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BANK FRAUDS: AN EMPIRICAL ANALYSIS ON THE NEED FOR A ROBUST LEGAL MECHANISM

FRAUDES BANCÁRIAS: UMA ANÁLISE EMPÍRICA SOBRE A NECESSIDADE DE UM MECANISMO LEGAL ROBUSTO

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Abstract: Bank frauds in the public sector banks in India is increasing every year. According to the Annual Report of the RBI bank frauds increased from 27% in 2017-18 to 41% in 2019 – 20. In 2020 - 2021 the Loan Portfolio saw 47.5% of the Frauds in terms of number and 99 % in terms of amount involved. The existing legal regulations fail to deliver the optimum results in controlling bank frauds primarily because there is no specific legislation instead there are a plethora of legislations to criminalize the frauds. In this Paper, an empirical analysis is made to study on the need for having a specific legislation on Bank Frauds. While examining the results it was identified that strengthening RBI Regulatory compliance mechanisms in the Banks, increasing the supervisory powers of the RBI under the Banking Regulation Act, giving enhanced punishment to provide enough deterrence, establishment of specialized court and investigation agency etc., shall help mitigate frauds in Banks. To manage Frauds in Banks, there is a need for comprehensive legal regulations. Curbing bank frauds needs an efficient enforcement agency and strong legislation. The need of the hour is to come up with legal regulations that can identify the banking frauds and punish fraudulent activities with a deterrent effect.

Keywords: Bank Frauds. Legal regulation. Banking Law. Law Enforcement mechanism.

Resumo: As fraudes bancárias nos bancos do setor público na Índia estão aumentando a cada ano. De acordo com o Relatório Anual do RBI, as fraudes bancárias aumentaram de 27% em 2017-18 para 41% em 2019-20. Em 2020 - 2021, a carteira de empréstimos registrou 47,5% das fraudes em termos de número e 99% em termos de valor envolvido. Os regulamentos legais existentes falham em fornecer os melhores resultados no controle de fraudes bancárias, principalmente porque não há legislação específica, mas há uma infinidade de legislações para criminalizar as fraudes. Neste Trabalho é feita uma análise empírica para estudar a necessidade de uma legislação específica sobre Fraudes Bancárias. Ao examinar os resultados, identificou-se que fortalecer os mecanismos de conformidade regulatória do RBI nos bancos, aumentar os poderes de supervisão do RBI sob a Lei de Regulamentação Bancária, aumentar a punição para fornecer dissuasão suficiente, estabelecer um tribunal especializado e agência de investigação, etc., deve ajudar mitigar fraudes em Bancos. Para gerenciar Fraudes em Bancos, há necessidade de regulamentações legais abrangentes. Reduzir as fraudes bancárias requer uma agência de execução eficiente e uma legislação forte. A necessidade do momento é criar normas legais que possam identificar as fraudes bancárias e punir as atividades fraudulentas com efeito dissuasor.

Palavras-chave: Fraudes Bancárias. Regulamentação Legal. Lei Bancária. Mecanismo de Aplicação da Lei.

1. Introduction

Every year the number of Bank Frauds increase manifold, according to the RBI Annual Report statistics it increased from 27% in 2017-18 to 41% in 2019 – 20. In 2020, the investigating agency CBI has registered more than 190 cases of Bank Fraud. The Annual Report (RBI, 2020) of the RBI, in its frauds analysis mentions the total cases of frauds (involving ₹1 lakh and above) reported by banks/FIs increased by 28 per cent by volume and 159 per cent by value during 2019-20. On an average the detection period has a lag of almost 24 months with regard to frauds of smaller amounts and an average lag of 63 months in frauds of more than Rs.100cr. From the Annual Report it can be understood that from 2018 – 2020, the greatest number of frauds happened in the Advances area.

The Narasimham Committee Report, as early in 1998 talked about the absence of any coherent policy on financial fraud as financial fraud was never kept in view while defining offences of various kinds under the Indian Criminal law. (NL Mitra 2001) In India with the recommendation of expert committee on Non-Performing Assets (NPA) and Frauds in consultation with the RBI has constituted an Advisory Board for Banking Frauds and it acts as the first level body for examination of all the large fraud cases above Rs.500 million involving the level of officers of GM and above before such a matter is recommended to the investigative agencies like CBI.

