



Special Issue

April (Week 3)

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All about corporate defence mechanisms against hostile takeovers

(Source: [The Hindu](#))

Context: *Tesla CEO Elon Musk's bid to acquire Twitter was partially thwarted on Saturday with the microblogging platform deploying the 'poison pill' mechanism. The 'poison pill' mechanism is used to dilute shares of a company so that activist investors looking for hostile takeovers will incur a massive expenditure. Besides, this will make the process cumbersome.*

How did Twitter deploy the 'poison pill'?

- Twitter put forth a shareholder rights plan that would be triggered if an entity acquires a stake of 15% or more.
- The plan would allow existing shareholders, excluding the acquiring entity — Mr. Musk in this case — to purchase additional shares at a discounted rate, making it difficult for the acquirer to establish a majority stake in the company.
- The move would additionally reduce the likelihood of an entity acquiring control of the company without paying the other shareholders an appropriate premium.
- It was meant to buy more time as the company's board endeavours "to make informed judgements and take actions that are in best interest of shareholders."

What are the other defence mechanisms?

- Publicly listed companies across the globe often witness threats of hostile takeovers, which take place through a back-door accumulation of shares; in other words, acquiring sizeable shares from the open market than from the management.
- However, with time, listed companies have been able to come up with several defence mechanisms to prevent such takeovers. Some of them include:
- **The greenmail defence:**
 - The idea here is simple: pay them to go away and stop threatening the company with a hostile takeover. It involves the target company repurchasing its own shares at a premium and in a quantity enough to prevent a hostile takeover.
 - In 1986, broadcast company Viacom International ended a two-week long siege by repurchasing 17% of its own block of shares from prominent institutional investor Carl Icahn at \$62 per share. Wall Street professionals estimated the deal helped the investor reap \$21 million, as per Los Angeles Times.
 - Mr. Icahn's group had spent an average of \$65.75 for each share, or a total of \$230 million for 3.5 million shares of Viacom.
 - However, the target company accorded it warrants priced between \$65.375 and \$72 for each of its common stock, which were usable for six years. Warrants are instruments that gives the holder the right, but not an obligation, to acquire the common stock of a company at any time before its expiry at a certain quantity and price.
 - "Analysts said the warrants were attractive because of widespread predictions that Viacom stock will soar in value over the next few years," The New York Times noted in its report. Further, the publication reported, that the activist investor was given \$10 million worth of free commercial air time across the company's radio and television stations.
 - The practice had become the means for several activist investors to sell their shares at a premium by threatening a hostile takeover.

- The Wall Street Journal adds that the practice, widely criticised as ‘corporate blackmail’, died down after the 1990s as “companies beefed up defences and lawmakers took steps to discourage it.”
- **The crown jewel defence:**
 - **This mechanism involves the target company spinning-off its crown jewel unit, or its most valued asset, in order to make the acquisition less desirable for the acquirer. The asset could be the unit that is most profitable in the company, or is important for future profitability, or produces the flagship product of the company.**
 - In September 2020, France-based Veolia Environnement SA initiated a bid to acquire 30% of utility company Suez SA from the state-backed utility company, Engie. Bloomberg reported that the acquirer was exploiting a depressed COVID-19 situation.
 - It had reported, “Suez’s justified outrage at this move, which would put Veolia boss Antoine Frerot in pole position to swallow the entire company, hasn’t been backed up by a convincing alternative, however.”
 - The defence was centred around Suez’s French water business. In April 2021, Reuters reported that in an effort to force Veolia to negotiate, Suez set up a Dutch foundation to prevent the sale of the water business deemed essential for its rival to divest and thereby, receive the antitrust approval to buy Suez.
 - The Dutch foundation was meant to ensure that they would own a symbolic but a powerful piece of the company and does not split from the group. In turn, this would make Suez unbuyable.
- **The pac-man defence:**
 - **Here one prevents a hostile takeover by initiating a reverse takeover. It involves the target company making an offer to the acquire the company that commenced the takeover bid. The target company could make use of its ‘war chest’ or securing finances from outside for the reverse takeover bid.**
 - Pac-Man was a popular yesteryear video game. The player is required to gulp all the power pills escaping the ghosts that are chasing the Pac-Man character. Once the player has acquired all the pills, the ghosts turn blue, allowing ‘Pac Man’ to eat them and acquire bonus points.
 - In 1999, Richmond-based paper-recycling company Chesapeake Corp launched an unsolicited bid for Shorewood Packaging.
 - The latter had previously tabled an offer to purchase the former Chesapeake for \$480 million at \$40 for each share.
 - In response, Chesapeake upped its bid to acquire Shorewood at \$17.25 per share, valuing it at \$500 million, from an initial \$16.50 per share, reported CNN Money.
 - Shorewood rejected the offer and after three months it was acquired by North America-based company, International Paper.
- **The white knight defence:**
 - In case a company’s board finds itself in a situation that it cannot prevent a hostile takeover, it seeks a more accommodative and cordial firm to acquire a controlling stake from the hostile acquirer.
 - **The ‘White Knight’ agrees to restructure the company adhering largely to the desires of the target company’s board, also providing a fair consideration.**
 - Automobile maker Fiat bailing out Chrysler from a liquidation crisis in 2009 is a case in point. Chrysler, like many other automobile manufacturers at the time was witnessing a downswing in sales following the global economic crisis of 2008.
 - It had to initiate bankruptcy proceedings in April 2009. This initiated a search for a potential buyer to bail it out from the crisis by infusing some cash into the company.
 - Chrysler was previously endowed \$4 billion from the U.S. Treasury Department in December 2008 and another \$4 billion in 2009 to keep the company afloat.



