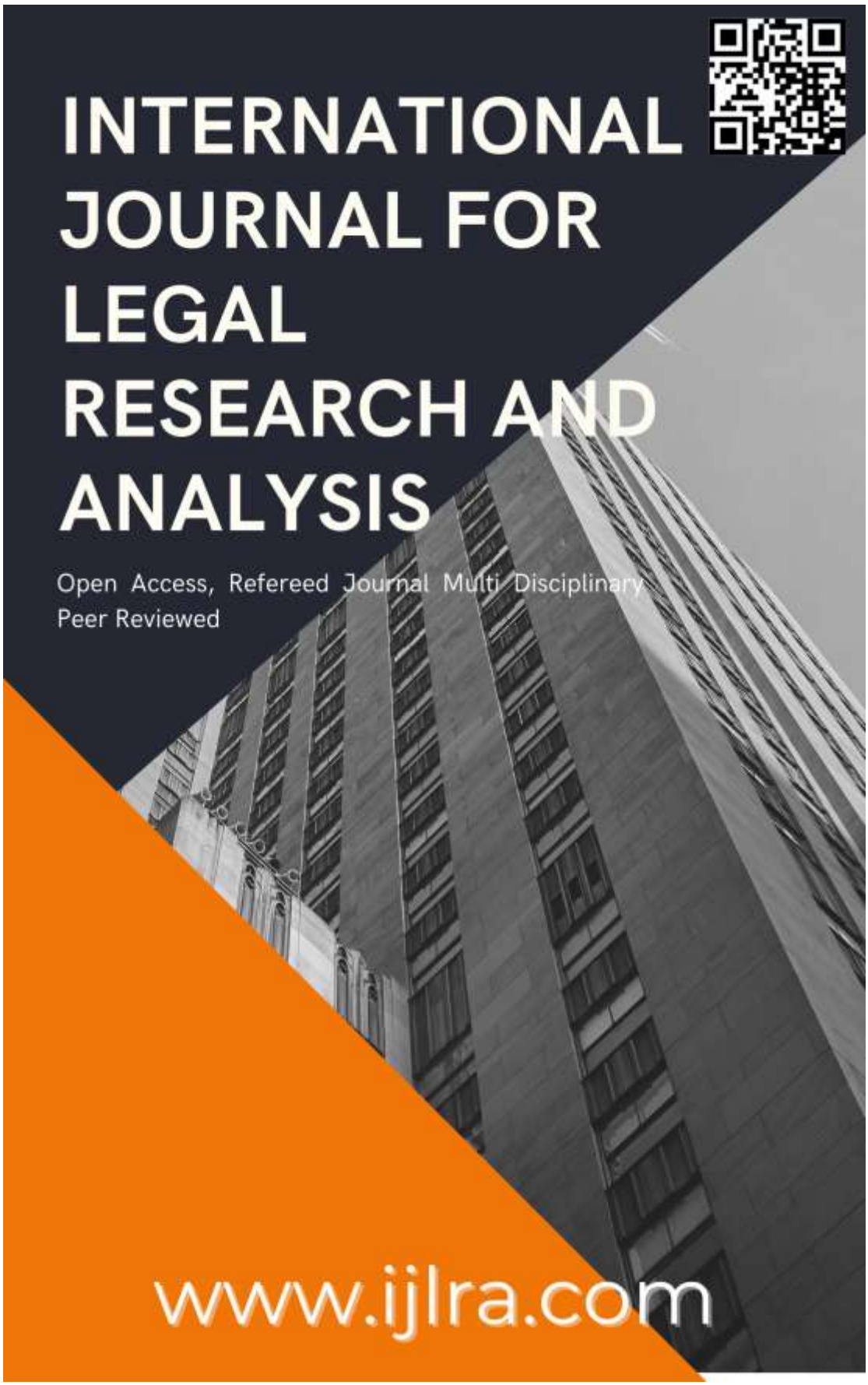

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RESEARCH ARTICLE

Corporate Frauds And Legal Architecture: A Study With Indian Perspective

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ABSTRACT

In India corporate frauds are originated from host of factors including greed, corrupt ideology, weak governance structures etc., apart from the fraud triangle model envisaged earlier. The typical fraud triangle is consisted of three ingredients, viz., opportunity, motivation and rationalisation. Corporate fraud hurts shareholders value, damages investor's trust, locking up of capital in litigation and causes financial market instability. Corporate frauds put financial institutions at stake, it effects common people and investors and thereby brought negative impact on development of financial market of the country. Research shows that mainly KMPs are responsible for such frauds. There are legislations and regulatory bodies to deal with corporate frauds which attract both civil and criminal liability. The Companies Act, 2013 attempted to curb corporate fraud into two stages viz., pre-fraud stage and post-fraud stage. Companies Act of 2013 apart from introducing legal provision like section 447 also gave birth to two regulators, viz., serious fraud investigation office (SFIO) and National Company Law Tribunal (NCLT). Corporate frauds also involve securities fraud which involves deception or manipulations in sale or purchase of securities in securities market. Further SEBI Act, 1992 also empowered it to take measures against fraudulent and unfair trade practice, insider trading like section 12A, 15. The Prevention of Money Laundering Act, 2002 also has a target to prevent corporate fraud since the definition of Money Laundering involves concealing the origins of illegally obtained money by transferring it through a complex sequence of banking or commercial transactions to mask its unlawful origins. With the above mirror view of corporate frauds in India there is need to enforce the law more strictly and there should be implementation of whistle blower policy to effectively safe guard against corporate frauds.

CHAPTER 1

INTRODUCTION

'Corporate frauds' are becoming a major threat to the financial and economic stability of the world and India being part of it. Such incidents have taken place continuously with large companies and cases have occurred which raised significant alarm in India. It involves individuals and corporations causing illegal activities by manipulating funds and finances, deceiving stakeholders, evasion of taxes or by wrongful financial gains. Such acts causes loss in confidence of the investors, financial markets gets destabilized and it damages the reputation of the corporations.

Corporate Fraud is a worldwide phenomenon. Cases of corporate misconduct have occurred in developed countries and emerging financial markets causing severe threat to stability of finances, trust of investors and growth of economy.

Cases of 'Corporate Fraud' like Enron Scandal, WorldCom have occurred in US, UK which compelled to make several reforms in legal field of corporate governance, regulatory framework and accounting standards. These countries have invested corporate sectors for changing their institutional frameworks, creating accounting bodies and framing of legal regulations.

In India, ‘Corporate Fraud’ in companies like ‘IL&FS and Satyam’, demonstrated weakness of corporate governance and management system in the country. It is evident that there is failure in internal control mechanism and managerial post and defects in risk management system. Such frameworks exposes employment security risk in long term, reputational loss to industry and affecting GDP of country. This indicates towards stronger legal regulations.

Since India suffers from delay in investigations, conflicts in jurisdiction and poor whistle blower mechanism as compared to Western nations, Indian government has put efforts to improve in corporate governance, accounting standards and enhancement of whistleblower.

1.1 MEANING

‘Fraud is an intentional act of deceit committed to obtain an unjust or illegal advantage, often in the form of money.’ Fraud consists of intentional misrepresentation, withholding of information,

or manipulation with the aim of deceiving others. Fraud can be generally described as an intentional act of deceit with the aim of obtaining an unjust or illegal financial advantage.

