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EMPLOYEE INTERESTS IN CORPORATE MERGERS: A CRITICAL ANALYSIS UNDER INDIAN LAWS- Prachi Sharma¹**ABSTRACT**

In the modern global economy, corporate mergers have become a prevalent approach for business growth, re-organization and consolidation. Merger activity in India, especially during the post-liberalisation timeline has been not just frequent but also complex due to factors such as market competition, globalization of business and economic efficiency. Analyses of mergers are typically focused on financial performance and how they measured up against shareholder value, but their implications go well beyond the economic realm by having an immediate consequence on the lives of workers whose pay checks and working conditions are directly subject to decision-making processes as those outlined for restructuring.

This paper attempts to critically examine the employee's interest in the corporate mergers under the Indian legal regime. It explores the relevant statutory framework for corporate mergers as contained primarily within Sections 230-232 of the Companies Act, 2013, and assess their adequacy in catering to employee rights. The paper further evaluates concerning labour laws to balance and impact in an M&A scenario with due attention towards Industrial Disputes Act, 1947 followed by recent guidelines on codification of new labour codes. Using judicial pronouncements as a touchstone to undertake such an analysis, the study discusses how courts have attempted to balance corporate autonomy with employee welfare.

The study is doctrinal in nature and draws on statutory, case law, and academic literature. It takes a comparative approach by looking at other jurisdiction's legal systems, for example those within the European Union as well as in the United Kingdom, where employee participation and consultation is embedded into corporate restructuring practices. This contrasts with the comprehensive nature of such requirements abroad, where employees are involved in decision-making process leading to a more efficient and effective grievance

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recovery mechanism on behalf of aggrieved parties, unlike the limited Indian framework which primarily centers around compensation as a remedy for grievances.

The study found that there are major challenges to protecting employee interests, such as the lack of stakeholder recognition in corporate law, weak enforcement mechanisms for labour provisions, employees' ignorance about their rights and slow dispute resolution. It also delves into the varied impact of mergers on different classes of employees permanent, contract labour and managerial staff signifying thereby that this uneven nature of protection is conditioned by prevailing inequalities in the system.

Accordingly, the study calls for a paradigm shift in to promote a more inclusive and integrated legal framework. So, it suggests recognising employees as a separate class of stakeholders, mandating consultation processes with them being introduced, boosting continued employment protection and better aligning corporate and labour law. The study emphasizes the need for a balanced approach when it comes to corporate mergers, arguing that economic goals must co-exist with social justice objectives without sacrificing employee welfare in favour of corporate profitability.

Keywords: Corporate mergers, Employee Interests, Employee Protection, Stakeholder Theory, Corporate Governance.

I. Introduction

Mergers and acquisitions are among the greatest tools used in business development, restructuring, or consolidation in today's corporate environment. In today's world of globalization, companies are always searching for means to improve competitiveness, grow their presence in the market and develop efficiency in operations. At the heart of all these mechanisms lie mergers, allowing companies to pool their resources, remove redundancies and benefit from scale. "Post-liberalisation in India, significantly triggered by the economic reforms initiated post-1991, has witnessed a surge in corporate restructuring activities on account of globalization, technological advancements and increased market competition."²

Why do companies pursue mergers? Why to achieve synergies, bigger market shares, diversified business operations and financial stability.³ Economically speaking, there should be nothing wrong with merging, and mergers are perceived as an economically good tool for

² Government of India, *Economic Survey 1991–92* (Ministry of Finance 1992).

³ ICSI, *Corporate Restructuring, Valuation and Insolvency* (Institute of Company Secretaries of India 2019).

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the consolidation of corporate efficiency that would in general contribute to enabling economic growth.⁴ But the consequences of mergers are much more profound than financial or commercial considerations. They impact the organization, its structure, and most importantly the employees who are the backbone of every corporate hold.

Workers are a critical stakeholder group in the corporate structure. Employees depend on the organization for their living, skill development and financial stability unlike shareholders and creditors whose interests are purely financial.⁵ Therefore, whenever anything structural changes in the organization (think merger), it has a real-world impact on them immediately. As such, these impacts can manifest as layoffs, downsizing, modification of employment terms and conditions or stationing, right up to possible termination. Such changes can also bring uncertainty, psychological stress and reduced morale that undermine professional stability.⁶

Contemplating that mergers have profound influence on employees, the legal embeddedness governing corporate restructuring in India has historically given precedence to shareholders and creditors.⁷ This validates the traditional insular approach to corporate law, which regards the company as a device for providing economic returns onto its investors.⁸ By contrast, employee interests have been treated as tertiary interests even more so than stakeholder interests in general but rather incidental to the rules of law governing corporations, often addressed indirectly through labour legislation and not embedded within corporate law itself.

