant market-price measures. For frequently traded shares, the pricing framework uses volume-weighted market prices. For infrequently traded shares, additional valuation parameters are considered (SEBI 2025b).

The pricing rules serve three primary purposes:

- Preventing the acquirer from offering public shareholders less than the price paid to the selling shareholder.
- Reducing the risk of discriminatory treatment between controlling and public shareholders.
- Creating a predictable valuation floor for takeover transactions.

The rules are particularly important where the acquirer negotiates a private purchase of a controlling block. Without a minimum-price requirement, the acquirer might pay a high price to the controlling shareholder for control while making a substantially lower offer to public shareholders.

3.2.2 Control premium and valuation: A statutory minimum price, however, is not necessarily identical to fair value. Control may produce benefits unavailable to minority shareholders, including the ability to determine board composition, corporate policy, capital allocation, and related-party arrangements. The economic value of these rights may exceed the historical market price.

Market-price benchmarks may also be imperfect where:

- The shares are thinly traded.
- The public float is small.
- The market is temporarily depressed.
- The company's future prospects are not reflected in historical prices.
- The acquirer possesses confidential information.
- The target operates in a sector with significant valuation volatility.

The issue is not that the pricing formula lacks value. A clear formula reduces uncertainty and litigation. The issue is whether the formula should operate as the complete measure of fairness in all cases.

A stronger framework could require additional valuation disclosure, including:

- The amount paid for control and the basis for any control premium.
- The valuation of the target under different methodologies.
- The relationship between the negotiated acquisition price and the open-offer price.
- The existence of non-cash consideration, side agreements, earn-outs, or preferential commercial arrangements.
- The financial effect of expected synergies.

The objective should not necessarily be to replace the formula with an open-ended fairness inquiry. Rather, the law should require clearer explanation where the economic transaction suggests that the control block received value beyond the statutory offer price.

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***3.2.3* Infrequently traded shares**: Infrequently traded shares present a particular difficulty. Where market trading is limited, market prices may not provide a reliable indication of value. The Regulations therefore permit the use of valuation parameters such as return on net worth, book value, comparable trading multiples, and other customary valuation methods.

This approach is appropriate in principle, but valuation remains sensitive to assumptions. Minority shareholders may not have the ability to test the valuation methodology or challenge assumptions concerning future earnings, debt, assets, or contingent liabilities.

Independent valuation or fairness opinions could provide greater assurance in specified transactions, particularly where:

- The shares are infrequently traded.
- The acquirer is a promoter or connected person.
- The acquisition involves related parties.
- The target has significant real estate, intellectual property, or contingent assets.
- There is a material difference between the negotiated price and the calculated market benchmarks.

3.3 Disclosure obligations

The open-offer process includes a public announcement, detailed public statement, draft letter of offer, letter of offer, and other disclosures. The documents generally address the identity and background of the acquirer, the number of shares proposed to be acquired, offer price, financial arrangements, purpose of acquisition, future plans, shareholding pattern, and statutory approvals.

Disclosure protects minority shareholders by reducing information asymmetry. It enables shareholders to decide whether to tender their shares or remain invested. The disclosure principle also supports market integrity by ensuring that material information is communicated to all shareholders rather than selectively provided to a particular group.

However, disclosure is not effective merely because information is available. It must be comprehensible, timely, accurate, and capable of being used by investors. Takeover documents often contain technical language and extensive financial information. Retail investors may not be able to assess whether the offer price adequately reflects the company's prospects or whether the acquirer's stated plans are credible.

A better model would distinguish between full regulatory disclosure and meaningful investor communication. In addition to the full letter of offer, the acquirer should provide a concise summary containing:

- The identity and experience of the acquirer.
- The transaction structure.
- The price paid to the selling shareholder.
- The open-offer price and price-comparison table.
- The proposed changes to the board and management.
- The acquirer's plans concerning assets, debt, employees, and business operations.
- The possibility of delisting or reduction in public shareholding.

