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CORPORATE FRAUD IN INDIA: LEGAL CHALLENGES AND REGULATORY RESPONSES

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ABSTRACT

India's economy, corporate governance structure, and confidence from investors have been increasingly threatened by corruption being committed in companies. Fraudulent acts that threaten to destabilize India's economy range from accounting fraud and insider trading to financial misrepresentation, money laundering, cyberfraud and bribing issues. Corporate scandals such as the Satyam Computer Services scandal; Punjab National Bank (PNB) and Nirav Modi fraud; Infrastructure Leasing & Financial Services (IL&FS); and Dewan Housing Finance Corporation Limited (DHFL) fraud highlight deficiencies in India's regulatory and enforcement mechanisms.[1] Parliament has created comprehensive laws relative to corporations, such as the Companies Act of 2013, Securities and Exchange Board of India Act of 1992, Prevention of Money Laundering Act,[2] etc.; but there is continued difficulty in enforcing these laws due to legal, institutional or procedural obstacles.[3]

The purpose of this paper is to explore the development and definition of 'corporate fraud', examine current legislative and regulatory frameworks addressing corporate misconduct, as well as the role of various regulatory and prosecutorial bodies, and analyse the challenges associated with protecting against, and prosecuting, corporate fraud in India. This paper uses significant judicial precedents and significant corporate fraud cases to assess India's regulatory response to corporate fraud. The author also includes a comparative analysis of selected foreign jurisdictions and suggests reforms that would enhance corporate responsibility, regulatory cooperation, forensic investigations, whistleblower protection, and technology oversight, thereby significantly assisting India in combating corporate fraud. The author concludes that

[1] Serious Fraud Investigation Office, *Report on Satyam Computer Services Ltd.* (Gov't of India 2010).
[2] Companies Act, No. 18 of 2013, §§ 447–448 (India).
[3] Prevention of Money Laundering Act, No. 15 of 2003 (India).

while there have been major advancements in India's legislative framework to address corporate fraud in the past 20 years, India must also continue to make institutional improvements, improve the speed of enforcement, and implement enhanced corporate governance practices, in order to effectively prevent corporate fraud in a modern economy.

INTRODUCTION

Corporate fraud is one of the most significant and serious legal and financial challenges facing the modern economy[4]. As companies cross international boundaries, and financial transactions become more complex, there are more opportunities to commit corporate fraud. Furthermore, the extent of the potential financial losses associated with corporate fraud can lead to significant financial loss for the company's shareholders, creditors, and investors; and at the same time, it decreases the level of trust in government regulatory organizations, financial markets, and legal systems. Corporate fraud is different from normal crime committed by an individual because of the characteristics of corporate fraud that typically include systematic deception of others, abuse of a position of trust, fraudulent misrepresentation of the financial status of a corporation (i.e. financial statements), concealment of material facts, and use of the corporate structure of a corporation for the purpose of committing fraud.[5] The majority of corporate fraud cases are not detected for long periods of time, often many years, because of the sophistication of the crime and/or because of the senior management or specialized intermediaries who perpetrated the fraud.

Since India has undergone significant corporate growth as a result of the economic liberalization that began in 1991, and this liberalization has allowed foreign investment in India, privatized many common use goods, and has increased the ability of private businesses to operate in various industries in India, the rapid growth that has occurred in the industrial sectors of India has also revealed deficiencies within the corporate governance structure and regulatory oversight.[6]

In addition to the growth of industry in India as a result of economic liberalization, the rapid growth of industry and insufficient internal controls, non-compliance with the applicable

[4] Edwin H. Sutherland, *White Collar Crime* (Dryden Press 1949).
[5] Donald R. Cressey, *Other People's Money* (Free Press 1953).
[6] Organisation for Economic Co-operation and Development, *OECD Principles of Corporate Governance* (2015).

corporate governance regulations, and developing financial technologies created an environment ripe for the commission of large amounts of corporate fraud.