As far as Indian law is concerned, legal regime surrounding corporate mergers are mainly embodied in Companies Act, 2013 specifically from Sections 230 - 232 which pertains to compromises, arrangements and amalgamations.⁹ Similar provisions provide for a more elaborate mechanism providing for various classes of creditors and shareholders followed by sanction from the National Company Law Tribunal (NCLT) enabling corporate restructuring.¹⁰ The NCLT's involvement adds a layer of judicial oversight, ensuring that the process is conducted with fairness and transparency.

⁴ Richard A Posner, *Economic Analysis of Law* (9th edn, Wolters Kluwer 2014).

⁵ Hugh Collins, *Employment Law* (2nd edn, Oxford University Press 2010).

⁶ Guy Davidov, 'The Status of Workers in Corporate Law' (2016) 34 *Comparative Labor Law & Policy Journal* 63.

⁷ Umakanth Varottil, 'The Evolution of Corporate Law in India' (2015) 6 *National Law School Review* 1.

⁸ Adolf A Berle and Gardiner C Means, *The Modern Corporation and Private Property* (Transaction Publishers 1932).

⁹ Companies Act 2013, ss 230–232.

¹⁰ Companies Act 2013, s 408.

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A deeper dive into these provisions shows that they hold little meaningful recognition of employee interests.¹¹ The statutory framework makes no separate class of employees as stakeholders nor any formal role in the approval process. Their involvement is mostly limited to providing objections, which are also provided upon judicial discretion. It is merely compounding a lack of engagement among workers in a process that has direct impact on their livelihoods.

Apart from corporate law, labour legislations like Industrial Disputes Act, 1947 and other new labour codes such as the Code on Social Security, 2020 and the Occupational Safety, Health and Working Conditions Code, 2020 also offer some protection to employees.¹² These laws regulate matters including retrenchment, compensation and work conditions. However, they are not governed by corporate law and do not target the nuances from mergers and acquisitions specifically.¹³

The law at work is divided between these two systems and hence, it loses harmony. While corporate law aims in facilitating conception of mergers based on economic efficiency, the labour law only offers employees limited and often defensive protection. The lack of a cohesive framework leaves a segmented legal structure with employee interests inadequately addressed.

In addition, with the changing landscape of corporate restructuring in India that includes cross-border mergers, information technology posting and large-scale workforce realignment (higher up being impacted), putting employees on alert. Existing legal frameworks, predominantly rooted in traditional concepts of employment and industrial relations, do not expose the attention to treat these emerging complexities.

Hence, the question of employee protection during corporate mergers becomes all the more relevant in the context today. At its core, it challenges the understanding of law as an intervening force between economic efficiency and social justice, and questions whether employees should be considered one of the primary stakeholders in corporate decision-making. This study aims to delve into these queries through a critical examination of the legal framework governing employee interest in corporate mergers in India.

¹¹ Umakanth Varottil, 'Stakeholder Participation in Corporate Governance' (2018) 31 *NLS Business Law Review* 45.

¹² Industrial Disputes Act 1947; Code on Social Security 2020; Occupational Safety, Health and Working Conditions Code 2020.

¹³ SP Sathe, *Labour and Industrial Laws* (LexisNexis 2015).

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Corporate mergers, although they are typically assessed in the language of financial performance and market outcomes, have deep and diverse impacts on employees.¹⁴ Indeed, the impacts are neither uniform nor consistent across different segments of the workforce in fact, they often vary dramatically by employee type, kind and hierarchy within your organization.¹⁵ In India, that distinction is even more critical to establishing employee rights because the legal framework does not adequately treat employees as a diverse group.¹⁶ This one-size-fits-all approach misses the fact that mergers have differential impacts and creates inconsistent protections for different classes of employees.

This chapter seeks to address this gap by analysing the impact of corporate mergers on different types of employees, including permanent employees, contract labour, managerial personnel, and unskilled workers. By examining how mergers affect each category, the chapter highlights the inadequacies of the existing legal framework and underscores the need for a more nuanced and inclusive approach to employee protection.

II. Permanent Employees and Job Security

Among other classifications of workers, permanent employees typically have a reputation for having more job security. They are usually hired on long-term contracts and entitled to several statutory benefits, such as protection from arbitrary termination under labour laws.¹⁷ Even this type of merger can cause great uncertainty and turmoil, however.¹⁸

Usually in a merger, permanent employees do not have either duplicating roles nor functions that might result in redundancy. This is the case when companies that offer related products or services come together, and duplicate administrative functions in areas such as finance and human resources. Employers may need to rationalize their workforce to identify redundancies in such cases resulting in retrenchment or redeployment of employees.

