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Certificate of Incorporation is No Longer Conclusive evidence in India : It can be Challenged Now in Case of Companies Registered in India

Before the enactment of Companies Act, 2013 it was settled law that once the required documents have been delivered to the Registrar of Companies and the necessary fee paid, the Registrar, after satisfying himself, issues a certificate of incorporation which shall be a conclusive evidence that all the requirements of the Companies Act have been complied with in respect of registration and matters precedent and incidental thereto. But now, by effect of registration we mean that from the date of incorporation mentioned in the certificate, the company comes into existence and has all the features of a body corporate but in the absence of any clear provision in the Companies Act 2013, it cannot be inferred that it is a conclusive evidence with regard to the proper and regular registration and formation of a company. Key Words : Certificate of Incorporation, Conclusive Evidence, Companies Act 2013 etc.Certificate of Incorporation is no longer conclusive evidence in India: It can be challenged now in case of Companies Registered in India

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Before the enactment of the Companies Act, 2013, it was settled law that once the required documents have been delivered to the Registrar of Companies and the necessary fee paid, the Registrar, after satisfying himself, issues a certificate of incorporation which shall be a conclusive evidence that all the requirements of the Companies Act have been complied with in respect of registration and matters precedent and incidental thereto. Thus certificate of incorporation was conclusive evidence that everything is in order as regards registration and that the company has come into existence from the earliest moment of the day of incorporation stated therein with rights and liabilities of a natural person, competent to enter into contracts and validity of the registration could not be questioned after the issue of certificate. The certificate of incorporation makes it conclusive that the requirements of the Companies Act with respect to registration have been complied with and thus giving an quietus to matters prior and contemporaneous thereto. It gives effect to the belief that once a person is born alive its existence cannot be denied on the ground of being born out of wedlock or similar misdeeds. In general parlance 'Conclusive Evidence' is evidence that cannot be contradicted by any other evidence. It is so strong as to overbear any other evidence to the contrary. The evidence is of such a nature that it compels a fact-finder to come to a certain conclusion. This provision is one of the exceptions in law to the principle that an act based upon fraud, etc. is void ab initio. This law was propounded through various judicial pronouncements and later incorporated through Section 35 of the Companies Act, 1956. In this regard, we had three landmark decisions which are as follows :

Peel's Case : In England the question whether the Registrar's certificate is conclusive was decided as far back as 1867 by Lords Cairns, sitting in the Court of Appeal. In Peel v. London and North Western Railway's case, after signature and before registration, a proposed memorandum of association had been altered without the authority of the subscribers so materially that, in the words of Lord Cairns, 'the alteration entirely neutralized and annihilated the original execution and signature of the document. The company, however, was registered, and the Registrar gave his certificate of incorporation. It was objected that the memorandum of association had not been signed by seven or indeed by any subscriber(s), and that the provisions of the Act had not been complied with. To that proposition Lord Cairns assented. But the certificate of incorporation, he said, is not merely a prima facie answer, but a conclusive answer to such objection . . . When once the certificate of incorporation is given nothing is to be inquired into as to the regularity of the prior proceedings. That was a plain and direct decision on the point. The observations of Lord Chelmsford in Oakes v. Turquand

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[1867] 2 HL 325 are to the same effect. I think, said his Lordship, that the certificate prevents all recurrence to prior matters essential to registration, amongst which is the subscription of a memorandum of association by seven persons, and that it is conclusive in this case that all previous requisites had been complied with.

Moosa Goolam Arif v. Ebrahim Goolam Ariff (1913) : In the case of Moosa Goolam Arif v. Ebrahim Goolam Ariff ILR (1913) 40 Cal 1 PC, only two adult persons signed the memorandum and one of them signed as a guardian of the other five members who were all minors at the time. Lord Macnaghten in the Privy Council said: "Their Lordships will assume that the conditions of registration prescribed by the Indian Companies Act were not duly complied with; that there were no seven subscribers to the memorandum and that the Registrar ought not to have granted the certificate. But the certificate is conclusive for all purposes."

Jubilee Cotton Mills Ltd. v Lewis (1924) : In that case, on 6th January, 1920 the necessary documents were delivered to the Registrar for registration. Two days later he issued the certificate of incorporation but dated it 6th January instead of 8th. On 6th January, company allotted shares to Lewis. It was contended to be void since the company was not in existence on that date. It was held that the certificate of incorporation is conclusive evidence of all that it contains. Therefore, in law the company was formed on 6th January and allotment of shares was valid.

Section 35 of the Companies Act 1956 :

According to Section 35, a certificate of incorporation given by the Registrar in respect of any association shall be conclusive evidence that all the requirements of this Act have been complied with in respect of registration and matters precedent and incidental thereto, and that the association is a company authorised to be registered and duly registered under this Act.

The conclusiveness of the Certificate of Incorporation is for the purpose of incorporation only and the certificate cannot legalise the illegal object contained in the Memorandum. Where the object of a company is unlawful, it has been held in Performing Right Society Ltd. v. London Theatre of Varieties (1992) 2 KB 433 that the certificate of registration is not conclusive for this purpose.

Present Position on Certificate of Incorporation :

Now the concept of conclusive evidence does not form part in the Companies Act, 2013 and it is prescribed in sub-section (7) of section 7 of the Companies Act, 2013 that where a company has been got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company or by any fraudulent action, the Tribunal may, on an application made to it, on being satisfied that the situation so warrants,

(a) pass such orders, as it may think fit, for regulation of the management of the company including changes, if any, in its memorandum and articles, in public interest or in the interest of the company and its members and creditors; or **(b)** direct that liability of the members shall be unlimited; or **(c)** direct removal of the name of the company from the register of companies; or **(d)** pass an order for the winding up of the company; or **(e)** pass such other orders as it may deem fit :

Provided that before making any order under this sub-section, **(i)** the company shall be given a reasonable opportunity of being heard in the matter; and

(ii) the Tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.

It is to be noted that in case of irregularity in issuance of certificate of incorporation, the Tribunal may pass order for winding up of the companies, but no such reference has been made under Section 271 of the Companies Act, 2013. However such circumstances may be covered under clause (g) of sub-section (1) of Section 271.

Which certificate(s) or document(s) is/are still conclusive evidence in the Companies Act, 2013?