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- The key risks faced by shareholders who remain invested.

Such a summary would not replace the legal offer document. It would make the document more accessible.

3.4 Escrow and financial certainty

The escrow requirement protects shareholders against the risk that an acquirer will announce an offer without having adequate funds to complete it. The acquirer must make financial arrangements in accordance with the Regulations, including the prescribed escrow mechanism.

This requirement is important because an open offer creates expectations among shareholders. If the acquirer lacks financing, shareholders may incur opportunity costs by postponing other investment decisions or relying on the announced exit price.

Financial certainty also supports the principle that a public announcement should be made only after careful and responsible consideration. In *Pramod Jain v SEBI*, the Supreme Court relied on the principle that an acquirer should exercise due diligence before announcing an offer and should not withdraw merely because the acquisition later becomes commercially unattractive.

3.5 Role of independent directors

Regulation 26 requires the target company's board to constitute a committee of independent directors to provide a reasoned recommendation on the open offer. The recommendation is published before the tendering period begins.

The committee serves as an institutional mechanism for protecting public shareholders. It can examine the offer price, the acquirer's disclosures, the effect of the transaction on the company, and the interests of public shareholders. The committee may also obtain independent professional advice at the company's expense.

The mechanism has several advantages:

- It introduces an internal review of the offer.
- It provides shareholders with an assessment from directors who are not supposed to be controlled by the acquirer.
- It encourages the board to examine the effect of the takeover on the company.
- It creates a public record of the board's reasoning.

Nevertheless, the mechanism may be weakened where independent directors have long-standing relationships with the promoter group, lack sufficient financial expertise, or do not obtain independent advice. A short recommendation stating that the offer is fair without explaining the valuation analysis does little to assist shareholders.

The recommendation should therefore disclose:

- The composition of the committee.
- Any relationship or conflict involving committee members.
- Whether independent financial advisers were appointed.
- The valuation methods examined.
- The basis for the committee's conclusion.

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- Whether the recommendation is based on price, strategic impact, or both.
- Any material limitation on the committee's review.

The committee should not be treated as a substitute for shareholder decision-making. Its function is to improve the quality of information and evaluation available to shareholders.

3.6 Restrictions on the target company

The SAST Regulations restrict certain actions by the target company during the offer period. These restrictions are intended to prevent the board from frustrating the offer or materially altering the company in a manner that prejudices shareholders.

The concern is particularly acute in hostile takeovers. A target company may attempt to defeat an offer through the disposal of valuable assets, issuance of voting securities, material contracts, or other defensive measures. While the board may have legitimate reasons to continue ordinary business operations, extraordinary actions should not be used to deprive shareholders of the opportunity to decide whether to accept the offer.

In *Pramod Jain v SEBI*, the Supreme Court discussed the principle that the target company should not take action to frustrate an offer without shareholder approval. The judgment also considered the prohibition against withdrawing a public offer and the importance of protecting the exit rights of shareholders.

The restrictions create a balance between two interests. The target board must continue managing the company, but it should not take extraordinary measures that transfer value, alter voting power, or make the offer commercially meaningless.

4. Critical evaluation of the existing framework

4.1 Strengths of the SAST Regulations

4.1.1 The framework recognises control as well as ownership: The separate control trigger is a major strength. It prevents parties from structuring a transaction to avoid the 25 per cent threshold while transferring effective control through contractual rights or board arrangements.

4.1.2 The framework offers a regulated exit: The mandatory open offer gives public shareholders a choice. They may tender their shares and exit at the regulated price or remain invested under the new controller. This is preferable to allowing control to change entirely through a private transaction between the acquirer and the existing controller.

4.1.3 The pricing rules reduce discrimination: The minimum-price provisions reduce the risk that public shareholders receive materially less than the controlling shareholder. The use of multiple price benchmarks also prevents reliance on a single potentially manipulated figure.

