



ISSN 2582 - 211X

LEX RESEARCH HUB JOURNAL

On Law & Multidisciplinary Issues

Email - journal@lexresearchhub.com

VOLUME II, ISSUE I
OCTOBER, 2020

<https://journal.lexresearchhub.com>

**Lex Research Hub
Publications**

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IMPACT OF THE MERGER OF PUBLIC SECTOR BANKS ON THE RIGHTS OF EMPLOYEES

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ABSTRACT

Merger is a business decision wherein two existing entities either merge together to form a new entity or one entity merges into the existing entity. The rationale behind the merger decisions is generally consolidation of business resources and improved economies of scale, along with ease of doing business and efficient manpower. The decision of the Government to merge ten public sector banks was appreciated as an effective step in improving the economy. The gains visible from the merger were significant improvements in recording recovery, enhanced profitability and others. However from the perspective of human resources, the decision came under scrutiny as the merger of banks would mean the closure of some branches of banks, in turn leading to lay-offs and unemployment in huge numbers. Though the government assured that no employee will lose their jobs pursuant to the merger, however, this statement seems any workplace whether in a bank or private sector should not be ignored, considering the ramifications of unemployment that the merger decision might bring about. This paper shall discuss the applicable legislations and rights of employees employed in the banking sector and also try to find effective remedies for the employees and for preserving their rights.

Keywords: Merger, Public Sector Banks, Human Resources.

INTRODUCTION

In an attempt to boost the economy, the Finance Minister Nirmala Sitharaman announced the amalgamation of ten public sector banks on 30th August 2019.¹ The amalgamation of the public sector banks is a step towards making India a \$5 trillion economy. It is assumable that the consolidation of public sector banks will be advantageous in strengthening the operational businesses of the banks and also increasing its presence and reach to customers, but the major fallout of the same will be the effect on the employees of the amalgamating banks. The government

¹ET Online, *Nirmala Sitharaman announces big reforms for Public Sector Banks: Key highlights*, THE ECONOMIC TIMES, (August 30, 2019), <https://economictimes.indiatimes.com/news/economy/policy/nirmala-sitharaman-announces-fresh-reforms-special-agencies-to-monitor-loans-above-rs-250-crore-to-avert-another-nirav-modi-like-situation/articleshow/70909169.cms>.

has time and again assured the employees that no retrenchment shall take place,² but it cannot be ignored that in cases of merger or amalgamation, employees are apprehensive and at risk of losing their jobs. Even with the assurance from the government, the All India Bank Employees' Association protested against the merger of the banks, claiming that the move will result in the closure of several bank branches and in turn unemployment for many people.³ The fears of the employees cannot be ignored as often in cases of merger and amalgamations, there are high probabilities of layout and reorganization of staff. In this context, this paper will address the employment issues arising out of the merger of banks and the rights of employees therein. This paper will discuss the applicable laws on bank employees and how those laws safeguard the employees against unwarranted retrenchment and lay-off.

LITERATURE REVIEW

1. Mergers In Banking Industry Of India: Some Emerging Issues, Asian Journal of Business and Management Sciences, Vijay Joshi (2014)
2. Mergers and Acquisitions of the Undertakings of Banking Companies in India: A Critical Study, Fincy Pallissery, 2013
3. Report of the Working Group on Banking Financial Sector Legislative Reforms Commission
4. Narasimhan Committee Report (1998)

STATEMENT OF PROBLEM

The rights of employees working in public sector banks should not be ignored and social security has to be provided to them as well in case of transfers or redeployment.

² Press Trust of India, *There will not be single job loss due to merger of banks: FM*, PTI, (June 20, 2020) <http://www.ptinews.com/news/10820453-There-will-not-be-single-job-loss-due-to-merger-of-banks--FM>.

³Press Trust of India, *Bank employees stage protest against govt's decision to merge PSBs*, BUSINESS STANDARD, (August 31, 2019), https://www.business-standard.com/article/finance/bank-employees-stage-protest-against-govt-s-decision-to-merge-psbs-119083100544_1.html.

HYPOTHESIS

Whether the current legislations and order of the government are sufficient for employees of the merging banks?

