CHAPTER -I

INTRODUCTION

Banking companies play a leading role in stimulating and stabilizing the growth of an economy\(^1\), \(^2\) hence failure of banks have a great impact than the failure of firms in other sectors. As a result, banks are subject to more intense regulation\(^3\) than in any other sectors and the state is more pro-active in intervening to prevent bank failures\(^4\). Banking system in emerging markets has over the past decades been transformed by three major trends – privatization, consolidation and the entry of foreign banks.

According to Fidler\(^5\), when a customer deposits money in a bank account, he does not, strictly speaking, deposit the money; but he lends it to the banker. The relationship between the banker and customer is therefore the contractual relationship of debtor and creditor\(^6\). The public patronage which the banker invites and receives is of such a character that it becomes in a sense a quasi-trustee\(^7\) of the fiscal affairs of the people and of the state\(^8\). In the words of Justice Isaac of the Australian High Court\(^9\), ‘a bank is in effect a financial reservoir receiving streams of currency in every direction, and from which there issues out flowing streams where and as required to sustain and fructify or assist commercial, industrial or other enterprises or adventures’\(^10\). Therefore, the insolvency of a bank can have a disastrous effect on the economy if it is not regulated effectively.

\(^{3}\) In India, The Banking Regulation Act, 1949 regulate the banking business.
\(^{4}\) Ibid.
\(^{6}\) Ibid at P.23
\(^{7}\) Mark Hapgood QC, “ Paget’s Law of Banking”, 12th Edn. Lexis Nexis (2004) at P.24-“A banker is not normally a trustee for its customer of the amount standing to his credit in his bank account”.
\(^{9}\) E. P. Ellinger, Eva Lomnika and C.V.M. Hare, “Ellinger’s Modern Banking Law”, OUP,5th Edn.(2011)
\(^{10}\) Commissioner of the State Savings Bank of Victoria v. Permewan, Wright &Co.,(1914)19 CLR 457(HCA)
A generalized banking crisis is often a result or reflection of the deterioration of the economic environment or poor macroeconomic management. The costs of a crisis can be magnified in the presence of a weak bank supervisory structure or in the case of supervisory and regulatory mistakes. Good crisis management is crucial for the preservation or restoration of confidence in the banking and financial system which is the ultimate rationale of the whole supervisory process.

Basically, a bank regulation can be said to have a single goal; the prevention of bank failure. Banking business is regulated in many ways. Regulation through licensing, prescribing the competency of management, determining capital adequacy, restrictions on the nature of business, and various others matters which aim to ensure that the interest of the depositors are protected and banks will ensure financial stability.

Despite such regulatory control there are clear evidences of bank failure in many countries including in India. In some such cases bank rescue provisions enabled the

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12 Ibid.3
14 Section 22 of the Banking Regulation Act, 1949 provides for the licensing of banking companies.
15 Section 10A-10D of the Banking Regulation Act, 1949 provides for persons with professional experience to be included in the board of directors and the power of RBI to appoint Chairman of board of directors in banking companies.
16 Section 12 of the Banking Regulation Act regulates the capital requirement for banking companies.
17 Section 6 of the Banking Regulation Act states that the forms of business in which the banks may engage.
19 Between 1980-2015 following banks had to be rescued by Reserve Bank of India under section 45 of the Banking Regulation Act, 1949
   1. Lakshmi Commercial bank with Canara Bank(1985)
   5. Purbanchal Bank Ltd with Central Bank of India (1990)
Reserve Bank of India to exercise its power of giving re-birth to such banks through mergers and acquisitions. Various reasons contributed for the failure of the banks, which are now been revived through M&A by Reserve Bank of India. These reasons can be broadly classified under two heads: Internal causes and external causes. Inefficient management, fraud, violation of the laws governing banks are the internal causes of bank failures. External causes can be periods of acute or prolonged depression. Period of depression, during 2007-09 however, had no effect on the Indian banking sector.

In India, originally the Banking Regulation Act, 1949 did not contain any provisions for mergers and acquisition among banking companies. Banking Laws (Amendment) Act,


20 Ss. 36AE to 36 AJ, 44A (7) and 45 of the Banking Regulation Act, 1949 are aimed to rescue a bank in distress either through amalgamation or through acquisition.

21 Joseph Kuruvila Vellikunnel v. Reserve Bank of India AIR 1962 SC1371 explains in detail the need for special laws for banking. “A large number of banking companies had failed during the years, 1947, 1948 and 1949. Between 1926 and 1937, 23 Banks had suspended payment. In 1938 and 1939, 46 Banks failed, from 1940 to 1946, 95 Banks were involved. But, in 1947, 1948 and 1949 there were as many as 123 failures involving outside liabilities of Rs. 82 crores. The largest number was in Calcutta with 83 Banks. In the winding up proceeding that followed, many unsatisfactory features were noticed. It was noticed that the realizations were insignificant, while the costs were great, and enormous expenditure of time took place”.


