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# Corporate Frauds from the Viewpoint of White Color Crimes

SHIVA KUMAR KARNATI[1]

## ABSTRACT

*This paper analyzes the issue of Corporate frauds from the viewpoint of White Color Crimes. The examination looks to assess the different causes that are in charge of Corporate Frauds. White Collar Crimes are committed by various Individuals in greed of self-enrichment. But when this crime is conducted collectively by group of people or association in any business, then such crime becomes Corporate Crime. The loss being suffered from other Conventional Crimes such as theft, trespass, burglary, arson, etc. is far less than the loss being suffered from White Collar Crimes. This study deals with the cases of corporate fraud in India and its types.*

*Corporate frauds can have a devastating effect on the business firms in which a fraud has occurred. This paper analyzes the impact on the local, State and National economic conditions based on the size of the business affected by the corporate fraud. The objective of this article is to highlight archetypal challenges in Corporate Fraud and to culminate corporate fraud with the implementation of efficient regulatory and legal systems.*

***Keywords:*** *Corporate Fraud, White Color Crimes, Fraud Prevention.*

## I. INTRODUCTION

**Fraud:** In a broadest sense, fraud means, an intentional deception made for personal gain or to damage another person or entity. Fraud is defined in both criminal as well as civil code.

"FRAUS OMNIA VITIATE"

"Fraud violates everything" Under Indian Contract Act, 1872

Fraud' defined.—'Fraud' means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent1, with intent to deceive another party thereto or 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;

'Fraudulently' means, a person is said to do a thing fraudulently if he does that thing with

[1] Author is a student at M.S.S Law College, Hyderabad, India.

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intent to defraud but not otherwise.

A corporate crime or fraud occurs when a company or an entity deliberately changes conceals sensitive information which then apparently makes it look healthier. Companies adopts various Modus-operandi to commit such corporate frauds, which may include misrepresentation in prospectus, manipulation of accounting records, debt hiding, etc. Corporate frauds can have a devastating effect on the business firms in which it has occurred. The loss in the organization can also have an impact on the local, state and national economic conditions based on the size of the business affected by it. Corporate frauds cannot be committed without some sort of rationalization, even when there is enough motivation and opportunity.

## II. Classification of corporate frauds

1. Crimes By Individuals Against Consumers, Clients Or Other Business People, e.g. misrepresentation of the quality of goods; pyramid trading schemes
2. Employee Fraud Against Employers, e.g. payroll fraud; falsifying expense claims; thefts of cash, assets or intellectual property (IP); false accounting
3. Crimes By Businesses Against Investors, Consumers And Employees, e.g. financial statement fraud; selling counterfeit goods as genuine ones; not paying over tax or ESI &PF paid by staff
4. Crimes against financial institutions, e.g. using lost and stolen credit cards; cheque frauds; fraudulent insurance claims
5. Crimes by professional criminals against major organisations, e.g. ; mortgage frauds; corporate identity fraud; money laundering
6. Cyber Crime or e-crime by people using computers and technology to commit crimes, e.g. phishing; spamming; copyright crimes; hacking; social engineering frauds.
7. Corruption: Making or receiving improper payments, offering bribes to public or private officials, receiving bribes, kickbacks or other payments. Aiding and abetting fraud by others.
8. Related Party Transaction: The most frequent type of transactions that require regulatory action are concessionary loans to related parties, payments to company officers for services that were either unapproved or non-existent, transfer of funds through overvalued purchases of assets/ investments, and sales of goods or services to related entities in which the existence of the relationship was not disclosed.

9. Procurement fraud : bid rigging/bid splitting; creation of shell companies to facilitate fraudulent payments; collusion between employee and suppliers; purchase order and contract variation orders; unjustified single source awards; false invoices for products and services for suppliers who do not exist.
10. Tax evasion and money laundering: Money laundering is a criminal offence aimed at presenting wealth of illicit origin or the portion of wealth that has been illegally acquired or concealed from the purview of tax and other authorities, as legitimate, through the use of methods that hide the identity of the ultimate beneficiary and the source of the ill-gotten profits.
11. Professional Crime: Crimes committed by Medical practitioners, Lawyers in course of their occupation.

## III. TECHNIQUES FOR THE INVESTIGATION OF CORPORATE FRAUD

**1.** There should be an informant in the team who would give the first-hand information about a white collar crime taking place or had taken place in a company and keeps the investigating officers updated with all that was, is or will be going on in the company. Unless and until somebody informs the police about the crime, no investigation can take place. Therefore, the role of informants becomes important.

**2.** Involvement of undercover agents. The presence of undercover agents is important as they help in tracing that evidence which are not *prima facie* evidence. They also help in giving information regarding people who go underground and then commit serious offences. Since tracking such people is not possible by the police officers, they appoint undercover agents who without any hint to the accused get all the details about him.

**3.** Introducing the examination of the physical evidence in the laboratory is very crucial for deciding a case. The medical evidences play a key role in giving a direction to a case. If not manipulated, then the medical tests are very efficient in determining who the accused would be in cases of serious offences, like rape.

