Law Journals

National Journal of
Labour and Industrial Law

Volume 4, Issue 2, 2021
(July-December)
DOI (Journal): 10.37591/NJLIL

http://lawjournals.celnet.in/index.php/jlil/index

Research NJLIL

# Corporate Restructuring: Safeguarding White-Collar Employees

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***Abstract***

*After the first merger wave in the late 1890s, companies are constantly trying to outperform each other to cope with globalization and increased competition in the markets. India faced its first wave of corporate restructuring post the liberalisation period, i.e., in the second half of the 1990s. To stand out in the market and expand the business, more than often, companies end up tying knots with other companies in one form or the other. Such arrangements cause a lot of problems for the workers working in the transferor companies. Out of these, the white-collar employees* ***("employees")*** *who work in the managerial and administrative capacity are affected the most. Due to redundancy, such transfers leave the employees high and dry. They are forced to accept the terms of the restructuring, and they do not receive any economic protection from the labour laws of the country like the other workers. Thus, this paper discusses the scope of the current legal system which helps in protection of the white-collar employees during such transfers, and how can we improve the same. The first part of the paper discusses the different ways in which the companies initiate the process of 'corporate restructuring' and how it is problematic for the employees of the selling company. The second part of the paper discusses the needs of protecting such employees. The third part critically analyses the current labour laws and cases which come to the rescue of the employees during such transfers and help in protecting their interests. The paper also examines the labour laws enacted under various jurisdiction dealing with the stated matter. The paper, in the end, provides some changes in the Indian legislation to improve the protection mechanism of the employees during a corporate restructuring.*

**Keywords:** 'Corporate Restructuring', 'White-Collar Employees', 'Protection of Employees', 'Lay Off', 'Retrenchment', 'Change in Working Conditions', 'Industrial Disputes Act', and 'Companies Act'.

## INTRODUCTION

In today's world, there is an increase in the restructuring of companies. Start-ups are regularly taken over by the giants. Different companies merge to expand their business. Sometimes, the big giants take over other companies to kill their competition or to expand their customer base. Such restructurings have some adverse impacts on the employees. This paper discusses how the employees are affected by such corporate decisions, what are the current labour laws which can protect the interests of such employees, and how some legislations can be reformed to improve the state of the protective veil of the white-collar employees.

## CORPORATE RESTRUCTURING

It is a method undertaken by a company to change its operational and financial framework to maximise its monetary gains. This action is usually undertaken when a company is facing financial crunch due to poor performance of some of its divisions; or when it decides to expand its business by buying out its competitors from the market; or

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Received Date: June 03, 2021
Accepted Date: June 04, 2021
Published Date: December 31, 2021

**Citation:** Sachit Singla. Corporate Restructuring: Safeguarding White-Collar Employees. National Journal of Labour and Industrial Law. 2021; 4(2): 10–16p.

 

when it decides to venture into a completely new business segment. The motive of corporate restructuring is always to increase profits and enhancing the performance of the company.

**Types of Corporate Restructuring**

There are different ways in which a company restructures its capital and organisation to increase profits or enhance its performance. Some of the ways of corporate restructuring are given below:

***Horizontal Amalgamation***

When there are two companies in the same business market, and one company buys the other company to end the competition and increase its revenue, such transfer is known as *'horizontal amalgamation'*.

***Spin-Off***

When one division of a company performs poorly or does not generate profits up to the standards of the company, then the company separates the division from itself and sells it off in the market. This method of transfer is called *'spin-off'*.

***Asset Sale***

When a company faces financial crunch and is in sudden need of cash flow, it sells off all the assets of one of its divisions. In this way, the management of the division changes without the change in ownership.

***Liquidation***

When a company becomes financially unstable to an extent that it fails to pay off the debts of the creditors, then it goes through the process of *'liquidation'*. Under liquidation, the creditors and other stakeholders are paid off by selling the assets of the company. After the completion of the process, the company ceases to exist.

**Problems faced by Employees**

In all the types of restructuring stated above, the employees of the transferor company face a lot of problems:

***Lay Off and Retrenchment***

In horizontal amalgamation, since the companies operate in the same business, there is the problem of the duplicity of departments after the merger. This leads to the problem of redundancy. Employees are therefore laid off or retrenched from their jobs as the new company/ transferee company does not require their services.