23 An account of the reasons lead to the Statutory recognition of special provisions for the banking companies discussed under Chapter-II

24 At that time banking companies could invoke the corporate restructuring provisions under the companies Act, 1913. Section 153 of the Companies Act, 1913, conferred right to the companies to make a compromise or arrangement with its creditors and members. Companies Amendment Act, 1936 added Section 153A&153B. Amalgamation of companies was dealt under Section 153A. (A summary of the history of corporate restructuring regulations discussed in Chapter-II of this study).
1950 for the first time recognized the right of voluntary amalgamation of banking companies by inserting Section 44A to the Banking Regulation Act, 1949. It conferred power to the Reserve Bank of India to sanction the scheme of amalgamation between banking companies. The Banking Laws (Amendment) Act, 1950, also restricted the power to make compromise or arrangement between banking company and its creditor by inserting section 44B to the Banking Regulation Act, 1949. High Court had the power to sanction the scheme. Banking Companies (Second) Amendment Bill, 1960 proposed for the introduction of Section 45 and Section 44A(7) to the Banking Regulation Act, 1949. The reason for introducing the bill was stated as “The procedure prescribed under the Banking companies Act, 1949 read with the Companies Act, 1956 for the liquidation of banking companies is somewhat elaborate, and in the absence of any provision in the law indicating the time schedule according to which certain payments may be made to the depositors, a great deal of hardship is caused to such depositors, who have to wait for considerably long period for realizing the sum due to them. It is proposed, in order to facilitate the expeditious payment of certain minimum amounts in such cases, that the procedure relating to the liquidation of banking companies should be suitably modified. The opportunity provided by these amendments has also been utilized to simplify the provisions of law relating to the grant of moratorium in respect of banking companies which may be experiencing difficulties and to facilitate the formulation and implementation of schemes of reconstruction or amalgamation of such companies.” Section 36AE to 36AJ of the Banking Regulation Act, 1949, was added in the year 1968 under which inefficient and disobedient banks were contemplated to be taken over by the Government. Banking companies Act was amended in 1968 so as to give effect to the policy of social control over commercial banks in India. “The Central Government was given power to acquire the business of any bank if it failed repeatedly to

25 Whereas the court had to sanction scheme of amalgamation under the Companies Act, 1913.

26 Section 44A(7) of the Banking Regulation Act, 1949 permit the central government to amalgamate two or more banking companies in public interest. Section 44A was inserted in the year 1950.

27 [1960] 30 ComCas. (Statutes) 157 - The Banking Companies (Second Amendment) Bill 1960- Statement of objects and reasons.

28 Inserted by the Banking Laws (Amendment) Act 1968.

comply with any direction issued by the Reserve Bank under certain specific provisions in regard to any matter concerning the affairs of the Bank and if acquisition of the bank was considered necessary in the interest of the depositors or in the interest of the banking policy or for the better provision of credit generally or of credit to any particular section of the community or in a particular area.

Mergers and Acquisitions is a significant process through which financial service industries accomplish the preferred economic growth. There are many reasons why companies agree to merge. According to the literatures on motives for merger, there are many reasons why companies agree to merge. According to the literatures on motives for merger, there are many reasons why companies agree to merge. According to the literatures on motives for merger, there are many reasons why companies agree to merge.

30 Section 21 or Section 35A of the Banking Regulation Act, 1949. [Section 21 – Power of Reserve Bank to Control advances by banking companies. Section35A- Power of Reserve Bank to give directions].


33 In the business parlance the expression ‘merger’ or ‘amalgamation’ is used interchangeably. The Companies Act, 1956 and the earlier legislations in India though permitted corporate reorganization; there was no definition or explanation given to the term merger or amalgamation. An explanation for the expression merger is dealt under section 232(8) (i) of the Companies Act, 2013. It states two forms of merger (1) Merger by absorption or (2) Merger by formation of new companies. Though, title of section 232 is ‘Merger and Amalgamation’ definition of the two terms are not provided in the Act.

34 ‘Acquisition’ is defined in section 2(b) of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011. In Chapter-II of these study economic factors underlying bank mergers is discussed. Sections 2(b) of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 define the term acquisition. “Acquisition as directly or indirectly acquiring or agrees to acquire shares or voting rights in or control over a, target company”. [Acquisition of shares of the banking companies is not within the scope this study. This study concentrates on the amalgamation or acquisition of the undertaking of banking companies either voluntarily or by the order Government under the existing banking legislations].

banking sector, it state the following; such as cost reduction, rationalization of branch networks, investment in new technologies and processes, income increase, risk reduction, diversification, strengthening of the strategic position\textsuperscript{37}, rapid access to new products or geographic market\textsuperscript{38}.