Labour laws do provide limited protection, in the form of compensation on retrenchment and transfer of undertakings but these protections are not robust enough. They do not ensure that people will still have a job, nor do they guard against changes to roles, location or working conditions.¹⁹ Consequently, permanent employees may still be considered as such in the legal sense but witness a drastic decline in the regularity and quality of their work.

¹⁴ OECD, *Corporate Governance and Employees* (OECD Publishing 2019).

¹⁵ R Edward Freeman, *Strategic Management: A Stakeholder Approach* (Cambridge University Press 2010).

¹⁶ Surya Deva, 'Corporate Social Responsibility and India' (2011) 8 *Asian Journal of Comparative Law* 1.

¹⁷ Industrial Disputes Act 1947.

¹⁸ Alan J Auerbach, *Corporate Takeovers* (University of Chicago Press 1988).

¹⁹ Industrial Disputes Act 1947, s 25FF.

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In addition, mergers usually lead to alterations in organizational culture and management styles, having an impact on employee well-being and productivity. Due to lengthy corporate cultures from different company, hence their combination was difficult & can lead adjustment issues especially for longtime employees. And so while full-time employees might think themselves relatively secure, they are not insulated from the negative consequences of corporate restructuring.

III. Contract Labour and Informal Workers

The merging of companies can be particularly stressful for contract labour and informal workers, who are among the most vulnerable kinds of employees.²⁰ They are not employed directly by the company like permanent staff but hired through contractors or other third-party agencies. As such, their employment relationship is by nature unstable and stripped of the benefits and protections of formal employment.

Contract workers are usually the first casualties during mergers, as both companies look to cut costs and consolidate operations. Because they are not considered part of the core workforce, their services can be ended fairly easily, often with little to no legal roof. This leaves them especially vulnerable to job loss and economic insecurity.²¹

Legal protections for contract labour are few and fragmented. Although labour laws contain some provisions for their employment conditions, these are not sufficient as safeguards in the merger context. Additionally, the lack of a direct employment relationship with the principal employer also makes it more difficult to enforce rights.²²

In practice, contract workers often face abrupt termination without adequate notice or compensation. They may also be excluded from benefits such as retrenchment compensation, continuity of service, and social security coverage. This highlights a significant gap in the legal framework, which fails to adequately address the realities of modern labour markets characterized by increasing reliance on contractual and informal employment.

IV. Managerial and Executive Employees

Managerial and executive employees are positioned at an intermediate level within the organization. They make decisions, oversee and administer corporate strategies and are often

²⁰ OECD (n 66).

²¹ Ibid.

²² SP Sathe, *Labour and Industrial Laws* (LexisNexis 2015).

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directly involved in the merger process itself. Yet mergers have their downside, even for higher status and better paid employees.²³

Mergers often end up with a restructuring process at the managerial level, including leadership position changes and reporting structures. Certain executives may be displaced, or managerial roles may be consolidated as a result. Managerial staff are generally excluded from the ambit of labour laws like the Industrial Disputes Act, 1947 and as such do not enjoy statutory protection in relation to their termination.

Managerial staff usually work under separate agreements that may also include termination provisions, severance packages, and non-compete provisions.²⁴ Overall, they are often negotiable and not necessarily best suited for solving employee interest problems.

Furthermore, organizational integrators are under pressure and uncertainty during integration to meet new structures and performance expectations. Their professional roles and career networks are also impacted by the erosion of autonomy and corporate governance changes.

V. Skilled and Unskilled Workers

The merger effects on employees depend on skill levels too. In contrast, if the labor force is composed predominantly of skilled workers with specialized knowledge or technical skills, these employees may be more easily able to adapt to changes within the organization and find new employment opportunities elsewhere.²⁵ Mergers can sometimes provide new opportunities for talented employees, especially with technology consolidation and innovation.

However, even skilled workers are not completely shielded from the negative impact of mergers. These may include a changing job roles, increased workload or relocation that can affect both their work and home life. Furthermore, they may have to learn new skills in order to use various systems and processes together which could add further pressure and anxiety.

Unskilled and semi-skilled workers, in contrast, are particularly at risk in mergers. They are also more easily replaced due to their roles and are therefore most vulnerable during workforce rationalization. Their vulnerability is further exacerbated by the absence of formal training and the scarcity of jobs.

²³ Industrial Disputes Act 1947.

