

**CORPORATE CRIMINOLOGY**- Astha Deep & Abha Singhal<sup>1</sup>**ABSTRACT**

Criminality finds its genesis into the roots of personal malice, misconduct, and miscreants. But the today-era takes into cognizance the conduct of the organizations who are treated virtually as a legal entity. It is breeding illegality out of the legitimate occupations that are in function. Being a white-collar crime, sometimes they are taken up as a professional crime to earn a livelihood. With the leaping development of technologies, committing and monitoring White Collar crimes has become challenging. Economic growth is desired but not unethically. In India, various laws and regulations have been formulated to counter and prevent it. In the era of globalization and the technological boom, crime has been an accelerating trend. Though sophisticatedly performed, they harm the health of the company and the economy as well. It is incredibly complicated to trace and understand it, and by the time it is traced, the magnitude of damage is amplified. Many regulatory authorities like CBI, CVC, SFIO are there to hunt down corporate criminals. The clutch on Corporations is tightened by the regulations framed and implemented.

**INTRODUCTION**

The phrase "Corporate criminology" or "corporate crime" is stumbled across from Criminologists Richard Quinney and Marshall Clinard. They explained different types of "white-collar crimes" in their definitive text *Criminal Behaviour Systems*. Now, what are white-collar crimes? White-collar crimes are perpetrated by an individual working in a legitimate organization/ firm to earn some favorable advantages. But when this same crime is achieved by a group of respectable men/officials working in the same organization, for the

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benefit of the same. It comes under the category/variety of white-collar crimes. American Criminologist and Sociologist Edwin Sutherland, in a 1939 presidential address to the American Sociological Association defined white-collar crime as a crime committed by a person of high social status and respectability in the course of one's responsibility. It has always been associated with the affluent and wealthy since then. In this today's world of globalization and industrialization, Corporate Crime has become a huge issue, both socially and economically. Business corporations, large and small, inflict an enormous amount of suffering on society. They are performed for greed and self-enrichment.

### **CONCEPT OF CORPORATE CRIMINALITY**

Corporate crime is an umbrella term for Fraud and accounts manipulation in the business. This type of corruption ranges widely from the valuation of assets, money laundering, evasion from taxes, forgeries and financial malpractices. These types of crimes are widely percolated in the business system to cause harm to one company and benefit another individual or company. The undue benefits are hidden under the garb of accounting numbers and are often difficult to trace. Some companies dive into these crimes in order to inflate their net profit and to minimize their losses. To reach to a certain corporate goal or the zenith of profit making, organisations often are seen indulging in such practices. Competition in the corporate world is high, other dark aspect of competition is foul play or cheating. Companies often cheat the way to the top and are hidden and protected by government employees who are corrupted and seek to share the crime as well. It is also done to escape the burden of tax that the net profit is shown less than the actual profit of the company.

The criminals and perpetrators use their corporate dexterities to manipulate to great extent the audit and accounting documents of the company for their undue benefit, to achieve goals of company, to evade taxes or fulfill their interest.

There is wide classification of corporate crimes or white collar crimes:

- Frauds is the broadest term used in the world of crime, which means intentional harm caused for personal gain, organizational goal, or other reason. It is defined in both civil and criminal codes.
- Forgery- In this type of crime there is a misuse of tools or instruments used in business.

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- Professional Crime- A crime done during occupation within the organization.
- Tax evasion- To get away with the unaccounted income by hiding the actual gains in a year by accounting manipulation.
- Embezzlement- Within an organization when a person is given the charge or authority over the money appropriates for his or her own personal benefit.
- Counterfeiting- Imitation of an instrument to do Fraud without any authority .
- Bribery- To influence the authority and the people working under it to manipulate data, counterfeit, or do Fraud of any sort.
- Ad hoc crime- To generate money for personal benefit without having to face the victim.