BANKS MERGER: THE LAW APPLICABLE

The word “merger” has not been defined anywhere. The general understanding of a merger is that it is a combination of two or more entities into a single entity.⁴ Merger and amalgamation are generally used interchangeably in the corporate world. The word amalgamation has been defined under the Income Tax Act, 1961 as follows:

Section 2 (1B): "amalgamation", in relation to companies, means the merger of one or more companies with another company or the merger of two or more companies to form one company (the company or companies which so merge being referred to as the amalgamating company or companies and the company with which they merge or which is formed as a result of the merger, as the amalgamated company) in such a manner that—

(i) all the property of the amalgamating company or companies immediately before the amalgamation becomes the property of the amalgamated company by virtue of the amalgamation;

(ii) all the liabilities of the amalgamating company or companies immediately before the amalgamation become the liabilities of the amalgamated company by virtue of the amalgamation;

(iii) shareholders holding not less than three-fourths in value of the shares in the amalgamating company or companies (other than shares already held therein immediately before the amalgamation by, or by a nominee for, the amalgamated

⁴ Manish, *Corporate Mergers Detailed Analysis*, TAXGURU, (March 13, 2020), <https://taxguru.in/corporate-law/corporate-mergers-detailed-analysis.html>.

company or its subsidiary) become shareholders of the amalgamated company by virtue of the amalgamation,

*otherwise than as a result of the acquisition of the property of one company by another company pursuant to the purchase of such property by the other company or as a result of the distribution of such property to the other company after the winding up of the first-mentioned company.*⁵

The idea of merger or amalgamation is promoted to expand the business, restructure the business and also to synergize the operations of the companies. In a merger, the shareholders of merging entities get the shares of the new entity proportionately. There is also a transfer of ownership and re-organization of employees. The merger between corporate entities usually brings about increased revenues and diversification of business.⁶

Mergers and consolidations between banks have been a general practice. Merger and consolidation of banks may have serious implications on the economy and hence such decisions are taken after detailed consultations with the Reserve Bank of India (“RBI”) and the Central government.

Consolidation in the banking sector has been a concern for many years. Various committees were constituted to suggest reforms in the financial sectors, for example, Narasimhan Committee, Leeladhar Committee. These committees suggested merger and consolidation in the public sector banks to create strong and competitive banks, thereby making the financial sector stronger.

The Narasimhan Committee recommended a structural reorganization of the bank, wherein there will be a three-tier banking structure in India through the establishment of three large banks with international presence, eight to ten national banks and a large number of regional and local banks.⁷ Consolidation among the public sector banks is important so as to meet the credit needs of a growing economy and also improving the profitability of the banking sector.⁸

⁵The Income Tax Act, 1961, No. 43, Acts of Parliament, (India).

⁶Prabhanshu, *Laws Regulating Mergers And Acquisition In India*, LEGAL SERVICES, (September 13, 2016) <http://www.legalserviceindia.com/article/1463-Laws-Regulating-Mergers-&-Acquisition-In-India.html>.

⁷Polito Economy Blogspot, *Narasimha Committee 1 Financial Reforms*, POLITO ECONOMY BLOGSPOT (February 26, 2016) <https://politoeconomy.blogspot.com/2016/02/narasimhan-committee-1-financial-reforms.html>.

⁸ Press Information Bureau, *Cabinet gives in-principle approval for Public Sector Banks to amalgamate through an Alternative Mechanism (AM)*, GOVERNMENT OF INDIA, (August 23, 2017) <https://pib.gov.in/PressReleaseDetail.aspx?PRID=1500477>.

The corporate mergers are governed by the Companies Act 2013, however, the mergers in the public sector banks are governed by The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. The purpose of the said acts is to provide for the acquisition and transfer of the undertakings of certain banking companies in order to control the heights of the economy and to meet progressively and serve the needs of the development of the economy in conformity with national policy.⁹

Under Section 9(1) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, the Central Government is empowered to make a scheme for carrying out the provisions of the Act, in consultation with the RBI. Section 9 (2)(c), talks about the reconstitution and amalgamation of new banks.

The role of RBI is significant when it comes to the merger of banks as the final nod is provided by the RBI itself. Being the main regulator of financial reforms and controller of banks in India, it is important that RBI exercises its utmost discretion when it comes to giving the approval for the merger of public sector banks as RBI is the ultimate authority in determining and protecting the best interests of the banks.¹⁰

ANALYZING THE DECISION OF MERGING THE PUBLIC SECTOR BANKS

On 23rd August 017, the Union Cabinet approved the amalgamation of the public sector banks through an alternative mechanism. The proposal for the consolidation will initiate from the Board of Banks. The proposals received from Banks for in-principle approval to formulate schemes of amalgamation shall be placed before the alternative mechanism. After in-principle approval, the Banks will take steps in accordance with the applicable law and SEBI's requirements. The final scheme will be notified by Central Government in consultation with the Reserve Bank of India.¹¹

⁹V Leeladhar, *Consolidation in the Indian Financial Sector*, RESERVE BANK OF INDIA, (May 14, 2008), https://www.rbi.org.in/scripts/BS_ViewBulletin.aspx?Id=9312.