The elimination of condition for treating conclusive evidence in the matter of Certificate of Incorporation in Companies Act 2013 is intentional and not an ommission on the part of Legislature. It is conspicous from the harmonious interpretation of the sub-section (7) and sub-section (7) of the Section 7 and moreover the Parliament has still adopted the doctrine of conclusive evidence in other parts of the Companies Act 2013.The Companies Act 2013 has used the nomenclature 'conclusive evidence' four times and such instances are reproduced as follows:

(i) Certificate of Incorporation is conclusive evidence if it is issued by the Registrar in the case of change of registered office from the jurisdiction of one Registrar to the jurisdiction of another Registrar within the same State. Such change is allowed provided the company has obtained the confirmation of the Regional Director. The confirmation obtained from the Regional Director must be communicated to the Registrar within a period of sixty days from the date of confirmation and thereupon the Registrar shall register the same and certify the registration within a period of thirty days from the date of filing of such confirmation. Such certificate shall be conclusive evidence that all the requirements of the Act with respect to change of registered office have been complied with. [Section 12(7)]

(ii) A declaration of Chairman regarding passing of resolution by show of hands is conclusive evidence : A declaration by the Chairman of the meeting of the passing of a resolution or otherwise by show of hands and an entry to that effect in the books containing the minutes of the meeting of the company shall be conclusive evidence of the fact of passing of such resolution or otherwise. [Section 107 (2)]

(iii) Sanction of Scheme by the Tribunal for sick companies shall be coclusive evidence : According to sub-section (7) of Section 262, the sanction accorded by the Tribunal shall be conclusive evidence that all the requirements of the scheme relating to the reconstruction or amalgamation or any other measure specified therein have been complied with and a copy of the sanctioned scheme certified in writing by the Officer of the Tribunal to be a true copy thereof shall in all legal proceedings be admitted as evidence.

(iv) Declaration in case of forfeiture of share shall be conclusive evidence : According to Clause 33(i) of Table F of Schedule 1 annexed with the Companies Act 2013 provides that a duly verified declaration in writing that the declarant is a director, the manager or the secretary, of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share.

Whether the precedents set by the Judicial decisions regarding certificate of incorporation as conclusive evidence still hold good?

We generally follow the rule of "Stare decisis", which is a legal principle by which judges are obliged to respect the precedent established by prior decisions. But Parliament is supreme and the function of the courts is to interpret the law as laid down by Parliament. It holds that the legislative body has absolute sovereignty, and is supreme over all other government institutions, including executive or judicial bodies. It also holds that the legislative body may change or repeal any previous legislation, and so it is not bound by written law (in some cases, even a constitution) or by precedent. Since the Companies Act 2013 has been enacted with due process of Parliament and it does not contain any specific provisions regarding certificate of incorporation as conclusive evidence and clearly mentioned the consequences and remedy thereof in case any irregularity or illegality in the process of obtaining certificate of incorporation. Hence as of now Judicial decisions holding certificate of incorporation as conclusive evidence is no longer binding on companies Governed by the Companies Act, 2003.

What about Certificate of Incorporation issued under Companies Act 1956? :

The question whether an enactment is meant to operate prospectively or retrospectively has to be decided in accordance with well- settled principles. The cardinal principle is that statutes must always be interpreted prospectively, unless the language of the statutes makes them retrospective, either expressly or by necessary implication. Penal statutes which create new offences are always prospective, but penal statutes which create disabilities, though ordinarily interpreted prospectively, are sometimes interpreted retrospectively when there is a clear intendment that they are to be applied to past events. The reason why penal statutes are so construed was stated by Erle, C. J., in Midland Rly. Co. v. Pye (1) in the following words: "Those whose duty it is to administer the law very properly guard against giving to an Act of Parliament a retrospective operation, unless the intention of the legislature that it should be so construed is expressed in clear, plain and unambiguous language; because it manifestly shocks one's sense of justice that an act, legal at the time of doing it, should be made unlawful by some new enactment ". This principle has now been recognised by our Constitution and established as a Constitutional restriction on legislative power. Article 20(1) of the Indian constitution provides necessary protection against ex post facto law. No person is to be convicted of an offence except for violating 'a law in force' at the time of the commission of the act charged as an offence. A person is to be convicted for violating a law in force when the act charged is committed. A law enacted later, making an act done earlier (not an offence when done) as an offence, will not make the person liable for being convicted under it.

Since sub-section (6) of section 7 attracts penalty and liability mentioned under section 447 which is itself a penal provision hence sub-section (6) and (7) must be intepreted prospectively and certificate of incorporation issued under the Companies Act 1956 still has the capability of conclusive evidence hence cannot be questioned before any Court or Tribunal.

Liability in Case of Irregular Formation of a Company:

According to sub-section (6) of Section 7 of the Companies Act 2013, if at any time after the incorporation of a company, it is proved that the company has been got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company, or by any fraudulent action, the promoters, the persons named as the first directors of the company and the persons making declaration under clause (b) of sub-section (1) of Section 7 shall each be liable for action under section 447.

Conclusion :

The Companies Act 2013 still prescribes the effect of registration as from the date of incorporation mentioned in the certificate of incorporation, such subscribers to the memorandum and all other persons, as may, from time to time, become members of the company, shall be a body corporate by the name contained in the memorandum, capable of exercising all the functions of an incorporated company under this Act and having perpetual succession with power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible, to contract and to sue and be sued, by the said name. In simple terms by effect of registration we mean that from the date of incorporation mentioned in the certificate, the company comes into existence and has all the features of a body corporate but in the absence of any clear provision in the Companies Act 2013, it cannot be inferred that it is a conclusive evidence with regard to the proper and regular registration and formation of a company. Now sub-section (7) of Section 7 read with sub section (6) of Section (7) clearly mentions that certificate of incorporation is no longer conclusive evidence and it can be questioned as to its legality.

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Essential Styles and Qualities for the Successful Leadership : A Study to Motivate the Aspirants

Leadership can be defined as one's ability to get others to willingly follow. Every political party needs leaders at every level. Leaders can be found and nurtured if you look for the following character traits. Leadership is nothing but the quality which makes a person stands out different from other ordinary members. It is associated with such a person who has aggressiveness in speech and action, love for the party men, and who can handle pressure under different circumstances and a person who is always ready to fight for the rights of followers. A leader is useless without followers. It is the followers who make a person as a leader and if required overthrow him. Leaders play a critical role during change implementation, the period from the announcement of change through the installation of the change.