- But the overall macroeconomic downturn did not help its revival ambitions. Its near deals with Nissan and Kia Motors collapsed because of the same reason.
- Additionally, the companies were believed to be unwilling to infuse cash into the beleaguered company. It was later that Fiat emerged as the white knight.
- The terms of the deal held that Fiat would not immediately infuse cash into the company, but as
- The Wall Street Journal reported, obtain a stake in exchange for covering the cost of retooling a Chrysler plant to produce Fiat models in the United States and provide engine and transmission technology.

All about Panopticonism

(Source: [The Hindu](#))

Context: *Panopticonism* was a theory introduced by Michel Foucault in one of his most influential books, *Discipline and Punish: The Birth of the Prison*. It is a concept which explains a new model of surveillance in society.

The structure

- Introduced by English philosopher and architect Jeremy Bentham, the panopticon was a circular building with cells built into its circular walls with an observational tower at the centre.
- A guard could observe every move of the prisoners in each cell from the observational tower. The prisoners, in turn, could see the tower but could not see anything inside it on account of the difference in height as well as the shutters and blinds.
- The ambiguity about whether or not they were being observed forced the prisoners to conduct themselves inside their cells with the assumption that the guards could be observing them at any point in time.
- This was the perfect idea for a prison, according to Bentham, as it was visible yet unverifiable. He believed that the fear of constant surveillance could help bring order and discipline, alter and reform groups and preserve morals inside the four walls of the prison.

The theory

- Foucault takes the architectural structure and transforms it into a philosophical theory that helps us understand how the idea of surveillance and the power relationship between individuals and systems of social control changed post-panopticon.
- An advocate of individual freedom, he believed that visibility was a ‘trap’ that would coerce people into disciplining themselves and behaving in a way that pleased systems of power and knowledge. Foucault explains how such invisible observation helps systems of control beyond the prison structure.
- If invisible surveillance features are installed in society, people would self-regulate themselves assuming that they are being constantly observed even when there is no one observing them. This makes panoptic surveillance more economical and efficient than total surveillance.
- It produces outcomes desired by systems of control without unleashing actual violence, but through structural violence wherein people are devoid of freedom owing to their psychological fear of being watched. This is a one-way attainment of information, which can be further used to control citizens.



- 1984 by George Orwell is a remarkable book that visualises a panoptic surveillance state. The plot revolves around Winston Smith and the way he looks at the dystopian society he lives in.
- Throughout the book, the author mentions the ‘Big Brother’ who is always watching, and how citizens in the fictional totalitarian state of Oceania seem to be living in a virtual prison controlled by technology and propaganda.
- People seem hesitant to talk or even think against the oligarchy not because they see a policeman or a guard watching over them but owing to the fear that there could be a spy amidst them listening to their thoughts (the spy could even be your own child).
- Foucault believed that panopticonism would spread and have unprecedented consequences in societies as systems of control would use it for their benefit at the cost of individual freedom.

The panopticon today

- As predicted by Foucault, panopticonism has spread in unexpected ways in our society. The present-day CCTV camera is a candid example of how the theory works with people being cautious about how they behave irrespective of whether the camera is functional.
- It, for instance, inculcates more fear among students writing an exam preventing them from cheating than the presence of an invigilator.
- Psychologist Shoshana Zuboff took the concept further with “surveillance capitalism”, which is a system of surveillance that was extended to marketing. Computers and mobile phones become a medium for monitoring one’s actions.
- An individual’s performance at the workplace is recorded and monitored through their keystrokes. Governments track our phones and keep a record of our biometrics in the name of preventing terrorism.
- As a marketing strategy, social media platforms tap into our search histories, understand our interests and squeeze in advertisements on our social media pages.
- This sort of monitoring and data collection is analogous to the panopticon because its a one-way information avenue, where systems of power use technology to monitor and even control our likes and dislikes.
- Though the act of giving our fingerprints for an Aadhar card, or giving access to our location and our contact lists to almost every mobile application we download seem trivial, these are methods of invisible surveillance that control us on a daily basis.
- The panopticon, thus, comes alive through new technologies and innovations that curtail our freedom.

