IMPACT OF MERGERS AND ACQUISITION ON THE LABOUR RIGHTS: A COMPARATIVE STUDY OF REGULATORY FRAMEWORKS IN INDIA, UNITED KINGDOM, UNITED STATES, AND SOUTH AFRICA

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ABSTRACT

The process employed under Mergers & Acquisitions has developed and kept on changing with the demands of the market, globalization and exponential development of the large-scale industries in last few decades. The finer nuances of these transactions has been analyzed and researched from the perspective of the laws, finance, strategy development but the ramifications of the mergers and acquisitions has been largely underexplored. This research paper examines the socio-economic and legal implications of M&A activities on workers in India, focusing on employment security, change in employment conditions, chang in wage structures, working conditions, and other ancillary rights. The study highlights and analyzes pivotal case laws, statutory protections under Indian labor legislation (such as the Industrial Disputes Act, 1947), and emerging trends in the corporate restructuring process and ramification on the labor force employed under the corporate entity. It highlights that while Mergers and Acquisitions can lead to improved efficiencies and competitiveness, they often result in job redundancies, changes in employment terms, and weakening of collective bargaining power, particularly in the absence of robust social safety nets. Moreover, it analyses regulatory framework in the developed jurisdictions, that is, United Kingdom, United States and South Africa respectively. Therefore, through a combination of doctrinal analysis and comparative case studies of the select jurisdictions, this paper tries to ensure a fine balance between the exponential industrial growth and the labor rights existing in the contemporary scenario. The findings clearly puts forward need for more nuanced due diligence, impact assessment of the labors involved, and more robust legal framework to ensure rehabilitation of the workforce affected by M&A transactions.

Keywords: *Merger & Acquisition, Labour Rights, Employment*

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I. Introduction

Mergers and acquisitions are primarily corporate restructuring processes, whereas the former in general parlance illustrates the joining of two or more corporate entities in order to achieve higher sales, capacity and attract better investment opportunities. Wherein, the latter categorically is described as the corporate restructuring exercise where one corporate entity either buys or acquires the other for the purposes of expansion into a larger unit. The aforementioned corporate restructuring processes affect the existing labor force in terms of their remuneration deductions, gratuity, pension, and sometimes basic succor and sustenance. This interesting dynamic between the commercial wisdom of the corporations and rights emanating from statutes and constitution for protection of labour widens the scope of research in this area. The objective is to examine the rights, that is, employment status and compensation[1] available to the employees affected because of the corporate restructuring exercise. Primarily, we will be examining the available literature, judicial pronouncements, and statutory rights available to employees in India under corporate restructuring schemes. Thereafter, we will look into developed labour jurisprudence in the United States of America, United Kingdom and South Africa. After comparing them with India's standpoint, we will try to offer possible solutions under the existing legal framework in India.[2]

The article primarily focuses on India's standpoint pertaining to the interface between corporate restructuring exercise and labour jurisprudence, and also the stand of the select jurisdiction on the subject matter at our perusal. It also highlights the different mechanisms through which redressal is done in select jurisdictions and then offers a substantial solution for the improvement under municipal regulatory framework governing labor rights and welfare. The research is doctrinal in nature. The first section, dealing with the Indian statutory framework, follows a descriptive and explanatory method. The part highlights the significance of the provisions and the possible issues in their interpretation. The second part dealing with the standpoint taken by the other select jurisdictions also follows the same method. Then the

[1]Shauree Gaikwad, "Employees' Rights Arising Out Of Mergers & Acquisitions: The Indian Judiciary's Perspective", HNLU CCLS, https://hnluccls.in/2020/09/04/employees-rights-arising-out- of-mergers-acquisitions-the-Indian-judiciary's-perspective/ (*last visited* on Feb 23, 2023).

[2] Sushmita Ravi, "Employee Transfers at the time of Mergers and Acquisitions, Indian Case Law", https://indiancaselaws.wordpress.com/2014/08/19/employee-transfers-in-mergers-and-acquisitions/ (*last visited* on Feb 24 2023).

authors use the analytical research method and the comparative analysis method to rely on the various other jurisdictions. The aforementioned methodologies will lay a ground work for finding solution for the problem in hand. This would primarily lead to comprehensive understanding of legal framework pertaining to evolving labor jurisprudence in India and will aid us in contrasting it with select jurisdictions and further in putting forward solutions to be incorporated in Indian labor welfare regime constructively.