As per the ‘Oxford Dictionary of Law’, ‘fraud’ is:

- "A false representation by means of a statement or conduct made knowingly or recklessly in order to gain a material advantage."1

As per law, ‘Black's Law Dictionary’ states ‘fraud’ as:

-"A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment."2

In the Indian jurisprudence, the ‘Indian Contract Act, 1872’ merely defines ‘fraud’ under ‘Section 17’ as "Fraud means and includes any of the following acts done by a party to a contract, or with his connivance, or by his agent, with intent to deceive any other party to such contract, or his agent, or with intent to induce any other party thereto or his agent to enter into the contract".

Furthermore, the ‘Association of Certified Fraud Examiners (ACFE) offers a generally acceptable definition of fraud in the corporate sector: -Fraud is any act of intentional or willful attempt to deprive some one of belongings or money through cunning, fraud, or other unfair means.’3

‘Section 447 of Companies Act, 2013’ prescribes ‘punishment for fraud’ and in the explanation appended to ‘Section 447’, the term of fraud has been explained. The said explanation runs thus,

‘Explanation’ – “For the purposes of this Section –

(i) “fraud”, 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 1Martin, (2009). A Dictionary of Law (7th ed.). Oxford University Press 2Garner, (2019). Black’s Law Dictionary (11th ed.). Thomson Reuters 3Association of Certified Fraud Examiners. (2022). Report to the Nations: 2022 Global Study on Occupational Fraud and Abuse

its creditors or any other person, whether or not there is any wrongful gain or wrongful loss;

(ii) “wrongful gain” means the gain by unlawful means of property to which the person gaining is not legally entitled;

(iii) “wrongful loss” means the loss by unlawful means of property to which the person losing is legally entitled.”

1.2 NATURE OF CORPORATE FRAUD

‘Corporate fraud is not a quirk in the behavior of corporations—it is a structural problem with lasting repercussions. These fraudulent schemes, usually engineered by those at the top of organizations, seek to derive unauthorized economic or strategic benefits. As economies integrate, and corporations become a driving force in national GDPs and job markets, the effects of fraud cascade far beyond balance sheets and shareholder losses.’4

Corporate fraud is a willful misstatement, concealment or distortion of fact by key managerial personnel and/or officers to obtain an unfair gain for themselves or the corporation. Such activity is generally systematic and carefully planned and is usually carried out under the garb of legitimate activity. The fundamental ethos of trust, transparency, and accountability in corporate transactions is undermined.

They can be perpetrated by senior executives, middle managers, or even low-level employees with minimal resource access. Yet, the most pernicious types tend to be those that occur at the executive or board level, where internal controls are weakened or even lacking.

1.3 TYPES OF CORPORATE FRAUD

‘Corporate Fraud’ can be classifies into ‘various types’ such as:

1.3.1 Asset Misappropriation

4Vissak, T., & Zhang, L. (2019). Comparative Analysis of Corporate Governance Practices in India and Developed Economies: Lessons from International Best Practices. International Journal of Business and Management, 7(3), 7390

Generally the most prevalent form, ‘asset misappropriation covers theft or diversion of company assets like cash, inventory, or intellectual property’. Usually, it is perpetrated by lower- or mid- level employees. The primary practices which are being performed in this area are – "Stealing cash or inventory", "Producing fake checks or fraudulently claiming expenses", "Misappropriating company assets (such as - vehicles, data, or intellectual property etc.) etc.".

For purpose of understanding, let us consider an example of an employee of a company's warehouse falsifying inventory records for pilferage over time which can lead to fraud but not limited to – "Gradual financial losses that accumulate over time", "Erodes internal control systems and operational efficiency" etc.

1.3.2 Bribery and Corruption

This typology includes ‘offering or accepting kickbacks, undue favours, or illegal payments to influence business decisions or secure unfair advantages.’ The main practices which are being done in this field are, ‘Kickbacks for awarding contracts, paying for regulatory or political favors, bid rigging and procurement fraud.’

We can see similarity to this type of fraud in the Siemens bribery case, where executives paid officials in multiple countries to secure deals.

This type of fraud can cause but not limited to – ‘breeds a culture of unethical behavior, distorts market competition and damages public trust, resulting in international sanctions or blacklisting”.

1.3.3 Financial Statement Fraud

It includes ‘intentional misstatement or suppression of financial information’ to create a ‘misleading impression of an organization's financial’ well-being. It also includes incorrect stating of revenues, understating liabilities, or manipulation of financial records.

1.4 CAUSES OF CORPORATE FRAUD

The nation has countless Acts, Rules, Regulations such as 'Companies Act, 2013', 'SEBI Act, 1992 and its Regulations', 'Prevention of Corruption Act, 1988', 'Prevention of Money Laundering Act, 2002' and various adjudicatory forums, specifically intended to prevent

Corporate Frauds such as 'National Company Law Tribunal, Serious Fraud Investigation Office' etc., yet the Corporate Fraud still goes undetected and takes menacing form. The reasons for its continued presence are manifold. The sluggishness in the law enforcement environment, inefficiency, personal greed and modus operandi of character etc may be the dominant grounds amongst others. The whistleblower Protection Act has not given full effect in this country so far and this neglect augments the problem of non detection of 'corporate fraud in India'.

The 'corporate system in the country' is still struggling with bringing the modern concepts of accountability, fairness and transparency in the communication system among the 'company's management, its board of directors, shareholders and other stakeholders'. This may be called as corporate mismanagement and this fosters the environment for corporate fraud.

Indian companies mostly are still run by family members and thus, the Board of Directors and Promoters are coming from common blood bondage and this disables the Directors to have independence or in other words the board's inability to independently examine the financial status of the company originates from this system. The family system promotes personal interest and this take precedence over the interest of other stakeholders

Proper 'Corporate Governance' requires effective 'audit committees' which would independently examine the 'financial statements and ensure statutory compliances'. However, the internal audit systems in many Indian companies are not effective and the 'lethargy of the auditors' to examine the 'financial statements' and 'health of the company' in accordance with the legal framework fosters corporate fraud.

The issue in poor 'corporate governance' arose 'from the fact that shareholders elect Board of Directors to monitor the running of the company on their behalf, who in turn appoints a team of managers. It is not possible for the Board to fully instruct the management on the desired course of action under every possible business situation.' Therefore, trust is reposed due to lack of proper contract. And this incomplete contract "empowered that most shareholders do not care to attend the General Meetings to elect or change the Board of Directors. Even those who attend therefore face difficulties in getting any say in selection of directors and it is often found that CEO fills the Board with his friends and allies. Thus, management having the keys to the

business utilizes this corporate vacuum to further their own self-interest rather than interests of the shareholders."5

Further, it is unfortunate that shareholders are neither interested in participating in annual general meeting nor desirous of keeping shares / stocks for longer period than necessary to encash capital appreciation. They have been found less interested to take a long term investment view to participate in management by electing Directors of their choice. This Myopic vision, laid to a condition when 'control and management of a company' fail in the 'hands of minority shareholders', who were promoters and thus, control the entire company. Shares / stocks are a subject matter under sale of Goods Act and therefore, vast majority of the shareholders no longer regard it an instrument of ownership. It is often told that now a day's dematerialization converted the shareholders as mere numbers. And, there was no sense of loyalty or involvement with the company. The only interest that remains was encashing the capital appreciation at the quickest possible time.6

The management class has captured all powers in a company by filling the Board with his / her people of choice and this trend continues in the appointment of auditor also. So, all voices are voices of the Managers and no independence. And, in India most of the corporate houses belong to a family and the 'head of the family' remain the 'chairman of the controlling company' sitting on the top of the related companies. He is the person on whose indication all salaried top management would move thus the concept of public company has not been translated truly since, companies are still run by lords of the corporate world with minimum participation in capital of a company.7

Still the country suffers from adequate transparency in financial reporting. Many companies are found to show inflated profits, overstating assets and reduced liabilities i.e. the ingredients of Section 448 of the said Act of 2013. Such statements are published to mislead the investors, and to use the fraudulent representation for taking loans, divert the proceeds of crime etc.

