
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

**JUDICIAL APPROACH TOWARDS EMPLOYEES RIGHTS POST
MERGER AND ACQUISITION**- Lavanya Malhotra¹**Introduction**

Merger and acquisitions often done with a view to consolidate firms for profit or decrease competition, often command less favour from the employees involved in it. Those that work in the firms going under mergers and acquisitions often fall in a vulnerable category and are prone to rescue. One such case is of Ram Pravesh Singh and Ors. vs. State of Bihar and Ors wherein in the year 1976, the Bihar Government, the Board and Rural Electrification Corporation brought into existence a society registered under the Bihar Co-operative Societies Act, known as the 'Futwah – Phulwari sharif Gramya Vidyut Sahakari Samiti Ltd. (for short 'the Society') to execute a REC Scheme for better distribution of electricity to rural areas. The Board suggested to revoke the licence granted and want to merge with Board. However, thereafter, the State Government took a decision that the assets and liabilities of the society should be transferred to the Board, but not the services of the employees of the Society. Therefore, the employees of the society (appellants) filed CWJC Nos.1503 of 2000 and 14394 of 2001 seeking a direction to the Board to absorb them in equivalent posts with continuity of service and also pay their arrears of salaries, allowances and other dues. They contended that they had a right, both in law and in equity, as also a 'legitimate expectation' to be absorbed into the services of the Board.

Now, the question that arose was if any obligation on Board - either contractual or statutory, or on equitable considerations-to absorb the services of the appellants?

To this, the court held that, a person can be said to have a legitimate² expectation of a treatment, 'if any representation or promise is made by an authority, either expressly or

¹ Student at Amity Law School, Noida

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

impliedly, or if the regular and consistent past practice of the authority gives room for such expectation in the normal course. Where the board made no such promises, the expectations has no legal role and hence the employees are not entitled to any compensation or else offered a job back in the board.

Often when the laws themselves are not able to do justice to the rights of employees, judiciary over rules them, turning in favor of the employees.

Judiciary and the fundamental rights of employees

The Constitution of India declares India a sovereign, socialist, secular, democratic republic. It seeks to protect the rights of people, provide equality of opportunity, justice to all in an unbiased light, freedom to act upon one's own will and, mutual love and respect amongst its citizens. The fundamental rights of people, provide them liberty to exercise all the above. The judiciary itself presides to protect these rights.

These rights are encased in part III and IV of the Constitution of India. Part III of the constitution of India, lays down the —Fundamental Rights| guaranteed by the Constitution of India. It encloses rights such as:

- (b) Right to Equality
- (c) Right to freedom
- (d) Right against exploitation
- (e) Right to freedom of religion
- (f) Cultural and educational rights
- (g) Saving of certain laws
- (h) Right to constitutional remedies

These rights provide every citizen the possibility of living a potent life. Where exploitation is to be avoided and equality is to be guaranteed. For citizens to have the liberty to shape their own future and have an equal access to the opportunities delivered by life itself.

Article 32 of Part III of the Constitution provides the provision to redress grievances of people against exploitation of their fundamental rights. This provision acted as the procedural aspect for protecting the substantive provisions provided in the Constitution

²2001 (49) BLJR 56, 2001 (88) FLR 864, (2001) III LLJ 260 Pat

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

as any person or citizen approach directly to the Supreme Court if there is violation of their fundamental rights happened.

In **Consumer Education and Research Society vs. Union of India and Others** the Supreme Court presided over the case under Article 32 of the Constitution. Consumer Education and Research had filed a writ petition for the protection of workers in asbestos industries. These are vulnerable to a deadly disease asbestosis which involves inflammation of the lung tissue leading to shortness of breath and often lung cancers. The industries involved in the hazardous material, didn't have any safety measures. There were around 11,000 workers living an unsafe life. There wasn't any approach from the industries to guarantee a safe workplace or health services in case the workers fell victim to the consequences of inhaling asbestos.