II. India's Standpoint Pertaining to Rights of the Employees

The Scope of this section is to deconstruct the standpoint envisaged in the Indian legal framework and Judicial Pronouncements pertaining to the subject matter. This section will primarily provide us a sound understanding of legal framework governing labor welfare in India.

Statutory understanding of the provisions associated with subject matter:

The obligation of the employee and the remedies pertaining to the employee affected under the corporate restricting exercises are dealt under The Industrial Disputes Act, 1947(hereinafter to be referred as the Act). In accordance with section 25 FF of the Act, if an employee is transferred to a different company in consequence of a merger which leads to a change in management and ownership.[33] Herein, every workman employed under a corporate entity for a continuous period of one year has to be mandatorily given notice and compensation along the lines of section 25F of The Act. The section furthermore outlines certain exceptions to the rule of notice and compensation in 25 F.[4] It categorically highlights that if the workmen service conditions are not negatively affected by the corporate restructuring then he will fall out of the purview of this Article. Secondly, the essence of the clause is that if the same status has been maintained in the subsequent organisation or the conditions have been made more favorable in those circumstances there is no need to serve the notice under section under section 25FF. The issue arises broadly under two heads one that the former employer terminated the services of the employee or the subsequent employer terminates the service of the employee then in both the cases, the employer has to serve notice as per the mandate of section 25 F and Section 25FF. Moreover, section 9 A of the Act elaborates the method in which the notice has to be served to the affected employee within

[3]Industrial Disputes Act, 1947 (Act 14 of 1947), s. 25 FF.
[4] Industrial Disputes Act, 1947 (Act 14 of 1947), s. 25 F.

the mandated period of 21 days.[5] The cumulative reading of these sections has made the comprehension of the procedure to be followed in cases of retrenchment of the employees in corporate restructuring exercise amply clear. The aforementioned provisions highlight circumstances in which the retrenchment requires serving of notice and then further redressal along with the prescribed period for doing the same.

Colloquial understanding of the procedure adopted by the corporations:

The subsequent owner after the corporate restructuring exercise retrenches or declines to hire the employee working for the corporate entity before the exercise and also the seller does not want to retain the workers working for the same corporate entity before the exercise, the seller has a duty to give the workers termination notice and pay compensation if they are subsequently terminated. If the Buyer of the entity voluntarily hires the workers associated with company prior to the corporate restructuring exercise, the buyer has the obligation of offering the same set of terms, conditions, and perks as they use to receive from the seller prior to the corporate restructuring exercise. Furthermore, the seller is also obligated to provide similar level of perks and seniority as provided in the prior corporate entity. The following would be the potential course of action:

I. Firstly, the employees either in groups or individually are asked to participate in casual conversations with the prior employer, that is, seller and the buyer, the potential owner after the corporate reconstruction process. The meeting addresses concerns arising out of the M& A transaction and its impact on workers pertaining to every issue like reduction in salary, retrenchment, relocation, etc. Workers are requested to resign from their current positions, and the Buyer will also send them an offer letter. The offer letter contains the same level of perks, remuneration and seniority for all purposes.

II. Thereafter, the seller accepts the resignations as mentioned above, and provides them with outstanding wages and other pending benefits and reliefs. The benefits and remuneration similar to the prior workspace is reiterated in the new agreement as per the deliberation between the prior employer and the new employee.

III. Judicial Pronouncements Pertaining to the Subject Matter

[5] Industrial Disputes Act, 1947 (Act 14 of 1947), s. 9.

In *Sunil Kr Ghosh* v. *K Ramachandran*, the Hon'ble supreme court envisaged that in cases of corporate restructuring exercise when the subsequent employer has kept the services of the employee without any variation then the procedure of notice prescribed under section 25 FF shall not be followed as the situation is remedied and there is no need of compensation and notice procedure.[6] Similarly in *Maruti Udyog Ltd.* v. *Ram Lal & Ors.*[7], the Supreme Court enunciated that the quantum of relief to be given to the workman who has been affected by the corporate reconstruction exercise has to be given according to the mandate of section 25 F of the Act and he has to be considered retrenched under section 25 F. The apex court in this case reiterated the standpoint mentioned in section 25 FF. Moreover, in *Gurmail Singh & Ors.* v. *State of Punjab & Ors.*[8] held that the employee has two options either to take the compensation or go ahead with the employment in the subsequent corporation formed after the restructuring exercise. Herein, the court enunciated as to how through notional retrenchment the Act remedies the situation in hand by providing the option of compensation or subsistence of the employment with the subsequent corporations.