5Rajesh Chakrabarti, "Corporate Governance in India – Evolution and Challenges.", College of Management, Georgia Tech., 800 West Peachtree Street, USA. 6N.L. Mitra, "Corporate Governance: A Sojourn to Find a Yardstick", Volume – 56, Number – 4, October – December, 2014, 7Ibid.

Further, the multiplicity of regulators is one of the vital problems for the fair and effective investigation. There are several cases which indicated regulators keep on passing the buck to one or the other regulators for enquiry and investigation. The confusion resulting from multiple regulators can be best understood by citing the Satyam scandal. In Satyam scam, more than one State and Central agencies were involved like 'CID (State), Tax Department, Securities Exchange Board of India, Central Bureau of Investigation, Enforcement Directorate, Institute of Chartered Accountant of India, Serious Fraud Investigation Office, Reserve Bank of India.' This involvement of multiple agencies leads to confusion and co-ordination problem which result in a delay in filing charges.8 1.5 CONSEQUENCES OF CORPORATE FRAUD

The Corporate Fraud has consequences such as:

i. Economic losses

The Corporate Fraud causes financial losses, unstability in stock market and reduces the confidence of investors.

ii. Organizational Damages

The Corporate Fraud created reputational damages to companies, entities and legal challenges can affect their existence.

iii. Employee Morale and Job Security

When corporate fraud comes to limelight, then company often goes for lay-offs which questions the job security of the employees.

iv. Legal and Regulatory Repercussions

This may burden the company with litigation costs, court fees, hefty fines creating a burden over them.

8https://shodhganga.inflibnet.ac.in/handle/10603/330129

CHAPTER 2

2.1 LEGAL FRAMEWORK IN INDIA DEALING WITH CORPORATE FRAUD9 :

The country is replete with legislation and regulatory bodies to tackle corporate fraud. The main legislation is,

2.1.1 'Companies Act, 2013' 'The Companies Act, 2013' prescribes provision for 'the Directors and Officers in-default' for criminal liability and the term "Officers in default"10 has given a wide ambit by

including key managerial personnel, Board of Directors, every Director etc. Thus, the officers / persons as mentioned in 'Section 2(60) of the Act' made the 'key managerial personnel' difficult to avoid criminal liability by taking shelter under the garb of corporate veil. And provisions appearing at 'Section 53, 57, 118, 128, 129, 134, 182 of the said Act' made the company (in some cases) as well as the "Officers in default" (in all cases) criminally liable for violation of the mandate of those 'Sections'. These provisions would definitely awake the 'key managerial personnel of the company' about their legal responsibility.

Further, the 'Companies Act, 2013' doesn't make 'Section 447 of the Companies Act', as a standalone offence but it mentions at-least more than ten situations when the offence of 'Section 447' would get attracted. For instance, 'Section 7(5) and 7(6) of the Act of 2013' may attract the offence of 'Section 447' when promoters, first directors and persons giving 'declaration furnished false or incorrect particulars or suppressed material information' during incorporation before 'Registrar of the Company'. In such cases, the Promoters, first directors and persons giving declaration would be held responsible for 'fraud' under 'Section 447'. Similarly, the proviso appended to 'Section 8(11) of the Act' stated 'that if it is proved that the affairs of the company were conducted fraudulently i.e. in-violation of its object as mentioned in Section 8(1) then every Officer in default shall be liable for action under Section 447'.

'A public company issues security to public through prospectus that is public offer'. Therefore, prospectus is a vital document of a company for inviting investment from the people and

9Rao, P., & Jaiswal, V. (2020). Regulatory Frameworks and Corporate Frauds in India: A Critical Review. Indian Journal of Economics and Business, 19(4), 112-134 10Section 2 (60) of the Companies Act, 2013

according to 'Section 34, if the prospectus contains any untrue or misleading statement then the person having the authority to issue such prospectus shall be liable under Section 447'. 'Section 36 of the Act' prescribes 'punishment for any person of the company under Section 447 for committing any false, misleading, deceptive statement inducing others to invest in the Securities or obtained credit facilities from any bank or financial institution'.

'Section 38 makes any person to be liable for action under Section 447 if he made impersonation for accusation of securities'. This provision made that 'outsiders if commit impersonation or fictitious names for purchase of securities of the company then he shall be liable for committing fraud'.

Further, 'Section 46(5), Section 66(10)' also envisaged the situation when the penalty under 'Section 447' would get attracted. 'Section 75(1)' i.e. failure to pay deposits taken within time would also attract the penalty of 'Section 447'. The Act also made 'auditors liable for fraud' in the situation as envisaged in 'Section 140(5)'. 'Section 206(4) made it clear that where a business of a company has been carried for a fraudulent or unlawful purpose then every officer of the company who is in default shall be punishable for the offence under Section 447'.

Therefore, the 'scope of the offence under Section 447 of the Act is very expansive and takes care all probable and possible situations of human conducts which can attract the liability of fraud in the perspective of the Companies Act'.

Further, taking lessons from 'various corporate frauds', the 'Act of 2013' made some serious effort in cleansing the system by incorporating some new features in the Act. The distinguishing features may be summarized as follows, viz. 1. 'Appointment of Independent Director' and prescribing qualifications for being 'independent director', vide 'Section 149(6) of the Act'. And, now 'every listed company has to maintain at-least one third of the Board as independent Directors. The minimum number of independent Directors in case of any classes of public company would be prescribed by rules.' 'The Independent Directors' have been made non-rotational and holding the position for 'a term of five years' and 'couldn't hold office for more than two terms continuously'. Provision has

been made for a 'cooling off period of at-least three years' before an individual would be considered again in the same company. 2. 'Section 150' envisages the 'provision for selection of Independent Directors by the Board from a data bank maintained by institutions as may be notified by the Central Government'. And, 'appointment of independent Director is required to be approved by the company in a general meeting'. Thus, the 'Board of Directors' would ensure that there would be 'proper balance of skills, experience and knowledge in the Board so that the Board's can discharge its duties properly'. 3. The Independent Directors could receive remuneration by way of fees as may be prescribed by rules but a stock option was not made available to them. 4. Further, 'Schedule IV of the act prescribes Code for Independent Directors' and 'the company and the Independent Directors' have been asked to follow the provisions of 'Schedule IV.' 5. Another 'important aspect' of the 'Act' is keeping the provision for 'audit Committee(Section 177)'. The 'Act prescribes that the Board of a listed company and other classes of companies' as required under rules would constitute and an 'audit committee'. Some of the 'important tasks of the audit committee' are (a) "Recommending for appointment of auditor and also the terms; (b) Review and monitor the independence and performance of the auditor, (c) Examining the financial statements and auditor's report, (d) Scrutiny of interoperate loans and investments, (e) Evaluation of internal financial control and risk management, (f) Monitoring the use of funds rose through public offer. Audit committee would hear auditor and the management before considering audit report. The committee would also establish vigil mechanism and adequate safeguards against victimization of any employee of the company."11

11N.L. Mitra, "Corporate Governance: A Sojourn to Find a Yardstick, Page No. 457, Volume 56 No. 4 (October – December 2014), pp. 437-462.