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4.1.4 Disclosure obligations improve transparency: The process requires information concerning the acquirer, transaction structure, offer price, financing, purpose, and future plans to be placed in the public domain. This helps reduce secret accumulation and selective information.

4.1.5 Escrow improves execution certainty: Financial assurance ensures that the acquirer is capable of meeting its payment obligations. This protects shareholders against a purely speculative offer.

4.1.6 Independent-director recommendations create an additional review: The independent-director committee introduces a governance-based assessment into the takeover process. Where properly performed, it can identify shortcomings in the offer and improve shareholder decision-making.

4.2 Weaknesses and unresolved issues

4.2.1 The open offer does not guarantee complete exit: The 26 per cent minimum offer can be insufficient where public shareholders collectively wish to sell more than 26 per cent. Proportionate acceptance may leave shareholders invested in a company whose control and strategy have changed.

This problem is especially serious where the acquisition creates a dominant controller and substantially reduces the influence of public shareholders. A minority shareholder may be economically compelled to remain invested despite having no practical ability to influence governance.

4.2.2 Offer-price benchmarks may not capture control value: The formula-based approach provides certainty but may not fully capture the value of control or expected synergies. It also relies on market data that may be unreliable in thinly traded or volatile securities.

The issue is not simply whether the price satisfies the Regulation 8 formula. The broader issue is whether the formula produces a price that enables a reasonable shareholder to make an informed decision about surrendering shares.

4.2.3 Retail shareholders face participation barriers: Retail shareholders may not receive or read the offer documents, may not understand the tender mechanism, or may fail to tender their shares within the prescribed period. A legal exit right is of limited practical value if the process is difficult to access.

The move towards electronic tendering has reduced some administrative barriers, but digital access, investor awareness, and the complexity of disclosures remain concerns.

4.2.4 Independent-director recommendations may be formalistic: The requirement to publish a recommendation does not guarantee independence or substantive evaluation. A recommendation may be prepared under significant time pressure and may rely heavily on management information.

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The Regulations should therefore focus not only on whether a recommendation exists but also on whether it explains the analysis behind the recommendation.

4.2.5 Enforcement delay can reduce the value of protection: Takeover transactions are time-sensitive. Delay in regulatory review, investigation, or resolution of complaints can affect market price, business value, and shareholder expectations. In *Pramod Jain*, the Supreme Court acknowledged concerns about delay but held that delay did not automatically entitle the acquirer to withdraw the offer.

The judgment correctly protects shareholder rights against speculative withdrawal. However, timely regulatory action remains important. A prolonged offer period can create uncertainty for both shareholders and the target company.

4.2.6 Control transactions may produce unequal benefits: The existing controller may receive benefits that are not obvious from the stated price, including employment arrangements, non-compete payments, consulting arrangements, debt settlements, asset transfers, or future business opportunities. Unless these benefits are fully disclosed and valued, public shareholders may not receive genuinely equal treatment.

The meaning of equality should therefore include not only the formal price per share but also material transaction-related benefits.

5. Judicial approach and regulatory enforcement

5.1 The Supreme Court and shareholder exit rights

The Supreme Court's decisions concerning takeover regulation provide important guidance on the purpose of the framework.

In *Nirma Industries Ltd v SEBI*, the Court explained that the takeover code seeks to:

- Ensure that the target company is aware of the substantial acquisition.
- Prevent distortion or manipulation of the securities market.
- Give small investors an option to exit.
- Ensure fair and equal treatment of shareholders.
- Prevent clandestine acquisitions.

The Court also held that a public offer once made could not ordinarily be withdrawn merely because the acquirer later considered the transaction commercially unattractive.

In *Pramod Jain v SEBI*, the acquirers had made a public offer in relation to Golden Tobacco Ltd. They later sought permission to withdraw, alleging delay and deterioration in the financial position of the target company. The Supreme Court upheld the refusal to permit withdrawal. It emphasised that an acquirer must conduct due diligence before making a public announcement and that an open offer cannot be treated as a speculative or revocable commercial proposal.

