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# An Analysis of Recent Corporate Frauds in India and USA and their Nexus with Corporate Governance

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## ABSTRACT

*Corporate fraud not only tarnishes the country's image and business, but it also has serious consequences for stakeholders, the stock, the company's employees, investors, and shareholders. "Fraud" is defined under various laws in India and the USA, which includes intentional fraudulent activities, not in consonance with corporate governance principles. In recent years, the world has witnessed an exponential growth of businesses as the world economy opened and ease of doing business was given utmost priority by the legislative branch, which focused on more attractive laws to create business opportunities but forgot about the aftermaths of a fraud which could happen and had no laws to prevent it. This paper focuses on 4 cases, i.e., the Kingfisher Airlines, YES Bank fraud, the Bernie Madoff Ponzi Scheme, and the Theranos Scandal.*

*Corporate governance is a key component of how businesses operate. Poor corporate governance may lead to the demise of even the most profitable businesses. In India, The Satyam Scandal was the turning point in the Indian corporate governance regime. Various bodies like the SEBI have produced codes and rules on Corporate Governance from time to time, in addition to numerous acts and recommendations issued by various regulators. Meanwhile, in the USA, the Enron Scandal led to the "Sarbanes-Oxley Act," something that reflected shareholder protection from both a political and economic standpoint.*

*For a good corporate governance regime in a corporation, the board of directors must meet regularly, sustain control over the company, be clear about their duties and obligations, and keep track of risk. Scandals and fraud are more likely to arise when directors and top management are not forced to follow a certain governance code. A better compliance mechanism by regulatory bodies, as we can see, what we have currently is not sufficient. The focus should shift from only investor protection to all stakeholders' protections, and an exclusive Corporate Governance code should be implemented.*

**Keywords:** *Corporate Governance, Corporate Frauds, Bernie Madoff, Kingfisher Airlines, Yes Bank, Theranos Scandal*

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## I. INTRODUCTION

*"There is one and only one social responsibility of business - to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition without deception or fraud."*

By Milton Friedman, American Economist

Friedman's statement holds true about the duty of a business. A business, when it goes beyond its responsibility for unaccounted for-profits, deceives its stakeholders and harms the economy as well, resulting in corporate frauds.

Corporate fraud has become an unavoidable aspect of life for the average investor, posing a significant danger to the economy as a whole. Corporate fraud not only tarnishes the country's image and business but also has serious consequences for stakeholders, especially small investors. It affects the stock market, as well as the company's employees, investors, and shareholders. Moreover, similar adverse effects have been found in the current times with existing investors and act as a deterrent for potential foreign investors, whose involvement in a rising economy like India is critical.<sup>2</sup>

### *Defining Corporate Fraud*

#### *India*

According to Section 17 of the Indian Contract Act, "fraud" includes false claims, active concealment, promises made without the purpose to carry them out, any other deceptive act, and any act found fraudulent. To be considered a fraud, the contracting party, or any other person with his connivance, or his agent, must have committed such activities to entice him to engage in the agreement.<sup>3</sup>

Fraud is a criminal offense under Section 447 of the Indian Companies Act, 2013. Sections 406, 420, 465, 477-A and other sections of the Indian Penal Code (IPC) would generally be used in similar circumstances prior to the introduction of Section 447. However, given the complexity of corporate frauds, their magnitude, and the increased need to investigate and punish them more efficiently, a particular provision was considered to be necessary. The Act does not clearly define corporate fraud, but it does impose a penalty for it. In the explanation,

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<sup>2</sup> Student Company Secretary, *Unearthing Corporate Frauds – The Ever-Increasing Role and Scope for Governance Professional*, August 2021; [https://www.icsi.edu/media/webmodules/UNEARTHING\\_CORPORATE\\_FRAUDS.pdf](https://www.icsi.edu/media/webmodules/UNEARTHING_CORPORATE_FRAUDS.pdf)

<sup>3</sup> Rai, D. (2019). Fraud in Contracts- Section 17 of the Indian Contract Act. [online] iPleaders. Available at: <https://blog.iplayers.in/fraud-in-contracts-section-17-of-the-indian-contract-act/>.

there is a definition of the term "Fraud." Fraud is "in relation to affairs of a company or anybody 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."<sup>4</sup>

According to the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices in the Securities Market) Regulations, 2003, "fraud" refers to "any act, expression, omission, or concealment committed by an individual or any other individual with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any unlawful gain. or avoidance of any loss."

Fraud also includes, "A knowing distortion of the truth or concealing of material fact in order for another person to behave to his detriment is also considered fraud. A hint of a truth that is not true by someone who does not think it is true, an intentional concealing of a fact by someone who knows or believes it is true, a promise made with no intention of keeping it, a representation made in an irresponsible and negligent way whether true or untrue, any act or conduct that is expressly declared fraudulent by another legislation, deceitful behavior by a person denying another of informed consent or full involvement, a false statement made without reasonable grounds for thinking it to be true. The Act of a security issuer disseminating false information that impacts the security's market price, causing investors to be effectively deceived despite the fact that they did not depend on the statement or anything derived from it other than the market price."<sup>5</sup>

### **USA**

As per the FBI, Corporate Frauds include the following activities: "Falsification of financial information, False accounting entries and/or misrepresentations of financial condition; Fraudulent trades designed to inflate profits or hide losses; Illicit transactions designed to evade regulatory oversight. Self-dealing by corporate insiders, Insider trading (trading based on material, non-public information); Kickbacks; Misuse of corporate property for personal gain; Individual tax violations related to self-dealing. Fraud in connection with an otherwise legitimately operated mutual hedge fund Late trading; Certain market timing schemes; and

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<sup>4</sup> Section 447 of the Indian Companies Act, 2013

<sup>5</sup> Section 2(c) Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003

Falsification of net asset values."<sup>6</sup>

The corporate miss happenings discussed here are sometimes referred to as Scams, Failures, Frauds, Scandals, etc., and are sometimes used interchangeably, but there is a difference in the meaning of these words. Scams are a subset of fraud, which is a larger area of crime. Scams can be classified as a type of fraud. Scams are often less serious than fraud, which is a highly serious violation. Whereas A scam is a deceptive transaction, a scandal is an incident or occurrence that disgraces or harms the reputation of those concerned. All the concerned connotations are given to corporate frauds; they all represent failures on behalf of duty-bound stakeholders. Hence they may be used interchangeably, but the extent of failure and action of the person committing such failure determines whether it will be a scam, scandal, or fraud.

### ***History of Frauds in India and the USA***

Historically, India and the USA have seen time and again corporate frauds.

The Mundhra incident in Independent India was the first reported scam. Haridas Mundhra, an entrepreneur and stock trader, defrauded the LIC of Rs. 125 crores by selling bogus shares. Mr. Jawahar Lal Nehru established a one-person panel led by Justice Chagla to investigate. Haridas was found guilty and was sentenced to 22 years in jail. Apart from the aforementioned scam, India has seen a slew of politically motivated frauds since independence, including the Teja loan scandal (\$220 million), the 1965 Kalinga tubes scandal, the 1974 Maruti scandal, the 1971 Nagarwala scandal (\$6 million), the 1987 Bofors scandal, the 1985 Fodder scam (\$9.5 billion), and the 1981 Cement scam (\$300 million).

The major corporate frauds related to finances and the securities market began after the 1990s liberalization, globalization, and privatization, for example.-Lavalin The Kerala hydroelectric scam was a financial controversy involving a hydroelectric infrastructure contract between the Kerala Government and the Canadian corporation SNC-Lavalin in 1995, which allegedly resulted in a net loss of 3,745,000,000 rupees to the Indian exchequer.<sup>7</sup> "The Airbus scandal (1990): Indian Airline's signing of the Rs 2,000-crore deal with Airbus instead of Boeing caused a furor following the crash of an A-320 airliner. Harshad Mehta Securities scam (1992) where he manipulated banks and the stock market, pushing shares like ACC from Rs 500 to Rs 10,000. The stacked-up claims of the brokers were a staggering Rs 10,000 crore. Urea scam (1996), which was born out of a shortage of fertilizer in 1996, a clutch of businessmen in

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<sup>6</sup> FBI (2016). White-Collar Crime | Federal Bureau of Investigation. [online] Federal Bureau of Investigation. Available at: <https://www.fbi.gov/investigate/white-collar-crime>.