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Introduction :

"A leader takes people where they want to go. A great leader takes people where they don't necessarily want to go but ought to be." **-Rosalynn Carter**

Bringing unity and coherence to a group of people is perhaps one of the most difficult tasks, which require effective leadership qualities. Be it politics, business or even sports, leaders are required in any situation that calls for a joint effort. Every leader has his / her own unique leadership style. Broadly speaking, there can be several effective leadership styles, which are as follows:

Effective Leadership Styles :

(1) Director's Approach : This leadership style is somewhat authoritarian in its approach since the leader has a specific goal in mind and directs the team towards the goal according to his plan of action. The leader identifies the requirements of the situation and creates a plan to handle the situation. The leader is completely in charge of division of work and specifically assigns roles for each and every team member. In this style of leadership, the leader has the final word on all the decisions and rarely asks for suggestions from the team members. The leader, who uses a director's approach for leading a team, usually supervises and evaluates the work of every individual.

(2) The Coaching Style : This leadership style involves more mutual interaction of the leader and the team. In this style, the leader sets the goals and identifies the problems; however the leader consults with his team members and encourages a healthy dialogue to facilitate exchange of ideas that can be beneficial for the team as a whole. The leader usually arrives at the decisions after having consulted the team members. This style of leadership displays more respect for individual opinions since the leader is more considerate towards the team members. The leader tends to encourage and appreciate the efforts of his team and constantly provides encouragement for the team by inculcating a sense of team spirit. The leader evaluates the performance of the leaders.

(3) The Facilitating Approach : This is a more flexible leadership style in which the leader allows the team members to be a part of almost every process starting from the role-delegation, goal setting, problem solving as well as the evaluation and overview. The leader acts more like a facilitator who inspires the team to reach their goal, by giving them a nudge every now and then. The leader tries to inculcate a sense of individual responsibility within every individual and hence creates an effective team that can function with minimum supervision.

(4) The Delegating Approach : The delegating style of leadership is more democratic than any other styles of leadership. In this style of leadership, the employees and the leader are a part of every process. The leader empowers the team members and allows them to be a part of the planning and decision making process and decide their own roles and responsibilities. In this style of leadership, the leader accepts the decisions of the team members, allows them to evaluate their own work. This sense of leadership tends to develop a team, which functions as a cohesive and responsible team. Thus there exist several effective leadership styles, which are suited for various setups and organizations. The success of the team and the satisfaction of team members as a

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cohesive group are the two important indicators of an effective leadership style.

Leadership Qualities :

Leadership can be defined as one's ability to get others to willingly follow. Every political party needs leaders at every level. Leaders can be found and nurtured if you look for the following character traits. Leadership is nothing but the quality which makes a person stands out different from other ordinary members. It is associated with such a person who has aggressiveness in speech and action, love for the party men, and who can handle pressure under different circumstances and a person who is always ready to fight for the rights of followers. A leader is useless without followers. It is the followers who make a person as a leader and if required overthrow him. Leaders play a critical role during change implementation, the period from the announcement of change through the installation of the change. During this middle period the organization is the most unstable, characterized by confusion, fear, loss of direction, reduced productivity, and lack of clarity about direction and mandate. It can be a period of emotionalism, with employees grieving for what is lost, and initially unable to look to the future. In addition to forecast and amiability, the characteristics that leader must have are ability to recognize employees' talents, he must know-how to make teams work and an open mind. Leadership does vary to some extent as per the positions i.e. it may be slight different for manager and different for a union leader but the basic qualities of leadership does not change.

(1) Vision : A leader with vision has a clear, vivid picture of where to go, as well as a firm grasp on what success looks like and how to achieve it. But it's not enough to have a vision; leaders must also share it and act upon it. Good leaders create a vision, articulate the vision, passionately own the vision and relentlessly drive it to completion. Leadership qualities are different for different position. For a CIO he must be thinking for stabilizing the current business and always looking for future scope of expansion. He has to be able to look beyond where we are today, know where the business is going, and be able to use that vision to move the company forward. Being able to do this is a rare skill indeed.

(2) Good Communication Skill : Communication is the key to be a great leader. The reason for this is simple: if he possesses the other nine leadership qualities but if he fails to communicate well, he will never be great leader. What he can do is communicate with others in the team about what can do to move the party forward. In other words, good communication is the key for developing good political relationships. If he can't establish a good political working relationship, he is not going to be that leader, that team player. He will not be able to communicate how it can add long-term value to the company. The modern leaders must therefore be equipped with good communicational skill and use new ways to do effective communication.

(3) Discipline : A good leader must have the discipline to work toward the vision single-mindedly, as well as to direct the actions and those of the team toward the goal. Action is the mark of a leader. A leader does not suffer “analysis paralysis” but is always doing something in pursuit of the vision, inspiring others to do the same.

(4) Integrity : Integrity is the integration of outward actions and inner values. A person of integrity is the same on the outside and on the inside. Such an individual can be trusted because he or she never veers from inner values, even when it might be expeditious to do so. A leader must have the trust of followers and therefore must display integrity. Honest dealings, predictable reactions, well-controlled emotions, and an absence of tantrums and harsh outbursts are all signs of integrity. A leader who is centred in integrity will be more approachable by followers.

(5) Dedication : Dedication means spending whatever time or energy is necessary to accomplish the task at hand. A leader inspires dedication by example, doing whatever it takes to complete the next step toward the vision. By setting an excellent example, leaders can show followers that there are no nine-to-five jobs on the team, only opportunities to achieve something great.

(6) Honesty : The most valuable asset of a leader is honesty. He must be honest with both his employees and the management committee. Another part of his features is integrity. Once a leader compromises his or her integrity, it is lost. That is perhaps the reason integrity is considered the most admirable trait. The leaders therefore must keep it “above all else.”

(7) Consistency : Leadership effectiveness is impossible without consistency. Every leader has an approach that is unique to them. Don't change your personal style radically after all; it got you in a leadership position. Modify the rough spots but take care not to confound your staff by displaying inconsistency. Your expectations, though subject to modification based on ever-changing business needs, should remain as constant as possible. The business world is confusing enough without you adding unwelcome surprises into the mix. Keep things simple and consistent.

