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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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THE ART OF DECEPTION:
DARK SIDE OF THE CORPORATE WORLD EXPLORED TO
UNCOVER THE MOTIVE BEHIND WHITE-COLLAR CRIMES

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Abstract

The purpose of this research paper is to analyse and provide insight into the world of corporate fraud and White-collar crimes. The paper begins by defining the term corporate fraud and how it forms a part of a White-collar crime. It further examines this financial crime and links it with relevant provisions of the Companies Act, 2013. This paper also explores various factors that contribute to shaping these kinds of crimes. It also discusses potential measures that can be taken to prevent these crimes and how these punishments act as deterrence. Furthermore, the paper dwells upon the phenomenon of fraud and crimes taking place in the corporate sphere with the help of the relevant cases/scams that took place in India. Finally, the paper explores the societal and economic cost of corporate fraud and White-collar crime and its devastating consequences. With this paper, we hope to shed light on this important and complex topic and encourage further research and discussion on corporate fraud and White-collar crime.

‘Richest Men In The World Against All Odds...For A While’

Hypothetically, you are a student taking an education loan worth 10 lakhs, instead of using this 10 lakh for the purpose of paying the tuition fees, you lent it to a friend who makes a profit out of it, and so do you. Now consider yourself as a corporate personality or a businessman and multiply this amount upto ten times. This above-mentioned situation committed on a large scale or on a recurring basis becomes part of what is known as a White-collar crime.

It is simple, as simple as the corporate world can get. An individual or a company committing an illegal activity in a dishonest or unethical manner is a basic explanation of a big and fancy term

‘White-collar crime’, it sounds quite sophisticated. It is indeed sophisticated. This is a story of people becoming rags to riches but not in an inspiring way at least to the people with morals and ethics. White-collar crimes¹ are crimes without loss of lives, instead they relate to loss of livelihood, who is to say which is worse? To establish a research on corporate frauds, we have assembled an analysis of the widely infamous cases of corporate fraud beginning with the renowned Scam 1992.

Harshad Mehta² was a stock broker. He was the brain behind one of the biggest financial frauds which was carried out in 1992 that shook the Indian stock market and pressured the market regulators to change the set of rules and regulations present at the time. In the past, Government issued securities which were traded in dematerialised form on account of what is known as a ready forward deal, banks exchanged notes, which were known as bank receipts (BR) in place of actual Government securities to borrow money from other banks. It was basically a promise of the delivery of the certificates. The money would go into the broker's account and the broker would distribute the money to the banks that provided the bonds. Since one bank could not deal with multiple banks at a given time, the broker played the role of an agent to facilitate the exchange between the banks. Mehta had a tie-up with banks to issue these BR's without having to issue the bonds. The expectation was that he would fetch the bonds from other banks in the market. This continued for a while until Harshad Mehta with the help of several banks started issuing fake bank receipts which were exchanged with the amount given by the seller bank. He used this amount to manipulate the stock market and after having gained profit from the same, he returned the amount and took back the fake BRs. This went on for a while until the stock market plummeted and Mehta on account of suffering heavy losses was unable to pay back the amount borrowed in the buyer bank's name. He was exposed by a journalist Sucheta Dalal through an article published in Times of India on 23rd April, 1992 following which he was imprisoned until his death in 2001.

Ketan Parekh³ was a trainee in Harshad Mehta's company and belonged to a broker family who also found another way to use these loopholes such as pump and dump scheme to commit corporate fraud. He used to pump the stock prices by getting the institutional investors to invest in them and

¹ Ivancevich, John M., et al. "Deterring White-Collar Crime." *The Academy of Management Executive* (1993- 2005), vol. 17, no. 2, 2003, pp. 114–27. *JSTOR*, <http://www.jstor.org/stable/4165960>. Accessed 10 Apr. 2023.

² Harshad Mehta v. Central Bureau of Investigation, 1992(24) DRJ 392, ILR 1993 Delhi 274.

³ Bank of India v. Ketan Parekh, (2008) 8 SCC 148.

subsequently the retail investors as well which overvalued the stock prices and at such time, he would sell his stocks and ear profits out of it. But the stocks due to being overvalued and the investors pulling out at the peak would plummet and cause immense losses to other investors. In one such incident, he got Madhavpura Mercantile Cooperative Bank to issue demand drafts without any money in the account. Since the cheque was issued by a bank, Bank of India trusted the same and credited Rs. Eight Hundred Fifty Crore into his account. Mehta's plan was to use the money for a few days, and generate some income on the same and then return Rs. Eight Hundred Fifty Crore to Madhavpura Mercantile Cooperative Bank, but his investment got stuck and the scam was revealed in front of the society. Ketan Parekh was involved in the Harshad Mehta scam and then subsequently orchestrated his own scam. In the aftermath, he was restricted from trading until 2017 but some sources present that he continued his scams long after the revelation and he caused losses upto 100 crores in the Calcutta Stock Exchange in 2009. He was imprisonment in 2014 for 2 years by the CBI court.

