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"Control Without Coherence: Doctrinal Fragmentation and Structured Flexibility in Indian Takeover Law"

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Abstract

"Control" marks the starting point of takeover regulation in India. Under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, acquisitions that amount to control over a listed company automatically require an open offer regardless of whether the acquirer acquires the requisite percentage in shareholding. It follows that the doctrine of control decides on when public shareholders will be offered an exit because of a change in the corporate control dynamics of the target company. But Indian takeover regulations have yet to develop a sound conceptualization of what control entails.[1]

The problem is not mere ambiguity, but a more serious one of doctrinal fragmentation. Indian takeover laws currently rely on three partially reconcilable definitions of control – Subhkam's proactivity/reactivity framework, which draws the distinction between positive control and passive protection; NDTV/VCPL's latent capacity theory, which regards inactionable rights to have immediate consequences for control; and the "blocking-rights" premise behind the 25% threshold rule, which considers the right to block special resolutions to matter for the purpose of regulation. Each theory captures a certain reality, but there is no clear explanation of their interaction.[2] In addition to this, this paper contends that the root cause of the problem has remained the same since SEBI has continued to use its subjective approach towards control determination even after the bright-line test in 2016–2017 without any structured approach. The issue here does not lie in giving up on being flexible. Instead, what needs to be done is to adopt a more structured approach to maintaining flexibility. In other words, SEBI must maintain its discretion but do so via category-based approaches.[3]

[1] Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations 2011 (SAST Regulations 2011), reg 4; Bhavya Nahar, '*Reviewing the Ambit of "Control" Apropos to the Objective of "Mandatory Bids": An Analysis under the Takeover Regulations*' (2018) 11 NUJS Law Review 1, 1–3; Nemika Jha, '*Political Economy of Takeover Regulation in India: How Good is India's Mandatory Bid Rule?*' (2023) 10 NLS Business Law Review 49, 53, 64, 67–70.

[2] *Subhkam Ventures (I) Private Ltd v SEBI* (2010) 99 SCL 159 (SAT) [6], [8]–[10] (Subhkam Ventures (SAT)); Securities and Exchange Board of India, In the Matter of NDTV Ltd, WTM/GM/EFD/31/2018-19 (26 June 2018) [23]–[24] (VCPL/NDTV SEBI Order); SAST Regulations 2011, reg 3; Takeover Regulations Advisory Committee, *Report of the Takeover Regulations Advisory Committee* (19 July 2010) (TRAC Report).

[3] Securities and Exchange Board of India, Discussion Paper on Brightline Tests for Acquisition of 'Control' under SEBI Takeover Regulations (14 March 2016) paras 1–9, 23–35 (SEBI Brightline Discussion Paper); Securities and

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I. Introduction

"Control" is the key concept for Indian takeover law. In terms of Regulation 4 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (Takeover Code), control of a listed firm results in a mandatory open offer regardless of whether control passes the percentage mark. [4]

This obligation is based on the principle of protecting the minority interest. The minority investor buys shares within an established corporate governance framework. Once there is a change in control, the investors are exposed to new corporate power centers without being party to the transactions which have led to such a change. This highlights why control definition is crucial in that it needs to neither be too narrow (and thus miss real changes in corporate power) nor be overly broad (thus applying open offers to non-takeovers). [5]

In this paper, I argue that Indian takeover law does not just suffer from an open-ended definition of control, but also suffers from inconsistent conceptions of what constitutes "control." This inconsistency is shown by three models: proactive/reactive model of Subhkam; latent capacity model of NDTV/VCPL case; and finally the blocking rights rationale behind the 25% trigger. These models need not necessarily exclude each other, but the jurisprudence of Indian law has been silent regarding the circumstances under which each is applicable, how these models relate to one another, and what constraints apply to each.[6]

The paper is structured as follows. Section II analyzes the three control models and the doctrine gap created thereby. Section III explores the reasons for this gap. Section IV assesses its consequences. Section V discusses structured flexibility as the way forward.

II. The Doctrinal Fracture: Three Models of Control

Takeover rules in India currently include three different, and partly irreconcilable, theories of control. First, there is the active/passive theory, as seen in the case of Subhkam, where control is dependent on positive power to manage or influence policy. Second, there is the potential capacity approach evident in the case of NDTV/VCPL, where an unexercised or potential right could carry

Exchange Board of India, Press Release No 56/2017, Acquisition of 'Control' under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (8 September 2017) (SEBI Press Release No 56/2017).