The petitioners Consumer Education and Research found the legal system lacking in any provision to safeguard the lives of thousands of workers working in the asbestos industries. They demanded provisions to safeguard the health of the workers under the following provisions:

(i) Article 21: No person shall be deprived of his life or personal liberty except according to procedure established by law.

(ii) Article 38 (1): The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

(iii) Article 39 (e): The State shall, in particular, direct its policy towards securing—

That the health conditions, their strength³ and especially children of tendered age, women and citizens are not forcibly entered into avocations which are unsuited to them.

□ Article 42: The State shall make provision for securing just and humane conditions of work and for maternity relief.

³Randhir Singh v. Union of India &Ors, 1982 AIR 879, 1982 SCR (3) 298.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

(1) Article 43: The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent.

(2) Article 46: The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

(3) Article 48A: The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

The petition was accepted, and laws framed under Rule 123A of Factories Act. According to the law, the companies dealing with asbestos were directed to maintain a database containing health status of workers from a minimum 40 years of employment to 15 years after their retirement. The Membrane Filter test is to be adopted by the factories or industries. Health coverage is to be insured whether under Employees State Insurance Act or Workmen's Compensation Act. These provisions amongst many more were provided by the Supreme Court for the safety of workers in asbestos industries.

It was made clear that being healthy is a fundamental right that should be provided to every worker. It would ensure a meaningful existence for the workers and enhance their quality of life. There shouldn't be such circumstances wherein a worker is forced to work under hazardous conditions for earning livelihood for his family. This would be at the cost of his own life, which is against the fundamental right of health for every citizen of the country.

Part IV⁴ (—Directive Principles of State Policy) of the Constitution of India, also provides directions for the state to employ laws based on the fundamental rights of the people as in Part III of the Constitution. Some of the provisions in Part IV, relevant to this study are:

- **Section 38: State to secure a social order for the promotion of welfare of the people.**

⁴Chapter 1, 4*(kkk), The Industrial Disputes Act, 1947.

- **Section 39: Certain principles of policy to be followed by the State. □**
- **Section 39A: Equal justice and free legal aid.**
- **Section 41: Right to work, to education and to public assistance in certain cases.**
- **Section 42: Provision for just and humane conditions of work and maternity relief.**
- **Section 43: Living wage, etc., for workers.**
- **Section 43A: Participation of workers in management of industries.**
- **48A. Protection and improvement of environment and safeguarding of forests and wild life.**

These principles are not enforced but are path makers for a state to function in a democratic and just society. These directive principles ensure a state to be involved in social welfare. These have to be kept in mind by the Central and State government before making any policies regarding its citizens.

In the case of *Randhir Singh vs. Union of India & Ors* on 22 February, 1982a writ petition was filed regarding equal pay for equal work as a fundamental right. Randhir Singh, a driver constable in the Delhi Police Force under the Delhi Administration and his colleagues filed a petition to the authorities that their case was omitted to be considered separately by the Third Pay Commission and that their pay scales should be the same as the drivers of heavy vehicles in other departments. When their request was not paid any attention, an application was filed under Section 32 of Indian Constitution.

The petitioner and other drivers of the Delhi police force argued that they performed a similar that of other drivers in the service of Delhi Administration and the Central Government. Their duties and responsibilities are also similar to them. The posts and rank held by the drivers of Delhi police force and that of Delhi Administration and Central Government was also identical. It would be irrational to consider that doing a similar task in different department would accord to difference in wages.

***The State shall, in particular, direct its policy towards securing—
(d) that there is equal pay for equal work for both men and women;***

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

Is a directive principle of state policy, but has to be read into a Fundamental Right. An equal pay has to be guaranteed where the amount and kind of work is similar. Denial of such a right would be against Article 14 of the Constitution, according to which a state cannot deny equality to people before the law, neither can it deny equal protection for all, under it. Article 16, in turn ensures equal opportunity for citizens in matters related to employment or appointment to any office. If citizens are not receiving an equal pay for an equal amount of work, then the right to equal opportunity holds no value.

