CHAPTER V

EMPLOYEES POSITION DURING BANK MERGERS

“A corporation represents far more than its current stock price; it embodies obligation to employees, customers, suppliers and communities”698.

5.1 Introduction: Mergers and acquisitions have sometimes been described as a legitimate means for breaking implicit contracts in order to restructure. A corporation is a nexus of implicit and explicit contracts which only work on the basis of trust between managers and workers. A mergers or takeover in many ways invalidate the employment contract699.

One of the important factors hindering the growth of banking companies through M&A Mergers and Amalgamations are seen as one of the modes of corporate restructuring. But it has some adverse impact on the employees as it results in layoffs, retrenchments due to closing down of some of the Industrial units of the company. Along with this is the problem of new work culture, adjustability to the new environment of work700. The larger a firm is in relation to the size of the community in which it operates, the greater disruption any such change is likely to have701. A scheme of merger/amalgamation or takeover is a statutory right of the companies702. The procedure for effecting a merger or takeover is also envisaged under the companies Acts in all the developed economies of the world. Provisions of the Companies Act, 1956 in India take care of the interest of


702 Ss. 293(1) a ,391-394,395 &396 of the Companies Act, 1956 ( India)
the class of creditors and class of shareholders as they being the contributories of the finance without their approval company cannot restructure its business.

First part of the chapter studies merger laws in India and its impact on the labour under the existing provisions of the companies Act and under the Banking Regulation Act, 1949. In India every legislation must be tested on the touchstone of the Indian Constitution. In this background second part of the chapter studies the constitutional law protection afforded to the companies to restructure and thereby achieving an economic equilibrium. Third part of the paper studies the role of Indian Labour legislations in protecting the interest of the employees during transfer of an undertaking with the help of the decided cases. Chapter also analyzes the guidelines issued by other countries and labour organizations in this regard. Finally chapter gives suggestions for improving and protecting the labour force during bank restructuring.

5.2 Basis of Industrial Jurisprudence: The preamble to the constitution of India states that it is a socialistic state. The basis of socialist state is embodied under the directive principles of state policy commonly known as Part IV of the Constitution of India. Directive principles are essentially not enforceable before any court of law. But they are fundamental in the governance of the country and must be applied by the state while making laws. Within this part Art. 39(b) and Art.39 (c) requires the state to ensure fair distribution of wealth and prevention of concentration of wealth in the hands of few. Art. 41 requires it to secure right to work for its people within its economic capacity. Just and human condition of work and living wages for work is also essential for the proper enjoyment of right to work. Finally Art.43- A requires it to take

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703 See s. 391(1) Indian Companies Act, 1956 – wherein the tribunal on the application of the persons mentioned in the section may call the meeting of the class of creditors/class of members
704 Art.37
705 Art.39(b) The state shall direct its policy towards securing, that the ownership and control of the materials resources of the community are so distributed as best to subserve the common good.
706 Art. 39(c) The state shall direct its policy towards securing that the operation of the economic system does not result in the concentration of wealth and the means of production to the common detriment
707 Art.42
708 Art.40
steps to ensure the participation of workers in the management of Industries. This articles form m the substratum of the Industrial Jurisprudence in India709.

5.3 Merger laws in India and its Impact on labour force: In India, Company mergers are governed by the Companies Act, 1956710 and bank mergers are by the Banking (Regulation) Act, 1949711. S. 293 (1)(a) of the Companies Act confers powers on the board to sale, lease or otherwise disposal of the whole or substantially whole of the undertaking712. The procedure of transfer would be considered as fair under s. 293 if the consent of the members of the company is obtained. It is to noted here that the other stakeholders interest have not been protected during transfer of an undertaking.

S. 391 of the companies Act, 1956 gives the court the power to sanction a merger or reconstruction between the company and its members and company and its creditors. The court enjoys more power under this section because it not only sanction a merger or reconstruction but also look into the substantial compliance of

