AN ANALYSIS OF THE LEGAL MECHANISIMS OF COUNTERACTION OF FINANCIAL IRREGULARITIES IN THE INDIAN MARKET

Dissertation submitted to National Law University and Judicial Academy, Assam

in partial fulfilment for award of the degree of

MASTER OF LAWS/ ONE YEAR LL.M. DEGREE PROGRAMME

Submitted by:

Anindita Deb

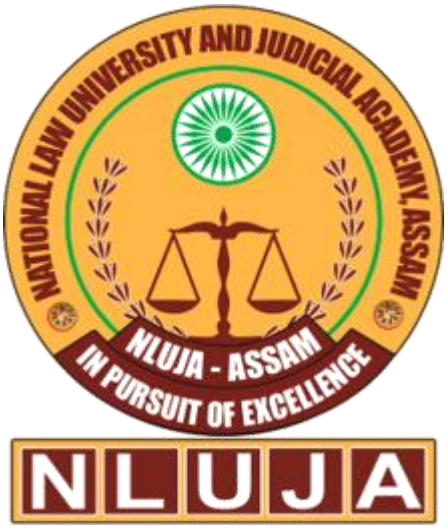
SF0220003

2020-21 & LL.M. 2nd Semester

Supervised by:

Mr. Ankur Madhia

Assistant Professor of Law



National Law University and Judicial Academy, Assam

(July, 2021)

CERTIFICATE

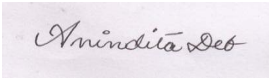
This is to certify that ANINDITA DEB has completed her dissertation titled "AN ANALYSIS OF THE LEGAL MECHANISMS OF COUNTERACTION OF FINANCIAL IRREGULARITIES IN THE INDIAN MARKET" under my supervision for the award of the degree of MASTER OF LAWS/ ONE YEAR LL.M DEGREE PROGRAMME of National Law University and Judicial Academy, Assam.

Date: 15.07.2021

MR. ANKUR MADHIA
ASSITANT PROFESSOR OF LAW
National Law University and Judicial Academy, Assam

DECLARATION

I, ANINDITA DEB, do hereby declare that the dissertation titled "AN ANALYSIS OF THE LEGAL MECHANISMS OF COUNTERACTION OF FINANCIAL IRREGULARITIES IN THE INDIAN MARKET" submitted by me for the award of the degree of MASTER OF LAWS/ ONE YEAR LL.M. DEGREE PROGRAMME of National Law University and Judicial Academy, Assam is a bonafide work and has not been submitted, either in part or full anywhere else for any purpose, academic or otherwise.



Date:15.07.2021

ANINDITA DEB

SF0220003

National Law University and Judicial Academy, Assam

ACKNOWLEDGEMENT

I acknowledge with pleasure my Alma mater, National Law University and judicial Academy, Assam for its unparallel infrastructural support and its rich academic resources.

I am highly elated to work on the topic of "AN ANALYSIS OF THE LEGAL MECHANISMS OF COUNTERACTION OF FINANCIAL IRREGULARITIES IN THE INDIAN MARKET" under the able guidance of my supervisor, Mr. Ankur Madhia, Assistant Professor of law, National Law University and Judicial Academy, Assam.

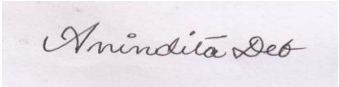
First of all I would like to express the deepest gratitude towards Mr. Ankur Madhia, Assistant professor of law who has the attitude and substance of brilliance; incessantly and cogently conveyed a spirit of adventure in regard to the dissertation. Throughout the writing of this dissertation I have received a great deal of support and assistance. Without the guidance and persistent help this dissertation would not have been possible. You provided me with the tools that I needed to choose the right direction and successfully complete my dissertation.

Secondly, I would like to thank Prof. (Dr.) V.K. Ahuja, the Honorable Vice Chancellor of National Law University and judicial Academy, Assam for providing me an opportunity to embark on this dissertation and also for sharing his vast knowledge.

Third I would like to express my gratitude to the officials and staff members of National Law University and Judicial Academy, Assam who rendered there help during the period of my dissertation. I want to thank you for your excellent cooperation and for all of the opportunities I was given to conduct my research.

This research work bears testimony to the active encouragement and help of friends, family members and well-wishers.

I am greatly indebted to the various writers, jurists and all other authors from whose writings and literary works I have taken help to complete this dissertation.



ANINDITA DEB

SF0220003

TABLE OF CASES

INTERNATIONAL CASES

1. *Salomon v. Salomon &Co.*
2. *The Government of India (Requesting State) v. Nirav Deepak Modi (Requested Person)*
3. *United States v. Bank of New England*

NATIONAL CASES

1. *Assistant Commissioner v. Velliappa Textiles Ltd*
2. *Anil Hada v. Indian Acrylic Ltd*
3. *Babulal Verma & Ors. v Enforcement Directorate & Ors*
4. *Basabai Rai Chowdhury v. Uoi*
5. *CBI v. B.Ramalinga Raju*
6. *Delloitte Haskins LLP v. UOI*
7. *Dr. Vijay Mallya v. Deputy Director, Directorate of Enforcement*
8. *Dr. Vijay Mallya v SBI & Ors.*
9. *IL&FS v. UOI*
10. *Iridium India Telecom Ltd. V. Motorola Inc*
11. *Ketan Parekh v. Security Exchange Board of India*
12. *Lenard Carrying Co Ltd, v. Asiatic Petroleum Ltd.*
13. *N Narayanan v Adjudicating Office*
14. *N Sampath Ganesh v. Union of India and Anr*
15. *Nirmal Singh Bhangoo v.. SEBI Appeal No.94 of 2015*
16. *Ram Narain Popli v. Central Bureau Of Investigation Appeal*
17. *Re: Public Issue norms*
18. *SBI v. Dr. Vijay Mallya*
19. *SBI v. Kingfishes Airlines*
20. *SBI v. Kingfishers Ltd*
21. *Securities and Exchange Board of India v. Smt. Roopal Nareshbhai Panchal*
22. *State v. Lalu Prsad Yadav*

23. *Securities and Exchange Board of India (Sebi) & Anr. v. Sahara India Real Estate Corpn. Ltd. & Ors*
24. *Standard Chartered Bank v. Directorate of Enforcement*
25. *Subroto Chattoraj v. Union of India & Ors*
26. *Sunil Bharti Mittal v. Central Bureau of Investigation*
27. *Union of India v. Infrastructure Leasing & Financial Services Ltd.*
28. *U.P Pollution Control Board v. Modi Distillery*

TABLE OF STATUTES

Year Statute Page Nos.

TABLE OF ABBREVIATIONS

Sl. No.	Abbreviation	Explanation	Page Nos.
1.	AC	Appeal Cases	72,74
2.	AIR	All India Reporter	75,78
3.	Anr	Another	47,101
4.	CAG	Comptroller and Auditor General	90
5.	CBI	Central Bureau of Investigation	35,45,46,54,88
6.	CM.	Chief Minister	46
7.	Co.	Company	74
8.	Del	Delhi	101,
9.	DIP	Disclosure and Investment Protection	47
10.	ED	Enforcement Directorate	56
11.	ELT	Excise Law Times	101
12.	FIR	First Investigation Report	33
13.	ILR	Indian Law Reports	101
14.	IPC	Indian Penal Code	9,14,45,50,60
15.	IPO	Initial Public Offering	40
16.	IRDA	Insurance Regulatory and Development Authority Fraud Policy	91
17.	LODR	Listing Obligations and Disclosure Requirement	85

18	LOU	Letter of Understanding	53
19.	Ltd	Limited	25,29,33,38,42,43,47,55, 72,75,78
20.	MCA	Ministry of Corporate Affairs	7
21	NCLT	National Company Law Tribunal	58,59,60
22.	NCLAT	National Company Law Appellate Tribunal	58
23.	NPA	Non Performing Asset	56,60
24.	NYSE	New York Stock Exchange	31
25.	OFCD	Optional Fully Convertible Debenture	47
26.	Ors	Others	47,50,57,60
27.	PFUTP	Prevention of Fraudulent and Unfair Trade Practices	16,39,41
28.	PMLA	Prevention of Money Laundering Act	56,91
29.	RBI	Reserve Bank of India	29,36,39,82,97,98
30.	RF	Ready Forward	27
31.	SCC	Supreme Court Cases	50,79,101
32.	SCR	Suoreme Court Reporter	79
33.	SEBI	Securities and Exchange Board of India	5,12,,17,26,,28,34,36,38, 39,40,41,44,47
34.	SFIO	Serious Fraud Investigation Office	58,59,60,61,87
35.	UK	United Kingdom	56

36.	US	United States	1
37.	UOI	Union of India	50,57,5861
38.	V.	Versus	29,34,56,58,75,94,101
39	W.P.	Writ Petition	48

CONTENTS

CHAPTER 1

INTRODUCTION

1.1. BACKGROUND:

It would be no exaggeration to state on the onset that India is on its way to become an economic superpower. The nation is fuelled by its vision to develop into a US$5 trillion economy by the year 2025[1]. India is additionally the quickest developing economy. It has also set the record of being the 7th largest economy in the world. To accomplish this, it is basic for the nation to have a sustainable system of investments and exports. The Banking sector, Corporate Sectors, Security and capital markets are the nerve of the thriving Indian economy. An effective combination of policies contribute massively towards the economic growth and development.

While a lot has been done to bolster the economic growth rate of India, it must also be realized that in order to sustain the growth it is important to create a safe haven for investors and eradicate financial irregularities.

The last three decades have been witnesses to several financial irregularities that took the world by storm. The trail of destruction left in the wake of the catastrophic consequences of a financial irregularity can be to such an extent that it could take decades to reverse its impact and recover the economy. Millions of people and at times nations have to be on the receiving end of the menace.

With the advent of the 21st century, there is no dearth of avenues for the ones driven by the desire to earn wealth. However, not all such avenues have the stamp of approval of legal enforcements. Financial irregularities are often committed with the desire to seek large margins of profitability or to continue an unlawful activity in a clandestine manner.

The term 'financial irregularity' is an umbrella term. It is not confined to a single activity. It encompasses several activities which are the product of or result into the violation of an established rule. Some of these activities include activities like criminal breach of trust, cheating, forgery, insider trading ,Fraud against creditors, Insider Trading, Financial Statements Fraud, Money Laundering, Accounting frauds, Market manipulation, Misleading disclosures, Affairs of the company conducted fraudulently, Mis-statements

[1]Ministry of External Affairs and Economic Diplomacy & States Division, 'Overview of the Indian Economy',<https://www.indembassyisrael.gov.in/pdf/Overview_of_Indian_economy.pdf>accessed 12 July 2021

in prospectus , Stock broker being unfaithful to the company, Overpricing shares or stocks, Misstating information to investors, Being unfaithful to the stock exchange, Bank Fraud, Fraudulent Bankruptcy, Stock Market Manipulation.

The nation bears testimony to some of the greatest scams buried in the ravages of time. All that was left in the misery that followed were beleaguered companies, institutions, share holders and even employees. Most of the scams were an amalgamation of a number of financial irregularities to yield the results of the wrong-doer's choice. The impact of such scams can be observed not just on an individual to individual basis but it has the capacity to wreak havoc on the economy of the nation. Increasing number of scams in the capital and securities market or banks or other financial institutions can cast a shadow of doubt on the minds of investors thereby creating an impediment in India's journey of economic growth.

The Indian legislature has enacted several legislations which are a part of the prevention machinery of such unlawful activities. These legislative enactments coupled with the enforcement agencies have successfully detected, prevented and brought to justice unscrupulous activities and the individuals associated therewith. However, these enactments too are tainted with several loopholes which if improved have the capacity of creating a budding economy and a safe haven for investors.

1.2. AIMS

This dissertation paper seeks to explore the meaning of the term 'financial irregularities' and make an in depth study of the activities which can be classified under the term. It further seeks to understand the counteractive mechanism which can effectively control and thereafter eradicate the menace of financial irregularities. India bears testimony to numerous instances of financial irregularities which have wreaked havoc on the Indian market. A detailed study of some of these scams shall provide effective assistance in understanding the techniques used to conduct such activities. The knowledge thus, acquired can be used to understand the mechanism of counteractions effective against such financial irregularities. While a number of legislative enactments and regulatory agencies have been introduced to prevent the occurrence of such activities, a lot can still be improved to facilitate transparency in the functioning of the Indian market.

1.3. OBJECTIVES:

- To study the term 'financial irregularities'
- To study the instances of major financial irregularities that occurred in India
- To analyze the causes and impact of financial irregularities on the Indian economy
- To ascertain whether criminal liability can be fastened on corporations and financial institutions involved in activities of financial irregularities
- To analyze the preventive mechanism in place to check financial irregularities
- To study the investor protection regime
- To ascertain whether there remains any loopholes in the legal regime which can be filled in provide an effective counteraction mechanism

1.4. SCOPE AND LIMITATION

The scope of this dissertation paper is limited to the following areas:

- To understand the term 'Financial Irregularities'.
- To study the several instances of occurrence of financial irregularities in India
- To ascertain the causes and effects of financial irregularities on the Indian economy
- To ascertain whether criminal liability can be fastened on corporations and financial institutions involved in activities of financial irregularities
- To understand the available legislative enactments and agencies that form a part of the protective and counteraction mechanism against acts of financial irregularities
- To understand investor protection policies
- To analyze whether there exists any lacunae in the prevailing legislative enactments against financial irregularities

1.5. LITERATURE REVIEW

- 'Overview of Indian Economy' by Ministry of External Affairs: Government of India provides an overview of the economic progress made by India in the recent

years. It describes the progress made by several economic avenues thereby fuelling economic growth in the country. This has been mentioned in Chapter 1 of this dissertation paper titled 'An analysis of the legal mechanism of counteraction of financial irregularities in the Indian market.

- 'Black's Law Dictionary' explains the meaning of the term 'irregularities'. The excerpt from it has been used in chapter 2 of this paper titled 'An analysis of the legal mechanism of counteraction of financial irregularities in the Indian market

- 'The Indian Penal Code' 35th Edition authored by Ratanlal & Dheerajlal explain in detail the several offences enlisted in the Indian Penal Code along with several relevant concepts. The expertise of the author on the subject in hand can be well estimated by the fact that the book has now reached its 35th edition. The book explains offences like forgery, cheating, criminal breach of trust, cheating, falsification of accounts, Fraud which are relevant to this dissertation paper. This has been adopted in chapter 2 and chapter 6 of this paper titled 'An analysis of the legal mechanism of counteraction of financial irregularities in the Indian market

- Company Law, 17th Edition by Avatar Singh. The author has elucidated in great detail the various concepts involved in The Companies Act. These have been adopted in chapter 2,5,6,7 respectively in this dissertation paper tilted 'An analysis of the legal mechanism of counteraction of financial irregularities in the Indian market.

- Law Commission of India's Twenty Ninth Report on proposal to include certain social and economic offences in the Indian Penal Code. The report was published in the year 1966. This report focuses on several white collar crimes such as offences preventing economic development and evasion and avoidance of tax. The report was prepared to remedy the problem of corruption and to make such amends in the laws which would have the effect of a speedy trial. The explanations provided therein have been adopted in chapter 2 of this dissertation

paper titled ‘An analysis of the legal mechanism of counteraction of financial irregularities in the Indian market

- Law Commission of India’s Forty Seventh Report on the trial and punishment of social and economic offences. This report concerns itself with the question of implementation of relevant provisions of certain Acts. It also seeks to answer the question of adequate and swiftly dealing with these offences. The report in page 2 sheds light on several important concepts pertaining to the background of the perpetrator and the victim of such offences. These portions of the report have been adopted in chapter 2 of this dissertation paper titled ‘An analysis of the legal mechanism of counteraction of financial irregularities in the Indian market

- The thesis paper titled ‘Study of SEBI with special reference to effectiveness of provisions against frauds and malpractices in the Share Market’ by Sapna U. The paper explores the various facets of SEBI ranging from its establishment to crimes committed and the effective provisions to prevent the occurrence of such transgressions. These portions of the paper have been adopted in chapters 3 and 6 respectively in this dissertation paper titled ‘An analysis of the legal mechanism of counteraction of financial irregularities in the Indian market

- ‘Frauds in the Banking Sector: Causes, Concerns and cures’ by inaugural address by Dr. K. C. Chakrabarty, Deputy Governor, Reserve Bank of India on July 26, 2013 during the National Conference on Financial Fraud organized by ASSOCHAM at New Delhi). The document addresses the growing concerns of banking frauds in the country and suggests measures to counter it. The recommendations and the statistics provided therein have been used in chapters 6,7, 8 respectively of this dissertation paper titled ‘An analysis of the legal mechanism of counteraction of financial irregularities in the Indian market

- The article titled ‘Law and policy relating to Bank frauds and its prevention and control’ authored by Tauseef Ahmad, Ph.D. Research Scholar, Faculty of Law

Jamia Millia Islamia, Delhi, India in the International Journal of law, management and humanities. This article emphasizes on the menace of bank frauds. The concept of bank frauds has been discussed in detail by the author. This has been extracted and adopted in chapter 2 of this dissertation paper titled 'An analysis of the legal mechanism of counteraction of financial irregularities in the Indian market

- 'FAQs (Frequently Asked Questions) on the prevention of Money Laundering Act' published by the Enforcement Directorate, Government of India. This document focuses primarily on Money Laundering and seeks to answer several questions with regard to the same. The explanations provided for the concepts have been put to use in chapter 2 of this dissertation paper titled 'An analysis of the legal mechanism of counteraction of financial irregularities in the Indian market

- 'Securities Scam: Genesis, Mechanics and Impact' authored by Samir K. Barua and Jayanth R. Varma of Indian Institute of Management in 'Vikalpa: The Journal for Decision Makers' describes in great detail the Harshad Mehta scam of 1992. It was published in the month of January of 1992. It has been used for reference in chapter 3 of this dissertation paper titled 'An analysis of the legal mechanism of counteraction of financial irregularities in the Indian market

- 'India's Satyam Accounting Scandal: How the story unfolded' published in Interdisciplinary Review of Economics and Management 2,1(2012) authored by Madan Bhasin. This article explores the depth of Satyam Accounting Scandal and has been adopted in chapter 3 of this dissertation paper titled 'An analysis of the legal mechanism of counteraction of financial irregularities in the Indian market'.

- Report of the Joint Committee on Stock Market Scam and Matters relating thereto (13^{th} Lok Sabha) (Volume -1 report). The presentation of the report was made in the Lok Sabha on the 19^{th} December, 2002 and laid in the Rajya Sabha on 19^{th}

December,2002. It has dealt in detail with the Ketan Parekh Scam. It also contains the information that has been discovered in course of the investigation conducted by SEBI. Several portions of the report have been referred to while preparing Chapter 3 of this dissertation titled 'An analysis of the legal mechanism of counteraction of financial irregularities in the Indian market'.