## **THE CHALLENGE OF COMBATING CORPORATE CRIMES**

The most imperative element is that of government regulation, monitoring, and control. The financial market even if an open and accessible economy cannot self-regulate itself. There is always a need for justified government intervention that will help an oversight in a healthy economy. When there is a loose end from the Government's side, there have been the worst financial disasters. Disasters of such rage are complicated to recover and do inadvertent damage to the economy and society. Tasking the companies that are in the lookout to escape the regulatory oversight somehow is one way to keep the economy in order. The regulations should not be dominating or overpowering and should always give pause for the companies to grow and generate profit ethically. There should be efficient enforcement mechanisms to prevent financial crises. There should be regular forensic scrutiny and investigation of firms at all levels.

## **LAW AND LEGAL PROVISIONS**

### *1. Indian Contract Act 1872*

The Indian Contract Act of 1872 defines Fraud as an act committed by a party to a contract or the agent against the other party to deceive them for his gains and influence him to enter into the particular contract. Such a fraud can be done by active or passive concealment of a fact material to the contract that might cause a change in the decision of the other party. It can also be done in the garb of false promise made to somehow induce the person to get into the contract. It can also be done by misquoting the facts or intentional omission or commission of falseful acts by one the parties or the agent.

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## 2. *Under the Indian Penal Code 1860*

The Indian Penal Code defines the Fraudulently as a compulsory element of intention or malice present in the Fraud done.

- Regulatory Regulations

### 1. *Indian Contract Act –Section 17*

The Indian Contract Act section 17 clarifies the meaning of Fraud. Fraud is the intentional harm caused by the way of active concealment of facts and matter of the contract by one of the parties to the contract or the agent .

<sup>2</sup>When analyzed s 17(1) shows the following :

- a) There should be a suggestion as to a fact;
- b) The factual suggestion should not be true;
- c) The suggestion should have been made by a person who does not believe it to be accurate; and
- d) The recommendation should be made in order to deceive or persuade the other party to sign the contract.

### 2. *Indian Penal Code – Section 25<sup>3</sup>*

"Fraudulently".—A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.

### 3. *Prevention of Corruption Act*

<sup>4</sup>7. Public servant taking gratification other than legal remuneration in respect of an official act.—Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavor to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in

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<sup>2</sup>Fraud in Contracts- Section 17 of the Indian Contract Act - iPleaders, 2021

<sup>3</sup> <https://indiankanoon.org/doc/1961417/>

<sup>4</sup><https://indiankanoon.org/doc/324254/>

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clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine.

4. *Prevention of Money Laundering Act*

Money laundering poses a significant threat to the economy and financial systems. Its definite prevention and dilution of any mechanism that facilitates it is extremely important. To achieve this much-needed objective Prevention of Money Laundering Bill was introduced in the parliament in 1988. It was finally passed as an Act in 2002. It was later amended in 2012. Keeping in mind the gravity and scope of the act, it was diversified in the approach and reach like money laundering in terrorism, drug trafficking, human trafficking, illegal arms sale, and another global menace. These sophisticated crimes are tracked and monitored using the guidelines in the act.

5. *The Companies Act 2013*

There is a separate section for Corporate Criminal Liabilities. It is recognised under Section 53, Section 118(12), Section 128(6), Section 129(7), Section 134, Section 188(5), Section 58(6) Section 182(4), Section 184(4), Section 187(4), and Section 447. Basically, there are many provisions under which monitoring of a company takes place to prevent Fraud against the company, shareholders, customers or the individuals related to the company. The provisions cover all diverse aspects from Incorporation to the Insolvency of the company.

6. *Clause 49 of Listing Agreement*

Corporate Governance and fairness in business conduct contain various rights and duties of the individual connected with the company's business. The company should adhere to and implement the principles of Corporate Governance. There should be upholding of the right of the shareholders, the role of the stakeholders should be specified, disclosure and transparency in the conduct of the business should be there and finally the responsibilities of the Board of directors should be performed ethically.

7. *Securities and Exchange Board of Indian Act*

For regulation of the stock market in the interest of the investors, companies and the economy, there is a board and set of guidelines that must be strictly followed.

8. *CARO Act*

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Also called the Companies Auditor's Report Order 2016, MCA has provided every auditor to follow section 143 of the Companies Act 2013.