Justice Reddy directed the state to ensure that equal pay for equal work is provided where ever applicable under **Section 39 (d), Article 14 and Article 16** of the Constitution of India. There may be no classification or irrational differences in the wages even when a similar amount of work is done in two different departments.

Judiciary and the Labour laws

Apart from the fundamental rights governing the lives of employees, labour laws enacted by the government acts as another set of watch guards. These laws have a significant impact on the welfare of the employees. Laws have been framed in order to provide a safe, healthy, equal, un-exploitative environment for the employees. Indian Judiciary considers the enforcement of these rights and whether they are acted upon in a just and faithful manner. To provide justice to the weak and the deprived, who need a judicial support to claim their own right. Judiciary here acts as a protector of the rights provided to the people. At the same time, it stands as a vigilante to the just application of laws. If and where the judiciary finds loopholes in the laws, it acts upon favouring the needs of people over the terms of law. If needs be, the law is amended to serve the present needs of the people. Where the judiciary recommends the amendments, legislators are abided by the directions of the court, to make the best possible resolutions regarding it.

Protecting the labour laws along with the fundamental rights, provides the judiciary a strong hold on the lives of the employees. To govern that justice is provided to the needy and that laws work for the benefit of the people and not against them. Acting as a presiding power over the lives of employees, the judiciary has a strong hold on the

society itself. Sometimes, it might be an important source of revolution or bringing about a change that large.

During mergers and acquisitions lay-offs and termination is a common phenomenon. After a merger, the new company seeks to choose employees from the two-duplicate set of departments available. It gets the opportunity to keep the best and terminate the other one. If the merger was an expense affair, then the new company might decide to cut down its cost by disposing off the employees. And in case the merger fails, the employees are certainly laid-off or terminated to reduce the cost of the company and work with few to save some money.

The Constitution of India provides an employer the freedom to lay-off or discharge an employee but within acute circumstances. While, they have the liberty to do so, but there are several obligations and directions by the legislation, to be followed.

I. Lay-offs

Lay-offs are defined by the Industrial Dispute Act as:

the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of machinery or natural calamity or for any other connected reason to give employment to a workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched.

So, in case the employer falls short of any material required in the work and gives a temporary leave to the workmen, then it is regarded as a lay-off. In the period of lay-off a workman is temporarily out of service. In such a case, he doesn't have a job or money in that duration of a pseudo unpaid leave. Moreover, he might not even know when he would be called back to his job. In such a period, providing compensation to the employee for the period of lay-off seems an appropriate and humanitarian act.

V. Interests of employees and workers

The tribunal cannot be called upon to sanction a scheme which is unworkable on the face of it. A scheme demanded of the workers to waive their claims compensation under the Industrial Disputes Act, and also notice money and gratuity, the proposal

being unfair, the court refused and order calling a meeting of the creditors for consideration of the scheme.

In Re: Krishnakumar Mills Co. Ltd. ... vs. Unknown, 1975.45 Comp Case 248 Guj. All that is asked for by this applicant is the permission to convene the meeting of the shareholders and creditors to consider with or without modifications the arrangement of the scheme of compromise and arrangement between the Krishnakumar Mills Company Ltd. under liquidation, and the creditors and members of the aforesaid mills. The application is made by one Ratilal Manila Shah, of M/s. National Machinery Mfg. Works, having their office at Tavdipura, Ahmedabad. The said firm claims itself to be a creditor of the mills-company to the tune of Rs. 1,41,000. The scheme has been opposed at the initial stage of issuing directions on the summons being taken out mainly by the two secured creditors, namely, the Gujarat State Financial Corporation and the State Bank of Saurashtra. On behalf of the Corporation as well as the State Bank of Saurashtra, affidavits-in-reply to this application have been filed and they have opposed any orders being issued by this court for convening the meeting of the shareholders and creditors for consideration of the scheme contending, inter alia, that the scheme is neither reasonable nor practicable of being implemented and a similar scheme was in the past rejected by the court summarily.

