



**Mysore Chapter**

# **eMagazine**



**Rendezvous with India's CS No. 1**

**Straight from the heart: a tête-à-tête with CS No. 6**

**Crossing the Milestones...**

**Secretarial Auditor's Duty to Report Frauds**

**Realm of International Corporate Governance Day-ICGD**

**Legal 'fiat' to "Sensitive Personal Data or Information" in India**

**Non-Compete Clause in Employment Contract - Whether tenable in the eyes of law?**

**...many more**

**[For Private Circulation Only]**



**CS MAMTA BINANI  
PRESIDENT**

## Message

I am delighted to note that the Mysore Chapter of the Institute is publishing the 150<sup>th</sup> edition of its eMagazine in July, 2016.

This e-Magazine has been an effectual platform of knowledge sharing, intellectual discussions and academic insights. Enormous benefits endowed by this publication have turned it as a very well accepted manuscript in the professional community.

It will be worth to mention that as an engine of enabling growth in the contemporary areas of knowledge, this eMagazine kept informing the professionals of latest sharing amongst the professional fraternity towards achieving professional excellence.

I extend my changes with view of expanding role, profile and scope of services of Company Secretaries.

I am content of the fact that the intellect of this eMagazine will keep assisting the students and members in further developing a positive attitude and proactive approach of knowledge best wishes for the successful publication of 150<sup>th</sup> edition of this eMagazine.

Wish you all success, always!!

Be the wind for the flight!!



# Grand Release

## of 150<sup>th</sup> Edition of the eMagazine



On 9<sup>th</sup> July 2016, grand release of 150<sup>th</sup> Edition of the eMagazine was celebrated.

CS (Dr) Shyam Agarwal, Vice President of the Institute of Company Secretaries of India released the edition. CS Dattatri H.M., Chief Editor of the eMagazine shared the colourful journey of the eMagazine. CS Ahalada Rao V., Central Council member and Chairman of the Research Committee of the ICSI spoke on the occasion and lauded the efforts of the Editorial team for the quality and outreach of the eMagazine. He also highlighted the need for Research under the Companies Act for the professionals and their growth.

In his inspiring speech on the occasion, CS (Dr.) Shyam Agarwal, called upon the fellow professionals to imbibe integrity in all walks of life, which is a combination of Character, Courage and Consistency. He briefed on the popularity of the eMagazine and lauded the efforts of the team on bringing out the newsletter with enriching content and innovativeness. He emphasized the need of research and publishing the researched topics for the general benefit of the professionals.

CS Bhansali M.C., Chairman of the ICSI-Mysore Chapter welcomed the gathering; CS Ajay Madiah B.B., introduced the guests and CS Pracheta M., Secretary of the ICSI-Mysore Chapter proposed the vote of thanks. The Chapter also recognised the contribution from all editors and columnists of the eMagazine.





**CS (Dr.) SHYAM AGRAWAL**  
**VICE PRESIDENT**



## Message

It is indeed a proud moment for all of us that ICSI-Mysore Chapter is releasing 150<sup>th</sup> edition of its eMagazine in July 2016. This eMagazine, which was started a decade back, has become well established and conventional in the professional community.

In last one decade, it has created a platform for members to express themselves, to share their thoughts, experiences and knowledge. Beyond doubt, it has contributed excellence in spreading knowledge across the profession.

I feel this eMagazine is an exclusively devoted move to provide information and updates with a view assist the stake holders in updating their knowledge with the contemporary challenges and opportunities of professional worth. I am sure that this eMagazine will keep developing better understanding of professional training, commitment and assurance.

I congratulate Mysore Chapter of ICSI for releasing 150<sup>th</sup> edition of the eMagazine.



**CS M. C. Bhansali**  
**Chairman**  
**Mysore Chapter**

## From the Chairman's Desk

A top notcher in all its endeavours – that's been the success saga of ICSI Mysore Chapter through these years. Having nearly 1500 students and 60 professionals the Mysore Chapter of ICSI has evolved as a knowledge portal in the recent years, conducting oral coaching classes to young professional aspirants. "UMANG" the Annual event of the Chapter has been a platform for students to exhibit their talents and explore their horizons.

Our professional colleagues have regularly visited colleges in the Mysore city creating awareness about the CS Profession to students.

On the professional front, our members truly believe "Knowledge is power" and have been organising periodical open house sessions on various Topics. To don all the achievements of the ICSI Mysore Chapter was the launch of E-magazine which had its humble beginning as a newsletter circulated among a small group in Mysore. Today it has branched out to many of the professional friends across the nation. It is a proud moment for the ICSI Chapter Mysore as we reach the 150<sup>th</sup> Edition of the eMagazine creating a mile stone.

At this juncture my sincere thanks to all the members especially the editorial team for their meticulous efforts in publishing it every month.



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<http://200.g/PV9Ch>

[newsletter.icsimysore@gmail.com](mailto:newsletter.icsimysore@gmail.com)



**CS Gopalakrishna Hegde**  
**Council Member**

I salute the efforts to bring out 150 editions of e-magazine. Kudos to the Editorial Team lead by CS Dattatri H.M., for demonstrating high degree of unwavering commitment, dedicated efforts, uncompromising quality, innovations and creativity at its best in bringing out the e-magazine well on time every month, month after month for 150 months. I congratulate Mysore Chapter of ICSI for the initiative and great support.

I admire, appreciate and applaud the efforts of "eMagazine, Mysore" sustained for such a long period and for achieving the unique distinction!!

\*\*\*



**CS Makarand Lele**  
**Council Member**

I am very happy to note that the Mysore Chapter of ICSI is releasing 150 edition of its Magazine.

I remember Mysore is one of the pioneer Chapter, which has brought out Magazine in eform sometime around 2003. I was very happy to get it and found that its design and concept was very unique.

I always found Mysore Magazine as a humble attempt to provide something new to the members. Articles and other contributions were of high quality and long shelf value.