- Report of The Companies Law Committee published in February, 2016. The report was prepared by the Company Law Committee headed by the Secretary, Ministry of Corporate Affairs. The report was presented to make suggestions pertaining to challenges which might occur during the implementation of the Companies Act,2013, Bankruptcy Law Reforms Committee, the Law Commission, the High level Committee on Corporate Social responsibility. Therefore, the MCA comprised the Companies Law Committee (the "CLC") under the chairmanship of the Secretary, Ministry of Corporate Affairs

1.6. RESEARCH QUESTIONS

(1)What are financial irregularities?

(2)What are the incidents of financial irregularities that occurred in India?

(3)What are the causes of financial irregularities?

(4) What is the impact of financial irregularities?

(5)Whether liability can be fastened on corporations involved in activities of financial irregularities?

(6)Whether there is an effective system of preventive measures and counteractions which deter the occurrence of financial irregularities?

(7) Whether the legal regime provides effective protection to the investors?

(8) Whether the legal regime of laws to address financial irregularities in India is embedded with maladies and is in need of modifications?

1.7. RESEARCH METHODOLOGY

This dissertation paper has been prepared with recourse to Legal doctrinal method of research. It rests on the information provided by both primary and secondary sources of

data. Case laws, statutes as well as law journals, law reviews have been referred to while preparing the paper. An effective combination of various sources of data has been used by the researcher to bring out the concept of financial irregularities and thereafter, trace its various contours. The Oscola 4th Edition of citation has been used by the researcher to provide footnotes throughout the paper.

1.8. RESEARCH DESIGN

CHAPTER 1: Introduction

CHAPTER 2: This chapter titled 'A study of the Concept of Financial irregularities' explains the term 'financial irregularities'. It studies the nature, motive, emotional background of the wrong doers and the victim of such crimes

CHAPTER 3: This chapter titled 'Incidents of Financial irregularities in India discuses the episodes of major financial irregularities that occurred in India

CHAPTER 4: This chapter titled 'Causes and Effects of Financial Irregularities' seeks to elucidate the impact and effects of financial irregularities on the Indian economy

CHAPTER5: This chapter, 'The Concept of Corporate Criminal Liability' studies in depth whether criminal liabilities can be fastened on corporations involved in financial irregularities.

CHPTER6: This chapter titled 'The Counteractive Mechanism against Financial Irregularities' studies the legislative enactments and agencies introduced to form a system of preventive mechanism against financial irregularities and economic offenders.

CHAPTER 7: This chapter, 'Investor Protection Regime in India'studies the investor protection regime in India and the practices adopted to ensure that the investors remain guarded from market malpractices.

CHAPTER 8: This chapter titled 'Loopholes in the Counteractive Mechanisms against Financial Irregularities' will analyze the loopholes the legal regime is replete with coupled with their consequences

CHAPTER 9: This chapter titled 'Conclusion' would provide conclusions, findings and suggestions

CHAPTER 2

A STUDY OF THE CONCEPT OF FINANCIAL IRREGULARITIES

2.1. THE CONCEPT OF FINANCIAL IRREGULARITIES

The last three decades have born witness to several financial irregularities that took the world by storm. The trail of destruction left in the wake of the catastrophic consequences of a financial irregularity can be to such an extent that it could take decades to reverse its impact and recover the economy. Millions of people and at times nations have to be on the receiving end of the menace.

The term 'Financial irregularity' embraces within its purview multifaceted activities. It is an umbrella term and embraces within its purview a broad range of activities. 'Irregularity" can be defined as violation or non-observance of established rules and practices. It is the breach of an established rule or an omission to do something that is necessary. Irregularities are characterized by the want of adherence to established practices, rules, regulations[2]. Financial Irregularities are thus, a violation of established rules and practices in financial transactions. It is indicative of impropriety in financial transactions and includes instances of financial mismanagement.

Financial irregularities include the following

- **Criminal Breach of Trust**

  The basic requirements for validly bringing an action under section 405 of IPC are two. Firstly, there should be an entrustment of property in the hands of the accused; Secondly the accused should have misappropriated the property, whether or not actuated by dishonest intention, to his own benefit and to the detriment of others.

  Thus, as the name suggests there should be a creation of trust. However, it should be borne in mind that compliance to the law of trusts for the creation of trust is not required under this provision[3]. All that this section requires is that the owner

[2] Henry Campbell Black, 'Blacks Law Dictionary', <https://www.latestlaws.com/wp-content/uploads/2015/04/Blacks-Law-Dictionery.pdf> accessed 01.07.2021

[3] Justice KT Thomas, *The Indian Penal Code* (35th edn. Lexis Nexis 2017)

should repose his confidence on the accused and create an obligation annexing to ownership. The accused should thereafter, misappropriate the property.

An imprisonment for a term stretching out to three years or with a pecuniary penalty or both has been imposed by Sec 406.

- **Cheating:** The Indian Penal Code under Section 415 describes the concept of cheating. Section 415 sets forth two classes of actions that can be brought within the purview of cheating. The first class refers to activities in which inducement is used as a tool to make a person fraudulently or dishonestly deliver a property or to retain it. The second class of activities refers to the doing or omission to do act which the person would not have done or omitted to do if he were not deceived. Such activities or omissions should have the effect of causing bodily harm or damage to reputation or property.

  This class of actions as opposed to the first category is not accompanied with an intention to induce dishonestly or by fraudulent means. However, it should be intentional. Thus, the ingredients of section 415 are:

  - Deception of a person
  - Fraudulently or deceptively inciting an individual to convey a property or to hold a property.
  - Intentionally causing an individual to do or to omit from doing an act which he would not do or omit from doing if he were not deceived

- **Falsification of Accounts**: The Indian Penal Code under section 477A defines the offence of Falsification of accounts. The primary requirement behind committing falsification of accounts is the presence of an intention to commit fraud. The section brings within its purview clerk, officer or servant or whoever acts in that official capacity. Section 447A states that the mode of carrying out the offence can be categorized into two parts. These are:

(a)Defrauding, destruction, alteration, mutilation or falsification any record, book, valuable security or account of the employer or is in his possession or has been gotten by him for or in the interest of his employer

(b)or willfully defrauding, and with the intention to defraud the making or abetting engaging in false entry in, or omission or alteration in, any such valuable security paper, electronic record, writing, or account. An imprisonment reaching out to a time of 7 years or fine or both can be imposed under this provision.

- **Willful attempt to evade tax, etc.:** The term 'evasion" means avoidance. The act of evasion of tax means to avoid the payment of tax or to not pay the requisite amount of tax. It can be a complete nonpayment or an underpayment of the amount of pay required to be paid. The activity is carried out by concealing the source of income or profits. Tax evasion has been brought under the arena of criminal offence. Any person found indulging in such activities can be punished under legislative enactments like that of the Income Tax Act, 1961.

- **Misappropriation of property:** Misappropriation of property refers to a situation wherein the property belonging to one person is misappropriated by another. The property must belong to a person but it should be converted dishonestly to his use by another person. For an activity to be classified as a misappropriation of property it is imperative that the other person makes no efforts diligently to identify the owner of the goods or to return the goods. Where the finder of goods diligently strives to find the owner of the goods or makes all possible efforts to return the goods, the offence of misappropriation of property cannot be said to have been committed.

- **Fraud against creditors**: Insolvency can be a product of several reasons such as bad decision making, technological obsolesce or unavoidable circumstances. However, if there are traces of activities which suggest that the business was conducted fraudulently or to defraud creditors, the same falls within the criteria of

fraud against creditors. It has been addressed under sections 339 of the Companies Act,2013.

- **Insider Trading**: Insider Trading, as the name proposes, alludes to the exchanging of the securities of the organization and bonds by people who are the insiders of the corporate structure. The access to price sensitive data which is not at the disposal of the people in general is utilized to the benefit to trade such shares and securities.

  Itis a penetration of the fiduciary obligation cast upon the individual from the organization or an absolute disregard of the confidence reposed by the company on the individuals. Any individual such as employee, person involved in management, auditor, advisor etc who has access to insider information can be perpetrators of the offence. Insider trading has been made punishable by the provisions of the SEBI Act,1992.

- **Unfair and Fraudulent trade practices relating to securities market:** Unfair and fraudulent trade practices can wreak havoc on the stability of the securities market These practices have been defined and prohibited by the Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market Regulations, 2003. These practices include:

  a) selling or buying or dealing in securities in any manner that is fraudulent;
  b) application of any deceptive or manipulative device or any activity which is violative of the Act or regulations with an object to issue, purchase, sale of a security,
  c) committing fraud for dealing in or issuing securities,
  d) to be involved in any practice, act, course of business which will have the effect of committing of fraud on any individual regarding any issue of securities.

The Act defines the thematic contours of the phrase 'fraudulent or an unfair trade Practice' as:

- Engaging in activities which have the effect of painting a fake or misleading scenario of trading;
- Dealing in securities merely with the object to cause inflation, depression or fluctuation in the price of securities for the purpose of facilitating wrongful gain or evading loss as opposed to transferring beneficial ownership.
- Payment of money or agreeing to pay money with the sole object of using inducement as a tool to secure the minimum subscription of the issue be secured fraudulently;
- The payment of money or pecuniary worth or an agreement to pay such money or money's worth to induce the person to deal in a security for the purpose of inflating, depressing, maintaining or causing fluctuation in the price of such security;
- Manipulating the price associated with the security;
- Publishing or report or causing to publish or report any information concerning securities which is false
- Engaging in a transaction concerning securities with no intent to carry it out or to alter their ownership
- Engaging in the dealing or pledging or selling of securities which are counterfeit or stolen or. The mode can be in physical or dematerialized form;
- Dissemination of information that contains distorted information which might have the effect of influencing the decision of the investors
- Circular transactions concerning intermediaries who enter a security with the motivation to give a deception of trading such security.
- a market participant inducing any person fraudulently to engage in securities transaction for the purpose of augmenting his commission
- the falsification of records by intermediaries

- the planting of false or misleading news with the purpose of inducing sale or purchase of securities

- **Fraud**

  The Indian Contract Act,1872 characterizes the term Fraud as committing any of the following acts with the intent to deceive any party or his agent or to to actuate him to go into an agreement

  1. providing a suggestion which is untrue by someone who believes it to be untrue;
  2. the concealment of a fact by somebody who knows or believes of the fact;
  3. a promise made by someone who does not have an intention of performing it;
  4. any other act fitted to deceive;
  5. any such act or omission which has been labeled to be fraudulent by the law.

  The IPC defines fraud as "any behavior by which one person intends to gain a dishonest advantage over another. It is an act or omission intended to cause wrongful gain to one person and wrongful loss to the other either by way of concealment of facts or otherwise."

  Sec 447 of the Companies Act, 2013 punishes any action adding up to fraud. An imprisonment for least six months which stretches out to a timeframe of ten years and a pecuniary penalty involving at least the sum included in the fraud which might reach out to three times of such sum has been contemplated by the provision. Where such an offense includes public interest, the imprisonment will not be under three years[4].

[4] Dr. Avtar Singh, *Company Law* (17th Edn. Eastern Book Company 2018)

The Companies Act requires the preparation and filing of statements concerning the affairs of the company. These statements should be genuine, authentic and true. Section 448 of the Companies Act, forbids the making of any statement which is untrue. It expresses that where an individual offers any statement which he believes to be false or discards the making of any statement which he knows to be material, such an act is culpable under section
447.

Falsification of statements: The concept has been addressed in section 628 of The Companies Act, 1956. It states two essentials for prosecuting an individual under section 628. These are:

A person should make a false statement in any balance sheet, report, return, prospectus, statement or other document

a) with the knowledge that it is false or;

b) discards to specify a material fact with the knowledge that it is material.

The section imposes an imprisonment for a timeframe stretching out to to two years and fine shall also be imposed

- **Money Laundering:** Money Laundering has been delineated in the Prevention of Money Laundering Act, 2002.

  It is, in a nutshell, is an attempt to legitimize money that is 'tainted'. Criminal activities are carried out with the intention of earning profit. An individual or an organization can be the recipient of such profit. Money Laundering is carried out to legitimize or to disguise the origin of such dirty money[5]. Activities such as illegal arms sales, smuggling, insider trading, bribery, computer frauds, can generate enormous amounts of wealth and the dire necessity of concealing the fact that the wealth has been generated in the course of a crime.

[5]Enforcement Directorate, 'Faqs Frequently Asked Questions On The Prevention Of Money Laundering Undering Act' <https://www.enforcementdirectorate.gov.in/faqs_on_pmla.pdf> accessed 12 July 2021

- **Fraud by Auditors**: Fraudulent conduct by auditors has been discussed by section 140(5) of The Companies Act, 1956. The provision states that a Tribunal on the behest of the Central Government or an individual concerned or on its own can take charge of a situation and if it has reasons to be satisfied that such an auditor has conducted fraud , or abetted or colluded the commission of fraud, a direction of changing its auditors can be made by the tribunal

  In the event of an application being made on the part of the central government, an order has to be made by the tribunal to make an order directing the change of auditor within a period of 15 days. The auditor, whether individual or a firm, can be banned for a period of five years and can further be prosecuted under section 447 of the Companies Act, 1956.

- **Market manipulation**: It would not be a lie to state that an immense amount of growth has occurred in the Indian market. The growth is built on the edifice of the confidence and trust reposed by the investors. However, there are a few practices which have the effect of eroding the investor's confidence. Market Manipulation is one of them. Market manipulation, as defined by Palmer's Company law[6] is the 'unwarranted' interference in the operation of ordinary market forces of supply and demand and thus undermines the 'integrity' and efficiency of the market[7]. Regulation 4 of the PFUTP also prohibits market manipulation. It includes activities like artificially increasing or depressing the price of securities. It refers to the creation of an artificial price and hinders the fair and transparent operation of the securities market.
- **Mis-statements in prospectus**: A prospectus is a document which forms the foundation of the offer to subscribe or buy securities of a company made by the public. Misstatements in the prospectus refers to misleading or untrue statements being made in the prospectus. The statement might be untrue in any form or context. Omission to include or inclusion of a fact which is likely to mislead the public also comes under the term 'misstatement'.

[6] *Palmer's Company Law* (25th Edn. Vol. 2,.11097 2010)
[7] N Narayanan v Adjudicating Officer SEBI CIVIL APPEAL Nos.4112-4113 of 2013 (D.No.201 of 2013)

- **Fraudulently inducing persons to invest money**: Misleading promises or engaging in fake promises or indulging in the omission of material facts to induce people to dispose, subscribe or underwrite securities are practices which are engaged in to fraudulently inducing persons to invest money . The acts ought to be done to materialize the purpose of earning profit or to obtain credit facilities from a financial institution.

- **Personation for acquisition, etc. of securities**: Personation for acquiring securities can be best understood as a species of fraud. It refers to charading as the owner of securities or shares with the objective to secure a pecuniary benefit in shares, interests or security.

- **Default by stockbrokers:** Section 2(1) (gb) of the SEBI Stockbrokers and sub brokers Regulations, 1992 portrays an individual having trading rights in any recognized stock exchange. A broker of stocks has been characterized under section 2(1) (gb) the SEBI Regulations, 1992. Stock brokers function as intermediaries in the market. Stockbrokers are thus, intermediaries who participate in the stock market on behalf of investors. They are governed by the regulation of 1992. The obligations of the stock brokers are dealt with under chapter IV.

  A broker is said to be acting in default when he acts in a manner which contravenes the e Act and are hence, liable to a penalty.

- **Bank Fraud**: Fraud refers to an activity which results in a wrongful gain to a person or a party over another person who suffers a wrongful loss. Banking fraud, thus, is a species of fraud itself. It refers to the wrongful gain, monetary or not, to a person or property. A banking fraud refers to the obtaining of a wrongful gain to a person by virtue of an omission or commission made in banking transactions or in the accounts.

- **Insurance Fraud**: Insurance fraud can be committed both by the policy holder as well as the corporation providing the insurance. It can be in the form of inflated claims. The policy holder can make inflated claims to display a loss which is an exaggerated version of the loss which has occurred. This is usually done with the help of inflated bills. In other cases, the insurance company an be the perpetrator of the crime. Insurance brokers of the company simply collect the premium involved without depositing it to the underwriter. Charge churning by the insurance provider can also be a class of insurance fraud in which the broker of the policy earns a high commission for himself by transferring the life insurance to different insurance companies. The consequence of such a practice is that it reduces the coverage of the policy and the premium rates keep increasing.

2.1.1. NATURE OF FINANCIAL IRREGULARITIES:

Financial irregularities as the name suggests are irregularities involving finances. Financial irregularities have the capacity of impacting the economy of an entire nation and can also spread its wings globally. These cases can be perpetrated by auditors, executives or directors of a company. It can be given effect to by way of manipulated financial statements or by deception. Financial irregularities can severely influence the sentiments of global stock markets.

Financial irregularities have been committed globally since decades now. Kautilya describes forty ways of embezzlement in 'Arthashastra.'[8] During the initial days, the regulatory mechanism was not effective enough to combat financial frauds. With the passage of time, several agencies and regulatory mechanisms were developed to tighten the screws around it.

[8] Dr. K. C. Chakrabarty ,'Frauds in the Banking Sector: Causes, Concerns and Cures' (National Conference on Financial Fraud, New Delhi, July 2013)

2.1.2. PERPETRATORS OF FINANCIAL IRREGULARITIES:

Types of Perpetrators Involved In Financial Irregularities**:**

- **Pre-Planned Perpetrator**: Pre-planned perpetrators are the ones who intend to submit to financial irregularities from the earliest point in time by pre meditated design. Pre planned financial irregularities can be both for a short period of time and for a long period. Short-term perpetrators of financial incorporate the ones who utilize stolen credit cards or false social security numbers; while the more long term ones are individuals who execute complex money laundering plans.

- **Intermediate Perpetrators:** Intermediate perpetrators are the ones who do not intend to commit irregularities unless they are compelled by financial hardships to do so.

- **Slippery Slope Perpetrators**: Slippery Slope perpetrators are traders who continue to carry on their trade despite not being in a healthy financial situation to pay off their debts[9].

Motive: The perpetrators of the crime are motivated by lust, excessive greed, insatiable desire for monetary gain. Unlike several offences, quenching the need for vengeance is not the motivating factor. The perpetrator is actuated by the need to achieve a better economic standing in the society. Monetary consideration is the prime motivating factor behind committing financial irregularities.

