

## LEGAL OBSTACLES AND CHALLENGES OF WHITE COLLAR CRIME AND CORPORATE FRAUD

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### ABSTRACT

*People from many walks of life commit white-collar crimes out of selfish ambition. However, when this type of crime is committed collectively by a group of people or an association in any firm, it becomes corporate fraud. In contrast to white-collar crime, certain conventional crimes like stealing, burglary, arson, trespassing, etc. cause much less damage. Our nation's economy and trade are negatively impacted by it. As a result, the investors' confidence in the market is also damaged. At the moment, India's economy is suffering greatly due to the country's rising white-collar crime rate. <sup>1</sup>Bank fraud, tax evasion, and economic threats have all been cited as obstacles to India's economy. In light of this, the Indian government must take decisive steps to lower the rising white-collar crime rate in India. However, it has been predicted through analysis of previous studies that white-collar crime poses a greater risk to a nation's economy than regular crime. In light of this, it has been discovered that white-collar crime can endanger employees by creating a risky work environment.<sup>2</sup>*

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**Keywords:** White-Collar Crime, Corporate Fraud, Bank Fraud, Tax Evasion.

### INTRODUCTION

The phrase white-collar crime was initially popularized and defined in 1939 by criminologist and sociologist, Edwin Sutherland. White-collar crimes, according to him are those that are perpetrated in the course of an individual's employment by someone of high social standing and respectability. Along with large corporations, he also included criminal enterprises in the term. Corporate crime or corporate fraud is when a person of high social standing and respectability commits a crime while conducting business.<sup>3</sup>

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<sup>1</sup> Ritika Saxena, 'A Case Study on Corporate Crimes in India' (iPleaders, 24 October 2019) <<https://blog.ipleaders.in/white-collar-crime/>> accessed 19 September 2023

<sup>2</sup> Harkunwarjot Singh Makkar, Ankit Paul Kuar, 'WHITE COLLAR CRIMES IN INDIA: A SET BACK FOR PROGRESSIVE NATION BUILDING' (2022) 1,1

<sup>3</sup> JETIR, 'INVESTIGATION AND PREVENTION OF CORPORATE FRAUDS IN INDIA' (2020) 1,1

The article examines two major types of white-collar crimes; corporate crimes, which are those perpetrated by businesses and their managers to further their objectives, and individual crimes, which may or may not include organizational or company resources but typically have a stronger self-interest component (eg; embezzlement or income tax fraud).<sup>4</sup>

According to Edwin Sutherland, a crime committed by a person of responsibility and high social position during the course of their employment is referred to as white-collar crime. The definition of white-collar crimes listed above includes five characteristics-

- 1) It is unlawful
- 2) Carried out by a reputable person
- 3) Have a good social standing
- 4) Within the scope of his work or career, and
- 5) Typically a breach of trust

In light of this, Prof. Sutherland said that in addition to conventional crimes or blue-collar crimes, these include certain violent crimes classified as white-collar, such as assault, robbery, rape, murder, and other such violent crimes.<sup>5</sup>

## TYPES OF WHITE COLLAR CRIMES

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**FRAUD-** A fraud is, by definition, a deliberate act of deception committed by the offender for their own ill-gotten benefit. One of the most frequent types of fraud in India is bank fraud, which includes obtaining loans on false pretenses, stealing checks, and impersonating financial organizations over the phone or online. <sup>6</sup>

**AD HOC CRIMES-** In this group, the perpetrator pursues his own personal goals while avoiding direct contact with the victim. For instance, credit card fraud, hacking, etc.

**BRIBERY-** Bribery is the act of offering money, products, services, or any other kind of information with the aim of influencing the action, opinion, or decisions of the recipient.

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<sup>4</sup> Sally S. Simpson, 'Making Sense of White- Collar Crime: Theory and Research' (2011) 1,1

<sup>5</sup> Joyshri Maity, 'White- Collar Crime in India and its Effect in the Society: A Critical Study' (2020) 8(8) IJCRT <<https://ijcrt.org/papers/IJCRT>> accessed 19 September 2023

<sup>6</sup> Kunalrexwal, 'White Collar Crimes in India' (*Legal Services India*, 2021) <<https://www.legalserviceindia.com/legal/article-10873-white-collar-crimes-in-india.html>> accessed 22 September 2023

**FORGERY**-The act of presenting fake documents like checks.

**EMBEZZLEMENT**- When someone uses money or property they have received for their own use, it is known as theft. Copying or imitating a product without a right to do so is known as counterfeiting.

