EMPLOYEE RIGHTS AND CORPORATE RESTRUCTURING: A LEGAL ANALYSIS OF THE HINDUSTAN LEVER CASE

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ABSTRACT

Corporate restructuring as part of mergers and amalgamations effects substantial changes within the internal structure of companies, often raising issues about the safeguarding of employee rights. Restructuring is often about improving efficiency; the maximization of business interests (with some specific exclusion) and to improve the position of the company in the marketplace, for example, after adverse commercial or market conditions. Notwithstanding, employees ultimately may face ambiguities and detriments in relation to parties to the employment agreement, security of employment, and working conditions. In India, restructuring is primarily governed by the Companies Act, which provides for such transactions in the workplace, and the Industrial Disputes Act, 1947, which seeks to maintain labor rights and protections. The absence of a direct mechanism for employee consultation or engagement in relation to corporate mergers creates a gap in employee protections, which is the focus of this paper. Using the case of Hindustan Lever Employees' Union v. Hindustan Lever Ltd[1], this paper will examine the interface of corporate law and labor law. Specifically, the business judgment by the Bombay High Court will be analyzed, with reference to their discussion in the context of 'public interest', while recognizing reference to concerns of employees. The paper compares the position of India against the more substantive employee-protection systems of the UK to recommend a reform agenda for India. The conclusion urges legislative and judicial changes to create a more inclusive and egalitarian process of restructuring.

Keywords: Corporate Restructuring, Employee Rights, Mergers, Industrial Disputes Act, Hindustan Lever Case, Public Interest, Companies Act, UK TUPE Regulations.

[1] Hindustan Lever Employees' Union v. Hindustan Lever Ltd, (1995) 83 Comp Cas 30 (Bom)

Introduction

Corporate restructuring has emerged as one of the hallmarks of contemporary corporate governance, frequently undertaken as a proactive response to changing market demands, shifts in technology, and competitive pressures. Corporate restructuring can take the form of mergers, acquisitions, and amalgamations to enhance operational efficiencies, reduce costs, and increase shareholder value. However, structural change has very real ramifications for a wider sphere of stakeholders, most importantly, employees.[2]

Employees represent more than simply the contractual element of participation in an organization's life; they contribute to its ongoing life, its culture, and its productivity. Yet, their interests are often on the margins of the considerations that are primarily commercial and financial in formulating restructuring options for an organization. The legal framework in India, while being robust, shows this imbalance as a feature of the legislation. While the Companies Act, 2013[3] supports the process of merging and reorganizing companies and makes some provisions for separate labor protections under the Industrial Disputes Act, 1947[4], in practice the interaction of those two legislative elements is fragmented and insufficiently engaged with the realities of industrial relations today.

The absence of connection can be seen most acutely in the landmark case of Hindustan Lever Employees' Union v. Hindustan Lever Ltd[5]. The case presents important questions about how to balance employee rights against corporate merger interests. The way the courts addressed the matter of "public interest" and the way the courts engaged limitedly with employee interests generated an ongoing debate about the protection provided by the courts in the case. The case raises the question we may ask about protecting employee rights should Indian law provides appropriate balance between economic efficiency and employee rights and dignity in corporate transitions[6].

[2]Liangrong Zu, *Corporate Social Responsibility, Corporate Restructuring and Firm's Performance* (Springer 2008).
[3] Companies Act, 2013
[4] Industrial Disputes Act, 1974
[5] Hindustan Lever Employees' Union v. Hindustan Lever Ltd, (1995) 83 Comp Cas 30 (Bom)
[6]S,Sundaram, U Das and A Roy, 'Merger and Amalgamation: Stamp Duty on the Value of Immovable Properties in India' (2024) 25 *Austl J Asian L* 55.

Chapter 1: Corporate Restructuring and Employee Rights in Indian Law

Corporate restructuring which includes mergers, amalgamations, demergers, and take-overs has become a recurring feature of the modern corporate landscape in India. It is often justified in various ways as improving operational efficiency, revising business activity, impressing competition, and reviving distressed companies. Restructuring is mainly governed by the Companies Act, 2013 (the Companies Act) and relevant labor law provisions, notably the Industrial Disputes Act, 1947 (IDA). The intersection of corporate and labor law is not without complexity and raises significant questions as to whether there are protections for employees in a restructuring. Sections 230 to 232 of Companies Act[7] provide the framework for implementing schemes of compromise, arrangement, and reconstructions (including mergers and amalgamations). The process typically required to affect the restructuring are:

1. A scheme of arrangement is proposed and presented to the **National Company Law Tribunal (NCLT)** for approval.

2. The Tribunal, upon being satisfied that the scheme is fair and reasonable, convenes meetings of the concerned classes of shareholders and creditors.