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710 The companies Act, 1956, merger provisions in Ss. 391-394, 396, 494 & 507 & Part VI A of the companies Act, 1956 provided for restructuring of Sick Industrial companies. Takeover is contained in S. 395 of the Companies Act, 1956 and SEBI (Substantial Acquisition of shares and Takeovers) Regulation, 1997.
711 The Banking(Regulation) Act,1949, Ss. 44A, 45
712 Meaning of the term ‘Undertaking’ was subject to much judicial scrutiny in number of cases. For example in P.S. Offshore Interland Services (P) Ltd &another v. Bombay offshore suppliers and services [1992] 75 ComCas. 583 (Bom.) D.R.Dhanuka J., “undertaking used in this section is liable to be interpreted to mean ‘the unit’ the business as a going concern, the activity of the company duly integrated with all its components in the form of assets and not merely some of the assets of the company…. Having regard to the object of the provision, it can at the most, embrace within it all the assets of the business as a unit or practically all such constituents…..”. Also in R.C. Cooper v. Union of India [1970]40 com Cas. 325( SC ) J. Ray------------- ‘undertaking meant a going concern’, undertaking meant the entire organization “In reality the undertaking is a complete and complex weft and the various types of business and assets are threads which cannot be taken apart from the weft.” Further in Brooke Bond India Ltd v. UB Ltd and others [1994]79 ComCas.346. (Bom). The court held that ‘By an undertaking is meant a business or enterprise in which a company may be engaged as a gainful occupation. Each one of several factories or manufacturing plants of a company will be considered an undertaking from the business point of view. It does not consists of mere assets or property. It is a productive organism, so as to speak and signifies a going concern engaged in the production, distribution etc., of goods or services. And the concept of undertaking was further discussed in Re, Yellamma cotton,woolen & silk mills Co. Ltd-Bank of Maharashtra v. Official Liquidator [1970] 40 Com Cas.466 ( My sore).
statutory provision \footnote{Miheer H. Mafatlal v. Mafatlal Industries Ltd (1996) 87 Com Cas 792 at p.819} and also look into whether the scheme is \textit{bonafide} exercise of majority power and that the scheme is reasonable. The courts also have the power of calling meeting of class of creditors and members and in many cases it looked into the interest of the employees \footnote{Ibid., also see All India Blue star Employees Federation All India Blue star Employees Federation v. Blue Star Ltd (2000) 27 SCL 265 (Bom).} \footnote{[1975]45 ComCas 248( Guj.)}. In the cases of \textit{Re Krishnakumar Mills Ltd} \footnote{Coimbatore Cotton Mills Ltd and Lakshmi Cotton Mills Co., Ltd., In re (1980) 50 ComCas 623 (Mad)}., the scheme brought before the court required that the workers waive their claims to compensation under the Industrial disputes Act, 1947 and also forego their claims to notice money and gratuity. The court found the proposal unfair and refused to allow a meeting of creditors to be called to consider the scheme. J. Padmanabhan, in a landmark case stated that court is not a rubber stamp in sanctioning a scheme under s. 391-394\footnote{716}. Another pertinent section is Section 394 of the Companies Act, 1956. It provides the Court with specific powers with respect to mergers and amalgamations. In particular both the provisos to Section 394 (1) subject to the sanction of the court to the criterion that ‘the affairs of the company have ‘not been carried on in a manner prejudicial to the interest of its members or public interest’. The courts have used this provision to protect the interest of the employees has often been co-opted into public interest. Restructuring of Companies in trauma is provided under Part VIA of the Companies Act. It provides an opportunity to the Sick Industrial companies to rehabilitate and restructure according to the procedure under Part VI A. A similar provision is contained in Part IV of the SEBI(Substantial Acquisition of shares and Takeover) Regulations, 1997 for the financial weak companies. Further under Ss. 494 and 507 of the Companies Act, 1956, an alternative route to voluntary winding up is provided for protecting the interest of shareholders and creditors. It provides for merger through voluntary winding up by the members and creditors.

Having seen the provisions under the Companies Act, 1956, one of the main defects of the scheme for merger or amalgamation under the Companies Act, 1956 or the
Companies Act, 2013 is that it does not provide workers with a right to object to a scheme of amalgamation. This is in contrast with the right of the members and creditors, whose express consent is required for such a scheme. This means that it is the Court that has to step in to pro-actively protect the interest of the workers. Therefore it is to be noted here that the merger provisions under the companies Act is not in consonance with the emerging stakeholder-based model of corporate Governance.