<sup>7</sup> [https://worddisk.com/wiki/SNC-Lavalin\\_Kerala\\_hydroelectric\\_scandal/](https://worddisk.com/wiki/SNC-Lavalin_Kerala_hydroelectric_scandal/)

connivance with top officials of the National Fertiliser Limited, fleeced the government of Rs 133 crore for the import of urea, which was never delivered. In Telecom fraud of 1996, Former minister of state for communication Sukh Ram was accused of causing a loss of Rs 1.6 crore by favoring a Hyderabad-based firm in the purchase of telecom equipment. Stock market scam of 2001 where Pentafour bull Ketan Parekh used UTI, Calcutta Stock Exchange, and his index K-10 to swindle investors. When the scam broke out, it wiped off over Rs 1 lakh crore of investors' market capital. Stamp paper forgery of 2003, Using lax regulation, unregulated trade, and old machines, A.R. Telgi forged stamps to defraud exchequer of Rs 30,000 crore."<sup>8</sup>

Scams were also detected in India's primary market during IPOs, which were investigated by SEBI beginning in 2003. These included the offerings of "Jet Airways, Sasken Communications, Suzlon Energy, Punj Lloyds, JP Hydro Power, NTPC, PVR Cinema, Shringar Cinema, and others." Similar violations were also discovered in the IDFC IPO when bogus applicants acquired almost 8% of the retail allotment through several Demat accounts.<sup>9</sup>

In recent years, scams like "The Satyam Computers Scam, Nirav Modi, The Punjab National Bank Fraud, Pacl India limited scam, NSEL case, Odisha industrial-land mortgage scam (₹52,000 crores), Odisha industrial-land mortgage scam (₹52,000 crores), PMC Bank scam DHFL scam and UPPCL employee provident fund (EPF) scandal, INX Media case against former Union Minister P. Chidambaram, IMA Ponzi scheme, D. K. Shivakumar money-laundering case, Cox&Kings scam, and IL&FS scam" have dwindled the wealth and trust of investors as there has been a violation of corporate governance principles, even basic ethics of doing a business just for making money.

***In the USA***, Major Corporate scandals include The salad oil scandal, also referred to as the soybean scandal, was a major corporate scandal in 1963 that caused over \$180 million (\$1.52 billion today), In Texaco scandal, the company was found to owe a debt of \$10.5 and went bankrupt., Long-Term Capital Management LP (LTCM) was a highly leveraged hedge fund that lost \$4.6 billion in less than 4 months in 1998 thanks to a combination of high leverage and exposure to the 1997 Asian financial crisis and the 1998 Russian financial crisis, which was bailed out in 1998 by a group of 14 banks in a deal brokered and put together by the US Federal Reserve. Other big financial scams include Pacific gas and Electric Company, Enron,

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<sup>8</sup> December 19, N.M., December 29, 2008 I.D., December 20, 2008UPDATED: and Ist, 2008 11:43 (n.d.). 10 scam, scandal and shame. [online] India Today. Available at: <https://www.indiatoday.in/magazine/economy/story/20081229-10-scam-scandal-and-shame-738544-2008-12-19> [Accessed 28 Nov. 2021].

<sup>9</sup> web.archive.org. (2010). IPO Scam: What, when, who and how? - Business - ibnlive. [online] Available at: <https://web.archive.org/web/20100629221505/http://ibnlive.in.com/news/ipo-scam-what-when-who-and-how/8980-7-single.html> [Accessed 28 Nov. 2021].

Kmart, WorldCom, Bayou Hedge Fund Group, Bear Stearns, IndyMac, Lehman Brothers, AIG, Washington Mutual, Bernie Madoff, Dynergy, Theranos, Ozy Media, and many more.

When we analyze the question, who commits the fraud? It can be any stakeholder involved in the business. Most of the scams do happen because of the overreaching interests of founders/owners to grow their businesses by any means possible. As a result, they end up cheating their investors and consumers alike. The aim might be growth, but the unethical route by overriding corporate governance principles lands them into big problems later on. This paper focuses on scams in airlines, banking, securities, and other investment market and medical technology sectors, i.e., Kingfisher Airlines, Yes bank, Bernie Madoff Ponzi Scheme, and the Theranos Scandal, respectively. The common link between them is that the founders committed the frauds. Though other stakeholders are also liable for actions like the key managerial persons, auditors, employees, etc., when we put the principal-agent connotation, their actions are subject to directions of the principle, the Founders.

In recent years, the world has witnessed an exponential growth of businesses as the world economy opened and ease of doing business was given utmost priority by the legislative branch, which focused on more attractive laws to create business opportunities but forgot about the aftermaths of a fraud which could happen and had no laws to prevent it. Even with multiple new regulations and laws in recent times, they have been found inefficient. In recent years, there have been multiple instances of corporate frauds with investors. Hence, a need to visit such frauds and determine the pecuniary interest of people involved in such frauds arises.

Though the above two Jurisdictions have tried to work hard after such high-level scams, they failed as their laws and policies did not stop new Corporate Frauds from happening.

## **II. A NEXUS OF CORPORATE FRAUDS AND CORPORATE GOVERNANCE**

Corporate governance is a key component of how businesses operate, and poor corporate governance may lead to the demise of even the most profitable businesses. Although there are a lot of regulatory bodies and laws that are being made to tackle this, all these laws are made with the main motive of protecting the rights and interests of affected stakeholders, mostly investors.<sup>10</sup>

As it's said, "Necessity is the mother of all Inventions," the development of the Corporate Governance regime is also based on the necessity to overcome frauds that affect global economies, investors, and consumers alike. Both the Jurisdictions discussed in this paper have

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<sup>10</sup> Diganth Raj Sehgal, *Ineffectiveness of corporate governance*, March 4, 2021, [https://blog.ipleaders.in/ineffectiveness-corporate-governance/#Cafe\\_Coffee\\_Day\\_Case](https://blog.ipleaders.in/ineffectiveness-corporate-governance/#Cafe_Coffee_Day_Case)

many safeguards and compliances to be met by Corporations, but frauds happen because the corporations willingly choose not to follow the law and ethical business practices.

### ***In India,***

The Satyam Scandal was the turning point in the Indian corporate governance regime. When this scandal came to light in 2009 till R. Raju was convicted in 2015, the government and authorities made a number of steps to improve corporate governance in India the meantime. The Confederation of Indian Industries established a task group in 2009, led by former cabinet secretary Naresh Chandra, to recommend improvements. The Ministry of Corporate Affairs produced Voluntary Guidelines for Corporate Governance in 2009, based on the task force's recommendations. The National Association of Software and Services Companies created a corporate governance and ethics committee. The Audit Committee recommended changes to audit committees, shareholder rights, and whistleblower policies. In 2015, SEBI framed the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR"), applicable to all listed companies, and provided for stringent guidelines relating to reporting/disclosure of material events and actual and suspected fraud. The SFIO under the new Companies Act has a statutory status and has recently also been conferred the power to arrest. The SFIO has been actively investigating cases relating to corporate fraud.<sup>11</sup>

The Benami Transaction (Prohibition) Act, 1988, The Foreign Exchange Management Act, 1999, The Securities and Exchange Board of India Act, 1992, The Companies Act, 2013, The Prevention of Money Laundering Act, 2002, The Information Technology Act, The Income-tax Act, 1961, The Indian Penal Code, 1860, Fugitive Economic Offenders (FEO) Act, etc. have extensive provisions to bring the fraudsters to justice. Various bodies like the SEBI have produced codes and rules on Corporate Governance from time to time, in addition to numerous acts and recommendations issued by various regulators. For example, the "Confederation of Indian Industries (CII)" published the Desirable Corporate Governance Code in 2009. The "Kumar Mangalam Birla Committee (2000)", which was set up by SEBI to recommend "the addition of a new article, Clause 49, in the Listing Agreement to encourage good corporate governance, brought the subject of corporate governance for listed firms to the frontline."<sup>12</sup>

Clause 49 is an extensive Corporate Governance toolkit for the listed companies to follow whose scope was widened post the Satyam Scandal to include provisions of Composition, role,

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<sup>11</sup> Moneycontrol. (n.d.). What Changed In The Legal Landscape Post Satyam Scam. [online] Available at: <https://www.moneycontrol.com/news/opinion/what-changed-in-the-legal-landscape-post-satyam-scam-2480623.html>.