(8) Magnanimity : Magnanimity means giving credit where it is due. A magnanimous leader ensures that credit for successes is spread as widely as possible throughout the company. Conversely, a good leader takes personal responsibility for failures. This sort of reverse magnanimity helps other people feel good about them and draws the team closer together. To spread the fame and take the blame is a hallmark of effective leadership.

(9) Humility : Leaders with humility recognize that they are no better or worse than other members of the team. A humble leader is not self-effacing but rather tries to elevate everyone. Leaders with humility also understand that their status does not make them a god. Mahatma Gandhi is a role model for Indian leaders, and he pursued a “follower-centric” leadership role.

(10) Openness : Openness means being able to listen to new ideas, even if they do not conform to the usual way of thinking. Good leaders are able to suspend judgment while listening to others' ideas, as well as accept new ways of doing things that someone else thought of. Openness builds mutual respect and trust between leaders and followers, and it also keeps the team well supplied with new ideas that can further its vision.

(11) Creativity : Creativity is the ability to think differently, to get outside of the box that constrains solutions. Creativity gives leaders the ability to see things that others have not seen and thus lead followers in new directions. The most important question that a leader can ask is, "What if ….?" Possibly the worst thing a leader can say is, "I know this is a dumb question ..."

(12) Fairness : Fairness means dealing with others consistently and justly. A leader must check all the facts and hear everyone out before passing judgment. He or she must avoid leaping to conclusions based on incomplete evidence. When people feel they that are being treated fairly, they reward a leader with loyalty and dedication.

(13) Assertiveness : Assertiveness is not the same as aggressiveness. Rather, it is the ability to clearly state what one expects so that there will be no misunderstandings. A leader must be assertive to get the desired results. Along with assertiveness comes the responsibility to clearly understand what followers expect from their leader. Many leaders have difficulty striking the right amount of assertiveness, according to a study in the February 2007 issue of the Journal of Personality and Social Psychology, published by the APA (American Psychological Association). It seems that being under assertive or overassertive may be the most common weakness among aspiring leaders.

(14) Sense of Humour : A sense of humour is vital to relieve tension and boredom, as well as to defuse hostility. Effective leaders know how to use humour to energize followers. Humour is a form of power that provides some control over the work environment. And simply put, humour fosters good camaraderie.

Intrinsic traits such as intelligence, good looks, height and so on are not necessary to become a leader. Anyone can cultivate the proper leadership traits.

(15) Selecting a Good Team : A good CIO although he possesses sound technical skills he assures that the team he selects is efficient enough to back up any skill he lacks. Choosing the best people for such team is a skill. A CIO after all is a human being and does not have answer for everything. But by working together he creates an atmosphere of mutual trust and respect; the team then always find the best solution.

(16) Ability to Stand Against Critics : As the success rate increases your critics multiply and become louder. Come to peace with the fact that you will always have a camp of people who critique every decision you make. They are generally the ones who are excellent problem-identifiers rather than problem-solvers. Develop your skills of repelling such critics so that they do not diminish your confidence or enthusiasm. It takes focus and confidence not to be adversely affected by criticism. Strong leaders learn the art of listening to critics, but ultimately making decisions for the good of the department, not to simply please the critics. The following quote sums it up nicely: "Some of the most talented people are terrible leaders because they have a crippling need to be loved by everyone."

(17) Action Speaks Louder Than Words : Managers must be able to put aside their concerns to listen to (and appear to listen to) those around them. As a result, they come know what is going on, and know what is both said, and said between the lines. They have the knack of appearing to know what people need even if those needs are not expressed directly. However, knowing what is going on, and identifying the needs of those around them is not sufficient. The responsive manager also acts upon that knowledge, attempting to help fulfil the needs of employees, superiors, etc. Responsive managers wield influence to solve problems for those around them, often before even being asked.

(18) Ability to Motivate People Around : A good leader must always keep motivating his team mates for good work and should maintain healthy environment. He must give first priority to safety of workers and see that they are not exploited by superiors.

Conclusion :

In today's fast-changing world, teams are looking to their leaders for stability and vision. They need guidance and smart decision-making especially when an organization faces big challenges and changes. That's where leadership styles and quality come in.

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A Study of Capital Adequacy of Urban Cooperative Banks in Madhya Pradesh

BASEL III is a set of banking reforms measurement tool developed by the Basel committee on banking supervision and risk management of the banking sector. These norms of banking supervision mainly focused on the capital adequacy to resolve future banking crisis.In banking the capital was related with the solvency risk of the bank. These regulations of capital adequacy were mandatoryforall the banks. The urban cooperative banks were mainly dealing with their members and customers who belong to the poor and middle class of the society. The capital was being contributed by the members of the bank. If any bank like urban cooperative bank is found poor in their capital adequacy norms then it is really a risk of saving of middle and poor class of the society. Therefore, main objective of this study has to evaluate the risk of capital adequacy of the urban cooperative bank in Madhya Pradesh. The findings depicted that there is a need to improve the leverage and return on equity ratio of these banks. This study covered 14 major urban cooperative banks in Madhya Pradesh.

Key Words : Capital Adequacy, Urban Cooperative Bank, BASEL Norms.

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Introduction :

The origin of the urban cooperative bank movement in India was very old. It is said to be started in close of 19thcentury, inspired from the cooperative movement in England and Germany. The cooperative societies were based on principle of cooperation and represented a new approach as against proprietary firms, partnership firms and joint stock companies which represent the dominant form of commercial organization. Cooperative banks weresmall sized units organized in the cooperative sector, which operates in both urban and non-urban region. These banks were traditionally center on communities, localities and work place groups and they essentially lend to small borrowers and businesses. The term urban cooperative banks (UCBs), though not formally defined, but to primary cooperative banks located in urban and semi urban areas.

The cooperative banks in a state are discriminated into the following categories :

(1) The Apex Banks (upper tier bank)

(2) The District Cooperative Banks

(3) The Urban Cooperative Banks

The urban cooperative banks are divided into two categories :

(1) Scheduled UCBs **(2)** Non Scheduled UCBs

(1) Scheduled UCBs : These banks could open its branches all over the India.

(2) Non Scheduled UCBs : These banks work at local level and cannot open branches outside the city.