## **CORPORATION AND CRIME**

Crime is a way of doing unethical practices for the benefit and the loss for the other. It has a huge effect on the social and Economic lives of many. What makes corporate crimes more dangerous is that they are performed by the elite class of this society, such as company employees and executives. They are served with such a low visibility, in a way no nobody could detect them, and also they try to do them in such a manner to keep them well within the Legal framework.

Corporate crime something which is perpetrated by an individual, or individuals, deliberately, in a bad faith, for the benefit of the themselves, or for the organisation they are working for. As we have learnt earlier, corporate crime comes under the white-collar crimes. companies/ organisations, with utmost secrecy, carries out a lot of corporate frauds, crimes which sometimes, makes it difficult for the agencies to catch them.

White-collar crimes are nonviolent in nature, so as to gain financial/personal edge and to deceit regulators and others. They can be distinguished into two crimes: corporate crime and occupational crime. These crimes are committed by a group of respected officials, who are working for the same organisation they want to get benefitted, by their said act. On the other hand, occupational crimes are committed by group of individuals against their organisation, workplace or, consumer during employment.

The term "corporate crime" originated from a series of mishappenings in the corporate world such as the fire incident at the Imperial Chicken Processing Plant.

These incidents made us aware of the corporate crime spreading throughout the world like a deadly fire. Since the world is growing at a tremendous rate, commercialization is increasing; industries are expanding, the incidents of corporate crime are taking the toll on the lives of ordinary citizens as well. The billions of dollars of funds which are being stolen, misappropriated every day are affecting the lives of those needy and poor. But it is still debatable whether corporate crime is actually a crime or not? The actions undertaken by these wealthy and esteemed members of the said organization, are done with such a privacy that it becomes really difficult to spot it at hand. Many of the crimes includes a comprehensive calculation of finances, stock markets, trading, etc that even the most professional individuals and agencies don't seem to understand.

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## **CORPORATE CRIMES IN INDIA**

An organization only acts through its employees and the individuals who commit the crime for the organization are themselves responsible for the said offense.

The term corporation was introduced in the late 14<sup>th</sup> century, to have a set of different brains to give more concrete ideas to make the right decisions and to establish a legal authority. The corporations, in the beginning, were only established for non-profit purposes but, from the onset of the 17<sup>th</sup> century, they became commercialized and profit-oriented.

### **Same famous corporate crimes in India:**

#### **A. Mundhra Case**

Mundhra scam was the first-ever fraud of independent India, which happened in the year 1957. Haridas Mundhra, a Calcutta-based stock speculator, regulator, and industrialist, without the advice of the investment committee and under governmental pressure, persuaded the Government-owned Life Corporation of India to invest a sum of Rs 1,26,86,100 in the fictitious shares of Mundhra's six companies.

Feroze Gandhi, the then MP from Uttar Pradesh's Rae Bareilly, and the son-in-law answers. As a result, PM Jawaharlal Nehru decided to set up a one-member committee to resolve the issue. He appointed former Chief Justice of India, Mohammadali Carim Chagla or M.C. Chagla, the commissioner of the inquiry.

#### **B. Harshad Mehta Case**

The 1992 stock market scam was executed by Harshad Shantilal Mehta, a stock and money market regulator with other politicians and bankers on the Bombay Stock Exchange. The 1992 scam was the most significant white-collar crime in Indian history amounting to Rs 5000 crore. It disrupted the market to some profound extent.

#### **At its core, what was this scandal all about?**

During the 1990s, stockbrokers, due to the stringent provisions being put in place by the Reserve Bank of India (RBI), were unable to borrow funds from the cheapest source, commercial Bank. Due to this, stockbrokers found a roundabout way to borrow funds by colluding with banks, trading in government securities, etc.

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Also, brokers got the required help from Public Sector Undertakings, which sought avenues to dump their temporary surplus. In the result, PSUs started taking positions in the securities market and this caused fourfold jump in Bombay Stock Exchange census.