In the case of spin-offs, the division already is generating poor profits. Therefore, to cut down the costs, the companies are forced to downsize. Thus, the employees are let go to reduce the cost to the company.

The company ceases to exist under liquidation, which means that all the employees need to find new places to work.

***Change in Working Conditions***

Due to duplicity, the transferee company does not require the services of the employees for which they were initially hired in the transferor company. Instead of laying off the employees, the management of the new company decides to utilise the employees in different ways. Sometimes, they decide to transfer the employees to their other office in a different location. This might cause hardships to the employees.

 

The new employer might want these transferred employees to work in a different field to further the achievement of the goals of the company. This will change the working requirements of the employees. To work in a different field will require different skill sets which might not be present in the transferred employees.

In both the situations above, there are high chances that the transferred employees are demoted from their previous position because the company wants to cut its costs.

**Need to Protect Employees**

Like other stakeholders, i.e., creditors, members, the board of directors, and workmen, employees too are an important stakeholder in the company. No involvement of their capital in the company does not absolve them from being a stakeholder of the company. Like the ‘workmen’, ‘employees’ also help in generating the capital for the growth of the companies. This makes them a significant stakeholder. Therefore, their protection from the layoffs and retrenchments is as much important as that of the workmen.

All the stakeholders in a company are protected in one form or the other. Board of Directors is the one who has the main decision-making power in such restructuring matters. They evaluate and give assent to the strategic plan of the merger & acquisition before it is taken to the members and creditors of the company [1]. Members/ Shareholders and Creditors are protected by the Companies Act, 2013 which provides them with the right to vote for the scheme [2]. The shareholders dissenting from the scheme are also protected under the Act [3]. The workmen are protected under the labour laws of the country. They are given economic protection under the Industrial Disputes Act [4, 5].

As can be seen above, the only stakeholder upon which the restructuring scheme is forced is the white-collar employees, who work in the managerial and administrative capacity. They neither have a say in the decision-making, nor they have any economic protection if they are laid off. Following are the current statutory provisions and cases which help in protecting the interests of the workmen.

## STATUTORY PROVISIONS

### Section 25 FF, Industrial Disputes Act [4]

This section deals with the workmen employed for more than 1 year, in case the establishment, in which he works, gets transferred to another party. *(Horizontal Amalgamation or Spin-Off)*

According to this section, the workmen should be given written notice, one month in advance, stating the reason for the change in the establishment. This section provides compensation to the workmen at an amount of 15 days of wages multiplied by the number of years the worker has worked in the establishment.

However, this section excludes the following workers from the protection of this section:

- The workers whose services are not affected or interrupted due to the stated transfer.
- The terms and conditions of the new job (job under the new owner) are the same as or are more favourable to the workers than their previous job (job under the previous owner).
- The new employer is liable, under law, to pay the workers' retrenchment compensation as if there was no interruption in their jobs due to the transfer.

### Section 25 FFA, Industrial Disputes Act [6] and Section 25 FFF, Industrial Disputes Act [5]

These two sections deal with the workmen employed for more than 1 year, in case the establishment, in which he works, closes down. *(Liquidation)*

According to Section 25 FFA, [6] the workmen should be given written notice, two months in advance, stating the intention of closing down the establishment.

 

Section 25 FFF [5] deals with the compensation given to such workmen. It is same as the above. The compensation is calculated by multiplying 15 days of wages with the number of years the worker has worked in the establishment.

**Cases**

***McLeod Russel India Ltd. vs. Regional Provident Fund Commissioner, Jalpaiguri [7]***

In this case, the Supreme Court held that the transferor and transferee company are jointly and severally liable for the statutory payments of the dues towards the workers. They will also be jointly and severally liable for the damages, imposed by the courts, in this regard.

It is the pro-socialist decision by the Supreme Court, as it makes sure that the workers get their dues paid, no matter the situation.

***Sunil Kr. Ghosh v. K. Ram Chandran [8]***

The Supreme Court, in this case, read into Section 25 FF, IDA [4] and decided that the scope of this section is wide enough to include the consent of the workers. When there is a transfer of an establishment, the selling party (old employer) should seek the consent of the workers whether they want to continue working, even if there is no change in their working terms and conditions. This means that if the workers do not consent to the transfer, they will be entitled to the compensation and all the retrenchment benefits under Section 25 FF [4] as if they are retrenched.