On this occasion I congratulate the Mysore Team and wish them good luck to continue this knowledge sharing initiative forever for the benefit of entire CS fraternity.

\*\*\*



**CS Ahalada Rao V.**  
**Council Member**

Success is not measured by money- it is measured by true hard work, discipline and will to win, you have proved that again.

I'm glad to know that the Mysore Chapter has completed 149th edition of news letter. I feel personally, this is one of the best electronic Magazines. Mysore Chapter has reached beyond the borders of the South and created the brand not only for the Mysore Chapter but also for the ICSI itself.

The content, articles and the total layout of the Magazine is innovative and awesome, in fact Mysore Chapter emagazine has shown path to many Chapters and regional councils for their eMagazine and became pioneer and paved path for the Go-green concept.

I wish this magazine should complete 1000 editions and more. Congratulations for the success to the entire ICSI Mysore Chapter and keep continuing.



## Message



**CS Ashish Garg**  
**Chairman**  
**PCS Committee, ICSI**

## MESSAGE



It is indeed a proud moment to note that the Mysore Chapter of the Institute of Company Secretaries of India is releasing the 150<sup>th</sup> edition of its eMagazine in July 2016.

This eMagazine has been an engine of enabling growth of our profession in contemporary world while sharing the knowledge and thoughts under the context of ever expanding role, profile and scope of services of Company Secretaries.

As an innovative way of spreading knowledge, it has reached to maximum professionals all through the country and for sure it has been very well accepted in the professional community.

The release of its 150<sup>th</sup> edition just in one decade ensures the very fact of the overwhelming appreciation, the eMagazine received from its readers. I am sure that the eMagazine will keep serving as a varied platform for knowledge sharing and will definitely facilitate the members, students and readers to be kept informed about the contemporary developments of the proficient expertise.

I extend my best wishes for the successful release of the 150<sup>th</sup> edition of the eMagazine.

\*\*\*



**CS R. Ramakrishna Gupta**  
**Secretary, SIRC of ICSI**

At the outset let me offer my heartiest congratulations to ICSI Mysore Chapter for publishing the 150<sup>th</sup> Edition of this eMagazine.

A none too easy feat to achieve. An assignment that requires complete devotion of those concerned coupled with a single-minded dedication for coordination and collation of entire inputs that go to make such worthwhile reading and make it an eagerly awaited monthly eMagazine.

What strikes one is an eye-catching layout and a fair distribution of material kick starting from the Chairman's desk and ranging from the academic to the practical, Guidance & Career Awareness programs, news and happening national events, Legal Aspects and notes and an attempt to draw young professionals into the mainstream and make them feel proud and enthusiastic about the CS Profession they have selected.

My best wishes to ICSI Mysore Chapter. Keep the eMagazine roaring regularly!

# Messages from the Past Chairmen of ICSI Mysore Chapter



**CS C. K. Sabareeshan**  
**Past Chairman, ICSI Mysore Chapter**  
**Past Chairman, CII, Mysore Zone**

It is indeed a matter of great pride, pleasure and privilege for me to know that our eMagazine has reached yet another milestone! What started as a half page communication from the then Chairman has grown into a comprehensive eMagazine of professional value!

No words can adequately compliment the editorial team for its unshakeable commitment to have scaled this height of success!

My hearty congratulations and very best wishes to the entire team!



**CS D.D. Bhat**  
**Past Chairman, ICSI Mysore Chapter**  
**Past Chairman, NIPM, Mysore Chapter**

It is heartening to note that the eMagazine is reaching a major milestone of 150<sup>th</sup> issue. I have been keenly following the growth trajectory of this wonder child of ICSI, Mysore.

It was a small and fragile sapling planted, 150 months ago, as a one page News Letter, edited by CS Dattatri, for sharing information among the members of Mysore Chapter of ICSI. None the less, it was a path breaker, as in those days, e-News Letters / Magazines were very rare.

The dedication and commitment of the Editorial Team, headed by CS H M Dattatri, in nurturing the Magazine is commendable and exemplary. I find the contents cover a vast range of topics and are of high quality and standard. The contributors from across the country and across the professions are adding value to the Magazine.

It may not be an exaggeration, if I say that the eMagazine is making the flag of ICSI, Mysore fly high.

Wishing to see many more issues of the eMagazine, Keep it up!





**CS Anshuman A. S.**  
**Past Chairman, ICSI Mysore Chapter**

The journey of more than 12 years of the eMagazine of Mysore Chapter is amazing. What was a single page communication to Mysore members has become a veritable warehouse of knowledge for professionals across India.

The eMagazine, named as 'eMagazine' in 100th Edition, for the busy professional, is a quick guide for updating, but for the young, it opens up a window to showcase their talent.

The archives trace the development of the corporate world for the researchers, but for people who have been in the thick of the activities of the Chapter, it is a nostalgic drive down the memory lane.

The eMagazine of Mysore Chapter reaches us with a regularity which is unbelievable. It speaks, in itself, the dedication and professionalism of the editorial team.

On this auspicious occasion of release of 150th edition, Kudos to each member of the team which makes the eMagazine come to my mailbox!!!



**CS K. Sarina Chouta Harish**  
**Past Chairperson, ICSI Mysore Chapter**

Greetings from the Editors' Desk to all our readers!

You have been an inspiration to us, at the Editorial team, to hit the 150th milestone. It was CS H M Dattatri's brainchild to start the Mysore Chapter eMagazine "The New Horizon" in December 2003. It was a single editor single page publication for over two years, and meant for the members of the Mysore Chapter with a readership of 12.

To some of the senior members, who were not known to access e-mails regularly, there were efforts to reach the magazine through physical editions in the initial years until it was totally digitized. Despite the professional commitments of the editorial members, we have barely missed the self imposed release date of 15<sup>th</sup> each month. We hope you have enjoyed reading, as much as we have enjoyed bringing it forth, the articles and write ups of varied professional interests contributed by the Authors.