6. The 'standard of accounting and audit practice' the basis of good 'corporate governance'. Indian accounting practice has been short of global practice not long ago. The 'Act of 2013' vide 'Section 132' provides for constituting the 'National Financial Recording Authority (NFRA) by the Central Government to provide accounting and audit practice.' 'NFRA are: i. Recommending the Central Government on the formulation and laying down norm accounting and auditing policies and standards for adoption by the companies, ii. Monitoring and enforcing the compliance of accounting and audit standards, iii. Overseeing the quality of services of the professionals associated with ensuring compliance, iv. Reviewing the suggestions by the professionals for the betterment of the standards. NFRA has the power to investigate in case of professional misconduct, impose penalty if misconduct is substantiated and/or debar a professional from practice. Central Government may prescribe the standard of accounting as recommended by the Institute of Chartered Accountants in consultation with NFRA.12 v. It has given the power to investigate either suo-motu or on a reference made to it by the Central Government into the matters of professional or other misconduct committed by any member or Chartered Accountants etc. It has been given the powers of a Civil Court also so as to investigate the professional and misconduct.' 7. The auditor is the ultimate umpire in the corporate governance and that is why 'section 139' contains some 'special provisions' regarding 'appointment of auditors'. And, from a combined reading of 'Section 139, 140, 141, 142' we may get the followings, viz. (i) 'Appointment manner and procedure would be provided under rules,

12Ibid.

(ii) Appointment would be for a term of five years though annual ratification would be needed provided that listed companies and other classes of companies would not reappoint an individual auditor for more than one term at a stretch and a firm for more than two terms, (iii) There would be a 'cooling off' period of at least one term of five years for the auditor / audit firm of a listed company before considering for appointment again, (iv) Removal from office within the term would involve special resolution and the prior approval of the Central Government,13 (v) Any conflict of interest has been prescribed as disqualification.'14

2.1.2 ‘SEBI Act, 1992’ “The Act was enacted to empower it with statutory powers for (a) Protecting the interest of the investors in the security market, (b) Promoting the development of the securities market, and (c) Regulating the securities market.”15 Corporate frauds include frauds in security and also stock market is manipulated, misrepresentation or non-disclosure of information related to ‘insider trading’. ‘SEBI has been mandated for regulating the business in stock exchanges and other securities market. Registering and regulating the working of stock brokers, portfolios managers, and other intermediaries. Regulating working of collective investment scheme, including mutual funds, venture capital funds. Prohibiting fraudulent and unfair trade practice in securities market. Prohibiting insider trading in securities even regulate substantial acquisition of shares and takeover of companies. SEBI may take measures in the interest of investors like suspends the trading of any security in a stock exchange; prohibit any person from accessing the securities market. The Act has vested with powers to take action against manipulation in securities market, disclosure of misleading statements to prevent market abuse’16.

13Section 140, Companies Act 2013. 14Section 141, Companies Act 2013. 15https://shodhganga.inflibnet.ac.in/bitstream/10603/45803/13/13_chapter%206.pdf

2.1.3 ‘Prevention of Corruption Act, 1988’ It serves as a ‘piece of legislation aimed at combating corruption across various sectors including corporate domain.’‘Section 9’ of it deals with ‘Offence relating to bribing a public servant by a commercial organization’. And, thereby, promotes corporate best practices as it acts as a deterrentBy this provision, corporate liabilities imposed on ‘corporate executives and employees engaged in bribery, kickbacks or other corrupt practices to gain undue advantages in business transactions.’

2.1.4 ‘Prevention of Money Laundering Act, 2002’

‘PMLA 2002’ has a vast definition on ‘Money Laundering’ under ‘Section 3 of the Act’ and it includes ‘Scheduled Offences’. These include; ‘Section 447 of Companies Act 2013; Sections 420, 467 and 471 of IPC; Sections 8, 9, 10 of Prevention of Corruption Act 1988; Section 12 A read with Section 24 of SEBI Act.’ The term “Proceeds of Crime” comes from the “Scheduled Offences” and are subject to attachment and confiscation under ‘Section 4 of PMLA 2002’ along with penalty.

Thus, ‘PMLA, 2002 acts as a deterrent to corporate fraud’. Further, ‘Reserve Bank of India, Central Vigilance Commission, Banking Ombudsman’ etc. all are created in the country to prevent ‘corporate fraud’.

2.2 THE ROLE OF KEY REGULATORY AND LEGAL BODIES IN TACKLING CORPORATE FRAUD IN INDIA

2.2.1 ‘The Reserve Bank of India (RBI)’:

‘The Reserve Bank of India’ has a very significant ‘role in maintaining the integrity of India's financial system, specifically that of banking and finance services’. To secure institutions from fraudulent transactions, RBI has introduced several measures:

Prudential Norms: RBI imposes prudent accounting standards and maintains periodical audits of banks with a view to determining their exposure to risk, including fraud exposure. 16Rinku, Prevention and control of corporate frauds: a socio-legal study of financial markets in India, Chapter – VI, Legislation and Regulatory Bodies For Prevention of Corporate Frauds in India., https://shodhganga.inflibnet.ac.in/handle/10603/45803

 “KYC and AML Guidelines: Banks are obligated to adhere to Know Your Customer (KYC) guidelines and Anti-Money Laundering (AML) procedures for prevention of money laundering and suppression of financial criminality. These encompass keeping records of transactions and reporting suspicious transactions.

 Fraud Reporting Mechanisms: Banks are obligated to report instances of grave frauds— above a determined monetary value—to their boards and RBI. It helps in earlier detection and efficient regulatory action.

 Fraud Risk Management Framework (FRMF): RBI even mandatorily instructs banks to employ autonomous fraud risk management units to identify, deter, and mitigate probable risks."

2.2.2 'Ministry of Corporate Affairs (MCA)':

'The business of the corporation' is regulated by 'Ministry of Corporate Affairs' and 'Companies Act, 2013' is administered by it. It administers good standards of corporate governance by corporations and takes remedial steps on behalf of misstatement or fraud.

'National Financial Reporting Authority (NFRA)': 'NFRA, under MCA, is a standalone auditor quality regulator and accounting standards regulator. NFRA can investigate accounting frauds and auditors' and companies' audit malpractices.'

'Registrar of Companies (RoC)': 'RoC oversees company registration and filings of compliance, and examines suspected companies involved in fraudulent business operations.'

'Serious Fraud Investigation Office (SFIO)': 'SFIO is a professional MCA investigative agency that deals with serious and complex corporate fraud cases. SFIO has sweeping powers to probe company accounts and prosecute corporate crime perpetrators.'