<sup>12</sup> Deloitte, "Governance 101 All you need to know on corporate governance practices in India", <https://www2.deloitte.com/in/en/pages/risk/articles/governance-101.html>



remuneration, Code of Conduct of Board of Directors and Independent Directors, Risk Management, rights issues, Audit Committee and its Power and role, Various Disclosures like Related Party Transactions, Proceeds from public issues, Accounting Treatment, preferential issues, etc. It also provides for mechanisms on Management and its qualifications, Shareholders, compulsory reports on corporate governance, formation of various committees to regulate the corporate governance regime in a company.<sup>13</sup> But a question arises with the real implementation behind the Company doors.

**Meanwhile, In the USA,** Share Ownership, The Berle-Means Corporation-separation of ownership from control, Institutional Investors, pension funds that are heavily reliant on stock holdings, and the "Enron scandal" in 2001 which led to the "Sarbanes-Oxley Act," something that reflected shareholder protection from both a political and economic standpoint is certain aspects which are governed by law.<sup>14</sup> The states in the United States have mainly created their corporation law, whereas the federal government has primarily established securities legislation. The Federal Securities Law addresses a number of significant corporate governance concerns. "The Securities Act of 1933" regulates the public offering of securities by requiring full disclosure of the securities of firms being listed for sale. Securities trading is governed by the "Securities and Exchange Act of 1934 (the 1934 Act)".<sup>15</sup> As a result, the 1934 Act requires continuous disclosure of information to markets and investors, as well as broker, dealer, and a compulsory follow requirement of stock exchange regulation, as well as anti-fraud and anti-manipulation measures.<sup>16</sup>

The Securities and Exchange Commission (SEC), a government body charged with interpreting and enforcing federal securities law, was also formed under the 1934 Act. The SEC has a lot of discretion in developing its regulations since statutory authority is seldom very specific.<sup>17</sup> Since the regulations must be consistent with Congress's intent in passing the law that gave the SEC its jurisdiction, the SEC does not have infinite authority.<sup>18</sup>

The allocation of power in a company is meant to preserve shareholders' interests and operate the organization efficiently to provide an internal mechanism of corporate governance. Annual

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<sup>13</sup> SEBI Circular, *Corporate Governance in listed Companies – Clause 49 of the Listing Agreement*, SEBI/CFD/DIL/CG/1/2004/12/10October29, 2004

<sup>14</sup> Arthur Pinto, *An Overview of United States Corporate Governance in Publicly Traded Corporations*, Periodical: American Journal of Comparative Law, Issue: 2010,1 Page Number: 257-283

<sup>15</sup> The 1933 Securities Act and 1934 Securities Exchange Act.

<sup>16</sup> Marc I. Steinberg & William K. S. Wang, *INSIDER TRADING* (2d ed. 2008).

<sup>17</sup> Section 14(a) of Securities Exchange Act of 1934 contains a broad grant of authority to the SEC to regulate the solicitation of proxies "as necessary or appropriate in the public interest or for the protection of investors." 15 U.S.C. ? 78n

<sup>18</sup> 15 U.S.C. ? 78y (a) (1)

shareholder meetings, during which the directors are chosen, and other matters may be voted on are required by law.<sup>19 20</sup> State legislation normally needs board approval before shareholders can vote, while bylaw amendments can usually be accepted without board consent.<sup>21</sup> Courts have established a shareholder's right to vote on an issue even with no specific legislative permission allowing for a right of speech, thus preserving a key shareholder concept.<sup>22</sup> Shareholders can also assert their rights to information and a fair voting process under state corporation law.<sup>23</sup> Disclosure is a crucial component of the fiduciary duty and accountability standards as failures to adequately disclose relevant information may apply to voting and other messages to shareholders.<sup>24</sup>

A corporation's financial statements are the first information a prospective investor looks at. Financial statements and other essential information must be presented to investors and markets under federal securities regulations.<sup>25</sup> Independent public accountants must create the financial statements, and they are obliged to the investors to do their best to offer complete information and prevent fraud.<sup>26</sup>

The Securities and Exchange Commission (SEC) has the right to take enforcement action against those regulated by it, such as brokers. It has the authority to file civil lawsuits to defend and enforce securities laws and file criminal charges against those who break them. Many federal securities legislation, such as the proxy and tender offer requirements, do not clearly allow for a civil remedy for shareholders. In many cases, however, federal courts have recognized an implied private civil cause of action based on the notion that Congress enacted the Act to protect investors and empower them to litigate.<sup>27</sup>

India and the US, both Jurisdictions have extensive corporate governance systems in place; still, the corporations led by founders with high motivation to make sure their business flourish lose sight of ethics and become determined to do scams with investors and consumers of its

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<sup>19</sup> Arthur Pinto, *An Overview of United States Corporate Governance in Publicly Traded Corporations*, Periodical: American Journal of Comparative Law, Issue : 2010,1 Page Number : 257-283

<sup>20</sup> *Hoschett v. TSI International Software, Ltd.*, 683 A.2d 43 (Del. Ch. 1996),

<sup>21</sup> Shareholders try to enhance their power because they can act without prior board approval.

Lisa M. Fairfax, *Making the Corporation Safe for Shareholder Democracy*, 69 Ohio St. L.J. 53, 67-77 (2008)

<sup>22</sup> *Auer v. Dressel*, 306 N.Y. 427, 118 N.E.2d 590 (1954)

<sup>23</sup> Arthur Pinto, *An Overview of United States Corporate Governance in Publicly Traded Corporations*, Periodical: American Journal of Comparative Law, Issue: 2010,1 Page Number: 257-283

<sup>24</sup> *Malone v. Brincat*, 722 A.2d 5 (Del. 1998)

<sup>25</sup> Arthur Pinto, *An Overview of United States Corporate Governance in Publicly Traded Corporations*, Periodical: American Journal of Comparative Law, Issue: 2010,1 Page Number: 257-283

<sup>26</sup> Louis Lowenstein, *Financial Transparency and Corporate Governance: You Manage What You Measure*, 96 Colum. L. Rev. 1335 (1996)

<sup>27</sup> Arthur Pinto, *An Overview of United States Corporate Governance in Publicly Traded Corporations*, Periodical: American Journal of Comparative Law, Issue: 2010,1 Page Number: 257-283

products and services and bypass such mechanisms. There is a maximum weightage given to investor protection from frauds, but there is the absence of consumer protection, the only scope for consumers is through a class action suit against the scamming company.

