

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

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Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi. (2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019



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Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr.Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar

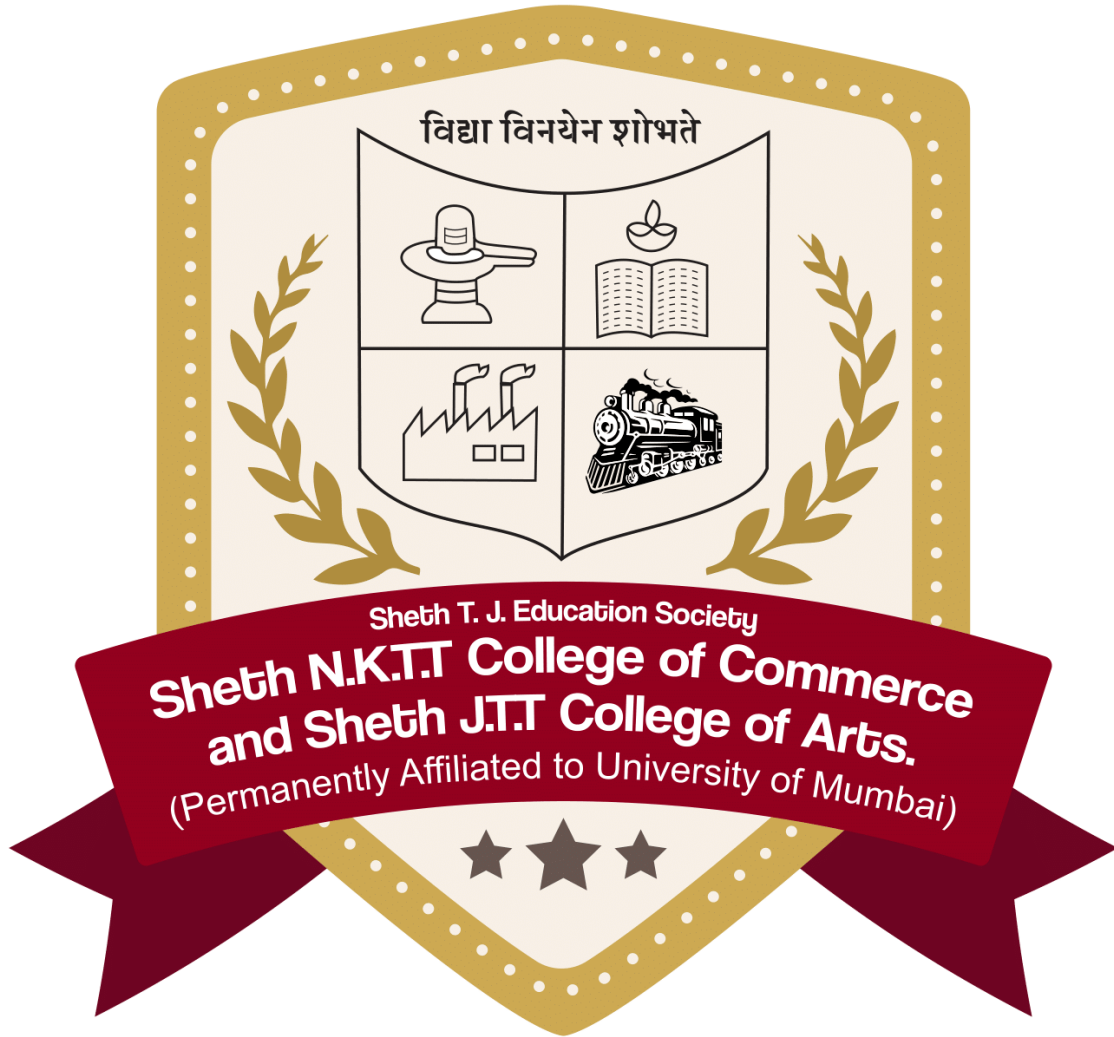


Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

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**IJLRA in Association with Sheth N.K.T.T College of
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“ROLE OF SERIOUS FRAUD INVESTIGATION OFFICE IN STRIVING WHITE COLLAR CRIMES AND ITS DEVELOPMENTS”

International Conference on VIKSIT BHARAT: INDIA @ 2047 - Challenges and Opportunities Ahead

Department of Accounting & Commerce (Sheth N.K.T.T College of Commerce & Sheth J.T.T College of Arts)

विद्या विनयेन शोभते

AUTHORED BY - YASH PALAN

I. DECLARATION

I, **Yash Palan**, hereby declare that this dissertation titled *“Role of serious fraud investigation office in striving white collar crimes and its developments”* is towards International Conference on VIKSIT BHARAT: INDIA @ 2047 - Challenges and Opportunities Ahead Organized by Department of Accounting & Commerce (Sheth N.K.T.T College of Commerce & Sheth J.T.T College of Arts) on Saturday, February 8th, 2025 I have duly adhered to the guidelines.

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II. ACKNOWLEDGEMENT

I would like to express my heartfelt gratitude and appreciation to my supervisor Professor Mukesh Arora for helping me all throughout the course of my dissertation work. Professor Mukesh Arora has enhanced my knowledge in the subject of Company law by pushing me to put in extra efforts in learning the nuances of the subject and the current regulatory framework in both India and overseas. By sharing the vast practical knowledge that Professor Mukesh Arora has expanded my knowledge beyond research literature by leaps and bounds. His valuable feedback and suggestions have been helpful and encouraging.