Capital Adequacy :

The capital adequacy highlights the banks capacity to maintain the capital commensurate with the nature and extend of all types of risk. This category also explain the bank managers ability to identify, monitor and control the risk related to capital. This is also one of main factor considered under the CAMELS rating performance evaluation model. The CAMELS rating model was a parameter for measuring the financial performance of the financial institutions including banks. This was a supervisory rating system originally developed in United States of America in 1979 as a Uniform System of Institutional rating, which later became CAMELS model.In India it was made applicable since 1995.

Review of Literature :

Tannan (2000) highlighted that as per the report of Marathe Committee, the need of the hour is to measure the profitability performance of the cooperative banks. Gurusamy S. (2001) in his research gave importance of the capital adequacy norms for the bank as per the Basel guidelines. Study also discussed the controlling of NPA ratio in modern banking.

Balasundaram N. (2008) found that camels rating system basically is a quantitative technique which is widely used for measuring performance of banks in Bangladesh. Malhotra Naresh and Arpal Parvesh Kumar Sr.(2012) made the performance appraisal of the Indian Public sector banks. They found that the Bank of Baroda has the Istposition in

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Liquidity and asset quality. IIndposition is of Andhra Bank in terms of capital adequacy. Gupta and Jain (2012) made a research on the cooperative banks in India with special reference to lending practices. The research suggested that cooperative banks should plan for branch expansion, introduce new schemes to satisfy the existing customers and plan to switch in the new areas of operations like Internet banking. Trivedi (2013) analyzed that the capital adequacy of scheduled urban cooperative bank in Surat city and found it satisfactory.

Objectives :

(1) To analyse the capital adequacy level of UCBs in M.P. **(2)** To measure the risk related to capital adequacy in UCBs located in M.P.

Methodology :

The Study : This study is exploratory in nature and explored the capital adequacy and risk related to capital adequacy in UCBs located in Madhya Pradesh.

The Sample : To conduct the study,14 UCBs located in different regions of M.P. have been considered. There were approximate 25 UCBs in M.P., out of which we approached 20 UCBs. Finally, 14 UCBshave been considered for the analysis purpose.

Tools for Data Collection : This study is based on the secondary data. This study is related to the capital adequacy norms, therefore, financial historical data of more than 5 years have been collected from the published annual report of the 14 UCBs. The secondary data also has been collected and analyzed from the various published report, journals and magazines.

Tools for Data Analysis : The study is based on the secondary data. The data collected from the printed and published annual reports of the 14 urban cooperative banks in Madhya Pradesh. After the adequate review of literatures the following four ratios have been studied to evaluate the capital adequacy and related risks in the UCBs. These four ratios are following-

(1) Total Capital Ratio : This ratio was calculated by the formula- Total capital and reserve/ Risk weighted assets. The ratio indicated the percentage of capital and reserve to the risk weighted assets. In banking, the capital stands for the solvency. The risk weighted assets were calculated as per the BASEL norms. It helps in maintaining the depositors in confidence. The higher ratio than 10.5% considered as good.

(2) Adjusted Capital Adequacy Ratio : This ratio was calculated by deducting the net non performing assets from both total capital and reserve and risk weighted assets. Higher ratio was better.

(3) Leverage Ratio : This ratio considered the debt and equity in a bank. The total debt is divided by total equity which shows the leverage of debt and equity. It measures the degree of leverage and indicates the amounts financed through borrowings, deposits and owners funds.

(4) Return On Equity Ratio : This ratio depicts the percentage of net profit on owners funds. The net profit is divided by the total capital and reserves. Higher ratio was better.

The above four ratios were calculated for a period of five years in twelve banks and for ten years in case of two banks. The arithmetic mean was calculated andthen the compounded annual growth rate and standard deviation were calculated. The standard rating1 to 5 was given for the four ratios as follows-

Total Capital Ratio and Adjusted Capital Adequacy Ratio :

If the ratio was above 10.5% then 1 rating was given. If it was between 10.5% to 7.5%, rating 2 - was given, if it is below 7.5%upto 5.5% then 3 rating was given and 4 rating was given if the capital adequacy was between 5.5 % to 3.5% and 5 rating was given if it was below 3.5.

For Leverage Ratio : if this ratio was 3 times or less than 1 rating was given, if it was between 3 to 4.5 then 2 rating and if it was in between 4.5 to 6 then 3 rating and if in 6 to 7.5 then 4 rating and if it was above 7.5 then 5 rating was given.

Return on Equity Ratio : if this ratio was 15% or above then 1 rating was given, if it was between 12.5 % to 15% then 2 rating and if between 9.5% to 12.5% then 3, if in between 6.5% to 9.5% then 4 and if the ratio was below 6.5% then it was given 5 rating.

After the standard rating of all the four ratios its average ratio was calculated and the final ranking and risks related to the capital adequacy for each bank was calculated.

Findings and Analysis :

It can be depicted from table no. 1 that no bank was found in strong category, but six banks were found in satisfactory category, their ratings were amongst 1.6 to 2.40. they were Indore Paraspar Sahakaribank.Indore, Transport Cooperative Bank Indore, ShramikNagrikSahakari Bank Indore.,SardarsinghNagrikSahakari Bank Tikamgarh, Paraspar Sahayak Sahakari Bank Indore, Sadguru Nagrik Sahakari Bank Bhopal. In terms of capital adequacy these banks were fundamentally sound but had modest correctable weaknesses.They were required to focus mainly on the leverage and return on equity ratio. Five banks had a rating between 2.4 to 2.6 it revealed that they were in the category between satisfactory and fair,under which there were combination of weaknesses needed to be redressed otherwise might become severe and so needed more than normal supervision.They were Arihant urban cooperative Bank, Indore, Vivekanand Nagrik Sahakari Bank Shujalpur, Shubhlakshmi Mahila Cooperative Bank Indore, Sanawad Nagrik Sahakari Bank Sanawad, Nagrik Sahakari Bank Ltd. Rajgad.Three banks had a rating between 2.60 to 3.40 which was in the fair category also required more than normal supervision in particularly leverage and return on equity ratios. They were Samta Sahakari Bank Dewas, Indore Cloth Market Cooperative Bank Indore and Ujjain Paraspar Sahakari Bank Ujjain. The risk of capital adequacy in all these banks looks serious because the capital adequacy and adjusted capital adequacy ratios are sound but the need is to increase the profitability and to increase the proportion of equity to debt, as depicted by the return on equity and leverage ratios of all the banks. If not paid attention there may be solvency risk in the future

Table No. 1 : List Of Capital Adequacy Rating of Urban Cooperative Banks in M.P.