[4] SAST Regulations 2011, reg 4.

[5] Nahar (n 1) 2–3, 5–9; Jha (n 1) 53, 67.

[6] Subhkam Ventures (SAT) (n 2) [6], [10]; VCPL/NDTV SEBI Order (n 2) [23]–[24]; SAST Regulations 2011, reg 3; TRAC Report (n 2).

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current control implications. Third, there is the blocking theory behind the 25% qualitative threshold. All of them represent valid aspects of corporate power.[7]

A. Rhodia and Sandip Save: Strategic Approval Rights and Context

There are two basic principles developed in this early line of cases. Firstly, in Rhodia SAT accepted that control does not have to entail day-to-day operational control. Right to prior approval in relation to strategic corporate matters, which entails right at a more strategic level rather than at management level, can amount to control over the corporation's policy decision-making process under Regulation 2(1)(e). This is consistent with the scope of the regulation: it mentions policy decisions not management ones. However, there are no explanations of how protective rights should be differentiated from directive rights in Rhodia.[8]

The case of Sandip Save provides some contextual basis for this principle. The significance of rights considered in isolation does not mean the existence of control since such rights are examined in the light of the reality of incumbent promoter and his control system. Minority investor's right to veto certain decisions may serve as protection of such investor against any form of exploitation on the part of the company while not disturbing current locus of control. However, this case failed to provide a clear cut criteria for determining whether protective rights become directive rights.[9]

B. Subhkam and the Proactive/Reactive Model

The Subhkam decision is the key authority in terms of the doctrine's application to the issue of investor protections. The investor had invested in a minority position with a bundle of governance rights, including nominee director rights, quorum rights, and affirmative voting rights. The SAT rejected the SEBI characterization and made an analytical distinction between proactive control and reactive protection. The investor had control if it had the affirmative ability to direct policy or management decisions. Reactive rights, which enabled the investor merely to veto or block certain things, were not automatically controlling rights. The investor could stop something from happening, but that didn't mean that it could dictate what had to happen.[10]

[7] Subhkam Ventures (SAT) (n 2) [6]; VCPL/NDTV SEBI Order (n 2) [23]–[24]; SAST Regulations 2011, reg 3; TRAC Report (n 2).
[8] *Rhodia SA v SEBI* (2001) 34 SCL 597 (SAT) [60]–[62] (Rhodia); SAST Regulations 2011, reg 2(1)(e).
[9] *Sandip Save v SEBI* (2003) 41 SCL 47 (SAT) [32], [41] (Sandip Save).
[10] Subhkam Ventures (SAT) (n 2) [3], [6]–[8], [10].

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This is significant from a commercial perspective. Minority private equity investors, PIPEs, and financial investors negotiate for such rights and protections because they don't have control.[11]

The best interpretation of Subhkam is not that any negative right must always be beyond control. In certain cases, the right may have the appearance of being negative but be in substance directive in its nature, as when it so encompasses the making of key business decisions that it effectively makes impossible the formulation of corporate policies in the absence of its approval. Rather, the better rule would be that any negative right should not always equate with control, precisely because the right may take the form of a veto while still preserving the bargain struck between the parties. [12]

The disposition of SEBI's appeal by the Supreme Court has made the situation much worse than before. No determination of the matter according to merit has been made by the Court; the order issued by the SAT was declared not to set a binding precedent. Thus, the only commercially relevant but legally insecure analysis has been the one concerning affirmative and protective rights.[13]

C. NDTV/VCPL and the Latent-Capacity Model

NTDV/VCPL is probably the most distant example from a pure proactivity/reaction approach. In this particular situation, the relevant substance elements included either lending transactions, purchase options or calls, or indirect methods that would work in achieving the exertion of influence over the control structure of NDTV. SEBI's approach changed from the exercise to capacity of influencing. In this particular situation, the question to ask was whether there was the possibility of exercising influence over the control structure by virtue of the terms of the rights.[14]

This solution has obvious anti-avoidance appeal, since in light of the previous regime, parties can engage in different financial transactions such as loans or purchase options etc. so as to first exert influence and then have the offer obligation. It also fits the language of Regulation 2(1)(e) which speaks of direct or indirect control "by agreement or otherwise."[15]