I would like to express my thank you to the Vice-Chancellor Prof (Dr.) C. Raj Kumar, entire CPGLS office headed by Prof (Dr.) Sridhar Patnaik and now Prof (Dr.) Vishwas H Deviah who continually pushed our LLM batch to make significant strides in a brief period and arranged useful webinars (covid-19 situation) and seminars/conferences (pre covid-19 situation) that

have helped us to bring more value to our respective dissertation work

III. ABSTRACT

Not only in the industrialised world, but also in rising economies such as India, white-collar crime is rampant. White collar crime is expanding as our economy advances. In recent years, starting from Satyam case numerous cases of corporate fraud have been surfaced in India. The SFIO is a federal law enforcement body created under the Companies Act, 2013 tasked with to investigate and prosecute white-collar offences for the violation of the Corporate Laws. The Serious Fraud Investigation Office (SFIO) is a statutory corporate fraud investigating agency in India, tasked with investigating and prosecuting financial crimes. Its significance has grown in recent years, necessitating a thorough examination. The government, on its part, has initiated a variety of programmes aimed at combating fraud, bribery, corruption, and other white-collar crimes. Recent data reveal a slowing of several sorts of crime in recent years. The primary challenge in eliminating corporate fraud in our culture is having a legal structure that is acceptable. According to reports, the relationship between auditors and management is the key basis for the company's upward progress. The introduction of the Serious Fraud Investigation Office, a multidisciplinary investigative organisation tasked with the responsibility of investigating large-scale and sophisticated frauds, transformed the environment. This paper acknowledges the entire history of corporate fraud, from the status of corporate fraud investigation prior to the Companies Act, 2013, to the emergence of SFIO via the Naresh Chandra Committee and its subsequent development in combating white collar crimes, including the power to arrest, the Companies (Arrests in Connection with Serious Fraud Investigation Office) Rules, 2017, and the introduction of EWS (Early Warning System) for detecting corporate fraud. Additionally, this document discusses the proper steps to follow when submitting a case containing Serious fraud. Numerous significant instances, such as the Satyam Scandal and the Deccan Chronicle case, have been examined in the context of the SFIO's role and operation. The author expresses its viewpoints by addressing and providing solutions to the technological and administrative challenges confronting SFIO. This research will focus on the SFIO's duties and functions. Additionally, it provides context for the SFIO's beginnings, formation, and investigative processes.

Keywords: Investigation, Corporate frauds, Companies, Complaints, Scandals, Scam, SFIO.

IV. INTRODUCTION

The “Serious Fraud Investigation Office (SFIO)” is a federal agency created under the administrative supervision of “Ministry of Corporate Affairs (MCA)” with the responsibility of investigating and prosecuting white-collar crimes. The Indian government formed the Committee on Corporate Governance, which is chaired by Shri Naresh Chandra, a former Cabinet Secretary. Among other recommendations, the Naresh Chandra Committee recommended “*the establishment of a Corporate Serious Fraud Office (SFIO), which would be headed by a Director nominated at the level of Joint Secretary to the Government of India. Additional Directors, Joint Directors, Deputy Directors, Senior Assistant Directors, Assistant Directors, Prosecutors, and other secretarial professionals support the Director*”. The headquarters of the company are in New Delhi, and it maintains regional offices in Mumbai, New Delhi, Chennai, Hyderabad, and Kolkata.

With the rise of corporate forms of commercial organisations in India, notably in the late twentieth century, a larger emphasis has been placed on the corporate governance framework. This was done in order to streamline a business’s operations while maintaining legal compliance and financial viability. The SFIO was designed to examine large-scale frauds perpetrated by multinational corporate leaders (often referred to as “white collar crimes”). It is a multidisciplinary organisation that requires competence in a wide range of areas, including corporate law, criminal law, banking, accounting, forensic auditing, capital markets, and taxation.

Additionally, the Naresh Chandra Committee argued that the organisation charged with identifying and investigating fraud should be granted legislative authority, akin to the UK’s Serious Fraud Office, which was established in 1988 under the 1987 UK Criminal Justice Act. The SFIO operated informally under the 1956 Companies Act (the “1956 Act”).

The Companies Act of 2013 granted statutory effect to the SFIO for the first time (the “2013 Act”). To address the growing incidence of corporate fraud in India, Section 447 of the 2013 Act was amended for the first time to include a definition of fraud and a penalty for such an offence. Satyam and a few other business crises that surfaced during Parliament’s debate on the 2013 Act appear to have served as the key impetus for the inclusion of this extremely broad definition of fraud – which is a synthesis of numerous parts of the Indian Penal Code (‘IPC’). The MCA should have autonomy to conduct suo moto investigations independently of police

investigations conducted pursuant to the IPC. Section 447 has been invoked in a number of recent company-related investigations. Given the provision's novelty, the NCLT, the HC, or the SC have not made direct pronouncements on it.