## **1. India: Kingfisher Airlines and "YES Bank" scam**

### ***i. Kingfisher Airlines***

#### ***The Beginning***

The Kingfisher Airlines scam was widely covered in the Indian media, and the government is still on a quest to bring back the absconding founder Vijay Mallya. When Vijay Mallya became the Chairman of UB Group in 2005, he started the luxury airline called Kingfisher Airlines.<sup>28</sup>

#### ***How did the scam begin?***

To expand beyond the domestic market and venture into international airlines, a new airline had to wait for 5 years<sup>29</sup>, and to avoid the gap, in exchange for a stake in Air Deccan, he paid Rs. 550 crores (US\$79 million).<sup>30</sup> Due to multiple reasons such as rising oil prices, the acquisition of a financially troubled airline, and other factors, it lost Rs 934 crore (US\$133 million)<sup>31</sup>. In 2009 The airline's combined debt grew to "Rs 5,665 crore (US\$810 million)", which increased to "Rs 7,000 crores (US\$1 billion)". IDBI Bank then provided the debt-ridden airlines with a Rs 900 crore (US\$128 million) loan. Kingfisher's then Directors raised \$100 million via a variety of sources, including Global Depository Receipts. This was in addition to rights issued through equity shares to raise capital up to Rs 500 crore (US\$71 million). Kingfisher then decided to lay off roughly 100 pilots as a result of the massive losses and capacity decrease.

In 2010, Banks gave the airline a nine-month deadline to repay the entire \$1.3 billion loan accumulated by the airlines. The debt recast arrangement for Kingfisher Airlines was approved by its board of directors. In 2011, Mumbai International Airport Pvt. Ltd. issued a notice to the airline, demanding that "it pay Rs 90 crore (US\$12 million) in unpaid debts". For non-payment of taxes, the Income Tax Department froze "11 Kingfisher Airlines accounts". In 2012, After the Income Tax Department blocked some of its accounts, Kingfisher Airlines canceled a

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<sup>28</sup> Harshita Ranjan, *Kingfisher Scam: Fall of the king of good times*, [https://thecompany.ninja/kingfisher-scam/#\\_ftn1](https://thecompany.ninja/kingfisher-scam/#_ftn1)

<sup>29</sup> The 5/20 rule was a norm of the Indian Aviation Ministry under which national carriers were required to have five years of operational experience and a fleet of minimum 20 aircraft to fly overseas, now the requirement is removed.

<sup>30</sup> SEBI, *Letter Of Offer*, <https://www.sebi.gov.in/takeover/deccanlof.pdf>

<sup>31</sup> Vilasini Pollisetty, *The Case of Vijay Mallya and Kingfisher Airlines*, May 31, 2019 <https://sevenpillarsinstitute.org/the-case-of-vijay-mallya-and-kingfisher-airlines/>

number of flights. The airline was forced to operate on a limited schedule and faced losing a number of important flight slots. The International Air Transport Association also asked travel agencies to stop purchasing tickets on Kingfisher's behalf. Employees began protesting salary payment delays, which caused more problems, resulting in a reduction of overseas operations. The Indian Revenue Department threatened to sue Kingfisher Airlines for alleged tax evasion, alleging that the airline has not remitted taxes collected from passengers.

The airline owed a consortium of 17 banks, led by the State Bank of India, a total debt of about "Rs.7,500 crore (US\$1 billion)". The DGCA declined to renew the carrier's Air Operator Permit, resulting in the loss of its flying license (AOP). By 2013, The DGCA requested that the carrier pay all outstanding debts, which included pending salaries of employees, before seeking a fresh renewal of the suspended license. By 2014, For the third quarter ending December 31, 2013, Kingfisher Airlines recorded a net loss of "Rs 822.42 crore (US\$117 million)".

#### ***Actions were taken against Mallya***

Mallya and three other directors of Kingfisher Airlines were declared "willful defaulters by the United Bank of India." Post this, Vijay Mallya left the country on March 2, 2016, after a group of banks filed a lawsuit in the Supreme Court seeking to "recover Rs.9,000 crores (US\$1.3 billion) from Vijay Mallya". After dismissing his appeal that all charges against his firm were "false and inaccurate," the Enforcement Directorate (ED) issued a non-bailable warrant for his appearance in court on April 18, 2016. The ED summoned Vijay Mallya three times to testify in court, but he never showed up. This caused him to be termed as a "proclaimed offender."<sup>32</sup>

The ED's Complaint where he was found to be violating "section 3 and 4 of Prevention of money laundering Act", details five alleged instances of lenders diverting loan funds to Kingfisher Airlines, including "the diversion of Rs 3,432.40 crore between April 2008 and March 2012 through over-invoicing of aircraft lease rentals; and the diversion of Rs 45.42 crore to pay for the rental lease of a chartered flight operated exclusively by Mallya; and the transfer of Rs 15.90 crore from Kingfisher Airlines to Mallya's business, which owns the Royal Challengers Bangalore cricket club in the Indian Premier League, and the transfer of Rs 2.80 crore to ICICI Bank as repayment of a previous loan to Kingfisher Airlines".<sup>33</sup>

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<sup>32</sup> Vilasini Pollisetty , *The Case of Vijay Mallya and Kingfisher Airlines* , May 31, 2019 <https://sevenpillarsinstitute.org/the-case-of-vijay-mallya-and-kingfisher-airlines/>

<sup>33</sup> Khushboo Narayan, *The cases against Vijay Mallya*, April 9, 2019 <https://indianexpress.com/article/explained/vijay-mallya-extradition-cases-uk-high-court-kingfisher-airlines-debt-bank-loans-5665813/>

The CBI also accused Mallya under "the IPCs Section 420 (cheating), Prevention of Corruption Act's Sections 13(1)(d) and 13(2), and Indian Penal Code's Sections 120B (criminal conspiracy)". The CBI also charged Kingfisher Airlines, United Breweries Holdings, and Mallya, the airline's corporate guarantor, to make "many conspicuous misrepresentations and misleading facts" to lenders. CBI claimed to have found oral contact and written evidence demonstrating Mallya's "intention" to cheat the financial institution.

### ***Events post him leaving India***

Mallya was detained and freed on bail on October 3 2017 in London as part of a "money-laundering investigation."<sup>34</sup> India requested extradition to the United Kingdom-based on accusations of the abovementioned bank fraud. Since his detention in April 2017 on an extradition warrant, Mallya has been free on bond. On June 16, 2018, a British court ordered Vijay Mallya to pay "£200,000 (18.1 million)" to Indian banks.

In December 2018, the UK court decided that he'd be extradited to India to face allegations of fraud<sup>35</sup> though Mallya was given permission to challenge his extradition to the London High Court in July 2019<sup>36</sup> ; the London High Court dismissed his appeal against his extradition to India in April 2020.<sup>37</sup>

Mallya then filed an appeal with the UK Supreme Court in May 2020; it was held that he might be extradited within the coming 28 days.<sup>38</sup> However, the Indian government was informed in October 2020 that Mallya could not be extradited at this time owing to an undisclosed "confidential legal matter."<sup>39</sup>

### ***Current Position***

"According to the Fugitive Economic Offenders (FEO) Act of 2018, he is the country's first fugitive economic offender".<sup>40</sup> Fugitive Economic Offender is "Any individual against whom any Court has issued a warrant for arrest in connection to a Scheduled Offence in India, who

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<sup>34</sup> Times of India, *Vijay Mallya arrested in London in money laundering case, gets bail*, October 3 2017; <https://timesofindia.indiatimes.com/india/vijay-mallya-arrested-in-london-in-money-laundering-case/articleshow/60925479.cms>

<sup>35</sup> Radhika Iyer, Edited by Deepshikha Ghosh, *Vijay Mallya To Be Extradited Rules London Court: 10 Points*. December 10 2018. <https://www.ndtv.com/india-news/vijay-mallya-to-be-extradited-says-uk-judge-1960513>

<sup>36</sup> Jane Croft, *Vijay Mallya granted permission to appeal against extradition*, July 2 2019; <https://www.ft.com/content/a8996bae-9cda-11e9-9c06-a4640c9feebb>

<sup>37</sup> Munish Pandey, *UK court rejects Vijay Mallya's appeal, may get extradited to India in few weeks*, April 20, 2020; <https://www.indiatoday.in/india/story/uk-court-rejects-vijay-mallya-s-appeal-may-get-extradited-to-india-in-few-weeks-1669059-2020-04-20>

<sup>38</sup> Money Control, *Vijay Mallya loses final appeal against extradition*, May 14 2020; <https://www.moneycontrol.com/news/business/vijay-mallya-loses-final-appeal-against-extradition-5266681.html>

<sup>39</sup> Deccan Chronicle, *Mallya's extradition from Britain not possible, India told*. October 9, 2020. <https://www.deccanchronicle.com/nation/crime/091020/mallyas-extradition-from-britain-not-possible-india-told.html>

<sup>40</sup> The Fugitive Economic Offenders Act, 2018

(i) has left India to avoid criminal prosecution; or (ii) when abroad, refuses to return to India to face criminal prosecution," according to the Act<sup>41</sup>. A "Scheduled Offense" is one that is "listed in the Schedule if the total amount of such offense or offenses exceeds one hundred crore rupees."<sup>42</sup> He fulfills the criteria of an Economic Offender, and the quest to bring him to India Continues.