Globalization also has a serious impact on the banking sector. The rising effect on the macro-economic shocks, growing competition among banks and other financial institutions and the general mismanagement of the banks demand that the banks interest need to be protected\textsuperscript{39}. Inherent within many merger transactions are bank’s desire to obtain “ready-made” branches. Banking offices are obtained through merger either by converting absorbed banks into branches or by transferring acquired branches to absorbing institution\textsuperscript{40}. Banks are invaluable to our society. Banking regulation is essential basically for two reasons (1) banks hold large amount of money that is not their own and (2) banks are involved in the risky business of lending money to the borrowers who may or may not return it. By holding and lending out money, banks impact the economy enormously. Its business strongly impacts public interest through its lending function, which has an inherent level of risk not present in other businesses\textsuperscript{41}.

Some economists argue that the process of consolidation is beneficial if it drives out the unproductive banking organizations from the market and if it facilitates increased

\begin{footnotes}
\footnote{E.g. increase in the market power resulting from greater market share of merged institutions.}
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efficiency in the banking companies that survive\textsuperscript{42}. Still, few are of the opinion that mergers among banks reduce bankruptcy risks, because merging two banks creates a bank healthier than their predecessor banks\textsuperscript{43}. Ownership structure, regulatory short comings and concern about job loses remain the main obstacles to a faster market driven consolidation process, except in transition economies\textsuperscript{44}.

Viewing it from the point of systemic risk\textsuperscript{45}, there are two opinions. On the one hand, bank mergers could stabilize an individual bank as well as decrease systemic risk; because consolidation can lead to increase in the diversification of the company’s asset and loan portfolio and consequently higher capital buffers\textsuperscript{46}. On the other hand diversification could reduce an institution’s individual probability of failure while at the same time making systemic crisis more likely\textsuperscript{47}.

Several approaches to consolidation are identified. One was the market driven approach, which is common in Central and Eastern Europe and in Latin America; another is the government driven approach, followed mostly in Asia. In India, RBI is vested the power over supervision and control over the banks.

Reserve Bank of India is in favour of amalgamation of banking companies\textsuperscript{48}, provided competition and stability are not compromised\textsuperscript{49}. Indian banking industry consists of banks of varied nature. Depending on the different nature of banks, there are specific

\textsuperscript{43} Michael S.H. Shih, ‘Banking Sector Crisis and Merger as a solution’ Available at http://ssrn.org
\textsuperscript{45} Gregor N.F , Sasha Neumann etal., ‘Systemic Risk and Bank Consolidation : International evidence’(2013)Available at http://ssrn.org
\textsuperscript{46} Ibid.,
\textsuperscript{47} Ibid.,
\textsuperscript{49} Chapter-III discusses the merger routes under the Indian banking laws.
legislations governing banks in India. Reserve Bank of India regulates twenty seven Public Sector banks including five subsidiaries of State Bank of India and twenty Private Sector Banks. Forty three foreign banks have their branches in India. In order to meet the credit requirement of rural population, there are fifty six Regional Rural banks and many co-operative banks under the supervision of Reserve Bank of India.

Some of the notable bank mergers in India since 2000, reveals that section 45 of the Banking Regulation Act was used by RBI to compel the merger of certain banking companies in order to rescue it from failure.

While talking about the Indian financial institutions and their operating background, it is important to bear in mind that there is multiplicity of governing statutes applicable to different entities in the Indian credit organizations. Additionally they are governed by the