But the NDTV/VCPL formulation is open to an over-inclusion problem if applied broadly. Not all options, convertibles, finance covenants, or contingent rights create any present control. The relevant rights may be remote, contingent, commercially implausible, or simply incapable of

[11] Umakanth Varottil, '*Comparative Takeover Regulation and the Concept of "Control"*' [2015] Singapore Journal of Legal Studies 208, 224–26; Afra Afsharipour, '*Corporate Governance and the Indian Private Equity Model*' (2015) 27 National Law School of India Review 17, 18–20, 39–42; Nahar (n 1) 18–20.
[12] Subhkam Ventures (SAT) (n 2) [8]–[9].
[13] *SEBI v Subhkam Ventures (I) Private Ltd* (2010) 2 SCC (Civ) 82, [4].
[14] VCPL/NDTV SEBI Order (n 2) [2], [11], [23]–[24].
[15] SAST Regulations 2011, reg 2(1)(e).

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exercising control. Without the present effect requirement, the connection between latent capability and present control would be difficult to define.[16]

The NDTV/VCPL case is problematic in light of Subhkam. While Subhkam questions whether the relevant right is merely protection or positive control, the NDTV/VCPL case considers whether latent rights result in present capability. A right could go unexercised, but still be commercially strong enough; likewise, the right could be exercisable, but not constitute control. Indian law has not considered the point at which latent rights can be considered present control.[17]

D. The Blocking-Rights Premise and Later Inconsistencies

The third model is a part of the quantitative trigger itself. The 25% blocking ability requirement of Regulation 3 has to be understood in terms of the capability to frustrate special resolutions. Blocking rights become regulatorily relevant here – not as evidence that every blocking right gives rise to control, but because of the recognition that frustrating basic acts of corporate policy could justify an open offer.[18]

Such a construction makes it difficult for the general holding in Subhkam to cover blocking interests. If negative or blocking rights were automatically out of the scope of control, how do we justify the fact that a blocking shareholding is in itself sufficient to trigger an open offer? Clearly, the better approach would be to interpret the Subhkam decision narrowly.[19]

Subsequent judgments support the view that there was inherent instability in the definition. Certain decisions were more circumspect about instruments that were not exercised or that were contingent, and were reluctant to recognize present capacity where the right had not ripened into influence. Other judgments took into account capacity, even though it had not been formally exercised. At least one decision indicated that structural capacity, which was not exercised because of an absence of intention to control, was not recognized – making it hard to square with the analysis of the NDTV/VCPL judgment.[20]

[16] Subhkam Ventures (SAT) (n 2) [6], [8]–[10]; VCPL/NDTV SEBI Order (n 2) [23]–[24].
[17] Subhkam Ventures (SAT) (n 2) [6], [8]–[10]; VCPL/NDTV SEBI Order (n 2) [23]–[24].
[18] SAST Regulations 2011, reg 3; TRAC Report (n 2); SEBI Brightline Discussion Paper (n 3) paras 29–33.
[19] Subhkam Ventures (SAT) (n 2) [6], [8]–[9]; SAST Regulations 2011, reg 3; SEBI Brightline Discussion Paper (n 3) paras 29–33.
[20] Securities and Exchange Board of India, Informal Guidance in the Matter of R Systems International Ltd, CFD/PC/AT/KJ/OW/817/2014 (8 January 2014) (R Systems Informal Guidance); Securities and Exchange Board of India, In the Matter of Proposed Acquisition of Equity Shares of NRB Industrial Bearings Ltd, WTM/PS/85/CFD-DCR-2/MAR/2014 (10 March 2014) (NRB Industrial Bearings); Securities and Exchange Board of India, In the Matter of Kamat Hotels (India) Ltd, WTM/GM/EFD/DRAIII/20/MAR/2017 (31 March 2017) (Kamat Hotels); VCPL/NDTV SEBI Order (n 2) [23]–[24].

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E. Synthesis: Control as an Unreconciled Doctrinal Category

There are some correct insights in Indian law on takeover. The insight that policy control may be effected through strategic approval rights in the case of Rhodia was correct. In the Sandip Save case, there was the correct insight that rights need to be considered in the context of commercial and proprietary considerations. The case of Subhkam correctly made the distinction between normal investment protection and control. In NDTV/VCPL, there was the correct insight that latent rights may mask control.[21]

The problem is that these insights have not been developed within an integrated analytical framework. There has been no attempt to articulate how negative power turns into policy control or how latent capacity turns into present control or when the element of intention matters and when blocking rights are merely protective rather than controlling in nature. The cases are not addressing the same legal issue differently; rather, they are posing different issues altogether.