A. Literature Review

1. *“Role of Serious Fraud Investigation Office (SFIO) in Protection of Investor's Interest: An Overview”*, By **Tabrez Ahmad**

Investors are the ultimate owners of a company, and the Board of Directors is responsible for managing day-to-day operations as well as ensuring that everything runs smoothly and that investors make a profitable investment. In order to protect investors' interests, numerous safeguards are included in the Companies Act of 2013. In addition, the Act supervises a company's activities to ensure that they are successful, as well as ensuring that investors receive a reasonable return on their investments and that their rights and interests are adequately protected. While we all recognise that good corporate governance and ethical behaviour go hand in hand, disagreements are inherent in the business world. Companies that engage in corrupt business practises reach new heights when corporate fraud is unavoidable, as it was in the past. Because of this, it may be difficult to prevent and detect white-collar criminal activity in the future. Public confidence in corporate governance has been eroded as a result of multiple high-profile incidents of corporate fraud. According to the Companies Act, the Central Government has the authority to investigate allegations of fraud or mistreatment of minority shareholders. In the event that a central government official considers that an investigation is needed as a result of the conclusions of Registrars or Inspectors appointed pursuant to Section 208, or if the investigation is in the public interest, that official may appoint inspectors on its own initiative. According to Section 213 of the Companies Act, 2013, a private sector firm may also request an inspector based on an order from a court or tribunal, or on the request of members of the company who own a specified number of shares in the company. ... SFIO was founded as a specialised, multidisciplinary organisation within the Ministry of Corporate Affairs with the mission of investigating and prosecuting high-profile incidents of corporate fraud and corruption.

2. *“Serious Fraud Investigation Office: The White Collar Crime Controller”*, By **Shruti Kulshreshtha**

Building a strong legal framework to combat corporate fraud is the most difficult

component of removing corporate fraud from our culture. In this particular situation, it is believed that the source of the problem is the interaction between auditors and management. Since the establishment of the Major Fraud Investigation Office, a multidisciplinary investigative organisation tasked with the responsibility of investigating serious and complex crimes, the environment has undergone a significant transformation. Even though corporate fraud has been around at least since 2013, this paper looks at how the SFIO has evolved since then as a result of the Naresh Chandra Committee, and how this has helped curb white collar crimes such as power of arrest. It also looks at how EWS (Early Warning System) has been implemented to detect corporate fraud.

3. ***“Role of serious fraud investigation agency in promoting corporate governance: a need for more teeth”***, By Dheerendra Kumar Baisla

Globally, corporate fraud has increased significantly in recent decades, with the most recent decade seeing the greatest increase. In the world of business, embezzlement and fraud are both considered white-collar crimes performed by powerful and influential executives. As a result of the Enron crisis, the Sarbanes-Oxley Act was enacted in the United States in 2002. Additionally, it was established that Indian corporate fraud had taken on new dimensions as a result of the Satyam Scam, which resulted in millions of dollars being lost by investors, shareholders, and other stakeholders as a result. Corporate governance procedures that are both effective and efficient are required to protect against corporate fraud. After this happened, the Indian government constituted the Naresh Chandra Committee in 2002 to look into the state of corporate governance in the nation. The committee was headed over by Naresh Chandra. Committee members argued in favour of creating a "Corporate Fraud Office," which would be established under the Companies Act 2013 and tasked with investigating instances of corporate criminal misbehaviour. The Financial Fraud Enforcement Network (FFEN) was developed by the FBI in order to target the most heinous economic crimes (FINEN). It is only in terms of topic that this notion can be considered wholly British, not in terms of practicality, that it can be considered such.

B. Research Questions

Through the present research work, the author aims to answer the following research questions:

1. What is Serious Fraud Investigation Office?
2. What are the legal powers and aspects of SFIO?
3. What is the role of SFIO in investigating White Collar Crimes?

C. Research Methodology

Open source publications were studied, analysed, and classified using a content analysis as the methodology for gathering data for this research. Disparate teams of researchers should be able to come up with the same rating utilising a different scoring system and instructions assigned for the data collected, since the rating is based on an objective component, not on subjective perceptions, views, or evaluations

D. Research Objectives

Through the present research work, the author aims to cater the following research objectives:

1. To determine the meaning and concept of Serious Fraud Investigation Office.
2. To determine the various legal powers and aspects of SFIO.
3. To determine the role of SFIO in investigating White Collar Crimes.
4. To determine the loopholes in the current system of SFIO.
5. To suggest plausible solutions to cater the identified loopholes.

V. ROLE OF SFIO

Over the last few years, there have been numerous illegal mining, coal block allocation, FEMA violations by Indian Premier League teams, and land denotification cases in India, ranging from the mother of all scams involving the awarding of 2G spectrum licences to the largest corporate frauds involving Satyam Computers and Reebok. The prosecution, on the other hand, has thus far come up with nothing useful.

A company member could request an investigation of the operations of the firm under Section 235 of the 1956 Act, notwithstanding the fact that the 1956 Act did not specifically permit the establishment of the SFIO. It is authorised to conduct an investigation into the affairs of a corporation under Section 210 of the 2013 Act, which is substantially identical to Section 335 of the 1956 Act.

Prior to 2003, when the SFIO was granted legal existence, corporate investigations were

delegated to Sections 235–247 of the Companies Act, 1956, which was amended to include the SFIO. The Central Government, in the event that a Registrar’s report is produced, has the authority to appoint one or more qualified persons to serve as inspectors, who will conduct investigations and submit the necessary reports. Moreover, these inspectors may be hired if the Firm Law Board determines that the operations of a company should be scrutinised because they are fraudulent or illegal in nature.