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51 Annexure-II list of Public Sector banks and its Assets and Liabilities from 2012-14
52 19 Nationalized Banks, 1 State Bank of India and 5 Subsidiaries of State Bank of India, Mahila Bank Ltd and IDBI Ltd
53 Annexure-III List of Private Sector Banks
54 Annexure-IV – List of Foreign Banks in India
55 Annexure-V – List of Regional Rural Banks in India
56 Part-V of the Banking Regulation Act, 1949 applicable for the Co-operative Banks in India
57 Annexure -I. Case study of Eleven bank mergers between 2000-2015 [Data collected from secondary sources. A brief summary of following bank mergers are prepared for the purpose of studying the effects of the regulatory provisions in avoiding bank failures. It also looked into the pre-merger and post merger performance of the banks]
1. Merger of Times bank with HDFC bank (S.44A of the Banking Regulation Act, 1949)
2. Merger Between ICICI LTD. and ICICI BANK (Ss. 391-394 of the Companies Act, 1956)
3. Merger between ICICI Bank and Bank of Madura (S. 44A of the banking Regulation Act)
4. Merger between Bank of Baroda with Banaras State Bank (Section 45 of the Banking Regulation Act, 1949)
5. Punjab national bank and Nedungandi bank merger (Section 45 of the Banking Regulation Act)
6. Merger between Global Trust Bank and Oriental Bank of Commerce (Section 45 of the Banking Regulation Act, 1949)
7. Merger between Bank of Punjab & Centurion Bank (Section 45 of the Banking Regulation Act, 1949)
8. Centurion Bank of Punjab with Lord Krishna Bank (S.45 of the Banking Regulation Act)
9. Merger of IDBI Bank Ltd. With IDBI Ltd (Ss. 391-394 of the companies Act, 1956)
10. Merger of ICICI Bank and the Bank of Rajasthan (S.45 of Banking Regulation Act)
11. Merger between Mahindra Kotak Bank and ING& Vysya Bank (S. 44A of the Banking Regulation Act)
statutory provisions, depending upon the nature of their operations and the form of their organization or ownership\(^{58}\). Mergers and acquisitions governing the banks are also not uniform in nature. In some cases, RBI needs to sanction the scheme\(^{59}\), whereas in the compulsory merger under section 45\(^{60}\) RBI need to prepare the scheme and the same will be presented before the Central government for its sanction. In the case of acquisition of banking companies Central Government may after consultation with the RBI acquire such banks and it would prepare the scheme for the acquired banks\(^{61}\). Amalgamation between a banking company and NBFC High Court is the sanctioning authority under section 391-394 of the companies Act, 1956. In acquisition of banking companies under the bank nationalization Act, 1970&1980 Central Government plays a very important role, though RBI is consulted before placing the same before the parliament.

Government of India directs the nationalized banks to acquire the undertakings of the financially weak banks. This is done in the interest of the depositors of the banking company. But it may be a burden on those banks to discharge the liabilities created by the transferor banks. However, in the interest of depositors, RBI and Central Government use the route of merger or acquisition to rescue the failing banks. There is no doubt; the depositor’s interest will be protected if the failed banks are acquired by nationalized banks or State Bank of India.

Louis D. Brandles\(^{62}\) reproduced in his book a speech given by President Wilson and he stated that “The great monopoly in this country is the money monopoly. So long as that exists, our old variety and individual energy of development are out of question. A great industrial nation is controlled by its system of credit. Our system of credit is concentrated. The growth of the nation and all our activities are in the hands of men, who even if their actions are honest and intended for the public interest are necessarily

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\(^{59}\) Section 44A of the Banking Regulation Act, 1949

\(^{60}\) The Banking Regulation Act, 1949

\(^{61}\) Section 36 AE read with Section 36AF of the Banking Regulation Act, 1949

\(^{62}\) Louis D. Brandles,“Other People’s Money, and how the bankers use it” Available at [http://archive.org/stream/otherpeoplesmone0bran_djvu.txt](http://archive.org/stream/otherpeoplesmone0bran_djvu.txt)
concerned about the great undertakings in which their own money is involved…”

At the fundamental level, the object of bank regulation was designed to wall off banks from market forces. Thus, a protective regulatory regime contributes to the stability in the banking industry. Further, entry of non-banking financial companies into the banking sector is encouraging certain banks to acquire such companies and sustain in the market, but there is no specific legal regime in India to recognize such combinations.

1.1 Objectives of the study:

‘All bank mergers occur within the legal framework. Basically, regulatory agencies attempt to maintain safe and sound banking practices through the establishment of regulations and examinations. However, there is no uniformity in the law governing bank mergers due to the diverse nature of banking Companies in India. In this background this study examines and appraises the significant legal factors underlying bank mergers in India. It also assesses whether the mergers and acquisitions among banking companies aim at the protection of depositors interest by avoiding bank failures in India’.

1.2 Statement of Problem: Due to the diverse nature of banks and their governing legislations there is no uniformity in the law and procedure governing M&A in the banking Industry. Moreover, the legislations governing bank mergers in India are commonly used only for the purpose of rescuing failing banks. Bringing uniformity in the bank merger regulations would encourage M&A in the banking sector. This would

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63 Louis D. Brandles, “Other People’s Money, and how the bankers use it” Available at http://archive.org/stream/otherpeoplesmone0bran_djvu.txt