**4.** Police officers are often seen conducting physical surveillance through dogs and electronic surveillance through CCTVs, or tracking call records, etc. This surveillance helps in tracking down even the smallest of evidence against the suspect.

**5.** Interrogation is that tool in the hands of the police which helps in taking out that information from the suspects which they would not have otherwise given.

6. Wiretapping where the law permits to do it helps in proving the guilt by way of producing call record in the court. In some cases, call records are sufficient evidence to hold a person guilty of an offence.
7. Legal advisers (internal or external) Legal advice should be sought as soon as a fraud is reported, irrespective of the route the organisation intends to follow. Specific advice would include such issues as guidance on civil, internal and criminal responses, and recovery of assets.

## IV. Legislation against corporate fraud in India

There are several provisions that exist for identifying corporate fraud. Government in order to ensure that the criminal committing corporate fraud be punished has brought in the following legislations-

1. The Companies Act, 2013
2. The Income Tax Act, 1961
3. Indian Penal Code, 1860
4. The Commodities Act, 1955
5. The Prevention of Corruption Act, 1988
6. The Negotiable Instrument Act, 1881
7. The Prevention of Money laundering Act, 2002
8. The Information Technology Act, 2005
9. The Imports and Exports (control) Act, 1950
10. The Special Court (Trial of offences relation to Transactions in Securities) Act, 1992
11. The Central Vigilance Commission Act, 2003
12. The SARFASI Act ,2002

## V. Penalties & sentencing in corporate fraud in India

### (A) Punishment for fraud

1. Separate definition of fraud under Section 447 of the Companies Act, 2013 (**the Act**) and

2. Creation of the Serious Fraud Investigation Office (**SFIO**) under Section 212 of the Act to investigate those frauds.

Section 447 of the Act is an amalgamation of several sections of the IPC including Section 405 dealing with Criminal Breach of Trust, Section 415 dealing with Cheating, Section 463 dealing with Forgery and Section 477A dealing with falsification of accounts.Section 447 of the Companies Act, 2013 provides punishment against the commission of fraud. It states that in case a person is found guilty of an offence of fraud he would be imprisoned for a period not less than 6 months and which extend to 10 years. And he will also be subject to fine which should not in any case be less than the amount involved in fraud and which may extend to 3 times the amount involved in the fraud. In case the fraud has been committed against the interest of the general public than the term of imprisonment would not be less than 3 years.

**(B) Punishment for false statement**

Section 448 of the Companies Act, 2013 states that: if a person deliberately makes a false statement, knowing it to be false or deliberately omits any material fact, knowing it to be material than he would be held liable for his wrongful act. This false statement can be made either through return, report, certificate, financial statement, prospectus, statement or any other documents required for the purpose mentioned under this Act or any rules made under it.

**(C) Punishment for furnishing false evidence**

Section 449 of the Companies Act, 2013 provides for punishment for furnishing false evidence. It states that if any person gives false evidence in a court of law:

- Either upon an examination on oath or solemn affirmation; or
- When any company is about to dissolve or otherwise also in case of any matter arising under this Act, in any affidavit, deposition or solemn affirmation,
- He shall be punished with imprisonment and fine both. The imprisonment will not be less than 3 years and may extend to 7 years and fine may extend to 10 lakh rupees.

**(D) Punishment when no specific punishment or penalty has been provided**

Section 450 of the Companies Act, 2013 states that in case a punishment or penalty for a crime, which has been committed either by an officer of a company or by any other person who contravenes any of the provisions of this act, then under this section he would be penalized with a fine which may extend to 10 lakh rupees. In case the contravention continues the person would be asked to pay a fine which may extend to 1,000 rupees everyday till the intervention continues.

**(E) Punishment when the default has been repeated**

Section 451 of the Companies Act, 2013 lays down that, when a company or any officer of that company commits an offence for which he has already been penalized and has also faced imprisonment, in case commits the same offence again within a period of 3 years, than that company and every one of those officers involved in the commission of the offence for the second time shall be punished with twice the amount of fine, in addition to the term of imprisonment provided in the act for that offence. But, in case the offence was committed after a period of 3 years of commission of the offence for the first time then this rule would not be applicable.

**(F) Appointment of adjudicating officers**

Section 454 of the Companies Act, 2013 says that the Central Government, by an order stated in the official gazette, has the power to appoint an adjudicating officer who will have the right to adjudicate penalty under the provisions of this act. The Central Government will also decide the jurisdiction for the officers.

The adjudicating officer can impose a penalty on the company or its officers on the grounds of noncompliance with the given provision under the Act. In case an officer who has been penalized by the adjudicating officer is dissatisfied with his action, he could file an appeal to the regional director would be having jurisdiction in that matter.

## VI. IMPLICATIONS OF CORPORATE FRAUD IN INDIA

The rate at which corporate fraud are increasing has become a matter of concern globally. It has been found that the detriment that corporate fraud cause to society is much more than other forms of crime. Moreover, India is a developing nation and so an unprecedented increase in corporate fraud hampers its image along with being a hazard in the growth of its economy.