Since the company closed down its business, the creditors started pressing the company of payment of the dues and ultimately in the month of August, 1971, Messrs Bhaidas Cursondas & Company of Khamgaon filed ⁵Company Petition No. 19 of 1971 for winding up the affairs of the company. This court ⁶by an order dated 7th February, 1972, wound up the company. The appeal filed by the company, being Original Jurisdiction Appeal No. 2 of 1972, was also dismissed by the order of the court dated 6th March, 1972. The official liquidator appointed by this court had taken out a judge's summons in Company Application No. 19 of 1974, for powers to sell the movable and immovable properties of the company by public auction in accordance with the directions given by this court from time to time. This court by its order of 13th May, 1974, permitted the official liquidator to sell the asset of the company by inviting offers as mentioned therein. Both the secured creditors, viz., the Gujarat State

⁵Avtar Singh, Company Law, 16th ed.p.589.

⁶1975. 45 CompCas 248 Guj

Financial Corporation and the State Bank of Saurashtra have agreed to the sale of the assets of the company by the liquidator, free from their charge subject to the conditions that the sale proceeds realised shall be charged with and retained as their security for the repayment of their loan together with interest and all other costs, charges and expenses, etc., payable in connection therewith. The official liquidator has, accordingly, advertised the sale of the assets in the various newspapers and the advertisements have appeared in the newspapers all over India. The last date for receiving the tenders is 15th July, 1974, which on receipt, shall be placed before this court on 16th July, 1974, that is, to-morrow. The tenderers are required to remain present at the time of opening of tenders so as to enable them to raise their offers. The official liquidator has for the purposes of advertisements incurred expenses to the extent of Rs. 6,000 by way of advertisement charges. The invitation of offers for the purchase of this unit together with the valuation report has been circulated with the terms and conditions of sale to 32 Chambers of Commerce and Industries, and Federations of Mills & Industries in India, and some of these chambers and federations have, in turn, circulated the news regarding the sale of the assets of this mills-company to their respective members. It is at this stage that this application has been made under section 391 for obtaining leave to convene the meeting of the shareholders and creditors to consider the scheme.

The Gujarat State Financial Corporation is a secured creditor of the company and the legal adviser of the company has also filed an affidavit in-reply opposing the court giving any directions on the summons, which has been taken out. A sum of over Rs. 17 lakhs approximately is due and payable by the company to the Gujarat State financial Corporation. The Corporation has on 29th November, 1971, filed an application in the court of the district judge at Bhavnagar being Civil Miscellaneous Application No. 59 of 1971 under the provisions of sections 31 and 32 of the State Financial Corporations Act for the recovery of its dues. At that time the total payment due and payable to the Corporation by the aforesaid company was Rs. 18,83,608.48. The interest at the rate of Rs. 454.55 per day was accruing since November 26, 1971. As a result of the winding-up order passed by this court, the said proceedings have been transferred to this court and they are pending against the company. On behalf of the State Bank of Saurashtra,

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

one Arvindray Chimanlal Parikh has filed an affidavit-in-reply opposing the scheme at an initial stage. The amount of Rs. 4,95,000 is due to the State Bank of Saurashtra under the various accounts of the mills-company with them.

VI. In case of retrenchment

Retrenchment compensation is given to the worker by his employer, if the employer seeks to terminate the employee under certain circumstances.⁷ These can be because the labour is surplus or redundant. In such cases, usually the last to be employed is the first to be terminated. It is believed, those that were with the company since long are more beneficial to the company, than the novice employees.