65 Ibid.

66 For Eg. Amalgamation of Private Sector Banking Companies are governed by Section 44A of the Banking Regulation Act, 1949. Acquisition of Banking Companies dealt under Sections 36AE to 36AJ of the Banking Regulation Act, 1949. Amalgamation among the Nationalized Banks are governed by Section 9(1)(c) of the Bank Nationalization Act, 1970&1980. Acquisition of banking companies by the State Bank of India is governed under Section 35 of the State Bank of India Act, 1955. Acquisition among associates of state bank of India group is governed by Section 38(2) & (3) of the State Bank of India (Subsidiary Banks) Act, 1959. Amalgamation of Regional Rural Banks is governed by Section 23A of the Regional Rural Banks Act, 1976. Amalgamations of Co-operative societies are governed by the Co-operative societies Act of the respective state. Amalgamation between banking companies and Non-Banking Financial Companies (NBFC) governed by the Companies Act, 1956 (Section 391-394)
ensure financial stability and protection of the interest of depositors. Secondly, there is no specific provision under the Banking Regulation Act, 1949 for the amalgamation between banking companies and Non-Banking Financial companies. Because of this, authority to sanction the scheme of amalgamation is exercised by the Court. If transferee is a banking company RBI should exercise its power to sanction such amalgamations and acquisitions.

1.3 Research Issues:

Whether the legislations governing bank mergers and acquisitions provide a healthy and efficacious legal regime for bank mergers and in so doing, facilitate the growth of banking companies and thereby avoid bank failures in the interest of depositors?

In order to answer the main issue, following sub-issues are identified:

1. Whether the separate legal regime for bank mergers in India is justified?

2. How far RBI exercises its authority in sanctioning bank mergers in India? Whether RBI’s power is restricted for the purpose of rescuing a financially weak bank under section 45 of the Banking Regulation Act, 1949?

3. Whether the law addresses the issues relating to amalgamation between banking companies and Non-Banking Financial Companies?

4. How far the rights of employees of the banking companies are protected during transfer of undertaking and amalgamation of banking companies? Is there is any differences to the position of the employees during voluntary and compulsory mergers under the banking regulation Act, 1949?

5. Whether the Indian bank merger laws are in conformity with the laws governing bank mergers in UK, Australia and Singapore?

1.4 Methodology for the study is mainly doctrinal. Therefore, it relied on statutes, cases, guidelines/notifications, committee reports, books, articles and speeches. It also looked into the secondary sources of Eleven notable mergers and acquisitions in the Indian banking sector between 2000-2015 for the purpose of analyzing whether the Indian legal regime is favorable towards M&A in the banking industry (Annexure-I).
Further, the Comparative methodology is adopted for studying the legal regime governing M&A’s in banking sector in the United Kingdom, Australia and in Singapore.

1.5 **Scope and Limitation:** Focus of the Research paper is mainly on the Legal regime governing mergers and acquisitions of the undertakings in the Indian banking Industry. This study also focuses on the legal issues in the amalgamation between a banking company and a Non-Banking Financial Company (NBFC). It also looked into the position of bank merger laws in UK, Australia and Singapore for the purpose of analyzing whether the Indian bank merger regulations are in conformity with the legal regime governing, bank mergers of developed nations.

Acquisition of shares of banking companies is not within the scope of this study. However, the recent developments brought to the Banking Regulation Act,1949 by the Banking Laws(Amendment Act),2013, pertaining to the restrictions on acquiring shares in banking companies is discussed in Chapter-III.

1.6 **Chapter Division:**

The study begins from the Second chapter titled ‘Mergers and Acquisitions: Regulatory Landscapes in India’. It proceeds by examining economic and legal motives and the impact of mergers and acquisitions. Secondly, it studies the economic theories of mergers and acquisitions. Thirdly, it concentrates on the constitutional validity of mergers and acquisitions with the help of constitutional provisions and case laws. Fourthly, it examines whether there is a need for regulation of mergers and acquisitions in India. It further, examines the routes of corporate restructuring under the Indian companies Act, 1956 and 2013 and critically analyzes the comparison between two legislations on corporate restructuring. It then studies the corporate restructuring regulations in India from a historical perspective. It commence by examining the Companies Act, 1913 which for the first time recognized the scheme of arrangement between members and creditors. But the Companies Act, 1913 neither used the expression Merger nor amalgamations or acquisitions. Originally, there was only a single

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67 This study is purely from the legal and regulatory perspective. Economic analysis of bank merger is not within the scope of this study.
section under the 1913 Act i.e., S.153. It conferred the power to make arrangement or compromise with the members and creditors. Companies Act, 1913 had undergone substantial changes through the Companies Amendment Act, 1936. One of the important aspects was that it inserted Ss.153A and 153B to the 1913 Act. Amalgamation of companies was dealt under section 153A of the Companies (Amendment Act), 1936.

The scope of S.153A was discussed in detail by the Madras High court in *Sahayanidhi Virindhunagar Ltd., v. ASR Subramanya Nadar and another*, ‘the court held that the object of S.153A of the Companies Act, 1913 was to facilitate arrangements and compromises between a company and its creditors or shareholders which involve the transfer of its assets and liabilities to other companies. It held that ‘Where an order of Court made under the section provides for the transfer of the assets and liabilities of a company in liquidation to another company, the assets by virtue of that order, without anything more stand transferred to and vested in the transferee company and the liabilities of the former company are also shifted to the transferee company’.