3. If the scheme is approved by a requisite majority and meets other statutory conditions, the Tribunal may sanction the scheme[8].

These provisions aim to balance the interests of shareholders and creditors, ensuring that the scheme is commercially sound and does not unfairly prejudice any class. However, **employees are not recognized as a distinct class** in this framework[9]. The Act assumes that if employment is continued with no significant changes in terms and conditions, the rights of employees are protected. This assumption is problematic, especially when employment security, working conditions, or prospects may be jeopardized even without a formal termination.

While **Section 232(3)(g)[10]** makes an incidental mention of "the transfer of employees of the transferor company to the transferee company," it does not establish any enforceable rights or

[7] The Companies Act 2013, ss. 230–23
[8] R Garg, 'Section 230 of Companies Act, 2013 – iPleaders' https://blog.ipleaders.in/section-230-of-companies-act-2013/
[9] F Pellisserry, 'Corporate Restructuring: Who Cares for the Employees?' (2012) *Indian Journal of Industrial Relations* 28
[10] The Companies Act 2013, s. 232(3)(g)

require consultation with employees or trade unions. Thus, employees are reduced to passive observers in decisions that may fundamentally alter their professional trajectories.

The **Industrial Disputes Act, 1947** provides statutory protection for "workmen" as defined under Section 2(s)[11]. It assumes particular significance during corporate restructuring, especially in cases involving the transfer of undertakings or ownership.

Section 25FF[12] of the IDA is at the center of our discussion as it provides that when an undertaking is transferred from one employer to another by way of succession, the transferred employees are entitled to be compensated as if they were retrenched, unless:

- The service of the workman is not interrupted.
- The terms and conditions of employment are no less favorable.
- The new employer has a statutory obligation to pay retrenchment compensation on further termination.

Section 25F[13] specifies requirements that must be secured before retrenching employees including notice and compensation. This is often referred to when there is a restructuring that leads to downsizing or redundancy of employees. Despite the protections afforded by Section 25F, implementation is patchy. The IDA is limited by its own definition of 'workman' whether managerial or supervisory or this will be the actual determination by the Board. In addition, the practical application of such provisions is based on the employee initiating an action, which is not always possible due to power imbalances or lack of access to legal resources[14].

The Issue of Stakeholder Recognition: Employees as Peripheral Actors

The Companies Act provides for notice to certain statutory bodies under Section 230(5) [15]including the Registrar of Companies, SEBI and the Income Tax Department—but does not require that notice be provided to employees and their representatives (unless the NCLT specifically so orders). Thus, labor unions and employee associations are not, as a matter of

[11] Industrial Disputes Act, 1947, No. 14 of 1947, s. 2(s)
[12] Industrial Disputes Act, 1947, No. 14 of 1947, s. 25FF
[13] Industrial Disputes Act, 1947, No. 14 of 1947, s. 25F
[14] Kiranmai and R Sridhar, 'Employee Perception during Restructuring: With Reference to Public Enterprises in India' (2014) 5(1) *OPUS: HR Journal* 24
[15] The Companies Act 2013, s. 230(5)

course, parties to the restructuring process, a defect widely criticized by labor law scholars and trade unions[16]. Even when objections are raised, the test for establishing that a scheme is contrary to "public interest" is high and the courts have employed this label mainly in economic and commercial terms. Employee welfare, job preservation, and social impacts have never been considered included under this concept.

The Companies Act, 2013 also tries to deal with shareholder complaints, including complaints from minority shareholders, under provisions such as Section 245[17], which allows for a class action against the company or its directors. Notably, the provision in the statute is ambiguous about whether employees, particularly, stakeholders, can bring such actions into focus. The limited recognition of employees as stakeholders in the corporate law context is stark compared to the role of employees in the operation of the enterprise[18]. It is also important to note that restructuring can have differential impact on different employee classes. Senior management may receive retention payments, stock options or new roles in the merged company, while lower-tier employees may end up in reduction, relocation and/or redundancies[19]. Differential and inequitable impact is rarely highlighted in statute or in the courts.