All about Jerusalem’s al-Aqsa Mosque

(Source: [Indian Express](http://www.indianexpress.com))

Context: *Tensions flared at Jerusalem’s al-Aqsa Mosque compound on Sunday, leading to clashes that left 17 Palestinians wounded. The unrest happened just two days after at least 152 Palestinians were injured during clashes with Israeli riot police.*

The historical context

- It is not possible to disassociate the 14-hectare site and the clashes with the larger, ongoing Israeli–Palestinian conflict.



- The al-Aqsa Mosque is one of Jerusalem's most recognised monuments. The mosque's complex is one of Islam's most revered locations, and the Temple Mount is the holiest site in Judaism.

- Over the decades, the site in Jerusalem's Old City has frequently been a flashpoint for violence between Palestinians and Israeli forces and hardline groups and is at the heart of competing historical claims. Some Palestinians believe that the mosque has also served as a symbol of their resistance, culture and nationhood.

- The Temple Mount is a walled compound inside the Old City in Jerusalem, and is the site of two structures: the Dome of the Rock to the north and the Al-Aqsa Mosque to the south.

- The Dome of the Rock is a seventh-century structure, an important Islamic shrine, believed to be where the Prophet Muhammad ascended to heaven. To the southwest of the Temple Mount, is the Western Wall, a remnant of the Second Temple and the holiest site in Judaism.

- In Judaism, it is believed to be the site where God gathered dust to create Adam. According to the Bible, in 1000 BC King Solomon built the First Temple of the Jews on this mountain, which Babylonian troops tore down some 400 years on the orders of the Babylonian king Nebuchadnezzar.

- In the first century BC, Jews returned from their banishment and built the Second Temple. The temple was burned in AD 70 by Roman general Titus.

- Following the Six-Day War in 1967, an armed conflict between Israel and a coalition of Arab states primarily comprising Jordan, Syria and Egypt, the Waqf Ministry of Jordan that had till then held control of the al-Aqsa Mosque, ceased to oversee the mosque.

- After Israel's victory in that war, the country transferred the control of the mosque and the northern part of the site, also known as Haram al-Sharif, to the Islamic waqf trust, a body that is independent of the Israeli government. Israeli Security Forces patrol and conduct searches within the perimeter of the mosque.

- Before modern borders were drawn up in the region, pilgrims to the Muslim holy cities of Mecca and Medina would stop over in Jerusalem to pray at this mosque. Friday prayers still draw thousands of worshippers to the site and Muslim religious festivals draw particularly large crowds.

Socio-political context

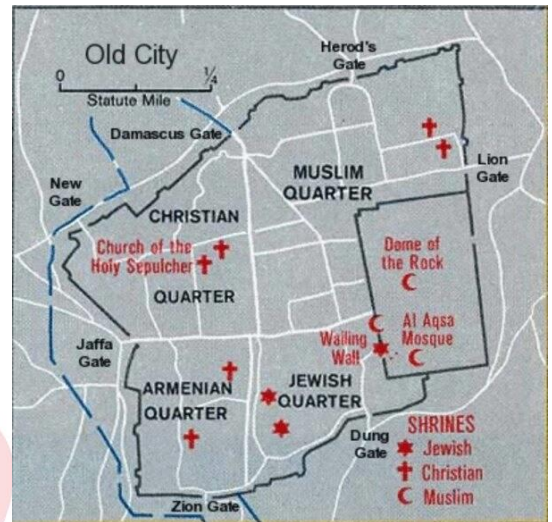
- For Abrahamic religions, this site bears a great amount of significance and has remained an important place for pilgrimage.

- For a long period in the site's history, non-Muslims did not have permission to access it. In the book 'City of stone : the hidden history of Jerusalem', Meron Benvenisti writes that Article 13 of the Mandatory Charter conferred on Britain by the League of Nations prevented it from interfering with the site or the administration of purely Muslim holy places, one of which was the mosque.

- After Israel captured the site in 1967 following the Six-Day War, the Chief Rabbinate of Israel had announced that entering the Temple Mount was forbidden to Jews, in accordance with a halakhic prohibition, Jewish religious laws.

- Given the tense socio-political situation with regard to the site, the Israeli government has imposed several restrictions on access to it. In its history, particularly its modern history, the site has been witness to several provocations that led to wider clashes and conflict in the city and region.

- In 2000, former Israeli prime minister Ariel Sharon visited the site when he was leader of the opposition, with a large security presence, which sparked what later came to be known as the Second Intifada.





Protests against Sharon's visit spiralled into an armed conflict that resulted in the deaths of thousands of Israelis and Palestinians.