The Chapter further concentrates on the historical reasons for recognizing the special provisions for bank mergers. It concludes with the bank merger laws in India under different banking statutes.

The need to recognize corporate restructuring as a statutory right of corporation was affirmed by the Bombay High court through Justice Chandrachud in *Ion Exchange*

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68 S.153 of The Companies Act, 1913- Power to make compromise or arrangement with creditors and members

69 S.153A of The Companies Act, 1913 –Stated that ‘where a scheme of compromise or arrangement is contemplated for reconstruction or amalgamation and where a scheme provides for transfer of an undertaking (in whole or part) by one company to another company, the court on application made to it may order sanction of the said scheme by making provision for (a) The transfer to the transferee company of the whole or part of the undertaking of the transferor company (b)allotment or apportionment of any shares, debentures etc by the transferee company (c) continuation of the legal proceedings (d) dissolution without transferor of transferor company (e) The provision to be made to any person who dissent from compromise and arrangement and (f) consequential order. Any order passed under S.153-A should be filed with the registrar in 14 days.

70 S.153B of the 1913 Act dealt with Acquisition of shares of the dissenting shareholders.

71 AIR1951Mad209

72 The case dealt with the stamp duty application for a transfer under S.153A of the Companies Act, 1913. The court held that for purpose of stamp duty - transfer of assets and liabilities from Transferor Company to Transferee Company takes place by virtue of Section s.153A without any further act or deed.
(India) Limited, In Re\textsuperscript{73}, wherein the court held that ‘the Corporate enterprise must be armed with the ability to be efficient and to meet the requirements of a rapidly evolving business reality. Corporate restructuring is one of the means that can be employed to meet the challenges and problems which confront business. The law should be slow to retard or impede the discretion of corporate enterprise to adapt itself to the needs of changing times and to meet the demands of increasing competition\textsuperscript{74}."

In order to study the special statutory recognition of bank mergers \textit{Chapter three} explores the ‘Regulatory Regime for Bank Mergers in India’. It starts with the Institutional Evolution of Banking in India. Secondly, it examines the rationale for separate legal regime for banks and it also analyses the motivations for consolidation in the banking sector. Further, it examines the different legal regime applicable for the merger of banking Institutions in India. It further concentrates on the categories of merger. The Merger efforts in the Indian Banking sector can be broadly placed as per the nature of the entities involved and of the mergers, into several categories viz., (a) Voluntary amalgamation between private sector banks (b) Compulsory amalgamation of a private sector banks (c) merger between public sector banks (d) merger of a non-banking financial company with a private sector bank (d) Merger among co-operative

\textsuperscript{73} [2001]105 Comp Cas.115 (Bom).

\textsuperscript{74} Ion Exchange (India) Limited, In Re, [2001]105 Comp Cas.115 (Bom.) The case concerned with the approval of the court in an application for a scheme of amalgamation brought two companies - Ion Exchange Specialty Chemicals Limited and Ion Exchange Environmental Services Limited sought to merge with a company known as Ion Exchange (India) Limited. The two transferor-companies are wholly owned subsidiaries of the transferee-company. The case in detail dealt with the scope and nature of the jurisdiction of the court in a scheme under Ss.391-394. The court speaking through J. Chandra chud held that “the law as it has evolved in the area of mergers and amalgamations has recognized the importance of the court not sitting as an appellate authority over the commercial wisdom of those who seek to restructure business. The need for this restatement is all the greater today where the interplay of competition and the forces of the market demand efficiency; cost effectiveness and high levels of productivity. Viewed in the context of this business reality, the scheme of amalgamation should in the present case pass muster. The holding company in the present case seeks to emerge from the economic difficulties which face its subsidiaries which have become loss-making entities. The effort is to pool together human, financial and material resources and to deploy them, upon amalgamation in a manner that would enhance profitability. This is a permissible object and nothing in the proposed scheme in the present case militates against commercial morality, the public interest or a view which a reasonable body of shareholders or creditors would adopt”.”
banks (e) Merger between Regional Rural Banks (f) Mergers of State Bank of India and its associates , (g) Acquisition of banking companies under Part II C of the Banking Regulation Act, 1949.