The judgment is significant for minority protection because it treats the open offer as creating a regulatory right for shareholders. Once the offer is announced, shareholders acquire a

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legitimate expectation that the offer will be honoured unless the strict regulatory conditions for withdrawal are satisfied.

5.2 Balance between acquirer and shareholder interests

Minority protection should not be understood as requiring every commercial risk to be imposed on the acquirer. Takeover regulation must also preserve the ability of legitimate acquirers to make offers, compete for control, and restructure inefficient companies.

An excessively rigid framework may create several problems:

- Acquirers may avoid public-company acquisitions.
- The cost of takeover financing may increase.
- Potential synergies may not be realised.
- Controllers may retain inefficient management.
- The market for corporate control may become less competitive.

The appropriate objective is therefore not to eliminate takeover risk but to allocate it fairly. The acquirer should bear the risk of ordinary commercial due diligence and market fluctuations. Shareholders should be protected against misinformation, unequal treatment, non-transparent control benefits, and actions that frustrate the exit opportunity.

5.3 Hostile takeovers and shareholder choice

Hostile takeovers may provide an important external discipline on management. If the incumbent management performs poorly or misuses company assets, an outside acquirer may seek to replace it. The possibility of an unsolicited offer can encourage managers to improve performance and protect shareholder value.

At the same time, hostile offers may be motivated by asset stripping, short-term gains, or the acquisition of valuable corporate assets at an undervalued price. The disclosure and board-recommendation mechanisms are therefore essential.

Shareholders should have sufficient information to evaluate both sides:

- The acquirer's stated purpose and experience.
- The incumbent management's performance.
- The likely effect of the acquisition on employees and business operations.
- The price offered compared with historical and intrinsic value.
- The possibility of future delisting or restructuring.

A takeover regime that focuses only on facilitating acquisition may under-protect shareholders. A regime that allows management to block every hostile offer may entrench poor management. The regulatory framework should therefore preserve shareholder decision-making while restricting coercion and manipulation.

6. Reform proposals

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6.1 Reforming the minimum-offer framework

The 26 per cent minimum offer should be periodically reviewed. A larger offer requirement could provide stronger exit protection, but it could also increase financing costs and discourage acquisitions.

A balanced reform could adopt a differentiated approach:

- Retain 26 per cent as the general minimum.
- Require a higher offer size where the acquirer will hold a specified dominant percentage after completion.
- Require enhanced justification where the offer covers substantially less than the public float.
- Permit shareholders to seek a larger offer where the transaction involves a fundamental change in business or delisting intention.
- Coordinate the open-offer process more clearly with delisting regulations.

The purpose should be to prevent situations in which minority shareholders are left with a nominal public float and limited practical influence.

6.2 Strengthening price fairness

The existing formula should continue to provide the basic minimum price. However, additional safeguards should apply in transactions presenting heightened valuation risk.

These safeguards may include:

- Independent valuation for infrequently traded shares.
- A fairness opinion in promoter-related acquisitions.
- Disclosure of all direct and indirect consideration given to the selling shareholder.
- Explanation of control premiums and expected synergies.
- Disclosure of non-compete payments, consulting agreements, and related-party benefits.
- A requirement to explain any material difference between the negotiated acquisition price and the open-offer price.

The use of an independent valuation should not result in an automatic replacement of the Regulation 8 price. It should provide an additional reference point and help shareholders understand whether the statutory price is conservative or generous.

6.3 Improving independent-director recommendations

The independent-director committee should be required to issue a detailed report rather than a conclusory recommendation. The report should disclose:

- The committee's assessment of the offer price.
- The valuation methods considered.
- The advice obtained.
- Any conflicts of interest.
- The likely impact on the company's employees, creditors, and business.
- The acquirer's stated plans and the committee's assessment of those plans.
- Whether the committee recommends acceptance, rejection, or shareholder-specific evaluation.