**TAX EVASION**- This is a common strategy employed by the middle class to conceal additional or extra income.<sup>7</sup>

### **WHY IS INDIA EXPERIENCING A RISE IN WHITE-COLLAR CRIMES?**

The reasons for a humongous increase in the growth of white-collar crimes in India is mainly because of the following reasons:-

**GREED**- The man known as the father of contemporary political thought, Niccol Machiavelli, was sure that people are naturally selfish. He asserted that a man can forget about losing his fortune more quickly and readily than he can about losing his father. The same holds true in cases of white-collar crimes.

**IMPACT OF TECHNOLOGY**- Because of the demands of business, politics, and quickly advancing technology, criminals now have access to innovative strategies for committing white-collar crimes. Technology has made it quicker and simpler for someone to get hurt or lose things.

**LACK OF STRICT LAWS**- Internet use and electronic payment techniques enable the majority of these crimes, laws seem unwilling to pursue these cases because tracking and investigating such crimes is difficult and time-consuming.

**COMPETITION**- After reading Charles Darwin's 'On the Origin of Species, Herbert Spencer used the phrase 'survival of the fittest' to describe how evolution works. This implies that there always exists competition amongst the species and the one who survives the best adapts best to its surroundings.<sup>8</sup>

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<sup>7</sup> Ritika Saxena, 'A Case Study on Corporate Crimes in India' (*iPleaders*, 24 October 2019) <<https://blog.ipleaders.in/white-collar-crime/>> accessed 22 September 2023

<sup>8</sup> Khushbu T, 'White Collar Crimes in India, Overview, Types, Reasons' (*Vakilsearch*, 7 September 2023) <<https://vakilsearch.com/blog/white-collar-crimes-in-india/>> accessed 22 September 2023

## CASES OF WHITE-COLLAR CRIMES IN INDIA

**HARSHAD MEHTA SCAM:** In the 1990s, Harshad Mehta, popularly known as The Bull, became well-known in the Bombay Stock Exchange. He used to borrow a ton of money from the banks in order to purchase scrips at huge costs. Thus, a fake market was developed. He misused and exploited his false reputation of The Bull and used it to raise the prices of the shares by manipulating the stock prices. Bank funds were also used improperly in order to make stock market investments. This action turned into his adversary because it was a pure case of money laundering. Rs. 5000 crore was earned by him through money laundering until, Sucheta Dalal, the popular journalist uncovered his scam. The Indian stock market suffered its greatest drop following the exposure of the Harshad Mehta Scam. Following this incident, several adjustments in the policies and procedures were adopted to prevent similar frauds by SEBI.<sup>9</sup>

**VIJAY MALLYA SCAM:** There is opposition to extraditing Indian businessman Vijay Mallya from the UK. Mallya is accused of fraud and money laundering in India and owes a total of almost 9000 crores to 17 Indian banks. The now-bankrupt Kingfisher Airlines is the company Mallya is most closely linked with out of all his ventures. Due to an increasing financial load, Kingfisher Airlines, which had been in business since 2005, was forced to shut down in 2012 additionally, the airline is being looked at for potential accounting fraud and money laundering. The Debt Recovery Tribunal received a complaint on Mallya on March 2, 2016, from a number of public sector banks. He left the nation on that particular day. In January 2019, he was recognized as a fugitive economic offender under the Fugitive Economic Offenders Act.<sup>10</sup>

## CORPORATE FRAUDS IN INDIA

Corporate fraud is the deliberate alteration and concealment of important data by a company or other entity in order to make the firm appear to be in better form. Companies use a variety of operating techniques to carry out these corporate scams, which frequently involve providing false information in the prospectus manipulating financial documents, etc. Falsifying financial information includes many different aspects some of which include false accounting entries,

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<sup>9</sup> 'Whai is White-Collar Crime and What is the Penalty?'