Chapter three further emphasizes the differential treatment for mergers between banking companies and Non-Banking Financial Companies (NBFC) with the help of decided cases and guidelines issued by Reserve Bank of India. This chapter also compares the difference between mergers under the companies Act, 1956 and 2013 and under the Banking Regulation Act, 1949, and also between merger under the Bank Nationalization Act, 1970 and under Section 45 of the Banking Regulation Act, 1949. Wherein, it finds that the essential distinction between the two provisions is that under Section 45 of the Banking Regulation Act, 1949 the Scheme is prepared by RBI and has to be merely placed before the Parliament. However, a different procedure is followed under Section 9 of the Banking companies (Acquisition and transfer of undertaking) Act, 1980 the scheme becomes effective only after the same is placed before both the Houses of Parliament and after the Parliament makes such modification and agrees to the scheme.75 Chapter three also discusses in detail the rationale for separate regime for mergers and acquisitions among the State Bank and Its associates and discusses the reasons for establishing State Bank of India and its Subsidiary banks. Consolidation of Co-operative banks and Regional Rural bank also find a significant place in this chapter. Case studies on merger among co-operative banks are also discussed in the same chapter. Case studies of some of the important bank mergers since 2000 are also provided in the annexure76.

Regulation of capital and its oversight by supervisors are important components of the financial stability policies in a market economy77. For this purpose, Chapter four questions the role of Reserve Bank of India in regulating bank mergers. In order to effectively regulate the banking system, there is a need for the centralized authority

75 New Bank of India Employees' Union and Another v Union of India and Others(Supreme Court of India) 1996Available at www.manupatra.com
76 Annexure-I
77 Augustin Villar, ‘Is financial Stability policy now better placed to prevent systemic banking crisis’ Available at http://ssrn.org
such as a central bank, whose primary responsibility is to act as a banker to the government in the widest sense. Central banks in all countries act as fiscal agent, banker and advisor on all important matters. Central bank liaises with and advises the Government on the monetary policy and ensures that the necessary steps are taken to carry it through.

In India, RBI is the central bank and it is vested with the power of regulation, supervision and control of banking activities. Whether the central bank should play an active role in banking supervision and regulation is debated world over. But in India, RBI not only performs monetary functions but also other functions, in particular banking supervision. At the outset, it must be pointed out that issues of regulatory organization are essentially second order issues. Far more important-and the first order issue-is the implementation of financial regulation, in particular, supervisory capacity and its quality and the soundness of the legal framework underlying the regulatory process.

Banking regulation broadly involves two kinds of objectives. The first objective is to preserve systemic stability. To avoid the collapse of financial system, banks and wholesale markets need to be regulated. The payment system is, in particular, a key channel for the potential spread of systemic risk. The second objective deals with the

80 The Reserve Bank of India Act, 1934
82 A comparison between Bank of England and RBI is discussed in Chapter-IV at Point no. 4.4A of this study
Depositor’s protection. Depositors are less informed than the banks, and small depositors in particular are very often financially unsophisticated. As a response to this asymmetric information and lack of sophistication, banking regulation attempts to protect the banks' depositors. Banking supervision is concerned with the soundness (solvency) of the banks and is thus primarily related to the first objective: systemic stability. It is to be noted that banking supervision does not intend to provide absolute guarantees. Nobody, including a supervisor, can guarantee that a bank will always be safe. Supervision aims to provide systemic stability and to protect depositors as far as possible, but in some case the bank management is itself responsible.

The Reserve Bank plays an important role in the economy and financial affairs of India and one of its important functions is to regulate the banking system in the country. It is the duty of the Reserve Bank to safeguard the economy and financial stability of the country. The Reserve Bank of India is the monitoring regulator empowered to form the Banking policy. Such is the policy being evolved in the interest of Banking system, monetary stability and sound economic growth. RBI as an expert body in regulating banks in India has been recognized by the courts through series of cases. In Peerless General Finance and Investment Co. Ltd v. R.B.I., the Supreme court held that the Reserve Bank play an important role in the economy and financial affairs of the country and its main role is to regulate the banking industry.

The supervisory functions of the RBI have helped a great deal in improving the standard of banking in India to develop on sound lines and to improve the methods of