The reason why the difference is important lies in the consequences of the open offer. Should SEBI regard such a right as control, then, while the minority stockholders will be given a chance to exit, the acquirer will be under a considerable regulatory burden.

III. Why the Fracture Persists: Retained Subjectivity Without Method

However, the inconsistency remains because of the institutional predilection of SEBI for flexibility without sufficient methodology. SEBI was aware of the ambiguity surrounding the issue. It published a discussion paper back in 2016 that examined the use of objective criteria, safe harbour, or bright-line guidelines regarding whether to define control acquisitions objectively or not. In 2017, SEBI kept the subjective approach.[22]

There was nothing wrong about this move on the part of SEBI. A mechanical approach to the matter would leave too much room for manipulation. In addition, control can be secured without having to obtain more than a certain number of shares. Thus, it seems sensible that SEBI chose the flexible approach to determining when there is control. However, the problem is that there was no methodology that accompanied this move.[23]

[21] Rhodia (n 8) [60]–[62]; Sandip Save (n 9) [32], [41]; Subhkam Ventures (SAT) (n 2) [6], [8]–[10]; VCPL/NDTV SEBI Order (n 2) [23]–[24]; TRAC Report (n 2).
[22] SEBI Brightline Discussion Paper (n 3) paras 1–9; SEBI Press Release No 56/2017 (n 3).
[23] SEBI Brightline Discussion Paper (n 3) paras 1–9; SEBI Press Release No 56/2017 (n 3).

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What SEBI kept were only general criteria without an explanation of how they would apply to specific circumstances in terms of distinguishing directive from protective rights, policy from management control, latent ability from some very remote prospect, and so forth.[24]

The real issue with institutional discretion is not lack of flexibility, but rather the lack of method to accompany it. Flexibility is justified if it enables the regulator to address substance. The lack of stability results from the regulator's failure to articulate the methods by which the substance will be discerned. SEBI retained the power to determine the context for control, but did not anchor that discretion to stable inquiries.

IV. Why It Matters: Minority Exit, Investment Certainty and Regulatory Legitimacy

The doctrinal fragmentation found in Part II gives rise to three practical implications.

Firstly, minority exit loses its reliability. Control is the doctrine through which the Takeover Code determines whether a public shareholder gets a right to exit. The fragility of the control doctrine implies that actual control transfers, for example through the exercise of latent rights, financing or governance structure, could avoid the open offer requirement and thus deny minority shareholders the opportunity for exit that the mandatory bid rule guarantees.[25]

Secondly, deal structuring will become more difficult. PE and PIPE investments in India typically take place with private placement where minority investors depend upon contractual rights such as vetoes, directorships, information rights, exits and promoter covenants. If the above mentioned rights might eventually qualify as control, it becomes necessary for the parties to factor into their consideration the above risks, for example through pricing, conditions precedents, termination rights and indemnities.[26]

Third, the legitimacy of regulatory decision making is undermined. Discretion itself is not illegitimate. However, when the criterion is vague and the stakes are economic, there is a heavy burden of explaining reasons. The decisions made by SEBI have to be clear, categorical and reasoned for the court to meaningfully conduct judicial review. A subjective exercise of power based on an assessment of the "over all arrangement" or "essence" cannot meet that burden.[27]

[24] SEBI Press Release No 56/2017 (n 3).
[25] SAST Regulations 2011, reg 4; Nahar (n 1) 5–9, 11–13; Jha (n 1) 64, 67–70.
[26] Afsharipour (n 11) 32–33, 39–43; Tarun M Stewart and Cyril S Shroff, '*Investing in Indian PIPEs*' (2007) 10 Journal of Private Equity 87, 91, 93–95.
[27] SEBI Brightline Discussion Paper (n 3) paras 8–9, 23–35; SEBI Press Release No 56/2017 (n 3).