An investigation may only be authorised in the case of public/benefit shareholder unhappiness, not in the case of employee dissatisfaction. When the inspector has obtained previous approval from the government to serve notice on such a body corporate, he or she may, on behalf of the Central Government, conduct an investigation into the affairs of linked firms or individuals who are involved in the case under investigation.

Indian officials announced in August 2002 the formation of a high-powered task force tasked with conducting an analysis and review of their nation’s military organisation as well as its administrative structure in order to make recommendations for improvements to the country’s critical defence programmes. As a result of Mr Naresh Chandra’s leadership, the committee is now recognised as the Naresh Chandra Committee for Corporate Governance, demonstrating the committee’s obvious contribution to the SFIO’s advancement. The public became aware of this recommendation of the Naresh Chandra Committee during the 2000-02 stock market crises, which also included the failure of financial institutions, the kidnapping of a child, and the failure of plantation firms, and it was subsequently made public by the government of India.

VI. RECOMMENDATIONS OF SHRI NARESH CHANDRA COMMITTEE

Among other things, the committee recommended that the SFIO be established. A number of recommendations were made, including the following ones: A Corporate Serious Fraud Office must be established by the Ministry of Corporate Affairs in order to combat corporate fraud (CSFO). This body, which may be made up of professionals on transfer or deputation or on a term contract, will be tasked with a wide range of tasks and responsibilities. It is required to be capable of recognising fraud and, with the assistance of authorised authorities, directing and supervising the prosecution of that fraud in suitable courts of law. In each scenario, a Task Force should be formed, with the team leader serving as the team leader. In order to preserve efficiency and control, a committee chaired by the Cabinet Secretary shall oversee the office’s actions, make appointments, and coordinate the work of numerous departments and

departments of government. An appropriate legal framework must next be established to allow the CSFO to investigate and prosecute all types of fraud. This may be accomplished in the same way as SFO is accomplished in the United Kingdom.

VII. RECOMMENDATIONS OF SHRI VEPA KAMESAM COMMITTEE

A committee chaired by “*Shri Vepa Kamesam, former Deputy Governor of the RBI, was constituted to review the SFIO’s operations and recommend efficiency improvements. The panel recommended administrative, statutory, and organisational changes in its April 29, 2009 report*”. Following the publishing of this report, the SFIO was granted legal recognition, as were several other modifications to the new Companies Act of 2013, including provisions relating to the examination of firms operating within and outside the country, as well as defining and penalising “fraud.” (Press Information Bureau, 2011)

SFIO did not have statutory legal standing until the Companies Act of 2013 took effect. It was founded by a resolution dated July 2, 2003¹, and is subject to the Ministry of Corporate Affairs’ jurisdiction. It is a multifunctional organisation headquartered in New Delhi with field offices located throughout the country’s major cities.

The SFIO’s investigation cases exhibit the following characteristics:

- a) Complexity, with consequences for cross-departmental and cross-disciplinary collaboration.
- b) Prominent involvement of the public interest in terms of monetary misappropriation or number of impacted individuals and
- c) The probability that investigations will result in or contribute to major improvements in systems, law, and procedure².

The SFIO is led by a director with a rank equivalent to that of a Joint Secretary to the Government of India who possesses expertise, skill, and commitment in resolving business challenges, and it is also comprised of professionals from several orders³. The remainder of the staff is drawn from a number of disciplines, including investigations, cyber forensics, financial accounting, management accounting, and cost accounting, as well as any other professions necessary to execute competent investigative activities. This constitution is critical since

¹ Resolution No. 45011/16/2003-Adm-I.

² Ramaiya, Guide to the Companies Act, 16th edn. p. 2525.

³ Section 211, The Companies Act, 2013.

conducting an investigation of a business requires not just investigative abilities but also capabilities and knowledge about how the business operates and conducts its business. According to the Companies Act of 2013, these individuals are responsible for obtaining all necessary information, explanations, justifications, documents, and assistance for the Inquiry Officer in order to finish the Company's additional investigation⁴.

Without prejudice to Section 210 of the Act⁵, the Central Government may delegate the examination of a Company to the SFIO only in the following circumstances:

Upon receipt of a report from the Registrar or an inspector according to Section 208, receipt of information that a firm's affairs must be investigated pursuant to the company's special resolution, in the public interest or upon receipt of a request from any Central or State Government Department.

Additionally, inspectors assigned to investigate can look into a business's activity in the following circumstances: at any point in time, any corporation that was a subsidiary, holding company, or subsidiary of its holding company, any corporation that is controlled by a managing director of the company in question or by someone who is the managing director or manager of the company in question at any point in time, any corporation whose Board of Directors is composed entirely of the company's nominees or is accustomed to conducting its operations in accordance with or pursuant to the firm's orders, any former Chief Executive Officer, manager, or employee of the aforementioned organisation⁶."

Whenever the Central Government refers a case for examination under this Act in order to establish credibility and expedite the examination of serious frauds, "*no other investigating authority of the Central Government or any state government is obligated to continue examination in such case in connection with any offence under this Act*", and any such examination that has already been initiated will be terminated. According to the law, the corporation, as well as its officers, employees, and representatives who are or were employed by the organisation, are required to provide the investigating officer with all of the data, clarification, documents, and coordination necessary for the investigation to be conducted⁷. The

⁴ Section 212(5), Companies Act, 2013.

⁵ Section 210: Investigation into the affairs of Company.

