

COMPENSATION TO RETRENCHED WORKER: WITH REFERENCE TO MALAYSIAN LAW AND SYARIAH (ISLAMIC LAW)

Farheen Baig Sardar Baig^{1*} and Ashgar Ali Ali Mohamed²

¹Assoc Prof. Dr., International Islamic University Malaysia, MALAYSIA, baigfarheen007@yahoo.com

²Prof. Dr., International Islamic University Malaysia, MALAYSIA, ashgar@iium.edu.my

*Corresponding author

Abstract

An employer, where possible, should not retrench his workers because this would place the worker in idleness and unemployment, which in turn would lead to social hazards and could cause stability of society and the economy of the country. Equally, an employer has the right to improve the viability or the efficiency of their business by rationalisation and reorganisation of their association. Unless the employee could be redeployed in some other capacity in the organisation, this would require laying-off or making workers redundant. Where retrenchment is unavoidable, this brings us to the payment of retrenchment compensation. Generally, the law in Malaysia does not make it obligatory on the employer to pay retrenchment compensation to a person who has been retrenched. Hence, this paper will discuss the law and practice in Malaysia on the payment of retrenchment compensation and compare it with the Syariah or Islamic law where the issue considered would be whether in Islam the unemployed has the right to claim from public treasury of the Muslim State and if so, the requirements that need to be satisfied as contained in the Qur'an. In fact, Islam calls out to work, encourages more efforts to produce wealth and forbids idleness and unemployment. Further, Islam also encourages the maximum payment of benefits to workers so as to secure the even distribution of profits. It must be emphasised that the Syari'ah (Islamic law) does not lack in guiding principles in view of its wide coverage of injunctions in respect of labour welfare. The author will submit that retrenchment is something that is abhorred in Islam because it causes a person to lose his job and being without a job or being unemployed is against the vein of the Qur'an. If circumstances are pressing, then the State must come in to provide another job for the retrenched worker instead of allowing him to be idle. This was also the practise of the Prophet (SAW). For those who are jobless due to the fact that they have been retrenched and there is no job available for them, then zakat has to be resorted to temporarily to help the really needy workers.

Keywords: Retrenchment, Compensation, *Syariah* and Malaysian law

1. INTRODUCTION

Generally, the stability of job in the private sector is dependent on the economic situation of the country. Many countries around the world including Malaysia had experienced several economic recessions and downturns over the past years. The resulting effect was the slowdown of economy, poor business conditions resulting in the decline in business, which led many companies into trouble because of severely reduced profit. They suffered big losses, some even having to restructure or reorganise their businesses in the form of take-overs and mergers. The worst of its effect is the closure of business. Being 'laid off', 'let go', 'fired' or 'axed' among others are terms commonly heard during this period. This caused the rise in unemployment due to the retrenchment in many sectors of the economy. The law recognised the employer's prerogative to declare redundancies whenever necessary in the interest of such business no matter how demeaning this might prove in practice. A worker has no right to continue in employment if the business could be run more efficiently without him. In *Pernas Charter Management Sdn Bhd v Hoh Chee Fun* (see [1996] 1 ILR 160) the Industrial Court

acknowledged the fact that the employer had the prerogative to reorganise or restructure for better business management thereby to retrench surplus labour.