5.4 Locus Standi of the employee during merger: One of the main issues the court had to resolve so as to protect the interest of the workers were the issue of *locus standi* of the employees to object to the scheme and the extent to which their obligations must be considered. The issue of *locus standi* of the employees in merger had come up before the Bombay High court in *Hindustan Lever Employees Union v. Hindustan Ltd and others* 717. It was found that even though the Companies (Court) Rules do not provide for giving notice to the employees for meeting to approve the schemes, in contrast with the provisions made for creditors and members, there is a provision for public notice of hearing of sanction by the court and the employees can put forward their concern at this point. The court also noted that the ‘worker is certainly a valuable part of the business and not an insignificant partner along with the capital management’ 718 and hence the court must take into consideration his concerns while accoring sanctions under S. 391 or 394. The Judgment of Justice V.A.Mohata, in this case was upheld by the Supreme court in an appeal 719 by Justice R.M. Sahai. Another case pertaining to the same issue decided by the Bombay High Court was in the case of *K EC International Ltd v. Kamani Employees Union* 720. In this case the trade union of the amalgamating company filed a suit opposing the petition for sanctioning a scheme of amalgamation filed by the amalgamating company. Their contention was that the statutory requirements under Section 391 to 394 and the requirements as per the Companies (Court) Rules had not been complied with. Some of the employees

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717 [1995] 83 ComCas.1 (Bom)
718 Ibid at Para.14
719 *Hindustan Lever Employees Union v. Hindustan Ltd and others* [1995]83 ComCas.30
720 [2002]109 ComCas 659(Bom)
were shareholders in the company as well and the union stated that it was appearing in a representative capacity on their own behalf. The company objected on the ground that the union could not represent the employees as shareholders. If the shareholders wished to sue they could sue on their own behalf.

But a different stand was taken by the Karnataka High Court in *Harihar Polyfibers v. Karnataka Forest Development Employees Union* 721. In this case, a government owned corporation was to takeover another company by acquiring 49% of its shares. The employee Union of the Government Corporation objected to the scheme by means of a writ petition. It was held that the union’s rights were not affected by the proposed amalgamation; it had no *Locus Standi* object to the scheme. Dismissing this contention, J.S. Radhakrishnan found, that the employees have a right to object with regard to a merger as the employees are the backbone of the petitioner company and their interest ought to be protected 722.

Another case wherein the issue of the interest of the employees involved were that of *John Wyeth (India) Ltd v. Geoffrey Manner and Company Ltd* 723. In this case the respondent company had to be merged with the petitioner company. Under the scheme, all the workers of the amalgamating company were to be compulsorily transferred to Wyeth, the amalgamated company along with the machinery assets and liabilities. Their contention was that since Wyeth was a loss making company while manners had been making profits, the transfer would adversely affect them and hence they did not wish to be transferred. At the outset, the Bombay High Court speaking through J.Sujata Manohar agreed with the workers contention and found that they could not be forcibly transferred. It was held that those who wished to be transferred could do so and would be protected under the merger scheme. Those who did not wish to be transferred could remain with Manners and would be entitled to all such rights and remedies as they may be entitled to in law 724.

721 2003 CLC 574(Kant)
722 Ibid at Para.71
723 1988 (1) LLJ 481
724 Ibid at Para.7
5.5 The employment protection under Bank merger provisions: Section 45 of the Banking Regulation Act, 1949 empowers the Reserve Bank of India to apply to the central government for suspension of banking business and to prepare a scheme of amalgamation. The Constitutional validity of Section 45 of the Banking Regulation Act was challenged in *Shivkumar Tulsian and another v. Union of India and others* 725. Section 45(5)(i) of the Banking Regulation Act, 1949 provides that the employees of the transferor company should be provided with similar remuneration and terms and conditions of employment as that of the employees of the transferee company. Provided that the employee is not a workmen within the meaning of S. 2(5) of the Industrial Disputes Act, 1947. This section further provides that the employees of the transferor company should be given the same rank and status in the transferee company. The only right of such employees whose service is so continued is to claim parity with the employees of the transferee bank itself of a corresponding rank or status subject to equivalent qualification and experience and no more. The transferred bank employee cannot get better conditions of service than the corresponding employee of the transferee bank 726. Under no circumstances can the remuneration of a transferred employee be adversely affected on the amalgamation of two banks 727. Similar view was upheld by the Supreme Court in *State Bank of Travancore v. Elias Elias* 728. Also in *State Bank of Travancore v. General Secretary, Association of the state bank of employees and others* 729 it was held that in the assessment of the experiences of the employees of the transferor bank as compared with the experience of the employees of the transferee bank, the account has to be taken not merely of the length of the service but also the factors such as the standard of efficiency in the transferor bank, the variety, the quality, the volume of business transferred by it etc. In *New Bank of India Employees Union v. Union of India* 730, it was held that when a scheme is framed under Section 45 for amalgamation, judicial review is permissible to a very narrow extent.