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The committee should also be permitted sufficient time and resources to obtain advice. The cost of independent advice should be treated as a legitimate transaction expense borne by the target company.

6.4 Making disclosure more accessible

The open-offer process should include a standardised investor summary. It should be written in plain language and include a comparative table showing:

Issue	Information to be provided
Acquirer	Identity, ownership, experience and financial capacity
Transaction	Shares acquired, shares proposed under offer and post-offer holding
Price	Negotiated price, open-offer price and key valuation benchmarks
Control	Proposed board changes and management rights
Business plans	Future strategy, asset plans, debt plans and restructuring
Public shareholders	Acceptance mechanics, pro-rata risk and tendering period
Future listing	Possibility of delisting or reduction of public shareholding
Risks	Principal commercial, legal and financial risks

The summary should be made available through stock exchanges, the target company's website, the manager to the offer, and investor communication platforms.

6.5 Improving participation by retail investors

Minority protection requires not only a legal right but also the practical ability to exercise that right. SEBI and market intermediaries should improve:

- Electronic communication of offer documents.
- Regional-language summaries.
- Investor helplines.
- Clear instructions for tendering shares.
- Notices explaining proportionate acceptance.
- Disclosure of the likely effect of oversubscription.
- Assistance for shareholders holding shares through different intermediaries.

The objective is to reduce the gap between sophisticated institutional shareholders and retail investors.

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6.6 Strengthening regulatory timelines and remedies

Regulatory review should be efficient and predictable. Delays may harm the value of the offer and create uncertainty concerning the target company's assets and management.

Possible measures include:

- Clearer internal review timelines.
- Early identification of deficiencies in draft offer documents.
- Digital tracking of regulatory comments.
- Prompt investigation of complaints affecting the offer.
- Interim directions where the target company takes potentially frustrating actions.
- Compensation or interest mechanisms where shareholder payment is delayed.

At the same time, the rule against speculative withdrawal should remain. An acquirer should not be permitted to withdraw merely because the market price has changed or the transaction has become less attractive.

7. Conclusion

The protection of minority shareholders is one of the central objectives of Indian takeover regulation. A change in control can fundamentally affect the value, governance, strategy, and risk profile of a listed company. Public shareholders therefore require more than ordinary market disclosure. They require a fair opportunity to exit, adequate information, protection against discriminatory treatment, and safeguards against actions that make the takeover process ineffective.

The SAST Regulations provide a comprehensive procedural framework. The 25 per cent threshold captures substantial acquisitions, while the independent control trigger prevents avoidance through contractual arrangements. The creeping-acquisition rules regulate gradual consolidation. The 26 per cent minimum open offer gives public shareholders a regulated exit mechanism. Pricing rules establish a statutory floor, disclosure requirements reduce information asymmetry, escrow arrangements improve financial certainty, and independent-director recommendations provide an additional governance review.

These protections nevertheless have limitations. A 26 per cent offer does not guarantee that all public shareholders can exit. The pricing formula may not fully capture control value, future synergies, or the value of non-cash benefits. Long and technical offer documents may not provide meaningful information to retail shareholders. Independent-director recommendations may become formalistic if they do not disclose the reasoning, valuation analysis, and conflicts underlying the conclusion.

Indian takeover law should therefore move from formal compliance towards more effective minority protection. The basic market-oriented structure should be preserved because it supports transaction certainty, capital formation, and the market for corporate control. However, it should be supplemented with stronger valuation disclosure, independent fairness review in appropriate cases, detailed board recommendations, accessible investor communication, and periodic review of the minimum offer size.

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The central principle should be that a minority shareholder must be able to understand what has changed, what value has been attributed to control, what future the acquirer proposes for the company, and whether remaining invested is a meaningful choice. A takeover framework is effective only when the exit right it provides is informed, accessible, and economically fair.

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