When a redundancy situation has caused a worker to be retrenched, the affected worker must be subject to retrenchment benefits based on the length of his service with his former employer. This is primarily because a workman who loses his job arising from a genuine redundancy situation in the company has done nothing wrong and therefore, the retrenchment benefit is paid to him to reflect the above (see *Tan Wee Khoo v Agilent Technologies (Malaysia) Sdn Bhd* ([2008] 2 LNS 1606). Retrenchment compensation is given with the aim and in the hope that the sum so paid would be sufficient to sustain the affected employee until he finds other employment. Unfortunately, however, the social media often highlight the plights of the retrenched workers for example, 'Workers left in the lurch without compensation', see (<http://www.freemalaysiatoday.com/category/nation/2013/10/09/workers-left-in-the-lurch-without-compensation/>) 'Retrenched Rubber Tappers Demand Compensation', (www.ipsnews.net/2002/08/labour-malaysia-retrenched-rubber-tappers-demand-compensation/) 'Existing laws leave retrenched workers at the mercy of wily employers', (<http://www.amco.org.my/narchives/ExistingLawsLeaveRetrenchedWorkersAtTheMercyOfWilyEmployers.pdf>) and 'Retrenched migrant workers must be fairly compensated', ([http://anilnetto.com/corporate-led-globalisation/retrenched-migrant-workers-must-be-fairly-compensated/among-others.](http://anilnetto.com/corporate-led-globalisation/retrenched-migrant-workers-must-be-fairly-compensated/among-others/)) In light of the foregoing, this paper addresses the issue on payment of such compensation from the common law perspective with special reference to Malaysian law and practice and from the Islamic law perspective with reference to the utilisation of *zakat* to assist the retrenched workers.

2. RETRENCHMENT BENEFITS ARE DISCRETIONARY IN THE ABSENCE OF A CONTRACTUAL PROVISION

In Malaysia, where an employee's contract of service is terminated, he is entitled to termination benefits as contained in the Employment (Termination and Layoff Benefits) Regulations 1980 (the 1980 Regulations), a subsidiary legislation made pursuant to the Employment Act 1955. For an employee to be qualified for the retrenchment benefits payment under the 1980 Regulations, he/she must satisfy the preliminary requirements namely, that he/she is an employee who is subject to the Employment Act 1955 (the Act), and secondly he/she must have a continuous contract of service for a period of not less than twelve months. It must be emphasised that the Act is only applicable to the category of employee specified in the First Schedule namely, (a) any person employed under a contract of service and whose wages does not exceed two thousand five hundred ringgit a month; and (b) a manual labourer irrespective of the amount of wages he earns in a month. If an employee fall within the purview of the First Schedule above and has a continuous contract of service for a period of not less than twelve months, he/she will be entitled to the retrenchment benefits as provided in the regulation 6 and it shall not be less than –

- (a) ten days' wages for every year of employment under a continuous contract of service with the employer if he has been employed by the employer for a period of less than 2 years; or
- (b) fifteen days' wages for every year of employment under a continuous contract of service with the employer if he has been employed by that employer for 2 years or more but less than 5 years; or
- (c) twenty days' wages for every year of employment under a continuous contract of service with the employer if he has been employed by that employer five years or more,

and pro-rata as respect an incomplete year, calculated to the nearest month.

It must be added that pursuant to section 7A of the Employment Act 1955, if the contracts between the employer and its employee provide for benefits better than those provided by the Regulations, the employer is bound by those better terms. Having noted the above, it is worth noting that a vast majority of Malaysian workforce under a contract of service do not fall within the purview of the Act. Hence, for the workers outside the purview of the Act, their entitlement to retrenchment benefits would depend on whether their individual contract of employment or the collective agreement to which they are members stipulates for such payment. The rate of the retrenchment benefits in a collective agreement may be over and above the rate stipulated in the 1980 Regulations.

However, for those not governed by the collective agreement and in the absence of any specific provision in the individual contracts of employment, they will not be entitled to such benefits. The payment will be totally at the discretion of the employer to pay or otherwise. The retrenched employee could not rely on the implied

obligation of fairness in a contract of employment to compel the employer to pay retrenchment compensation. In fact, the New Zealand Court of Appeal in *Aoraki Corporation Ltd v McGavin* ([1998] 3 NZLR 276 (CA)), held inter alia, that there was no implied obligations on the part of the employer to pay redundancy compensation where the parties to the employment contract have not provided the same in their contract of employment. Further, although clause 22(c)(ii) of the Malaysian Code of Conduct for Industrial Harmony (the Code) stipulates that where retrenchment is inevitable, the employer should make provisions for the payment of redundancy and retirement benefits, the Code nevertheless is not a legal document and hence, the problem lies with its enforcement.