This decision is again a pro-proletariat decision as the court states that the workers cannot be compelled to work against their wishes.

**Problems with the Current Labour Legislation**

Although the legislative body and the Supreme Court of India have tried their best in safeguarding the interests of the workers, there is still room for improvement in the current labour legislation. Problems that need improvement to achieve the objective of the protection of the workers are:

***The Distinction between 'Workmen' and 'Employees'***

The statutory provisions and the cases mentioned above only protect the workmen in a transferred company. Above statutes explicitly excludes the white-collar employees from the protection provided under them. White-collar employees are those who usually performs desk jobs in the managerial and administrative capacity. The definition of the workmen also excludes employees whose jobs include the application of creativity and imagination, as the same does not come under either skilled or unskilled work [9-11]. It also excludes the workmen with a supervisory role who earns more than ₹ 10,000 per month [12].

There are no legal provisions which protect such employees. The objective of labour laws is to protect the working class and providing them with economic security in such conditions. During the corporate restructuring of any type, the employees and workers are at the equal pedestal of disadvantage and risk of losing their jobs. But the Indian Labour Laws provide workers with the protection of compensation while the employees are stranded without any protection.

Since there are no laws to protect the employees, their termination is guided by the employment contracts. Due to the abundance of unemployment and few job opportunities, the employment contracts are very much one-sided as the companies are at a better position of bargaining power. Thus, during restructuring, they do not have any right to consent; and when they are terminated, they do not get any compensation as well.

***The Distinction between Employees with and without ESOPs***

The Indian legislation also protects the 'Employees who have ESOPs'. ESOPs are 'Employee Stock Option Plan' which provides the employees with the ownership in the company by giving them options to purchase the shares of the company. Such employees are protected during such restructuring under the Companies Act.

Section 230, Companies Act [2] states that the creditors and members of the company should conduct a meeting in which they have to decide whether they want to go ahead with the restructuring scheme, by a vote of $3/4^{th}$ or 75% majority. Thus, the shareholders and creditors have a say in the decision-making of restructuring. Employees with ESOPs are considered members of the company, thus, they have a statutory right to have a say in such decision-making.

However, on the other hand, employees without ESOPs do not have any say in such decisions. They are forced to accept the decision of the board, members, and creditors. If they do not agree with the decision, they are let go with or without compensation, as per their employment agreement. Thus, the white-collar employees without ESOPs are neither protected under the labour laws nor the company law.

## FOREIGN LEGISLATIONS

### USA: WARN Act

In the USA, Worker Adjustment and Retraining Notification **("WARN")** Act governs the employees when there is a transfer of establishment from one owner to another. Section 2102 [13] of the Act obliges the employer to give written notice, two months in advance, stating the intention of closing down the establishment. In the meantime, the employees look for jobs somewhere else.

### UK: TUPE Regulations

In the United Kingdoms, Transfer of Undertakings (Protection of Employees) Regulations **("TUPE Regulations") [14]** govern the employees when there is a transfer of an undertaking from one owner to another. The act obliges the new employer to retain all the employees who were working under the employment contract of the old employer. Like Section 25 FF, [4] it also obliges the company to give written notice to the workers and ask for their consent whether they want to continue their employment with the new employers.

### France: Code du Travail

In France, such transfers are governed by the 'Code du Travail' which is the Labour Code of France. As per Chapter 4, [15] when a company is transferred to another company, they have to make a 'Redundancy Plan' to ensure that no employee of the transferor company gets laid off. The plan has to obtain the approval of the Union of Workers. If they reject the plan, then the plan goes to the Labour Ministry which decides the matter.

## PROPOSED SOLUTIONS

The Indian legislation requires reforms in the corporate as well as the labour laws which will help in achieving the objective of protecting the proletariat class. The employees' interests can be safeguarded by providing them with the right to have a vote in the decision making of such matters, like the creditors and other members of the company; or they can be given protection like workmen by providing them compensation, in case they are terminated from the company because of redundancy or because they lack the new skill sets required to work for the new employer. Following are the proposed solutions that would help in achieving the objective of protecting the proletariat class:

### Borrow from Foreign Legislations

We can borrow some changes from the foreign legislations mentioned above. We can borrow the mandatory requirement to retain all the employees from 'TUPE Regulations'. Therefore, if there is a transfer of an establishment from one owner to the other, then all the employees will be retained, and no employee will be laid off. However, if there is a financial restrain on the buying company which makes it impossible for them to retain all the employees, then there should be a mandate to form a 'Redundancy Plan'. We can borrow this from the 'Code du Travail' so that the laid-off employees do not end up being unemployed. If the buying company cannot employ such workers, then the plan will help them to provide jobs outside the company's group.