Emotional Background: There is mostly no emotional connection between the doer and the victim[10]. The primary object of the individual involved in the activity is to gratify his own needs and desires for wealth rather than inflicting harm on the other party. Although

[9]Michael Levi, 'Organized fraud and organizing frauds: Unpacking research on networks and organization' Criminology & Criminal Justice' (2008) 8(4) Criminology and Criminal Justice <https://journals.sagepub.com/doi/pdf/10.1177/1748895808096470> accessed 5th May,2021

[10] Law Commission, *Forty seventh report on the trial and punishment of Socio Economic Offence*(Law Com No. 47, 1972) para 1.4

the greed is satiated at the expense of the other party's welfare, the damage caused is a collateral.

2.1.3. VICTIMS OF FINANCIAL IRREGULARITIES: Unlike crimes like murder, sections of people have to bear the brunt of Financial irregularities rather than individuals[11]. The state or chunks of people (the section of public investing in securities market, buying shares or other such intangibles) have to bear the consequences. Even if an individual is affected by the impugned activity, the society is most prominently affected by the heinous activity.

In offences like Rape, Defamation, Murder etc. the crime has a direct bearing on the individual and hence, the victim or anyone interested in the individual seeks remedy. In offences involving financial irregularities the bearing of the activity is reflected on the entire society. Although there might be an immediate individual victim but such offences have the potential of affecting an entire nation by bringing its economy to its knees. For instance: In the IL&FS Crisis that took place in the year 2018, on the first blush it appears that the immediate consequences of manipulative auditing was faced by the shareholders, investors of the company but on viewing a larger picture of the fiasco it can be observed that the crisis was such that it could have a domino effect on the economy.

Hence, the control and prevention of financial irregularities fulfills multifaceted purpose:

- It preserves national resources
- Facilitates preservation of the economy
- Facilitates the augmentation of the wealth of the economy by keeping at bay the exploitation of the resources of the nation.

2.2. WHITE COLLAR CRIMES:

The term'White Collar Crimes' was coined in the year 1939[12]. White Collar Crimes refers to misdoings committed by the upper section of the society. These crimes include

[11] ibid

[12] Petter Gottschalk and Lars Gunnesdal , 'White-Collar Crime Research' (*Researchgate ,* March 2018) <https://www.researchgate.net/publication/323939569_White-Collar_Crime_Research> accessed 11 July 2021

activities like deceit, misappropriation, breach of thrust. The driving force behind these crimes is obtaining or avoiding the loss of property. Application of physical force or violence is not essential for committing a white collar crime. White collar crime is certainly a type of financial irregularity. Financial irregularity is the genus of which white collar crimes is the species.

The Santhanam Committee also recognized the gravity attached to white collar crimes. It states the creation of what seemed to be a "mass society". The society would be characterized by elitism, managerial class and encouragement of monopolism. The committee also holds white collar crime to be more lethal than other classes of crime because the financial stakes involved are way too high. In addition to it, the offence might lead in eroding the morale of the society[13]. It cites tax evasion, tax avoidance, malpractices in the securities market, share pushing, hoarding, profiteering, under invoicing, over invoicing, monopolistic control, maladministration of companies , bribery, corruption, evasion of economic laws, profiteering, election offences as some of the prime examples of white collar crimes.
It can also include the following:

- Evasion of taxes[14]
- Money Laundering
- Fraud involving insurance, banks, chit fund
- Fraud involving credit cards
- Public Servants accepting bribes
- Smuggling / Illegal Foreign Trade
- Stock Market Manipulation
- Intellectual Property theft
- Embezzlement/ misappropriation of money[15]

[13] Law Commission, *Twenty ninth report to include certain social and economic offences in The Indian Penal Code* (Law Com no.29,1966) para 6
[14] Ministry of Home Affairs, Report of the committee on Prevention of crime(1964) para 7.3
[15] Deepa Singh and Prakash Gopalan, 'An Analysis of White Collar Crime in India: A Study' (2018) 7 International Journal of Trade and Commerce
<https://sgsrjournals.co.in/paperdownload/11_Deepa%20Singh.pdf> accessed 11 July 2021

- Forgery
- Counterfeiting
- Abusing of office
- Engaging in articulating fake information pertaining to finance:
- False accounting entries and/or misrepresentations of financial condition;
- Trades which are fraudulent in nature articulated to bring about inflation of profits or conceal losses; and
- Transactions which are illicit and have been articulated to avoid regulatory oversight.
- Engaging in insider trading
- Insider trading
- Misusing the property of corporate for individual gain; and
- Tax violations related to self-dealing.

2.2.1. DISTINGUISHING FEATURE OF WHITE COLLAR CRIMES

The distinctive component of white collar crime is that these are commissions of individuals from the upper layers of the society. The crime is associated with the profession, calling or vocation of the individual. Thus, crimes like murder, adultery even if committed by an individual belonging to the elite group of society is not attributed the mark of white collar crime owing to its dissociation with the profession of the individual.

2.2.2. CHALLENGES ASSOCIATED WITH WHITE COLLAR CRIMES

It is unfortunate that the detection of white collar crime can be an extremely complex process. The transactions carried out by highly sophisticated, well educated individuals are a reflection of their intelligence. An intricate web of lies and deception is stated through figures and words on paper which makes it nearly impossible to be detected. It can only be detected by agencies which are experts in the financial field.

Secondly, these crimes can also go unreported resulting in a lack of awareness amongst the public. The crimes involve a complex machinery of commissions and omissions which becomes challenging for the media to be describe in their one or two hours long program.

Lastly, the individuals engaged in white collar crimes have in their disposal the strength of powerful connections and are able to influence a number of individuals which lend them a helping hand in concealing and effectively continuing their practices. They might be the owners of news channels or print media which may impact the choice of the outlet in communicating the news.

2.3. CONCLUSION:

From the aforementioned discussion, it can be expressed without a grain of doubt that the term financial irregularities is an ever expansive term and embraces within itself varied offences such as breach of trust, falsification of accounts, falsification of accounts, lapses on the part of the auditor etc. The term 'Financial irregularity' embraces within its purview multifaceted activities. It is an umbrella term and embraces within its purview a broad range of activities. 'Irregularity" can be defined as violation or non-observance of established rules and practices. It is the breach of an established rule or an omission to do something that is necessary. Perpetrators of financial irregularities can be pre planned, intermediate or slippery slope.

Financial irregularities have the capacity of impacting the economy of an entire nation and can also spread its wings globally. These cases can be perpetrated by auditors, executives or directors of a company. It can be given effect to by way of manipulated financial statements or by deception. Financial irregularities can severely influence the sentiments of global stock markets.

It would however, be erroneous to assume that financial irregularities are synonymous to white collar crimes. Financial irregularities are the genus of which White Collar Crimes are the species. The latter refers to misdoings committed by the upper section of the society. These crimes include activities like deceit, misappropriation, breach of thrust. The driving force behind these crimes is obtaining or avoiding the loss of property. Application of physical force or violence is not essential for committing a white collar crime.

Unlike crimes like murder, sections of people have to bear the brunt of Financial irregularities rather than individuals. The state or chunks of people (the section of public investing in securities market, buying shares or other such intangibles) have to bear the consequences. Even if an individual is affected by the impugned activity, the society is most prominently affected by the heinous activity.

CHAPTER 3

INCIDENTS OF FINANCIAL IRREGULARITIES IN INDIA

This research paper is driven by the objective to comprehend the counteractive mechanisms against financial irregularities. The study of counteractive mechanism against financial irregularities cannot be severed from the incidents of financial irregularities. Hence, in order to understand the stratagem applicable for effective preventive and regulatory mechanisms against financial irregularities, it is imperative to understand the scheme of events and lapses which might have led to major episodes of financial irregularities in the past.

3.1. EPISODES OF FINANCIAL IRREGULARITIES IN INDIA

I. Harshad Mehta's Security Scam

Year of Scam: 1992

Amount Involved: Rs. 5,000 Crore[16]

Harshad Mehta also then referred to as the 'Sultan of Dalal Street[17]' was a stockbroker in the early 1990s. He was born in the state of Gujarat on 29th July,1954. Having earned a graduation degree in Commerce in 1976, the following years were characterized by him working odd jobs until he started his own security firm known as 'Grow more Research and Asset Management Ltd.'. His affluent lifestyle and fleet of cars would put even the most gigantic industrialist to shame. However, it was later brought to light that his affluence was a product of unscrupulous activities. The Harshad Mehta scam shook the very edifice of the Indian securities Market and exposed the loopholes in the regulatory measures and ushered in a new age of reforms. The fact that the scam is still alive in the collective consciousness of the mass can be estimated from the fact that a show on a digital platform has been made about almost three decades after the crime was perpetrated. He also earned the names 'The Big Bull' for himself.

---

[16] Sapna U, 'Study of SEBI with special reference to effectiveness of provisions against frauds and malpractices in the share market' (PhD thesis, Swami Ramanand Teerth Marathwada University 2013)

[17] Simran Chandok,' The growth Of SEBI- from Harshad Mehta to Subrata Roy'(2015) 1 International Journal For Legal Developments & Allied Issues 206 <https://thelawbrigade.com/wp-content/uploads/2019/05/simran-chandok.pdf> accessed 10 July,2021

Harshad Mehta had invested huge sums of money in a specific share. This influenced several others too to invest in the same share. This caused an inflation in the unnatural inflation of the stock prices and thereby leading to an unnatural pumping of money into the securities market. This ushered in the 'Bull Run'. Share prices of companies like Associated Cement Company (ACC) witnessed massive increase of 4400%.

The Ready Forward deal

One of the major instruments by which this scam was given effect to was the ready forward deal. The Government often requires humongous sums of money for its functioning. The Banks are obligated to buy government securities and provide money to the government. However, in this process the banks also experience a blockage of liquidity. With the aim of resolving this crisis, a lending bank lends money against government securities. The RF is a secured loan for a brief time frame from a bank to another.

A ready Forward deal is used for the following purposes by a bank:

- To inject liquidity into the government securities market[18]
- To assist the banks in maintain their Statutory Liquidity Ratio[19]

During the scam, the banks traded through the broker. A ready forward deal was made by appointing a broker. The broker would then be shouldered with the responsibility of finding a bank which would be interested to provide money against government securities. In the meanwhile, the broker would retain the money given by the selling bank with himself. He would find a buying bank and retain money from the buying bank too for finding a selling bank. The time period for which the money would be retained by the broker would provide the broker with a window of opportunities to the broker while both the banks would remain unknown to each other in the illusion that the broker is still on the lookout for a party. Thus, the nature of the ready forward deal was changed from a bank to bank loan to a bank to broker loan.

[18] K. Srinivasan, 'The indian financial scam of 1992: causes, consequences and lessons' (Jawaharlal Nehru University2020)

[19] Samir K. Barua & Jayanth R. Varma, 'Securities Scam: Genesis, Mechanics and Impact'(1992) Vikalpa 9 <https://faculty.iima.ac.in/~jrvarma/papers/vik18-1.pdf> accessed 10 May 2021

However, for the scam to take place, it was imperative that the nature of the loan be transformed from a bank to bank loan to a broker driven unsecured loan.

Broker Intermediated Settlements

The traditional role of brokers being mere intermediaries was changed during the Harshad Mehta era which witnessed a phase during which a broker was able to credit his bank account with the cheque drawn in favour of the account payee. Exceptions were often made to the bank custom of crediting the amount solely to the payee mentioned on the cheque. The purpose was to reduce clearing delays and the interest lost on it[20].

Dispensing With Securities

For a loan to be unsecured, it was necessary to do away with the practice of obtaining securities. The route adopted to do so are as follows:

- Banks were made to give away with their cheques without acquiring securities. This can be mostly attributed to corrupt or negligent officers who could be lured by bribes.
- The second route taken was that of fake receipts. Cheques were obtained from the banks by replacing securities by a fake paper dressed up as a bank receipt.
- The third alternative that was availed was to forge the securities.

Bank Receipts

During the scam, bank receipts were used as a tool to obtain a BR which would be utilized to engage in RF deals with different banks. During the scam the banks would also issue BRs not backed by securities. Fake Bank Receipts would also be used by brokers to obtain an unsecured loan. The banks which were involved in the process included names like the Bank of Karad (BOK) and the Metropolitan Cooperative Bank (MCB). The broker's account would be credited with the cheques drawn in favour of these banks.

[20] Ahmed Feizizadeh, 'Capital market Fraudulent Financial Practices and Investor Protection Role of Sebi'(PhD thesis Osmania University2014)

Consequently, several large banks made unsecured loans to the BOK/MCB which was then accessed by the intermediaries.

Detection of The Scam

The scam was unearthed for the first time by a journalist named, Sucheta Dalal who reported the scam on 23rd April,1992 in an article published by Times of India.

Impact:

- The sensex which was operating at 4500[21] sharply fell to 2500[22]. This massive downfall can be accounted to the unscrupulous activities of brokers The properties of the perpetrators of the crime were attached and the transactions undertaken by them lost the stamp of validity. The persons involved in the crime were active stick brokers who dealt in shares of gigantic numbers. The act of invalidating these transactions had the effect of the steep fall of the stock market. The investors felt betrayed due to the scam and decided to sell off their shares. This led to the stock market losing 0.1 million per day
- Before the scam, the government was considering a shift towards liberalization, privatization and globalization. The aftermath of the scam was such that a cautious approach was adopted. The name of dignitaries like P.V. Narasimha Roy was also dragged into the matter.
- Prior to the SEBI Act of 1992, the SEBI could not intervene in transactions between investors and brokers. Realizing this shortcoming, the legislature intervened to empower the SEBI sufficiently to take the reins of the matter into its hands. The SEBI Act of 1992 was enacted which imparted a statutory status to the SEBI.

[21] Samir K. Barua & Jayanth R. Varma, 'Securities Scam: Genesis, Mechanics and Impact'(1992)18 Vikalpa
<https://faculty.iima.ac.in/~jrvarma/papers/vik18-1.pdf> accessed 10 May 2021

[22] Corporate Professionals, ' Frauds in Indian Securities Market'
<https://www.corporateprofessionals.com/wp-content/uploads/2020/10/Fraud-in-Indian-Securities-Market_Final.pdf> accessed 19 May 2021

Legal Ramifications

An inspection was conducted by the RBI in the month of January of 1992, of the accounts of banks in suspicion of a securities transaction. It was soon discovered that there was a shortfall of Rupees 649 Crore in the State Bank of India's portfolio. There was an absence of securities for which the bank had paid Harshada Mehta for. Subsequently, Mehta conceded to the RBI and paid up Rs. 620 crores which was found to have been paid of which Rs 574 crore were from his Grindlay's Bank account. 489.75 crores were found to have been credited in the course of a securities transaction by National Housing Bank. However, the problem in the paradise was that NHB could not evince any securities which backed the transaction.

Harshad Mehta was accused of 72 criminal cases and there were 600 civil suits against him[23]. He was in the end arrested and expelled from the financial exchange The Bombay High Court imprisoned him and an imprisonment of 5 years was imposed on him with a fine of Rs. 25,000. The conviction was upheld in the Supreme Court by Justice B.N. Agarwal and Arijit Pasayat while M.B. Shah dissented[24]. Mehta succumbed to a heart ailment on the 31st of December, 2001.

II. The Satyam Accounting Scandal

Year: 2008

Amount Involved: 7136 Crores[25]

The Satyam Scam was unearthed when the owner of Satyam Computer Services Ltd., Mr. Ramalingam Raju divulged having manipulated his books of accounts by fabricating his assets and liabilities.

Satyam has won several laurels some of which include the "Golden Peacock Award[26]" 2007 and in 2009, being referred to as India's IT "crown jewel" and the "fourth largest"

[23]'Reportjoint Committee on Stock Market Scam and Matters Relating Thereto' (2002) <http://loksabhaph.nic.in/writereaddata/InvestigativeJPC/InvestigativeJPC_635612541266248975.pdf > accessed 2 June 2020

[24] Ram Narain Popli vs Central Bureau Of InvestigationAppeal (crl.) 1097 of 1999

[25] Sapna U, 'Study of SEBI with special reference to effectiveness of provisions against frauds and malpractices in the share market' (PhD thesis, Swami Ramanand Teerth Marathwada University 2013)

[26]'Global Excellency in Corporate Governance',<http://goldenpeacockaward.com/global-award-for-excellence-in-corporate-governance.html>accessed 12July 2021

company[27]. The magnanimity of the scam was to such an extent that it was termed as "India's Enron".

The confession of having manipulated the financial statements of the company first brought the Satyam scandal to forefront. In a disclosure to the company's governing body on January 7,2009[28], he confessed that he had manipulated the resources and liabilities figure of the company. The assets were overstated to the tune of $1.47 billion. The company faked cash and bank loans worth $1.04 billion[29]. The income was exaggerated essentially every quarter throughout quite a long while to line up with the analyst assumptions.

Ramalingam confessed the usage of his own personal computer in perpetrating the fraud. Fake bank accounts were created and the fiscal reports of the company were inflated by displaying interest from those accounts. It was also brought to limelight that nearly 6000 fake salary accounts were created with the purpose of misappropriating the salary deposited by the company in those accounts. The head of internal audit of the company was an accomplice. Customer identities and invoices which were fake in nature were made to inflate revenue. Board resolutions were also forged.

The timeline of the Satyam Scandal is here s under[30]:

1987: Satyam Computers was founded by Mr. Ramalingam Raju in Hyderabad[31]

1991: Debuts on the Bombay Stock exchange

---

[27]Madan Bhasin, 'Corporate Accounting Scandal at Satyam: A Case Study of India's Enron ' (2013) 1 European Journal of Business and Social Sciences',
<https://www.researchgate.net/publication/%20_ACCOUNTING_SCANDAL_AT_SATYAM_A_CASE_STUDY_OF_INDIA'S_ENRON> accessed 9 June 2021

[28] Madan Lal Bhasin, 'Creative Accounting Scam at Satyam Computer Limited: How the Fraud Story Unfolded?'(2016) Open Journal of Accounting, 2016 <https://file.scirp.org/pdf/OJAcct_2016092613243701.pdf> accessed 9 June 2021

[29]Hunton Andrews Kurth LLP, ' Satyam crisis highlights security and corporate issues for outsourcing customers' (*Lexology* 8 January 2009) <https://www.lexology.com/library/detail.aspx?g=51c6c41b-f461-4813-b667-e53e2321bda8> accessed 15 May 2021

[30] Chanchal, 'Satyam Scandal(A case study)'(2014) 5International Research Journal of Commerce Arts and Science
<https://www.academia.edu/10971389/SATYAM_SCANDAL_A_case_study_?auto=download> accessed 15 May 2021

[31]Indian Servers, 'Ramalingam Raju Ex CEO, Chairman and founder of Satyam'(16 November 2010) <http://ramalingaraju.blogspot.com/2010/11/ramaling-raju-profile.html> accessed 15 May 2021

2001: Company gets listed on New York Stock Exchange[32]

2008: The revenue of the company crosses 2 billion $

December,2008: An announcement was made by Satyam Computers to the effect that the company has bought a 100% stake in Chairman Ramalinga Raju's son's companies Maytas Properties and Maytas Infra.