Moreover, corporate fraud causes emotional traumas, not only to the victims of the crime but to the society at large. Where the victim is not able to bear the expenses of corporate fraud that he had evidence, the society starts losing faith in the authorities. If the authorities at higher positions, who have enormous powers, start using it in a wrongful way, then who else will the citizens trust.

Also, as these crimes are flourishing all over the country, people find themselves secure anywhere, neither in the physical world nor in the virtual world. Where people were introduced

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to the digital world to avoid tiring jobs like standing in the queue to deposit or withdraw money from the bank and reduce other sorts of physical labor, it has not become the biggest platform for the commission of white collar crimes. Nowhere do the people find themselves safe.

Above all, despite several movements against the corporate fraud and instituting several rules and regulations via enchantments, the government has not been able to do much for the victims of the white collar crime. The complicated nature of the method of committing such crimes makes it difficult for the authority to find evidence. That is why many criminals move freely and this has become the main reason for the crime to flourish. The criminals don't find any incentive to commit such crimes which helps them make easy money.

Also one of the major reasons for such crimes to flourish is that media coverage of very few cases takes place in case of corporate Fraud. Often the media person and the offenders fall under the same group or class and stars favoring them instead of showing their reality to the people.

Moreover, people sitting at a higher position, who commits such crimes, buy the media persons or threaten them to close their channel, in order to stop the media coverage of their wrongful or illegal acts which they commit or have committed during the course of their occupation.

# VII. SUGGESTIONS TO CREATING AN ETHICAL ANTI-FRAUD CULTURE

## (A) Formulating a Strong Anti-Fraud Programme

A robust control environment is vital to reduce the risk on account of fraud and misconduct within companies and their dynamic business environment.

The following are some key aspects of the anti-fraud framework that an organization should implement to mitigate the fraud risks.

### 1. Leadership setting the tone

Board of directors are responsible for setting the "tone at the top", which flows across the entire company and its various locations. Management views on mitigating fraud, corruption and misconduct should be revealed to the employees. It is recommended that management should actively assess frauds, corruption and misconduct risks and controls. Without ensuring that all suspected allegations of misconduct are independently investigated, management might not be able to develop the requisite neutral and balanced environment within the organisation. Disciplinary action and zero tolerance for violations should also be part of the message that the Board sends out to employees.

### 2. Fraud Prevention Policies

Organisations willing to counter fraud should develop sound fraud prevention policies that must have the following key components:

- Extensive background checks on new-hires, promotion ,candidates, suppliers, customers and business partners,(including international third parties);
- Segregation of duties;
- Position rotations;
- Limitations of physical access to assets; and
- Removal of unauthorized and old system users.
- Whistle blower mechanism

**3. Steps Against Conflicts Of Interest**

In a small business personal relationships (and selfinterest) can dominate judgment on key decisions. Whether that means handing over select areas of business to friends / relatives to manage or retaining certain areas with one, without objectively assessing if these candidates are indeed the right fit for the job at hand. In our experience, we have seen promoters defraud lenders and investors by systematically acting in their self-interest and putting the future of their companies in jeopardy.

**4. Relook At Your Business' Ethical Quotient**

Most entrepreneurs have coaches and mentors who guide them on making business decisions. They also provide counsel on aspects such as talent acquisition, funding prospects and identifying customer segments. These mentors can also provide guidance on ethical behaviors and refer entrepreneurs to experts who can help with putting together effective anti-fraud policies.

**5. Document Ethical Practices And Create A Policy**

While start-ups are not mandated by law to have a code of conduct or ethics or anti-fraud policy, it is still recommended that they formally document best practices in this regard. Such documentation can be helpful in winning customers, getting funding and eventually prepare the organization for future regulatory obligations.

**6. Whistleblower or complaint mechanism**

A whistleblower is a person(s) who has and reports insider, knowledge of illegal activities occurring in an organization. Whistleblowers can be employees, suppliers, contractors, Clients or any individual who becomes aware of illegal or fraudulent activities taking place in a business either through witnessing the behavior or being told about it. The organisations need to consider the following:

a. Ensuring confidentiality of information reported through the whistle-blower mechanism
b. Policy of non-retaliation against the whistle-blower
c. Actions that can be initiated based on the nature and seriousness of the issue reported?
d. Issues that are “not serious” taking up senior executives’ time.

**7. Continuous Monitoring Using Data Analytics**

Business data is increasingly being managed and stored by IT systems. The pressure to improve efficiencies and integrate supply chains has meant that many organisations are now heavily reliant on IT systems to support business processes. Such systems have also reduced the level of human intervention required, which has traditionally acted as a fraud control. As a result, organisations are placing more reliance on automated controls to both prevent and detect fraud.

## VIII. CONCLUSION

The present article discusses the impact of corporate fraud on the local, state and national economic conditions based on the size of the business affected in India. By exploring the archetypal challenges due corporate fraud and providing suggestions to mitigate those challenges, this article presents a constructive critique of Prevention of corporate fraud and White color Crimes. Specifically, this article highlights the issues pertaining to the Classification of Corporate Frauds under White Color Crimes, the investigation of corporate fraud, legislation against corporate fraud in India, implications of corporate fraud in India. Suggestions to help culminate the corporate fraud are explicated in detail.

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