The economic offences violate a catena of laws and vigilance action often result in composite cases being registered. There is a need for a harmonious application of all these legislations to enhance the success rates in holding the culprit liable. Or, a new enactment which exclusively deals with Economic crimes/Offences.

For the empirical analysis, to choose respondents who have experience with the procedure related to frauds and the legal regulations pertaining to the same, the sample selected were based on the Judgmental sampling (non-Probability sampling). The experts in the area of study were chosen from the Public Sector banks based in two cities - Palakkad in Kerala and Bengaluru in Karnataka. Respondents include Bank Managers and Chartered Accountants. Also, the time period of the study was between April-June 2021.

The Public Sector Banks included in the survey:

1. State Bank of India
2. Canara Bank
3. Indian Overseas Bank
4. Union Bank of India

The Data collection was done with the help of Questionnaires. The Respondents were divided into two groups – one of the Bank Managers of PSB's and the other of Auditors of PSB's. Two different questionnaires were prepared to understand the effectiveness of the existing legal regulations in curtailing the Bank Frauds.

Out of the total 47 respondents, 36 were Bank Managers from the Public Sector Banks among which 20 of them were with experience of 10 years and above, experience is key in getting a refined perception, 11 of them with 5 years and more of experience and only 5 of them in the range of 1- 4 years of experience. Similarly, among the respondents of Auditors (Chartered Accountants) 5 of them were with more than 10 years of experience.

2. Review of Literature

There is innumerable literature available regarding Frauds and a few in particular with the Frauds in Banking Sector. Mamta Shah (2012) studies the inadequacy of the existing regulations in banking sector and the substantial loss it causes to the public money. Her study reveals that there are many reasons for Frauds – "poor regulatory system, carelessness of employees, lack of proper supervision by top management, improper use of technology, and lack of awareness of customer and employees and poor coordination."

Madan L Bhasin (2016) an earlier Chief Vigilance Officer, has done various studies with regard to Bank frauds. He conducted a questionnaire-based survey in 2013-14 with 345 Bank employees to understand their perception and to evaluate the factors that influence the degree of their compliance level. In another empirical study by Madan with regard to frauds in the Indian banking sector takes factors like frauds and scams into account. This work starts with the description of the Indian banking sector and then shows the main aspects that tends towards the scams and frauds. Lack of accountability among the staff mainly at the top level is one of the prime reasons behind the frauds.

Mayur Abhayankar and Ketan Patil (2019), shed light on issues such as frauds in the banking industry, the illegal practices and case studies of all the players involved in such malpractices. Singh.T & Nayak. S, conducted research on Frauds in Banking and they found out the reasons of unethical practices in the financial sector. The study suggests that the industry should communicate the ethical code to its roots and moreover, there should be policy of blacklisting those who engage in malpractices.

K.C. Chakrabarthy, says that the Frauds has escalated to new heights in recent times. He observed that though the number of frauds has reduced in the recent years the amount involved has increased by four times. He also points out that "Internal systems and control should be able to identify fraudulent activities and raise timely red flags. Delays in reporting these activities should be minimized as it gives the fraudster enough time to erase her trail making it difficult for investigative agencies to find convincing proofs. The law should ensure that perpetrators are dealt with strictly and are barred from accessing banking and other financial facilities once convicted of a fraud." Dr. Dinesh Kumar Gupta (2020), in his study puts forward the need for forensic audits in order to reduce the number of frauds happening in the corporate and banking sector.

Research Questions

1. What are Banking Frauds and its different types?
2. How did the legislations provide legal mechanisms against bank faradism India?
3. Why does the existing regulatory mechanism fail to curb the frauds in the banking sector?

Research Objectives

1. To study the existing legal mechanisms to prevent frauds in the banking sector and its failure in curbing the menace of Frauds in Banking.

2. To analyze the need for a specific legislation on Bank Frauds and to suggest the necessary changes that need to be made in existing laws.