Reaching out to a 35,000+ readership over the last twelve years, the Mysore E magazine has surely stood the test of time. I must confess that my association with this journal over the last 10 years has been a phenomenal journey, giving me profound professional contentment and is a contribution to my alma mater 'The Institute of Company Secretaries of India'.

At some point, passing the baton would be essential to maintain the length of the race!



**CS Sunil Kumar B.G.**  
**Past Chairman, ICSI Mysore Chapter**

The Mysore Chapter has made a mark not only at a regional level but also at the national level, full credit to the office bearers of the Chapter and the students & their parents then and now.

In this message, I would like to recall the efforts of CS Anshuman A.S., his untiring efforts made the Chapter reach the next level and because of his efforts the Chapter could get its own building.

Specifically to talk about the Chapter Magazine and the CSMysore group, the credit should go to CS Dattatri H.M. & his team. Every 15th of the month releasing the Magazine without fail which in itself is a big achievement, every edition has been beautifully designed and the selection of topics and presenting in readable manner is not an easy job, full credit to the Editorial team then and now.

I wish all success to the Editorial Team to keep up the momentum and to reach the Chapter news letter to newer heights."



**Ajay Madaiah B.B.**  
**Past Chairman, ICSI Mysore Chapter**

This is a very special occasion for having reached its 150th edition of e-magazine, it is a proud moment to rejoice and celebrate! It also proves the passion and dedication of the editorial team and constant support of its readers across India!!

Beginning its journey in December 2003 this monthly communication of Mysore Chapter of ICSI has been growing and improving in all dimensions. It has evolved itself continuously in its contents, quality, reach, topics and design month on month and from e news letter it has reached to be called as e magazine.

This magazine has been a forum to share thoughts, knowledge and current developments in the corporate affairs amongst students, members and other professional.

I feel happy to be part of this team and acknowledge their effort, enthusiasm and the commitment of the members to bring out the editions each time within 15th of every Month. I am sure going forward it will achieve newer heights and continue to contribute towards growth of the profession.



# The Journey....

Dear Readers,

It is a moment of great pride, pleasure and contentment that we could traverse a learning journey of 150 months together! We are marking this occasion with the release of the 150th edition of the eMagazine from ICSI Mysore Chapter. CS (Dr.) Shyam Agrawal, Vice President of the ICSI honoured the Chapter and readers by releasing this mega edition on 09th July 2016 in the Chapter premises at Mysore.

We have touched the lives of over 35000 professionals across the Country, starting from a miniscule number of 12 readers!

A single page communication has metamorphosed into:

- A magazine with variety of contents of professional importance;
- Forum for sharing opinions, experiences and knowledge;
- School for learning written communication – many of our friends could shed their inhibition and bring forth their literary best;
- Inspiration for replication at other Chapters, corporate and professional entities;
- Inspiration for conducting activities at various Chapters and other locations;
- A Networking media

We were able to achieve all of these,

- without cutting a single tree! That's the power of 'e Communications';
- by constantly ensuring ease of reading and responding
- without compromising on the quality or presentation and
- by ensuring ease of archiving and referring as and when required

## Growing as such was a thrilling journey! An incredible journey!

Our initial efforts needed a lot of push. We should recall here the strong support extended by CS C.K. Sabareeshan, the then Chairman of the Mysore Chapter.

### Snapshot of the history of eMagazine:

- The Journey thus began with a single member eNewsletter team of CS Dattatri H M. in December 2003, with the title '**The New Horizon**'. The first three editions had single page.
- From June 2004 (7th edition), title changed to '**Newsletter**'. Further titled as '**eNewsletter**' from 70th edition in Nov'2009. Renamed as '**eMagazine**' from **100th edition** released on 15th May 2012.





- eMagazine is reaching professionals since last **152 months**, which includes two bi-monthly editions released in **Feb-Mar'2007** and **Feb-Mar'2008**.
- In over last twelve and half years, eMagazine had **ELEVEN editors** so far, apart from support team members, columnists and authors from all across the country & abroad who have immensely contributed to the growth of eMagazine.
- Many of the team members have owned and maintained columns for years before joining core team as EDITORS and have continued their support thereafter, even not being on editorial team. Table with details of Editors since Dec'2003 are as below who formed a 'team' to take the initiative to newer heights!



**CS Dattatri H.M.**  
Tenure  
Dec'2003 - Jul'2016  
Editions 1 to 150



**CS Sarina C.H.**  
Tenure  
Feb'2006 - Jul'2016  
Editions 27 to 150



**CS Omkar Gayatri**  
Tenure  
Aug'2007 - Jul'2016  
Editions 44 to 150

**CS Rashmi M.R.**  
Tenure  
Apr'2009 - Jul'2014  
Editions 63 to 126



**CS Abhishek Bharadwaj A.B.**  
Tenure  
Jun'2012 - Jul'2016  
Editions 101 to 150

**CS Ajay Madaiah B.B.**  
Tenure  
Jan'2015 - Jul'2016  
Editions 132 to 150





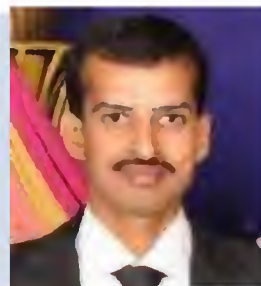
**CS Vijay Shyam Acharya**  
Tenure  
Jan'2015 - Jul'2016  
Editions 132 to 150



**CS Madhur N. Agrawal**  
Tenure  
Jan'2015 - Jul'2016  
Editions 132 to 150



**CS Kasturi S.**  
Tenure  
Feb'2006 - Jan'2007  
Editions 27 to 38



**CS Ravishankar Kandhi**  
Tenure  
Jan'2015 - Jun'2015  
Editions 132 to 137



**CS Phani Datta D.N.**  
Tenure  
Apr'2016 – Jul'2016  
Editions 147 to 150



- Three special editions of the eMagazine with all columns and articles around one theme/subject were released in March 2008, October 2008 and March 2009 on topic 'Environment', 'Health' and 'Safety' respectively.
- The eMagazine has inspired professionals & students with interviews covering life lessons of CS from Mysore and other parts of India. Following are the personalities who gave us an interview (names are with prevalent designations):