A number of high-profile scandals have highlighted the impact of corporate fraud on the financial ecosystem of India in a devastating way. For example, in 2009, the Satyam Computer Services scandal revealed extensive forgery of financial statements amounting to thousands of crores of rupees, which has had a dramatic effect on investor confidence in the corporate governance of India.[7] Likewise, the Punjab National Bank fraud perpetrated by Nirav Modi and Mehul Choksi exposed the systemic weaknesses in banking oversight, internal auditing, and risk management[8]. In more recent history, the failures of Infrastructure Leasing & Financial Services (IL&FS) and Dewan Housing Finance Corporation Ltd. (DHFL) demonstrated significant shortcomings in the corporate disclosures, regulatory oversight, and accountability mechanisms. Together, these cases illustrate that corporate fraud is not simply an individual act of criminal behaviour, but rather a larger issue of governance that affects the financial institutions themselves, the public's confidence in these institutions, and the stability of the national economy.

Aware of these potential challenges, the Indian legislature has taken significant steps to bolster the regulatory structure surrounding corporations with respect to their illegal conduct. The passing of Companies Act 2013 marked a major shift in how to improve governance in the corporate world through: Increasing the accountability of directors; requiring companies to put in place internal controls; holding auditors accountable; putting into place provisions for corporate social responsibility; creating class action remedy provisions; and providing enhanced authority for enforcement investigations as carried out by the Serious Fraud Investigation Office (SFIO).[9]

In addition, other legislative avenues, including rules from the Securities and Exchange Board of India (SEBI), the Prevention of Money Laundering Act (PMLA), the Insolvency and Bankruptcy Code (IBC), and various Reserve Bank of India (RBI) regulations, have also been implemented in order to further minimize the occurrence of financial misconduct and improve transparency.[10]

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[7] *S.E.B.I. v. Satyam Computer Services Ltd.*, Order No. WTM/KMA/IVD/267/12/2010 (Dec. 16, 2010).
[8] Central Bureau of Investigation, Punjab National Bank Fraud Case.
[9] Companies Act, No. 18 of 2013 (India).
[10] Securities and Exchange Board of India Act, No. 15 of 1992 (India).

Even in light of such an aggressive and progressive approach to the regulation of corporations in India legislation, enforcement has remained extremely challenging due, in part, to the complexities involved in investigating corporate fraud (e.g., the international nature of the transactions involved, the use of shell entities and digital currencies, and the widespread use of tax havens and cross-border financial networks). Numerous challenges assist regulatory bodies in carrying out this important task; including:

(i) the overlap of jurisdictional authority between different regulatory agencies;
(ii) the existence of procedural delays;
(iii) the lack of adequate technology; and
(iv) the shortage of forensic accounting professionals.

In addition, prolonged court proceedings decrease the deterrence effect of prosecuting corporate fraud and affect the timing of providing compensation to the victim or victimized parties.

Digital technology is creating a new and more difficult legal environment. AI, blockchain tech, crypto-currencies, cloud computing, and digital payment systems have changed how businesses function, but have also opened up many new ways for advanced financial crimes to be committed. The vast majority of current laws, which were created before the digital economy was established, are inadequate to deal with the new risks of these crimes. Consequently, law enforcement agencies must constantly change the laws they enforce to keep pace with the changing landscape of digital crime.

This paper investigates the legal framework governing corporate fraud in India, analyses the institutional mechanisms for fraud prevention and investigation, assesses the principal legal and practical challenges facing law enforcement, and evaluates the adequacy of current reforms. To this end, the research analyses laws, legal precedent, use of regulatory authority, and major instances of corporate fraud to determine whether the current legal framework in India adequately balances corporate growth with accountability and transparency. The paper will also recommend measures to improve law enforcement, interagency coordination, corporate governance standards, and a more robust framework for addressing the risks of future corporate fraud.

CONCEPT AND MEANING OF CORPORATE FRAUD

Corporate fraud encompasses illegal or dishonest activities by an organization (or its employees or agents) with the intent to gain illicit financial or commercial advantage. It can take many different forms, including abuse of managerial authority, falsifying financials, violating fiduciary duty, failing to disclose material facts, or intentionally misrepresenting information in a way that causes financial loss to shareholders, creditors, investors, employees, regulators, and the general public. Corporate fraud is classified as white-collar crime because it is committed by people in positions of trust and/or with authority.[11]

Under The Companies Act 2013, fraud is defined by Section 447. [12] Fraud is defined as any act or omission that intentionally misleads, takes advantage of another person, or otherwise injures another person's interests by denying them their rights regardless of whether they actually received the benefit or experienced a financial loss. Therefore, this definition greatly expanded the scope of corporate fraud in India by including not only actions of actively deceiving but also omissions and abuse of corporate authority.