As from the foregoing, unless the employee is governed by the Employment Act or that the contract of employment or the collective agreement to which he/she is a member contains clause for the payment of the retrenchment benefits, the payment of such benefits is at the absolute discretion of the employer. For example, in *Hasbullah Muhammad & Ors v Suasa Unik (M) Sdn Bhd* ([2009] 2 LNS 1341), the company had ceased operations and had gone into receivership. It had retrenched all its 213 staff and paid them retrenchment benefits although majority of these workers were not governed by the Employment Act 1955 nor were they subject to the collective agreement. The payment of retrenchment benefits by the company was solely an act of goodwill and moral responsibility towards the Company's staffs although they were not obliged under the law to do so.

However, in other jurisdictions such as the United Kingdom, Australia, Canada and South Africa, among others, employers are obliged to pay redundancy compensation to the retrenched worker. For example, under the United Kingdom Employment Rights Act 1996, an employee retrenched from employment will be entitled to be paid redundant compensation also known as a 'statutory redundancy payment'. To be eligible for such payment, the affected worker must be an employee working under a contract of employment and must have at least two years' continuous service. Similarly, in Canada, an employee who has been retrenched will be entitled to be paid severance pay if he has completed at least 12 consecutive months of continuous employment.

Again, in Australia, the Fair Work Act 2009 requires the employer to pay redundancy pay to the aggrieved employee if the employee is terminated at the employer's initiative because they no longer require the job to be done by the employee. But where an employer who is a small business employer, with less than 15 employees, he is not required to provide redundancy pay on the termination of an employee's employment. In South Africa, the Basic Conditions of Employment Act 1997 provides that employees who are retrenched should be paid severance pay of at least one week's remuneration per year of completed service. The affected worker is entitled to such severance pay in addition to their normal remuneration and benefits for time worked/work done, leave pay, notice, retirement fund withdrawal benefits and any other amounts due.

The position in New Zealand and Singapore is however the reverse. In New Zealand, there is no statutory right to redundancy compensation prescribed in their Employment Relations Act 2000 (ERA), nor is there a common law right unless employers and employees or their union have agreed to one in the applicable employment agreement. However, since redundancy is a form of dismissal, the parties is subject to personal grievance provisions of the ERA and where the applicant is successful in establishing his dismissal to be unjustifiable, compensation, damages and other remedies are available under the ERA. The legal position in Singapore under the Singapore's Employment Act (Cap 91) is also similar to New Zealand in that there is no right to retrenchment benefits in the absence of a contractual term providing for it. For example, in *Loh Seok Wah v American International Assurance Co Ltd*, ([1999] 1 SLR 285) it was held inter alia, that in the absence of any statutory provision, written law or contractual term compelling an employer to pay retrenchment benefits, the payment of any such benefit to the employee is entirely at the unfettered discretion of the employer.

In light of the practice in other jurisdictions, it is submitted that employees in the private sector who are retrenched from employment due redundancy situation in the organisation ought to be paid retrenchment benefits. The payment is primarily intended to ensure that the affected worker and his family have some form of financial compensation to cushion the often harsh effects of losing livelihood. The rate of payment of retrenchment benefit must be in accordance with the contract of service or collective agreement but should not be less than the rate specified in the Employment Act 1955. Further, the Act should be amended to extend its application to all workers irrespective of their level of monthly wages. The above is also consistent with the ILO

Convention on Termination of Employment at the Initiative of the Employer, 1982 (Convention No. 158) which requires inter alia, the payment of adequate compensation for loss of employment due to redundancy situation in an organisation.

3. RETRENCHMENT COMPENSATION FROM SYARIAH PERSPECTIVE

Having considered the payment of retrenchment compensation in Malaysia and selected jurisdictions, it would be appropriate to focus this subject from the Islamic perspective. It would be worthwhile to note that in Islam work is regarded as sacred where both employer and employee are expected to work together for the growth and the progress of human life, command justice and act fairly between one another to invoke the pleasure of Allah (SWT). The Qur'an, *Surah al-Jumu'ah* (62): 10, provides, "when the prayer is finished, then may ye disperse through the land, and seek of the bounty of God". Again, "It is He who has made the earth manageable for you, so traverse ye through its tracts and enjoy the sustenance which he furnishes; but unto Him is the resurrection" (*Surah al-Mulk* (67): 15) And finally, "Every man receives only what he makes an effort for" (*Surah al-Najm* (53): 39).