Research Gap

The need for a change in existing laws has been a matter of study in many literatures. There are some studies that are made with the help of Empirical research method which are confined to one particular bank or a particular jurisdiction. The efficiency of the existing laws regarding Bank Frauds, the need for a specific legislation and an independent agency to investigate such frauds has not been taken up as a subject matter of study. The Bank Frauds continues to happen and the legal regulations fail to deliver the optimum results because primarily there is no definition for banking frauds, there is no specific legislation but a plethora of legislations that has to be applied to criminalize the frauds. This leads to an inefficient method, which takes time to adjudicate and does not provide the desired results. This particular study will help in identifying the reasons for the failure of the legal instruments in curbing frauds and also in suggesting some robust mechanisms to identify and reduce the number of Frauds in the Banking sector. The need of the hour is to identify a legal mechanism that can identify the banking frauds and punish them effectively so that it will act as a deterrent in the future.

Significance of the Study

Banking sector is one of the major pillars of an economy. Its effectiveness helps in the growth of the economy. The recent trend of increasing bank frauds has made it difficult for the people to trust the banking system. The RBI being the regulator has been trying hard to curb the number of frauds from occurring. Still, we can see that the number of frauds just keeps rising year by year. This makes it evident that the current laws and regulations are not effective enough and there is a need to change the same. This research undergone will help students, lawyers and academicians in understanding banking frauds, gain knowledge on the reasons for the failure of the existing legal mechanisms in India. Also, this study will help to create a road map for future legislation dealing specifically with the offence of Banking Frauds. This study might be enlightening upon the lacunae in the existing legislations and the need for a specific legislation in this regard.

Research Hypothesis

With the advancement of banking business, the nature of frauds has changes drastically. There are sophisticated frauds in every activity of banking from credit cards, online banking to loans and advances etc., Such frauds have made the existing laws inadequate. There is a negative relationship between legal regulations and the incidence of frauds. The absence of a specific legislation makes the regulatory framework ineffective in identifying and stopping Bank Frauds are offences where there is catena of laws that gets applied. The alarming rate at which the quantum of (fraud)amount lost by banks keeps increasing demands new measures to curb bank frauds. RBI being the regulator has been trying to adapt to the changing scenario by bringing about new regulations whenever the need arises, but still there is lack of effectiveness in the process. If there is a comprehensive legislation which deals with bank frauds or the economic offences, it would definitely help mitigate the problem.

4. Methodology

The researcher followed the mixed research gathering the data from both the doctrinal and non-doctrinal method. The method of data collection adopted is the judgemental non-probability sampling. The primary tool for the data collection is a questionnaire with 25 items. The objective of the study is to identify the effectiveness of the existing regulations with regard to Bank Frauds.

Reliability and consistency of the questionnaire

The reliability and internal consistency of the questionnaire was assessed measuring Cronbach's alpha which is 0.87 indicating the questionnaire is reliability and maintained its consistency.

Data collection

The data were collected with the help of the questionnaire from Bank managers and Chartered Accountants working the Public Sector Banks from the four banks mentioned before. The total respondents are 47 – 36 Bank Managers and 11 Chartered Accountants.

Sources of secondary data

The researcher has collected data from both primary and secondary sources available. Primary sources include the Statutes like the Indian Penal Code,1860, Cr. PC, 1973, Negotiable Instruments Act, 1881, Banking Regulation Act,1949, Reserve Bank of India Act, 1934, Companies Act, 2013, Prevention of Money Laundering Act,2002 etc., Committee reports like – Narasimhan Committee, RBI reports etc., and the Secondary data is collected from Text books, various Articles and Journals by different authors – National and International available on the internet. Also, as the study is based on empirical analysis, primary data is collected from Respondents with the help of Questionnaires.