There is a difference between corporate fraud and normal crimes, which occurs because at times of fraud there are usually a number of people involved from different departments, and the company's structure can also be very complicated; meaning investigations and prosecution could take longer to complete.

Corporate fraud also has consequences for the economy. Corporate fraud causes direct loss of money to the business, this can discourage investors from investing, thereby affecting foreign investment. Corporate fraud can have an impact on financial markets, increasing the costs for regulatory oversight, and damaging the integrity of the corporate governance structure. The larger scale of corporate fraud may cause instability within banks and impede the growth of a country's economy. India has had a number of major financial scandals within the last 20 years, which show just how serious this issue can be to an economy.

Theoretical explanations of corporate fraud typically refer to the Fraud Triangle Theory developed by Donald Cressey.[13] According to Cressey's theory, an individual commits a fraud due to the presence of three elements - pressure, opportunity, and rationalisation. Pressure may

[11] Edwin H. Sutherland, *White Collar Crime* 9–12 (Dryden Press 1949).
[12] Companies Act, No. 18 of 2013, § 447 (India).
[13] Donald R. Cressey, *Other People's Money: A Study in the Social Psychology of Embezzlement* 30–35 (Free Press 1953).

arise from either financial performance targets or individual greed as identified through the opportunity created through either

a lack of internal controls or lack of supervisory oversight, whereas the opportunity created through the means of rationalisation creates justification for the fraud to occur.

Contemporary researchers have added a fourth element - capability to Cressey's original three elements, thus creating the Fraud Diamond Theory. [14]Fraud Diamond Theory acknowledges that complex corporate fraud can only occur with the presence of the specialized knowledge, authority, and technical skills to do so.

In the context of corporate fraud in India, there has been a shift from only viewing corporate fraud as an internal governance issue to viewing corporate fraud as an issue that impacts financial stability, economic growth, and the public at large. As a result, laws and regulations that regulate corporations have changed from merely imposing criminal penalties on corporations to emphasising prevention, transparency, accountability, and early detection.

TYPES OF CORPORATE FRAUD IN INDIA

Fraud in the Corporate sector takes many forms and can be influenced by the type of business, the environment it operates in, and the means used by the perpetrator. Traditional Corporate fraud continues to exist as the use of advanced technology has provided managers with more opportunities for committing fraud.

1. Financial Statement Fraud :

One common type of Corporate Fraud is Financial Statement Fraud, which is a wilful alteration of accounting records in order to provide an inaccurate picture of the company's current and future financial status.[15] Examples of this type of fraud include overstated profits, understated liabilities, inflated assets, concealed debt and fictitious revenues. The motivation behind the commission of the fraud typically includes the desire of the perpetrator to receive investment or loan money or to increase the market value of the company.

Satyam Computer Services (2009) is an example of Corporate Financial Statement Fraud in India.[16] The Founder of Satyam admitted to several years of manipulating the financial

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[14] David T. Wolfe & Dana R. Hermanson, *The Fraud Diamond: Considering the Four Elements of Fraud*, CPA J., Dec. 2004, at 38.

[15] Companies Act, No. 18 of 2013, §§ 128, 129, 134 (India).

[16] Serious Fraud Investigation Office, *Report on Satyam Computer Services Ltd.* (Gov't of India 2010).

statements of Satyam by inflating cash balances, profits and fictitious revenues (in amounts in excess of thousands of crores of rupees). The scandal brought to light several issues related to poor audits, inadequate oversight from the board, and a lack of adherence to proper governance.

2. Accounting Fraud :

The term accounting fraud can refer to fraudulent accounting practices that include the falsifying of various business documents such as accounting records, invoices, vouchers for expenses or taxes paid, and financial statements. Examples of accounting fraud may include creating fictitious transactions or recording fictitious sales; failure to record expenses and willfully manipulating depreciation on an asset/account; and keeping multiple sets of accounting records.

Companies are able to avoid tax liabilities, provide false information to potential investors, conceal financial problems, and fulfil conditions set forth by banks or other financial lending institutions due to these fraudulent accounting practices.