Distinguished Personalities	Edition
<b>CS C.K. Sabareeshan</b> , B.Sc., ACA & ACS CS & CFO, Automotive Axles Ltd, Mysuru	58 – Nov'2008
<b>CS M.C. Bhansali</b> , B.Com. & FCS, Practicing Company Secretary, Mysuru	59 – Dec'2008
<b>CS Pradeep Mehta</b> , B.Com., LLB, ACA & ACS, MD, CFO & CS, AT&S India, Nanjangud	60 – Jan'2009
<b>CS D.D. Bhat</b> , MA, LLB & FCS, GM – Legal & Commercial, JK Tyres Ltd, Mysuru	61 – Feb'2009
<b>CS Gopalakrishna Hegde</b> , ACA & ACS, Director (Fin) & Secretary, Trident Powercraft Pvt Ltd, Bengaluru	62 – Mar'2009



**Interaction with**

**Star Studded Gala release of editions:**

- CS Preeti Malhotra, President ICSI year 2007 Releasing 48th edition of the Newsletter
- CS Anil Murarka, President ICSI year 2011 Released the Flash Bulletin of the Newsletter on the occasion of inauguration of the new premises for the Mysore Chapter



- CS (Dr.) Shyam Agrawal, Vice President of the ICSI year 2016 released the 150<sup>th</sup> edition of the Newsletter

We are grateful to our professional friends for contributing their time, knowledge and expertise in the form of articles to the eNewsletter, making it absolutely useful to the readers.

Landmark Centenary edition of the eMagazine was released on 15th May 2012 with 25 articles on topic of high professional relevance among other columns bundled in 57 pages!

- Distinguished authors in our earlier issues include:
  1. **CS R. BalaKrishnan**, the then Company Secretary, HITS Africa Ltd., Kingdom of Bahrain (70th edition, Nov'2009).
  2. **Mr. Lokesh V.** currently Managing Director of Innomantra Consulting Private Limited, Bengaluru has authored many articles on IPR from Sep'2007 to Nov'2009 for the eMagazine.
  3. Youngest CA, CS, CWA **Mr. Amar Kakaria** ('Limca Book of National Records') from Pune. He not only authored series of articles but also inspired many others to write in the eMagazine.
  4. **Mr. Amitkumar Hegde**, MCA, currently with Microsoft ,USA, coined the idea to initiate new column 'IT Tools and Techniques' in Oct'2007 and introduced several useful software, tools & techniques which makes the day-to-day office work easier..
  5. **Mr. B. Jagadeesh**, the then Director-Corporate HR, Essilor India Pvt. Ltd was running a column on HR issues.
  6. **Ms. Nitza Agrait Vilá**, Commercial Legal Lead, Microsoft India has written series of articles on 'Cloud Computing' as a Tool to Enable and Enhance Compliance (Jan'2016 to Mar'2016 editions).





7. **Mr. Sharath Mahendra Kumar**, B.Com, MBA, LLB, MPhil, PGDMM, (ACS, LLM), Bengaluru has already authored 32 articles on Industrial and Employment laws and count is on.

Hope you have heard the story ‘When did you sharpen your axe recently?’ (Story narrated below after the editorial)

In a fast paced life, every professional is running out of time to know more. Many a time, we do not take the time out for “sharpening our axe” – that is the knowledge quotient. The eMagazine provides you support in “Sharpening” your axe i.e. knowledge, information and wisdom.

The Chapter has continued this initiative purely with an intellectual intent and not with a commercial intent. It can succeed only with the active participation from you – learned professionals!

The present team is now passing on the baton to CS Phani Datta D.N. to lead the editorial team. We wish the Best in taking this to higher levels!

## Let's **grow** together! Let's **glow** together!

For the Editorial Team

**CS Dattatri H. M.**  
Chief Editor



### *The story mentioned in the editorial goes as follows:*

Once upon a time, a very strong woodcutter asked for a job in a timber merchant and he got it. The pay was really good and so was the work condition. For those reasons, the woodcutter was determined to do his best.

His boss gave him an axe and showed him the area where he supposed to work.

The first day, the woodcutter brought 18 trees.

“Congratulations,” the boss said, “Go on that way!”

Very motivated by the boss words, the woodcutter tried harder the next day, but he could only bring 15 trees. The third day he tried even harder, but he could only bring 10 trees. Day after day he was bringing less and less trees.

“I must be losing my strength”, the woodcutter thought. He went to the boss and apologized, saying that he could not understand what was going on.

“When was the last time you sharpened your axe?” the boss asked.

“Sharpen? I had no time to sharpen my axe. I have been very busy trying to cut trees...”

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**"If I had six hours to chop down a tree, I'd spend the first four hours sharpening the axe."**

- **Abraham Lincoln**

# Rendezvous with India's CS No. 1



**CS R. Narayanaswami**, ACS, FCA, ACMA, BGL, DISA(ICAI)  
[rnswami44@gmail.com](mailto:rnswami44@gmail.com)

**Sir, you are the FIRST member of our ICSI with ACS Membership No. 1 and you have completed CS course in 1968. Could you please share with our readers your Career Progression?**

I started my practice in early 1968 as Chartered Accountant and simultaneously qualified as a Company Secretary. CS course and training helped me drafting and advising the clients on different procedural aspects of Company law.

After practicing for twelve years, I went overseas on contract service for nine years and worked in various capacities, handling numerous assignments including Finance, HR, Internal Audit, Secretarial and Taxation. On my return, I worked as a Finance Director and Company Secretary in a deemed Public Company for 3 years in Chennai.