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86 Ibid.,
87 In the case of Palai Central Bank, Kerala
89 Deccan Chronicles Holdings Limited and others v Union of India and others(Madras High Court)2014 available at www.manupatra.com the said case concerned with the constitutionality of Section 2(1)(o)of the SARFAESI Act,2002 and classification of NPA by RBI. Court discussed the role of RBI in protecting the banking system generally through the enactment of SARFAESI Act,2002.
90 ( 1999) 2 SCC  343
their operation. Further in *Federal Bank Ltd v. Sagar Thomas*\(^91\), it was observed that as per statutes, RBI and the central government exercise all the functional, fiduciary and managerial control over the banking industry. Every banking company is duty bound carry on the banking business as per the banking policy under the stringent control of the Reserve Bank in the interest of the banking system or in the interest of monetary stability of sound economic growth, having due regard to the interest of the depositors. The activities carried out by the bank are vital to the public interest and have the potential to affect the socio-economic development and growth of the nation\(^92\). The Reserve Bank of India has been given very wide powers of superintendence and guidance over the banking companies with a view to safeguard not only the interest of the depositors but the public interest to ensure the proper management of the banking companies, in the context of S. 45, it could also act in the interest of the banking system of the country as a whole\(^93\). Also in *Piralal Anand v. Reserve Bank of India*\(^94\), it was held that the Banking Regulation Act, at every turn make the Reserve Bank the authority to sanction, permit, certify, inspect, report, advise, control, direct, license and prohibit. There is hardly any provision where the Reserve Bank’s judgment is not made final vis-à-vis a banking company except rarely where an appeal to the central government can lie. In *Amrit Bank Ltd and others v. Union of India and ors*\(^95\), it was held that the Reserve Bank can exercise its power under section 45 for obtaining moratorium and framing subsequently a scheme of amalgamation in the case of a banking company even when there is no such financial difficulty. In *Punjab National Bank, New Delhi v. All India New Bank of India Employees Federation, New Delhi*\(^96\) it was laid down that in order to prevent step motherly treatment to the depositors as well as to the employees of the amalgamating

\(^{91}\) AIR 2000 SC 4325.

\(^{92}\) *Ibid.*.

\(^{93}\) *Joseph Kuruvilla Vellikunnel v. Reserve Bank of India* AIR 1962 SC 1371. This case is popularly known as ‘Palai Central Bank cas’. Also in *Corporation bank v. D.S. Gowda*, 1994(5) SCC 213 “Under the Banking Regulation Act, 1949 wide powers are conferred on the RBI exercise affective control over the banking in India “.

\(^{94}\) 1972 (2) LLJ, 495(Del.)

\(^{95}\) [1968]38Comp Cas.356

\(^{96}\) AIR 1977 Allahabad 8 at Pp.11,12
banks, such regulatory and supervisory powers have been entrusted to the Reserve Bank and the power to sanction the scheme of amalgamation has been conferred on the Central government. If any person contravenes the said provision or any provision under the Banking Regulation Act, it is the duty and function of the Reserve Bank of India to protect the gullible public in public interest. Further, this chapter examines the role of RBI v. Court in the merger between banking company and a non-banking financial company with the help of decided cases.

Chapter five studies the **Impact of Bank mergers on the employees of banking companies.** First part of the chapter studies merger laws in India and its impact on the labour under the existing provisions of the companies Act and under the Banking Regulation Act, 1949. In India every legislation must be tested on the touchstone of the Indian Constitution. In this background second part of the chapter studies the constitutional law protection afforded to the companies to restructure and thereby achieve economic equilibrium. Third part of the said chapter studies the role of Indian Labour legislations in protecting the interest of the employees during transfer of an undertaking with the help of the decided cases.

Fourth part compares the position of employees during voluntary and compulsory bank mergers under the Banking Regulation Act, 1949 with that of the Companies Act, 1956 and 2013. In this part employees concern during bank mergers are analyzed with the help of decided cases. Finally, it analyzes the guidelines issued by other countries and labour organizations in this regard. At last, paper gives suggestions for improving and protecting the labour force during corporate restructuring in banking companies.

Chapter Six is a comparative study on the Bank merger Laws in the UK, Australia and Singapore. Consolidation has been a widespread development in the banking industries of many countries in recent decades. As a consequence, number of banking companies has declined significantly in many countries and a number of large universal banking with international operations has emerged. In many emerging markets banks M&A have been driven by government policy initiatives for restructuring. Frequently such initiatives have followed a financial crisis and have become directed towards stabilizing banking
system and the wider economy. In this context, Part-I of the study examines the central reasons for amalgamation of banks in general and the rationale of special bank merger regulations. In this part paper stress upon the risk factor and monopoly are the two main constrains prescribed by the regulators for the disapproval of amalgamation of banks. Part-II of the study examine bank mergers and acquisitions in India from 1969 till 2015 and offers a conceptual explanation of the causes that lead to mergers among the banking companies during this period. Part-III examines the law governing bank mergers in UK, Australia and in Singapore. Part IV briefly identifies the type of fundamental regulatory reforms that are needed for the purpose of enabling bank mergers and acquisitions across all the four jurisdictions.

Chapter Seven identifies the lacunas in the existing legal system governing corporate restructuring generally and bank mergers specifically. Further through the critical analysis of various provisions of bank merger laws in India, it proposes to amend the banking regulation Act to provide additional clauses in it to deal with merger of all types of banking companies. It also proposes for a single window clearance for the approval for bank mergers. It further identified the lacunas and provided suggestions to encourage growth of banking companies through mergers and acquisitions in India.