Directors and auditors both share obligations under the Companies Act, 2013 regarding the proper keeping of accounting records and the disclosure of material information of the company's financial condition.[17]

3. Banking and Loan Fraud :

Banking fraud occurs when an entity or individual receives a loan through the use of fraudulent or forged loan documents, or using fake or fraudulent collateral. Banks that engage in or suffer from banking fraud can negatively impact the overall stability of the entire banking system. Banking fraud ultimately increases the cost of providing services to taxpayers and the general public through the creation of a financial burden.

The fraudulent Nirav Modi-Punjab National Bank case highlights the breakdown in supervision/oversight of banking activities when multiple letters of credit were issued without being recorded in the bank's internal banking system over several years and resulted in losses to the bank of over ₹13000 crores. The case further illustrated the deficiencies in internal control systems within banks and the adequacy of oversight provided by the regulatory agencies that govern banks.[18]

[17] Companies Act, No. 18 of 2013, §§ 128, 134, 143 (India).
[18] Central Bureau of Investigation, RCBD1/2018/E0001 (Punjab National Bank Fraud Investigation).

4. Insider Trading and Securities Fraud :

The act of insider trading is when someone with access to non-public information trades on that information prior to it being disclosed publicly by the company. In addition to insider trading, the term securities fraud also encompasses several other types of activity such as;

- manipulating the market through price manipulation,
- giving misleading disclosures,
- creating inflated stock prices artificially,
- circular trading, and
- conveying falsehoods about a company that affects the trading market of the company's stocks.

To regulate insider trading in India, the Securities and Exchange Board of India (SEBI) created the SEBI (Prohibition of Insider Trading) Regulations of 2015 which prohibit the use of material non-public information to trade and create duties on the part of publicly listed companies with respect to the disclosure of such material non-public information.[19]

5.Bribery and Corruption in Corporations :

A corporation committing corporate corruption is when it provides something of value (e.g. money, gifts, etc.) to a public servant or a private person unlawfully to obtain a contract or other favourable administrative acts such as receiving assurance of a permit or license, tax benefits or any other governmental approval. Corporate bribery and corruption distort competition and also undermine the integrity of public administration.

Bribery is governed primarily by the Prevention of Corruption Act, 1988.[20] However, corporations will be liable under the Companies Act when their directors breach their fiduciary duties/obligations or when directors engage in fraudulent business operations.

6.Money Laundering :

A corporate entity may be used as a means to mask the origins of funds from criminal acts through multistep transactions which could include something called a shell company, offshore accounts, layered transactions, or a non-existent business. When done properly, money

[19] Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015, Gazette of India (Jan. 15, 2015).

[20] Prevention of Corruption Act, No. 49 of 1988 (India).

laundering allows an individual (or a corporation) to conceal illegal funds' origins, while still allowing the funds to be used as if money derived from legitimate means.

Provisions contained in the Prevention of Money Laundering Act, 2002 provide law enforcement agencies with the authority to conduct investigations into suspicious financial transactions,[21] freeze property that has been obtained as a result of criminal activity, and prosecute individuals who are involved in laundering funds acquired as a result of criminal activity.

7.Cyber-Enabled Corporate Fraud :

With the increasing digitisation of corporate activities, cyber-related crimes associated with corporate-related crimes are being perpetrated at an alarming rate.[22] Corporate Fraud: Cyber-enabled implies fraudulent conduct electronically by way of unauthorised electronic funds transfer (moving money electronically between accounts), ransomware attacks, phishing schemes, and business email compromise; electronic accounting, cryptocurrency fraud and the unauthorised use of confidential corporate information.

Unlike conventional corporate fraud offences, in which there generally is a large component of physical activity, the majority of cyber-enabled corporate frauds occur across international digital networks, involve anonymous transactions through the use of cryptocurrency, use sophisticated technology that makes the investigation and prosecution of cyber-enabled corporate fraud much more complex, and have no significant physical evidence that can be used to establish criminal culpability. Therefore, there is an increasing requirement for corporations to enhance their corporate governance in regard to cyber security, digital compliance systems, and internal risk management systems.

CAUSES OF CORPORATE FRAUD IN INDIA

Corporate fraud occurs when a number of factors are present and combines to create an opportunity for fraud as a result of an organisational weakness, regulatory loopholes, a financial motivation and governance failures. The most significant factor is that the level of corporate governance is very weak; therefore, the board of directors does not effectively oversee management's activities and therefore allows management to materially misstate financial

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[21] Prevention of Money Laundering Act, 2002, No. 15 of 2003, §§ 3–5 (India).