Retrenchment compensation, prior to **Section 25 F** of Industrial Disputes Act was provided by the consent of tribunals involved. When Section 25F provided certain conditions upon which retrenchment compensation is to be paid, all the succeeding cases were directed under it. This section provided a legitimate value to the provision of retrenchment compensation. It was enacted keeping in mind the increasing cases of retrenchments out of closure of establishments. To safeguard the jobs of the employees and prevent large scale unemployment, Section 25F was inserted in the Industrial Disputes Act.

In **Barsi Light Railway Co. vs. K.N. Joglekar** case, the court considered payment of retrenchment a justifiable act. According to the arrangement held between the secretary of the State of India and the Railway Company, the latter was to be acquired. The order was in effect from January 1, 1954 as ordered by the President of India. Following this agreement, the railway company issued notice to its employees regarding their termination. Their services would no longer be required with effect from the afternoon of December 31, 1953. It was also stated that the retrenched employees would be absorbed by Government of India who are willing to work under the conditions set by the government.

A great number of employees became a part of the service under the Government of India on a similar pay scale. However, 23% of the staff was re-employed on a lower pay scale. There were 24 employees who were not taken into service by the

⁷Ibid

Government of India. Afterwards, the Railway Union filed 61 applications under the Payment of Wages act, 1936 for payment of compensation under section 25F.

The employees filed an application under Section 15 of the Payment of Wages Act to the authorities, complaining that they had been terminated by the Railway Company. In such a case, they demanded a justified entitlement to compensation under Section 25F of Industrial Disputes Act. The authorities, though accepted the⁸ entitlement, but refuse to take any action, proclaiming no authority on the matter.

VII. In case of transfer of undertaking

Under Section 25FF of Industrial Disputes Act, on closure of an establishment, an employer has the obligation to pay compensation to the employee after fulfilling certain conditions. However, this section didn't have any such impact when it was first framed in Industrial Disputes Act, 1956. One such example is that of **Hari Prasad Shiv Shankar Shukla vs. A.P. Divelkar**. The court held that employers are not liable to pay any retrenchment benefit to the employees under Section 25 F of Industrial Disputes Act. This is when the employer terminates the services of the employees on a true and legal closure of a business or when employee is terminated because of the transfer of any establishment.

Another example is **K. Madhavan and Anr. etc. vs. Union of India & Ors**¹⁵⁵ the learned counsel commended that whole period⁹ of service rendered by the employees of the transferor bank considered for their seniority after amalgamation. In the afore said case petitioner Madhavan was a permanent officer in the grade of Deputy Commandant. Court held no assistance to the appellant in the present case where a scheme has required to be framed after amalgamation of the services of the transferor bank with the transferee bank and in that scheme certain provisions have been made as to how the employees of the transferor bank would be fitted in the transferee bank.

⁸JyotiAngrish, —Impact of globalization on Indian labour laws with special reference to social security. Shodganga: A reservoir of Indian thesis. Accessed on July 24, 2017. <http://hdl.handle.net/10603/57426>.

⁹(1988 (1) SCR 421).

For general queries or to submit your research for publication, kindly email us at editorial@ijlr.in

<https://www.ijlr.in/>

Chairman, Canara Bank, Bangalore vs. M. S. JASRA &Ors, Respondent No. I who was a Banking Officer in the Reserve Bank of India applied for the post of Assistant General Manager in Lakshmi Commercial Bank, he was selected for the said post and he joined in March 1983. In 1985 on an application made by the Reserve Bank under Section 45(1) of the Banking Regulation Act, 1949, the Central Government passed an order of moratorium under Section 45(2) of the said Act, in respect of Lakshmi Commercial Bank and it came to be amalgamated with Canara bank. The services of the employees of Lakshmi Commercial Bank were continued with Canara Bank, and respondent No.1 was fitted in the post of Divisional Manager in Canara Bank. He claimed that he should be given against a higher post by his position as Assistant General Manager in Lakshmi Commercial Bank.