### **C. Punjab National Bank (PNB) fraud scam**

Punjab National Bank (PNB) scam is known as the biggest scam in the history of India. The Bank is the second largest public lender only after State Bank of India, in India. It shook the whole nation when it was announced that PNB had discovered a massive fraudulent transaction worth Rs 11,400 crore via a single branch in Bombay (now Mumbai).

The key accused in the case were Nirav Modi, a famous jeweler and designer, his maternal uncle Mehul Choksi, owner of the renowned Gitanjali Group, a jewelry company in India, other related people and few employees of Punjab National Bank itself. Nirav Modi and Mehul Choksi left the country when the scam was being made public.

#### **What is this fraud case all about?**

The Bank found out that two of its employees named Gokulnath Shetty, the deputy manager, and Manoj Kharat repeatedly issues fraudulent Letters of Undertaking (LOUs) to Nirav Modi's companies without following the due process and law such as, not mentioning them in Bank's core software, and not procuring cash reserve or collateral which resulted in the huge loss to the Bank.

#### **What is a LOU?**

A Letter of Undertaking is a guarantee or a formal document that provides assurances to one party from the other to perform a specific task/obligation. LOUs are not issued for general retail transactions but commercial transactions such as business and trade. Before the scam got hit in public, both Mehul Choksi and Nirav Modi fled the country to take asylum. In 2017, Mehul Choksi applied for citizenship and took an oath for citizenship in the following year, that is, 2018. He flew to Antigua and Barbuda before the news of the scam was revealed to the public. Choksi is currently facing charges by the Enforcement Directorate (ED) and the Central Bureau of Investigation (CBI). Mehul Choksi, the fugitive offender, went missing from Antigua & Barbuda. Speculations were there that he escaped to Dominica via boat. Local Dominica police caught Choksi, and now he is in CID custody.

### **D. 2G Spectrum Scam**

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**"The prosecution has miserably failed to prove its case, and all the accused are acquitted,"** said special CBI judge O.P. Saini, after the special court in New Delhi, by thoroughly examining the case, calling it baseless, acquitted all the accused on 21<sup>st</sup> December 2017.

### **What is the meaning of 2G Spectrum?**

The term 2G is an abbreviation for second-generation wireless telephone technology/cellular network. It is also understood as Global Systems for Mobile (GSM) or Code Division Multiple Access (CDMA). In this today's world, where development is reaching the nook and corner of the earth, 2G has been superseded by 3G (UTMS/CDMA2000), 4G(LTE), and 5G, with many more to come.

The term 'spectrum' refers to different types of radio waves used to create and strengthen communication. Since the waves surround us everywhere and every time, it needs to be monitored. The Government appoints various private telecom companies and PSUs to help monitor the spectrum.

### **What was the case all about?**

The 2G spectrum case dates back to year 2011, where the main accused, former Minister of Communication and Technology, Andimuthu Raja was arrested by the Central Bureau of Investigation (CBI) for granting spectrum licenses to private companies at unfair low costs. The minister issued licenses at year 2001 auction price, and not 2008. This fraud case involves politicians, bureaucrats, corporate executives, because of whom, there was a heavy loss, Rs 1.76 lakh crore (as per Comptroller and Auditor General of India), to the public exchequer. The case was thoroughly investigated by the Central Bureau of Investigation (CBI) which filed a chargesheet of 80,000 pages before the court proceedings began.

### **E. East India Company**

A private company, but had a mandate to serve the British State, both politically and commercially. East India Company was the Crown chartered trading company, the first-ever multinational corporation (MNC) to pursue investment opportunities and have territorial powers. To achieve the end goals, the company even performed unethical conduct in financial matters and exploited many innocent people for their benefit. The company often had to engage in unfair and unethical practices such as theft, bribery, and coercion. This was considered one of the biggest scams, as the company's expansion led to a downgrading of