¹⁰Kuruvila Vellikunnel vs. Reserve Bank of India, A.I.R 1962 S.C. 1371 (India).

¹¹ *supra* note 8.

While the merger of the public sector banks was announced, on one hand, protests erupted among the employees of these banks, fearing closure of bank branches and a steep rise in unemployment was observed on the other end of the same event. The Government however claimed that they are taking all steps necessary, and no single person shall lose their job.¹²

Considering the implications this merger can create on the unemployment levels in the banking sector, it is important that the Government takes all parameters into consideration and come up with an effective scheme of amalgamation, wherein the employee's rights are taken into consideration.

EMPLOYEES RIGHTS IN CASE OF AMALGAMATION OF BANKS

Under the Banking Companies (Acquisition and Transfer of Undertakings) Act, there is no remedy for the ones being rendered unemployed. Section 12(4) of this act bars any compensation to an employee whose services are being transferred and also does away with the jurisdiction of any court or tribunal to entertain the compensation claim.¹³

Further adding to the plight of the bank's employees, Section 9(5) (a) of the above-mentioned Act mandates that once the scheme of the merger is approved, it shall be binding on the employees of the banks, leaving them with very little scope of objections therein.

There is, however, one saving provision for the bank employees under Section 45 sub-clause (5) of the Banking Regulation Act 1949, where the scheme for amalgamation may provide for a provision for the continuance of service of the employees of the banking companies at the same remuneration and same terms and conditions at which they are employed presently. However, the Banking Regulation Act is applicable to all banking companies, including the public sector banks.

Studies show that bank employees feel personally threatened by merger activities, which is not considered to be justified and conducive to enhanced quality banking services.¹⁴ Even in cases of merging or restructuring companies, the creditors are given an option to show their dissent with

¹² *supra* note 2.

¹³ The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, No.5, Acts of Parliament, (India).

¹⁴ Mylonakis, John, *The Perception of Banks' Mergers and Acquisitions by Bank Employees*, .INTERNATIONAL JOURNAL OF FINANCIAL SERVICES MANAGEMENT, at 204-205.

the proposed merger; the employees are however left with no options. The merger becomes binding on them, even if they do not agree with it.

One such bank merger where the employees raised their concerns was the merger of Punjab National Bank and New Bank of India in 1993. This was a case where the stronger bank protected the weaker bank as the New Bank of India was a loss-making bank.¹⁵ This merger raised disputes among the employee of the New Bank of India as they alleged that it led to a disparity between employees with respect to promotional opportunities, transfer policy and perquisites given to employees.¹⁶

The surplus workmen staff was transferred to various branches of the Punjab National Bank, but these transfers order were challenged by the All India New Bank of India Employees Federation and employees union of New Bank of India as well.¹⁷

The Supreme Court, in the final appeal, held that the transfer orders were determined in a fair manner and there was no discrimination alleged between employees of Punjab National Bank and New Bank of India.¹⁸

Such failed initiatives and purportedly no action in favour of the employees create a destructive competition among the employees and distract them from working efficiently. Such actions result in loss of potential talent for the organizations, as when the employees do not see any hope to count on their survival, the only option with them is to leave their jobs.¹⁹

In another case of employment issues arising out of a bank merger, the Supreme Court held that Section 45 (5) of the Banking Regulation Act provides for the continuance of terms and conditions of service and remuneration for the employees. *If the transferee bank does not offer the same rank or position to the employee in which the employee was in the transferor bank, then it would violate*

¹⁵ *supra* note 13.

¹⁶ *Id.*

¹⁷ Malvika Joshi, *Bank consolidation: 5 mergers from the past*, LIVEMINT, (August 24, 2017), <https://www.livemint.com/Industry/Hyd4eUUAJudpodUZgyzgM/Bank-consolidation-5-mergers-from-the-past.html>.

¹⁸ Punjab National Bank and ors. Vs All India New Bank of India Employees' Federation and ors. (1997) 1 S.C.R. 1126 (India).

¹⁹ *supra* note 13.

the provision of the section. Hence 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.²⁰

Thus this provision comes as a relief for the bank's employees as mergers not providing for equal service conditions may be rejected by the RBI in view of the statutory obligation. The banks subjected to merger need to take employees' concerns into consideration and ensure that every employee, ranging from lower-level clerks to top-level management, do not lose out on any opportunities due to mergers.