Again I went on overseas contract as Group Finance Director for 8 Companies operating in different fields like Plantation & Agriculture, Carriage & Freight forwarding, Travel, Packaging, Manufacturing, etc. I successfully completed my assignment and returned to Chennai after three years and assumed my role as Group Finance Director & Company Secretary and subsequently continued as Adviser before my retirement recently.

**Please tell us your views about how CS profession has grown over the years.**

Initially when we started our career in 1960's, opportunity for CS was limited. However, growth of CS profession is tremendous especially in recent years. Scope for CS in present corporate world is admirable. Now, the opportunities for CS are plenty, that too challenging not just in one area but in multiple facets which demands expertise, practical knowledge and acumen.

**What is your advice to the new entrants in the profession to shape their career better?**

**What is 'Success' in your view and what do you attribute your Success to?**

Success is the satisfaction we get at the end of our life that we have contributed something for the **upliftment of the society and the environment** within our limitations.

**Truth, Honesty, Hard work and Grace of God** are the secrets of my success.

After qualification, it is your turn to prove yourself worthy of multi-tasking and precisely updating your knowledge and skill sets with confidence. At any stage of the career, you should **not resort to any sort of shortcuts** to satisfy anyone. You should **be diligent, true, honest and resourceful**. Wherever and whenever possible, as you grow, try to build a good team of professionals.

### **What are your thoughts on the Companies Act, 2013, governance and compliance trends of 21st Century?**

Many good changes are brought in the Companies Act, 2013 like OPC, codification of duties of directors, CSR, reporting of fraud, rotation of auditors etc. But unfortunately, the new Act has **NOT SIMPLIFIED** the company law, on the other hand, added more complexities which could have been avoided.

### **What are your interests?**

Of course 'reading' and visiting historical places of interest.

### **Who is your role model and what inspired you in him/her?**

The Legend **Shri. N.A. Palkhivala** whose expertise was not only in Law but in other fields as well. More than this, he was a **HUMANITARIAN** with high principles in life and a **great PHILANTHROPIST**.



## **Must Read Links...**

### **12 Ways to Improve Work Life Balance Beginning Today**

<http://www.forbes.com/sites/davidkwilliams/2016/07/06/12-ways-to-improve-work-life-balance-beginning-today/#d3adb5c38eda>

### **Too busy to exercise or even to go on a holiday? Work-life balance a struggle? Re-boot!**

<https://www.linkedin.com/pulse/too-busy-exercise-even-go-holiday-work-life-balance-struggle-kumar?trk=hp-feed-article-title-like>

### **25 Years of Learning and Laughing with Warren Buffett by Bill Gates**

<https://www.linkedin.com/pulse/25-years-learning-laughing-warren-buffett-bill-gates?trk=hp-feed-article-title-like>

### **Benefits of reading...**

"I find television very educating. Every time somebody turns on the set, I go into the other room and read a book." - Groucho Marx

<https://www.linkedin.com/pulse/all-great-readers-leaders-vivek-nath?trk=hp-feed-article-title-like>



# Chapter Activities – June 2016

## PCS DAY CELEBRATIONS

The Chapter organised PCS Day on 15th June 2016 between 4.00 pm to 7.00 pm at the Chapter premises. Members and students participated in the celebrations.



The Chairman of the Chapter CS Bhansali M.C. welcomed the members and highlighted the importance of a Company Secretary in the present corporate environment and the role of Practising Company Secretary. The Secretary of the Chapter CS Pracheta M. made a presentation on the Practising Company Secretary shared by the Institute. Later, CS Pracheta M. moderated the open house session on the Companies Amendment Bill, 2016. Each clause of the bill was discussed in detail. The members and students participated in the discussion actively. The celebrations were concluded by cutting of the cake, followed by high tea.

## FIRST BATCH OF 3 DAYS E-GOVERNANCE PROGRAM

ICSI-Mysore Chapter has conducted first batch of 3 Days eGovernance Program on 18<sup>th</sup> May, 2016 to 20<sup>th</sup> May, 2016 at Chapter premises. The 3 Days program was conducted by various faculties with related experience in eGovernance field. The 3 days eGovernance was attended by 10 students.

## FIRST BATCH OF 5 DAYS' SKILL DEVELOPMENT PROGRAM

ICSI-Mysore Chapter has conducted first batch of 5 Days' Skill Development Program from 27<sup>th</sup> June, 2016 to 01<sup>st</sup> July, 2016 at Chapter premises, which was conducted by faculties with related experience in the field. The Program was attended by 10 students.

## YOGA DAY CELEBRATIONS



On 19th June 2016, ICSI-Mysore Chapter jointly with Jain Milan Palace City arranged a preliminary session for the Yoga Day in Chapter Premises. Ms. Ratna Rao and her colleagues from Patanjali Yoga Samithi demonstrated the International Day Common yoga protocol to the Chapter Members which are to be performed on the International Yoga Day. The trainer urged the participants to love their own body and keep on practising yoga to keep oneself in good health and maintain a stress free living.



## Secretarial Auditor's Duty to Report Frauds



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### Statutory provision

Section 143(12) of the Companies Act 2013 ('the Act') casts a new duty on secretarial auditor (besides financial and cost auditor). Section 143(12), as amended by the Companies (Amendment) Act 2015, reads as follows:

“(12) Notwithstanding anything contained in this section, if an auditor of a company in the course of the performance of his duties as auditor, has reason to believe that an offence of fraud involving such amount or amounts as may be prescribed, is being or has been committed in the company by its officers or employees, the auditor shall report the matter to the Central Government within such time and in such manner as may be prescribed.

Provided that in case of a fraud involving lesser than the specified amount, the auditor shall report the matter to the audit committee constituted under section 177 or to the Board in other cases within such time and in such manner as may be prescribed:

Provided further that the companies, whose auditors have reported frauds under this sub-section to the audit committee or the Board but not reported to the Central Government, shall disclose the details about such frauds in the Board's report in such manner as may be prescribed.”