[22] Information Technology Act, No. 21 of 2000 (India).

information without the necessary oversight.[23] Due to conflict of interest, negligence or lack of thorough reviews, independent directors, the audit committee and statutory auditors may not identify or report fraud.

Another cause of corporate fraud is weak internal controls, which create opportunities for fraud.[24] Recordkeeping and accounting systems have not been established properly; risk management systems have not been properly established; there is little segregation of duties; and the company has very limited internal audit functions. All of these factors allow employees and/or senior management to conceal fraudulent transactions for extended periods.

Senior management may have very high expectations of financial performance, including revenue, profit, market capitalisation, or shareholder return, which creates tremendous pressure on senior management to manipulate financial results to meet the expectations of investors and keep their stock price from declining.

Another contributing element to corporate fraud in India is the complex regulatory environment.[25] There is a myriad of regulatory agencies in India: SEBI, RBI, SFIO, MCA, ED, CBI and State authorities. Furthermore, all of these agencies have overlapping jurisdiction; it takes a considerable amount of time to respond to complaints; and they range widely in the way that they enforce the laws.

Finally, because globalization and developing technology have made it possible for corporations to do business via multinational corporations, shell companies, digital goods, and offshore tax havens, regulatory oversight has become more complicated and increased the ability of individuals to commit complicated financial fraud by creating a need for constant modernization of the legal frameworks used for corporation and investigative capabilities.

STATUTORY AND LEGISLATIVE ARCHITECTURE

The Anti-Fraud Framework in India consists of the intersection of many laws.

1. Companies Act 2013 :

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[23] Organisation for Economic Co-operation & Development (OECD), *G20/OECD Principles of Corporate Governance* (2015).

[24] Committee of Sponsoring Organizations of the Treadway Commission (COSO), *Internal Control—Integrated Framework* (2013).

[25] Companies Act, 2013, No. 18 of 2013 (India); Securities and Exchange Board of India Act, No. 15 of 1992 (India).

The new law turned around the whole paradigm of regulation from penalizing before the event to active prevention and taking personal responsibility. The first part of this section is a broad definition of Fraud.

Section 447 (Fraud):[26]

Fraud relates to the affairs of a company and/or body corporate and includes acts, omissions, concealing of factual information, or misusing position of authority made (in some way) by any person or any other person in conspiracy with any intention to deceive any person, acquire any undue advantage from, cause loss to, or expose any person to damage; no matter whether or not there is any impropriety in obtaining any asset, or whether or not there is a loss to an affected party.

Key Feature: The statutory definition of the crime takes away from the physical manifestation of the damage. The mere existence of an intention to deceive/abuse one's position will be sufficient to establish an ingredient of the offense and aid the investigative body in determining whether the elements of this offense have been met.

Penal Consequences:

If the crime is of public interest, the minimum period of incarceration shall be 3 years, while in typical circumstances, imprisonment may last between 3 to 10 years, and monetary penalties can reach three times the value of the amount fraudulently taken. This offense is cognizable, non-bailable, and non-compoundable.

Section 448: Punishing False Statements[27]

Section 448 is specifically deals with record falsification and false statements. Any person making a false statement or omitting a material fact in any return, report, certificate, or financial statement required under the Act is also subject to prosecution under section 447.

2. The Bharatiya Nyaya Sanhita (“BNS”), (2023) :[28]

A New Penal Code BNS has replaced the Indian Penal Code 1860 as the legal framework within which acts of fraud are treated as traditional crimes. The BNS defines as criminal:

[26] Companies Act, 2013, No. 18 of 2013, § 447 (India).
[27] Companies Act, No. 18 of 2013, § 448 (India).
[28] Bharatiya Nyaya Sanhita, No. 45 of 2023, §§ 316, 318, 336, 344 (India).

Section 316: Criminal Breach of Trust (IPC Sec 405/409), the misappropriation of property that has been placed in the corporate entity's care by a corporation.

Section 318: Cheating and Inducing the Delivery of Property by Dishonest Means.

Section 336 and 344 - Forgery and Falsifying Accounting Records - specifically targeting creative accounting practices and providing false invoices to a corporation for products from a shell company.