Apart from NFRA (as discussed earlier), the Act also constituted various authorities under the Act like,

2.2.3 'Nomination and Remuneration Committee' 'Section 178 lays down the creation of nomination and remuneration committee in every listed company and such other classes of companies as may be prescribed by the Central Government.

The task of the committee is to identify qualified persons for being appointed as Directors and also lay down the criteria for maintaining independence of a Director. Thus, the committee has been tasked to evaluate the performance of Directors. It has been given the power to lay down the desired level of remuneration so that it can attract the quality persons as Directors. Another important task is to lay down the policy for financial incentives to be paid for the key managerial personnel and its true disclosure in the Board's Report.'17 2.2.4 'Stakeholders Relationship Committee' 'The Act also lays down for constitution of a stakeholder's relationship committee to consider and resolve the grievances of security holder of a company.'18 Thus, it would act as a whistle-blower in the company. 2.2.5 'Serious Fraud Investigation Office (SFIO)' 'Central Government has the power under Section 211 to establish SFIO which will investigate frauds in relation to companies.' It is a 'multifunctional investigating agency consisting of experts for timely and effective detection of fraud'. It takes up investigation whenever 'assigned to it by the Central Government'. It has the 'power to arrest a person found to be guilty of offence under the Companies Act.'19 Further, in order to 'maintain authenticity of investigation carried out of SFIO, the Act lays down that whenever any case has been assigned to it by the Central Government for investigation no other investigating agency shall proceed with the investigation in such case'. This provision insulated the 'investigation carried out by SFIO from being derailed by intervention by other Central or State agency'. The 'SFIO' has been given the power to arrest a person for committing offence under 'Section 447 of the Companies Act', 'Further, in order to prevent the accused under Section 447 to get the opportunity quick bail, the stringent conditions alike of Section 45 of PMLA, 2002 has been mentioned in clause (ii) of Section 212(6) of the Act of 2013'. 2.2.6 'National Company Law Tribunal (NCLT)' 'Section 408 provides for constitution of National Company Law Tribunal.' 17Rinku, Prevention and control of corporate frauds: a socio-legal study of financial markets in India, Chapter – VI, Legislation and Regulatory Bodies For Prevention of Corporate Frauds in India., https://shodhganga.inflibnet.ac.in/handle/10603/45803 18Rinku,

Prevention and control of corporate frauds: a socio-legal study of financial markets in India, Chapter – VI, Legislation and Regulatory Bodies For Prevention of Corporate Frauds in India., https://shodhganga.inflibnet.ac.in/handle/10603/45803 19Ibid.

Under "Section 245 of the Act, members and depositors of a company can apply with the Tribunal if they believe that the companies' affairs are being conducted in a manner detrimental to its interests."'The NCLT' has the power to 'prohibit the company from engaging in activities beyond the scope of its Memorandum of Association and Articles of Association.' It can held the Corporation or its directors accountable for illegal, fraudulent acts or omissions and even can make the auditor of the company responsible for providing misleading information. 'Section 241' mandates the filing of complaint before the Tribunal 'when the company's affairs are conducted in a manner detrimental to the public interest or oppressive etc. Section 213 empowers the Tribunal to power of investigation.'20

20https://shodhganga.inflibnet.ac.in/bitstream/10603/45803/13/13_chapter%206.pdf

CHAPTER 3

3.1. IMPORTANT JUDICIAL TRENDS RELATED TO CORPORATE FRAUD

Indian courts have been major contributors to the interpretation and creation of the legal framework regarding corporate fraud. In a 'series of judgments', the 'Supreme Court and High Courts' not only established the parameters of fraudulent activity in the corporate context but also highlighted the roles of directors of companies, auditors, regulatory bodies, and statutory institutions. The following is an overview of landmark case laws and the changing judicial attitude.

3.1.1 Satyam Computer Services Ltd. Scam Case21

3.1.2 Background and Context

In 2009, the Satyam Computer Services Limited Scam occurred which is also known as Satyam Scam or Satyam Computer Fraud. In 1997, B. Ramalinga Raju found Satyam Computer Services which was largest and successful IT Service company in India which had global eminence.

In 2008, it became a 'public listed company on National Stock Exchange (NSE) and Bombay Stock Exchange (BSE)'. In 2009 a fraud in the 'financial statements of company' had occurred of over Rs. 7000 crore ($1.5 billion approximately) was publicly confessed by the Chairman of Satyam, B. Ramalinga Raju. He confessed that he misrepresented revenues of company, profits and cash balances for many years. He further confessed that he had inflated revenue figures of company to maintain high stock prices and meet expectation of analysts. He admitted that the bank statements were misrepresented to show inflation in cash reserves which were non-existent and made it appear that company is financially sound. Generation of false invoices and fictional clients were created to justify the fraud.

3.1.2 The Role of Key Individuals

'The fraud was orchestrated by Ramalinga Raju, with the help of his brother Rama Raju (who was the Managing Director) and other senior management officials.' The board of directors was largely unaware of the fraud. 21CBI v. B. Ramalinga Raju (Satyam Scam), Special Court for CBI Cases, Hyderabad, CC No. 2/2010

'In a letter to the Board of Directors, Raju admitted to fabricating the company's accounts to the tune of ₹5,040 crore (approximately $1 billion), along with manipulating the balance sheet'.

3.1.3 Initial Response and Regulatory Actions

o 'SEBI (Securities and Exchange Board of India) initiated an investigation into the company.'

o ‘The Serious Fraud Investigation Office (SFIO) was instructed to investigate the financials and corporate governance practices.’

o ‘BSE and NSE suspended trading of Satyam’s shares after the revelation.’

o ‘The government appointed a new Board of Directors to manage the company's affairs.’

o ‘The CBI (Central Bureau of Investigation) initiated an investigation into the fraud, which included balance sheet manipulation, document forgery, and misappropriation of funds’.

3.1.4Court's Observations and Reasonings in the Criminal Case (2017 Verdict)

“The criminal case against Ramalinga Raju, Rama Raju, and other top executives of Satyam was prosecuted by the ‘Central Bureau of Investigation (CBI)’. The main legal arguments and observations of the court during the investigation and subsequent trial” are as follows:

1. Scope of the Fraud and its Effectiveness

The court agreed that the fraud of Raju and his team was planned and ongoing for several years.

Manipulation of the company's accounts led to humongous losses for the investors and took a toll on public confidence in India's corporate world and capital markets.

The court noted that it was not only a single incident of scamming, but was an orchestrated effort at cheating the shareholders, auditors, and also the regulatory authorities. It was an attempt ‘to conceal the weakened financial health of the company’.

2. Conspiracy and Collusion

The court held that Ramalinga Raju and his top management had conspired to perpetrate the fraud. It was a well-planned fraud, wherein book cookery was done with the willful knowledge and connivance of the management.

Collusion with Auditors: Satyam's auditors, PricewaterhouseCoopers (PwC), were questioned. Though PwC auditors were acquitted earlier, they were subsequently found guilty of negligence of audit in checking Satyam's accounts. They were considered to have defaulted in detecting warning signs in the ‘financial statements’.

3. The Role of the Board of Directors

‘The directors of the board’, who were to be in ‘charge of the company's operations, were either ignorant of the fraud or negligent in their duties’. The court pointed out that they should have exercised due diligence on the ‘company's financial statements’, but they were lazy and lacked effective monitoring.