Chapter 2: Analysis and Critique of the Hindustan Lever Case

The case of Hindustan Lever Employees' Union v. Hindustan Lever Ltd.[20] provides an interesting reading on how the Indian judiciary deals with employee rights during corporate restructuring. The dispute arose out of the merger between Hindustan Lever Limited (HLL), a subsidiary of the multinational Unilever, and Tata Oil Mills Company Limited (TOMCO), a well-established Tata Company. While the merger was being presented as a corporate reorganization to improve operational efficiencies and market share, it raised serious questions among employees. The TOMCO employees' union brought the merger before the Bombay High Court, asserting that the process did not sufficiently involve the employees and that it was detrimental to job security and terms and conditions of employment.

[16] B Hepple, 'Restructuring Employment Rights' (1986) 15(1) *Industrial Law Journal* 69
[17] The Companies Act 2013, s. 245
[18] F Pellisserry, 'Corporate Restructuring: Who Cares for the Employees?' (2012) *Indian Journal of Industrial Relations* 28
[19] ibid
[20] Hindustan Lever Employees' Union v. Hindustan Lever Ltd, (1995) 83 Comp Cas 30 (Bom)

Despite the union objection, ultimately the Bombay High Court approved the merger scheme. As justification for their decision, the Court stated that there was no curtailment in terms of salaries, benefits or termination of employment. Therefore there was no infringement of labor rights. The court ruled that continuing employment on similar terms amounted to compliance with relevant statutes. There was, therefore, no reason to prevent the merger from going ahead. When it came to issues relating to "public interest," the court applied a quite narrow interpretation and treated it largely as a measure of economic efficiency, shareholder benefit, and regulatory compliance[21]. Concerns regarding employee welfare and rights were not relevant to the court's consideration. The judgment, therefore, expressed a blanket deference to the commercial judgement of shareholders and regulatory agencies and did not contemplate any deeper engaging with labor law[22]. This type of reasoning has drawn widespread criticism for being overly formalistic and reductive.

Typically, the court recognized that employee rights needed to be protected. However, it only accepted a narrow interpretation of those rights meaning only an absence of immediate harm such as losing a job or a reduced salary. Such a narrow interpretation completely neglected larger conceptualizations of employee experience and the meaning of their work, such as future job insecurity and the erosion of union strength, impact on work roles, and potential loss of bargaining leverage[23]. The long-term consequences of the merger on workers simply were not considered even though corporate restructuring usually has uncertain and indirect yet systemic rationalizing impacts on the workforce.

Equally concerning was the court's disregard for procedural justice. The court gave no due diligence to whether employees were allowed a voice in the merger process, whether the union was consulted, or whether any formal mechanism for a voice for employees was used. The end result was a decision that underlined a legal context, wherein workers are otherwise peripheral to decisions by corporations, despite being central to the business. However, it operates within a legal paradigm that runs contrary to the participatory principles of contemporary labor law, which regards consultation and procedural fairness as essential dimensions to governance of restructuring. The ruling also displayed a fundamental disconnect between corporate and labor

[21]S Sundaram, U Das and A Roy, 'Merger and Amalgamation: Stamp Duty on the Value of Immovable Properties in India' (2024) 25 *Austl J Asian L* 55.
[22] ibid
[23]S Sundaram, U Das and A Roy, 'Merger and Amalgamation: Stamp Duty on the Value of Immovable Properties in India' (2024) 25 *Austl J Asian L* 55.

law. The court failed to engage in relevant provisions of the Industrial Disputes Act, 1947 - namely Sections 25FF[24] and 25F[25], which provide for payment to employees and continuance of employment, in the event their business is sold or closed. While the Companies Act provided a pathway for merger under Sections 391 – 394 (now 230 – 232 of the 2013 Act)[26], it was never previously even suggested that the courts even envisioned reconciling the provisions with their corresponding protections in labor law.

This lack of integration continues to support a disjointed regime of law, in which corporate law and labor law operate independently rather than holistically to promote economic fairness and social justice. Additionally, it should be noted that this legal judgement needs to be situated in the context of the broader political economy of post-liberalization India. The 1990s represented a distinct shift towards economic liberalization, privatization, and globalization. Courts during this time often took on a pro-business stance in their rulings[27]. The Hindustan Lever case is squarely in this trajectory from the judiciary, which perceives judicializing with procedural fairness and giving a green light for corporate consolidation, while minimizing difficulties for courts to engage more deeply in public mobilization by responding to the needs of those most impacted. The case demonstrates a legal failure, but also a philosophical disposition affording neoliberal objectives over the needs of labor.