3. Prevention of Money Laundering Act 2002 (PMLA) :[29]

Funds that are siphoned off as a part of corporate fraud are often sent to shell networks where they can be hidden away. If an offence occurs under Section 447 of the Companies Act, 2013, then it automatically constitutes a scheduled offence for the purposes of PMLA, allowing the Enforcement

Directorate the authority to attach both corporate and personal property as proceeds of crime, which may include going through the corporate veil to reclaim property.

4. SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 :[30]

SEBI regulates fraudulent and unfair trade practices on an ongoing basis for listed public companies using regulations known as PFUTP. These regulations also prevent artificial inflation of stock values through schemes where stocks are bought and sold between insiders or by way of circular trading, etc. In addition, these regulations address issues such as market manipulation and the use of inside information in connection with public offers or other forms of securities transactions.

REGULATORY AUTHORITIES, THEIR JURISDICTIONS, AND HOW THEY ENFORCE FRAUD PREVENTION

Regulatory Authority	Statute Regulatory Authority's	Core Function

[29] Prevention of Money Laundering Act,2002, No. 15 of 2003 (India).

[30] Securities and Exchange Board of India (Prohibition of Fraudulent & Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (India).

Serious Fraud Investigation Office (SFIO)	Companies Act, 2013 [Sections 211-212]	The SFIO is a multidimensional elite team that investigates the most complicated and systemic commercial frauds.[31]
Securities and Exchange Board of India (SEBI)	SEBI Act, 1992 and PFUTP Regulations	SEBI's primary mandate is to protect the investing public and maintain the market integrity of entities whose securities are publicly traded.[32]
Enforcement Directorate (ED)	Prevention of Money Laundering Act, 2002 and Foreign Exchange Management Act [FEMA], 1999	The ED's primary functions are to trace, track and seize the proceeds of crime (money laundering) and to investigate cross-border money laundering.
National Financial Reporting Authority (NFRA)	Companies Act [Section 132]	NFRA's mandate is to act as an independent monitor of auditing standards and to take disciplinary action against auditors who aid and abet fraud.[33]

[31] Companies Act, 2013, No. 18 of 2013, §§ 211–212 (India).

[32] Securities and Exchange Board of India Act, No. 15 of 1992 (India).

[33] Companies Act, 2013, No. 18 of 2013, § 132 (India).

Reserve Bank of India (RBI)	Banking Regulation Act [1949]	RBI's mandate is to implement fraud risk management frameworks for commercial banks and non-banking financial companies (NBFCs) that address credit and loan fraud.

The Central Primacy of the SFIO

The SFIO, established by Section 211 of the Companies Act, 2013, consists of multiple disciplines including forensic auditors, data scientists, corporate lawyers, and capital markets experts. Once a case is assigned to the SFIO by the Central Government pursuant to Section 212(2), no other Central or State authority may investigate the same matter. This creates absolute Central primacy over fraud matters to eliminate fragmented prosecution of fraud.

CRITICAL LEGAL CHALLENGES IN PROSECUTING CORPORATE FRAUD

Prosecuting corporate fraud presents critical legal challenges because of the pervasive legal, procedural and technological hurdles that exist despite a comprehensive set of laws governing these types of crimes.

1.Regulatory Overlap and Jurisdictional Conflicts :

Although SFIO's workspace is safeguarded by the Companies Act (as illustrated in Section 212 (2)) fraud is almost never experienced in isolation; that means that large-scale, higher-dollar-value fraud schemes trigger multiple regulatory agencies at the same time. For example, bank loan diversion schemes can involve SFIO for violations of company law, CBI for criminal conspiracy or corruption under BNS, ED for laundering under PMLA and also Income Tax Department for tax evasion.[34] The presence of multiple regulators scrambling to investigate these schemes creates structural friction; in addition, since each agency has its own set of procedures, they experience delays in sharing forensic evidence, conflicting witness testimony

[34] Companies Act, 2013, No. 18 of 2013, § 212 (India).

when it comes time to testify about what they saw and protracted litigation over the question of jurisdiction over the electronic and physical evidence seized.

2. The Evidentiary Maze: Digital Forensics versus Admissibility :

Current financial scheming uses encrypted communication, blockchain transactions, alteration of the dynamic ledger, and obfuscation of data stored in the cloud.