Data Analysis

The analysis is based on the respondents who are divided into two sets – one of Bank Managers and the other of Bank Auditors. About 63.6% respondents among the Auditors and 55.6% respondents among the Bank Managers accept that there has been an unprecedented increase in frauds in the credit/loans and advances section and they are of the opinion that the major reason for the occurrence of such frauds is the non-compliance to the stipulated guidelines put forth by the RBI. The reasons for the same are being stated as the impracticality of following it, corruption, excessive competition between banks, lack of awareness and technical knowledge, misuse of discretionary powers provided to bank managers etc., 81.8% of the Auditors and 86.1% of the Managers believe that the frauds can be detected and the defaulters identified in time to prevent it from happening. And the banks internal security system can detect the frauds within the shortest time possible. All the Auditors feel that the Audits, both internal and external has really helped in identifying frauds and at times it had even helped in detecting them early. 54.5% of the Auditors feel that the Audits must be mandated every month and a few of them suggests the specialized audits to be performed to cater specific needs. Also, Forensic Audits must also be mandated so that the frauds can be detected sooner.

The greatest number of frauds occurs in the credit/loans or advances section. The quantum of amount lost is high. About 54% of the Auditors and 40% of the Managers feel that the reason for such high number of frauds is the non-compliance to the stipulated guidelines. 52.8% of the respondent managers agree that the employee's connivance is also necessary for frauds in loans/advances.

When it comes to conviction, the rate is less than 26% according to the NCRB 2019 Data that is available on the website and the pendency rate of the judicial proceeding was 95.5%

in 2018. The efficacy of the investigative and judicial agency is evident from these statistics itself. Among the respondents both the Managers (60%) as well as the auditors (80%) feel they are less efficient and there needs to be some major changes to meet this issue. More than 72.7% of the Auditors and 69.4% of the Managers agrees that the conviction of the fraudster is not achieved in most of the cases.

When it comes to fraud reporting to the RBI, the Police and the CBI about 41.7% of the managers opined it never gets reported. The BoD decides if it has to be reported or not. The reasons for the same are many, firstly, if it gets reported as fraud the recovery of money is not possible until the investigation is complete secondly, banks are always wary of the reputational risk and would prefer ways to minimize any ill effect to the banks by adopting other measures. Also, the political interference also in some instances withhold the banks from reporting frauds. 63.6% of the Auditors and 75% of the Managers feels there is a need for an independent fraud monitoring body in every state. Recently, the Central Vigilance Commission had constituted a body called the ABBF, Advisory Board for Bank Frauds, who shall be the first level of examination for all large cases of fraud before it gets referred to the CBI by the respective PSB's. A similar body in every state shall help in reducing the burden upon the ABBF and shall also help in quicker investigation and resolution.

All the Auditors (100%) and 86.1% of the Managers believes there are lacunae in the existing legislations because of which it is not possible to detect and prevent frauds from happening as well as the inability to achieve the conviction of the fraudster to act as a deterrent. More than 63% of the Auditors and 60% of the Bank Managers suggests that the enactment of a specific comprehensive legislation shall help mitigate frauds in the Banking sector. Majority of the respondents are of the opinion that there needs to be a legislation which specifically deals with Bank Frauds. If there is a legislation in particular dealing with it, there shall be lesser complications in the procedure and implementation. Quicker processing of bank frauds with timely convictions shall always act as the best deterrent.

While advancing loans, the majority of the respondents said that the loan processing stage is the only time when a banker has control, because of the cut-throat competition there is pressure on the dealing officers to Fast track proposals which ends up affecting the assessment quality. At least for high-value loans, if all banks have a fixed standard time for proposal, the undue rush on processing can be avoided. The assessment standards should also be standardized. So that a proposal which is rejected with due reasons won't get processed in another bank with looser regulations. Also, there should be stringent pre and post sanction monitoring. The end use of the disbursed amount must be verified. In an analysis of frauds done by former CVC, its report suggests Banks to set up centralized loan processing hubs which shall help in streamlining the selection of borrowers with enhanced due diligence, assessment of proposal etc., thus delinking the sanction process from the business owner i.e., branch heads. Before the sanction of the loans the respondents suggest that the collaterals must be verified properly and diligently.

The Respondent Auditors and Managers feels the challenges in fraud prevention includes difficulty in timely detection and recovery, profound Political interference, cut throat competition and target pressures, Lack of infrastructure in branches leading to Weak technological advancement and security system, inefficient CBS, Under-employed branches, lack of employees in the credit section who have adequate knowledge of business laws, Company law & practical knowledge relating to accounting, Auditing & Taxation and leniency in fixing accountability of staff.