4. Breach of Corporate Governance Principles

The court quoted severe corporate governance anomalies in Satyam's business. It said a lack of accountability, transparency, and ethical practices within the corporation that made it possible for such a fraud to happen for such a long period of time.

5. Punishments Issued by Law

‘Ramalinga Raju was sentenced to 7 years in prison and ₹5 crore fine. Ramalinga's brother Rama Raju was given the same sentence and punishment as well.’

The other directors and the auditors were also penalized by the court, observing their actions to be a blatant violation of their duties as fiduciaries to employees, stockholders, and the general public.

3.1.5 The Conclusion of the Case

‘The final verdict of the court’ in 2017 justified key conclusions of the Satyam scandal:

1. Accounting Manipulation: It was found that Satyam had overstated revenues and profit and built up fictional cash reserves of the company over years.

2.Intent to Defraud: The intent to mislead the shareholders and artificially inflate the valuation of the company in the stock market was intentional and premeditated.

3. Internal Controls Weakness: Internal audit procedures in Satyam were poor, and the senior management totally took advantage of it to execute the fraud.

4. Auditors' Negligence: The court noted that auditors of PriceWaterhouseCoopers (PwC) did not verify the financial statements in spite of patent irregularities.

5. Investor Losses: The fraud led to colossal losses to investors, both foreign and Indian shareholders, who took investment decisions based on the financial statements.

3.1.6 Court's Final Ruling

In 2017, ‘Hyderabad Special Court convicted Ramalinga Raju, his brother Rama Raju, and other accused for 7 years of rigorous imprisonment.’ They were also ‘fined ₹5 crore each.’ They were also held accountable for the creation of false market valuation and huge losses to the shareholders, employees, and stakeholders.

The court directed assets to be confiscated so purchased through fraud and imposed strict penalties. The judgment was a ‘landmark in the history of corporate fraud in India’, indicating the path towards stricter regulatory mechanisms and corporate governance standards.

3.1.7 Influence on ‘Corporate Governance and Reforms in India’

‘The Satyam scandal led to a number of corporate governance reforms in India with the Companies Act 2013 being adopted in India making stricter regulations and rules for corporate frauds, auditing practices and financial disclosures.’

Amendments were made with the aim of ‘improving the corporate accounting and audit practices to the extent of their transparency, accountability, and ethics so that no such massive corporate frauds could recur in the future.’‘Satyam scandal’ emerged as a reform trigger that urged the India corporate governance environment to become stricter in its rules.

Some of the ‘key reforms’ introduced in ‘the Companies Act, 2013’ post-Satyam fraud case are as follows:

1. Increased Auditor Accountability and Independence

Pre-Satyam Scenario:

Indian auditors were not so responsible prior to the Satyam debacle. The auditors, especially PricewaterhouseCoopers (PwC) in the Satyam debacle, did not report irregularities and frauds in company accounts despite glaring warning signs.

Post-Satyam Changes:

 ‘Section 211 of the Companies Act, 2013 gave legislative support to the Serious Fraud Investigation Office (SFIO), which was established to probe large ‘corporate frauds in India’, including the Satyam case’.

 ‘SFIO’ can initiate action against persons and organizations for grave frauds such as financial reporting abuse and company fraud and can also arrest the individuals and impound assets.

 The ‘SFIO’ was highlighted after Satyam as a ‘specialized agency to investigate corporate frauds’ at the national level. The Satyam case showed that there was a need for special investigating agencies that had the powers to investigate intricate frauds in the corporate sector.

2. Tighter Disclosure Obligations

Before the ‘Companies Act, 2013’, there were inadequate disclosure requirements of financial information to the stakeholders. This transparency enabled the easy manipulation of accounts by companies like Satyam and cheating of investors.

Changes after Satyam

• ‘Section 134 (Financial Statement and Board's Report)’: It made the financial disclosure requirements stricter. Companies are required to show financial statements in details containing the report of Director, discussions and analysis of management, and report on corporate governance.

• ‘Section 143 improvesReporting of Fraud’.The ‘auditors are required to report the frauds’ to the ‘Board of Directors and to the Government’where the value of the case is more than ₹1 crore. It creates alert for frauds and manipulation of finances. These are addressed by reducing chances of fraudulent concealment like in Satyam scam.

3. Expanded ‘Role and Powers of the Board of Directors’

Pre-Satyam Position:

In ‘Satyam's case’, ‘the Board of Directors’ did not catch on to the fraud even when there were financial improprieties in the company. This was because weak corporate governance practices prevailed.

Post-Satyam Changes:

• ‘Audit Committee is establishedunder Section 177 in every listed company which consists of independent directors to monitorthe auditing and accounting processes in company.’

• ‘Section 178’ constitutes ‘Nomination and Remuneration Committee’ where the ‘Board is required to approve and determine the director’s terms of reference and position of the executive for promoting top management’s governance.’

4. The ‘Corporate Social Responsibility (CSR) and Accountability’

Pre-Satyam Position:

Prior to the ‘Satyam case, the idea of Corporate Social Responsibility (CSR) was underdeveloped, and firms used to concentrate mainly on profit maximization without proper accountability to stakeholders.’

Changes post-Satyam:

• ‘Section 135 mandates for compulsory Corporate Social Responsibility for firms which comprise of net worth of ₹500 crore or more, turnover of ₹1,000 crore or more, or net profit of ₹5 crore or more.’

• ‘2% of the firm’s average net profits for the previous three years towards are set aside for CSR activities, holding corporations accountable to contribute to society and ethically conduct business.’

• This is intended to encourage responsible business practices and serve as a counterpoint to corporate greed that brought about the Satyam scam.

5. Minority Shareholder Protection

Pre-Satyam Scenario:

Interests of a majority of the minority shareholders were influenced mainly by the Satyam scandal since management used to engage in fictitious accounting without checks and controls, not even keeping the investors informed.

Post-Satyam Reforms:

'Section 244' facilitates for minority shareholders the 'Right to Apply to Tribunal', i.e, right to approach the 'National Company Law Tribunal (NCLT)' when their interests get misrepresented by the majority shareholders or the management.

It provides protection to minority shareholders to sue in 'case of fraud on the part of company management'.

6. Strengthening Regulation Powers

Pre-Satyam Position:

'Regulators' such as 'Securities and Exchange Board of India (SEBI)' had very limited powers to intervene where there was fraud in companies and accounting manipulation.

Post-Satyam Reforms

'Section 245Companies Act, 2013 has instituted class action suits'. It helps the shareholders or the creditors to bring a suit against the company, directors, and auditors owing to fraud, like in the Satyam scam.

It equips stakeholders to act as a group and facilitate corporate action openness.

The Satyam scam had very deep impacts on the 'corporate governance' culture of India. The 'Companies Act, 2013', reforms were towards more financial disclosure, corporate accountability, and safeguarding to shareholders. The act has strong audit regulation, improving the boards of directors' functioning, institutionalization of a 'Serious Fraud Investigation Office (SFIO)', and more investor and minority shareholder protection.

These reforms were the impetus to restore faith in India's corporate sector so that future corporate malpractices like the Satyam scandal will be averted by stricter regulation and efficient enforcement powers.

1. Consolidated SEBI Rules like increased surveillance and improved enforcement of disclosure levels of financial openness.