⁶ Section 212(1), The Companies Act, 2013.

⁷ Section 219, Companies Act, 2013: Power of Inspector to conduct investigation into the affairs of the company.

⁸ Inspection, Inquiry and investigation, Sections 206-229, Companies Act, 2013.

inquiry will be carried out in accordance with Chapter XIV⁸ of the Companies Act, 2013, and the SFIO will submit a report to the Central Government within the time frame specified in the order of the court⁸.

In *Church of South India v. Union of India*⁹, the Madras High Court found that the phrase “is of the view” in Section 212 imposed a jurisdictional requirement on the Central Government to develop an opinion on the necessity of an SFIO probe. The case was decided by the Madras High Court. Every order issued by the Central Government is null and void unless and until a “opinion” is formulated in accordance with Section 212 of the Constitution.

An investigation will be conducted by the SFIO into any corporate organisation that has been identified as committing one or more of the following offences, and that corporation may be subject to a fraud penalty under Section 447 of the Act. There will be no surety or bond bail for anyone accused with this felony, and no one will be freed pending trial. However, the accused will only be granted bail when the Public Prosecutor has been given a sufficient opportunity to dispute the motion and has demonstrated to the court that the accused is not guilty of the charge and is unlikely to commit it while out on bail (see below). According to Section 212(6) of the Act, *“bail may also be granted if the defendant is less than sixteen years old, is a woman, or is ill or infirm, and that only the Special Court has the ability to give relief in these circumstances. Nonetheless, bail limits are governed by the 1973 Code of Criminal Procedure or any other bail statute in effect at the time of the arrest or detention”*¹⁰.

The Companies (Inspection, Investigation, and Inquiry) Guidelines, 2014 comprise guidelines governing the overall establishment, constitution, and functioning of the SFIO formed under the Companies Act 2013 to conduct inter-departmental investigations into white-collar crimes in corporations. It went into effect on April 1, 2014. The SFIO is led by a “director,” who must be *“at least a Joint Secretary in the Government of India and have knowledge and experience dealing with corporate concerns. It may hire experts in corporate law, criminal law, banking, accounting, forensic audits, financial markets, taxation, and information technology as needed”*.

Political involvement stymies prosecution with a myriad of investigating agencies beholden to

⁸ Section 212(3), Companies Act, 2013.

⁹ Writ Petition Nos.25236 and 25419 of 2018 & 32587 of 2019, High Court of Madras, Decided on February 01, 2021.

¹⁰ Section 212(7), Companies Act, 2013.

a variety of ministries. Even if the perpetrator has no obvious political ties, the wheels of justice grind to a halt. Consolidating agencies or granting legislative authority to SIFO, as urged by the Naresh Chandra committee, can help reduce political influence while also transforming a toothless tiger into a fierce beast capable of instilling terror in white collar criminals¹¹. While India has a plethora of laws, their implementation is haphazard, uneven, and prone to political interference. Existing laws will only be enforced consistently and aggressively if they are consistently and aggressively enforced. Priority should be given to modifying suffocating restrictions and deleting redundant laws. This would allow public prosecutors to file charges as soon as possible, collect evidence as quickly as possible, and bring persons accused of wrongdoing before the court for their day in court as soon as possible.

A free market economy is built on the rule of law and an equal playing field for all persons and enterprises. As India transitions to a more typical capitalist society with a growing role for the private sector, successful prosecution of white collar crimes is critical for enhancing economic efficiency, eliminating corruption, and maintaining faith in the free market system.

VIII. POWER TO ARREST

Despite the fact that the SFIO was established by the Companies Act of 2013, it did not gain the right to arrest in connection with a company investigation until August 24, 2017, when the Company (Arrest in Connection with Serious Fraud Investigation Office) Rules, 2017 were passed. The government has given the SFIO jurisdiction to arrest directors, Key Management Personnel (KMPs), and anybody else accused of breaking the Companies Act of 2013. According to the statement, the Director, Assistant Director, or Additional Director of the SFIO has the right to arrest anyone they believe is subject to prosecution under Section 212 of the Act, with the exception of any government or foreign corporation¹². Before the Additional or Assistant Director executes such an arrest, the rule now requires the Director's written authorization. The Director of SFIO makes the final decision on all arrests. The SFIO may only arrest government officials and foreign enterprises with the prior permission of the Central Government. As far as arrest of government officials and person related to foreign enterprise are concerned the prior permission of CG is required before making the arrest of such person.

¹¹ Naresh Chandra, Report of the CII Task Force on Corporate Governance Ministry of Corporate Affairs (2009), https://www.mca.gov.in/Ministry/latestnews/Draft_Report_NareshChandra_CII.pdf.

¹² Rule 2(1) of the Company (Arrest in Connection with Serious Fraud Investigation Office) Rules, 2017.

In *Rohtas Industries Ltd. v. SD Agarwal*¹³, the court held that a substantial fraud investigation can be tremendously damaging to a firm and should be avoided in the absence of credible proof as given in Section 237(b) Companies Act, 1956. Given the gravity of the investigation and arrest, they should be given only on the basis of substantial and convincing evidence.

The Bombay High Court ruled in *N. Sampath Ganesh v. Union of India*¹⁴ that a prosecution may be initiated based on an interim report or an inquiry report if the report is sufficient to prove a charge.