The question that surfaces in front of us now is that whether the compensation is sufficient to remedy the situation in which an individual has been working for a longer period or because of the seniority of the employee has become employable. The statute is silent about balancing the commercial wisdom and the rights of the employee in a holistic manner.

A situation where a workman has been employed in a corporate entity for a longer duration or is a senior citizen employed there for long then merely the compensation is not going to remedy the situation as such. The sole prerogative of having a labor centric legislation catering to the broader objective of labor welfare will fall apart. "The seminal issue of the closure of the various industrial undertaking and acquisition by some other entity is happening very often and the issue of workmen being at the receiving end of the exercise has raised some serious questions about the entire exercise of corporate reconstruction itself. The cases of sudden closure without the prior intimation to the government are also surfacing frequently. Several Factors appear to have led to these closures, amongst which are the losses getting accumulated for a long period of time and mismanagement of the affairs of the establishments."[9]

[6](2011) 14 SCC 320.
[7] (1995) 111 PLR 575
[8] 1993 AIR 1388.
[9] Industrial Disputes Act, 1947 (Amending Act 32 of 1947).

The other pivotal argument against retrenchment of an employee is the legitimate expectation that an employee has after working for several years that the corporation is not going to retrench him without upholding their rights and interest. In ***Ram Parvesh Singh and Ors* v. *State of Bihar and Ors*[10],** the apex court envisaged the aspect of legitimate expectation. In the case in hand, the workmen voiced their needs that they had a fair and legitimate expectation that the employer is going to take care of their concerns. In the present context, it is imperative to analyze the import of this case. Firstly, In the present case, all the employees because of the absorption of the prior corporate entity lost their jobs. Herein, because all the concerned employees were senior citizens, they lost their livelihood, succor and sustenance entirely. The distinction was that the undertaking absorbing the private entity was a government entity. Herein, the undertaking was the state instrumentality under article 12 and hence there was a legitimate expectation that the employees are going to be re-employed under the state entity. Hence, this case addresses the absorption of the private entity by the state and the condition of workmen when a state entity acquires a private corporate entity.

IV. Position in USA, UK and South Africa

The scope of this section is to analyze the labor jurisprudence pertaining to the select jurisdictions and then further to compare and contrast with Indian standpoint and carve out a possible solution.

United States standpoint

In the U S, the cumulative understanding of several laws has to be understood in light of impact of M&A on the labor rights. One of the key laws in this regard is the Worker Adjustment and Retraining Notification (WARN) Act (hereinafter WARN). The Act states for the mandatory serving of the notice in the circumstances of the mass layoff of the employees when the figure reaches 100 or more than that for its application.[11] The employees would get an advance notice of 60 days affected by mass layoff.[12]Additionally, there are various other laws at the federal and state level to ensure rehabilitation of the labors affected by merger and acquisition of a corporate entity. For example, the Consolidated Omnibus Budget Reconciliation Act (COBRA)[13] prescribes for the robust healthcare mechanism and health coverage for the employees who lost their job during corporate reconstruction exercise. Furthermore, labour

[10] (2006) 8 SCC 381.
[11]Worker Adjustment and Retraining Notification (WARN) Act, 1988(29 U.S. Code) s. 2101.
[12] Worker Adjustment and Retraining Notification (WARN) Act, 1988 (29 U.S. Code) s. 2102.
[13]https://www.dol.gov/general/topic/health-plans/cobra

laws in the US, such as the National Labour Relations Act (NLRA)[14] and the Fair Labour Standards Act (FLSA)[15], provides for the protection pertaining to the fair bargaining and compensation post the loss of job because of the corporate reconstruction process. These laws apply regardless of whether the employee is working for a company that is going through a merger or acquisition. Overall, the US has enhanced legal framework for employee rights during mergers and acquisitions. However, as with any legal framework, the effectiveness of these laws in protecting employee rights depends on their proper implementation and enforcement. One landmark case related to employee rights arising out of mergers and acquisitions in the United States is the case of *NLRB* v. *Burns International Security Services, Inc*.[16]

In this case, the Supreme Court of the United States envisaged that when one corporate entity acquires another company and retains the employees of the acquired company, the subsequent company is bound to renegotiate with the employees' union. The apex Court held that the National Labor Relations Act (NLRA) requires the new employer to recognize the rights of the labor employed before and negotiate with employee's union regardless of the fact that he has not signed any such agreement with the prior corporate entity. The Burns judgment crystallized a pivotal precedent for protecting the rights of employees during mergers and acquisitions, and confirmed that the NLRA's protections for collective bargaining and union representation continue to apply even in the cases of a merger or acquisition.