(Navi, 14 November 2022) < <https://navi.com/blog/white-collar-crime/> > accessed 23 September 2023

<sup>10</sup> 'Who is Vijay Mallya?'

*Business Standard* (India, 23 September 2023) 1

false trades to inflate profits, the disclosure of price-sensitive information that is covered by insider trading laws, and showing of false transactions that have the effect of luring additional investors. Businesses commit such fraud for a variety of purposes, including to increase the amount of phony money they produce, to fudge the company's standing in the marketplace, and to deceive the government in order to commit tax evasion.<sup>11</sup>

## TYPES OF CORPORATE FRAUDS IN INDIA

**Misappropriation of funds-** Fraudulent accounting, payment schemes, and stock price manipulation are all examples of misappropriation of funds.

**Inappropriately taken property-** intellectual property rights, tangible products, and dummy payments that take advantage of a company's resources for their own gain are all examples of heft.

**Corruption-** It is forbidden to make or accept fraudulent payments, to bribe public or private officials, to help them commit fraud, to encourage them, and to get political support for such actions.<sup>12</sup>

## LEGISLATIONS REGULATING CORPORATE FRAUD

The following are a few anti-fraud laws, policies, or guidelines with reference to corporate fraud:-

**Prevention of Corruption Act, 1988-** Corruption is a harmful problem for the country. According to the Sanathan Committee Report, corruption is a multifaceted issue with origins and consequences in society as a whole. This Act combined the provisions of the Criminal Act of 1952, the IPC, and the CrPC, Public duty, Public authority, and public servant have definitions outlined in this statute. The public officer's criminal responsibility can be determined using these definitions.

**Prevention of Money Laundering Act, 2002-** For the past few decades, money laundering has been carried out extensively in India. This has led to a sharp rise in socio-economic crimes.

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<sup>11</sup> Akanksha Tomar, 'India: Corporate Frauds: An Analysis' (2018)

Mondaq, <<https://www.mondaq.com/india/white-collar-crime-anti-corruption--fraud/696380/corporate-frauds-an-analysis>> accessed 23 September 2023

<sup>12</sup> CS Urvashi Jain, 'Corporate Fraud in India & Outside India under Companies Act, 2013' (Legal Window, 5 January 2023) <<https://www.legalwindow.in/corporate-fraud-in-india/>> accessed 23 September 2023

Money laundering is the process of converting illegal currency into legal tender or corrupted currency into pristine currency. Thus, preventing money laundering is the primary goal and aim of the act.

**Companies Act, 2013-** The Companies Act of 2013 is a piece of law that focuses on concerns related to corporate fraud.<sup>13</sup>

- Section 447<sup>14</sup> defines fraud committed against a business or other legal entity.
- Section 212<sup>15</sup>- The Serious Fraud Probe Office's Investigation into the company's business is allowed.
- Section 448<sup>16</sup>- False Statement Penalty.
- Section 449<sup>17</sup>- Penalties for offering false evidence.
- Section 450<sup>18</sup>- Punishment in cases when no specific penalty is specified.

### THE FIRST SCAM OF INDEPENDENT INDIA: THE MUNDHRA SCAM

The Mundhra Scam was likely the most significant corporate fraud involving the securities market in Independent India. A businessman and stock speculator named Haridas Mundhra robbed The Life Insurance Corporation of India of Rs. 1.25 crores in India in 1957 by selling fake shares to it. After being found guilty, he received a 22-year prison term. T.T. Krishnamachary, who was at the time the Union Minister, was forced to leave his esteemed position as a result of harsh criticism from both inside and outside of Parliament. The connection between the bureaucracy, stock market speculators, and small, dishonest businessmen was made clear by the Mundhra scandal. Additionally, it highlighted disagreements between Feroze Khan, Jawaharlal Nehru's son-in-law, and the former prime minister.<sup>19</sup>

The government was questioned whether LIC had purchased shares of these Mundhra-controlled enterprises over market value using premiums from policyholders, and the

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<sup>13</sup> Ritika Saxena, 'A Case Study on Corporate Crimes in India' (*iPleaders*, 24 October 2019) <<https://blog.ipleaders.in/white-collar-crime/>> accessed 23 September 2023