The wisdom behind these verses of the Qur'an mean that Allah (SWT) has made the earth rich with sustenance and has called onto man to traverse through the land, and use his best efforts and struggle, and work hard to seek his bounty. Then he will have rights to and enjoy the fruits of his labour as a result of his struggle in this world. These injunctions of the Qur'an are not merely theoretical, but their practical application is also seen by numerous examples taken from the history of Islam during the time of the Prophets. Many Prophets had worked to earn their livelihood and the some notable among them were Prophet Adam, Idris (Idrees), Ishaq (Isaac), Sulaiman (Solomon), Yusuf (Joseph), Musa (Moses), Nuh (Noah), Daud (David), and Isa (Jesus). Once while reflecting his early life, the Prophet (SAW) observed; "No one has been appointed with prophethood and not grazed cattle". The companions asked "And you too, O Prophet of God? Yes, replied the Prophet (saw), against the wage of one or two *qairat*, I too have grazed the cattle for the people of Mecca" (see Hakim Mohammed Said (ed.), 1989, p 37) Again, Abu Burdah bin Dinar narrated that the Prophet (SAW) said "The best income is from a blessed sale (transaction) and what one earns by his hands" (Imam Ahmad, "*Musnad*", vol 3 p 466 and vol 4 p 141). From the above traditions, it can be seen that seeking gainful employment is strongly encouraged in Islam and has been equated to *'ibadah* (worship or divine service) just as much as praying. Islam places high importance on its people to attain jobs and work hard for an honest living because the income from these earnings will be blessed indeed.

This is why Islam has denounced begging due to the fact that it may be a way of avoiding hard work and toil and it could also be taken to be a sign that the individual has given up his search for acquiring his own sustenance. In this regard, it is narrated by Az-Zubair bin Al'Awam that the Prophet (SAW) said: "It is better for anyone of you to take a rope (and cut) and bring a bundle of wood (from the forest) over his back and sell it and Allah will save his face (from the hellfire) because of that, rather than to ask the people who may give him or not" (*Sahih al-Bukhari*, Volume 2, Book 24, Number 550: *Sahih Al-Bukhari*, Book of Zakat, Chapter on "Avoiding Beggary"). When a man is not engaged in work many ugly circumstances must be tolerated by the society. The family suffers, hunger turns into frustration, irritable spouses flare up at each other, domestic violence breaks out and probably families will break up. Therefore, dependence of an able person on somebody else for a livelihood is a religious sin, a social stigma and disgraceful humility.

The Muslim State is obliged to provide its subjects with honourable means of living and to guarantee the basic needs of the society. Therefore, if someone is capable of working, the State has to provide him a suitable job opportunity but in the case he is unable to work due to incapacity for example, his basic needs should be provided from the Public Treasury (Hussain Hamid Hassan, 1995). If the Government fails to accomplish its obligation in this regard, it will be responsible for neglecting the main duty for which it has been established. This will expose the subjects to beggary which is abhorred by Allah (SWT) and His Apostle, push them to committing horrible crimes like loot, burglary, robbery, domestic violence in homes where there is unstable income and the plunder of others properties and will ultimately change the features of Islamic society which is to be established on principles of justice and guarantee of the right of honourable and free life.

Hence, the Muslim State has the duty of creating job opportunities through its economic planning such as agriculture, trade, industry and profession, other related businesses or salaried employment in the service of the government or with an organisation (Yusuf al-Qardawi, 2001, pp 127-145). The Prophet (SAW) made the handle of an axe with his blessed hands and fixed it to the axe to show that it is incumbent on the Muslim rulers in providing every able Muslim with a respectable job opportunity (Hakim Mohammed Said, 1989). The State would also benefit when its subject is employed where she will in return collect revenue which includes *zakat* which shall then be distributed to certain categories of people as provided in the Qur'an. *Zakat* is aimed at eradicating poverty by providing financial protection to the poor and the needy, and for those employed to administer the (funds); for those whose hearts have been (recently) reconciled (to the truth), for those in bondage and in debt, in the cause of Allah (SWT), and for the wayfarer (*Surah al-Taubah* (9): 60). *Zakat* can thus be described as one of the pillars of Islam, due to its charitable nature for the establishment of social justice in the society and on the other hand it invokes the pleasure of Allah (SWT), as it purifies the soul of the giver.