*ii. The "YES Bank" scam.*<sup>43</sup>

***The beginning***

By market capitalization, "YES Bank" was formerly the country's fifth-largest private lender. "YES Bank was founded by Rana Kapoor and Ashok Kapoor in 2004".<sup>44</sup> Fraud caused YES Bank to collapse unexpectedly and suddenly, just as it was gaining traction as a viable competitor to other private banks.<sup>45</sup> Rana Kapoor, the Bank's promoter, took the majority of critical decisions, including significant loans. His desire to make YES Bank No. 1 bank may have contributed to the Bank's precipitous decline in fortunes, which was sharper than its climb to a prominent position in the banking sector.

***How did the scam break out?***

On March 31, 2014, the Bank had a loan book of "Rs 55,633 crore and deposits of Rs 74,192 crore". Since then, the loan book had nearly quadrupled in size, reaching Rs 2.25 trillion on September 30, 2019. Deposits, on the other hand, did not keep up, increasing by less than three times to Rs 2.10 trillion. The Bank's asset quality deteriorated, bringing it under the scrutiny of the RBI. YES, Bank was aggressively lending, disregarding risk limitations, and underreporting bad loans. They were financing companies like the Anil Ambani-led Reliance group, DHFL, and IL&FS that were already in high-risk sectors and suffering problems. YES Bank's exposure to such bad-performing firms was enormous, and to make matters worse, they were concealing or misreporting the NPAs.<sup>46</sup>

***CBI report against YES Bank and DHFL***

According to the CBI report, during the fiscal year 2018-19, Rana Kapoor conspired with Kapil Wadhawan, the Promoter Director of DHFL, where YES Bank gave the loan to DHFL in

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<sup>41</sup> Section 2(f) of The Fugitive Economic Offenders Act, 2018

<sup>42</sup> Section 2(m) of The Fugitive Economic Offenders Act, 2018

<sup>43</sup> Rana Kapoor v. Directorate of Enforcement & Anr. Criminal Bail Application No (ST). 4999 OF 2020

<sup>44</sup> *WHAT IS YES BANK CRISIS?* <https://www.business-standard.com/about/what-is-yes-bank-crisis>

<sup>45</sup> *Yes Bank Ltd. (Yes bank) - Company History*, <https://www.business-standard.com/company/yes-bank-25267/information/company-history>

<sup>46</sup> Student Company Secretary, *Unearthing Corporate Frauds – The Ever-Increasing Role And Scope For Governance Professional*, August 2021;

[https://www.icsi.edu/media/webmodules/UNEARTHING\\_CORPORATE\\_FRAUDS.pdf](https://www.icsi.edu/media/webmodules/UNEARTHING_CORPORATE_FRAUDS.pdf)

exchange for a substantial undue benefit to himself and his family members through the companies they owned. "Between April and June 2018, YES Bank invested Rs.3700 crores in DHFL's short-term debentures".<sup>47</sup> Simultaneously, Kapil paid an Rs.600 crore kickback to Rana Kapoor and his family members under the guise of a builder loan from DHFL to DOIT, which Rana Kapoor's family members owned. The loan was approved based on a mortgage on a substandard property with a very minimal value. YES Bank approved a loan of Rs.750 crores, which was placed in the account of BRPL, a DHFL Group subsidiary controlled by both Kapil and Dheeraj Wadhawan. The remaining funds were moved to the Group Companies, which Dheeraj managed, and from those accounts, Rs.632/- Crores were transferred to RKW Developers, which was subsequently transferred to "M/s. KYTA Advisors Private Limited, which was owned and controlled by the accused."<sup>48</sup> As a result, the loan of Rs.750 crores approved for BRPL was not used for the SRA project that BRPL was working on and for which the money was approved.<sup>49</sup>

### ***Parties accused and Charges***

Charges were filed against M/s. Deewan Housing Finance Corporation Limited [for short, 'DHFL'], through its Directors, Kapil Rajesh Wadhawan, Dheeraj Rajesh Wadhawan., M/s. Belief Realtors Private Limited, through its directors., M/s. RKW Developers Private Limited, through its directors., M/s. DOIT Urban Ventures (India) Private b Limited (for short, 'DOIT'), through its directors. Ms. Roshini Kapoor D/o. Rana Kapoor, Mr. Rana Kapoor S/o. Late Raj Kishore Kapoor. FIR was lodged on 7.3.2020 for the commission of offenses punishable under Section 120-B read with "Section 420 of Indian Penal Code, and under Sections 7, 12, 13(2) read with 13(1)(d) of the Prevention of Corruption Act".<sup>50</sup>

### ***Current Position***

The RBI has taken control of YES Bank's management and put a moratorium on the lender's operations. SBI would spend cash to buy a 49 percent share in the reconstructed private lender, according to a tentative 'Scheme of Reconstruction' released by the RBI.<sup>51</sup>

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<sup>47</sup> Press Trust of India , *HC reserves orders on bail pleas of wife, daughters of Yes Bank founder* , September 23, 2021

[https://www.business-standard.com/article/finance/hc-reserves-orders-on-bail-pleas-of-wife-daughters-of-yes-bank-founder-121092301062\\_1.html](https://www.business-standard.com/article/finance/hc-reserves-orders-on-bail-pleas-of-wife-daughters-of-yes-bank-founder-121092301062_1.html)

<sup>48</sup> Kapil Wadhawan v. CBI Ld/Vc/Criminal Bail Application No. 522 Of 2020 and Dheeraj Wadhawan v. CBI Ld/Vc/Criminal Bail Application No. 523 Of 2020

<sup>49</sup> Rashmi Rajput, *CBI files chargesheet in the YES Bank case*, Jun 26, 2020; <https://economictimes.indiatimes.com/news/politics-and-nation/cbi-files-chargesheet-in-the-yes-bank-case/articleshow/76626756.cms>

<sup>50</sup> Kapil Wadhawan v. CBI Ld/Vc/Criminal Bail Application No. 522 Of 2020 and Dheeraj Wadhawan v. CBI Ld/Vc/Criminal Bail Application No. 523 Of 2020

<sup>51</sup> Directive under Section 35A of the Banking Regulation Act, 1949 DOR. PSBD. No. 7117/16.01.137/2019-20

### III. USA: BERNIE MADOFF AND THERANOS SCANDAL

#### *i. Bernie Madoff*

##### *The Beginning*

"Bernard Lawrence "Bernie" Madoff was an American banker who ran the world's largest Ponzi scam,"<sup>52</sup> taking tens of billions of dollars from tens of thousands of investors over at least 17 years, if not longer. In the early 1990s, he was also the chairman of the Nasdaq, a pioneer in computerized trading.