United Kingdom's standpoint

In the UK, there are multiple laws and regulations that protect employee rights during mergers and acquisitions. These laws include the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)[17] and the Information and Consultation of Employees Regulations 2004 (ICE).[18] The TUPE regulations are drafted in a way to protect employee interest when the business is being taken over by the new corporate entity. The sole prerogative of the regulation is to ensure the protection of the needs and rights of the labors who are mostly at the receiving end of the corporate restructuring exercise. The regulations provide that the same terms and contract as existing in the prior corporate entity remains the

[14]National Labor Relations Act (NLRA), 1935 (29 U.S.C.) s. 151.
[15]https://www.dol.gov/agencies/whd/flsa(*last visited* on March 3, 2024).
[16]406 U.S. 272 (1972).
[17]The Transfer of Undertakings (Protection of Employment) Regulations 2006 (2006 No. 246).
[18]The Information and Consultation of Employees Regulations 2004 **(**2004 No. 3426).

same in the subsequent entity. The new employer is obligated to acknowledge and recognize any trade union that were in place prior to the transfer. Apart from TUPE and ICE, there are other UK laws that protect employee rights during mergers and acquisitions. For example, the Working Time Regulations 1998 provide for minimum rest breaks, maximum working hours and minimum holiday entitlements.

The Transfer of Employment (Protection of Employment) Regulations (TEPOR) provides for the protection of employees' rights during the transfer of a business as a going concern. TEPOR mandates that the new employer takes the employee of the prior corporate entity with the same terms as before the transfer occurred. The regulations also require that the new employer recognize any collective agreements and employee representatives in place prior to the transfer. Therefore, the UK holistically is protecting employee rights during mergers and acquisitions, with the TUPE and ICE regulations forming the cornerstone of this framework. These regulations help to ensure that labor are not left worse off as a result of a merger or acquisition, and that their rights are respected and protected throughout the process.

One landmark case related to employee rights during mergers and acquisitions in the United Kingdom is the case of *Celtec Ltd* v. *Astley*[19] In this case, the Tribunal held that the TUPE regulations apply to the entities even when the there is no express contract stating that the subsequent employer will have to comply with the similar terms and conditions as of the previous employer. The case categorically crystallized an important precedent for the interpretation of the TUPE regulations, and clarified its broad sweep to cover broad range of transfer and comprehensively addresses the issue of labor rights pertaining to mergers and acquisitions.

Another important case is *GMB* v. *Allen and Others*[20], which was heard in the EU Court of Justice in 2012. In this case, the EU Court held that the TUPE regulations require employers to consult with employee representatives on the proposed transfer of an undertaking, and that failure to do so can result in a claim for compensation. The case reiterated the important point of the consultation requirements in the TUPE regulations, and underlined the need for employers to involve employees and their representatives in the transfer process. This case highlights the comprehensive framework pertaining to the addressal of labor rights in corporate reconstruction exercises.

[19]C-478/03 (ECJ)
[20][2007] IRLR 752

South Africa's standpoint

In South Africa, the Labour Relations Act (LRA)[21] comprehensively provides a regulatory framework governing the rights of the employee during the Mergers and acquisition transaction. The LRA mandates that the owners shall deliberate with the employees and their respective unions before taking a decision that would impact their work conditions, remuneration, and other changes that would arise because of mergers and acquisition exercise. The LRA in certain circumstances also provides for the transfer of similar work conditions from one corporate entity to another during corporate reconstruction exercise. Additionally, the Basic Conditions of Employment Act (BCEA)[22] clarifies minimum standards for employment, including working hours, leave, and notice periods. The BCEA holistically applies on all the workmen employed regardless of corporate reconstruction. Therefore, we understand that South Africa's legal framework provides for the protection of employees' rights during mergers and acquisitions. The framework requires employers to consult with employees and their representatives. The TEPOR and BCEA provide additional protections for employees' rights, including minimum employment standards and the protection of collective agreements.