However, the deal was terminated later on due to opposition made by the investors[33] but Satyam witnessed a 55% growth in its trading in the NYSE.

December 23rd, 2008: The World bank bans Satyam Computers from receiving direct contracts from due to its inability to furnish proper documentation highlighting the fees charged by its sub contractors[34]. Consequently, the stock of the company witnessed its lowest when it dropped to 13.6%

December 25th, 2008: Satyam demands an apology from the World Bank and an explanation for its inappropriate statements which is detrimental to the company's reputation.

December 26th, 2008: The independent director of Satyam Computers, Mr. Mangalam Srinivasam resigns post World Bank's statements against Satyam.

December 28th, 2008: Two more directors of satyam, who were the Non-executive and Independent Director resign

January 6th, 2009: The grip of promoters over the company loosen as their stakes fall to 3.6%[35]

In a shocking turn of events, Raju in a resignation letters addressed to the board of directors, Ramalingam confessed to have fabricated the assets and liabilities of the company. He stated that accounts were manipulated to the tune of US $ 1.47 billion.

---

[32] 'Satyam Computer Services Limited' <https://www.ibef.org/download/Satyam.pdf> accessed 15 May 2021

[33] Reema Sharma, 'Impact of corporate governance on financial performance of selected companies in India'(Guru Nanak Dev University 2012)

[34] Rangana Mitra and Mayuri Asamwar, 'Merger of Tech Mahindra and Satyam Computer Services Ltd. with special reference to HR Issues' <http://www.iosrjournals.org/iosr-jbm/papers/ies-mcrc-volume-2/14.pdf> accessed 15 May 2021

[35] Kavya Bhargava, 'Satyam Scam : A case Study' (*Prezi*, 11 March 2015) <https://prezi.com/wbfypervlfu8/satyam-scam-a-case-study/ > accessed 26 April 2021

Bank loans were cash amounting to 1.04 billion US$ was reflected. Revenues were also shown to be higher than actual.

As confessed by Raju himself, there was a significant gap in the profit earned and the profit reflected in the book of accounts. Every attempt made to bridge the gap went in vain. The owner was also perturbed by the probability of a possible takeover that might happen due to the company's disappointing performance resulting in bringing the unscrupulous activities of the company to the forefront.

The Maytas takeover strategy was the final straw. It was a failed attempt to fill in the gap. Mr. Raju made various bank accounts to propagate the fraud. Bank accounts which were fake were created and balance sheets were then inflated to present a picture of non-existent balance. A total of six thousand fake salaries accounts were made. The income statement of the company was inflated by way of claiming interest income from the bank accounts which were fake.

An aggregate of 6,000 phony compensations accounts were made. He additionally inflated the pay statement by guaranteeing revenue pay from the phony financial balances[36]. It was also brought to light that cash from these phony salary accounts were appropriated by the corporation[37].

Legal Ramifications:

After emanating shock waves across the country, the accounts of Satyam were frozen. The fallout was addressed by the Ministry of Corporate affairs as the company's board of directors wee dissolved. In order to safeguard the interest of 53,000 employees and 3 lakhs shareholders, the government intervened by filing an application under Sections 388B, 397, 398, 401, 402, 403 read with 406 and 408 of the Companies Act, 1956 before the Company Law Board.

Soon after Raju surrendered to the Andhra Pradesh police. He was arrested later in January, 2009. The company law board, thereafter, dissolved the board of directors and

[36] A.C Fernado , 'Satyam – Anything but Satyam' ,(*Loyala Institute of Business Administration* , 2010) <http://www.publishingindia.com/uploads/samplearticles/mm-sample-article.pdf> accessed 26.08.16

[37] Sudatta Barik, 'An analysis on the role of investigative agencies and the government to prevent corporate frauds in India a case study on Satyam and PNB scandal' (PhD thesis, National Law University Odisha2020)

appointed a new set of board of directors. The government also appointed three members to the new set of board of directors, namely, Deepak Parekh, and C. Achuthan.

An FIR was registered by the Central Bureau of Investigation against Ramalingam and several officials. A team consisting of 15 members was set up to assist in the investigation in the case. A total number of three charge sheets were filed against Raju and other accused describing Raju as the kingpin of the multi crore scam. A charge sheet was filed by the Central Bureau of Investigation on 07-04-2009. A further charge sheet were also filed on 07-04-2009 and07-01-2010.The charge sheets filed by the CBI accused the former Chairman and others of entering into a criminal conspiracy during the period of 2001-2008 and of luring ordinary investors into buying the shares of the company by continuously carrying out falsification of the books of accounts and thereby providing himself and the family members, an opportunity of off-loading the shares held by them at the most opportune times.

A formal takeover of the company by Tech Mahindra Ltd[38]. was completed as the company merged Satyam Computers with itself resulting in the creation of a new entity Mahindra Satyam[39]. A new set of prosecution was started by the Enforcement Directorate as it filed a criminal complaint of Money laundering against satyam computers[40].

The CBI special court imposed an imprisonment extending of 7 years to Raju Ramalingam, , B Rama Raju and to eight others. Justice BVNL Chakravarthi invoked sections 409,406 ,420,120-B,419,420,467,468,477A, 477A,201, of the Indian Penal Code and Section 248(2) of the Code of Criminal Procedure Code[41]. A pecuniary penalty

[38]J.P Sharma 'What Went Wrong with Satyam?' <https://iodglobal.com/Articles/Inst%20of%20Directors-WCFCG%20Global%20Covention-Paper%20Prof%20J%20P%20Sharma-What%20Went%20Wrong%20With%20Satyam%20new.pdf> accessed 2 April 2021

[39] 'Satyam Computer' <https://srccgbo.edu.in/pdf/bc796cd06e3171866769fd50c42836b6.pdf> accessed 2 April 2021

[40]Srijoy Das Archer & Ange, 'The Curious Case of Satyam Computers: the story behind India's biggest corporate scandal' <http://www.archerangel.com/wp-content/uploads/Resources2015811111128.pdf> accessed 15 May 2021

[41] Vijay Prakash and Monika Srivastava , 'Satyam Scam : Lesson from Corporate Governance' , (2012) 2 International Journal of Research in Economics & Social Sciences' <http://euroasiapub.org/wp-content/uploads/2018/06/ESS-Dec12-7326-1.pdf> accessed 15 May 2021

standing at Rs.5.5 crores was meted on B. Ramalinga Raju and his brother Rama Raju was also fined by the trial court[42].

III. The Dummy Computers Scam

Year Of Scam: 1997

Amount of Scam: Rs. 1,200 Crores

Period of the Scam: 1992 – 97[43]

The kingpin of the scam had a humble beginning in life. Bhansali was brought into the world in a family of a jute merchant in Calcutta. Bhansali, after obtaining a degree in B.Com, soon went ahead to establish a financial consultancy firm, CRB Consultancy. CRB consultancy before long began consistently advancing in its area of expertise. However, despite having a lush blossoming business of its own, it was yet to earn a name for itself. Soon after, he went ahead to join the nation's illustrious registrar of companies.

Bhansali was found to be short charging the registrar's clients and was made to leave. He, thereafter, started a company of his own named 'CRB Consultants,' a private limited company in New Delhi in 1985 which was later on re-christened to CRB Capital Markets and was accorded the status of a public limited company. The company soon managed to earn a name for itself. It had accrued both for the Bombay Stock Exchange and the New York Stock Exchange. With an attractive A+ rating and upfront cash incentives of 7-10%, the company soon managed to attract clients to the extent that it was able to raise a whopping amount of 176 crore from the public in the January of 1995.

However, the turning point in the tale of CRB Capital Markets's success came was that Bhansali was involved in investing money in non existing dummy companies who he staged. For its maiden public issue, Bhansali managed to raise funds from close knit families who happened to be his acquaintances. These companies functioned with no

[42] CBI vs B.Ramalinga Raju , In The Court Of The Xxi Addl. Chief Metropolitan Magistrate –Cum Special Session Court, Hyderabad, 9th April 2015

[43] Sapna U, 'Study of SEBI with special reference to effectiveness of provisions against frauds and malpractices in the share market' (PhD thesis, Swami Ramanand Teerth Marathwada University 2013)

equity and was stage managed by Bhansali himself. During the course of time, Bhansali sold these companies to businessmen who were in need of such dummies companies. Bhansali earned profit by rigging his share prices. This was done by resorting to two techniques.

Firstly, Bhansali would buy the stocks of his company through a private company which is owned by him and thereby, rig his share prices. His company was also listed in

Secondly, Bhansali would indulge in the process of cross holdings through his public companies[44].

The consequences of this strategy were reflected in the profits earned by the company. For instance, a whopping sum of Rs 176 crore was raised by CRB Capital Markets in three years. Further, a sum of Rs 230 crore was raised in 1994 by CRB Mutual Funds further raised and Rs 180 crore came via fixed deposits[45].

Bhansali opened a savings bank with the State Bank of India in the year 1996 in its Mumbai branch for availing services like payment of dividends, interests, redemption cheques. The bank had granted Bhansali with the service of a current account. The facility of overdrawing was not made available to him. For a period of nine months the bank treated dividend warrants as demand drafts for the sake of convenience until it was discovered that the account owned by Bhansali was over drafted to the extent of crores. The RBI granted a time span of 72 hours to Bhansali to repay his debts pursuant to almost 400 complaints made by the investors of his schemes. Bhansali or the officials at the helm of affairs if his company never showed up and were untraceable. Pursuant to exhaustion of the deadline, the CBI sealed the CRB premises, froze the bank accounts thereby leading to a collapse of the company.

[44] Poonam Kataria, 'Role of government in corporate governance in India a critical study' (PhD Thesis Kurukshetra University 2014)

[45] Gaddam Naresh Reddy , 'Fraudulent Financial Practices and Investor Protection in the Indian Capital Market – Role Of Sebi'(2015) <https://www.osmania.ac.in/UGC%20MRP%20final%20Reports2018/FFP%20AND%20IP-PROJECT%20FINAL%20REPORT.PDF> accessed 15 May 2021

Legal Ramification:

After the company collapsed, an administrator was appointed by SEBI. The administrator was entrusted with the duty of ascertaining the plan of payment to the unit holders of the company. The resources of the plan contained the frozen bank accounts and it stood at Rs 81 Lakhs, in addition to certain dividends from investors, meagerly traded and unlisted shares adding up to Rs 17.5 crore was additionally included[46]

IV. Ketan Parekh Scam

Year of scam: 2001

Amount of scam: Rs. 120 crores (approx)

Period of the scam: 1999 – 2000[47]

Ketan Parekh has been famous in the history of Indian stock market for all the wrong reasons. He is said to have single handedly caused a scam which was capable of shaking the very edifice of Indian financial markets.

Ketan Parekh was a chartered accountant who was engaged in the affairs of a company named, NH Securities, which was established by his father. Parekh was the apprentice of Harshad Mehta who taught him the nuances of the stock market. It will be no exaggeration to state that Parekh was considered as the Midas of the stock market. All that he touched turned to gold. Parekh was found to be hobnobbing with people of perceived higher social status. He befriended everyone from actors and political personalities and even global entrepreneurs. He held stakes in companies with huge returns and minimal capital requirements. These companies include Amitabh Bachchan Corporation Limited (ABCL), Mukta Arts, Tips, Pritish Nandy Communications, HFCL, Global Telesystems (Global), Zee Telefilms, Crest Communications, and PentaMedia Graphics.

[46]Sapna U, 'Study of SEBI with special reference to effectiveness of provisions against frauds and malpractices in the share market' (PhD thesis, Swami Ramanand Teerth Marathwada University 2013)
[47]ibid

Parekh was soon hailed as the Big bull of the stock market. H established a network of companies which dealt with operation of the stock market. With the sweeping Information, communication and entertainment consuming the world, the dotcom era established a strong grip over the Indian stock market.

The stocks in his portfolio were referred to as the K-10 stocks. These stocks witnessed such increase in value that in the January of 2000, K10 stocks were regularly hailed as the top five traded stocks in the stock exchange. A 57% growth was recorded by HFCL while Global witnessed increased by 200%. Their flourishing business can be estimated by the fact that big names in the business would also invested in K-10 stocks.

Parekh resorted to two techniques to indulge in the scam.

- **Pump and dump:** Pump and dump is used to lure investors. The investors are lured to buy shares of a company the quantum of which is huge by furnishing false information to them about the shares. Once the investors invest in the share, the fall prey to the trap laid by window dressing. This practice eventually results in the rise in price of these shares. Once the shares are bought by the investors, the brokers no longer engage in window dressing. The over estimated price of the shares begin to drop with the investors being grappled by hardships to sell these shares further ahead and hence, have to be the bearer of huge loss.
- **Circular Trading:** Circular trading, as the name suggests indicates the dealing in stocks of a company within a circle of traders. Ketan Parekh would make a number of traders buy and sell the shares of a company throughout the day or till a certain period of time. This would result in the boom in the volume of shares. The investors, would thereafter, get lured into buying the stocks of the company, after noticing the volume of such stocks[48]. Once the investors invest in theses tocks, Parekh would earn profit out of it and would also pay a certain amount of commission to the traders who were involved in circular trading.

[48]Ahmed Feizizadeh,'Capital market Fraudulent Financial Practices and Investor Protection Role of Sebi'(PhD thesis Osmania University 2014)

Ketan Parekh knew how to spread the word for his stocks. He would ensure that he focused on the stocks that would have the media's attention. The dotcom phase also aided him immensely in concealing his fraud as all the boost in the market would be accredited to the ICE era and his malpractices would remain successfully concealed.

Arrangement of funds: Parekh would resort to financial institution for the supply of funds necessary to keep his malpractices thriving[49]. The helping hand in the sustenance of the fraud was lent by a certain Ahmedadbad based bank named Madhavapura Mercantile Commercial Bank (MMCB). The shares of the bank were bought by Parekh himself so that he could have a say in their loan decisions. His loan amount accounted for 750 million. He also gained money from promoters in return for having manipulated the share price of several companies.

Ketan Parekh resorted to the pay order to route. He would manage to acquire loans from the bank in the form of payment orders and thereafter, pledge these with other financial institutions. These financial institutions included names like HCFL and UTI. Parekh would obtain funds by offering shares as collateral.

Everything worked in favour of Ketan Parekh until the market crashed in 2001. The hardest hit were the stocks which were technology-based stocks. It was challenging for Ketan Parekh to raise money from banks with the aid of his shares.

Legal Ramifications:

Investigations were conducted by SEBI during the period of September-December. The investigation made revealed that the several entities such as K.N.P. Securities Ltd., Triumph International Finance India Ltd., NH Securities, Classic Shares and stock broking services etc were controlled by Ketan Parekh[50]

[49] Poonam Kataria, 'Role of government in corporate governance in India a critical study' (PhD Thesis Kurukshetra University2014)

[50]'Reportjoint Committee on Stock Market Scam and Matters Relating Thereto' (2002) <http://loksabhaph.nic.in/writereaddata/InvestigativeJPC/InvestigativeJPC_635612541266248975.pdf> accessed 2 June 2020

The investigation revealed that MMCB issued Pay orders to Parekh without sufficient securities or collateral[51]. These PO would then be discounted at the stock exchange of Bank of India. The same course of transaction was followed on 08.02.2001 and 09.02.2001 MMCB issued PO amounting to Rs. 137 Crore. The PO was discounted at BOI, the proceeds thereafter were allocated to Ketan Parekh. However, in an ugly turn of events MMCB was in a liquidity crunch and was not in a position to pay the amount. BOI was thereafter, left with a debt of Rupees 137 Crores.

Ketan Parekh was arrested and debarred from trading in the stock market for fourteen years till the year 2017 by exercising the powers conferred under. Section 4(3) read with Section 11B and Sec 11(4)(b) of the SEBI Act, 1992, and Regulation 11 read with Regulation 13 of SEBI PFUTP Regulations, 2003[52]. His actions were found to be violative of the provisions of SEBI PFUTP, 1995. Regulation 4(a),4(b),4(c),4(d) of SEBI PFUTP ,1995 was invoked against him. In an order dated 11.05.2018. the debt recovery tribunal took stock of the situation and made BOI entitled to the money it owed. The RBI also cancelled the license of MMCB owing to failure of payment of its dues[53]. He was also imprisoned for 3 years and was subjected to a fine of Rs. 5 Lakhs for not paying the penalty imposed by SEBI. A penalty of Rs. 3.25 lakhs was additionally imposed by SEBI.

[51] Saptarshi Ghosh and Mahmood Bagheri , 'The Ketan Parekh Fraud and the supervisory lapses of the Reserve Bank of India (RBI):A case study)' (2006) 13(1)Journal of financial crime <https://www.academia.edu/10925909/The_Ketan_Parekh_Fraud_and_Supervisory_Lapses_of_the_Reserve_Bank_of_India_RBI_A_Case-Study> accessed 10 July 2021

[52] Ketan Parekh v Security Exchange Board of India on 14 July 2006

[53] 'Reserve Bank Cancels the Licence of The Madhavpura Mercantile Co-perative Bank Ltd., Ahmedabad (Gujarat)'(*Reserve Bank of India* 07 June,2012*)* <https://www.rbi.org.in/scripts/BS_PressReleaseDisplay.aspx?prid=26606>accessed 10 July 2021

V. Benami Demat Accounts Scam

Year of Scam: 2005

Amount of Scam: Rs. 45 Crores (Approx)

Period of the Scam: 2003 -2005[54]

The IPO scam was unearthed pursuant to an investigation conducted by the

into the affairs of transaction of several companies when Initial Public offerings were made during the timeframe of 2003-2005.The IPO scam brought to the forefront the name of Roopal Ben Panchal, a resident of Ahmedabad. She was involved in the activities of opening several fake demat accounts.

The modus operandi of the scam was eccentric. Leading dailies of Ahmedabad advertised the scheme of getting their pictures clicked and obtaining free copies of the pictures. In the garb of running the scheme, Panchal obtained the copies of the pictures to open fictitious bank account. The same course was resorted to open a total number of 6,000 fictitious bank accounts.

Almost 6,000 bank accounts were opened. The purpose behind opening these demat accounts were only to corner shares. Applications for allotment of IPO were made through these accounts. These IPOs were reserved for retail applicants. 105 IPOs were revealed to be engaged in the scam.