##### *How did the scam break out?*

As per the SEC Complaint in 2008 against Madoff and BMIS, which Madoff himself controlled, SEC sought "emergency action to halt ongoing fraudulent offerings of securities and investment advisory fraud by Madoff and BMIS, a broker-dealer and investment adviser registered with the Commission."<sup>53</sup>

"Madoff confessed to one or more employees of BMIS that he has been operating a Ponzi scheme through the investment adviser operations of BMIS for many years and that BMIS has liabilities of about \$50 billion," according to the Complaint. Madoff informed these workers that any leftover assets at BMIS would be distributed to staff and some investors in the investment advisor company, such as relatives and friends.<sup>54</sup>

He lied to his clients about investing their money in "common stock options, and other securities of large publicly traded companies" because he never put those funds in the securities for many years before being caught. The funds were instead sent to a "Chase Manhattan Bank account." When clients wanted to collect the earnings they thought they had generated; he paid the required sums using money from the Chase Manhattan bank account or money from other clients' Chase Manhattan bank accounts. People, charity organizations, and individuals were among the victims of Bernie's scam.<sup>55</sup> To conceal his deception, Madoff filed false audit reports with SEC and distributed the same to his clients to maintain his false credibility. He transferred money to and fro from USA to UK to deceive his clients of a complete securities transaction.<sup>56</sup>

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on March 05, 2020 <https://rbidocs.rbi.org.in/rdocs/content/pdfs/DD05032020.pdf>

<sup>52</sup> Adam Hayes, *Bernie Madoff*, April 30, 2021 <https://www.investopedia.com/terms/B/Bernard-Madoff.asp>

<sup>53</sup> Bernie Madoff Complaint (2008) <https://www.sec.gov/litigation/complaints/2008/comp-madoff121108.pdf>

<sup>54</sup> Bernie Madoff Complaint (2008) <https://www.sec.gov/litigation/complaints/2008/comp-madoff121108.pdf>

<sup>55</sup> Text Of Bernard Madoff's Court Statement March 12, 2009 12:50 PM ET *The text of Bernard Madoff's prepared plea allocution statement, delivered Thursday in U.S. District Court in New York.* <https://www.npr.org/templates/story/story.php?storyId=101816470>

<sup>56</sup> Text Of Bernard Madoff's Court Statement March 12, 2009 12:50 PM ET *The text of Bernard Madoff's prepared plea allocution statement, delivered Thursday in U.S. District Court in New York.* <https://www.npr.org/templates/story/story.php?storyId=101816470>



### ***Charges against Bernie Madoff***

SEC also Alleged "Violations of Section 17(a) of the Securities Act of 1933 (the "Securities Act"), Sections 206(1) and 206(2) of the Advisers Act of 1940 ("Advisers Act"), and Rule 10b-5 thereunder, 17 CFR 240.10b-5 and Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act")."<sup>57</sup>

After SEC complaint, a case was filed against Bernie Madoff by the United States government where "he was charged with 11 counts of fraud which included False Filing With The Securities And Exchange Commission, Money Laundering, Mail Fraud, International Money Laundering To Promote Specified Unlawful Activity, International Money Laundering To Conceal And Disguise The Proceeds of Specified Unlawful Activity, False Statements, Perjury, Investment Advisor Fraud, Securities Fraud, Wire Fraud, Theft From An Employee Benefit Plan."<sup>58 59</sup>

### ***Court Order***

He received a 150-year sentence and was compelled to surrender \$170 billion in assets.<sup>60</sup>

Recently another type of investor and consumer fraud had been brewing,

#### ***ii. The Theranos Scandal.***<sup>61</sup>

### ***The beginning***

From 2003 until 2018, Elizabeth A. Holmes served as the Chief Executive Officer of Theranos, Inc., a health care and life sciences business she created and owned. Ramesh "Sunny" Balwani worked for Theranos from September 2009 to 2016, in different capacities, including the member of the Board of Directors, President, and Chief Operating Officer. Theranos looked into developing a one-of-a-kind technology that would allow diagnostic testing to be done with just a few drops of blood rather than the vials of blood needed in traditional analysis. Theranos also worked on inventing a method to extract a few drops of capillary blood from a patient's finger with a tiny syringe, then storing and conserving the blood in a patented device called the "nanotainer." Theranos' stated objective was to develop a second proprietary device that could analyze blood samples collected in nanotainers fast and correctly. "TSPU," "Edison," and "miniLab" were all terms used by Theranos to identify these devices. Theranos stated that their

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<sup>57</sup>Bernie Madoff Complaint (2008) <https://www.sec.gov/litigation/complaints/2008/comp-madoff121108.pdf>

<sup>58</sup> Lionel S. Lewis, *Madoff's Victims and Their Day in Court*; Society Issue: 2010,5 Page Number: 439-450

<sup>59</sup> United States of America v. Bernard L. Madoff, United States District Court Southern District Of New York 09 Cr. 213 (DC)

<sup>60</sup> Adam Hayes, *Bernie Madoff*, April 30, 2021 <https://www.investopedia.com/terms/b/bernard-madoff.asp>

<sup>61</sup> United States of America, V. Elizabeth A. Holmes and Ramesh "Sunny" Balwani, Cr 18-0258 Ejd

patented technology and techniques would eliminate human error and produce the most accurate results possible. Theranos claimed that their blood tests saved customers money, "claiming that it billed all of the tests on the Medicare Clinical Laboratory Fee Schedule at 50% or less of the listed payment rate."<sup>62</sup>

### ***Press releases by Theranos***

Theranos stated in a September 2013 news release that they collected blood with a microneedle and eliminated wastage of big needles and blood through conventional methods. Beginning in late 2013, Theranos began offering tests to the general public through its Wellness Centers at Walgreens stores in Palo Alto, California, as well as Phoenix, Arizona, and the surrounding areas.<sup>63</sup>

### ***Fraudulent actions by Holmes and Balwani***

As per the Indictment sent by the US Attorney's Office, Theranos defrauded its Investors and customers.

Beginning around 2010, Holmes and Balwani made substantively false and misleading representations to investors and failed to disclose material facts, including false and misleading written and verbal communications, promotional materials comprising false statements, untrue financial reports, models, and false and misleading propositions to the media, among other things.<sup>64</sup>

When Holmes and Balwani were aware that Theranos proprietary analyzer was inaccurate and unreliable, they tricked their investors into believing that their innovation, at a faster pace, could work a full range of clinical tests using small blood samples and deliver results that were more reliable and precise than those done by conventional methods. Holmes and Balwani claimed that "Theranos would generate over \$100 million in revenue in 2014, and that Theranos was expected to generate around \$1 billion in revenue in 2015, but in reality, Theranos had generated only around a few hundred thousand dollars revenues in 2014 and 2015," and both knew that "Theranos' proprietary analyzer was running a "null protocol" during the demo to make it look like it was working."<sup>65</sup>

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<sup>62</sup> United States of America, v. Elizabeth A. Holmes and Ramesh "Sunny" Balwani, Case No. 18-cr-00258-EJD, (N.D. Cal. Oct. 13, 2020)

<sup>63</sup> United States Of America, v. Elizabeth A. Holmes And Ramesh "Sunny" Balwani, Case No. 18-cr-00258-EJD, (N.D. Cal. Oct. 13, 2020)

<sup>64</sup> United States Of America, v. Elizabeth A. Holmes And Ramesh "Sunny" Balwani, Case No. 18-cr-00258-EJD, (N.D. Cal. Oct. 13, 2020)

<sup>65</sup> United States of America, v. Elizabeth A. Holmes and Ramesh "Sunny" Balwani, Case No. 18-cr-00258-EJD, (N.D. Cal. Oct. 13, 2020)

By late 2014, Therano's retail launch at Walgreens had slowed due to a number of difficulties, including Walgreens officials' worries about Theranos' performance. They also misled investors by claiming that Theranos used Theranos-manufactured analyzers for patient testing when, in reality, Holmes and Balwani were aware that Theranos procured and used third-party, widely viable analyzers for patient testing.<sup>66</sup>

### ***Misleading Investors***

They also misled investors by "claiming that several national or multinational pharmaceutical companies and research institutions had inspected, utilized, and affirmed Theranos' technology," when in fact, Holmes and Balwani knew that these pharmaceutical companies and research institutions never had inspected, utilized, or affirmed Theranos' technology. They even published "misleading claims to media for publication, and shared the resulting stories with possible investors, while knowing that their representations to the media were false." After receiving false and misleading statements, misrepresentations, and omissions from Holmes and Balwani, many interested "investors initiated electronic wire transfers for the purpose of investing money in Theranos."<sup>67</sup>