One landmark case related to employee rights during mergers and acquisitions in South Africa is *National Union of Metal Workers of South Africa and Others* v. *Aveng Trident Steel (a division of Aveng Africa (Pty) Ltd)*[23], which was heard in the Labour Court of South Africa in 2019. In this case, the Hon'ble court held that it is the duty of the corporate entity to enter into discussion, deliberation with the workmen going to be affected by the corporate reconstruction exercise and provide those provisions for compensation. The court found that Aveng Trident Steel failed to consult adequately with the union regarding the transfer of employees to a new company following a merger, and therefore ordered Aveng to pay compensation to the affected employees.

The landmark case crystallized an instrumental precedent for the protection of employees' rights during mergers and acquisitions in South Africa, and affirmed the obligation of employers to consult with employees and their representatives before implementing any changes that may affect their employment conditions. The case also highlighted the importance of proper consultation in ensuring a smooth and successful transfer of business

[21]Labour Relations Act, 1995 (Act 66 of 1995).
[22]Basic Conditions of Employment Act 1997 (Act 75 of 1997)
[23][2021] 1 BLLR 1 (CC)

ownership, along with the potential ramifications for employers who fail to meet their legal obligations.

V. Impact on Gratuity of concerned employees: Indian perspective

Gratuity is considered as a kind of retirement benefit for recognizing their long-term service to the organization or an institution. It is comprehensively governed by the Payment of Gratuity Act, 1972, which categorically applies to all entities having 10 or more than 10 employees.[24] Under the Act, any employee who has given his service to the organization for about five years is applicable for a gratuity payment upon retirement, resignation, or death. "The amount of gratuity payable is calculated as 15 days' wages for completion of every year of service, subject to a maximum limit of 20 lakh rupees".[25]Wages for the gratuity includes dearness allowance, basic pay and many other ancillary benefits. It is the duty of the employer to pay gratuity to eligible employees, and failure for complying with the same will result in penalties. The Act also gives for the establishment of a Gratuity Fund by employers, to which they can make continuous contributions for the purpose of paying gratuity to employees. Gratuity is considered as a mark of loyalty and also a sign of long-term association with an organization. Employers are therefore required by law to provide this benefit to eligible employees, and failure to do so can result in legal repercussions. If an employer does not pay for gratuity to eligible employees during mergers and acquisitions, it can lead to legal consequences and penalties.

During mergers and acquisitions, the subsequent employer also assumes all the liabilities of the previous employer along with the liabilities pertaining to gratuity. And if any circumstances, the acquired the company did not pay the gratuity the company getting acquired has to pay the same. In such cases, the acquirer may negotiate with the acquired company to allocate a portion of the purchase price towards gratuity liabilities, or may include the gratuity liability as part of the due diligence process to ensure that they are aware of the liability and can plan accordingly. Moreover, if the employer does not receive gratuity contribution from the employer then he has a right to file a complaint against the employer to the authority mentioned under the Payments of Gratuity Act. Furthermore, the employment authority under the Act has the power to level penalties against the employer and also to pass a dictum to pay the gratuity to the aggrieved employee along with interest. Therefore, it is

[24]The Payment of Gratuity act, 1972 (Act no. 39 of 1972) s. 1
[25]The Payment of Gratuity act, 1972 (Act no. 39 of 1972) s. 4

important for employers involved in mergers and acquisitions to ensure that they comply with all legal requirements related to gratuity payments, to avoid potential legal disputes or penalties.

In the case of *Bharat Petroleum Corporation Limited* v. *Naveen Kumar Tyagi and Others (2007)*[26], the Bombay High Court held that an acquirer company is liable to pay gratuity to eligible employees of the acquired company, even if the acquired company had not paid gratuity to these employees. In this case, Bharat Petroleum Corporation Limited had acquired Burmah Shell Refineries Limited, and the employees of Burmah Shell claimed gratuity from Bharat Petroleum Corporation. Bharat Petroleum Corporation argued that it was not liable to pay gratuity to these employees, as they had not been paid gratuity by Burmah Shell. However, the court held that under the Payment of Gratuity Act, the liability to pay gratuity passes on to the acquirer company upon acquisition, and the employees are entitled to receive gratuity from the acquirer company. This case established the principle that an acquirer company is liable to pay gratuity to eligible employees of the acquired company, and that the liability cannot be avoided by arguing that the acquired company had not paid gratuity to these employees. It underscores the importance of due diligence during mergers and acquisitions, to ensure that all potential liabilities, including gratuity liabilities, are properly assessed and factored into the transaction.