Roopal Panchal acted in concert with financers. Panchal was provided with the required amount of money for cornering shares by the financers. After the allotment of these shares, the shares would thereafter be transferred by Panchal to the financers. After the transfer of shares the money would be refunded to Panchal along with the required commission payable to her. The financer would then sell off the shares on the maiden day

[54]Sapna U,'Study of SEBI with special reference to effectiveness of provisions against frauds and malpractices in the share market' (PhD thesis, Swami Ramanand Teerth Marathwada University 2013)

of its listing and made a colossal benefit by the difference in the listing price and the initial IPO.

Legal Ramifications

Panchal and her accomplices were found guilty of contravening sections 12A (a), (b) and (c) of the Act and regulations 3 (a), (b), (c) and (d) and regulation 4(1) of PFUTP Regulations 2003[55]. A penalty of Rs.15,0,000 was imposed. Section 15HA of the SEBI Act was also attracted. A disgorgement amounting to Rs. 11,59,41,663 from Roopal Panchal was also ordered. The assets were seized by invoking the Prevention of Money Laundering Act under proceeds of crime. Panchal and five others were banned from the securities market[56].

VI. Vanishing Companies Scam

Year of Scam: 1996

Amount of Scam: Not Known

The vanishing company scam, as the name suggests is simply a scam wherein a company vanishes after raising money from the market. The funds are raised in the garb of executing projects. Thereafter, the company simply vanishes never to be found again. The scam was in vogue in the early 90's i.e. from 1992-1996. Around 3,911 companies braised a total of Rs.25,000 Crore and then were simply lost in oblivion. The Ministry of Corporate Affairs has published the names of several companies in its website under the category of 'Vanishing Companies.'

The names of these are[57]:

[55]'Data of Prosecution cases launched for violation of SEBI cases other than Collective Investment Schemes (As on 31st July, 2018)' (*SEBI* , 31 July 2018)
<https://www.sebi.gov.in/sebi_data/attachdocs/aug-2018/1534135819755.pdf> accessed on 10 July 2021
[56] Securities and Exchange Board of India v Smt. Roopal Nareshbhai Panchal January 31, 2012
[57] Vanishing Companies (*Ministry of Corporate affairs*)
<https://mca.gov.in/MinistryV2_hn/vanish_west.html> accessed 10 July 2021

NAME	ISSUE SIZE (RUPEES IN CRORES)	NAME OF DIRECTORS OR PROMOTERS
Caldyn Aircon Ltd.	4.45	Joginer M Chawla (Dead) Ajay Dhawan Gunter Wiskot R K Gupata G P Sureka Ajay Sureka Monica Chawla
Global Exhibitions Limited. (Formerly Known as Global Network Limited)	4.45	Gadde Shivaramaprasad J.Gopalakrishnhamurthy Dr.Y. Sadashivarao G.Sathyanarayana G.Babji Ch. Padmanaba Rao Muralidhar Gullapalli
Hitesh Textile Mills Ltd.	7.48	Hitesh Raval Satish Singhal Hemendra S Banera Ashok H Sagar K L Kapur Priti H Ra

Ichakalanji Soya Ltd	2.00	Shamgonda Bapgonda Patil Sudhir B Golagade Anna Parisa Chhogule Kallappa Nana Udgave Dr. Vithal Mahadur Raut Bharat Dinkar Mehta S S Jain Srinivas Asawa
Pashupati Cables Limited	11.95	Vinay Kumar Singhal Sushil Kumar Aggarwal K.C Gupta Vijay Jain
Realtime Finlease Ltd	3.75	Dhanpatraj P Mehta Madan I Jain Hari Prasad Nair V S Sudararaman Kushalraj P Mehta Dilip P Mehta Manish G Mehta

Legal Ramifications:

As episodes of Vanishing Companies surfaced in the 90s decade, the Enforcement Directorate in collaboration with the Securities and Exchange Board of India established

a Co-ordination and Monitoring Committee. A total number of seven task forces were constituted which worked hand in glove with the concerned stock exchange, DCA, SEBI[58].

Criteria for Identifying Vanishing Companies:

(a) Incapability with respect to the company to file statutory returns with the Registrar of Companies (RoC) for a period reaching out to 2 years;

(b)Failure of the company to file returns with stock exchange for 2 years, provided it remains a listed company;

(c) Non traceablity of the company at its registered office and

(d). Non traceable directors[59]

The SEBI invoked Section 11(1), 11B, 4(3) of the SEBI Act,1992 and debarred as many as 40 companies in 2016 from trading in the Securities market and further directed their complete dissociation from the market for time period extending to five years starting from 21st October,2016[60].

VII. Fodder Scam

Year:1996

Amount of Money Involved: Rs. 950 Crore[61]

The Fodder Scam of 1996 was a product of the fusion of several cover ups. The point of origin of the scam lies in 1985 when the then C.AG. detected the siphoning off of funds

[58] 'In the matter of directions under Section 11 read with Section 11B of the SEBI Act, 1992 to Topline Shoes and its directors' (*Securities and Exchange Board of India,* 8 September 2004*)* <https://www.sebi.gov.in/sebi_data/docfiles/11804_t.html> accessed 10 July 2021
[59] Order in the matter of Vanishing Companies 21 October 2016
[60] ibid
[61] Ciarra Jasso and Adam Lang, 'Can Corruption be removed from India' <https://mays.tamu.edu/center-for-international-business-studies/wp content/uploads/sites/14/2015/10/India-corruption-Presentation.pdf> accessed 12 July 2021

from the Bihar treasury. The state that had to bear the brunt of the scam was the state of Bihar. The genesis point of the scam was the state animal husbandry department. The modus operandi of the scam as the creation of fictitious bills to display an artificial withdrawal from the state treasury. Accounts were fabricated to impart the color of legitimacy to the excessive withdrawals. The magnanimity of the scam was such that it engulfed the who's who in politics, the bureaucrats and even did not leave the then Chief Minister-cum-Finance Minister, Lalu Prasad Yadav, from its grip.

The scam was operating from the Animal husbandry department and was a source of unjust enrichment for many until Public Interest Litigations were filed in the High Court of Judicature at Patna and at its Ranchi Bench in the year 1996 by which time some of the cases had been lodged at some districts. The modus operandi of the scam was defalcation of public funds, transactions which were fraudulent and fake accounts in Animal Husbandry, Department of State of Bihar, falsification of book of accounts[62].

Legal Ramifications:

January,1996: The scam is detected by the then Deputy Commissioner, Amit Khare upon discovering documents in the course of raiding the Animal Husbandry Department reflecting the siphoning off of assets by non-existent companies under the garb of feed supply.

March,1996: The Patna HC orders a CBI investigation into the case.

June, 1997: A chargesheet is filed by the CBI against Lalu PrasadYadav and 55 others by invoking Sections 420 and 120 (b) of the IPC and Section 13 (b) of the Prevention of Corruption Act.

February,2002: Trial is initiated at Ranchi Special Court after the case is transferred to Jharkhand.

[62] CBI V Shri Lalu Prasad Yadav R.C. Case No. 64(A) /1996 Pat

June,2007: 58 persons are sentenced to imprisonment for a time frame going from two years to six years for being associated with deceitfully redirecting Rs. 48 crore from the Chaibasa Treasury.

March,2012: Lalu Prasad Yadav is charged for deceitfully pulling out Rs.47 Lakhs by forging bills during the time he was filling in as the Chief Minister of the state.

September,2013: Special CBI Judge. Pravas Kumar Singh, convicts 46 people. Mr. Yadav is debarred from contesting any elections.

January 6th,2018: Lalu Prasad Yadav was further imprisoned for a term of 3 and half years and was subjected to Rupees 10 Lakhs fine.

January 24th,2018: In another case, Yadav along with former CM Jagganth Mishra was imprisoned for a period of five years[63] and he was further subjected to a fine amounting to Rupees five lakhs in default of which rigorous imprisonment for a further period of 1 year was imprisoned for corruption charges and falsification of records

VIII. Sahara India Pariwar Investor Fraud Scam

Year:2010

Amount Involved: Rupees 25,000 Crores[64]

The Sahara India Pariwar Investor Fraud Scam can be traced back to 2010. The companies involved in the scam are the Sahara India Real Estate Corp. Ltd. (SIRECL) and Sahara Housing Investment Corp. Ltd. (SHICL). The modus operandi of the scam

[63] State v Lalu Prsad Yadav R. C Case No. 68(A)/1996

[64] Vaishali Khandelwal, 'Sahara india's Downturn: a study on awareness and Customer;s Perspectives' 3 IJIR <http://www.onlinejournal.in/IJIRV3I3/195.pdf> accessed 15 July 2021

was the issuance of Optional Fully Convertible Debentures[65]. The investors include members from the general public such as cobblers, tailors, labourers, artisans[66].

The scam was unearthed when SEBI requested the copy of the Red Herring Prospectus submitted to the Registrar of Companies for issuing Initial Public Offerings. The prospectus reflected the issue of OFCDs which were violative of the provisions of SEBI Act. The public issue was made without depositing the draft offer with sebi. There was an utter failure on the part of SICCL to comply with the DIP guidelines resulting in its blatant violation. The disclosure requirements and disclosures pertaining to investor protection mandated by SEBI in the prospectus was also not complied with. Several fabricated statements such as the issue being a private issue was also made. The red herring prospectus neither included details of its investment nor did it clarify the proceeds from the projects in which it invested[67].

Legal Ramifications:

The SEBI invoked sections 56(1),56(3),62,73(1),(2),73(3) and 117 of the Companies Act,1956[68]. Section 117B of the Companies Act was also violated by the company by not appointing a Debenture trustee. M/S Sahara India was banned from indulging in any forms of transactions in the securities market or from associating itself with any public listed company until the dues are cleared[69].

2010: It was revealed in the course of investigations that the assets were raised through OFCDs, albeit the rules required approval from Sebi for any issuance of securities to 50 financial backers. In these cases, the quantity of monetary financial backers ran into crores.

[65] Niraj Kumar and Mausam, 'Corporate Governance Regime in India: A Tale of Constant Emerging Challenges' (2017) National Capital Law Journal 145
[66] Securities And Exchange Board Of India (Sebi) & Anr. Versus Sahara India Real Estate Corpn. Ltd. & Ors. Contempt Petition (Civil) Nos. 412 And 413 Of 2012 In Civil Appeal Nos. 9813 And 9833 Of 2011 And Contempt Petition (Civil) No. 260 OF 2013 In Civil Appeal No. 8643 OF 2012
[67] ibid
[68] Re: Public Issue norms WTM/MPB/EFD-1-DRAIII/56/2018
[69] ibid

2011: The order of the SEBI was upheld by the The Security Appellate Tribunal[70] . It further directed the company to provide a refund of the amount invested in the form of Optional Convertible Bonds along with interest within 6 weeks from the order passed.

2012: In an appeal, a direction was issued by The Supreme Court to Sahara to refund the amount of money it had gathered from the investors[71]. A period of three months was granted to comply with the orders[72]. The company was further required to furnish documents reflecting the approval coupled with the allotment associated with bonds to SEBI. The direction had to be complied with within a timeframe of ten days. This had been done to ensure that the subscribers as well as the amounts deposited are genuine. The genuineness of the documents were to be ascertained by the investigating officers engaged for the same. In default of furnishing these documents, SEBI shall be liable to attach and sell properties, freeze bank accounts etc.

The Supreme Court in Sahara India Real Estate Exch. Cor. Ltd. Vs. SEBI[73] directed the appellants to deposit a sum of Rupees 17,400/- Crores in the form of two installments.

2013: Subrata Roy is debarred from leaving the country by the Supreme Court pursuant to the corporation's inability to follow the Court's order for reimbursing the cash raised[74].

2014: A non bailable warrant is issued against Subrata Roy after his failure to appear before the court[75]. Subrata Roy was arrested in Lucknow.

---

[70]Rinku, 'Prevention and control of corporate frauds : a socio legal study of financial market in India' (Maharshi Dayanand University 2014)

[71] Ahmed Feizizadeh, 'Capital market Fraudulent Financial Practices and Investor Protection Role of Sebi'(PhD thesis Osmania University2014)

[72]Dr. Vijaya Lakshmi Kanteti, 'Corporate Social Irresponsibility Towards Investors- a Case Analysis of Sahara Group' (2015)4 Indian Journal of Research <https://www.worldwidejournals.com/paripex/recent_issues_pdf/2015/May/May_2015_1430744248__59.pdf> accessed 10 July2021

[73]Civil Appeal NO.8643 of 2012 with WP(C) No.527 of 2012

[74]SEBI V Sahara India Real Estate Corp LTD. I.A. NOs. 101-103 In Contempt Petitions (C) No.412 - 413 Of 201 In Civil Appeals No. 9813 And 9833 Of 2011 And Contempt Petition (C) No.260 Of 2013 In Civil Appeal No.8643 Of 2012

[75]Bajramg Lal, 'A "case studies" on Corporate Fraud in India – Sahara and Saradha' (2017) <https://bajrang75.files.wordpress.com/2017/07/case-study-sahara-and-saradha-b-s.pdf> accessed 10 July 2021

IX. Saradha 'Chit Fund' Ponzi scheme

Year:2013

Amount involved: Rupees 30,000 Crores[76]

The Sarada Scam was operated by the Sarada Group. The modus operandi of the scam was to raise money from the public as redeemable bonds and debentures. Returns at incredulously high rates were assured. In order to further popularize and gain momentum or the scheme, agents were appointed who would receive commissions for luring the public into the trap. Several parts of Bengal, Orissa and Assam were hit by the scam[77]. Gullible public were tantalized into depositing their hard earned money into ponzi schemes. In order to yield high investments, almost 300 companies were floated which would operate in the arena of transport, flats, travel, resorts etc[78]. All the activities were conducted without obtaining the due permission of SEBI. Many investors were tricked into believing that the scheme in which they were investing was a chit fund. This was far away from reality. The schemes were identified as collective investment schemes.

The group soon went defunct. There was a sudden closure of all its offices. There were complaints which suggested that the company was unable to make a payment of the amount of money promised to the investors.

Legal Ramification:

The SEBI unearthed the Sarada Scam. The schemes run by it fell inside the domain of Collective Investment scheme as characterized under under Section 11 AA of the SEBI Act,1992.The company was found to act in violation of Section 12(1)(B) of the SEBI Act and Regulation 3 of the CIS regulation,1999.

Upon consideration of the above facts, the SEBI directed M/S Sarada Reality India Ltd. And Mr. Sudipta Sen, the Managing Director to initiate winding up process, the default of which would lead to the following consequence:

---

[76]'How have the Ponzi Scams/UDs/CISs Duped Investors', <https://iica.nic.in/images/Book_on-Ponzi-Schemes%20in%20India.pdf> accessed 14 July 2021

[77]Rinku, 'Prevention and control of corporate frauds : a socio legal study of financial market in India' (Maharshi Dayanand University 2014)

[78]Saikat Gochchait, P.C. Tripathy, 'A Case Study of Chit Fund Scam In India' (2015) 3 IJRMS <https://www.researchgate.net/publication/275219784_A_Case_Study_of_Chit_Fund_Scam_In_India> accessed 11 July 2021

(i)Initiation of proceedings under section 24 and under Chapter VI of the Securities and Exchange Board of India Act

,ii. A reference for initiating a civil or criminal case to the State Government or local police against M/s Saradha Realty India Ltd. and its directors and its managers/ persons in charge myriad offences ranging from fraud to misappropriation of public funds

iii. The Ministry of Corporate Affairs, was referred to initiating the winding up process[79].

It further debarred the company from gaining access to the securities market or transacting therein until it refunds the money collected from the investors and its collective investment schemes are wound up. He was also imprisoned by invoking several provisions like those of sec 120B,420,406 of the IPC[80]. In compliance to the Calcutta High Court's direction in Basabai Rai Chowdhury v Uoi[81], Justice, a commission under justice Shyamal Kumar Sen was also set up to investigate into the matter[82]. The Court further directed the attachment of bank accounts, disposing assets owned by Saradha, to open a nationalized bank account.

The Enforcement Directorate has been investigating the money laundering aspect of the scam since 2013. It has recently attached property worth Rupees 3 crore from several political leaders.

X. PACL Scam

Year: 2014

Amount Involved: Rupees 45,000 Crores[83]

Pearl Agrotech Corporation Limited, also known as PACL was a company founded by Nirmal Singh Bhangoo in the year 1996. The company would operate in the field of real estate and hospitality[84]. The company was found to be running a collective investment

[79] WTM/RKA/ERO-CIS/19/2013

[80] Subroto Chattoraj vs. Union of India & Ors. (2014) 8 SCC 768

[81] W.P. No.12163 (w) of 2013

[82] 'Notification' (24 April 2013) <http://home.wb.gov.in/content/1434101253Justice_Shyamal_Kumar_Sen_Commission_of_Inquiry.pdf> accessed 11 July 2021

[83]Saikat Gochchait, 'A Case Study of Chit Fund Scaams in India' (Researchgate, March 2015) <https://www.researchgate.net/publication/275219784_A_Case_Study_of_Chit_Fund_Scam_In_India> accessed 12 July 2021

[84] Ahmed Feizizadeh, 'Capital market Fraudulent Financial Practices and Investor Protection Role of Sebi'(PhD thesis Osmania University2014)

scheme. However, it was in blatant infringement of the directions by the Sebi in its press brief conducted on Nov18th,1997[85] and the public notice made on a December 18th, 1997. The Press Brief on November 26th, 1997 stated that the rules governing Collective Investment Schemes are under development and no person shall sponsor Collective Investment Scheme until the same had been prepared[86].

The public notice made on December 18th, 1997 contained the stipulation that the existing Collective Investment Schemes shall be made in compliance with Section 12(1B) and further directed that the required information be sent to sebi by 15th January, 1998[87].

The company was found to be acting in manner which was violative of both the notices. Upon realization of the default made by the company, the SEBI in its letter dated March 04, 1998, apprised the company of its ineligibility of reaping the benefit of the proviso attached to Section 12(1B) of the SEBI Act. Acquiring a rating from a credit rating agency was also made necessary.

Legal Ramification:

The Security Exchange Board of India, vide its order directed that the investors be refunded the money collected in the Collective Investment Scheme along with the returns as promised by the terms of the scheme within three months[88]. The order of the SEBI was challenged at the Securities Appellate Tribunal. The Securities Appellate Tribunal concurred with the order vide its order dated August 22nd, 2014[89].

[85] 'Collective Investment Schemes -Public Notice' (*SEBI*, 1October 2002)<https://www.sebi.gov.in/media/public-notices/oct-2002/collective-investment-schemes-public-notice_16622.html> accessed 11 July 2021
[86] WTM/PS/30/CIS/NRO/AUG/2014
[87] ibid
[88] ibid
[89] Nirmal Singh Bhangoo Vs. SEBI Appeal No.94 of 2015

The SEBI, pursuant to the dismissal of the appeal by the Securities Appellate Tribunal, initiated the process of attaching its bank accounts or Demat accounts as a part of its recovery process[90].