According to s. 143(13), “No duty to which an auditor of a company may be subject to shall be regarded as having been contravened by reason of his reporting the matter referred to in subsection (12) if it is done in good faith.”

To put it in plain language, what subsection (13) seeks to provide is that there will be no contravention of the auditor's duty towards the company if he reports a fraud in terms of s. 143. This provision seeks to protect the auditor from a possible breach of duty due to reporting of a fraud under this section. .

Subsection (15) makes an auditor, cost auditor or secretarial auditor liable for the punishment of fine of a minimum of one lakh rupees and a maximum of twenty-five lakh rupees, for non-compliance of subsection (12).

## Reporting of fraud not to be part of Secretarial Audit Report

It should be noted that the reporting of fraud required under s. 143 is not to be part of the Secretarial Audit Report in the form MR-3 since there is no such requirement and we cannot read it in the statutory provision. However, the secretarial auditor must report in the Secretarial Audit Report a non-compliance with any provision of the Companies Act if the fraud committed results into such non-compliance.



## Conditions to be satisfied

According to subsection (12) of s. 143, if the auditor has suspects, in the course of the performance of his duties as auditor, and forms a belief based on a reason, he must report it in the manner set out in subsection (12) and prescribed under rules made by the Central Government. The reporting of a fraud to the Central Government is required if it involves an amount in excess of the prescribed amount. A fraud of an amount less than the prescribed amount has to be reported to the audit committee of the company.

The following conditions must be fulfilled to attract subsection (2) requiring the auditor to report the matter to the Central Government within the time and in the prescribed manner:

- a fraud has been committed by any officer or employee of the company;
- the fraud involves the prescribed amount;
- there was a reason for the auditor to believe that a fraud had been committed in the company;
- such belief occurred to the auditor in the course of the performance of his duties;

If the fraud involves a lesser amount than the prescribed amount, the auditor must report it to the audit committee constituted under s. 177 of the Act or to the Board in other cases within the prescribed time and in the prescribed manner. If the auditor has reported a fraud under this sub-section to the audit committee or the Board but not reported to the Central Government, it must disclose the details about such fraud in the Board's Report in such manner as may be prescribed.

## Punishment for failure to report

Not reporting a fraud when required to be reported is a separate offence punishable under s. 143(15) for which an auditor (or cost or secretarial auditor) not reporting it would be liable, if the conditions specified in s. 143(12) are satisfied. In this case as well, conviction of the auditor on a prosecution under s. 439 by a criminal court after a trial will be a must and a mere failure to report by the auditor would not suffice to make the auditor liable for punishment under s. 143(15). When the auditor is prosecuted for failure to report, in the trial, the burden of proof will be on the prosecution to prove that there had occurred a fraud and yet the auditor failed to report it.

## Punishment for fraud

A fraud requiring reporting under subsection (12) would be an offence so far as the persons committing a fraud are concerned (officers and employees of a company), because, if proved, it is punishable on conviction in criminal proceedings under s. 447 of the Act, according to which any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud.

To punish a person under s. 447, prosecution under s. 439 and conviction by a criminal court after a trial will be a must and a mere reporting by the auditor would not suffice. In other words, reporting by the auditor under s. 143(12) would not make an officer or employee liable for punishment under s. 447 and it will require a criminal trial



on a complaint under s. 447 by a person authorised under s. 439(2). Under s. 439, a court can take cognizance of any offence under this Act which is alleged to have been committed by any company or any officer thereof, only on the complaint in writing filed in a criminal court by the Registrar, a shareholder of the company, or a person authorised by the Central Government in that behalf. It is a well settled principle that a fraud must be alleged and proved.

In the context of valuation of shares for a scheme of amalgamation, it was held that if the share exchange ratio in a scheme of amalgamation of companies has been fixed by an experienced and reputed firm of chartered accountants, in the absence of any charge of fraud against them the court will accept such valuation and ratio of exchange. A mere allegation of fraud is not enough, it must be a proper charge of fraud with full particulars. Only if the court finds that the scheme is fraudulent or unreasonable, the court would proceed not to sanction the scheme. The onus lies heavily on those who oppose the sanction of the Scheme to show that the scheme is unfair, unreasonable or fraudulent. — *Kusum Products Ltd. In re* (1999) 98 Comp Cas 10: (2000) 36 CLA 29 (Cal).

## Which frauds require reporting?

The words “in the company by its officers or employees” indicate that a fraud to be reported must have taken place in the company and it must have been committed by an officer or employee of the company. While section 2(59) of the Act provides an inclusive definition of the term “officer”, the term “employee” is not defined in the Act and hence must be taken in its ordinary sense, namely a person in the employment of the company.

Section 2(60) of the Act gives the definition of "officer who is in default" and seeks to bring in its fold “in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer”. This, by implication and inference, brings registrar and share transfer agent within the ambit of the inclusive definition of “officer”. Accordingly, a fraud committed by the registrar and registrar and share transfer agent of the company is its officer of the company and hence a fraud committed by registrar and share transfer agent within the purview of section 143(12).

## Reason to believe

One of the essential conditions for the applicability of s. 143(12) is that the auditor has reason to believe that an offence of fraud involving the prescribed amount is being or has been committed in the company by its officer or employee. A person is said to have reason to believe a thing if he has sufficient cause to believe that thing. Section 26, IPC explains the meaning of the words "reason to believe" thus. "Reason to believe". A person is said to have 'reason to believe' a thing, if he has sufficient cause to believe that thing but not otherwise".