4. RETRENCHMENT COMPENSATION PAYABLE BY EMPLOYER

An employer, where possible, should not retrench his workers because this would place the worker in idleness and unemployed, which in turn would lead to social hazards as mentioned earlier. Equally recognised is the employer's right to improve the viability or the efficiency of their business by rationalisation and reorganisation of their association. Unless the employee could be redeployed into some other capacity in the organisation, this would require laying-off or making workers redundant. Where retrenchment is unavoidable, this brings us to the condition of a person who has been retrenched. He may be a very poor person whose income is merely sufficient for himself and his family. On the other hand, he may be one who is still well to do, have savings and can maintain himself for a few months more till he finds another job. The difference between the two is that the former has the right to claim from the public treasury of the Muslim State because he satisfies the requirement stated in the Qur'an as discussed below. The later however will not be able to make a claim due to the fact that he is well to do although he has been deprived of a job. In the aforesaid circumstances, is the employer bound to pay the affected workman compensation for the loss of employment?

Generally, the affected worker should be paid his dues, which has been agreed by the parties at the time the contract was concluded. The Qur'an provides that the terms of the contract should be reduced in writing (*Surah al-Baqarah* (2): 282). Where parties to a contract of employment agreed for the payment of compensation for loss of employment arising from genuine redundancy, the contract is binding. If however, the contract is silent on payment of compensation for loss of employment can it be made obligatory on the employer to pay the affected worker such compensation? It is noted that although an employer is entitled to earn and possess, the fact that he is a mere trustee provides the necessary measure to ensure proper handling of his possessions, his trusts. He has authority to earn, to invest and to spend. Yet, in so doing he is guided by high principles to save him from going astray. They are not unreservedly free to spend their money or handle their properties the way they please. There are certain rules of expenditure to be followed. The Qur'an provides that Allah (SWT) enjoins upon the proprietor to fulfil his financial obligations towards his fellow men, and to be moderate in his private spending.

He is always reminded of the fact that Allah (SWT) is the real provider and actual possessor. In particular, the Qur'an states "And render to the kindred their due rights, as (also) to those in want, and to the wayfarer. But squander not (your wealth) in the manner of a spendthrift. Verily, spendthrifts are brothers of the Evil Ones, and the Evil One is to his Lord (Himself) ungrateful" (Chapter 17, verses 26-27). Apart from the above, an analogy from the *hadiths* is that a worker who had been made redundant due to genuine reasons, must be compensated because he has worked and the employer has 'taken full work' from him. To send him away after all this work, surely the worker should be treated justly and paid adequate compensation.

Furthermore, Islam encourages extending help and therefore, an employer must help in any way he can to ensure that their workers are not left without a means of survival. Providing a retrenched worker with retrenchments benefits, or even placing him on another job or taking steps to cut cost in times of bad economy instead of retrenching workers will all gain the pleasure of Allah (SWT). The calculation of adequate compensation for loss of employment has not been provided, but rich and handsome compensation will invoke the pleasure of Allah (SWT), which in turn will be handsomely rewarded in the hereafter (Quran, Surah Al-Talaq (65): Verse 7).

It must be added that if the employer does not pay for reasons such as insolvency or bankruptcy, or dishonesty, then the Muslim State has the power to order the employer to pay depending on the decision of the Court being by means of garnisheeing, seizing or auctioning the property of the bankrupt employer. It may even resort to *Bait-ul-Maal* as the last resort due to the fact that it is really a matter between the employer and employee and therefore has to be solved among themselves.