The Securities appellate Tribunal order was challenged in the Supreme Court as an appeal. The appeal was dismissed with costs. It was further directed that a committee be formed headed by Mr. Justice RM Lodha, former Chief Justice of India for dealing with matters pertaining to the disposal of lands for facilitating the recovery process[91].

XI. Punjab National Bank Scam

Year:2018[92]

Amount Involved: Rupees 11,400 Crores[93]

The Punjab National Bank scam was conducted by Nirav Modi, the mastermind behind the 11,400 Crores scam. The scam was executed by getting hold of Letters of Understanding from the bank[94]. This was done by acting in collusion with some of the officials of the Punjab National Bank.

A bank issues a letter of understanding with the sole purpose of helping a borrower to pay his dues. For the sake of convenience, the working of a letter of understanding can be explained with the help of an illustration. For instance, A person X., procures raw materials from a person Y worth Rupees 200 Crores. X being incapable of depositing the

[90]'Corrigendum to Notice of Attachment of Bank Accounts and Demat Accounts dated March 1, 2021 against 32 associates of PACL under Recovery Certificate No. 832 of 2015' (*SEBI* , 18 March 2021) <https://www.sebi.gov.in/enforcement/recovery-proceedings/mar-2021/corrigendum-to-notice-of-attachment-of-bank-accounts-and-demat-accounts-dated-march-1-2021-against-32-associates-of-pacl-under-recovery-certificate-no-832-of-2015_49550.html> accessed 11 July 2021

[91] ibid

[92] Dr. Meda Srinivasa Rao and Dr. B. Kishore Babu,' A Case Study on Punjab National Bank Scam (Is it only a scam or failure of the combined banking system?)16' Journal of Xi' an Shiyou University, Natural Science Edition <https://amity.edu/UserFiles/admaa/6561aPaper%202.pdf> accessed 11 July 2021

[93] Amrish Dogra & Manu Dogra, 'Sustainability and Ethical Banking: A Case Study of Punjab National Bank'(2019) Amity Journal of Corporate Governance 4 (1), (15-27) <https://amity.edu/UserFiles/admaa/6561aPaper%202.pdf> accesed 11 July 2021

[94] Sudatta Barik, 'An analysis on the role of investigative agencies and the government to prevent corporate frauds in India a case study on Satyam and PNB scandal' (PhD thesis, National Law University Odisha2020)

money to his supplier deposits securities worth the same amount due to a bank and the bank in return issues a Letter of Understanding. The bank thereafter, deposits the requisite amount of money with the supplier's bank.

This mode of payment was exploited to the core to gain profit. Unauthorized Letters of understanding were issued in favour of Modi[95]. This was done without obtaining the requisite security[96]. The bank officials namely, Mr Gokulnath Shetty and Mr Hanumant Kharat, were hand in gloves with the perpetrators. The LOUs were issued (i) without following the appropriate procedures (ii) obtaining appropriate documents (iii) the entries pertaining to the issue of LOUs had not been recorded in the bank's system and (iv) the LOUs were not used for the purpose for which they were issued. A total of 150 of such LOUs were managed by Modi.

These LOUs were issued to three companies which a part of Nirav Modi's Firestar group. These companies were:

M/s Diamond R US (issued with LOUs amounting to INR 2210.61 crores)

M/s Solar Exports (issued with LOUs amounting to INR 2152.88 crores)

M/s Stellar Diamonds (issued with LOUs amounting to INR 2134.71 crores)[97]

The fraud was unearthed when the PNB was approached for the issue of LOUs. In response to the request, PNB stated that the required cash margin against the LOU was not present and hence, it could not be issued under then prevailing conditions[98].

[95] Amrish Dogra & Manu Dogra , 'Sustainability and Ethical Banking : A case study of Punjab National Bank'(2019)4 Amity Journal of Corporate Governance 15
[96] Amit Kumar Singh & Rishabh Gupta, ' Gem of Scam : Nirav Modi' (2018) 19 Delhi Business Review
[97] The Government of India (Requesting State)N V Nirav Deepak Modi (Requested Person)
[98] Lovejit Kaur, 'PNB SCAM: Shining Diamond Trader Took Away PNB's Shine' (2020) 8 International Journal of Engineering Development and Research <https://ijedr.org/papers/IJEDR2001010.pdf> accessed 11 July 2021

Legal Ramifications:

The Central Bureau of Investigation investigated the scam pursuant to the FIR lodged by Punjab National Bank against Nirav Modi, Mehul Chowksy and others. The CBI investigated the matter against Nirav Modi, nirav modi firms under charges of cheating, fraud and causing loss to PNB. A complaint was also filed with the Enforcement Directorate against Nirav Modi. The Ministry of Corporate Affairs brought the Serious Investigation Officer into the picture by shouldering them with the responsibility to conduct an investigation[99].

It was found that Nirav Modi had managed to launder an amount of Rs. 5,921 crores with the help of his 17 shell companies based in India. The Regional Director (Western region) was urged by the MCA to file a petitioner against the accused under sections 221,241,246 of The Companies Act,2013. A direction was issued to Nirav Modi to make a payment of an amount extending to Rupees 2309,04,08,900 with an interest at the rate of 18% starting from July 2018 till the due amount is realized. On April 11th,2018 a non bailable arrest warrant was issued against him[100].

Things took a very different turn when the U.K. government informed the Indian Government that Nirav Modi had been staying there. The West Minster's Magistrate Court sent the matter to Secretary of State to decide whether Nirav Modi shall be extradited[101]. On April17,2021, Modi was allowed to be extradited from the United Kingdom to India pursuant to a decision made by the U.K. Home Department. An appeal has been filed by Modi in United Kingdom's High Courts against the extradition order citing insufficient evidence against him and the deplorable conditions of jails in India

[99] ibid
[100] The Government of India(Requesting State)VNirav Deepak Modi(Requested Person)
[101] The Government of India (Requesting State)N V Nirav Deepak Modi (Requested Person)

XII. Vijay Mallya Scam:

Amount Invoved:9,000 Crores [102](Approximately)

Year:2016

Vijay Mallya was a business mogul functioning as the controlling director of Kingfisher Airways. He was controlling several other companies like those of United Breweries ltd. And United Breweries Holdings lts. (UBHL). KFA encountered with financial a crisis in the background of rising fuel prices and the global effect of the Lehman crisis.

In order to resolve the financial crunch, the group borrowed money as loans from Indian Banks. These banks include State Bank of India ("SBI"), the Bank of India, the Bank of Baroda, the United Bank of India ("UBI") and United Commercial Bank ("UCO"). Industrial Development Bank of India ("IDBI")[103]. However, despite such measures Kingfishers condition never improved. The deplorable sate of finances can be well estimated from the fact that the airlines despite several efforts was not able to pay the salaries of its employees[104]. UBHL, KFL, KFIA entered into several agreements with the consortium of banks for repayment of its debts[105]. After several attempts to pay off the debts incurred by it, the KFA defaulted in the reimbursement of its credits[106]

Legal Ramifications: KFA was declared as an NPA on failure to pay the debt, recovery proceedings were initiated before the Debt Recovery tribunal, Bangalore[107].

---

[102]Niraj Kumar and Mausam, 'Corporate Governance Regime in India: A Tale of Constant Emerging Challenges' (2017) National Capital Law Journal 145

[103] Ms Sweety Gupta and Mr. Shiv Gupta , 'Case Study From Riches to Rags: The Story of Vijay Mallya' (2017) 9 Pacific Business Review International <http://www.pbr.co.in/2017/2017_month/Jan/22.pdf> accessed 11 July 2021

[104] Dr. M Sree Rama Devi, 'Fraudulent Financial Practices - A Case Study of Vijay Mallya' (2016) International Journal of Economics And Business Management <http://iaard.net/images/IAARD-Journals-IJBEM-2016-2(2)-237-240.pdf> accessed 11 July 2021

[105] Dr. Anil Dogra, 'Banking Frauds In India: Case Studies Of Nirav Modi And Vijay Mallya Case' (2018) 6 IJCRT<https://ijcrt.org/papers/IJCRT1801539.pdf> accessed 11 July 2021

[106]Wamick Aijaz,'Essay on Kingfishers Airlines Scandal'(*Researchgate*, October 2020) <https://www.researchgate.net/publication/344742979_Essay_on_Kingfisher_Airlines_Scandal_Kingfisher_Airlines > accessed 11 July 2021

[107] ibid

A case was filed by the ED under Section 13(1) and 13(1)(d) of the Prevention of Corruption Act[108]. His assets were attached by the ED vide an order dated 03.09.2016[109]. . An order was passed directing the company to wind up as it was held to be incapable to pay off its debts under section 433(e) of the Companies Act,2013[110]. It was held by the Debt Recovery Tribunal vide an order dated 19.01.2017 that UBHL,KFL,KAL were liable to pay an amount extending to Rupees 6204,35,03,879 along with interest at the rate of 11.05% per annum.[111] UBHL also became insolvent and an order was passed to initiate winding up proceedings against it.

Mallya was declared as a proclaimed offender by a PMLA Court[112]. He had been staying in the UK for nearly 6 years since 2015. His passport was revoked. A consortium consisting of 17 banks was constituted to initiate the debt proceedings. The Directorate of enforcement and Debt Recovery tribunal had attached his property in the process of realization of the dues. He was also held liable for contempt of court under two grounds

A) For non-disclosure of the details of his assets as directed by the Court

B) For having violated the orders of restraint as ordered by the High court of Karnataka[113]

As of January 18,2021, a U.K. Court has informed that Malya cannot be extradited until a 'confidential' legal matter is resolved

[108] JP Sharma and Ruchi Goyal, 'Corporate Governance Failure of Five-Star Accredited"Kingfisher Airlines'(2017) 14 Journal of IMS Group <http://www.publishingindia.com/GetBrochure.aspx?query=UERGQnJvY2h1cmVzfC80NTk2LnBkZnwvNDU5Ni5wZGY> accessed 11 July 2021
[109] SBI V. Dr. Vijay Mallya Case No: BR-2018-001805
[110] SBI V.. Kingfishes Airlines PVT. LTD. COP NO.164/13
[111] SBI V Kingfishers Ltd. OA NO.766/2013
[112] Dr. Vijay Mallya v. Deputy Director, Directorate of Enforcement FPA-PMLA-1475/MUM/2016
[113] Dr. Vijay Mallya v SBI & Ors. Contempt Petition (Civil) NOs.421-424 OF 2016

XIII. IL&FS Crisis

Year:2018

Amount Involved:91000crores[114]

Infrastructure Leasing and Financial Services Limited made headlines in 2018 with regard to claims of financial crisis that the company was facing. Central Bank of India, Unit Trust of India and Housing Development Finance Corporation and Unit Trust of India formed IL&FS in1987. The company is a systematically important core investment company with the reserve bank of India. The shareholders of IL&FS include names like that of SBI, ORIX Corporation, Japan, LIC, Central Bank of India and several others. The company raises funds from banks and other regulated lending sectors as short term and long term loans and invests it in other projects[115].

The spark of a liquidity crisis can be first traced back to 2018 when the road arm of IF&LS was unable to repay its debts followed by two of its subsidiaries which faced trouble in making repayments to 2018. Several group companies also defaulted in making repayments. The admitted debt of the company stands at Rs. 91,000 crores as on March,2018. The management of the company had utterly failed in effectively utilizing public money and were indulging in an operational cover up. It had nothing to offer to the banks, stakeholders and to the public at large

Legal Ramifications:

The series of such events and the anticipation of a contagion effect was the driving force behind the Government of India's move to an application to the NCLAT under Section 242 and 243 of the Companies Act[116]

---

[114] Union of India v. Infrastructure Leasing & Financial Services Ltd.., Company Appeal (AT) No. 346 of 2018 with
IAs Nos. 3616, 3851, 3860, 3962, 4103, 4249 of 2019, 182 & 185 of 2020, order dated 12.03.2020.
[115] 'Who we are' (*IL&FS*)
<https://www.ilfsindia.com/about-us/group-profile> accessed 12 July 2021
[116] Ministry of Corporate Affairs, 'Press Release'(*Ministry of Corporate Affairs*, Oct,.1 ,2018)
<http://www.mca.gov.in/Ministry/pdf/pressReleaseILFS_01102018.pdf> accessed 11July 2021

Dismissal of Board Of Directors

The NCLT, Mumbai special Bench in its order dated 1.10.2018 by invoking the jurisdiction under section 241(2) of The Companies Act,2013 held that as per section 242(1) of the Act the affairs of the company were prejudicial to the public interest. The board of directors of the company was dismissed on grounds of mismanagement and breach of fiduciary duties[117].

Immunity Provided to the New Board of Directors

The NCLT observed that the newly appointed board of directors might face disqualifications under sections 164 and 167 of The Companies Act,2013. It is therefore, just, fair and reasonable that the new board of directors be granted immunity for the effectively discharging their duties[118].

Grant of Moratorium

The Union of India had raised a plea for the grant of moratorium for protection from against adverse legal actions but the NCLT via its order dated 12.10.2018 dismissed the application on the ground of dearth of legal provisions under IBC regulating the grant of moratorium to financial service providers under the IBC and The Companies Act,2013. However, on an appeal the NCLT granted moratorium to the company

SFIO Report

The SFIO submitted its report on November 30,2018. The board of directors of the group companies formed a Committee of Creditors[119]. The committee was shouldered with the responsibility to ensure that the company functions smoothly. The report revealed that it was used as a vehicle for propagation of fraud and as a medium for personal enrichment by the persons holding the pivotal positions of the company. The Union of India further alleged that the committee had painted a rosy image of the company's financial affairs with an intention to obtain high credit ratings, avoid breach of regulatory ceiling leverage.

[117] MCAv.IL&FS CP 4506/2018

[119] IL&FS, <https://www.ilfsindia.com/media/2553/affidavit-5th-progress-report-vol-i.pdf> accessed 12 July,2021

The Central Government seeked to restrain the company from mortgaging, or creation of charge or lien or creation of a third-party interest or the alienation of any properties. The granted the relief sought.

Suo Motu Enquiry by ICAI

Pursuant to serious allegations of decorated financial statements of the company the Disciplinary Directorate of the Institute of Chartered Accountant initiated a suo motu inquiry into the aforementioned company. The inquiry revealed lapses, involvement of the auditors in the manipulation of financial statements. The auditors were found guilty of professional misconduct by the ICAI[120].

Reopening the Books of Accounts and Recasting the Financial Statements

A petition was filed by Union of India after the findings of SFIO and ICAI, in the NCLT, Mumbai Bench seeking reopening of the book of accounts and appointment of such person or firm of Chartered Accountants to recast the financial statements of IL&FS and its group companies for its immediately preceding five financial years. The NCLT allowed the petition as per Section 130 of The Companies Act, 2013 but remained mum on allegation pressed on the statutory auditors[121].

The IL&FS Group companies was classified on the basis of its insolvency

GREEN	Companies which can pay all its debts. They are solvent. Green entities shall continue repaying its financial debts
AMBER	Entities which cannot meet all financial obligations barring operational and senior

[120] 'ICAI Press Release' < https://www.icai.org/post/15155> accessed 15 May 2021
[121] 'ICAI Press Release' <https://www.icai.org/post/15419> accessed 15 May 2021

	secured debt
RED	Entities which cannot repay even senior secured financial debt

It was further added by the NCLT that since the company was yet to make payment of its dues the accounts of IL&FS or its entities could not be declared as Non Performing Assets (NPA). This could be done only with its prior permission.

The accounts of IL&FS and its group companies was allowed to be declared as NPA .However, it was added that the recovery process and debit money shall not be initiated.

Filing of Charge sheet by SFIO

The SFIO had filed a charge sheet on 30.05.2019 against 30 parties for misreporting the financial statements and for concealing information. Several provisions like those of sections 36 r/w S.447,Sec 447,Sec 420 r/w Sec 120 of IPC, Section 143, 184(4),448 of The Companies Act,2013, Section 68 of The companies act,1956 were invoked[122].

Ministry of Corporate Affairs Moves against the Auditors

Deloitte Haskins and Sells as well as BSR and Associates LLP and their former auditors were brought under the radar by the Ministry of Corporate Affairs who prayed for debarring these auditors by invoking sec 140(5) of the Companies Act,2013. The ground for the plea was the fraud committed by the auditors at IFIN which is a subsidiary

[122] Serious Fraud Investigation Office v. IL&FS Ltd.&Ors., Criminal Complaint No. 20 of 2019

company of IL&FS. The MCA did not stop at this and further prayed for the interim attachment of its bank accounts, properties and lockers[123].

The reopening and recasting of the accounts of ILFS by the SFIO for the last five years was permitted by the Supreme Court.

Status of "Red Entities"

A time span of 2 weeks was granted by the NCLT to IL&FS to inform the course of action intended to be taken pertaining to its 55 "Red Entities" and to specify whether a "red entity" can be transformed into a "green entity" or an "amber entity". In the event of impossibility of such an occurrence, they are required to state the actions to be taken with regard to other red entities. IL&FS and UOI were further directed to state the actions intended to be taken to release the sum of money payable towards funds like Pension Fund, Provident Fund, Army Group Insurance Fund etc.

IL&FS itself stated that three of its amber projects which would be accorded the status of Green entities[124].

Proceedings Against Auditors

The auditors of IL&FS were proceeded against by the Ministry of Corporate Affairs based on the Serious Fraud Investigation Report ((SFIO). The request of MCA was allowed in the order of the NCLT dated 18.07.2019.

On the basis of the initial probe conducted by the SFIO which revealed that Deloitte played a major role in the lapses that occurred in IL&FS, the Union Government seeked to ban Deloitte. However, the Bombay High Court by way of an interim ordered prevented coercive action against the firm.

The chairman of the company, Ravi Parthasarathy was arrested on the June 12th, 2021 on charges of alleging cheating and fraud by a subsidiary of the company.

[123] Delloitte Haskins LLP v. UOI Cr. Writ Petition NO. 5263 OF 2019
[124] IL&FS v. UOI Company Appeal (AT) No. 256 of 2019

3.2.CONCLUSION:

From the aforementioned discussion, it would be no exaggeration to state that the Indian market has born witness to a myriad of incidents involving financial irregularities. Each occurrence has to be viewed as a product of its times. While some incidents can be attributed to the failure of regulatory bodies others can be viewed as a product of the desire to quench the thirst of unending greed for materialistic possession.

CHAPTER 4

CAUSES AND EFFECTS OF FINANCIAL IRREGULARITIES

The economy of the country has voyaged far since the independence to its current vision of turning into a monetary superpower. Banks and corporations have contributed towards pumping stability in the market. These entities have incessantly strived towards diverting the attention of investors towards the market. Efforts are under way towards broadening the penetration of investors into the economy.