The Respondent Managers had suggested certain measures to be taken to prevent bank frauds, it includes the need for Robust appraisal and Credit monitoring system, Automation of Loan processing and Analysing Data, Strict Penalization of staff for non-adherence of Guidelines, RBI should take proactive measures and use modern data analytic tools to follow at least the big-ticket loans being processed and currently running, Legal actions for wilful defaulters should be swift and bold. Deterrent rate of any law is a direct function of the swiftness in execution of law and not just the heftiness of punishment, Norms to recover property from directors/promoters, property purchased in the names of the relatives or family members during the tenure of the loan, even if those are outside India (stringent laws to recover money), Train employees well and make them vigilant, IT Department and Core Banking System must be strengthened to provide a more responsible fraud prevention and control department. The Auditors suggested some additional pointers like there should be regulation on the discretionary powers of the Bank Managers, Constant auditing and monitoring, Surprise checks by independent Authority, Frequent job rotation in credit section employees, Stringent actions for failure in following guidelines, Stringent regulation, implementation and close monitoring and Statutory auditors and concurrent auditors of the bank must be appointed by an external agency like RBI and under no circumstance this right should be passed on to the banks. Red flagged accounts should be audited by an independent expert like auditors (CA) preferably from an empanelled list maintained by RBI, adequate protection and confidentiality for whistle blowers must be ensured and all fraud cases must be reported to respective RO's and police/CBI.

5. Results

The Primary data collected to be a basis for the current research gave a few insights on the effectiveness of the existing regulations. Frauds in Public Sector Banks are the only one's studied which is limited to a few respondents. The study has confirmed the Hypothesis that the existing legislations are not effective per se. There is a need for a robust legal mechanism that can effectively curb the increasing number of Bank Frauds. The study suggests the enactment of a legislation that either comprehensively deals with economic offences or a legislation that is specific to the Bank Frauds alone.

Therefore, ***there is negative relationship between legal regulations and the incidence of frauds***. The enactment of a specific legislation can help curbing bank frauds.

With this study, it has been observed that the major reasons for the Bank Frauds are the lack of compliance to RBI guidelines, Overburdened staff who are not trained properly and the rat race to meet targets of the Banks. Other systemic problems include corruption and political interference. There is lack of employees in the credit section who have adequate knowledge of business laws, Company law & practical knowledge relating to accounting, Auditing & Taxation. The biggest challenge in all these cases is the inability to recover the money lost to frauds. The judicial process also adds to this as it lacks the swiftness, which should be exercised in economic offences for a speedy redress. There should be an adequate appraisal system and post disbursement monitoring for timely detection of frauds.

There is a need for a systematic change in various aspects according to the suggestions of the respondents. Strict actions must be taken for the non-adherence to the guidelines put forth by the RBI. The Political interference in the disbursement of loan must be made minimal; RBI should take proactive measures and use modern data analytic tools to follow at least the big-ticket loans being processed and currently running. Employees at every level of the banks must be trained well periodically and must be made aware of the varying ways in which frauds can happen and how it can be prevented. The use of technology must be resorted to automate loan processing and analysing data. All the Banks must keep a data base and share the information with regard to the loans that are taken and the securities that are given, so that the same collateral may not be used when availing loan from another Bank. There is a need for a more responsible fraud prevention and control department.

It was found that the major setback the banks receive when it comes to Bank Frauds are that there is a delay in identifying the Frauds – it may be the fraudster acting alone or with the connivance of the employees. The first line of action with regard to that must be stringent regulation to make the employees comply with all the directions of the RBI. Another issue is the impossibility to recover the lost amount. Banks must always stick to the strict regulations and must ensure the collateral's provided shall meet the loss in case of default from the person. There needs to be stricter pre and post verification of assets in case of loans of large amount.