Whereas the electronic evidence used to be regulated under Section 65B of the Indian Evidence Act, 1872, now the same is covered under the Bharatiya Sakshya Adhiniyam, 2023. This is because the new Act of 2023 has superseded the old Indian Evidence Act of 1872. Thus, it is evident that electronic documents will now be regulated according to the new Act.[35]

The challenge is that when forensics auditors extract deleted logs from a Distributed Ledger System (DLS) or a cloud server without mathematically mapping hash values, or without maintaining a complete chain of custody, the defence counsel has the ability to have said evidence excluded based on technicalities. The rapid growth of technology-enabled white-collar crimes has created significant bottlenecks in specialized cyber-forensic infrastructure within law enforcement agencies.

3. The Shell Company Conundrum and Layering :

Fraudsters take advantage of structural gaps by creating multiple levels of dummy entities known as shell companies. They can use layering techniques to transfer money through dozens of current account banks within multiple jurisdictional banks within hours. Determining who the ultimate beneficiary owner is within this environment will involve navigating nominee directors, layers of corporate ownership, and multiple tax haven jurisdictional issues, thus requiring the issuance of time-consuming Letter Rogatories (LR) and Mutual Legal Assistance Treaties (MLAT).

4. The Challenges Faced by Whistleblowers :

As an example, the Whistleblower Protection Act still lacks strong protections for whistleblowers within private companies. For example, while Section 177 of the Companies Act requires listed companies to have a vigil mechanism in place, several whistleblowers are subjected to various forms of retaliation (e.g. corporate retaliation), and professional

[35] Bharatiya Sakshya Adhiniyam, No. 47 of 2023, §§ 61–63 (India).

blacklisting, and do not have access to any form of state-sponsored physical or identity protection. These barriers prevent early reporting of wrongdoing.[36]

5. Delays in the NCLT and Special Court Systems :

The NCLT and Special Courts are also facing significant delays in dealing with the high volume of Insolvency and Bankruptcy Code cases and regular company cases filed in those courts. Delays in corporate fraud trials make it more difficult for the trial process to result in the recovery of civil remedies, because of asset depreciation during the course of the litigation.

PROACTIVE REGULATORY RESPONSES AND DIGITAL SHIFTS

Digital shifts drive proactive regulatory response Regulatory frameworks in India are significantly updated with the shift to real-time digital monitoring of businesses and eliminating the threshold of an after-the-fact regulatory investigation

1. Implementation of Corporate Governance Robustness: Regulators have passed the responsibility of preventing fraud to business as a whole through their respective corporate bodies.

- Auditor Responsibility: An auditor who has had evidence of potential company fraud by their company officers or employees is mandatorily required to report this information under section 143(12) of the Companies Act, 2013 to the Ministry of Corporate Affairs within prescribed timelines.[37] Failure to do so may cause the infringement of rules and regulations or potential suspension from the National Financial Reporting Authority (NFRA).

- Independent Directors: It is required that the majority of members on the corporate audit committees are independent and have personal liability to ensure proper action is taken when related party transactions (RPTs) are completed or flagged.

2. Technology-Driven Proactive Oversight:

The Ministry of Corporate Affairs (MCA) has enhanced its MCA21 System to version 3 through the use of Artificial Intelligence (AI) technology that enables predictive modelling based on business filings through a combination of the use of predictive data sets and the

[36] Companies Act, 2013, No. 18 of 2013, § 177 (India).
[37] Companies Act, 2013, No. 18 of 2013, § 143(12) (India).

calculation of the associated risk of a company filing.[38] The MCA21 system automatically reviews and validates company filings for any potentially serious weaknesses (i.e. disparate balance sheet, continual changes of external auditors or the increase of many high-interest debt transactions, sharing of common addresses between different companies) which then trigger a "Red Flag." The Red Flag also subsequently initiates an early inspection process before significant problems have occurred throughout the corporation.

3. Updated RBI Master Directions on Fraud Risk Management :

The Reserve Bank of India has issued new guidelines directing domestic banks to use early warning signals to classify an account as either a Special Mention Account (SMA) or a Non Performing Asset (NPA).[39] In addition, if an account has an exposure greater than Rs 50 crore the bank is required to carry out an independent forensic audit to determine whether there are any systemic issues related to diversion of such assets, before taking action on restructuring the related loan.