However, despite obtaining a global financial landscape, the Indian market has witnessed several impediments in the form of instances of financial irregularities. These scams hurt the faith reposed by the investors in on the Indian market and can have a devastating effect on the Indian economy.

4.1. CAUSES OF FINANCIAL IRREGULARITIES

There are several factors which have contributed towards making such scams a reality. Some of these have been discussed below:

A) Access to Information: In the world of ever evolving financial growth, information can be a weapon. The direct manifestation of this is the practice of insider trading. The treasure trove of sensitive information pertaining to a company lies at the hands of the decision-making authority or the insiders of the company. With power, comes responsibilities and when the power is abused the consequences can be catastrophic. The individuals which gain access to such information take undue advantage of their position to leak the information. The data arrives to the financial backer after a delay. The time gap is used by the people already having prior information by unscrupulous ways thus, keeping genuine investors at bay.

B) A Ruse to Gain Investors: One of the primary reasons behind committing any form of financial irregularity is the desire to quench a human being's insatiable desire for money. In a constantly competing world, each entity puts their best foot forward to attract investors. In a bid to attain investors, several entities often indulge in financial

irregularities. The more the number of investors, the more profitable the business entity is. Practices such as giving false disclosures on the company's prospectus or to conceal relevant particulars about the company are techniques employed to reach this end.

C)An Attempt to Conceal the Company's Deplorable Financial Conditions: A corporation's deplorable financial condition can be a bad news for the corporation and the people associated with it. Bad debts, shortfall of capital money can weaken the confidence reposed by the investors on the company and can also result in eroding the company's hard earned reputation in the market. Several techniques such as financial misstatements are committed in order to conceal the real picture and to paint a rosy picture of the company.

D)To Attain Loans from Banks by Employing Fraudulent Means: Banks often have stringent rules in place while granting financial aid in the form of loans. Financial irregularities are resorted to when the individual or entity is incapable of adhering to the norms of the financial institution as a technique of gaining the financial assistance of the bank without having to comply with its regulations.

E)To Bridge the Gap Between the Artificial Assets of the Company as Displayed in the Accounts Book and the Actual Figures: Several business entities have been found to have manipulated their books of account. With the increase in the figures in the book of accounts and the decreasing figure of actual profit of the company, it becomes difficult to bridge the gap between the two. The act of manipulation of book of accounts is itself a financial malpractice. In order to bring the two figures to harmony several others are committed[125].

F) Lapses on the Part Of the Auditors of the Company: The auditors of a corporation are tasked with the responsibility of auditing the book of accounts of the company and to present an actual image of the company's financial affairs. However, there have been instances of willful default on the part of the auditors of the company which in turn aid

[125] Mohamed Bechir Chengue, 'Financial Fraud and Managers, Causes and Effects' (*Researchgate* , 2020) <https://www.researchgate.net/publication/346444930_Financial_Fraud_and_Managers_Causes_and_Effects > accessed 11 July 2021

the corporation in bringing a false picture of the company's financial affairs to the forefront[126]

G) To Prevent the Winding Up of a Corporation: The ultimate goal of a corporation is to remain operational and to keep earning profit. However, there might be circumstances which might compel it to initiate the process of winding up. The desire to conduct financial irregularities also store up in the mind of an individual to portray that there is no necessity of initiating the process of winding up.

H) To Display A Higher Share Volume in the Market: A high share volume often piques the interest of investors in the shares of a corporation. However, it is not always that the volume of shares of a company increase in the usual course of events. Unfair financial practices like circular trading are employed by the corporation to give a false impression of increased share volume and to thereby, obtain the interest of the investors.

I)Personal Enrichment: Financial Offences are mostly committed to satiate man's desire for money[127]. Financial irregularities are the means to this end. A multiplicity of these practices are often employed to attain wealth.

J) Corrupt Officials: Almost every organization has been penetrated by corrupt officials who prefer personal enrichment over transparency[128]. There have been several instances when these officials, in an attempt, to quench their thirst for wealth, have acted hands in gloves with the perpetrators of the crime hand have thereby, aided them in exploiting them[129].

[126]Osei-Assibey Mandella Bonsu Li Kao Dui Zou Muyun Evans Kwabena Asare Isaac Adu Amankwaa, 'Corporate Fraud: Causes, Effects, and Deterrence on Financial Institutions in Ghana' (2018) 14 European Scientific Journal <https://core.ac.uk/download/pdf/236413426.pdf4> accessed 11 July 2021

[127] PV Alexander ,'A study on the application of forensic accounting tools in progressive accounting practices for detection and prevention of fraud'(PhD Thesis, Hindustan University2016)

[128] Fredrick Odhiambo Olongo,' The Effects Of Financial Fraud And Liquidity (October 2013) <http://erepository.uonbi.ac.ke/bitstream/handle/11295/58568/the%20effects%20of%20financial%20fraud%20and%20liquidity%20on%20financial%20performance%20of%20commercial%20banks%20in%20kenya?sequence=3> accessed 11 July 2021

[129] Ahmed Fazizadeh, 'Capital market Fraudulent Financial Practices and Investor Protection Role of Sebi' (PhD Thesis, Osmania University 2014)

4.2. IMPACT OF FINANCIAL IRREGULARITIES

After having understood the factors which might lead to instances of financial irregularities, it is imperative to understand the impact of such occurrences. The impact of the offence might be of such magnitude that it could leave its imprints on multiple classes of people. It might take years of concerted efforts to restore the original position of the loss bearers.

I. Impact on the Investors:

The foremost impact of most financial irregularity can be seen on the economy of the nation which bears the loss of the practice of financial irregularities. Internationally, the country is not viewed as the most favourable option for investment. Serious doubts of incompetence might be raised on the regulatory authorities and the ruling government of the country[130]. This might, in turn, hurt the financial backer's sentiments and might discourage the growth of the Indian market[131].

II. Impact on Unaccounted Assets:

The impact of financial irregularities can be multi faceted. In an attempt to conceal the proceeds of the economic offences, the perpetrators of financial irregularities often mask them as unaccounted assets lying in the country or elsewhere. The same amount of money is then utilized in perpetrating other forms of crime such as tax evasion, funding terrorist activities, drug racketeering, furthering other ulterior motives.

III. Impact on Finances:

The impact of some forms of financial irregularities can be a lot worse than crimes such as theft, robbery or burglary. While the latter may run into a few thousand rupees but

[130] 'International Public Sector Fraud Forum Guide to Understanding the Total Impact of Fraud', <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/866608/2377_The_Impact_of_Fraud_AW__4_.pdf >accessed 11 July 2021

[131] Isa Tak , 'Impacts and Losses Caused By the Fraudulent and Manipulated Financial Information on Economic Decision' (2011) 12 Review of International Comparative Management <https://www.researchgate.net/publication/227490361_Impacts_and_Losses_Caused_By_the_Fraudulent_and_Manipulated_Financial_Information_on_Economic_Decisions> accessed 11 July, 2021

offences such as the ones affecting the securities and share market might siphon off crores of rupees. The amount of callousness associated with the offence is immense.

IV. Impact on Detection of the Offence:

Financial irregularity, particularly, activities pertaining to white collar crimes, are committed, whether by concerted efforts or not, cautious planning and by following an intricate web of omissions and commissions which ensure that the irregularity goes undetected. They are committed by the highly sophisticated, well educated section of the society. The complex method associated with the offence makes it difficult for the authorities to detect the offence. It is also extremely time consuming which further buys more time for the perpetrators to wash away all possible detectable traces of their misdeeds. The detection of such offences is far more difficult than offences which involve direct application of force.

V. Impact on the Morale of the Society

The society is a group of people held together by an adhesive bond of social values and trust. The presence of the phenomenon of financial irregularities creates a sense of distrust[132]. It dissolves the vey bond keeping humans together. Fear and suspicion looms over very social interaction. It reduces the status of a man from a social animal to a lonely entity in a diabolical world.

VI. Impact on the Illiterate Class of the Society

While it is no lie that understanding the nuances of financial transactions is not every body's area of expertise, the illiterate sections of the society are worst hit. Their lack of exposure to the education system makes them particularly vulnerable to scams. They are easily manipulated by using the hope of a prosperous future as a bait. With their lack of education and their little investor knowledge, the instances of financial irregularities leave a deep and long lasting impact on their lives, which might at times, also lead to their death.

[132]'Corporate Resiliency: Managing the growing risk of fraud and corruption A holistic approach'(*Deloitte* ,September 2003) <https://ficci.in/spdocument/20310/FICCI-Deloitte.pdf> accessed 20 April 2021

4.3. CONCLUSION:

It would be erroneous to perceive the menace of financial irregularities in the society as an isolated event in the timeline of events. More often than not, there can be several driving factors behind. A singular event or a chain of episodes can trigger an event of financial irregularities. The same also holds truth for the consequences of financial irregularities. An episode of financial irregularity is an event which can trigger a multifaceted reaction from several strata of the society. It can also affect the ones who do not have a direct or proximate relationship with the event. Hence, it can be concluded by stating that financial irregularities can be the product of several driving factors and can have far reaching and multifarious consequences.

CHAPTER 5

THE CONCEPT OF CORPORATE CRIMINAL LIABILITY

The presence of corporations in every region of the world has become an ordinary phenomenon. From manufacturing mobile phones to manufacturing a hairpin, the world is now inundated with the presence of corporations. The world has indeed become a global village. Hence, the penetration of corporate houses into the lives of man is like never before.

It would not be exaggeration to state that corporations are the nerve of the economy. Giant corporate houses are counted as members of the elite club. They wield immense economic power. However, with the multi faceted role of corporate entities in the world, the responsibilities fastened on the shoulders of these corporations are immense.

The corporate entities are no longer treated as mere units of the society. These are often perceived as great agents of social changes. With the passage of time, several corporate houses have had to be embroiled with charges of financial irregularities. Although corporate houses have with the help of the facilities such as infrastructural facilities and monetary benefit escalated their journey to success, there have been numerous instances of corporations being the perpetrators of financial irregularities. Under such circumstances, it becomes imperative to explore the criminal liabilities that can be fastened on an entity which does not satisfy the scientific explanation appended to the term ‘human being’.

The meaning attached to the term ‘corporations’ by a layman would be the collection of individuals bound by the sole purpose of operating a business. However, the law recognizes the following kinds of corporations:

- Corporation Aggregate
- Corporation Sole

Corporation Aggregate can be understood as an aggregation of individuals who incorporate a company while corporation sole can be characterized as a corporation consisting of a single individual who is the repository of rights and duties.

5.1. DOCTRINES OF CORPORATE LIABILITY

Corporate Criminal liability can be attributed to instances when any activity conducted by a corporation is punishable under law. Bringing a corporation under the radar of law is very different from persecuting an individual for the omissions or commissions made by him. It is the unique nature of the company which accords it a status very different from what is ascribed to crimes committed by individuals. A corporate crime can be described as an activity undertaken by the corporation which is violative of any law in force or is liable to be punished under any law in force.

A classification of instances which might result into corporate criminal liability can be done for the sake of convenience into:

(i) Routine obligations: Incapability of adhering to norms governing the routine course of activities of the company. The obligations imposed by such norms include the duty of filing, information and submission before the prescribed authority.

(ii) Mandatory statutory obligation:-Mandatory statutory obligations refer to activities which acquire validity only after obtaining the permission and approval of authorities prescribed by law.

(iii) Statutory restriction:. Statutory restrictions, as the name indicates, shall be activities which have been restricted by the laws in force and the performance of which shall be seen as being ultra vires of the company. Acts of misfeasance, misconduct and willful negligence involving the element of men's rea can be held to be falling under this category.

The jurisprudence of criminal liability lies on the edifice of the principle set forth by the maxim, Non Facit Reum Mens Sit Rea which indicates that for fastening a liability it has

to be established that any action or omission has been conducted which any law in force forbids accompanied by a guilty mind[133].

Corporate entities, being an artificial person, were put in a grey area with regard to the liability of actions being undertaken by them[134]. Corporate liability can arise under any of the following situations:

A) DERIVATIVE MODEL OF CORPORATE CRIMINAL LIABILITY: The identity of a corporation is a fictitious one. Several theorists view a company as a collection of persons. Hence, the question of culpability of a company distinct from the persons associated with it is never entertained. This view can be better understood by the observation made by Smith and Hogan in this direction which defines a corporation as **"is a legal entity but has no physical existence and cannot act or form an intention of any kind except through its directors and servants. As each director is also a legal person quite distinct from the corporation, it follows that a corporation's legal liabilities are all, in a sense, vicarious.[135]"** Hence, the person is kept at the centre of the theory around which the question of corporate liability revolves.

B) AGENCY THEORY: The Agency Theory operates on the premise that for the activities undertaken by its employees, the corporation shall be held liable. The theory was developed in Law of Torts which later was adopted in the arena of criminal law. The principle of 'respondeat superior' is an extension of this very theory.

A threefold test has been fostered to ascertain whether the vicariously liability of a corporate structure for the omissions or commissions of its employees. Firstly, there should be a commission by the employee in the course of his employment.

Secondly, it should be done to gain benefit for his company. However, this parameter has been relaxed after the observation that many activities are done for reaping personal

[133]Gyan Prakash Tiwari, 'Corporate Criminal Liability: An Analytical Study'(*Researchgate*,May2020) <https://www.researchgate.net/publication/341105952_CORPORATE_CRIMINAL_LIABILITY_AN_ANALYTICAL_STUDY> accessed 11 July 2021

[134] Company Law Committee, *Report of the Company Law Committee* (2019) para 1.1

[135] Matseki Muhwezi,'The Case for Criminal Liability'(*Academia)* <https://www.academia.edu/29045498/THE_CASE_FOR_CORPORATE_CRIMINAL_LIABILITY> accessed 11 July 2021

benefits rather than benefits for the company[136]. Thirdly, the act and intent ought to be attributed to the corporation.

C) IDENTIFICATION THEORY: The Identification Theory arose in consequence to the shortcomings of the Agency Theory[137]. The theory discards the necessity of a vicarious liability. It seeks to attribute the liability on an individual and thereafter, the personification of the company. It merges the identity of the employee with the corporation and transforms him from working for the company to working as the company. It emphasizes on the individuality of the people in key positions within the corporation. A model of the Identification theory can be found to have developed in the observations made by Viscount Haldane in Lennard's Carrying Co Ltd v. Asiatic Petroleum Co Ltd[138]:

"A corporation is an abstraction. It has no mind of its own any more than it has a body of its own; its active and directing will must consequently be sought in the person of somebody, who for some purposes may be called an agent, but who is really the directing mind and will of the corporation; the very ego and centre of the personality of the corporation."

In Tesco Supermarket v. Nastrass, Tesco Supermarket[139] was accused of being engaged in an activity against the Trade Descriptions Act 1968,i.e., for not selling products at the declared cost. The matter rotates around the commercial of cleanser powder which was promoted at a scaled down cost. A normally priced cleanser powder was put on the rack attributable to the misstep of the shop colleague. There was a failure by the manager to ensure that the powder was made accessible at the publicized cost. The issue viable was if the identity of the manager could be bonded with the identity of the corporate structure.

It was observed that the stature of a manager in a company cannot be treated to be such that he be treated as the corporation. The defence of due diligence could be exercised by

[136] Kendel Drew and Kyle Clark, 'Twentieth Survey of White Collar Crime: Article Corporate Criminal Liability' (1998),Crim.L. Rev. 1998,277
[137] Kubakaddi Basavaraj Mallappa, 'An analytical study of corporate criminal liability under Indian legal system' (Ph.D Thesis, University of Mysore 2014)
[138] Lenard Carrying Co Ltd, v. Asiatic Petroleum Ltd. (1915) AC 705
[139] [1972] A.C. 153

the company owing to the fact that due diligence had been exercised by the top management of the Company. Viscount Dilhome observed that "a person who is in actual control of the operations of a company or of part of them and who is not responsible to another person in the company" [140]is the brain in charge and will of the corporation. It was further added that the concerned company's constitution would be a decisive factor in ascertaining whether the position of a person is such that it be merged with the company.

D) AGGREGATION THEORY: The challenges associated with the modern structure of a company led to the promulgation of the aggregation theory. The traditional Pyramid Hierarchy structure made it possible to discern the nerve centre or the person in whose hands the reins of the company lies. The modern setting of a company no longer rests on the Pyramid Hierarchy structure. The power button of the company lies in multiple centers. The business of the corporation is run by the concerted efforts of all the power centers. The complexity associated with such a structure has made it difficult to ascertain the brain behind the corporation.

The aggregation theory, as the name suggests, operates on the principle of aggregation. It aggregates the mental elements and acts of all persons acting of the relevant persons acting in running the business of a company[141]. This is done with the motive of ascertaining whether the activities can be done in toto by a single person**.**

The theory can be attributed to the efforts of the United States judiciary. This can be further understood with reference to United States v. Bank of New England[142]. There was a failure by a bank in filing a Currency Transaction Reports for any amount withdrawn which is higher than $10,000. It was held that the bank had to be treated as an institution in ascertaining whether knowledge could be attributed to the corporation. In doing so, it had to be realized that knowledge could be attributed to an institution by attributing it to all of its employees. For instance, an employee A, might know one facet

[140] Kubakaddi Basavaraj Mallappa, 'An analytical study of corporate criminal liability under Indian legal system' (Ph.D Thesis, University of Mysore 2014)
[141] Kluwer Kubakaddi Basavaraj Mallappa, 'An analytical study of corporate criminal liability under Indian legal system' (Ph.D Thesis, University of Mysore 2014)
[142] (1987) 821F.2d 844 (1stCir), 484 US 943

of CTR while employee B would know the other. The knowledge held by the bank is the grand total of the knowledge held by its employees.

E) DOCTRINE OF PIERCING THE CORPORATE VEIL: The hurdles in fastening corporate criminal liability arises due to its unique personality. A company might appear on its first blush to be a juristic person but on further introspection it can be found that a company is in reality an conglomeration of individuals. The status of it being a juristic person veils it from the criminal corporate liability. The principle of lifting the corporate shroud attributes acknowledgment to the human factor behind an organization.

The doctrine of corporate liability operates on the premise of lifting the veil from the corporate nature of a company and exposing the persons lying behind the yield to subject them to the criminal liabilities for their activities.