Rana Kapoor⁴, the promoter of Yes bank, over a short period of time, built a very reputable image in the industry and had developed a lot of contact with the industrialists of the country. As he was the promoter, most of the decision-making powers, including large loans, were centralized to him. He had the ambition to make Yes Bank the largest private bank of the country. The loan book of Yes bank had grown to nearly four times as much as its deposits. The bank came under RBI regulatory scanner as its asset quality worsened. At that time, Yes bank was lending aggressively without taking into consideration the risks involved and was also under-reporting the bad loans. The bank was lending the money to the corporators which were already in a very risky position and were facing challenges in running their business. The major criticism in this case was that they were hiding the non-performing asset reports and also were misreporting them consequently. Giving the loan to such low-performing companies like Anil Ambani led Reliance group was also one of the reasons for Yes bank's downfall. All this happened during the tenure of Rana Kapoor. After this, Ravneet Gill took in hand the management of Yes bank but struggled to regain the deposits and was also not able to raise enough capital as the bank had gained a bad reputation in the market till that time. This fraud had such a huge impact that the name Yes Bank does not exist in this corporate world as it has been taken over by SBI now.

⁴ Rana Kapoor v. Enforcement Directorate, 2022/DHC/005170.

Nirav Modi⁵ was a businessman dealing with imports and exports of diamonds. As an exporter, he had managed to work behind the bank, count those into the bank office and strike up a friendship with the officers operating the SWIFT system (an interbank messaging system used to send money across borders). Nirav Modi used to buy raw diamonds from abroad for which he used to obtain foreign currency. To get the forex financing, the Indian Bank would give a guarantee to the foreign bank via the SWIFT system. The guarantee was in a way a letter of understanding (LoU). Now, this guarantee is issued by Indian Bank only when they have the imposter money in their account. Modi by his influential friendship with the officer managed to send LoU messages through the SWIFT system without any money being present in his account. In the end, Punjab National Bank ended up paying money for the guarantees and suffering huge losses as a result of this scheme.

In all these cases, the fraud was committed by exploiting a system which was based on a fiduciary relationship. What is common in all the above-mentioned cases is that the person committing the fraud managed to perpetrate the same by bribing the person in authority. The bribe may just be as small as 0.0001% of the fraud amount. But people tend to lose their morals and ethics over this small portion, as to them money is over anything and everything. The bottom line here which can be drawn is that, in India we have a lot of people earning salaries in thousands who have the power to make decisions on thousands of crores. The person who knows this will try to exploit the system by accepting bribes. Reading about it decades later in articles with thousands of other perspectives floating in the air is the easiest thing to do but it may send shivers down the spine if an actual situation unfolds before your eyes.

‘Is Scam A Male Dominated Industry?’

Women in business is a name, less heard of. A corporate career for women seemed like an untouchable cloud hovering over dreams of millions of women looking for success. And yet there were less women role models than one would prefer to achieve this far-reaching dream. While it is an understanding that the presence of women in the corporate sector at an executive level is so scarce that a statutory act needed to allot 1% reservation to women directors in order to insure good and diverse corporate governance had to be implemented. It can be inferred that people hiring women as

⁵ Government of India v Nirav Deepak Modi, [2022] EWHC 2829 (Admin).

executives would only do so because of the reservation criteria and not because the candidates might deserve that position. In this sense when a woman acquires an executive level position, it is a proud moment for women empowerment. Not restricted to this, it would inspire millions of women to take up corporate subjects.

A study conducted by Barbara Casu⁶ revealed that banks having more female representation will have less likelihood of their executives committing fraud. The study showed that institutions like these with more women on the board of directors had saved more than 7 million a year. Not only that, it also witnessed that gender diversity of any kind was resulting in good governance and overall better risk management and profits to these European banks. In conclusion, the study found that just one woman executive will not be beneficial but at least three are required to bring this change.

As a counterclaim, another perspective arose against the contents of this study that it is due to the lack of women executives and the scarce numbers present at the BOD to make decisions that women scammers and fraudsters are less in number and not because of their ethical nature. Steffensmeier, a professor of sociology and criminology at Penn. State begs to differ, he has aptly put forward that women are risk averse, their circles even in the corporate world are restricted and hence they are unable or uninvited in a game of co-conspirators planning the next biggest scam. His view includes that “the glass ceiling effect for involvement in corporate corruption is as great or greater than the ceiling that keeps women from climbing the corporate ladder.”⁷

Regardless, there have been cases not in a far-away country with different laws and different applicability of corporate aspects but our own country which makes an estimate of 14,000 crore worth of scams. By this I shall refer to the Chanda Kochhar scam⁸ also referred to as the ICICI bank-Videocon kickback scam. Chanda Kochhar was a woman of great achievement and ideally a role model too. She was the first CEO⁹ of a public sector bank that ranked second only to SBI between

⁶ HARVARD BUSINESS REVIEW, <https://hbr.org/2021/05/banks-with-more-women-on-their-boards-commit-less-fraud> (Last Visited Apr. 10 2023).