725 [1990] 68 ComCas 720 (Bom.)
728 AIR 1971 SC 143.
729 1978 II LLJ 305 (Ker.)
730 AIR 1996 SC 3208
Particularly when a dispute or difference arising with regard to the equivalence of experience has been decided by the Reserve Bank of India, in exercise of its powers under the second proviso to Section 45 (5) (i), the High court in the writ jurisdiction cannot sit in appeal over such judgment. It can only interfere in extreme cases of arbitrariness or unreasonableness. As to the criteria adopted for judging the equivalence of experience in two different banks which are being amalgamated Reserve Bank being an expert body in banking operations would be the best judge. It was further reiterated in *State Bank of Travancore v. Its Association* 731 wherein Division bench of the Kerala High court stated that ‘experience may generally mean the length or duration of service in a profession or institution, but the court cannot altogether rule out the richness and nature of the experience in the matter of service in a bank. The quality of service, efficiency of organization and the range and volume of business transacted must all contribute to the experience gained in a bank.

S. 45 (5) is basically a mandate to the Reserve Bank of India that the scheme framed by it must contain all the provisions mentioned in the sub-section in the concerned scheme. The sub-section further casts an obligation that the scheme must provide for the continuance of the service of all those employees who are workmen within the meaning of the Act of 1947. In *Piara Lal Anand v. State Bank of India* 732 in this case it was laid down that Sub-section (5) of Section 45 of the Act is only an enabling provision and gives discretion to the Reserve Bank to provide for all or any of the matters it deems fit, but it was not mandatory that the scheme must contain all the matters mentioned in Section 45 (5) of the Banking Regulation Act. In *K.L. Shepherd v. Union of India* 733 the court was dealing with the scheme of amalgamation under Section 45 of the Banking Regulation Act with regard to the status of the employees of the amalgamated bank who were excluded from the service of the transferee bank while retaining other similarly situated employees. In this context the court came to the conclusion that the scheme should uphold the principles of natural

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731 1978 Lab.I.C.1343
732 1972 II LLJ, 495 (Del.)
733 (1989) 1 CompLj 167 (SC)
justice\footnote{\textit{Ibid} see “Fair play is a part of the public policy and is a guarantee for justice to citizens. In our system of rule of law every social agency conferred with the power is required to act fairly so that the social action would be just and there would be furtherance of the wellbeing of the citizens”}. Section 45 (5) (i) was primarily incorporated in the Banking Regulation Act, 1949 so as to give a statutory assurance to the position of employees in merger\footnote{Also see \textit{Indian Bank v. K. Usha and another} AIR 1998 SC 866, \textit{S. Sundaram v. ICICI Bank Ltd} 2007 Indlaw MAD 146.}. State bank of Travancore v. Elias Elias\footnote{\textit{AIR 1971 SC 143}}, Section 45(5)(i) provides for the terms and conditions of service and remuneration. If the transferee bank does not offer the same rank or position to the employee in which he was in the transferor bank, then it would violate the provision of the section. Under clause (ii) to the first proviso of section 45(5)(i), the transferee bank is not entitled to place an employee in a post of lower rank and status than the rank in the transferor bank.