The conviction of the offenders is also a difficult feat to achieve. In most of the cases there is lack of conviction, because of varying reasons from lack of evidence to prove fraud and forgery, out of court settlements that are reached and also the economic offenders fleeing the country. There need to be swift action when it comes to economic offences. Legal actions for wilful defaulters should be swift and bold. The investigators target must be to minimize losses, reduce the chances of adverse publicity, preserve material evidence and provide effective legal action. Deterrent rate of any law is a direct function of the swiftness in execution of law and not just the heftiness of punishment.

Auditors are key to identify the frauds in Banks, there is a need for appointing statutory auditors and concurrent auditors of the bank by an external agency like RBI and under no circumstance this right should be passed on to the banks. Proper accountability of staff on the stressed assets and red flagged accounts should be made by an independent expert like auditor preferably from an empanelled list maintained by RBI.

6. Conclusions

The impact of Bank frauds has on the economy is very difficult to quantify and state. When we analyse the number of bank frauds and the amount of the bank frauds, we find that it keeps increasing year after year; the percentage of frauds in the PSB's in the financial year 2020 was almost 80 per cent. All these prove that the existing legal regulations are not effective enough. Bank Frauds has such societal impact that, "it creates a hazard in the financial interest of the society. The gravity of the offence creates a dent in the economic spine of the nation. It has the potential to usher in economic crisis". Hence it is necessary to bring forth some new legal mechanisms to curb the number of Bank Frauds.

Indian banks need significant improvements in operation and governance standards, The Government, the RBI and the Banks must work in Unison to arrive at the best results. There are certain key points that need to be considered in every instance of Bank Frauds:

1. Early Detection – The money lost to fraud is more or less impossible to recover by the time the frauds are detected; on an average the detection period lag is 3- 4 years.
2. Enhance RBI's supervisory powers – The RBI lacks the effectiveness in supervising and controlling the PSB's. It must be given more powers so that it can help mitigate frauds. Also limit the interference on the officers and board of the banks by political powers.
3. Create a strong Deterrence – The inability to punish the culprits severely is another lacuna. The Punishment needs to be severe enough so that it acts as a deterrent to future fraudsters from committing that offence.
4. Speedy Disposal of Cases – The inadvertent delay in judicial proceedings is very problematic. There is a huge delay in justice delivery system. Hence, there needs to be specialized courts for the speedy disposal of economic offences.
5. Provision to Mitigate Loss – Frauds is that kind of an offence which cannot be eradicated as such nor can be foreseen. But the Banks can always be diligent to avoid such huge losses. Whenever the banks advances loans, the collateral and security must be good enough for recovery so that the loss can be mitigated.

The following suggestions are made in the light of these above-mentioned aspects:

1. For Early Detection: Banks must strictly adhere to the RBI Guidelines

The average lag between the date of occurrence and its detection by banks was 22 months while for large ticket frauds of Rs.100 crores and above, the time lag was whopping 55 months. Due to such an inordinate delay, the law fails to play a deterrent for the fraudsters and rather works as an incentive

Every Bank must ensure that the RBI guidelines are followed in every transaction, proper training must be provided to the employees so that they are aware of the fraud prone areas and the due diligence they must adhere to, to avoid the occurrence of it. Whenever there is discretionary power on the employees, sufficient checks must be ensured so that there cannot be an instance of misuse. Also, the information technology adopted for the EWS – Early Warning Signals and the software for FRM – Fraud Risk Managements must be constantly updated so that all the latest frauds can be detected as early as possible. There needs to be a better technological co-ordination.

The early detection mostly shall be possible on the basis of audits, the Statutory and Concurrent Audit performed must be by the Auditors appointed by the RBI. The Banks and the

Board must not be the one's appointing the auditors. To ensure the independence of the Auditor's and for them to report the frauds an independent agency like the RBI must appoint Auditors.

2. To enhance RBI's supervisory power's: RBI must be given more powers as a regulator

In accordance to the Banking Regulation's Act, the RBI does not have many powers when it comes to Public Sector Banks. The Central Government being the majority stake holder in PSB's, it has the majority voting rights. The Government can interfere and even appoint inefficient and ineligible persons to the Board of Directors. It shall not always be on the basis of merit. This shall affect the efficiency of the Banks as well. The P.J. Nayak Committee also has suggested the same in his report. The banks should be only under the supervisory powers of the RBI. Dual regulation by the Finance Ministry and RBI results in a tug of war for a decision making.