The SFIO should keep in mind that its actions may have far-reaching repercussions for corporate governance, compliance, risk management, and investor protection.

Despite the elimination of a similar provision, Section 212(6) still prohibits the issue of bail for Section 447 infractions. The Supreme Court reversed the Delhi High Court's grant of bail in *SFIO v. Nitin Johari*¹⁵ on the grounds that the twin pre-conditions given forth in Section 212(6) and the basic standards for grant of bail set forth in Section 439 of the CrPC were not met.

Section 212(6) of the Companies Act, 2013 applies to anyone suspected of committing an offence described by Section 447 of the Act, which criminalises fraud. According to Section 447 of the Companies Act, 2013, an arrested person must demonstrate to the Court that: he has reasonable grounds to believe he is innocent; and he is unlikely to commit any offence following his release on bail. In complex cases involving documented evidence and paper trails, the evidential value of the prosecution's material may be disputed solely through cross-examination of prosecution witnesses and the submission of defence evidence. When a charge is being framed, the critical question is whether a case against the defendant has been made. As a result, the identical data would be analysed and the identical legal standards would be applied. Despite not being arrested and cooperating fully with the investigating agency, a person accused of violating Section 447 of the Companies Act may be taken into custody under Section 212(6) upon appearing before the relevant court on a summons issued by it, despite cooperating fully with the investigation. This section was necessary in instances where the Inquiry Agency took the prudent decision to arrest a suspect during the course of the inquiry

¹³ AIR 1969 SC 707.

¹⁴ (2020) 222 CompCas 676 (Bom).

¹⁵ (2019) 9 SCC 165.

due to the possibility of evidence being tampered with or the suspect being a flight risk.

IX. EARLY WARNING SYSTEMS (EWS)

The SFIO's goal is to remove any possibility of white collar crime evasion, and they are currently working on a technique for finding a needle in a haystack. One of the next improvements being worked on behind the scenes is early warning systems. The SFIO has established a consultancy firm solely committed to the development of the system's conceptual underpinnings. This is essentially an alarm system for detecting corporate crimes early enough to prevent them from recurring, so reducing not only investor losses but also the country's overall economic condition. The concept of establishing an EWS was first proposed in 2009, following the Satyam debacle. To assist in identifying potential frauds, the new framework would use the MCA 21 database, as well as information gathered from other administrative associations and other sources, such as online networking.

The system would reduce disruptions caused by corporate fraud by actively monitoring organisations' behaviour using statutory reporting components and other publicly available data.

The primary goal of the EWS system is to eradicate shell companies. Shell firms typically lack visible economic activity or assets in their own right and are established for immoral purposes. In a slew of reports and studies, the issue of anonymous corporations has been widely identified as critical for addressing a variety of high-priority international issues, including *“the drug trade, organised crime, terrorism, money laundering, tax evasion, corruption, corporate crime, and systemic financial instability”*. *“While it is now difficult to audit the financial records of ROC registered enterprises, EWS will be able to detect artificial intelligence, hence improving corporate governance”*.

X. PROCEDURE TO PROSECUTE AND SECURE CONVICTION

It is vital to file a complaint when a person knows or has reason to believe that a substantial fraud has happened at a particular firm for the purpose of good governance and the preservation of a vibrant securities market. The major goal of uncovering corporate fraud is to safeguard not only investors' interests, but also the interests of consumers, global economic stability, and financial stability.

According to Section 436 of the Companies Act, 2013, a Special Court may take cognizance of an offence under that section based on a review of the police report or a complaint filed in that regard, without committing the offender to the court for trial notwithstanding anything contained in the Code of Criminal Procedure, 1973.

Anyone who is unsatisfied with the actions or conduct of a corporation or an investor may “*file a complaint with the Registrar of Companies (RoC) or the Ministry of Corporate Affairs*”. Additionally, there are no filing fees associated with a case alleging substantial fraud. To file an online complaint, the following steps must be taken: Visit the official website of the Ministry of Corporate Affairs at www.mca.gov.in. One of the prerequisites is that the corporation you are filing a complaint against has a CIN, or Corporate Identity Number. When the cursor is hovered over ‘MCA Services’ on the MCA website, a big drop-down menu containing all of the MCA’s services appears. There is a subcategory titled ‘Create Investor/Serious Fraud Complaint’ in the drop-down menu. Just click on it. On the following page, you’ll see something similar to this: ‘To register a complaint, please use either the Investor Complaint Form or the Serious Investor Complaint Form, which are both available under Company Forms Download.’ The term “Download Company Forms” will show in blue and will take you to the website’s whole collection of online forms. Click on the blue link. After downloading Company Forms, the complainant can go down to the subheading ‘Investor Services.’ The complainant may utilise the e-form and instruction package to complete the ‘SERIOUS COMPLAINT FORM.’

In *K. Veeraswami v. Union of India*¹⁶, the Supreme Court held that a final inquiry report prepared by an investigating officer pursuant to Section 173 of the CrPC is merely an opinion and does not constitute legal evidence.