\textit{The Chairman, Canara Bank, Bangalore v. M.S. Jasra and others}\footnote{\textit{AIR 1992 SC 1341}, case was decided by L.M. Sharma, J.S. Verma, and Yogeshwar Dayal, JJ., Facts of the case: M.S. Jasra was Assistant General Manager in Lakshmi Commercial Bank. The Central Government, after considering the application made by the Reserve Bank under Sub-section (1) \textit{Section 45 of the Banking Regulation Act, 1949} made an order of moratorium under Sub-section (2) thereof in respect of Lakshmi Commercial Bank and the Reserve Bank prepared a scheme for amalgamation of the Lakshmi Commercial bank with the Canara Bank under Sub-section (4) of Section 45 which was approved by the Central Government on August 24, 1985. As a consequence the services of the employees of Lakshmi Commercial Bank were continued on amalgamation in the Canara Bank and respondent M.S. Jasra was fitted in the post of Divisional Manager in the Canara Bank that respondent No. 1 could not, therefore, claim to be governed by the age of superannuation of 60 years in the Lakshmi Commercial Bank.}, court held that the petitioner’s services were continued on amalgamation of the Lakshmi Commercial Bank with the Canara Bank and petitioner became an employee of the Canara Bank and was, therefore, entitled only to the right given by proviso (ii) to Clause (i) of Sub-section (5) of Section 45 which entitled him to the same terms and conditions of service as employees of the corresponding rank or status of the Canara Bank. Age of superannuation of the employees in Canara Bank being 58 years only, respondent could not claim to retire at 60 years. In \textit{Allahabad Bank and Ors. v. All India Allahabad Bank Officers’ Asson. &}
Court held that the employees of the United Industrial Bank Ltd. on amalgamation were given an option not to continue in service after amalgamation and were given the option to obtain proper compensation under the provisions of the Industrial Disputes Act. Such type of benefit or option was however not available to the employees of the transferor banks on nationalization and therefore the erstwhile employees of the amalgamated bank do not stand on the same footing as the erstwhile employees of the nationalized banks. The employees of the United Industrial Bank who did not choose to exercise the option to discontinue service and obtain payment of compensation under the Industrial Disputes Act on amalgamation of the United Industrial Bank with the Allahabad Bank cannot now complain that the transferee bank can not alter their age of retirement which power of the transferee bank, has been upheld by the Supreme Court in the case of Canara Bank. In view of the said Supreme Court decision in the case of Canara Bank court held that the contention of the respondent that the age of superannuation as was applicable to him while in service in the United Industrial Bank cannot be altered by the Allahabad Bank is not sustainable.

Case was decided by Gitesh Ranjan Bhattacharjee and Basudev Anigrahi JJ. Facts of the cases: It has been argued on behalf of the petitioners that he was originally an employee of the United Industrial Bank Ltd. which bank was amalgamated with the Allahabad Bank by notification dated 30th October, 1989 issued by the Government of India and the service conditions in the erstwhile United Industrial Bank of India Ltd. prescribed the age of superannuation of the officers as 60 years and they becoming officers of the Allahabad Bank on amalgamation the benefit of extension beyond the age of 58 years should be extended to them also, which was not being done. It is contended on behalf of the respondents that the benefit of extension up to the age of 60 years is not available to the petitioner No.4 and to the erstwhile officers of the United Industrial Bank of India Ltd. who on amalgamation was serving in the Allahabad Bank. In this case also it was the contention of the writ petitioner no.4 that as an employee of the United Industrial Bank before amalgamation he was entitled to retire at 60 years of age but now he is being asked by the Allahabad Bank to retire at 58 years.

Section 12(2) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1969, provides that every officer or employee of an existing bank shall become, on the commencement of the said Act. An officer or other employee, as the case may be of the corresponding new bank and shall hold his office or service in that bank on the same terms and condition and with the same rights to pension, gratuity and other matters as would have been admissible to him if the undertaking of the existing bank had not been transferred to and vested in the corresponding new bank and continue to do so until and unless his employment in the corresponding new bank is terminated or until his remuneration, terms or conditions are duly altered by the corresponding new bank.
Central Bank of India and Ors. v. Madan Chandra Brahma and Anr\textsuperscript{739}, Court held that Clause (i) of Sub-section (5) Section 45 of the Banking Regulation Act, 1949 has only provided that an employee, had the right to get the same remuneration and to have the same terms and conditions of service which they were getting or by which they were being governed immediately before the date of the order of moratorium. The right to be treated on a par with the employees of the appellant Bank cannot extend to a right to be treated as having entered the service of the appellant Bank even before the very amalgamation. In \textit{E.K.Andrew v. State Bank of India}\textsuperscript{740}, the court held that section 45 of the Banking Regulation Act, 1949 had been incorporated in Banking Regulation Act as early as from 1960. An amalgamation could have been there only after observing mandatory conditions of Section 45 of the 1949 Act. If that be so, past service was allowable to be taken over. However, expression in Section 45(5) (i) of the 1949 Act was continuance of services of all employees of banking company which impliedly prohibited cutting off of past service\textsuperscript{741}. In \textit{Paul Francis Ambukkaram & others v. Union of India}\textsuperscript{742}, Court held that Article 31A(1)(c) of the Constitution of India disables the