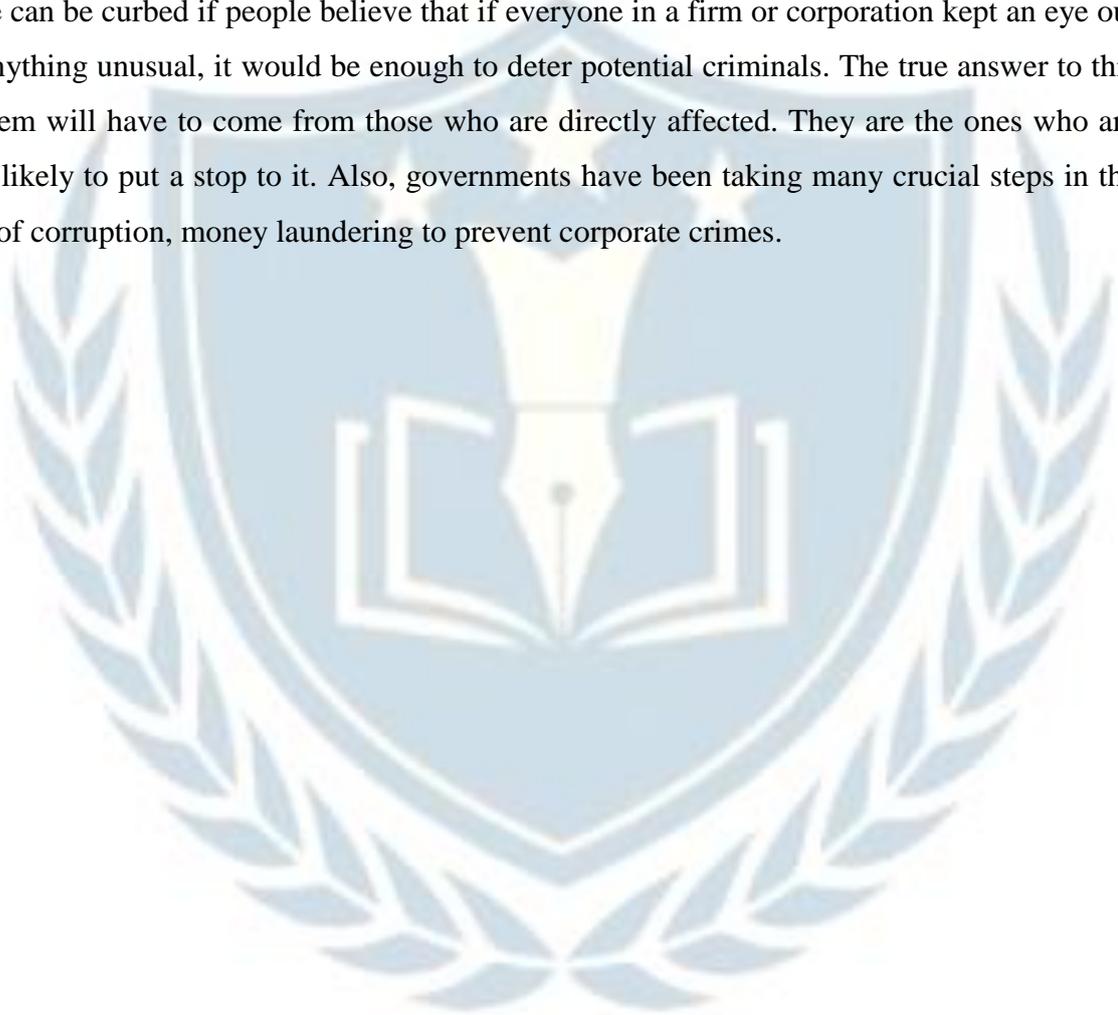
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many countries, particularly India, which was, earlier, referred to as the 'Golden Bird' of the world.

## CONCLUSION

As the world is proliferating, with excessive globalization and industrialization, corporate crime cases are on the rise. They are committed out of greed and personal benefit. Corporate crime has become a new tool to rob innocent people of their livelihood and happiness. This crime can be curbed if people believe that if everyone in a firm or corporation kept an eye out for anything unusual, it would be enough to deter potential criminals. The true answer to this problem will have to come from those who are directly affected. They are the ones who are most likely to put a stop to it. Also, governments have been taking many crucial steps in the field of corruption, money laundering to prevent corporate crimes.



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