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V. Structured Flexibility as Reform

However, the previous parts have illustrated that the issue is not with the breadth of Regulation 2(1)(e). This breadth was absolutely essential. The issue lies with the lack of discipline in its interpretation and application due to the absence of a consistent way of reasoning. Structured flexibility can be suggested as reform.[28]

The principle of structured flexibility will not ask SEBI to give up on contextual analysis or resort to hard and fast thresholds. What it asks for is to interpret the qualitative standard using definable categories. On every instance of alleged acquisition of control, SEBI must justify the finding on the basis of the kind of control alleged, the rights/arrangements used to demonstrate it, the character of these rights (protective/directive), their cumulative impact on decision-making of the company, presence of latent rights, and, finally, whether it justifies a mandatory open offer.

A. Why Bright-Line Formalism Is Not Enough

While a purely mathematical or exhaustive approach towards control may be effective in addressing issues of certainty, it will fail to prevent avoidance problems. Control need not always take a bright line form. Parties may find a way to contract out of the specified categories or even combine various permissible rights which collectively may give them an influence over the company. This would certainly create a problem of weakening the quality criterion in the long run. SEBI should, therefore, have been correct in taking a flexible approach in 2017.[29]

B. The Six-Step Structured-Flexibility Test

In each control assessment by SEBI, the following six-step framework should be used. Each step below is directly aimed at addressing one of the shortcomings highlighted in Part II above.

Step 1 - Determine the exact type of control claimed

It is imperative that SEBI does not begin the analysis by asking the generic question of whether the acquirer possesses 'control.' Even the regulatory provision itself defines 'control' into various forms including the power to appoint a majority of the directors of a company, management control and policy control. In addition to the various types mentioned in the regulations, judicial interpretations have included other types of control such as blocking control, latent control and cumulative control. SEBI must specifically determine whether: (a) it involves board control; (b) it

[28] SAST Regulations 2011, reg 2(1)(e).
[29] SEBI Brightline Discussion Paper (n 3) paras 23–35; SEBI Press Release No 56/2017 (n 3).

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is management control; (c) it is policy control; (d) it is blocking control; (e) it is latent control; or (f) it is cumulative control.[30]

Step 2 - Identification of the instrument that gives rise to the control mechanism

Once the category is determined, SEBI must identify the specific instrument(s) or contractual rights in whose exercise control is claimed. It is crucial to specify the exact instrument that makes the company under the control of the claimant and not rely on vague terms such as "influence" or "overall arrangement." The instrument may be shareholding, nominee directors, quorum rights, veto and affirmative voting rights, reserved matters, management rights, shareholder agreements, financing covenants, call option, convertible securities, pledges rights, or any combination thereof.

Step 3 - Categorize the rights into the protective, participatory or directive classifications

The SEBI should divide the rights on which it is basing its analysis into three different classes, which offer more precision than the protective/control dichotomy used thus far. The protective rights keep the investor's original bargain safe but do not include any means by which the company's direction can be determined (anti-dilution clauses, related party protections, extraordinary change of control consents). Participatory rights provide the investor some access to information and participation in corporate decision-making without providing any means for determining the company's direction (information rights, observer rights, nomination rights with limited decision-making powers). Directive rights allow the investor to determine the company's direction (consent rights over budgetary, business plan, management selection, capitalization, debt and acquisition strategies).[31]

Step 4 - Analyze the cumulative architecture of the rights

It is necessary for SEBI to analyze the combined effect of the rights involved. The right of control might come through the structure of the rights as opposed to the substance of any particular right. A veto right, a right to nominate directors, or an option may individually not imply a right of control, but in combination, these rights could together transform the decision-making process within the company. SEBI needs to evaluate whether these rights complement each other, whether the acquirer has both the ability to know and block, whether there is an overlap of board representation and veto rights, and whether the company can take normal decisions without the approval of the acquirer.

[30] SAST Regulations 2011, reg 2(1)(e); SEBI Brightline Discussion Paper (n 3) paras 4–5.
[31] Subhkam Ventures (SAT) (n 2) [8]–[9].

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Step 5 - Conduct a present force test in case of unexercised or latent rights

Where SEBI is working with options, convertibles, warrants, pledge enforcement rights, or contingent purchase rights, SEBI must conduct a present force test. The issue is not about whether the right is unexercised and, more importantly, not all unexercised rights give control. The issue is that of whether this latent right exerts itself on the company's internal power structure at the time in question. Is the right presently exercisable and unilateral? Is its exercise subject to conditions? Does exercise of the right have an economic likelihood? Does the right constrain the promoter, the board, or the management, and is there any accompanying governance or financing right involved?[32]