**Amendment in Companies Act, 2013**

As employees are an important stakeholder of the company which help in the capital generation, they should also have a say in the decision making of the corporate restructuring matters.

Therefore, Section 230 of the Companies Act, 2013[2] could be amended to include the employees of the company in the section as well. This means that along with the 75% majority of the creditors and members of the company, it will also require the 75% majority of the employees of the company. This amendment will provide the employees to have their say in the decision making of the corporate restructuring along with the other stakeholders of the company. Thus, their interests will be protected, and they will not be discriminated against the employees with the ESOPs.

**Amendment in Industrial Dispute Act, 1947**

During the transfer of entities, the employees are laid off because of redundancy or any of the reasons mentioned above in the paper. They do not receive any compensation like workmen. They are left high and dry without any economic security.

Therefore, Section 25 FF, [4] 25 FFA [6] and 25 FFF [5] could be amended to include the 'employees' along with the 'workmen'. This means that the employees would get a written notice in advance about the situation. They would have the right to consent whether they want to work for the new employer or not. If they decide to not give their consent, then they would be treated as retrenched employees which would make them entitled to the retrenchment compensation which is calculated by multiplying 15 days of wages with the number of years the employee has worked in the establishment.

**Remove the Distinction between 'Employees and Workmen'**

The last solution is to remove the distinction between 'an employee' and 'a workman' altogether from the Industrial Disputes Act, 1947. There is no point in differentiating white-collar employees from the workmen as they also suffer the same consequences as the workmen during any industrial dispute. Not every employee, who is in the managerial or administrative position, is a representative of the company.

Also, there is no point in differentiating a worker in a supervisory capacity, earning ₹10,000 per month, from a worker in a supervisory capacity, earning ₹ 10,500 per month. No objective is achieved by differentiating such workers based on their incomes. Due to this distinction, a large section of senior workers, with the pay scale higher than ₹ 10,000 per month, are thrown out of the protection cover of the Labour Laws. They suffer as much as the workman in supervisory capacity earning less than ₹ 10,000 per month.

Therefore, the distinction between 'an employee' and 'a workman' should be removed and the legislative body should provide one definition which includes both of them. The same view is taken by the Standing Committee on Labour in their 8th Report in consideration of the Industrial Relations Code 2019 [16]. Along with safeguarding the interests of the employees, this will also reduce the number of cases filed in the Indian courts to determine whether a particular job profile falls under the category of 'workmen' or 'employees'.

**CONCLUSION**

In the era of globalisation, companies are continuously opting for different forms of corporate restructuring to grow their profits and expand their business. This directly affects the white-collar employees of the transferor company. They are the significant stakeholders in a company, but still, they are the only group of workers who remain unprotected. The top management employees are protected under the Companies Act, 2013, for they have the direct say in the decision making in such issues. The bottom-line workers are protected by the Industrial Disputes Act, 1947. The only group of workers that are left alone are the white-collar employees who fall in the middle of the work-line hierarchy. If they are laid off or retrenched, then they do not have any economic protection except under their employment contracts. These contracts are usually in the favour of the companies because of their strong bargaining position as there is an abundant supply of workers in the Indian market, while the demand is less. Due to these reasons, there is a dire need for labour laws which can come to the rescue of the left-out class of workers, a.k.a., employees.

Therefore, I propose some changes in the corporate as well as legal laws which will help in safeguarding the interests of the employees. They could be given a provision of the right to have a say in the decision making like their fellow stakeholders so that they can protect their interests. They could also be given compensation like workmen in case of retrenchment, either because of the company's decision or because of their consent. Lastly, I agree with the 8th Report of the Standing Committee of Labour and propose to altogether remove the distinction between 'an employee' and 'a workman'.

Labour Laws are enacted to protect the proletariat class in the country. By excluding the working class, which falls in the middle of the hierarchy, it goes against the objective of the Labour Laws. Employees should have an equal right to protection as their counterparties. If we implement the above changes, then a large portion of the working class will be saved from the hardships they have to face during the transfer of undertakings, or any other form of corporate restructuring.

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