The expression 'reason to believe' has been interpreted by the Supreme Court to mean that even though formation of opinion may be subjective but it must be based on material on the record. It cannot be arbitrary, capricious or whimsical. [*N. Nagendra Rao and Co. v. State of A.P.* AIR 1994 SC 2663]

The expression "reason to believe" does not mean a purely subjective satisfaction. The belief must be held in good faith: it cannot be merely a pretence. The reasons for the belief must be have a rational connection or relevant bearing to the formation of the belief and are n extraneous or irrelevant. [*S. Narayanappa v. Commissioner of Income-tax, Bangalore* AIR 1967 SC 523]

Shah, J. as a member of the Constitution Bench in *Calcutta Discount Co. v. I. T.O.*, AIR 1961 SC 372 observed that, the expression "reason to believe postulates belief and the existence of reasons for that belief. The belief must be held in good faith: it cannot be merely a pretence. The expression does not mean a purely subjective satisfaction of the Income Tax Officer: the form of decision as to the existence of reasons and the belief is not in the mind of the Income Tax Officer. If it be asserted that the Income Tax Officer had reason to believe that income had been under-assessed by reason of failure to disclose fully and truly the facts material for assessment, the existence of the belief and the reasons for the belief, but not the sufficiency of the reasons, will be justifiable. The expression therefore predicates that the Income tax Officer holds the belief induced by the existence of reasons for holding such belief. It contemplates existence of reasons on which the belief is founded, and not merely a belief in the existence of reasons inducing the belief; in other words, the Income Tax Officer must on

information at his disposal believe that income has been under-assessed by reason of failure fully and truly to disclose all material facts necessary for assessment. Such a belief may not be based on mere suspicion: it must be founded upon information.

## Definition of ‘fraud’

While an auditor is under the statutory obligation to report an offence of fraud under s. 143, the section does not define the expression ‘offence of fraud’ or the term ‘fraud’, nor is there a definition in s. 2 of the Act. Section 447 defines ‘fraud’ as follows:

"fraud" in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss."

This definition has not, however, been made applicable for the purposes of s. 143. Two principles of interpretation are notable in this regard: (1) An expression not defined in the statute cannot be imported from an earlier statute.<sup>1</sup> It is always dangerous to seek to construe one statute by reference to the words of another.<sup>2</sup> (2) When the Legislature uses the same word in different parts of a statute, the presumption is that that word has been used in the same sense, unless displaced by the context.<sup>3</sup>

It was held by the Supreme Court that when the Legislature uses the same word in different parts of a statute, the presumption is that that word has been used in the same sense, unless displaced by the context.<sup>4</sup> In that case, the Supreme Court was dealing with the word ‘relative’ used but not defined in s. 304B of the IPC. The Supreme Court referred to its interpretation in another decision of the Supreme Court in relation to s. 498A of the IPC which also uses but does not define the word ‘relative’.

In *Jarnail Singh v Bakshi Singh* [1960] 30 Comp Cas 192 (Punjab), with respect to the definition of ‘private company’ in section 2(1)(13) of the Indian Companies Act 1913, which provided, inter alia, that “where two or more persons hold one or more shares in a company jointly they shall for the purposes of this definition be treated as a single member.” The court held: “In the proviso the words “for the purposes of this definition” are significant. All that they convey is that two or more persons holding one or more shares jointly in a private company shall be treated as a single member not for all purposes but “for the purposes of the definition” only.” The court pointed out that the proviso makes it clear that two or more persons holding shares in a company jointly are not to be considered as a single member for all purposes.

It should be noted that the definition of ‘fraud’ given in s 447 is limited to that section only, since the Explanation appended to s. 447 section specifically states in that it is ‘For the purposes of this section’. Therefore, that definition does not seem to be relevant for the purpose of s. 143. This is open to interpretational debate and judicial scrutiny. Therefore, the principle, that where an Act does not define a word used in the Act, the legislature must be taken to have used that word in its ordinary, dictionary meaning,<sup>5</sup> should apply.

## General meaning of ‘fraud’

The ordinary meaning of ‘fraud’ is any deception, trickery, or humbug; the crime of deceiving somebody in order to get money or things illegally; intentional perversion of truth in order to induce another to part with something of value or to surrender a legal right; an act of deceiving or misrepresenting; wrongful or criminal deception intended to result in financial or personal gain; dishonestly making a false (untrue or misleading) representation with a view to gain or with intent to cause loss.



<sup>1</sup> *Union of India v R.C. Jain* AIR 1981 SC 951; 1981 (2) SCC 308; 1981(2) SCR 854; 1981 (1) Scale 320; 1981 (19) DLT 305

<sup>2</sup> *Nippon Yusen Kaisha v Ramjiben Serowgee* AIR 1938 OC 152.

<sup>3</sup> *State of Punjab v GurmitSingh* 2014 AIR SCW 3800.

<sup>4</sup> *State of Punjab v GurmitSingh* 2014 AIR SCW 3800.

<sup>5</sup> *Union of India v Delhi Cloth & General Mills Ltd* AIR 1963 SC 791; *South Bihar Sugar Mills Ltd v Union of India* AIR 1968 SC 922.

A fraud is intentional deception resulting in injury to another. Fraud usually consists of a misrepresentation, concealment or nondisclosure of a material fact, or at least misleading conduct, devices or contrivance. [Barron's Dictionary of Legal Terms]

Section 2(26) of the IPC states that a person is said to a thing fraudulently if he does that with intent to defraud but not otherwise.

Section 17 of the India Contract Act 1872 defines "Fraud" as : "Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto of his agent, or to induce him to enter into the contract:-

- (1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
- (2) the active concealment of a fact by one having knowledge or belief of the fact;
- (3) a promise made without any intention of performing it;
- (4) any other act fitted to deceive;
- (5) any such act or omission as the law specially declares to be fraudulent.

**Explanation.**-Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech."

Fraud is a misrepresentation made recklessly without belief in its truth to induce another person to act. It is a tort arising from a knowing misrepresentation, concealment of material fact, or reckless misrepresentation made to induce another to act to his or her detriment.

The Black's Legal Dictionary defines "fraud" as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right; a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury.