⁷ PENN. STATE, <https://www.psu.edu/news/research/story/women-still-less-likely-commit-corporate-fraud/> (Last Visited Apr. 10,2023).

⁸ Chanda Deepak Kochhar v. ICICI Bank Ltd., (2021) 14 SCC 643.

⁹ KHANNA, VIKRAMADITYA, et al. “CEO Connectedness and Corporate Fraud.” *The Journal of Finance*, vol. 70, no. 3, 2015, pp. 1203–52. *JSTOR*, <http://www.jstor.org/stable/43611095>. Accessed 10 Apr. 2023.

the 2000s-2010s. The scam left thousands out of money and caused great loss to ICICI whose NPA had fallen great heights since Kochhar took over. The corruption was brought forward by Arvind Gupta who wrote a letter to the PM office regarding the easy ways of loan that ICICI had been providing Videocon, the consideration of this loan was headed by Chanda Kochhar. Videocon in essence lent this to another company “Nupower renewable group” which was owned by none other than Venugopal Dhoot and her husband, Deepak Kochhar. Subsequently, Dhoot sold his shares to Kochhar at a later date for only 2.8 lakhs and similarly Essar group’s involvement where they lent a loan of 453 crore for interest of 0.001%. This was part of a quid pro quo deal between these countries and hence the Kochhars’ received the kickback money for the same. Kochhar was charged with criminal breach of trust under Section 409 of IPC.

Another prominent woman dominated scam to note is the Co-Location scam which concerned the CEO of National Stock Exchange, Chitra Ramkrishna who handed over five years’ worth of crucial and confidential data of India's largest stock exchange to an unknown ‘Yogi’. She was granted bail pending hearing by the Delhi High Court observing that she is not likely to commit any offence while on bail.¹⁰

Exceptions exist to all rules, it is true that the likelihood of scams usually involve male employees and executives. This could be because the men like the risk taking nature of these White-collar crimes while the women are busy facing the challenge of overcoming the glass ceiling to indulge in corporate frauds.

“Neither Socially Nor Economically Correct, It Must Be Politically Fair...”

There can be several instances of political interference and influence by the politicians which motivates the corporation to indulge in these fraudulent activities. The government officials may use their connections and influence the investigating agencies not to charge the corporations and draw any legal proceedings against them. These things are possible if the companies have political support or if companies fund the political campaign of the parties. This in a negative way motivates the corporates to involve in fraudulent activities or illegal behaviour. It also degrades the integrity of the

¹⁰ Chitra Ramkrishna v. Assistant Director, 2023 SCC OnLine Del 653

companies as well as of the regulatory system. It will create a biased environment in the corporate world. Another instance of the involvement of political forces may be, if the company is dragged in the court of law but the sitting judges are politically connected with the corporation, so there lies a possibility of them being more biased or sympathetic to the interests of the corporations even if it is against the public interest, morals and ethics. There also lies a possibility in the legislation that is made to protect corporations from being prosecuted, but they may make such laws which weakens the power of the regulatory body and limits their authority to prosecute the corporations. Whenever a fraud is committed and if there is profit earned by the corporations then such profits are shared by only a few powerful individuals who were successful in committing the fraud. But if their scam is unveiled in the society and if they suffer any loss due to the same, then the losses are shared by the public, that is the common people in the way of increased taxes.

“Whistle-Blowing Or Corporate Suicide?”

Whistle-blowers¹¹ act as the good Samaritans to a road accident in a world of corporate fraud, scams, business malpractices, insider trading, and illegal acts of company’s executives. Whistle-blowers are the ones who reveal the major chunk of a perfectly silhouetted White-collar crime which would dupe the general public, rob them of their hard earned money and lead to increase in corruption. Whistle-blowers do not gain something from revealing these secrets hence they are categorized as ethical, well-managed and honest people usually who believe and strive hard for good corporate governance for the benefit of the public and not otherwise.

An opposing view arises in the corporate world where these people are considered as traitors or defectors who in pursuit of fame and glory have revealed a company’s secret subjecting it to eternal doom. As dramatic as that sounds, it is the truth. Other consequences of this activity is loss of job, inability to find another job, damage to reputation in the corporate world, corporate boycott etc. which does not fare well for the whistle-blowers.