Allowing the appeal, this Court held that, the only right of such an employee whose service is so continued is, therefore, to claim parity with the employees of the transferee bank itself of corresponding rank or status subject to equivalent qualification and experience and no more. The right of such an employee is provided in the proviso to clause (i) and not in the earlier enacting part of clause (i) of sub-section 70 (5) of Section 45 of the Act as claimed by respondent No.1 and upheld by the High Court.

And, Court also referred State Bank of Travancore vs. Elias Elias &Ors., [1971] 2 SCR 28. Clauses 10 and 12 of the Amalgamation Scheme just include the substance specified in clause (i) and the proviso thereunder. There is no uncertainty or conflict in those clauses of the scheme¹⁰ either inter se or with clause (i) and the proviso there under sub-section (5) of Section 45 of the Banking Regulation Act, 1949.

CONCLUSION

Merger and acquisitions has been evolving as a growing strategy in the corporate world to harness many objectives. The market has been booming with news of recent mergers and acquisitions along with predictions regarding their success or failure. Often undertaken with a view to increase growth, mergers often have the opposite effect. This is mostly due to the neglect of companies for its

¹⁰1992 AIR 1100 1992 SCR (2) 68, 1992 SCALE (1)616.

employees. Employees face a hard time during mergers and end up stunting the growth of the company they work in.

This study was undertaken in order to understand this phenomenon. It sought to bring out the effect mergers have on the employees. In order to bring this out, a combination of empirical and doctrinal study was undertaken. The doctrinal study analysed the legal background governing the lives of the employees and the companies in cases of mergers and acquisitions. Coupled with this was an empirical study, that was supposed to bring out the changes experienced by the employees in the new work environment.

Employees from telecommunications, automobiles, pharmaceuticals and banking industries were surveyed using questionnaire, to gather primary data regarding their experience at the new work place. Information about the attitude of employees towards the merger and its effect on them, were gathered. For secondary data, by-laws, recent amendments in laws, judicial cases and legal reports were referred to. These provided insight into legal framework that drives mergers and acquisitions; and those that rescue the employees affected by the mergers.

REFERENCES

- Singh, Avatar, *Company Law*, 16, (Lucknow: Eastern Book Company, 2014).
- Agrawal, Prachi. 2014. —Payment of Gratuity Act, 1972: A Critical Analysis. Accessed July 18, 2017. <https://www.lawctopus.com/academike/payment-gratuity>.
- Angrish, Jyoti. —Impact of globalization on Indian labour laws with special reference to social security. Shodganga: A reservoir of Indian thesis. Accessed on July 24, 2017. <http://hdl.handle.net/10603/57426>.
- Aperian Global. Published May 23, 2016. —Successful Mergers and Acquisitions: what you can learn from them. Updated 2017. Accessed July 1, 2017. <http://www.aperianglobal.com/successful-mergers-acquisitions>, api-

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

3712392. 2008. —Legal steps involved in mergers and acquisitions/
procedure of mergers. Accessed on July 28, 2017.

<https://www.scribd.com/doc/6624395/Mergers-and-Acquisition>

- Arora, Mani and Kumar, Anil. 2012. —A Study on Mergers and Acquisitions – Its impact on Management and Employees. Research Gate. Accessed on June 27, 2017. https://www.researchgate.net/publication/258769054_A_Study_on_Mergers_and_Acquisitions_-_Its_impact_on_Management_and_Employees.
- ASSOCHAM. "Mergers and acquisitions in the new era of Companies Act, 2013". 2014, [www.ey.com/...Companies_Act/\\$File/Assocham_White_paper_Companies_Act.pdf](http://www.ey.com/...Companies_Act/$File/Assocham_White_paper_Companies_Act.pdf).
- Ashford. 1988. Individual Strategies for Coping with Stress During Organizational Transition, https://www.researchgate.net/publication/250959445_Individual_Strategie