It is an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another. -Webster's Third New International Dictionary, page 904.

In *S. P. Changalvaraya Naidu v. Jagannath* AIR 1994 SC 853;[1994] 1 SCC 1, the Supreme Court explained 'fraud' as follows: "A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage."

"Fraud" means an intention to deceive; whether it is from any expectation of advantage to the party himself or from the ill-will towards the other is immaterial. The expression "fraud" involves two elements, deceit and injury to the person deceived. Injury is something other than economic loss, that is, deprivation of property, whether movable or immovable or of money and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver, will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied. [Dr. Vimla v. Delhi Administration [1963] 33 Comp Cas 279; and *Indian Bank v. Satyam Fibres (India) Pvt. Ltd.* [1998] 92 Comp Cas 149; [1996] 5 SCC 550].

Fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. It is also well-settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations, which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad. An act of fraud on the court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the



transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including *res judicata*. [*Ram Chandra Singh v. Savitri Devi* [2003] 8 SCC 319; *Commissioner of Customs (Preventive) v. Aafloat Textiles (I) P. Ltd.* AIR 2009 SC (Supp) 2320]

## Applicability of s. 143 to secretarial auditor

Subsection (14) of s. 143 states that the provisions of this section shall *mutatis mutandis* apply to— (a) the cost accountant in practice conducting cost audit under section 148; or (b) the company secretary in practice conducting secretarial audit under section 204.

The Latin expression *mutatis mutandis* means with necessary changes or the necessary changes having been made; in the same manner with appropriate changes for the context; (used when comparing two or more cases or situations) making necessary alterations while not affecting the main point at issue.

This provision is not easy to apply in the case of secretarial audit, inasmuch as s. 143 has been specifically designed in relation to financial audit and secretarial audit is not identical with financial audit in most respects and hence it is absurd to say that the provisions of section 143 would *mutatis mutandis* apply to secretarial audit.

Nonetheless, as subsection (12) mandates, if a secretarial auditor of a company in the course of the performance of his duties as secretarial auditor, has reason to believe that an offence of fraud involving such amount or amounts as may be prescribed, is being or has been committed in the company by its officers or employees, the auditor shall report the matter in the manner specified in by the Central Government by way of rules.

However, this requirement has little applicability in the case of secretarial audit. As noted before, the reporting requirement under subsection (12) cannot apply unless the conditions specified in that subsection are satisfied and one of the essential conditions is that the fraud involves the prescribed amount. Subsection (12) expressly states: *fraud involving such amount or amounts as may be prescribed*. In other words, no reporting of fraud by the secretarial auditor is necessary, unless a fraud committed by an officer or employee involves a sum of money and it can be measured in monetary terms.

For example, if a director is paid any remuneration (say sitting fees) without attending a board meeting, it would be necessary to report this as an instance of fraud involving prescribed amount. But, on the contrary, if a company has filed any form or return with the Registrar of Companies in accordance with any provision of the Act, it is impossible to say that it is a fraud involving any sum of money.

## Prescribed amounts and manner of reporting

The Ministry of Corporate Affairs, by its Notification G.S.R. 972(E) dated 14 December 2015, amended rule 13 of the Companies (Audit and Auditors) Rules, 2014. Analysis of the rule is presented below:

(1) Under sub-rule (1), a fraud must be reported to the Central Government if it involves or is expected to involve individually an amount of rupees one crore or above.

(2) The reporting will be done in the manner stated in sub-rule (2)

(3) Under sub-rule (3), a fraud must be reported to the Audit Committee/Board if it involves any amount being less than one crore rupees and it must be reported immediately but not later than two days of the auditor acquiring knowledge of the fraud and the reporting must be done in the manner stated in sub-rule (3).

(4) In the case of fraud involving less than one crore rupees, the details of the fraud and reported to the Audit Committee or the Board under sub-rule (3), must be disclosed in the Board's Report for the financial year in which the fraud was reported.

(5) The provisions of rule 13 shall apply, *mutatis mutandis*, to the cost auditor appointed under s. 148 and to the secretarial auditor appointed under s. 204.

# Straight from the heart...

**A tête-à-tête with CS No. 6**



**CS G.V. Aiman**, B.Com, LLB, CS(London), ACS  
Advocate, High Court, Mumbai  
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***Sir, you are the 6th member of our ICSI with CS Membership No. 6. Our readers would love to hear about your journey as a student of CS and other courses.***

Prior to 1969, I had passed the examination of Company Secretaryship ('CS') conducted by the Corporation of Secretaries, London (now ICSA) securing highest marks in the World for Accounts paper with International Prize in Accounts award. Post which I have completed **CS in India in the year 1969** with Inter & Final having three subjects each for me. At that time there was no provision of any tuition or classes or teachings and we had to study on our own with the recommended books by the examining Authorities.

After completing CS examination, I underwent in total 6 months training, out of which 5-1/2 months in Tata Group of companies and half a month in ROC, Maharashtra, Mumbai. Training curriculum, among other things, included handling the share dealings in Bombay Stock Exchange of the entire Tata Group of Companies.

In the meantime, I pursued Bachelor's degree in Commerce from the Karnataka University, Dharwad. In the year 1974, I also passed LL.B. examination from the Bombay University.

## ***How the ICSI has evolved over the years?***

The matters relating to CS was originally handled by the Department of Company Affairs in the Ministry of Law, Justice and Company Affairs. Even our examinations were conducted by it with examiners being staff of the ROC. Subsequently, CS was handled by the Company Law Board when it was formed. Thereafter, the Institute was formed as a Company under Sec. 25 of the Companies Act, 1956 as a non-profit making Company. Even in that Company (Institute) my Membership No. was 22 as I had become member of the Institute at very early stage.

In the year 1980, pursuant to an Act of the Parliament, i.e. the Company Secretaries Act, 1980, the ICSI was formed, thereby, the profession of Company Secretary got a statutory recognition.