### ***Misleading Consumers***

They also deceived consumers through "advertising and other marketing materials, making direct and indirect claims about Theranos' ability to provide accurate, fast, reliable, and inexpensive blood tests and test results, leading to thousands of patients paying Theranos or Walgreens acting on behalf of Theranos, for blood tests and test results, occasionally following referrals from their misinformed doctors."<sup>68</sup>

### ***Misleading Healthcare Professionals***

They also misled doctors and healthcare practitioners about the efficacy of their technology, while knowing that Theranos' technology was not capable of consistently providing accurate and trustworthy findings, as evidenced by complaints from doctors and patients affecting correct diagnosis of patients and putting the health of people on a cliff. They were both aware that their analyzer could not produce accurate and trustworthy findings regularly.<sup>69</sup>

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<sup>66</sup> United States of America, v. Elizabeth A. Holmes and Ramesh "Sunny" Balwani, Case No. 18-cr-00258-EJD, (N.D. Cal. Oct. 13, 2020)

<sup>67</sup> United States of America, v. Elizabeth A. Holmes and Ramesh "Sunny" Balwani, Case No. 18-cr-00258-EJD, (N.D. Cal. Oct. 13, 2020)

<sup>68</sup> "United States of America, v. Elizabeth A. Holmes and Ramesh "Sunny" Balwani, Case No. 18-cr-00258-EJD, (N.D. Cal. Oct. 13, 2020)

<sup>69</sup> for certain blood tests, including but not limited to bicarbonate, calcium, chloride, cholesterol/HDL/LDL, gonorrhea, glucose, HbA1c, hCG, HIV, LDH, potassium, PSA, PT/INR, sodium, testosterone, TSH, vitamin D (25-OH), and all assays conducted on Theranos's TSPU version 3.5, including estradiol, prolactin, SHBG,

### ***Charges and current scenario***

Holmes and Balwani are charged with: "Conspiracy to Commit Wire Fraud against Theranos Patients, Conspiracy to Commit Wire Fraud against Theranos Investors." Their trial is still underway, and if convicted, they will have to forfeit to the United States all property, constituting and derived from proceeds traceable to offenses and a long-term Jail Sentence.<sup>70</sup>

## **IV. CONCLUSION AND SUGGESTION**

Corporate governance is a foundation stone of a successful corporation. It is the collection of procedures, strategies, and rules that a business uses to make the official choices and operate its business. For a good corporate governance regime in a corporation, the board of directors must meet regularly, sustain control over the company, be clear about their duties and obligations, and keep risk track. In addition, the company secretary should be responsible for making sure that all administrative actions, rules, and regulations specified by the law are adhered to. They must also make certain that the needed paperwork is submitted with the Registrar of Companies.

Corporate governance as a concept covers a wide range of responsibilities; however, each company's governance structure will differ depending upon its management functions. Risk mitigation and fraud detection are aided by corporate governance. Scandals and fraud are more likely to arise when directors and top management are not forced to follow a certain governance code.

The analysis of such corporate frauds leads us to the question of mens rea, the mental element. Through the above case studies, the element of overreaching behavior to grow business fast by their owners, founders, or CEOs is seen. The element of intentional doing of such frauds arises.

The separation of business ownership and management is one of the primary elements behind repeated corporate governance failures; Because of this separation, the owners are unable to adequately oversee the management, allowing the management to behave opportunistically or falsely.<sup>71</sup> Civil and criminal liabilities are put on the wrongdoers by piercing the corporate veil as the corporation though humans run a separate legal entity and an artificial person but and those running it and making decisions for it are supposed to be held responsible.

When a corporation commits fraud, the people in charge of its operations - the "directing mind

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thyroxine (T4/free T4), triiodothyronine, and vitamin B-12.

<sup>70</sup> United States of America, V. Elizabeth A. Holmes and Ramesh "Sunny" Balwani, Cr 18-0258 Ejd Third Indictment

<sup>71</sup> Jensen, M. C., Meckling, W. H. (1976). Theory of the firm: Managerial behavior, agency costs and ownership structure. *Journal of Financial Economics*, 3(4), 305–360.

and will" – are usually held accountable. When fraud is perpetrated against a corporation or its shareholders, however, it necessitates the identification of both the executives at whose request, or for whose advantage, such activities were performed, as well as the perpetrators of the crime. While Indian law establishes a wide standard of behavior for some key corporate executives, the gradation of culpability among all officials, from the CEO to a member of the accounting department, is not specified.<sup>72</sup>

The law does not distinguish between those in positions of authority and others who are just following orders. To widen the purview of existing law providing onus of responsibility, the Securities Exchange Board of India (SEBI), while investigating allegations of corporate fraud and other serious failures, does not normally confine its investigation to the highest echelons of management. As a result, the extent to which different officials are accountable for corporation fraud becomes significant.

A strong corporate governance policy in compliance with various regulations of law spelling out each officer's obligations and urging them to think about them while making important decisions is something to be made mandatory with regulatory vigilance oversight.

### **How to prevent fraud from happening**

- Obtain a copy of a credit report for a person or company with which you are conducting business in order to inquire, request references, and assess creditworthiness. Credit checks are very helpful in combating fraud and confirming identities.
- A corporation should keep the personal information of its clients safe from identity and data theft. Compliance with the same should be reported to the regulatory bodies.
- There should be complete transparency to notice and detect danger spots when services are outsourced or transferred; it helps in Knowing what is done by all persons and organizations involved with the business, both internal and outside.
- Bank statement reconciliations on a regular basis by independent auditors will help in discovering whether any checks were written on the company account that should not have been, or if the Bank made any mistakes, in addition to identifying outside questionable activities.
- Executives frequently use random audits, internal audits, and management reviews to verify that all processes are followed and that the right questions are asked and

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<sup>72</sup> India Corporate Law. (2019). Corporate India, Individual Liability and the Relevance of the Superior Orders Defence. [online] Available at: <https://corporate.cyrilamarchandblogs.com/2019/07/superior-orders-defence-corporate-fraud/> [Accessed 24 Dec. 2021].

answered at all levels. The regulators should also create mechanisms to do surprise checks.

- Initiate a rapid-response strategy including techniques for investigating, reporting, and prosecuting fraud or corruption if it is discovered. Astringent whistleblower policy is necessary to protect employees who report misgivings done by their employers.
- Procedures for following up after a fraud incident are essential for ensuring that suspicious activity is not overlooked. After a fraud has happened, it is critical to assess current controls or ensure that new controls are implemented to prevent it from happening again.

The most important step to prevent such scams would be a better compliance mechanism by regulatory bodies; as we can see, what we have currently is not sufficient; hence an oversight is required to detect frauds at the earliest stages possible. The frauds come to light at a later stage, when all the damage is done; hence an oversight board inclusive of all stakeholders should be present to keep track of actions.

Total implementation of Corporate Governance is of utmost necessity in a successful business for upholding the rights of all stakeholders. The current legal regime in India and USA doesn't seem sufficient in being a deterrent to prevent fraud from happening. Hence an exclusive Corporate Governance code, keeping in mind the various Corporate Governance requirements, should be implemented in India, and the focus should shift from only investor protection to all stakeholders' protections.