S.No.	Bank Name	Total Capital Ratio	Adjusted Capital Adequacy Ratio	Leverage Ratio	Return on Equity Ratio	Final Rating of Capital Adequacy*
1	Indore ParasparCo.Bank Ltd. Indore	40.87	39.97	3.99	2.65	2.25
2	Arihant Cooperative Bank Ltd.Indore.	27.24	27.24	6.5	7.72	2.5
3	Vivekanand Cooperative Bank Ltd. Shujalpur	16.09	16.09	8.34	9.38	2.5
4	Ujjain ParasparCoop.Bank ltd. Ujjain	12.57	9.48	9.1	4.74	3.25
5	Transport Coop.bankltd.Indore	53.56	53.56	1.6	1.99	2
6	ShubhlakshmiMahilaco.Bank Indore	28.06	28.06	4.07	2.73	2.5
7	ShramikNagrik co. Bank ltd. Indore	44.14	41.2	2.77	0.61	2
8	SardarsinghNagrikco.Bank ltd. Tikamgarh	39.42	38.56	3.16	4.73	2.25
9	ParasparSahayak co. Bank Ltd. Indore	29.18	27.49	3.94	4.49	2.25
10	Indore C.M.co. Bank Ltd.Indore	15.88	15.88	10.35	4.73	3
11	SanawadNagrikco.BankLtd.Sanawad	16.07	16.07	9.23	9.68	2.5
12	SadguruNagrik co. Bank ltd.Bhopal	31.16	28.85	3.67	3.77	2.25
13	Samtaco.Bank Ltd. Dewas	27.78	27.78	6.28	3.58	2.75
14	NagrikCo.Bank Ltd Rajgad	24.74	22.38	6.6	-10.28	2.5
					Overall Rating	2.46
	* 1 to 1.4 Strong ; 1.6 to 2.4 Satisfactory ; 2.6 to 3.4 Fair ; 3.6 to 4.4 Marginal ; 4.6 to 5 Unsatisfactory					

The total capital ratio and adjusted capital adequacy ratio were above the standard in all the 14 banks, which highlighted that the banks were maintaining an above standard percentage ratio of total capital and reserve to risk weighted assets. All the banks had 1 rating on the basis of the average of these two ratios. The banks needed to improve their leverage and return on equity ratios. The leverage ratio depicted the ratio of total debt to total capital and reserves. Only two banks out of the 14 had strong position with 1 rating whose average was less than 3. Four banks had a rating of 2had satisfactory position but they needed to increase the reserves and capital in proportion to the increasing debt. One bank had 3 rating in this leverage ratio which must pay attention to the increasing debt proportion otherwise it may become a severe problem in future.

Three banks had 4 rating in leverage ratio which was marginal they highly needed a close supervision in improving this ratio. Four banks had 5 rating in leverage ratio which was unsatisfactory. If not paid serious attention then the banks may lead towards a high risk of leverage.

In case of return on equity ratio two banks out of 14 had a rating of 3 which required a more than normal supervision to increase the net profit in comparison with the total capital and reserves. One bank only had a rating of 4 in this ratio which meant the close supervision required to increase the net profit. Eleven banks out of 14 had a rating of 5 which was highly unsatisfactory. It has highlighted that the banks were not successful in the execution of profit increasing strategies. They needed to work towards controlling of expenses and provisions andalso adapting the investing strategy in Government securities and other diversification strategies.

It is also very clear from the capital adequacy analysis that all the 14 urban cooperative banks in Madhya Pradesh were having an impressive total capital and adjusted total capital adequacy ratio but they have to adapt a strategy to increase the total capital and reserves and focus on increasing the profit to improve the return on equity ratio.

Suggestions and Conclusion :

After the detailed analysis, it was found that these urban cooperative banks were maintaining better capital adequacy ratio. It was above the required capital adequacy. The same was analyzed about the adjusted capital adequacy ratio. But most of the banks were found difficulty in maintaining a satisfactory leverage ratio and return on equity ratio. These banks needs to improve the debt and equity ratio for controlling the increase in total debt in comparison to the total capital and reserve. It was suggested to keep this ratio lower which was better. It was also suggested that the return on equity was required to be improved. For this purpose the profit increasing strategies like less provisioning, controlling non-performing assets and cost saving strategies as well as diversification schemes for income were necessary. This ratio was suggested to be kept higher. The overall average capital adequacy rating of all banks was 2.46 which was between satisfactory and fair category which indicates that the capital adequacy of these banks were neither at risk nor at strong level but still a focus was needed to improve the leverage and return on equity ratios.

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Perspective of Forensic Accounting in India

Forensic accounting is used for fraud examination, covers fraud allegations from inception to disposition, including obtaining evidence, interviewing, writing reports and testifying. In the current scenario the emphasis is on the forensic accounting as the public deals with financial collapses, increased white collar crime and growing occurrence of occupational fraud. Forensic accounting provides investigative function and litigation support service to understand the depth and width of the financial scam happening in any economy. The objective of the study is to understand the significance of forensic accounting in India and to highlight the problem of forensic accounting in India. This paper is conceptual in nature and information is collected from secondary resource. It has been suggested that appointment of forensic accounts should be mandatory in public sector and large scale companies.

REENA YADAV

Introduction :

Now-a-days, business complexities are growing multifold and the need for their enquiry and solution is being felt everywhere and it also created requirement for investigation in business matters. To have control over frauds, internal and external auditors may be appointed and with the passage of time, the fraud may be minimised. The auditors can control in many ways: whether the accounts have been prepared according to the GAAP or not, the company policy have been complied or not etc. Hence, in this regard, need for point system of accounting was felt which can reveal the various transaction related with the cell of accounting in companies. This area may also be considered as origin for forensic accounting.

Meaning of Forensic Accounting :

The amalgam of accounting, auditing and investigation may be called forensic accounting. The need for this branch of accounting arises from the increasing instance of fraud and misappropriations in every part of the world. Forensic Accounting is the application of financial skills and an investigative mentality to unresolved issues, conducted within the context of rules of evidence. It consists of two major components:-

(1) In case of litigation, investigative skills of forensic accountants are used in two ways, he can be called upon to give his expert opinion based on his investigation and may require possible courtroom testimony.