It may be further stated that under the Islamic system, the menace of greedy and destructive capitalism never arises. The enterprising individual is responsible for the prosperity of the State, and the State in turn is responsible for the security of the individual. Class conflicts are replaced by co-operation and harmony; fear and suspicion are remedied by mutual security and confidence. The economic system of Islam is not drawn in the light of arithmetical calculations and capacities of production alone. Rather, it is drawn and conceived in the light of a comprehensive system of morals and principles. Once the work is done, the worker is entitled to a fair wage for his services. Failure by the employer to pay the just wage or attempts to cut it down and waver on it is a punishable act, according to the divine law. In the Qur'an, *Surah Mutaffifin* (83): 1 – 6, Allah (SWT) said: "Woe to those that deal in fraud, those who, when they have to receive by measure from men, exact full measure, but when they have to give by measure or weight to men give less than due. Do they not think that they will be called to account on a Mighty day, a day when (all) mankind will stand before the Lord of the Worlds?"

5. 'POOR' AND 'NEEDY', BENEFICIARY OF ZAKAT

Any person who falls within the categories as mentioned in the Qur'an can become a beneficiary of *zakat*. It is stated by Sayyid Qutb that "need is an urgent substitute for work". Therefore those in need are those who can temporarily be allowed to make claims from the *zakat*. It will be pertinent to note whether a workman who has been retrenched is considered as one who is in need as described in the Qur'an and thus being able to qualify as a beneficiary of the *zakat* fund. The Qur'an describes *Fuqara* and *Masakin* as beneficiaries of *zakat*.

The broad interpretation of the words *Fuqara* and *Masakin* are shared by some Islamic dictionaries, for example, Abdullah Yusuf Ali has interpreted the word *Miskin* as 'needy', and *Faqir*, as someone who is 'in financial need'. Another encyclopaedia defines the word *Faqir* as a beggar, a dependant or one who is in need as opposed to *Ghani* or a rich person, (see *Faqir* in H.A.R Gibb, et. al.) while another encyclopaedia of Islam defines the word *Miskin* as the poor, the most needy, miserable or the person whom it is an obligation for believers to support (see *Miskin* in M. Th Houtsma, et. al, 1936) Therefore, both *Faqir* and *Miskin* include anyone who is in need of material or financial assistance.

Further to the above, the Oxford English Dictionary defines 'poor' as a person who is unfortunate, needy, destitute or indigent or the one who is lacking the comforts and necessities of life, or one who is having less than is wanted or expected (see Leslie Brown, (ed), 1993). The same dictionary also defines the word 'needy' as one who is 'poor', destitute or a person without necessities. Meanwhile, Webster's New Twentieth Century Dictionary defines 'poor' as the one who is poor, or needy or indigent, or money less or insolvent, lacking pleasure or comfort. It also defines 'poor' as one who is lacking material possessions or having little or no means to support oneself (Noah Webster, *Webster's New Twentieth Century*, 1983). The same dictionary defines 'needy' as one who is poor or not having enough to keep up an adequate standard of living.

Based on all these logical arguments it can be said that the words *Fuqara* and *Masakin* mentioned by Allah (SWT) in the Qur'an indeed carry broad interpretations based on *Qiyās (analogical deductions)* and *Masalih al-Mursallah (public interest)*, and this includes those who have been retrenched and are in a position of being needy of financial assistance. It is a known fact that in Malaysia most people depend on their regular earnings to sustain themselves and their families, without which they would be in desperate search of financial assistance. The Qur'an, *Surah al-Nisa* (4): 36, states regarding the needy, "Show kindness to both (your) parents and with near relatives, orphans, the needy, the neighbour who is related (to you) as well as the neighbour who is a stranger, and your companion by your side and the wayfarer, and anyone else under your control. Allah does not love someone who is conceited, boastful"(see also *Surah al-Nisa* (4): 8 and 135; *Surah al-Baqarah* (2): 215 and 273).