XI. DECCAN CHRONICLE HOLDING LTD.

The SFIO was conducting an inquiry into a corporation at the time of writing. DCHL filed for bankruptcy in Hyderabad, where it is the owner of the English-language newspapers Deccan Chronicle and Asian Age, among other publications. They were unable to service a debt of around Rs. 1,230 crores between 2009 and 2011, and they also engaged in a number of financial irregularities during this period. Furthermore, serious infractions of the 1956 Companies Act could not be overlooked. Following an inquiry by the Securities and Futures

¹⁶ (1991) 3 SCC 655.=

Industry Organization, the company generated funds through the sale of nonconverting debentures and other financial instruments by a number of banks. Eventually, the Board of Financial Reconstructions (BIFR) ruled the corporation to be unsound, but lenders filed a lawsuit against it under the SARFAESI Act.

XII. SARADHA CHIT FUND

Following widespread public outrage over the duping of certain gullible investors through the use of phoney cash pooling schemes masquerading as chit reserves, the Ministry of Corporate Affairs launched the investigation in 2013. The SFIO is now examining around 60 organisations, the most of which are located in the country's eastern areas and are suspected of defrauding unsuspecting citizens. Previously, the SFIO said that the firms under investigation had made legitimate financial errors rather than participating in money laundering through exploited administrative flaws by promoters. As a result of technological advancements and increased use of the internet to advertise such commodities to speculators, the industry has seen an increase in the number of unique monetary items available for purchase. The SFIO has been shown to be incapable of resolving disputes on its own. This unit is responsible for unpredictable forgeries that have cross- departmental, cross-disciplinary implications. It also contributes considerably to fiscal theft and the number of influenced employees through open enthusiasm. It provides the results and investigation report to the Central Government for consideration once the investigation is complete. Following a comprehensive assessment of the report, the Central Government may provide additional directives to the states.

XIII. SUGGESTIONS

The SFIO has recently handled a considerable number of investigations; the primary problem is a lack of manpower to handle such a large amount of investigations.

The headquarters of SFIO are in New Delhi, and the organisation has four subsidiaries in Mumbai, Hyderabad, Kolkata, and Chennai. To improve the efficacy of the investigations, the SFIO should expand its reach throughout India by increasing the number of regional offices stationed around the country. This will make it easier to cover a wide range of businesses and give better outcomes.

SFIO does not prioritise the timely recruitment of office personnel. A sufficient intellectual team is one of the SFIO's fundamental needs for effective operation and inquiry. Inadequate

staffing results in increased payroll costs, substandard work, increased employee stress, and missed growth prospects. This will not provide the expected results, and SFIO's entire goal will be defeated.

The act anticipates and addresses every possibility that could arise over the course of a white collar crime prosecution, which is notoriously difficult to complete successfully. Although committees have been constituted in the past to make recommendations on a variety of issues, the Central Government has failed to put those recommendations into effect. The complexity of frauds rises over time, necessitating an increase in the level of attention required on the part of the SFIO.

Even if the SFIO is recognised under the new Companies Act 2013, the organization's attitude will remain unchanged. At the moment, cases are allocated to the SFIO by the Central Government, which also prosecutes them. Both SFIO and this modification are required. However, this authority may be exercised only following the conclusion of an investigation into corporate wrongdoing. This position should be examined as part of the SFIO system by an independent committee, the Ombudsman Independent Committee.

In this day and age, any restriction imposed on the general public may be accompanied with a plan. Despite the fact that SFIO has previously announced the EWS's launch, the system is still in its early phases of development. The SFIO's success in this area has been minimal and dismal. The detection failed miserably, demonstrating the SFIO's lack of preparedness, and if immediate action is not done, people will find ways to escape the restrictions that the EWS will apply in the near future, according to the EWS. Essentially, this renders the revolutionary fraud detection system that is due to be released obsolete.

The SFIO is ultimately controlled by the Central Government, and it is possible that the Central Government will refuse to authorise investigations and prosecutions, allowing the accused corporation to destroy important evidence.

Each individual complaint should be dealt with according to the protocol that has been established. An open channel of communication exists between the SFO with individuals, whistleblowers, and others in the UK. Currently, there are no provisions in the Indian SFIO that address tactics such as those described in Section 177, which mandates the construction of an

internal and even an external Vigil Mechanism for whistleblowers to protect their identities. What, if any, additional remedies are available to whistleblowers who believe they have been treated unfairly? As a result, the SFIO has established a formal complaints mechanism.

Despite the fact that the SFIO has legal standing under the Companies Act of 2013, the Central Government continues to transfer investigation jurisdiction to the organisation. The Central Government has far more influence over SFIO's activities than is necessary, restricting the organization's capacity to thrive in the future. The SFIO should be given the ability to accept and review cases on its own.

Bribery and Corruption involve the majority of the elements of fraud. SFIO must also be combined with investigation in these instances. As of now, only cases brought under the Companies Act 2013 are filled, not those brought under other statutes.

Government has worked based on the Ninth Report of the Standing Committee on Finance on 'Demands for Grants (2020-21) to accordingly make changes to the functioning of SFIO to increase efficiency¹⁷. In the SFIO, the working strength has been increased from 66 to 83 against the sanctioned strength of 133 and vacant posts are being filled by deputation and Direct Recruitment.

XIV. INJETI SRINIVAS COMMITTEE FOR PREPARING AN INVESTIGATION MANUAL FOR SFIO

On March 6, 2020, the Ministry of Corporate Affairs (MCA) formed a 12-member committee chaired by "Mr. Injeti Srinivas, Secretary MCA, to prepare an Investigation Manual for SFIO".