Chapter 3: Comparative Analysis with UK Jurisprudence

In contrast to the Indian legal framework, the United Kingdom has established a more coherent and employee-oriented approach to addressing the implications of corporate restructuring. The UK legal framework accepts that mergers, acquisitions, and businesses transfers can have adverse consequences on employees, and so it has adopted specific statutory safeguards to address this. The main mechanism is contained in the Transfer of Undertakings (Protection of Employment) Regulations 2006[28] (TUPE), which is a reflection of the European Union's Acquired Rights Directive (2001/23/EC)[29]. Together with parts of the Companies Act 2006[30],

[24] Industrial Disputes Act, 1947, No. 14 of 1947, s. 25FF
[25] Industrial Disputes Act, 1947, No. 14 of 1947, s. 25F
[26] Companies Act, 1956, No. 1 of 1956, ss. 391–394 (India); Companies Act, 2013, No. 18 of 2013, ss. 230–232.
[27] K Mehta, 'From Struggle to Success: A National Analysis of Corporate Restructuring' (2023) 5(3) *International Journal of Legal Science and Innovation* 21

[28] Transfer of Undertakings (Protection of Employment) Regulations 2006, SI 2006/246 (UK).
[29] Council Directive 2001/23/EC of 12 March 2001 on the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, OJ L 82, 22.3.2001, p. 16–20.
[30] Companies Act 2006 (UK).

the intention of this legal scenario is to protect continuity of employment and support worker involvement during corporate restructuring processes. TUPE helps ensure that employees affected by the transfer of a business is not seen as disposable capital. It seeks to ensure that the employee still has an employment contract with the new employer (continuity of employment) and ensures that the employee will not be dismissed because of the transfer (with some exceptions). TUPE provides statutory protection for employees/directors affected by the transfer of a business, and any dismissal that is solely connected to the transfer is automatically unfair unless it is for economic, technical, or organizational (ETO) reasons which involves a change in workforce. This is part of Regulation 4 of TUPE[31]. Regulation 13 requires employers to notify and consult with the appropriate representatives of any affected employees from the transfer in a fair manner[32]. Since an employer must consult affected representatives, the failure to do this may avoid liability.

In the case of Litster v Forth Dry Dock & Engineering Co Ltd[33], the House of Lords interpreted the Acquired Rights Directive in a purposive manner, and thereby, extended protection for employees who were dismissed immediately before the transfer to avoid liability. Litster confirmed that these employees and their representatives, still have the protection of the Directive, and therefore, protection under TUPE. This was significant shift in the application of restructuring law, which is now placing the employee at the center, as a rebuttal to employers seeking to avoid their statutory obligations.

In Daddy's Dance Hall A/S v Rasmussen[34], the European Court of Justice (ECJ) outlined that the transferee (the new employer) cannot unilaterally change the terms and conditions of employees, by only virtue of the fact that they have transferred, and UK law incorporated this principle, which has continued to provide some protection against erosion of employees' benefits post-transfer.

The case of Regent Security Services Ltd v Power [35]also indicates how TUPE's breadth is evolving, with the Employment Appeal Tribunal concluding that TUPE may apply regardless of whether a new service provider is outsourced (a change in service provision), and that the employees who provide the services to the previous service provider were entitled to transfer

[31] Transfer of Undertakings (Protection of Employment) Regulations 2006, SI 2006/246, reg. 4 (UK).
[32] Transfer of Undertakings (Protection of Employment) Regulations 2006, SI 2006/246, reg. 13 (UK).
[33] *Litster v. Forth Dry Dock & Engineering Co Ltd*, [1989] ICR 341 (HL)
[34] *Daddy's Dance Hall A/S v. Rasmussen*, [1988] ECR 739 (ECJ)
[35] *Regent Security Services Ltd v. Power*, [2007] IRLR 226 (EWCA Civ).

to the new service provider with their rights intact. These cases illustrate the broadening of TUPE from the historical asset transfer to covering broader employee transfers in changing service provision.

The UK's TUPE is shaped by a history of collective bargaining and the involvement of unions. The Information and Consultation of Employees Regulations 2004[36] are also a limited way of providing additional ways of consultation and involvement of employees, when dealing with significant changes to business processes, including restructuring.