2. Reforms in Corporate Governance, which includes mechanisms for stronger independent board and audit committees i.e., post-Enron (USA) and Satyam (India).

Corporate Governance is well illustrated in Satyam scam revealing the loopholes in laws for audits, accountings and corporate governance in India. This landmark judgement opened eyes for corporate entities and regulatory bodies so that they strongly emphasize on accounting and auditing methods and corporate governance mechanism.

The case is not only of Indian-incorporated companies' importance of wide reach but also embodies the world necessity for 'increased regulation of companies in order to safeguard investors and the integrity of financial markets.'

3.2 N. Narayanan v. Adjudicating Officer, SEBI22

3.2.1 Background and Context

Pyramid Saimira Theatre Limited (PSTL), an Indian listed company, is reported to have engaged in financial misreporting during the period in question as an option of its directors, one of whom was N. Narayanan, who was a whole-time director and also a promoter.

3.2.2 Key Allegations:

22N. Narayanan v. Adjudicating Officer, SEBI, (2013) 12 SCC 152

o Inflated Financials: PSTL reported exaggerated figures in revenues, profits, security deposits, and receivables, deviating from true financial performance.

o Misleading Disclosures: The company falsely announced agreements with 802 theatres, presenting only 257 original agreements upon scrutiny, suggesting the non-existence of the remaining agreements.

o Market Manipulation:'The inflated financials resulted in an artificial rise in the company's stock price, enabling promoters to pledge shares and raise substantial funds from financial institutions.'

3.2.3 Legal Proceedings and Findings

1. 'Section 12A of SEBI Act 1992 and SEBI (Prohibition of Fraudulent and Unfair Trade Practice) Regulation 2003 were violated according to investigation by SEBI.'

2. 'The appellant was banned for two years by SEBI from securitiesdealing and penalized with Rs. 50 lakhs under Section 15 HA of SEBI Act 1992.'

3. 'Securities Appellate Tribunal (SAT) had upheld the orders passed by SEBI and reinforced that there were manipulation in market and misreporting of finances.'

4. 'The Hon'ble Supreme Court' observed and emphasized that 'directors have duties to endure accuracy in reporting and this responsibility cannot be escaped by claim of ignorance in financial details'. The Court highlighted that 'such acts lower the confidence and trust of investors and disrupts security market's integrity.'

5. Penal Justification: Sanctions were warranted because of the willful nature of fraud activities.

3.2.4 Court's Observations and Rationale

Fiduciary Duty of Director: Directors have a fiduciary duty to manage and monitor financial reports. Delegation of work does not exempt directors from liability for financial misreporting.

Material Misstatements: Intentionally misstating financial information, including over- reporting revenues and assets, constitutes a severe offense under securities law.

Market Abuse: Financial data manipulation to create illusory high share prices deceives the investors and causes chaos in the market, requiring stringent regulatory actions.

Regulatory Authority: SEBI has the responsibility to maintain securities law enforcement and investor protection, e.g., levying penalties on defaulting individuals and companies.

Confirmation of Violation:'The Court held that the appellant and other directors had violated the terms of the SEBI Act and Regulations prohibiting fraud and unfair trade practices.'

Proportionate Sanction: Imposed sanctions were found to be proportionate to the gravity of the frauds committed with the intent of discouraging such behaviour in the future.

3.2.5 Implications

Greater Director Responsibility: The case places strong focus on active director involvement in oversight of finances and transparency.

Protection of Investors: It places great emphasis on safeguarding investors from manipulative corporate actions distorting market conditions.

Regulator Watchfulness: The order places great emphasis on SEBI's role to act as a vigil and operate against market abuse to maintain a fair-trading atmosphere.

Indian court rulings have had a determining role in delineating the boundaries of corporate fraud regulation. By holding individuals as well as companies accountable for misdoings and re- establishing control of legislatory regulators, Indian courts have established strong jurisprudence that discourages unethical

company behaviour. These choices not only led to legislative reforms but also affected the growth of a robust compliance culture in Indian business world. Corporate fraud is an international phenomenon which undermines economic stability and investor confidence. Though nations across the globe have created strong legal systems to counter corporate fraud, there are certain grave issues in their implementation. The typical problems are generally loopholes in laws, prosecution delay, and the absence of corporate accountability. The above study unravels the challenges for India in implementing ‘corporate fraud legislation’.

CHAPTER 4

CHALLENGES IN INDIA ON IMPLEMENTING THE LAWSRELATING TO CORPORATE FRAUD

4.1 STUDY OF INDIA REGARDING CHALLENGES IN IMPLEMENTATION OF LAWS RELATING TO CORPORATE FRAUD23

Corporate fraud is a universal phenomenon that erodes the economic stability and the confidence and trust of investor. Even though countries around the world have established robust legal frameworks for curbing corporate fraud, there are certainly some genuine concerns in their enforcement. They are mainly regulatory loopholes, procrastination in prosecution, and insufficiency in corporate accountability.

□ Regulatory Loopholes

There have been significant efforts made by India to improve in its laws by enacting ‘Companies Act 2013’ and establishing ‘Serious Fraud Investigation Office (SFIO)’. However, there remains existence of drawbacks.

The regulators like ‘Securities and Exchange Board of India (SEBI)’ are reluctant to enforce the laws due to delayed investigation and inadequate resources. The Corporate Governance remains weak with poor mechanism of audit and internal control system in the company. There remains inconsistency in enforcing laws in cases of corporate fraud.

□ Delayed Prosecutions: One of the key problems in India is delayed prosecutions. Celebrity corporate fraud cases are delayed in being prosecuted because of:

i) Overloaded judiciary: Indian judiciary is afflicted with humongous pendency of cases, and this leads to court delay in fraud cases of corporates.

23 Agarwal, Utkarsh. (2024). A Comparative Analysis Of White-Collar Crime And Major Financial Debacles In India And Other Countries. African Journal of Biomedical Research. 27. 11565-11569. 10.53555/AJBR.v27i4S.5913.

ii) Political interference: Political pressure or corporate pull in some cases may result in delay in court, particularly in fraud cases involving prominent people.

□ Lack of Corporate Accountability

India has serious issues concerning corporate accountability lack, such as:

‘Corporate governance’remain weak even after enactment and enforcement of ‘Companies Act 2013’, specifically in cases of family run businesses where there is weak accountability.

Another reason is political interferences protect and shield corporate fraud and offenders are unpunished.

In some cases, persons connected to corporate fraud, mostly in large conglomerates, are not prosecuted because they hold political and economic power, ‘Saradha Chit-fund scam’ is the example of such menace. In this respect, it is stated that ‘Hon’ble Supreme Court of India’ in the judgment rendered on ‘09th May,

2014' in 'Subrata Chattoraj vs. Union of India, (2014) 8 SCC 768', has pointed out the 'violation of SEBI, Reserve Bank of India, gross negligence on the part of the statutory auditors as the causes behind this scam. It also points out fraudulent certification, non-compliance of accounting standards, material misstatement of facts etc., played big factors behind the big scam.'24

□ Whistleblower Protection

Whistle Blowers Protection Act, 2014, is still under-implemented.

Concerns of retaliation discourage disclosures.

□ Cross-border Enforcement Challenges

Every country encounters challenges in organizing international fraud cases.