VI. Pension related issues of retrenched employees in Indian scenario:

In India, pensions are typically governed by the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, which establishes the Employees' Provident Fund Organization (EPFO) and the Employees' Pension Scheme (EPS)[27]. The EPS provides for a pension to employees who are members of the Employees' Provident Fund (EPF)[28] and who have completed a minimum of ten years of service. Under the EPS, employers are required to contribute a certain percentage of an employee's salary towards the pension scheme. The employee also makes a contribution towards the scheme. The contributions are invested and earn interest, and the accumulated amount is used to provide a pension to the employee after retirement.

During mergers and acquisitions, the acquirer assumes all the liabilities of the acquired

[26](2007) 5 SCC 78.
[27] The Employees' Provident Funds and miscellaneous provisions act, 1952 (Act no. 19 of 1952) s. 6a.
[28]The Employees' Provident Funds and miscellaneous provisions act, 1952(Act no. 19 of 1952) s. 5.

company, including any pension liabilities. The acquirer may negotiate with the acquired company to allocate a portion of the purchase price towards pension liabilities, or may include the pension liability as part of the due diligence process to ensure that they are aware of the liability and can plan accordingly. If an employer does not comply with the EPS, it can result in legal consequences and penalties. Employees who are eligible for a pension under the EPS and do not receive it can file a complaint with the EPFO, and the EPFO may initiate an inquiry and take action against the employer for non-compliance. It is important for employers involved in mergers and acquisitions to ensure that they comply with all legal requirements related to pension payments, to avoid potential legal disputes or penalties. Due diligence should be conducted to assess the pension liability of the acquired company and to factor it into the transaction.

During mergers and acquisitions, pension liabilities are typically treated as part of the overall due diligence process. The acquirer will typically request information about the pension plan and the liabilities associated with it as part of the due diligence process. The acquirer will want to know the funded status of the pension plan, which is the ratio of the plan's assets to its liabilities. If the plan is underfunded, the acquirer will want to know the extent of the underfunding, and how the acquired company plans to address it. The acquirer may also want to negotiate the allocation of the pension liability as part of the purchase price. If the acquired company has a defined benefit pension plan, which guarantees a specific benefit to employees, the acquirer will need to consider the potential liability associated with the plan. This liability can be significant, especially if the plan is underfunded.

The acquirer may want to consider terminating the pension plan or freezing it, which would mean that no additional benefits would accrue under the plan. This can help limit the acquirer's exposure to potential liability associated with the plan. The acquirer may also want to consider offering a lump-sum payment to employees in lieu of their pension benefits. It is important for the acquirer to ensure that they comply with all legal requirements related to pension payments, to avoid potential legal disputes or penalties. The acquirer may want to consult with legal and financial experts to ensure that they are aware of all the risks and liabilities associated with the acquired company's pension plan. If the acquired company has failed to pay pensions to its employees, the acquirer may be held responsible for any unpaid pension obligations. This would depend on the terms of the acquisition agreement and the relevant laws governing pension payments.

Under Indian law, the Pension Fund Regulatory and Development Authority Act, 2013[29] and the Employee's Provident Fund and Miscellaneous Provisions Act, 1952 impose obligations on employers to make contributions to employee pension funds. If an acquired company has failed to make these contributions, the acquirer may be held responsible for any unpaid amounts. In such cases, the acquirer may be required to make the necessary pension payments to employees, in accordance with the terms of the pension plan and applicable laws. The acquirer may also be required to pay penalties or face legal action for non-compliance. To avoid such situations, it is important for the acquirer to conduct a thorough due diligence process prior to the acquisition, to identify any potential liabilities related to pension payments. The acquirer may also want to negotiate the allocation of pension liabilities as part of the purchase price, and include appropriate indemnification provisions in the acquisition agreement to protect against potential liability.

Madura Coats Ltd. v. *Additional Provident Fund Commissioner and Others*[30] (2014) case, where the Supreme Court held that an acquiring company could be held liable for unpaid pension contributions of the acquired company, if the acquisition agreement specifically provided for such liabilities to be assumed by the acquirer. In this case, Madura Coats had acquired the assets and liabilities of a company called Amalgamated Fibres Limited, which had failed to make contributions to the employees' provident fund. The employees of Amalgamated Fibres claimed that Madura Coats was liable for the unpaid contributions, as the acquisition agreement specifically provided for the assumption of these liabilities. The Supreme Court held that Madura Coats was indeed liable for the unpaid contributions, as the acquisition agreement had clearly specified the assumption of such liabilities.