PROTECTION AVAILABLE IN CASE OF UNEMPLOYMENT

DUE TO MERGERS

The Industrial Disputes Act, 1947 (“IDA”) is important legislation when it comes to solving disputes related to employees. Section 25FF of IDA provides for compensation payable to employees in case of transfer of undertakings, where the deemed situation shall be that every workman who has been in continuous service of not less than one year, shall be deemed to be entrenched, unless the workmen agree to be transferred, provided that the service conditions remain the same.²¹ This provision is essential in providing job security to the employees, whose employment is being put at risk due to merger and/or amalgamation of their organization.

The provision is also applicable to banking companies as the Department of Financial Services in a circular dated 20th April, declared banking services as a public utility service under the provisions of IDA, in order to ensure that the bank's employee union does not engage in strikes.²²

This move can be inferred to be a sort of deterrence in case the bank employees raise their voices or protest against the proposed merger of the public sector banks, as public utility services under the IDA are prohibited from engaging in a strike without proper notice, as per Section 22 of IDA.²³

Looking at the compensation which can be availed by the bank employees in pursuance of Section 25FF of IDA, an important precedent in this scenario is the case of Chairman, Canara Bank,

²⁰ State Bank of Travancore v. Elias Elias, A.I.R 1971 S.C. 143 (India).

²¹ The Industrial Disputes Act, 1947, No. 14, Acts of Parliament, (India)

²² Yogima Seth Sharma, *Labour Ministry Extends Utility Services for three Industries*, ET TIMES, October 18, 2019.

²³ *supra* note 23.

Bangalore vs. M. S. JASRA & Ors,²⁴ wherein the post offered to the Respondent in the transferee bank was below the post on which he was actually employed in the transferor bank. Allowing the appeal by the Respondent, the Court held that right of employees to continue service at same post is contained in the provisions of Section 45 of the Banking Regulation Act and the employee has to be treated equally along with the employees of the transferee bank when they have same qualifications and experience.

Further emphasizing the rights of employees, the Supreme Court noted that the service conditions of government employees cannot be changed without following the principles of natural justice. *Any arbitrary or whimsical exercise of power prejudicially affecting the existing condition of service of a government servant will offend against the provision of Article 14 of the Constitution.*²⁵

The loophole of the law here is that in the present decision of the Government the merger is of public sector banks under the Banking Companies (Acquisition and Transfer of Undertakings) Act, which contains a non-obstante clause under Section 12(4) that *the transfer of the services of any officer or other employee from an existing bank to a corresponding new bank shall not entitle such officer or other employees to any compensation under this Act or any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority.*²⁶

This Act bars the employee from seeking any compensation in case of transfer of services and because of the non-obstante clause, the act overrides the provision of IDA. This bar will certainly create a hassle for the public sector bank employees, because statutorily they will not be able to gain the advantage of Section 25FF IDA, because of the bar in Section 12(4) of Banking Companies (Acquisition and Transfer of Undertakings) Act.

²⁴ 1992 S.C.R (2) 68.

²⁵ H.L. Trehan & ors. etc. vs. Union of India & ors, (1989) 1 S.C.C. 764.

²⁶ *supra* note 23.

CONCLUSION

Mergers results in the closure of bank branches and thus a risk on the people employed in those branches. While it is true that the advantages of a merger are important to the economy, some issues are not taken into consideration while deciding a proposal for a merger. One such issue is the employment issue. It is very rare that the human resources issue is discussed in pre-merger talks. However, the scheme for merger needs to have a provision for employees as well. The employment issue is a complex problem. The employees are constantly worried about their future and payments and possible promotions or dislocation post-merger.

A prominent example of the failure of the merger scheme to protect the employees was noted in the merger of State Bank of India with its associate banks. As per reports, the headcount in SBI after the merger of its associate banks has actually come down from 2,64,041 in March 2018 to 2,57,252 in March 2019.²⁷ It is clear that the Government cannot assure everyone of job security when to come to a merger in the public sector banks. The Government can only make effective schemes of merger which actually takes into consideration all employee's related issues and concerns. While approving the scheme, RBI should check that the scheme provides for employees compensation, in case they are being left unemployed by the bank merger as RBI regulates the banking sector and is responsible for improving the standards of banking in the Indian economy.²⁸

²⁷ T.R.Bhatt, *Implementing India's Great PSB Merger Is Proving to Be a Giant Headache*, THE WIRE, (January 4, 2020), <https://thewire.in/banking/india-public-sector-banks-merger-implementation>.

²⁸ Peerless General Finance and Investment co. Ltd v. R.B.I, (1999) 2 S.C.C. 343.