Therefore, if a person is able to work but has been retrenched from his job without compensation and is unable to find work immediately because of the scarcity of jobs, the State should provide the necessary financial assistance to him from the *Bait-ul-Mal* (the treasury department) to meet all the expenses of the person who is out of work. The amount to be given should not be a flat rate amount to each individual in need like the social welfare schemes operational in some developed countries, rather the amount required to suit his needs. The amounts to be given may vary depending on the size of the families and such payment is only temporary so as to fulfil one's immediate needs, not in relation to past employment and level of earlier contributions. Alternatively, the State may provide the retrenched employee necessary funds, preferably as a loan, from the *Bait-ul-Mal* to start a business and farming, among others. This will help the needy to run their affairs so that there will be no destitute left in the society.

It may be further added that the Muslims in a Muslim State pay *zakat* that is compulsory (see ALQ Vol. 2 1987 at 92). The non-Muslims pay *jizyah*, a land tax (*kharaj*) which is imposed by a Muslim government on non-Muslim citizens in return for their complete safety and protection, (Al-Mawardi, Kitab Al-Ahkam al-Sultaniah, p. 143) both from external and internal threats. The non-Muslims pay much less *jizyah* compared to the *zakat* paid by the Muslims, as in the days of the Prophet (SAW) it amounted to only ten *dirhams* yearly, which represented the expenses of an average family for ten days (Abdul Rahman I. Doi, 1994, p 57). Besides this there were other leniencies and exemptions from *jizyah* payment. Although *jizyah* is obligatory, it has become somewhat symbolic and has been abolished in many Islamic countries for a few related reasons. It basically symbolizes the fact that a non-Muslim is willing to live in a Muslim State, accepts the protection of the Muslim State and willing to feel themselves subdued (*Surah al-Taubah* (9): 29). But the question remains as to whether non-Muslims have the same rights to the funds from the *Bait-ul-Maal* of the Muslims.

All Muslim jurists are unanimous in their opinion that Muslims as well as non-Muslims are to be treated equally in their rights to be looked after from the funds of *Bait-ul-Maal* in any Muslim State. (Al-Ili, Abd al-Hakim Hassan, 1974, p 313). Jurists like Imam Zufar opine that it is lawful to give *zakat* to the poor and destitute *dhimmis* in order to draw them closer to Muslims (Abdul Rahman I. Doi, p. 110). It is also the view of the Maliki and Zaidi schools of jurisprudence that it is lawful to give *zakat* to non-Muslims. It will make them well disposed to Islam and that they will not side with the enemies.

Another reason that logically allows the *Bait-ul-Maal* fund to be given to Muslims and non-Muslims alike is because the contribution to *Bait-ul-Maal* consists of *zakat* paid by the Muslims, *Jizyah* and *Kharaj* paid by the non-Muslims themselves. However, besides the arguments stated above, some school of thoughts still insist that *Bait-ul-Maal* fund should not be given to non-Muslims. This is because in some countries like Malaysia it is only obligatory for the Muslims to contribute *zakat* into the *Bait-ul-Maal*. Therefore, logically only the Muslims should benefit from such fund in times of financial difficulty. Deprivation of a job is treated differently in Islam as it is in the secular state. This is because in the latter, job is just a means of sustenance but in Islam job and work are treated as an '*ibadah*'. Therefore anything related to it is carried with utmost care in line with its injunctions regardless of whether it involves a Muslim or a non-Muslim in a Muslim state.

6. UTILISATION OF ZAKAT TO PAY RETRENCHMENT BENEFITS IN SELECTED MUSLIM COUNTRIES

It would be worthwhile to refer to the practice on utilisation of *Zakat* for purposes of assisting the retrenched workers in selected Muslim countries namely, Saudi Arabia and Malaysia. The word 'retrenchment' or 'redundancy' does not appear in the Saudi Arabian legislation, however, a reading of the legislation can imply that retrenchment has to be the last step if a worker has to be terminated from employment. One example given in the Saudi Labour and Workmen Regulations 1969 is a change of ownership of business. It is stated in Article 126 that 'if change occurs in the form of the establishment or its legal position, work contracts that are valid at the time the change occurs, shall remain effective'. The use of 'shall' clearly denotes that workers cannot be retrenched by the new establishment in the event of a take-over or change of ownership of business.