²⁴ Hugh Collins (n 23).

²⁵ Joseph E Stiglitz, *Globalization and Its Discontents* (Penguin 2002).

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The current law fails to adequately differentiate between this group of workers and those with more job security, resulting in a one-size-fits-all approach that ignores their specific needs. This underscores the necessity for targeted measures that acknowledge and address the heterogeneous qualities of employees.

VI. Gendered Effects of Corporate Mergers

One industry feeling the regulatory pinch are companies undergoing mergers, a process many don't consider could be gender biased. Corporate restructuring can be particularly challenging for women employees who often face job insecurity, disruption of work-life balance and discrimination in retention.²⁶

Mergers can also affect the way workplaces operate, including policies on relocation and driving by more men to occupy newly created agendas, which could impact disproportionately women, especially those with care responsibilities. Furthermore, women tend to be overrepresented in certain industries or positions that could face higher risks of downsizing.

These challenges are exacerbated by the lack of gender-sensitive provisions in the legal framework. General laws on labour offer some protections, but none that specifically address the gendered impact of mergers. Yet another hole in the legal regime that ought to be addressed, however.

VII. Psychological and Socio-Economic Impact on the Employees

Apart from legal and economic aspects, mergers have their psychological and socio-economic impacts on employees. However, uncertainty related to the corporate restructuring may raise anxiety and stress levels and decrease job satisfaction.²⁷ Employees may feel a sense of loss, especially when they must leave behind their familiar work environment or adjust to changing organizational culture.

The socio-economic ramifications are just as severe, with job loss or alterations to employment being unable to impact only the workers but also their families and social circles.²⁸ In a nation like India, where social security systems are on the mend, it can cost dearly to lose your job.

²⁶ ILO, *Women at Work Trends Report* (International Labour Organization 2016).

²⁷ Hugh Collins (n 23).

²⁸ Joseph E Stiglitz (n 77).

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Formal rights, remedial entitlements come in for attention under the legal framework and these well-defined attributes are largely absent from both international tort law and domestic tort laws. Without stipulation of social and psychological welfare, the legal approach to safeguarding employees is limited.

The analysis in this chapter shows that the effects of corporate mergers on employees are neither uniform nor sufficiently addressed by existing law. Different types of employees suffer from different level of vulnerability, contract labour, unskilled worker and many marginalized groups are worst hit by it. But the law takes a one-size-fits-all approach that does not appreciate these differences, leading to uneven and frequently insufficient protection.

Hence, it clearly shows that a more nuanced and differentiated approach is needed, one that recognizes the diversity of the workforce and different set of challenges faced by each category. This will make a legal framework closer to an effective and equal system for protection of employees in corporate mergers.

Conclusion

One of the other aspects of this research is its substantive critique on diverse legislation and judiciary mechanism governing rights and needs of employees during mergers. The study identifies structural and conceptual deficiencies in the existing legal regime by analysing provisions under companies act, 2013, labour legislations and relevant judicial pronouncements. These are the absence of employee engagement, an over-reliance on compensation-based remedies and the disengagement between corporate and labour laws.²⁹ This research not only builds on academic knowledge but also forms a basis for measuring the effectiveness of current legal protections.

From a policy standpoint, the study is also significant. It brings the deficiencies in the existing paradigm into sharper focus and raises questions about the need for a more cohesive, equitable restructuring with clear foundations. The comparative perspective provided in this analysis also makes it more robust by spotlighting best practices from others, thus making the study useful for policymakers and legal reformers in India.

Of addition, the study adds to the broader discussion on corporate governance by arguing in favour of more inclusive model that treats employees as a key constituency. While traditional

²⁹ SP Sathe, *Labour and Industrial Laws* (LexisNexis 2015).

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corporate governance models have centered heavily on shareholder interests, an important shift toward stakeholder-oriented approaches is emerging. It shows how this perspective is changing and emphasizes the need for integrating employee interests further into corporate decision-making.

Academically, the study acts as a source of value for students, researchers and scholars in corporate law, labour law and industrial relations. It connects several key areas of law and offers an integral analysis that can also serve as a guide for future research in this area. Simultaneously, it serves practical utility for legal practitioners and corporations as well as lawmakers due to its exposure of the complexities linked to these measures, along with pragmatic solutions.

Accordingly, the broad aim of this study is to underline lacunae in the existing legal framework without losing sight of its contribution towards formulation of a more just, inclusive and equitable regime governing mergers and acquisitions in India. The necessity of balancing corporate goals and employee well-being highlights a key point from the analysis: economic growth needs social responsibility as well and legal accountability when they are not aligned.

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