Step 6 - Establish the justification for the open offer sanction

Lastly, SEBI must link the control determination to the objectives of the mandatory open offer. This brings us to the core issue: Is there enough evidence that the structure of corporate control has changed to make an exit right appropriate? SEBI will have to state the pre-acquisition control structure; the specific rights the acquirer acquired; how those rights affect board, management, policy, blocking or latent control; whether the acquirer has put the public shareholder under a new center of power; and, if the answer is yes, why an exit right is appropriate. In this way, the control analysis will stay linked to the objective of the takeover code. The inquiry will avoid the over-inclusive problem through asking whether the rights warrant an exit option. The inquiry will avoid the under-inclusive problem by asking whether there has been a change in the control structure. Intent may be relevant but not dispositive: where there has been an objective shift in the governance bargain, a mere disclaimer of intent should not be determinative.[33]

C. The Effect of the Test

This six-step test cannot ensure that there will not be uncertainties since difficult situations may arise, but they would be better disciplined. SEBI will retain its discretion to establish de facto control, latent control, and cumulative effect, but at the same time will be obliged to justify its position through classifications corresponding to the statute and precedents. The test does not make the mistake of presenting a binary choice between Subhkam and NDTV/VCPL cases. Subhkam does not become a complete haven from all negative rights; NDTV/VCPL should not be a universal principle that all unexercised rights equate to control; Rhodia should not turn out that all consent rights have a control character. Every authority would be used as intended, so none of them become overly inclusive.[34]

[32] VCPL/NDTV SEBI Order (n 2) [11], [17], [23]–[24].
[33] SAST Regulations 2011, reg 4; Nahar (n 1)11–13, 31–32; Jha (n 1) 53,67–70; R Systems Informal Guidance (n 20).
[34] Subhkam Ventures (SAT) (n 2) [6], [8]–[9]; VCPL/NDTV SEBI Order (n 2) [23]–[24]; Rhodia (n 8) [60]–[62].

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SEBI could adopt this approach without a need for legislative amendment by issuing an interpretative circular or schedule under Regulation 2(1)(e). This should be illustrative, not exhaustive, in nature so as not to provide guidance on how to avoid regulation. The SEBI could also choose to use this approach by adopting it administratively: each decision on controls going forward should specify explicitly which requirement is being satisfied. Through repeated iterations, this will form a better body of precedent.[35]

VI. Conclusion

It will be recalled that the notion of control within the Takeover Code dictates whether an exit option ought to be available to public shareholders owing to a shift in the balance of power. The notion of uncertainty in control does not remain a mere technicality since it impacts the way the mandatory bid provision works, and the efficacy of the exit process as well as the costs of minority holdings.[36]

In summary, the problem identified by this paper goes beyond ambiguity. It involves doctrinal inconsistency. Indian takeovers law provides for at least three distinct theories of control - Subhkam's proactive/reactive dichotomy, NDTV/VCPL's latent capacity theory, as well as the idea of blocking rights on which the 25% control trigger is based. Each of these ideas represents a meaningful facet of corporate power without a satisfactory explanation of when one aspect of power transforms into control and how it relates to the other dimensions of power.[37]

The retained subjectivity of SEBI after its 2016-2017 bright-line exercise may have been justified in principle, but it leaves room for unstructured discretionary decision-making. This leads to doctrinal fragmentation that has very real implications for the ability of minority holders to withdraw from the company and structure investments. [38]

Structured flexibility solves this problem without stripping away contextually relevant considerations. Structured flexibility does not boil down discretion into an equation. What it demands is that the regulator think things through along certain parameters: the nature of the asserted control; the rights invoked by the assertion; whether the rights are protective or directive in nature; what cumulative effect the rights have; the current effect of any latent rights; and how the conclusion relates to the open offer consequence.

[35] SAST Regulations 2011, reg 2(1)(e); SEBI Brightline Discussion Paper (n 3) paras 23–35; SEBI Press Release No 56/2017 (n 3).
[36] SAST Regulations 2011, reg 4; Nahar (n 1) 5–9, 11–13; Jha (n 1) 53, 67–70.
[37] Subhkam Ventures (SAT) (n 2) [6], [8]–[10]; VCPL/NDTV SEBI Order (n 2) [23]–[24]; SAST Regulations 2011, reg 3; TRAC Report (n 2).
[38] SEBI Brightline Discussion Paper (n 3) paras 1–9, 23–35; SEBI Press Release No 56/2017 (n 3).