Having said the above, it must be admitted that unlike other developing country, Saudi Arabia has manpower problems which is inadequate to support economic developments at a rapid rate and also lacking skills in the expanding sectors. Due to this the immediate solution was to import skilled and unskilled workers. Recruitment

of expatriate labour is regulated jointly by the Ministry of Interior and the Ministry of Labour and Social Affairs. In general, the government encourages the recruitment of Muslim workers, either from Muslim countries or from countries such as India and Sri Lanka with sizeable Muslim minorities. The largest groups of foreign workers come from Pakistan, the Philippines, and India. In light of the above, retrenchment of workers is relatively rare among the employers in the Kingdom of Saudi Arabian and hence, the issue retrenchment compensation to retrenched worker is seldom raised or argued in courts.

Meanwhile, Malaysia is the only Islamic nation to have embraced the *Syari'ah* without abandoning democracy, progress or national unity. It is the only country to have Islam as its official religion in a multi-religious, multi-ethnic constitution that accords equal rights to all. Although the actual text of the *Syari'ah* is not yet completely adhering to in Malaysia, it is nevertheless slowly gaining momentum as a delicate balance will have to be struck by its leader's ingenuity in forging a system of law that can hold diverse people together. Having said the above, the concept of *Bait-ul-Maal* is also existed in Malaysia, which is responsible inter alia, for the collection of *zakat* and its distribution to the needy. Although there is no specific provision to provide for those who have been retrenched, still anyone who is without a job and falls under its categories of persons entitled to *zakat* can make a claim from the *Bait-ul-Maal*. While the distribution from *Bait-ul-Maal* is not catered for the non-Muslims, as they do not pay *zakat*, still they live peacefully and their rights are fully protected. The income tax that the non-Muslims pay, cater for their comfort and to a certain extent their safety, health, welfare and needs in general.

7. CONCLUSION

In short, in Islam retrenchment is something that is abhorred because it causes a person to lose his job and being without a job or being unemployed is against the vein of the Qur'an. Many texts of the Qur'an and prophetic tradition regarding work and its importance to mankind have been cited, which clearly indicates the reasons for which workers in Islam should not be retrenched. If circumstances are pressing, the State must come in to provide another job for the retrenched worker, instead of allowing him to be idle. This has also been seen earlier from the practise of the Prophet (SAW). For those who are jobless due to the fact that they have been retrenched and does not have resources to sustain themselves and their dependent for the time being, then *zakat* is to be resorted to temporarily to help these needy workers. Last but not least the Article XVII of the Universal Islamic Declaration of Human Rights, which was based on the Qur'an and *Sunnah*, provides: "Islam honours work and the worker and enjoins Muslims not only to treat the worker justly but generously."

REFERENCE LIST

- Al-Ili, Abd al-Hakim Hassan. (1974). *Al-Hurriyyat al-Ammah fil fikr wal Nizam al-Siyasi fil Islam*. Cairo.
- Al-Qardawi, Yusuf. (2001). *The Lawful and the Prohibited in Islam*. Islamic Book Trust.
- Ali Mohamed, Ashgar Ali. (2012). *Retrenchment: The Law and Practice in Malaysia*. (2012). Sweet and Maxwell Asia.
- Ali Mohamed, Ashgar Ali. (2014). *Dismissal from Employment and the Remedies*. (2014) Lexis Nexis Malaysia.
- Billah, Mohd Ma'sum. (2003). *Islamic Law of Trade and Finance, A Selection of Issues*, (2nd eds.). Ilmiah
- Brown, Leslie. (1993). *The New Shorter Oxford English Dictionary*. Clarendon Press Publishers.
- Doi, Abdul Rahman I. (1994). *Non-Muslims under the Syariah*, Kuala Lumpur.
- Hamid Hassan, Hussain. (1995). *Right to Work*. Da'wah Academy.
- Houtsma. M. Th (et. al) (1936). *The Encyclopaedia of Islam*. vol 3.
- Mohammed Said, Hakim. (1989). *The employer and employee – Islamic concept*. Dar al-Fikr Al-Islami.
- Webster, Noah. (1983). *Webster's New Twentieth Century Dictionary of the English Language*, Prentice Hall Press.