\textsuperscript{739} AIR2008SC15 case heard before K.G. Balakrishnan, C.J. and P.K. Balasubramanyan, J. Facts : On 29.8.1990, the Purbanchal Bank was merged with the Central bank of India under a Scheme of Amalgamation under the Banking Regulation Act, 1949. Respondent No. 1, whose date of birth had been recorded as 1.8.1934, was to attain the age of 58 years by 31.7.1992. On 17.7.1992, the appellant Bank informed respondent No. 1 that he would be reaching the age of superannuation on 1.8.1992. Respondent No. 1 by his reply dated 23.7.1992, sought to dispute his date of birth. That apart, he also claimed that he would retire on attaining the age of 60 years, as per Regulation 19 of the Service Regulations 1979 on the basis that his original appointment in the Gauhati Bank was on 9.6.1969 and hence he was entitled to continue in service of the appellant Bank, till he attained the age of 60 years. The appellant Bank did not accept this stand of respondent No. 1 and retired him on his attaining the age of 58 years.

\textsuperscript{740} [2005(106)FLR954]. Case decided by M.Ramachandran J. Deputy Manager of Bank reappointed Petitioner with approval of Reserve Bank of India, for a fresh period of three years, but could not complete term, since Petitioner was removed from office on 2nd April 1983. Issue before the court was Whether, removal of Petitioner was justified?

\textsuperscript{741} In \textit{Merchants Bank Ltd., Tanjore v. M. Dharmasambarthani Ammal and Ors. AIR1966 Mad.26}, Wherein the court held that clear intention of Clause (e) of Section 45 (5) was to enable the transferee bank to continue actions or proceedings started by the banking company and pending immediately before the date of the order of moratorium.

\textsuperscript{742} (1987)1ILLJ150Ker facts of the case: Petitions were employees of the Bank of Cochin which, after a short-span of moratorium declared under Section 45 of the Banking Regulation Act, was amalgamated with the State Bank of India, under a statutory scheme approved by the Government of India under Section 45(7) of the above enactment. Petitioners
Court to declare a law providing for amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations on the ground that it is inconsistent with, or takes away or abridges any of the right conferred by Article 14 or Article 19. The above provision will be attracted, only if the challenge is against a law providing for amalgamation of two or more corporations. The scheme under Section 45 of the Banking Regulation Act, 1949 is statutory; it has the force of law, and necessarily, it is the law for purposes of Article 31A of the Constitution of India. James P.J. V Union of India (UOI) and Ors AND K.P. Mathew v. State Bank of India and Ors. The court held that the obligation of the transferee-bank under the scheme containing provisions as indicated in Clause (i) of Sub-section (5) of Section 45 would be to grant, not later than three years, to the absorbed employees the same remuneration and the same terms and conditions of service as are paid to other employees of corresponding rank or status of the transferee-bank provided the qualifications and experience of such employees are the same or equivalent. The second proviso to Clause (i) makes provision for resolution of disputes with regard to equivalence of qualifications and experience which are to be decided by the Reserve Bank whose decision is rendered to be final.

5.6 Comparison of Labour protection under Section 44A and 45 of the Banking Regulation Act, 1949: Section 44A is facilitating voluntary mergers between two private sector banking companies. However, it ignores the position of employees during transfer of business. No doubt the employees can seek remedies under section 25FF of the Industrial disputes Act, 1947. But under Section 45, RBI, while preparing the scheme takes care of the interest of the employees. The object of Section 45 is to rescue an ailing bank and thereby protecting the interest of the depositors. Reserve Bank being the guardian of banking companies in India, it must ensure parity of treatment to all the stake holders of banking companies. Reserve Bank can ensure while sanctioning a challenge their inclusion in the schedule attached to the Scheme. The effect of such inclusion was that they were excluded from continuance in service under the State Bank of India unlike other employees.

743 B.N. Srikrishna, C.J. and M. Ramachandran J.

744 Point no.5.7 discuss the scope and ambit of Section 25FF of the Industrial Disputes Act, 1947
scheme under Section 44A, that the interest of the employees are protected during transfer of business between the two companies. The interest of the employees are not given recognition neither under the Companies Act, 1956, in Section 391-394 (Ss.230-234 of the 2013 Act) nor under Section 396 of the Companies Act, 1956 (Section 237). The rationale for special treatment to the employees in case of merger under section 45 is not clear. Most often the employees also have a role in the failure of the banking companies. Thus, instead of reviving the human resource of the ailing bank, retaining them or giving equal position in the transferee company is not appropriate. Either there must be equal treatment of employees of the banking companies in both kinds of mergers or in both cases the employees must avail the remedies under Section 25FF of the Industrial disputes Act, 1947.