## V. REFERENCES AND BIBLIOGRAPHY

- The Staff Of The Committee On Governmental Affairs United States Senate, *Financial Oversight Of Enron: The Sec And Private-Sector Watchdogs REPORT* October 7, 2002; <https://www.govinfo.gov/content/pkg/CPRT-107SPRT82147/html/CPRT-107SPRT82147.htm>
- Adam Hayes ,*The Biggest Stock Scams of Recent Time*, April 26, 2021; <https://www.investopedia.com/articles/00/100900.asp>
- Connie Roff , *Everything you need to know about the Theranos scandal*, September 07 , 2021; <https://www.panmacmillan.com/blogs/literary/theranos-elizabeth-Holmes-john-carreyrou>

- IANS, *ED files chargesheet against Rana Kapoor in money laundering case*, May 6, 2020; <https://english.lokmat.com/national/ed-files-chargesheet-against-rana-kapoor-in-money-laundering-case/>
- Dinesh Unnikrishnan, *The fallen stars of Indian banking* , September 08, 2020; <https://www.moneycontrol.com/news/business/the-fallen-stars-of-indian-banking-5808831.html>
- CA Naresh Kataria, *Corporate Frauds in India – Part I*, May 04,2021; <http://www.lawstreetindia.com/experts/column?sid=488>
- Student Company Secretary, *Unearthing Corporate Frauds – The Ever-Increasing Role And Scope For Governance Professional*, August 2021;
- [https://www.icsi.edu/media/webmodules/UNEARTHING\\_CORPORATE\\_FRAUDS.pdf](https://www.icsi.edu/media/webmodules/UNEARTHING_CORPORATE_FRAUDS.pdf)
- FBI (2016). White-Collar Crime | Federal Bureau of Investigation. [online] Federal Bureau of Investigation. Available at: <https://www.fbi.gov/investigate/white-collar-crime>.
- Sarbanes-Oxley Act Of 2002 [Public Law 107–204, Approved July 30, 2002, 116 Stat. 745]
- Harshad Shantilal Mehta vs Custodian & Ors on May 13, 1998[With C.A. Nos. 5147/1995, 5225/1995, 5325/1995, 6080/1995, 12574/1996, TC (Civil) No.5/1998]
- SEBI, Mumbai v. Satyam Computer Services Ltd. and Ors. (WTM/RKA/SRO/64-68/2014); M/S. Satyam Computer Services ... vs Directorate Of Enforcement, ... on December 31, 2018
- Harshita Ranjan, *Kingfisher Scam: Fall of the king of good times*, [https://thecompany.ninja/kingfisher-scam/#\\_ftn1](https://thecompany.ninja/kingfisher-scam/#_ftn1)
- SEBI, *Letter Of Offer* , <https://www.sebi.gov.in/takeover/deccanlof.pdf>
- Vilasini Pollisetty , *The Case of Vijay Mallya and Kingfisher Airlines* , May 31, 2019 <https://sevenpillarsinstitute.org/the-case-of-vijay-mallya-and-kingfisher-airlines/>
- Khushboo Narayan, *The cases against Vijay Mallya*, April 9, 2019 <https://indianexpress.com/article/explained/vijay-mallya-extradition-cases-uk-high-court-kingfisher-airlines-debt-bank-loans-5665813/>
- Times of India, *Vijay Mallya arrested in London in money laundering case, gets bail*, October 3 2017;
- <https://timesofindia.indiatimes.com/india/vijay-mallya-arrested-in-london-in-money-laundering-case/articleshow/60925479.cms>

- Radhika Iyer, Edited by Deepshikha Ghosh, *Vijay Mallya To Be Extradited Rules London Court: 10 Points*. December 10 2018.
- <https://www.ndtv.com/india-news/vijay-mallya-to-be-extradited-says-uk-judge-1960513>
- Rai, D. (2019). Fraud in Contracts- Section 17 of the Indian Contract Act. [online] iPleaders. Available at: <https://blog.iplayers.in/fraud-in-contracts-section-17-of-the-indian-contract-act/>.
- Jane Croft, *Vijay Mallya granted permission to appeal against extradition*, July 2 2019;
- <https://www.ft.com/content/a8996bae-9cda-11e9-9c06-a4640c9feebb>
- Munish Pandey , *UK court rejects Vijay Mallya's appeal, may get extradited to India in few weeks*, April 20 , 2020;
- <https://www.indiatoday.in/india/story/uk-court-rejects-vijay-mallya-s-appeal-may-get-extradited-to-india-in-few-weeks-1669059-2020-04-20>
- Money Control, *Vijay Mallya loses final appeal against extradition*, May 14 2020;
- <https://www.moneycontrol.com/news/business/vijay-mallya-loses-final-appeal-against-extradition-5266681.html>
- Deccan Chronicle, *Mallya's extradition from Britain not possible, India told*. October 9, 2020.
- <https://www.deccanchronicle.com/nation/crime/091020/mallyas-extradition-from-britain-not-possible-india-told.html>
- Rana Kapoor v. Directorate of Enforcement & Anr. Criminal Bail Application No (ST). 4999 OF 2020
- Rashmi Rajput, *CBI files chargesheet in the YES Bank case*, June 26, 2020; [https://economictimes.indiatimes.com/news/politics-and-nation/cbi-files-chargesheet-in-the-yes-bank-case/articleshow/76626756.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](https://economictimes.indiatimes.com/news/politics-and-nation/cbi-files-chargesheet-in-the-yes-bank-case/articleshow/76626756.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)
- Kapil Wadhawan v. CBI Ld/Vc/Criminal Bail Application No. 522 Of 2020 and Dheeraj Wadhawan v. CBI Ld/Vc/Criminal Bail Application No. 523 Of 2020
- Directive under Section 35A of the Banking Regulation Act, 1949 DOR. PSBD. No. 7117/16.01.137/2019-20 on March 05, 2020 <https://rbidocs.rbi.org.in/rdocs/content/pdfs/DD05032020.pdf>
- Bernie Madoff Complaint (2008) <https://www.sec.gov/litigation/complaints/2008/comp-madoff121108.pdf>



- Lionel S. Lewis , *Madoff's Victims and Their Day in Court* , ; Society Issue : 2010,5  
Page Number : 439-450
- United States Of America v. Bernard L. Madoff, United States District Court Southern District Of New York
- Text Of Bernard Madoff's Court Statement March 12, 200912:50 PM ET The text of Bernard Madoff's prepared plea allocution statement, delivered Thursday in US District Court in New York.  
<https://www.npr.org/templates/story/story.php?storyId=101816470>
- Adam Hayes , *Bernie Madoff*, April 30, 2021  
<https://www.investopedia.com/terms/b/bernard-madoff.asp>
- Deloitte, "*Governance 101 All you need to know on corporate governance practices in India*", <https://www2.deloitte.com/in/en/pages/risk/articles/governance-101.html>
- SEBI Circular, *Corporate Governance in listed Companies – Clause 49 of the Listing Agreement*, SEBI/CFD/DIL/CG/1/2004/12/10October29, 2004
- The 1933 Securities Act and 1934 Securities Exchange Act are Codified at. 15 U.S.C. ?? 77a-77aa (2000) and at 15 U.S.C. ?? 78a-78nn (2000).
- Marc I. Steinberg & William K. S. Wang, *INSIDER TRADING* (2d ed. 2008).
- Hoschett v. TSI International Software, Ltd., 683 A.2d 43 (Del. Ch. 1996),
- Lisa M. Fairfax, *Making the Corporation Safe for Shareholder Democracy*, 69 Ohio St. L.J. 53, 67-77 (2008)
- Auer v. Dressel, 306 N.Y. 427, 118 N.E.2d 590 (1954)
- Malone v. Brincat, 722 A.2d 5 (Del. 1998)
- Louis Lowenstein, *Financial Transparency and Corporate Governance: You Manage What You Measure*, 96 Colum. L. Rev. 1335 (1996)
- J. I. Case Co. Borok, 377 US 426 (1964)
- Jensen, M. C., Meckling, W. H. (1976). Theory of the firm: Managerial behavior, agency costs and ownership structure. *Journal of Financial Economics*, 3(4), 305–360.
- India Corporate Law. (2019). Corporate India, Individual Liability and the Relevance of the Superior Orders Defence. [online] Available at: <https://corporate.cyrilamarchandblogs.com/2019/07/superior-orders-defence-corporate-fraud/> [Accessed 24 Dec. 2021].

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