The past has witnessed deaths of several whistle-blowers who brought forward illegal or fraudulent conduct of the companies through external channels. Satyendra Dubey, an employee of NHAI

¹¹ DYCK, ALEXANDER, et al. “Who Blows the Whistle on Corporate Fraud?” *The Journal of Finance*, vol. 65, no. 6, 2010, pp. 2213–53. *JSTOR*, <http://www.jstor.org/stable/23324409>. Accessed 10 Apr. 2023.

accused his employer of corruption with regards to highway construction projects following which he was assassinated in 2003. Shanmugam Manjunath, blew the whistle accusing Indian Oil of adulteration of petrol, he witnessed the same fate in 2005. Vijay Pandhare exposed the Maharashtra irrigation scam which led to the resignation of the deputy CM Ajit Pawar. These incidents saw a great threat to not only the livelihood of whistle-blowers but also their lives.

Subject to these grave and severe cases of causing threat to the life of a whistle-blower, the Whistle-blowers Act, 2014 was introduced to protect the rights of the whistle-blowers and Section 177 of the Companies Act, 2013 and Regulation 18 of the SEBI LoDR ensure vigil mechanisms or a whistle-blower policy that help mellow down the consequences of letting out company secrets. As a consequence, every listed company needs to have an audit committee which will overlook this vigil mechanism, countering false and malicious cases, investigating relevant allegations with thorough procedure etc.

The language of these provisions and statute guarantee safety to a whistle-blower but reality differs from this scenario. An important fact to note here is that this protection extends only to public sector employees or Whistle-blowers of a Public Listed Company. The vigil mechanisms of neither Companies Act nor SEBI deal with the scenario of such a case in a private sector which is a matter of great concern as a private employee acting upon good faith for the market's benefit will still be committing corporate suicide.

“How Much Can 447 Really Solve In Scam 21st Century?”

Section 447 of the Companies Act 2013 refers to the punishment of fraud. It basically draws the penalties against the person who is found guilty of committing corporate fraud. It also defines the punishment of false statement whenever it is made in relation to any report, certificate, financial statement or other company related documents. In terms of punishment under Section 447 of the Companies Act, 2013, a corporate fraud worth more than 10 lakhs or constituting 1% of turnover will attract a sentence of six months which may extend up to ten years including fine ranging from amount of fraud till three times the same amount. It further says that if any officer or any employee of the company is found guilty of such offenses, then they will be discharged from their position and will be disqualified from the post of director or to hold any other office in a company for a period of five

years from the date of their conviction.

So far this stringent provision has not deterred many fraudsters or scammers from committing an offence. Attracting this sentence to white collar criminals is difficult because no mens rea exists for them to commit such an offence, hence sections under IPC cannot be attracted. Criminals escape punishment simply because of the benefit of corporate veil. A company may incur monetary losses or insolvency and bankruptcy implications but persons behind the act get away with it, and this chain creates a new cycle rendering the punishment ineffective in a long term and a large scale to be used as a deterrent.

“All's Well That Ends Well!”

Corporate fraud is a single grain in a bag of White-collar crimes. This paper has focused more on the corporate fraud aspect and dealt with the scenarios where bad corporate governance, unethical practices and overall structural and managerial dysfunction has led to the rise of these types of frauds regardless of the strict provisions inserted to counter this.

The increasing number of fraud cases has put the government in action to follow the strict laws and implement it. It has alarmed the investigating agencies to follow the set procedure and conduct proper investigation. Also, the government alone cannot combat the corporate fraud, there must be continuous support and efforts of the company's management, its external auditors, and by all the people working in the organization, in order to lower the corruption. The duty also lies upon the auditors that are financial auditors as well as secretarial auditors, to provide a true position of the company and also detect any default, if any.

Our country also lacks in terms of infrastructure, even if the fraud gets reported and the person committing the same is found guilty, there are no separate cells present for the convicts of these White-collar crimes. Indian prisons lack the basic bifurcation facilities to facilitate different levels of criminals including Under-trials, convicts coming under different gravity of crimes, convicts of criminal and civil nature and lastly convicts or prisoners of White-collar crimes. This results in violation of fundamental rights of accused, be it Under-trials or convicts, which is a prominent issue in our developing nation. Some of the major issues that arise due to this lack of infrastructure is the

increase of health problems including spread of contagious diseases, high mortality rate of criminals in prisons, spread of STDs and many more issues of different subjects. White collar criminals are treated the same way a murderer on death row is treated which almost seems unfair and this is where the bifurcation plays a great role.

Nevertheless, seeing as most of them are powerful and well-connected, they are able to escape the minimum prison time with the help of political influence and where they are unable to get this help it can be inferred that in a long game of chess they have finally become the pawns of their own team.