Another relevant case is the *Vodafone India Services (P) Ltd.* v. *Union of India* (2018)[31] case, where the Supreme Court held that an acquiring company could not be held liable for unpaid taxes of the acquired company, if the transaction was structured as an acquisition of shares rather than an acquisition of assets. While this case does not deal specifically with pension liabilities, it is relevant in the context of mergers and acquisitions, as it highlights the importance of structuring transactions appropriately to minimize potential liabilities.

[29] The Pension Fund Regulatory and Development Authority Act, 2013 (Act no. 23 of 2013).
[30](2014) 3 SCC 1.
[31]C/SCA/17033/2018

VII. Suggestions

I. The high possibility of retrenchment in the Indian context is the predicament that we need to address in the Indian context. There has to be job security provided to the employees working in the corporation when the corporate restructuring exercise occurs and the transferor corporation is absorbed by the transferee corporation. Herein, the law should step in to ensure mandatory and smooth transition of employees to the transferor to transferee corporations. This condition of non-liquet has to be augmented with a law in place ensuring mandatory transition in India.

II. The aforementioned suggestion would hold the ground because the developed countries (United Kingdom) and developing countries (South Africa) have had the similar dichotomous situation and they managed to handle it well by introducing a new social security legislation protecting the rights of the employees working in transferor companies during corporate restructuring exercise. Per se, Under the TUPE legislation in the United Kingdom, the regulations provide that same terms and conditions of employment shall be automatically applied on the subsequent employer pertaining to the concerned employees, and with their continuous service preserved. Similar standpoint has been taken by South Africa under TEPOR regulations.

III. Our comparative analysis has shown us that in the countries where smooth transfer of employees from Transferor Corporation to the transferee company not only solves the problem associated with right to livelihood of the employees, but also offers solution to the issues pertaining to the pensions, provident fund and gratuity of the concerned employees. Herein, in both the aforementioned countries not only the employment subsists but the terms and conditions of the prior employment subsist as well. Herein, the legal anomalies pertaining to all other matters get automatically resolved by virtue of the law augmenting smooth transfer.

IV. The issues pertaining to the question as to whether compensation is enough in cases of senior citizens and other long-term employees getting retrenched remain unanswered under the interface of corporate reconstruction and labour jurisprudence in India. Hence, the possible solution here is a law to augment the smooth transfer of employees from transferor to transferee entity. The only possible roadblock would be that it would be against the commercial wisdom of the transferee entity and further would impact the ease

of doing business. The key takeaway is that the developed countries and other developed countries have successfully implemented the act of similar nature and have performed exceedingly well in ease of doing business index as well.

v. The possible panacea to the misery of the employee getting retrenched can be resolved by introducing a doctrine to compensate employees belonging to the various factions. Per se, if we take into account senior citizens or disabled employee the differential treatment can be validated through the operation of Article 14 of the constitution. The intelligible differentia that demarcates the difference is their physical inability from the others and reasonable nexus is the right of livelihood that is getting impaired because of the concerned retrenchment. Considering in mind the factual matrix, the authors want to suggest a doctrine to resolve and quantify the amount of compensation. The doctrine would quantify compensation taking into account following considerations, that is, the financial status of the concerned corporation, the economic status of the employee, duration of employment, physical and mental health evaluation of the retrenchment employee, the value he added to the corporation, etc. Keeping in mind this consideration, we can carve out a possible solution to this problem.

VIII. Conclusion

The stability that organized workers formerly experienced has considerably diminished, and the relationship between employers and employees reflects the occasionally energizing, occasionally threatening volatility of the present corporate marketplace because of corporate restructuring exercises. Keeping in mind the surge in the cases of mergers and acquisitions, it is imperative for the legislature in consultation with the Ministry of Corporate Affairs to come up with law properly addressing rights and responsibilities of the employers and employees in the corporate reconstruction exercise instead of leaving everything at the mercy of section 25FF of the Industrial Dispute Act, 1947. The mechanism employed by the select jurisdictions, that is United Kingdom and South Africa shall be refereed while augmenting the gap in the transfer of employees from transferor to transferee company in Indian context.