The committee's mandate included the following: increasing awareness of relevant processes and statutes to ensure that Investigation Officers adhere to the highest professional standards; developing a "all-encompassing Manual" for conducting effective investigations in accordance with the Act; assessing and making recommendations based on prior experience and cases; providing insight to reviews of existing processes; and conducting comparative analysis on a variety of variables.

¹⁷ Action taken by the Government on the recommendations contained in Ninth Report of the Standing Committee on Finance on 'Demands for Grants (2020-21), Lok Sabha (2020), http://164.100.47.193/Isscommittee/Finance/17_Finance_20.pdf.

XV. CONCLUSION

Corporate fraud and financial frauds have widespread ramifications for a number of stakeholders, the general public, and the economy. To advertise their success as a business, firms frequently attempt to present a rosy picture of their financial health as if it were all rainbows and unicorns. They conceal their financial statements through a variety of fraudulent and unethical tactics in order to present a false picture to shareholders. As a result, it is important to reevaluate, reconsider, and enact stringent legislation to counteract fraudulent practices. White-collar crime is on the rise in India, necessitating exceptional sanctions and effective legal enforcement.

In order to investigate complicated business issues involving a higher level of public interest, the Serious Fraud Investigation Office (SFIO) was founded. There was a need for an agency dedicated exclusively to the resolution of complex white-collar crimes, such as the Satyam Computers case, because *“it would have experts from various fields handle such cases more efficiently and effectively, and it could coordinate with other investigating agencies, such as the CBI, the Securities and Exchange Board of India (SEBI), and other organisations”*. This goal was intended to be achieved through the establishment of an SFIO under the Companies Act of 1956. SFIO records, on the other hand, indicate that the situation has not improved.. According to the organization’s website, the vast majority of complaints made against firms are still pending in various stages before a variety of courts as a result of the prolonged legal procedure. Additional challenges that have hampered the effectiveness of the SFIO include a lack of manpower, delays in obtaining permissions, and, in certain cases, the involvement of various government organisations, all of which have contributed to the organization’s overall inefficiency. As a result, it is vital to address these concerns and ensure the smooth operation of this special investigation agency in order to punish those responsible for large-scale corporate frauds and to defend the interests of investors and the general public, respectively. As a result, it is vital to address these concerns and ensure the smooth operation of this special investigation agency in order to punish those responsible for large-scale corporate frauds and to defend the interests of investors and the general public, respectively.

The SFIO concluded investigations in 12 cases involving 361 entities during fiscal year 2019-20. In FY 2018-19, by contrast, it had concluded investigations in 12 cases involving a total of 83 businesses. This contrast indicates how the SFIO is becoming more active in its primary mission of corporate fraud investigation. However, there are still a significant number of active

litigations involving the SFIO, particularly where there has been a significant delay in concluding the investigation and filing the report.

That the SFIO is effective in combating corporate fraud is demonstrated by this. Because the business sector has the potential to have large and far-reaching economic implications, the government is attempting to instil a culture of sound corporate governance in the country through this initiative. With all of its faults, SFIO operates at an impressively rapid pace. Although still in its infancy, the SFIO is steadily strengthening its capacity to compete with the performance of severe fraud offices in other jurisdictions with each new step it takes. Corporate fraud is becoming more frequent, and as a result, the SFIO's purpose is becoming increasingly important.

There are no published statistics on the number of prosecutions that end in convictions, and the lack of transparency exacerbates the problem. According to the MCA, only six successful convictions have been achieved out of 162 completed investigations, including the Reebok and Satyam instances¹⁸. According to the data, the strike rate in the United States is on average 3.7 percent, whereas it is 85 percent in the United Kingdom. One possible explanation is that SFIO lacks the authority to resolve disputes on its own. Though it submits a comprehensive and complete investigative report at the conclusion of the investigation, the Central Government instructs the SFIO to initiate prosecution against a corporation after examining the report. In comparison, the United Kingdom's Serious Fraud Office ("SFO") is a "independent" entity charged with investigating and prosecuting major and sophisticated fraud and corruption cases¹⁹. Its role in promoting good corporate governance in that country has become increasingly important as the major enforcer. As a result, a comparable model with equivalent capabilities may be used to the SFIO as well, ensuring prompt relief to investors while also alleviating part of the court's workload. One reason is because MCA exerts direct control over the agency, while another is a manpower problem. Only 59 officers were authorised to fill the 133 vacant posts, according to the MCA²⁰. The Agency has had various difficulties as a result of a lack of proactive measures, a staffing shortfall, limited financing, and reliance on the

¹⁸ Anil Sasi, Since inception, 6 probes by SFIO led to convictions The Indian Express (2015), <https://indianexpress.com/article/business/business-others/since-inception-6-probes-by-sfio-led-to-convictions/> (last visited Oct 16, 2021).

¹⁹ Home, Serious Fraud Office (2021), <https://www.sfo.gov.uk/> (last visited Oct 16, 2021).

²⁰ Vacancies, SERIOUS FRAUD INVESTIGATION OFFICE, <https://sfio.nic.in/vacancies> (last visited Oct 27, 2021).

government for permission to investigate suspects. The recruitment process should be overhauled by way of deputation and increase direct recruitment to circumvent this issue. Further, the number of regional offices can be increased with permanent officers on standby. Some changes to SFIO functioning is required.

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**Sheth N.K.T.T. College of Commerce
and Sheth J.T.T. College of Arts.**
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