In addition, cases such as University of Nottingham v Eyett[37] emphasize the need to communicate with employees about their rights and how management decisions affect employee rights even outside the confines of TUPE. The UK formally left the European Union on January 31st, 2020, and opted to keep TUPE in its domestic legal framework, which reflects continued commitment to retaining employee rights in a transfer of businesses[38]. Post-Brexit reform has not significantly undermined or watered down the fundamental employee protections contained within TUPE, and the majority position taken by political and judicial bodies shows a belief that the stability and welfare of employees is essential to good corporate governance[39]. In comparison to the Indian environment, where typically employee interests can find themselves sidelined during a restructuring scheme and employees do not have statutory consultation rights with management under the Companies Act 2013[40], the UK model of employee rights demonstrates a more developed and holistic approach. Employee participation as part of restructuring is not only through statutory obligations but has arguably developed through judicial activism to expand meanings and understandings of protective legislation.

The UK's legal system suggests that economic efficiency and labor protection can coexist. In fact, having employees involved in a restructuring situation can support stability within the organization, support morale, and mitigate litigation. These actions can not only benefit the workers but also employers, shareholders, and regulators as well - as it enhances trust and minimizes disruptions.

[36] The Information and Consultation of Employees Regulations 2004
[37] *University of Nottingham v. Eyett*, [1999] ICR 626 (EWCA Civ).
[38] T C Moreira and D C Martins, 'The Role of Employees (and Their Representatives) in Company Restructuring' in *EU Collective Labour Law* (Edward Elgar Publishing 2021) 342
[39]S Deakin and A Koukiadaki, 'Capability Theory, Employee Voice, and Corporate Restructuring: Evidence from UK Case Studies' (2012) 33(3) *Comparative Labor Law & Policy Journal* 427.
[40] The Companies Act, 2013

In conclusion, the UK regulatory regime - based on TUPE, supports policy principles from the EU, and is supported by considerable case law - can inform India's approach to restructuring to include workers and to treat them as stakeholders rather than as liabilities[41]. It also places labor at the center of corporate decision making, something that Indian lawmakers and courts can consider when looking to develop a restructuring regime that reconciles economic and social expectations.

Conclusion

The Hindustan Lever decision is an instructive example of the inadequacies present in the Indian legal system to adequately protect employee rights in corporate restructuring. While working within a restrictive and minimal understanding of "public interest," the Bombay High Court prioritized procedural formalism over the relational substance of labor issues, signifying judicial loyalty to corporate capitalism and the favorable independence to managerial discretion, to the exclusion of the perspective of the worker, who is arguably the most affected stakeholder in these corporate restructuring activities. The Hindustan Lever judgment highlighted a systemic issue within Indian corporate law governing the relationship between labor welfare legislation and governance regimes in corporations. Although the court in Hindustan Lever illustrated the limitations of continuing to rely solely on labor legislation like the Industrial Disputes Act, 1947, as companies undergo mergers or amalgamations pursuant to the Companies Act, the decision indirectly expressed the need for the explicit recognition and incorporation of employee perspectives into the corporate restructuring process. To do so purely within a normative corporate restructuring framework will potentially undermine the constitutional objective of advancing social justice and the human dignity of labor.

To address these gaps, a more holistic and balanced legislative framework must be put in place. The Companies Act ought to be amended so that employee unions must be formally consulted whenever a restructuring scheme is put before the courts, so that employees are able to be meaningfully involved in the process, rather than acting as an afterthought in considering a collective redundancy proposal. A labor impact assessment ought to even be made an application requirement prior to a merger scheme getting approval from the National Company Law Tribunal (NCLT) so that we take a step towards embedding social accountability at the

[41]O C Aduma and R O Udeoji, 'Comparative Analysis of Corporate Restructuring Practices: Nigeria, India and United Kingdom' (2024) 15(2) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 240.

heart of corporate decision-making. Moreover, courts ought to assess "public interest" in a holistic way, when determining whether the socio-economic restructuring of employees may undermine their employment rights and allow for insufficient compensation. Aligning the Companies Act with the Industrial Disputes Act can help make legal regime consistent and facilitate adherence to labor protections instead of covertly eroding them while seeking commercial outcomes. Also, statutory options must be established for employee participation, i.e., via unions, representative committees or independent representatives (ombudsman) to ensure the restructuring process remains transparent to labor and equitable to all parties. Ultimately, economic growth must go together with fairness and human dignity and any corporate restructuring framework absent of this balance offends and erodes the principles of democratic governance.