<sup>14</sup> Companies Act of 2013, s 447

<sup>15</sup> Companies Act of 2013, s 212

<sup>16</sup> Companies Act of 2013, s 448

<sup>17</sup> Companies Act of 2013, s 449

<sup>18</sup> Companies Act of 2013, s 450

<sup>19</sup> Mayank Shrivastava, 'AN ANALYSIS OF MAJOR CORPORATE SCAMS IN INDIA WITH SPECIAL REFERENCE TO SECURITIES MARKET' (2021) 622, 625



government's response was negative. An ex-judge of the Bombay High Court, named M.C. Chagla, was tasked with investigating the claims in order to verify them. The LIC investment committee would have taken into account Mundhra's falsification had they been consulted, according to some stockbrokers who testified during a public inquiry. After that, it was decided that an investigation needed to be conducted into the finance secretary and two other officials.<sup>20</sup>

## CURRENT DEVELOPMENTS IN INDIA'S CORPORATE FRAUD

The SEBI(LODR) Regulations, 2015 have been updated with effect from October 8, 2020, to provide that, in the case that a forensic audit is started, listed firms shall notify stock exchanges of the following information:-

- The start of the forensic audit, the company that initiated it, and any supporting paperwork;
- Final forensic audit report, complete with any management comments, upon receipt by the listed business (apart from those that were required by regulatory or enforcement authorities).

The lack of any materiality rules in this new reporting requirement may lead the Audit Committee and Boards to have serious concerns as any such disclosure could materially affect the Company's stock price.

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## CONCLUSION

In the present society, natural persons now form corporate bodies to carry out business activities in the current industrialized business-oriented, and market-based society. The activities and output of corporate organizations must be regulated since they have an impact on people, society, and the nation. Corporate bodies are recognized as having legal status in order to regulate their activities. The most effective method for regulating anyone's behavior is through the criminal justice system.<sup>21</sup> Corporate fraud is rife in India despite multiple laws and regulatory bodies, solid corporate governance, and other factors. Numerous laws, law commission reports, and investigative agencies were developed and allocated only to stop the

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<sup>20</sup> Sakshi Shairwal, 'Corporate fraud- an understanding' (*Lexology*, 27 September 2021) <<https://www.lexology.com/library/detail.aspx?g=f14e4ac0-4ead-409e-a7f5-74d596bb9b26>> accessed 23 September 2023

<sup>21</sup> Pradeep Kumar Singh, 'Corporate Criminal Liability in India' (2022) 31, 45

developing threat in order to keep a check on the prevention and punishment of corporate criminals. However, stricter and better rules must be implemented.<sup>22</sup>

Nationwide, people are losing faith in private-sector investment. Even while the private sector has the potential to contribute significantly to economic progress, it is currently more involved in fraud. The Indian government has made various efforts to thwart this kind of crime there. According to the 2013 Companies Act, there are some techniques that the government has listed that can be used to stop fraud. According to Section 211<sup>23</sup>, the Central Government may establish the Serious Wrongdoing Investigation Office to look into corporate fraud. Additionally, the central government may request an investigation into a corporation's actions after obtaining a report from the registrar or inspector.<sup>24</sup>

## SUGGESTIONS

To prevent white-collar crimes and corporate fraud, the following steps should be taken by big companies and corporate firms:-

1. Establishing a moral environment is the overarching tone.
2. Leading by example should be used.
3. One should abide by the corporate code of conduct.
4. Strict guidelines should be implemented for the call in service for unethical practices.
5. Internal controls should be trustworthy.
6. Encourage ethics instruction
7. It is necessary to plan training sessions, like internal controls, fraud prevention, etc.<sup>25</sup>

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<sup>22</sup> JETIR, 'INVESTIGATION AND PREVENTION OF CORPORATE FRAUDS IN INDIA' (2020) 1,1

<sup>23</sup> Companies Act of 2013, s 211

<sup>24</sup> Ritika Saxena, 'A Case Study on Corporate Crimes in India'

(iPleaders, 24 October 2019) <<https://blog.ipleaders.in/white-collar-crime/>> accessed 23 September 2023

<sup>25</sup> *Ibid*