(2) Forensic Accountants investigative skills are required for collecting, analysing and evaluating financial evidence, as well as the ability to interpret and communicate findings.

The forensic accounting includes finding out the transactions, accounting, to give final shape, sorting out of appropriate terms, reporting etc. Under it, we have to use total efficiency while doing accounting, auditing and investigation. Besides, within the jurisdiction of the court, it would be very much within its field to explain the capacity to respond. Hence under it, an experiment may be made to understand the data and also business conditions.

Objectives of The Study :

Recent cases of frauds and financial scam in India require more professionalism in accounting and finance. Investigative audit has always been there, it is only the techniques involved that has been changing in line with sophistication of the financial fraud involved. In this view, the objectives of paper are:

(1) To understand the significance of forensic accounting in wake of recent financial scam in India.

(2) To examine the various application of forensic accounting in Indian firm.

Research Methodology :

The paper is of conceptual nature and based on secondary data. For this purpose the data are collected from various articles on forensic accounting and international level working papers and report in newspaper etc.

Forensic accounting in India - Implementing and progress :

While forensic accounting developed as early as 1995 in USA, it put its first step in few years back. In India forensic accounting has risen to prominence because of increased financial frauds popularly known as white collar crimes. The shortage of respect and perception in Indian's

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law enforcement agencies plus the price at which white collar crimes have enhanced, has prompted the improvement of forensic accounting in India. Forensic accounting though a new field in Indian accounting world has tremendous potential as a new practice area for Indian CAs. Indian CAs with their extensive theoretical education and practical experience can create forensic accounting and auditing as their niche area.

Indian forensic centre of studies was established by CA Mayur Joshi in the year 2005. Post Satyam fiasco, it started providing certification and specialization such as CFAP in information Technology, Insurance, Anti money laundering expert, certified bank forensic accounting. CFAP is a person who has undergone training in the field of forensic accounting, forensic auditing, litigation support and investigative accounting to effectively handle the investigation of financial fraud and give expert testimony in the court of law. Chartered accountancy firm such as Sharad Joshi Chartered Accountants do provide these services. A Delhi based firm S.K. Jain also investigated the world famous Xerox fraud case. But by and large this area is dominated by the big four consultancy firms such as Deloitte, KMPG, Price Water house Coopers and Ernst and Young. In order to curb the increasing financial fraud case and scams, government of India has established some agencies that combat fraud as follow:

(a) Serous Fraud Investigation Office(SFIO) :

It was the first agency established by GOI under ministry of corporate affair which look into the fraud that involves the violation of multiple laws such as Income Tax, FEMA and RBI Act etc. Formation of SFIO is really a landmark development for forensic accountants.

(b) CBI (central Bureau of Investigation) :

It has its specialised wing to deal with the financial fraud called as 'economic offences wing'.

(c) CVC (Central Vigilance Commission) :

It is the agency which handles the crucial part of the occupational frauds viz. corruption. It also helps in the bank fraud cases. Some of the initiatives taken by regulatory bodies show a positive sign in preventive scams. To prevent scam in financial sector, RBI has asked banks to include forensic accounting practices. SEBI has also decided to create a 'forensic cell' to improve the quality of the financial information disclosed. The future of forensic accounting in India is poised to grow at a rapid pace.

Scams in India :

Forensic Accounting has come into limelight only in the recent past due to rapid increase in the white collar crimes and due to the perception that Indian Judicial law is not stern to unveil the frauds. It is being used in almost all the sectors like banks, financial institutions, politics, corporate companies, insurance companies etc. as our country has witnessed many frauds in the past few years with the increase in modern technology. Some of scams that took place are as follows:

Scandal	Year Reported	Scope	Key Players	Summary
Satyam Scam	2009	Rs. 14000 Crore	Ramalinga Raju and his family, CFO & other top level management; auditors and board of directors	Falsified revenues, margins and cash balance, operating profit artificially boosted from 61 crores to 649 crores.
2G Spectrum	2010	Rs. 1,76,000 Crores	A Raja, MK Kanimozhi, Nira Radia and many Telecom Cos.	Irregularities in awarding spectrum licenses. Licenses issued on first cum first serve basis instead of action. Advancing of cut-off date which is illegal
Common Wealth Games	2010	Rs. 35000 Crores	Suresh Kalmadi & other organizing committee members, private companies and Govt. Officials	Allegation of corruption and mismanagement by the organizing committee, delay in the construction of main venue leading to misuse of funds, infrastructural compromise, hefty payment made in the name of non-existing parties
Indian Coal Allocation Scam	2012	Rs. 1.86 Lakh Crore	Comptroller and Auditor General of India, the Coal Ministry, many electric boards & private companies	Coal block allocated, not auctioned, leading to estimated losses as per the comptroller and Auditor General of India
VVIP Chopper deal Scam	2013	Rs. 362 Crores	Augusta Westland company, Former IAF chief SP Tyagi & his cousins, Politicians, Govt. and several middlemen	It has been alleged that former IAF chief has accepted bribe to give contract worth Rs. 36 billion

Significance of Forensic Accounting :

Forensic accounting has played a major role in all the above scams. It has been used as an investigative tool where the documents pertaining to the scams are sent to the forensic laboratory. Many scams could have been detected and prevented in the early stage if forensic auditing is made mandatory in India. The cases are moving at snail pace in the trail courts due to the involvement of :

(1) High profile bureaucrats in scams like Common Wealth Games scam & Adarsh housing society scam.

(2) Politicians in most of the above scams like 2G Spectrum, Coal gate & VVIP Helicopter deal scam

(3) Corporate in some of the scams like Satyam scam and 2G spectrum.

In this view, forensic accounting needs to be expert in accounting Practices, auditing skills and investigative skills. Along with specialized knowledge about the technique of finding out the frauds one need patience and analytical mindset. One has to look beyond the number and grasp the substance of the situation. He needs to question seemingly benign document and look for inconsistencies. For this purpose forensic accountant involve themselves in financial investigation and reporting.