5.7 Protection of employees under European Merger Control Laws: EU, merger regulations entitles not only the concerned companies, competitors and the interested parties, but also the recognized employees of the representatives of the concerned companies, upon the application to be heard by the commission during its merger procedure. This is of particular importance to the employee representatives, since company mergers and takeovers frequently entail major company restructuring and reduction of the combined work force\(^745\). The merger control procedure can provide the unions and the European work council with useful information in terms of anticipating restructuring and ensuring that management informs and consults with the employee representatives in good time on any merger or acquisition plans.

5.8 Employment protection during merger in the United Kingdom:

The transfer of Undertakings (Protection of Employment) Regulations, 2006\(^746\). The TUPE protects employees terms and conditions of the employment when a business is transferred from one owner to another. The employee’s continuity of service and any other rights are preserved and the companies have a duty to inform the employees.


\(^746\) www.cipd.co.uk
5.9 Labour Protection during transfer of business in India: S. 25 FF of the Industrial Disputes Act was introduced in 1957 to clarify the rights of the workers subsequent to transfer of an undertaking. The only right that the enactment of S.25FF has given to workers is the right to claim compensation according to Section 25F.

Section 25FF is useful in protecting the interest of the workers subsequent to mergers, by providing for notice and compensation in case of transfer of undertaking, retrenchment or closure. According to Section 25FF, when the ownership or management of the company is transferred from the original employer to a new one, by virtue of an arrangement (such as merger scheme) or by operation of law (e.g., merger under Section 396 of the Companies Act, 1956 or Section 237 of the 2013 Act), every worker who has been in service with the original employer for a period of more than one year, and whose service has been interrupted by the transfer, is entitled to one month’s notice in writing indicating the reasons for the change and compensation equal to 15 days average pay for every completed year of service from the original employer. However,

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747 25FF. Compensation to workmen in case of transfer of undertakings.- Where the ownership or management of an undertaking is transferred, whether by agreement or by operation of law, from the employer in relation to that undertaking to a new employer, every workman who has been in continuous service for not less than one year in that undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched: Provided that nothing in this section shall apply to a workman in any case where there has been a change of employers by reason of the transfer, if--

(a) The service of the workman has not been interrupted by such transfer;

(b) the terms and conditions of service applicable to the workman after such transfer are not in any way less favorable to the workman than those applicable to him immediately before the transfer; and

(c) the new employer is, under the terms of such transfer or otherwise, legally liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by the transfer.

748 S. 25F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until--

(a) the workman has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service] or any part thereof in excess of six months; and

(c) Notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

Compensation to workmen in case of transfer of undertakings.
if the service of the employer is not interrupted by the transfer, or he is employed in the new organization and the terms of service in the new organization are at the same level as they were in the original company, he shall not be eligible for any of these benefits. Further, the old employer will be released from his obligation to pay compensation if the terms of the transfer or other legal requirements make it incumbent upon the new employer to pay compensation to the workman as if his service had not been interrupted by the transfer. If these three conditions are not fulfilled, the employee shall be liable for redundancy compensation.

5.10 Conclusion: In the era of globalization the need to strike a balance between employee security and business requirements has become crucial importance. Human resource is the backbone of any organization. It is the need of the hour to give protection to the employees during transfer of an undertaking. A corporation is no doubt a business association, nevertheless, it is to be remembered that it is an artificial legal fiction and it cannot act on its own. Human beings are the agents through which a corporation carries out its business. It is evident from the provisions of the Companies Act in India that the employees concern during merger is neglected by the management preparing a scheme. Corporations affect the life of modern society and employees are its major stakeholders.

The companies Act, 1956 and the Banking Regulation, Act, 1949 in India should include express provisions for the protection of employees during transfer of undertaking. Indian Parliament should come up with legislations like TUPE in UK and Merger Control Laws of EU, wherein it expressly confers rights on the employees. Board of directors should call a separate meeting of the employees before a scheme of merger is applied for the approval of the court. A company can exercise the right of merger or transfer of an undertaking, only if the provisions of the articles authorizes to do so. Hence the articles of the company in addition to conferring authority on the companies
must also specifically include the protective provisions for employees during transfer of an undertaking.