The RBI, hence must be given the powers to appoint as well as dismiss the officers including Chairman, Managing Director, CEO and other directors and also when it identifies any frauds, the power to even change the board composition. Independent Directors also must be appointed in the Board so that the good governance standards shall be maintained. To incorporate all these changes the Banking Regulation Act must be amended accordingly.

3. Create A Strong Deterrent – Enhanced punishment is necessary to be a deterrent

The inadequacy of existing penal legislation is evident from the rising number of frauds in the banking sector. Even though there is no specific legislation which deals particularly with Bank Frauds, the IPC had pitched in. As offences of Criminal Conspiracy, Criminal Breach of Trust, Cheating, Forgery etc., The major flaws in the existing legislations are the slow and cumbersome legal process when time is the essence in an economic crime like Fraud, the punishments provided in the IPC under various sections are not adequate to act as a deterrent, the corruption being institutionalized in every transaction, Negligence among the Bank Officials with regard to the statutory compliances that they have to meet, etc. Hence there is a need to bring forth certain amendments to the existing laws like IPC, to increase the severity of punishment so that it would act as a deterrent for future fraudsters.

The suggestions based on this study is to bring about an amendment to the existing penal law so that a strong deterrent can be made. Since the definition for Bank Frauds has not been provided in any legislation, the definition adopted by the N.L Mitra Committee can be resorted to: "Bank or Financial fraud means and includes any of the following acts committed by a person or with his connivance or by his agent, in his dealings any bank or financial institution or any other entity holding public funds:

(a) the suggestion as a fact, of what which is not true, by one who does not believe it to be true; (b) the active concealment of a fact by one having knowledge or belief of the fact;

(c) a promise made without any intention of performing it;

(d) any other act fitted to deceive and

(e) any such act or omission as the law specially declares to be fraudulent."

The punishment for committing such Bank Frauds must be imprisonment for a period of 5 years, which may extend up to 7 years or with fine and for serious fraud a maximum punishment up to 10 years must be given and the fine amount should be double the fraud amount involved.

4. For Speedy Disposal of Cases: There needs to be a specialized court and investigation agency

The CBI and CVC are already overburdened with numerous case files. Hence a specialized agency which has adequate officials having knowledge in Banking transactions, laws and financial frauds is necessary. This independent statutory agency shall be able to investigate without any ropes tied upon it. The Government should have minimal control over the investigation. The specialized investigative agency shall also help in the swift investigations. The Special Court which shall also be constituted shall help in speedy disposal of bank fraud cases bringing the culprits to justice.

There is also a need for an independent department that deals with frauds in Banks, so that all the procedural aspect shall be dealt by this department during the investigation process. It may also include lawyers and auditors who can work together in effective evidence gathering etc.,

The ABBF, constituted by the Central Vigilance Commission can be considered as a specialized advisory board for frauds involving officers above General Manager in PSB. A similar one in states can help in swift investigation. Also, with the Banks involved in other activities of insurance, trade etc, a new regulatory body consisting of select members from RBI, SEBI and IRDA can help in regulating frauds if more than one sector is involved.

5. Provision to Mitigate Loss – Ensure the advances are made within the limits

The difficulty that arises in all the Fraud cases is the inability of the banks to recover the loss. As the detection period takes years, the banks' ability to recover also reduces. The Banks must always ensure that the advances are made only on the basis of Collaterals. The collateral security must hold good for recovery and the banks must periodically inspect the collaterals submitted to them. The application of the Prevention of Money Laundering Act (PMLA Act) helps in recovering from the proceeds of crime which includes the assets of the company and the director's as well. The Employees must be well trained to verify the genuineness of the collateral security that is provided. Surprise checks must be made to verify the securities provided (so the possibility of a non-existent company is not made). Also, they should make sure that the same security is not provided in another Bank to avail the loan, there must be effective communication with the other banks to avoid such occurrences.