Techniques for Forensic Accounting :

The technique of forensic accounting include the conventional accounting and auditing tools like ratio technique, cash flow technique, a standard statistical tool examination etc. In cases involving significant amount of data, the present day forensic accountant has technology available to obtain or source data, sort and analyse data and even quantify and stratify result through computer audit and various other techniques. Some of the techniques involved in forensic accounting to examine the frauds are given below:

(i) Benford's Law : It is a mathematical tool and is one of the various was to determine whether variable under study is a case of unintentional errors or fraud. On detecting any such phenomenon, the variable under study is subject to a detailed inspection. The steps of Benford's law are very simple. Once the variable or field of financial importance is decided, the left most digit of variable under study extracted and summarized for entire population. The summarization is done by classifying the first digit field and calculating its observed count percentage. Then Benford's law is applied. A parametric test called the Z-test is carried out to compute the significance of variance between the two population for a particular level of confidence. It also works for mixture numbers, decimal number and round numbers. There are many advantages of Benford's law like it is not effected by scale invariance and also help in situation when there is no supporting document to prove the genuineness of the transactions.

(ii) Theory of Relative size factor (RSF) : It shows all unusual fluctuation, which may be arising from fraud or genuine errors. RSF is measured as the ratio of the largest number to the second largest number of the given set. In practice there exists certain limit for each entity such as vendor, customer, employee etc. These limits may be defined or analyzed from the available data if not defined. If there is any stray instance of that is way beyond the normal range, then there is a need to examine further into it. It helps in better discovery of anomalies or outliners. If records that fall outside the prescribed range are suspected of error or fraud. These records or fields need to relate to other variables or factor in order to locate the relationship, thus establishing the truth.

(iii) Computer Assisted Auditing Tools (CAAT) : CAATs are computer program that an auditors use as part of the audit procedures to process significant auditing data contained in a client's information system, without depending on him. CATT helps auditors to perform various auditing procedures such as:

(a) Testing detail of transaction and balances

(b) Locate inconsistencies or significant fluctuations

(c) Testing general as well as application control of computer system

(d) Sampling programs to extract data for audit testing and

(e) Redoing calculation performed by accounting system.

(iv) Data Mining Techniques : It is a set of assisted technique designed to automatically mine large volumes of data for new, hidden or unexpected information or patterns. Data mining techniques are categorized in three ways: Discovery, Predictive modelling and Deviation and link analysis. It discovers the usual knowledge or patterns in data without any prior knowledge of fraud. It explains various affinities, association, frauds and variation in the form of conditional logic. In predictive modelling, patterns discovers from the database are used to predict the outcome and to guess data for new value item. In Deviation analysis the norm is found first, and then those item are detected that deviate from the usual within a given threshold. Link discovery has emerged recently for detecting a suspicious pattern. It mostly uses deterministic graphical techniques, Bayesian probabilistic casual networks. This method involves "Pattern matching" algorithm to extract any true or suspicious cases.

(V) Ratio Analysis : Data analysis ratio for key numeric field is also a useful technique used by forensic accountants to detect the frauds. The following three ratio are commonly used to do data ratio analyses to report on the fraud health by identifying possible symptoms of fraud:

(i) The ratio of the highest value to the lowest value.

(ii) The ratio of the highest value to the second highest value.

(iii) The ratio of the current year to the previous year.

Using ratio analysis, a financial expert studies relationships between specified cost and some measur4e of production such as unit sold, dollar of sales or direct labour hours.

Problems of Forensic Accounting in India :

Following are the major problem in successful implementation of the profession of forensic accounting in India:

(i) Due to the complex and traditional judicial system and political fancy, forensic accountants are facing a stiff challenge in gathering information against such big shots that is admissible in the court of law.

(ii) It will be quite costly if any issue on financial defalcation or fraud was brought to court and where it involve expert witnessing. Thus, most companies prefer to settle the issue outside the court to shun the expensive cost and the risk of bad publicity on their cooperate image.

(iii) Indian economy has been opened up to the world and some financial scandal involve corporate from other countries, globalization of the economy and the fact that a fraudster can be based anywhere in the world has led to the problem of inter-jurisdiction. Forensic Accountants find it difficult to detect and prosecute computer related fraud from other country in Indian jurisdiction.

(iv) Forensic accounting is an expensive service in comparison to investigative auditing. Moreover, it is not mandatory for companies to appoint forensic accounting unlike internal/external action in order to present irregularities in their financial transactions.

(v) So far, there is no specific guideline or act on forensic accounting practices frame by the authorities.

However, growing financial fraud cases, recent stock market scams, failure of non financial banking companies phenomena of vanishing companies and plantation companies and failure of the regulatory mechanism to curb it has forced the Government of India to form SFIO under ministry of corporate Affairs which can be regarded the first step of the central Government to recognize the importance of forensic accountants.

Implementation of Forensic Accounting :

The following steps are taken for successful implementation of forensic accounting in India:

(i) In order to bring awareness or make people understand the significance of forensic accounting as a present detective investigative tool to check on irregularities in financial transaction, new legislation should be enacted.

(ii) Forensic accounting may be integrated into the academic curriculum of various tertiary institutions as a mean of increasing awareness of the subject matter.

(iii) It should be made mandatory to recruit a forensic accountant in all the companies especially in public sector companies and large scale companies.

(iv) It's time for India to give a thought for modifying its present judicial system which is traditional and complex. It has to free herself from bureaucratic hurdles and red-tapism.

(v) There is also a need to make a new law for the prosecution of fraudsters, irrespective of their domicile and such law should always be drafted keeping in mind the uses of information technology in fraudulent practices. In order to tackle the problem of prosecution of fraudster from different domicile other than India, the issue need to be taken up to international regulatory body. In this regard, international co-operation needs to be sought to achieve some form of 'legislative consistency.'

Conclusion :

Forensic accounting in India is relatively a new area of study, a series of working definition and sharing of corporate experiences should be undertaken and encouraged to ensure a common understanding. Indeed, there is great future in forensic accounting as a separate "niche" consulting. It is being used as an investigative tool, rather than a preventive tool. If forensic auditing is made mandatory in various sectors many of the scams can be restricted. There is also a need to make a new law for the prosecution of fraudsters, irrespective of their domicile and such law should always be framed keeping in mind the uses of information technology in fraudulent practice. To prevent scams in financial sector, RBI has also asked banks to include forensic auditing practices while majority of CAs have excellent analytical skills, they need to acknowledge that forensic services require specialized training as well as real life 'practical' corporate experience.

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