JUDICIAL PRECEDENTS

1. Vijay Madanlal Choudhary v. Union of India[40]

Facts of the Case

The case came from several petitions that questioned the constitutional validity of different parts of the Prevention of Money Laundering Act, 2002 (PMLA). The petitioners said that the broad powers given to the Enforcement Directorate (ED), such as searching, seizing, attaching property, arresting, and imposing strict bail conditions, violated their fundamental rights under the Constitution of India. They also raised concerns about the methods used by the ED when looking into financial and corporate crimes.

Issues Before the Court

Whether the provisions of the Prevention of Money Laundering Act, 2002 were constitutionally valid?

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[38] Ministry of Corporate Affairs, *MCA21 Version 3.0* (Gov't of India).
[39] Reserve Bank of India, *Master Directions on Fraud Risk Management in Commercial Banks* (2024).

[40] *Vijay Madanlal Choudhary v. Union of India*, (2022) 10 S.C.C. 386.

Whether the powers given to the Enforcement Directorate were arbitrary or violated Articles 14, 20, and 21 of the Constitution?

Whether the strict bail conditions under Section 45 of the PMLA were constitutionally sound?

Judgment

The Supreme Court confirmed the constitutional validity of most provisions of the Prevention of Money Laundering Act, 2002. It stated that money laundering is a serious economic crime that impacts the country's financial stability. Therefore, strict investigative and enforcement powers are warranted. The Court also supported the Enforcement Directorate's authority to attach proceeds of crime, conduct investigations, and prosecute offenders under the Act.

Significance in Corporate Fraud

This judgment has become a key decision in fighting corporate fraud related to money laundering. It boosts the Enforcement Directorate's ability to trace and recover proceeds of crime made through fraudulent corporate activities, shell companies, and financial misconduct. The decision highlights India's commitment to preventing economic crimes and promoting greater corporate responsibility.

2. Yerram Vijay Kumar v. State of Telangana[41]

Facts of the Case

The case arose due to allegations regarding fraud and making of false statements in contravention of the Companies Act, 2013. The crux of the issue was whether the prosecution for criminal offences in connection with Sections 447 and 448 of the Companies Act was possible without complying with the procedure outlined in the Act. This pertained mainly to the scope of powers available to the Serious Fraud Investigation Office (SFIO) and how these offences could be taken cognizance of.

Issues Before the Court

Was prosecution for offences under Sections 447 and 448 of the Companies Act under the special procedure of the Companies Act,2013?

[41] *Yerram Vijay Kumar v. State of Telangana*, 2026 INSC 42 (S.C. Jan. 9, 2026).

Could ordinary criminal proceedings be taken or pursued for offences of serious corporate fraud, irrespective of the special procedure provided in the Act?

Judgment

In the above case, the Supreme Court ruled that offences arising under Section 447 and 448 of the Companies Act would have to be tried under the process established by the Companies Act, 2013. The Court reiterated the need for compliance with any procedure laid down in law when such procedure exists for carrying out an investigation and prosecuting an offence under such an act.

Significance in Corporate Fraud

This judgment highlights the importance of the Serious Fraud Investigation Office in cases of serious corporate fraud and the significance of the procedural requirements under the Companies Act, 2013. It helps create consistency in cases of corporate fraud, avoids procedural lapses and ensures that serious financial offences are investigated by the appropriate authority under statute.

CONCLUSION

India’s legal framework against corporate fraud is strong, based on Section 447 of the Companies Act and supported by solid judicial backing. However, the prosecution speed and asset recovery still face hurdles due to delays in procedures and complex financial technology. To address these issues, India should consider a few key structural reforms:

- Establish Unified Financial Crime Benches: Combining specialized judicial resources into unified financial crime courts can help resolve cases under the Companies Act, PMLA, and BNS at the same time. This can prevent lengthy trials.

- Enact a Comprehensive Private Sector Whistleblower Act: Expanding legal protections and offering real incentives for whistleblowers can help uncover corporate fraud before it affects the public markets.

- Build Institutional Capacity in Forensic Technology: Providing agencies like the SFIO with advanced blockchain tracing tools and AI models will help them keep up with the technical skills of modern white-collar criminals.

In essence, even though there has been remarkable development in India's legal structure regarding fraud committed in business corporations, proper implementation, coordination between institutions, readiness for technology, and prompt prosecution are necessary to ensure corporate accountability and protection of investors' confidence.[42]

[42] Companies Act, 2013, No. 18 of 2013, § 447 (India).