24Vide Para No. 10 of the judgment dated 9th May, 2014 of the Hon'ble Supreme Court of India in Subrata Chattoraj vs. Union of India (2014) 8 SCC 768, in connection with Writ Petition (Civil) No. 401 of 2013.

Mutual Legal Assistance Treaties (MLATs)25 and agreements such as UNCAC (UN Convention Against Corruption)26 are enhancing cooperation.

The pace of India's extradition and evidence collection is slower than that of the U.S. or UK.

Although corporate fraud laws exist worldwide, implementation gaps still plague enforcement. India struggles as much as other nations but is particularly hampered by institutional inefficiencies, political interference, and resource constraints. Intensifying inter-agency coordination, judicial efficiency, and strengthening corporate governance architecture are essential to implement effectively. International best practices like incentivizing whistleblower programs and efficient cross-border investigations can close these gaps.

The issues of implementing corporate fraud-related laws are common, though with varied nuances across countries. India, as with most other leading economic nations, confronts loopholes in regulations, slow prosecutions, and absence of corporate accountability. But the degree of these problems differs.

25 https://legalaffairs.gov.in/documents/mlat 26 https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf

CHAPTER – 5

SUGGESTION AND CONCLUSION OF THE STUDY

5.1 SUGGESTIONS RELATED TO LEGAL REFORMS REGARDING CORPORATE

FRAUD: -

Corporate fraud elimination encompasses a pro-active, wide-ranging intervention including legal reforms, policy interventions, and institutional reforms. Follow-up of the issues under the Indian as well as world situation, following are the proposals of reform and recommendation:

5.1.1Practical Recommendations

Mandatory Ethical Training: There should be periodic compulsory training by the company of company ethics, compliance, and anti-fraud practice by employees at all levels.

Efficient Internal Audits: Increase the frequency and autonomy of internal audits so that early warning signs of financial misdeeds are identified.

Integrated Risk Management Framework: Implement a centralized, technology-based system of risk management to monitor transactions and identify suspect behaviour in real time. Financial deceptions of

corporate fraud, particularly financial fraud and fraud based on insider trading, are ‘complex and sophisticated in nature and penetrate over a long period of time’. Sophisticated tools would immensely improve the capability to capture early warning signs and act promptly on them, thus prevent incurring potential financial loss.

5.1.2 Policy-Level Reforms

Simplified Regulatory System: Create a nodal central body to bring together fraud investigation under ‘SEBI, SFIO, RBI, and the Ministry of Corporate Affairs’ to avoid any overlaps and delays.

Enforcing Whistleblower Law: Make anonymity and protection strong for whistleblowers under the Companies Act and promote confidential reporting systems.

Reforms in Penalties: Rebalancing of penalties and fines as it relates to the scale of the fraud. Make restitution to the victim obligatory.

5.1.3 Institutional Mechanisms Strengthening

Capacity Building of the Enforcement Agency: Provide forensic accounting, digital evidence management, and foreign investigation training.

Allocations of Budget: Provide increased funds and manpower to SFIO, ED, SEBI, and other enacting agencies.

Digital Case Management Infrastructure: Implement central case-tracking databases and systems to provide timely updates and transparency in corporate fraud investigations.

5.1.4 Judicial and Legislative Reforms

Fast-Track Courts for Corporate Fraud: Create special benches in ‘National Company Law Tribunal (NCLT)’ or ‘High Courts’ for speedy disposal of cases of corporate fraud. India's judiciary has often been criticized for its slow case adjudication, and as a result, long-drawn-out ‘corporate fraud cases hinder the potency of legal deterrents’. Creation of the ‘fast-track courts’ can speed up the dispensation of justice and be an effective deterrent for those contemplating frauds.

Amendments in Companies Act: Further elaborate Sections 447 to 449 so as to include specifically more recent forms of cyber-enabled deception and trans-border cons.

Forensic Audits as Per Se Admissible Evidence: Permit forensic audit reports to be held as prime evidence in the court under Indian Evidence Act.

I humbly repeat and reiterate that there are plenty of legislations, regulatory authorities, Investigating Agencies, Special Courts in the Country to deal with corporate fraud and offences. However, it remains very much in the country’s political economy and every year we found that corporate fraud happened. Common people, public sector banks, public entities are common victims of such corporate fraud. We have travelled more than 10 years since Saradha chit fund scam which rocked a large number of eastern India States, covering over millions of people.

Therefore, time has come to revisit the legal landscape of the country and, suggest some measures for consideration, viz.

1. The ‘offences under Section 447 are made cognizable by Section 212(6) of the Companies Act, 2013.’ However, ‘no Court shall take cognizance of any offence under this Act except on complaint in writing’ as per ‘Section 439(2) of Act.’ Therefore, the shareholders of company are required to abide by complaint procedure so that ‘Court’ can take cognizance under said Section. Having regard to the legal literacy level of the country, this complex procedure is required to be changed and offence under ‘Section 447 and other

offences under the Companies Act, 2013' are 'required to be dealt with the offences mentioned' in 'IPC / BNS, 2023' for common man's understanding.

2. Statutory provision may be made to disallow corporate offenders to get benefit of pre-arrest bail as mentioned in 'Section 482 of BNSS, 2023'.

3. Statutory provision also is made to disallow corporate offenders to get the benefit of post arrest bail until he suffers custody for at least 50% of the period had he been convicted.

4. 'The Proceeds of Crime is required to be mandatorily attached under Section 107 of BNSS, 2023'.

5. 'The West Bengal Protection of Interest of Depositors in Financial Establishments Act, 2013', like legislation is required at the national level.

6. Re-constitution of Investigating Agencies with professionals at the head and not the policeman.

7. Due remuneration is to be paid to the independent directors so that they can motivate themselves with due care and diligence in the organization.

8. We may think for establishing Public Company Accounts Oversight Board (USA precedent) which would supervise the audit of public firms.

9. Another issue which requires proper address is the shell companies / companies in paper but having no physical activities. These companies are huge in market and have been duly registered before 'ROC'. These companies show 'Balance Sheets' but these companies do not have any physical existence. Therefore, law may be changed to give anyone the power to inform 'SFIO and ROC' regarding existence of such companies so that after receipt of the said information, the regulatory bodies start investigation. Such investigation is very much required because these shell companies are used to park the illegal monies of the people.

10. The system of appointing family members as Directors of the company is to be immediately banned because in most of the companies, the name of the family members have been put only for the paper purpose and even, the family members don't know their real obligations. If such system can be implemented then a large amount of ills in the economic system of the country can be diagnosed.

CONCLUSION

'Corporate fraud', a distinct category of offence committed by human beings behind the curtain of incorporation. Every time the human brain finds out new avenues to commit deception, misrepresentation, concealment so as to reap unjust enrichment. In the country like ours, we learn through experiences. Companies Act, 2013 has been implemented not long ago so time is required to be given to see the efficacy of the new legislation and the regulatory bodies created by it. Admittedly, every system ultimately depends on the human factors, and the persons responsible for implementation of laws, regulations are therefore, required to maintain utmost professional approach and not show any laxity for being salaried employees of the State. Fundamental research on Criminology is to be made to find out the possible and probable criminal behaviors in the financial market of the country and legislations and regulations may be tailored to cope with the situations. Finally, we are required to instill a fear in the minds of the fraudsters that the violation of law would inevitably bring punishment more than their harvested financial gain by committing fraud.

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