Bank Fraud is a complex subject, the gravity of which is difficult to be understood. The loss causes massive impact on the economy and also affects the reputation of the particular bank involved. Banking Industry is based on the principles of trust and integrity, if that's broken, there tends to be immense repercussions. The major setback the country had to face was the inability of the banks to recover the money lost to frauds as well as the inefficiency to arrest the culprits – the two big names are still out there in United Kingdom fighting the extradition charges. This brings us to the understanding that the legal regulations that are present are not effective enough to punish the culprits nor to curb them. There is a need to relook the existing regulations and make the necessary changes in accordance with time. Since there is a catena of laws that applies together in such cases it might not be effective enough. An exclusive legislation that deals primarily with Bank Frauds incorporating the suggestions in the study can be very effective in curbing bank frauds.

With the incorporation of the suggestions made with this study, the incidence of Bank Frauds can be reduced to a good extent. This study has helped in identifying the loopholes in the existing regulations so that changes can be brought about to have a Banking system that is free from economic offences like Frauds. The scapegoat for all such massive frauds is the public sector banks. Even though the reasons for the same have been many as discussed earlier, the most evident ones are the corrupt practices and the political pressure. Such interference into the bank's activities must be made minimal. Also, if the government can interfere in the board decisions, many of the frauds might not even be reported. In 1987 in ***State of Gujarat v. Mohanlal Jitamalji Porwal,*** the court viewed fraud and such economic offences very seriously, "such economic offence having deep-rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as a grave offence affecting the economy of the country as a whole and thereby posing serious threats to the financial health of the country." Yet, there has not been any substantial change in that regard.

Scope for Further Research

There can be further research on the other types of frauds like cyber frauds, accounting frauds, cheque frauds, phishing etc., Also, further research can be done on the need for a comprehensive legislation with regard to economic crimes. There is catena of laws that gets applied when it comes to such crimes, if there is one single legislation that deals with all these crimes it can help in simpler procedure and faster adjudication.

References

Act of 1987 2 SCC 364

Bhasin, T.M. (2018). Analysis of Top 100 Banks Frauds by Central Vigilance Commission (2018); https://www.tmbhasin.in/Studies/Studies.pdf

Chakrabarthy, KC (2013). Causes, Concerns and Cures. Inaugural address at National Conference on Financial Fraud (2013)

Crime in India Chapter Reports, NCRB, 'Chapter 9 Economic Offences', 23/04/21 [https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Chapter%209-15.11.16_2015.pdf]

CVC Office Order, 'Framework for ABBF', (2020); https://cvc.gov.in/sites/ default/files/ 006msc 038p.pdf

Gupta, Dinesh Kumar (2020). Growing Needs of Forensic Audit in Corporate and Banking Frauds in India (2020) Available at SSRN: https://ssrn.com/abstract=3624001 or http://dx.doi.org /10.2139/ssrn .3624001

Madan L Bhasin (2016). The Role Of Technology In Combatting Bank Frauds: Perspectives And Prospects (2016), 5 Ecoforum (9), 2016 accessed from https://www.researchgate.net/publication/306030925 on 10/11/2020

Madan L Bhasin. (2015). Menace of Frauds in the Indian Banking Industry: An Empirical Study. Australian Journal of Business and Management Research. . Also see: 4 European Journal of Business and Social Sciences (2015)

Mamta Shaw. (2019). A Case Study on Increasing of Banking Frauds in India' (2019), January-June 2019, Parichay: Maharaja Surajmal Institute of Journal of Applied Research 2(1)

Mayur Abhayankar and Ketan Patil (2019) A Study of Frauds in Banking Industry 9 IJAR (2019)

Mitra, N.L. (2001).L. Mitra, The Report of The Expert Committee on Legal Aspects of Bank Frauds RBI Reports, (2001); https://www.rbi.org.in/Scripts/PublicationReportDetails.aspx?ID=247

PMLA, 2002, S.447, No.15, Acts of Parliament 2002

State of Maharashtra through CBI v. Vikram Anantrai Doshi and Others Crl. Appeal No. 2048 of 2014

Tamanna Singh and Siddharth Nayak (2015). Frauds in Banking, Corporate Governance Issues', CCS Project Report, IIM Bangalore.