The best authority on the subject is Salomon v Salomon &Co[143]. Salomon was a boot and shoe manufacturer. A company called Salomon & Co. Ltd. Was incorporated by him. The memorandum of the company was subscribed by Salomon, his four sons, his daughter and his wide. The board of directors consisted of himself and two of his sons. The business of shoe making was moved to the company at 40,000$. Salomon took 20,000 shares valued at 1$ and debentures worth 10,000$. One share was allotted to the remaining members of his family. Upon liquidation, the state of affairs of the company was such that assets worth 6000 Euros and -Salomon as a debenture holder owed 10,000 Euros while the unsecured creditors owed 7,000 Euros. The question for consideration was who would be paid first. The unsecured creditors held that the company did not have an identity distinct from Salomon himself. It was a mere sham. It was Salomon operating under a different name

However, it was held that the company has a distinct personality. It fulfills all the legal requirements. It has a distinct and independent entity and hence, must be treated as a company.

[143] [1897] AC 22

F) DOCTRINE OF ATTRIBUTION: The term 'alter ego' has been defined as second self by the Black's Law Dictionary[144]. Thus, the alter ego of the corporation refers to the individual charged with the running of the company. The doctrine states that the criminal intent possessed by the alter ego of the corporation shall be attributed to the corporation itself. Subsequently, mens rea would be inferable from the psychological condition of the alter ego of the corporation.

For a better understanding of the working premise of the doctrine it would be profitable to refer to the observation made by a two judge bench in para 59 in Iridium India Telecom Ltd. Vs. Motorola Inc[145]. It was held that the notion that companies could not be brought under the purview of Acts requiring a specific mental set up has been rendered obsolete by the adoption of the doctrine.

5.2. CORPORATE CRIMINAL LIABILITY PROVIDED UNDER VARIOUS LEGISLATIONS:

Several legislations in India manifest the intentions of corporate criminal liability. These legislations include:

- **The Indian Penal Code:** The Indian Penal Code is a piece of legislation which brings under its purview every person irrespective of his nationality or allegiance, or his rank, status, caste, color or creed for the omissions or commission of activities prohibited by this code. The word 'person; has been given a very broad connotation. Section 11 of the Act, defines person as both citizens and non citizens. It also embraces company, assortment of persons, whether incorporated or not. Thus, a conjoint perusing of section 2 along with section 11 highlights that activities undertaken by juristic persons like companies or association of persons shall be brought inside the gamut of the Indian Penal Code.

[144] Henry Campbell Black, M. A.'Blacks Law Dictionary' <https://www.latestlaws.com/wpcontent/uploads/2015/04/Blacks-Law-Dictionery.pdf>accessed-01.07.2021

[145] AIR 2011 SC 20

- **The Companies Act, 2013:**. Section 1 of the Act suggests that it is applicable on companies, insurance companies, banking companies, companies involved in the business of electricity generation or supply, such other company regulated by any special Act and such body corporate as notified by the Central Government .Some of the provisions of the Act which indicate its ability to fasten criminal liability on a corporation are here as under: Section 118(12), Section 128(6), Section 129(7), Section 134, Section 188(5), Section 57, Section 184(4), Section 447.

- **The Transplantation of Human Organs Act, 1994** : The Transplantation of Human Organs Act, 1994, under section 21 accords recognition to the corporate criminal obligation principle. Section 21(1) states that where a company is found to be engaged in any activity which has been rendered punishable under this Act, every person who during of the offence, was holding the duty for leading the business of the company ought to be expected to take responsibility for such activities and shall be proceeded against and punished in that direction. The provision also provides the defence of due diligence and absence of knowledge.

  Section 21(2) further brings directors, managers or any other person of the company under the purview of this Act by stating that where any offence is the product of the neglect , connivance or consent of the done directors, managers or any other person of the company , such people will be held responsible under the Act.

- **Food and Safety Standard Act, 2006:** Section 66 of the Food and Safety Standard Act, 2006 is also a manifestation of the doctrine of corporate criminal liability. It expresses that where an organization is found to have committed any offense under this Act, the individual capable to or accountable for directing the business of the organization will be expected to take responsibility for the commission of the offense.

- **Criminal Procedure Code, 1973:** Section 305 of the Code of Criminal Procedure,1973 talks about the system when a corporation is an accused or one

for the charged. It characterizes the term corporation as incorporated corporation or other body corporate, and incorporates a society registered under the Societies Registration Act, 1860 (21 of 1860).

- **Narcotic Drug and Psychotropic Substance Act, 1985:** The Narcotic Drug and Psychotropic Substance Act enshrines the doctrine of corporate criminal liability under Section 38. It expresses that where a corporation is discovered to be occupied with any offense referenced under section V of the Act which has been delivered punishable under this Act, the obligation will be secured upon each individual who, at the hour of the offense, was carried with the duty regarding leading the organization or the business of the organization for such acts and subsequently, will be proceeded against and punished. The provision also provides the defence of due diligence and absence of knowledge.

  It further brings secretaries, managers, directors or any other officer under this Act by stating that where any offence is attributable to the neglect, connivance or consent of the directors, managers or any other person of the company , the guilt shall be fastened upon such persons under the Act and shall be subjected to punishment accordingly.

- **Essential Commodities Act, 1955:** The Act states that where a company is found to be engaged in any offence the liability shall be fastened upon every person who, during the offence, was holding the responsibility for conducting the business of the company and hence, ought to be proceeded against and punished in that direction. The provision also provides the defence of due diligence and absence of knowledge.

  It further brings directors, managers, secretaries or any other officer of the company under the purview of this Act by stating that where any offence is attributable to the neglect, consent, connivance of the directors, managers or any other person of the company , such persons shall be held guilty under the Act and shall be subjected to punishment accordingly.

The provision defines 'Company' as body corporate, and includes a firm or other association of individuals;

Thus, there are several pieces of legislations in India which accord recognition to corporate criminal liability and thereby, make such companies liable for the offences committed by them.

5.3. THE EVOLUTION OF JUDICIAL RESPONSE TO CORPORATE CRIMINAL LIABILITY

The Indian judiciary has been dealing with corporate criminal liability since decades now. However, there has been a considerable shift in the Indian judiciary's approach towards corporate criminal liability.

The word 'person; has been given a very broad connotation. Section 11 of the IPC, defines person as both citizens and non citizens. It also embraces company, collection of persons, whether incorporated or not. Thus, a conjoint perusal of section 2 along with section 11 highlights that activities undertaken by juristic persons like companies or association of persons shall be brought in the gamut of the Indian Penal Code. However, the gray area that remained to be decided was the position of cases wherein the Indian Penal Code mandates a imprisonment and fine as punishment.

In Assistant Commissioner v. Velliappa Textiles Ltd.[146], it was held that it is impossible to put a corporation behind the bars where the Indian Penal Code mandates an imprisonment coupled with a fine. Hence, the prosecution of the company under the offence is not feasible. However, the dissenting judge held that impossibility of imprisonment cannot be the sole ground on which the company can remain unprosecuted. He further added that the court is shouldered with two basic responsibilities. Firstly, ascertaining whether the accused is guilty and secondly to determine the punishment to which he would be subject to based on the evidences adduced. An analysis of these duties led him to the conclusion that a corporation should be subjected to fine if found guilty.

[146] AIR 2004 SC 86

Striding on an opposite path than the majority verdict in the aforementioned case, the Apex court in Standard Chartered Bank v. Directorate of Enforcement[147] made the observation that the impossibility of imprisoning a company cannot be a reason behind providing a blanket immunity to a corporation. Hence, a corporation should be subjected to a fine, where the offence is mandated to be punished by an imprisonment coupled with a fine if found guilty.

The conundrum of ascertaining the identity of individuals who could be referred to as the controlling mind of a corporation was put to rest by the Indian judiciary in U.P Pollution Control Board v. Modi Distillery[148], wherein the manager and the persons responsible for the corporation's activity amounting to the breach of the Water Pollution Act, 1974 were persecuted. The same was reiterated in Anil Hada v. Indian Acrylic Ltd[149].

A similar question was answered again in Sunil Bharti Mittal v. Central Bureau of Investigation[150]. The issue for consideration was whether the liability for the acts of the company could be fastened on the officials of a company. It was observed that an individual perpetrating a crime on behalf of a company can be brought under the radar of law along with the company. However, attributing criminal intent to the company does not automatically place the director into the shoes of the accused. In order to make an individual guilty, it is imperative that the criminal intent of the person along with his active role in the perpetration of the crime be established or there be a statutory provision attracting vicarious liability.

Thus, the Indian judiciary has gone through a whirlwind of evolution from refusing to persecute a company to even holding an individual perpetrating the crime representing the company guilty.

5.4. CONCLUSION:

Criminal liability of corporations has always been on a different footing than other crimes. Due to its eccentric nature, it is but obvious that the topic kindles a burning

[147] (2005) 4 Comp LJ 464 (SC)
[148] (1987) 3 SCR 798
[149] (2000) 1 SCC 1
[150] (2015) 4 SCC 609

curiosity in the minds of the readers. The answer to the question of attributing criminal liability can be found rooted in several theories. Some of these theories include the aggregation theory, the agency theory, the identification theory, the attribution theory to name a few. The concept can also be found embodied in several pieces of legislations like those of IPC, CrPC, Companies Act, The Essential Commodities Act etc. The judiciary has also evolved and is now more akin to testing a corporation on the furnace of corporate criminal liability.

CHAPTER 6

THE COUNTERACTIVE MECHANISMS AGAINST FINANCIAL IRREGULARITIES

The Indian Market has born witness to several instances of financial irregularities. These irregularities, almost invariably, involve mind boggling amount of money the recovery of which is a very difficult task to accomplish. Behind unearthing and putting to justice every unscrupulous activity, there lies an immense amount of incessant and arduous investigation process. In response to the calamitous consequences of the instants of financial irregularities, several legislative enactments as well as enforcement agencies were introduced as elements of a web of counteractive mechanism against financial irregularities.

6.1. LEGISLATIVE ENACTMENTS INTRODUCED TO COMBAT FINANCIAL IRREGULARITIES

- **The Securities and Exchange Board of India Act, 1992: The Sec**urities Exchange Board of India Act gained effectiveness in the year 1992. The Act became effective on the 30th of January, 1992. The Act addresses the malpractices in the securities board. Chapter VA of the Act prohibits manipulative And Deceptive Devices.

  Chapter VIA describes the penalties and adjudication provided under the Act.

  The Act has also contributed by enacting a securities and exchange board of India under chapter II. It has also promulgated numerous regulations which address issues like insider trading, disclosure requirements, listing obligations, issue of capital, Acquisition of shares, stock broking etc.

- **Prevention of Money Laundering Act,2002:** The Prevention of Money Laundery Act, 2002 as the name suggests, is a legislative enactment introduced to

prevent the occurrence of the crime of money laundering[151]. The term 'Money Laundering' has been described in Section 3 and lays down the punishment for the same under section 4. Chapter III of the Act provides for attachment, adjudication and confiscation of property. It also establishes an appellate tribunal under Section 25 chapter VI. The Act provides for special courts and authorities under Chapter VII and VIII.

- **Prevention of Corruption Act, 1988:** The Prevention Of Corruption Act was enacted on the 9th of September, 1988. The Act was introduced to amend along with consolidating the laws relating to corruption. The Act also authorizes special judges to try any of the offences punishable under this Act. The special judge is also empowered to try the offence of abetment or conspiracy or an endeavor to do any such Act. Chapter III of the Act makes the following activities punishable by law such a accepting bribes, criminal misconduct etc.

- **The Banking Regulation Act, 1949:** The Banking Regulation Act, 1949 was enacted on the 10th day of March, 1949. The Act has been instituted for the combination and revision of the law identified with banking. The Act provides activities such as making of mis-statements in any return, asset report or some other archive willfully , receiving deposits in any manner which is contravening section 35(4)(a) of the Act, contravening any other provision of this Act. Section 36ad (c) of part IIB additionally disallows exercises which can subvert the confidence of the financial backers of the Bank. Section 47(a) of the Act empowers the RBI to impose penalties for contraventions or defaults.

  On a bearing by the Central Government to start an investigation, the rbi will answer to the Central Government or on any assessment [or scrutiny] made under this section . On the chance that, the Central Government after thinking about

[151] Enforcement Directorate , 'FAQs Frequently Asked Questions on Prevention of Money Laundering' <https://www.enforcementdirectorate.gov.in/faqs_on_pmla.pdf > accessed 12 July 2021

such report, is of the assessment that the undertakings of a bank are being led in a way which can be named as being hindrance of the interest of its depositors

(a) forbid the getting of new deposits

(b) direct the Reserve Bank to apply under sec 38 for the winding up of the financial organization. This will be done solely after offering a reasonable chance to the Bank being referred to make a representation concerning the report.

- **The Income Tax Act, 1961:** The Income Tax Act,1961 gained effectiveness on 13th of September 1961. The Act was introduced with the objective of amending and consolidating the law governing taxation in India. The Act describes the events on the occurrence of which penalties can be imposed under the Act. These offences include activities such as failure in furnishing return of income, failure in furnishing statement of financial transaction, failure to allow inspection, furnishing information which is incorrect in reports or certificates, indulging in mis reporting income or under reporting income, engaging in willful tax evasion.

- **Lokpal and Lokayuktas Act,2013**: The Lokpal and Lokayuktas act,2013 was enacted on the 1st of January,2014. The Act suggests that the Act has been enacted to facilitate the setting up of the institutions of Lokpal for the Union and Lokayuktas for states in order to inquire into claims pertaining to corruption and all matters incidental thereto. The Act establishes a Lokpal under Section 3 of chapter II of Part II and for the establishment of a lokayukta under Section 63 of Part III. The Act also provides for an inquiry wing and a prosecution wing. The Act also delineates matters such as jurisdiction, procedure related to preliminary investigation, audit, declaration of assets. Section 35 also facilitates the establishment of special courts and shoulders them with the responsibility to decide cases pertaining to the Prevention of Corruption Act, 1988.

- **The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015**: The Black Money (Undisclosed Foreign Income And Assets) And Imposition Of Tax Act, 2015 was enacted on the 26th of May, 2015. The Act

reflects the legislature's intent to overcome the menace of black money in the garb of undisclosed foreign income and assets. It also provides the procedure to be adopted on the occurrence of such an event followed by the imposition of tax on undisclosed assets and income held in any place outside India. Penalties imposed and acts termed as offences have been dealt with under Chapter IV and V respectively.

- **The Fugitive Economic Offenders Act,2018**: The Fugitive Economic Offenders Act, 2018 gained effectiveness on 31st July,2018. The Act seeks to provide for a process by which fugitive economic offenders can be prevented from dodging the legal procedure in India by ousting the jurisdiction of the Indian judiciary. Section 2(f) describes the term 'fugitive offender'. Where a capture warrant has been given concerning a Scheduled Offense against an individual by a Court in India, who—(I) has left India with the purpose of avoiding criminal arraignment; or (ii) is situated in abroad however will not get back to India to be dependent upon criminal indictment, the person is termed as a 'fugitive offender'. The arrangement for the confiscation of the property of the fugitive can be found in Chapter II of the Act.

- **The Prohibition of Benami Property Transaction Act, 1988:** The prohibition of Benami Property Transaction Act, 1988 was enacted on the 5th of September, 1988. The Act suggests that it seeks to prohibit Benami transactions and to recover the properties which are held Benami and for other matters incidental thereto. The act defines the term 'Benami' under section 2(9). Section 2 (10) defines the term "benamidar"; The Act prohibits benami transaction under Chapter II, provides adjudicating authority under chapter III and provides for the attachment and confiscation of property under chapter IV. The offences and penalties for engaging in benami transaction have been provided in Chapter VII of the Act.

- **Securities and Exchange Board of India (Listing Obligations and Disclosure Requirement) Regulations,2015:** The Sebi Lodr ,2015 gained effectiveness on the 2nd of September, 2015. The regulations provide for the obligation imposed upon the listed entity and the principles governing disclosure requirements. Several changes have been introduced into the regulations by means of amendments notified by SEBI on the 6th of May, 2021.

- **Securities and Exchange Board of India (Stockbrokers and Sub Brokers) Regulations,1992:** The Securities And Exchange Board Of India (Stock Brokers And Sub Brokers) Regulations,1992 was introduced on the 23rd of October, 1992. It was made by invoking section 30 of the SEBI Act, 1992. Chapter II and Chapter III of the Act provides for registration while the general obligations and responsibilities have been discussed in chapter IV. Chapter VI describes the procedure to be adopted in case of default.

- **Securities and Exchange Board of India (Underwriters) Regulations,1993:** The Securities And Exchange Board Of India (Underwriters) Regulations,1993 came into effect on the 8th of October, 1993. The regulations were introduced by invoking Section 30 of the Sebi Act, 1992. Section 2(f) characterizes an underwriter while Section 2(fa) defines the term 'underwriting'.

  Chapter II of the regulation sheds light on registration of underwriters, chapter III imposes obligations on under writers while chapter V discusses the procedure to be adopted in case of default.

- **SARFAESI (Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest) Act, 2002 :** The SARFAESI (Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest) Act, 2002 gained effectiveness on the 17th day of December , 2002. The Act, under Section 2(b) describes the term 'asset reconstuction. Section 22 of the Act express the areas pertaining to the registration of securitisation, reconstruction. Section 23

makes it mandatory to file particulars of securitization, reconstruction. The compliance with such directions have also been made mandatory.

- **Foreign Exchange Management Act,1999:** The Foreign Exchange Management Act,1999 was sanctioned to combine and alter the law identifying with foreign exchange. It consists of seven chapters and forty nine sections. Chapter 1 delineates the short title, definitions, extent, application and commencement. Chapter II depicts the regulation and management of foreign exchange while Chapter III deals with authorized persons. Chapter IV deals with contravention and appeals and Chapter V deals with adjudication and appeals. Chapter VI deals with provisions relating to Directorate of Enforcement and Chapter VII describes miscellaneous provisions.

- **Central Vigilance Commission Act,2003:** The Central Vigilance Commission Act, 2003 was instituted on the eleventh day of September, 2003. The Act accommodates the Central Vigilance Commission to ask into the cases of activities held to be offenses under The Prevention of Corruption Act, 1988.

6.2. AGENCIES TO COMBAT FINANCIAL IRREGULARITIES

Legislative Enactments are mere ideas on papers strung together to form powerful sentences without agencies to execute such ideas. The presence of these agencies strengthens the values of transparency in the Indian market. Some of these enforcement agencies are here as under:

- **Police Force**: The police force of the state in which the offense has occurred is basically liable for leading investigation concerning the claims of financial irregularities. The CrPC has to be adhered to. The Economic Wing of the police force is especially equipped to fight such occurrences of financial irregularities.

- **Serious Fraud Investigation Office:** The Serious Fraud investigation Office was set up pursuant to the suggestion made by the Committee on Corporate

Governance headed by former Cabinet Secretary, Shri Naresh Chandra. Circumferenced by surging instances of stock market scams and the recommendation made by the Naresh Chandra Committee, the decision to establish the SFIO was considered by the cabinet in a meeting conducted on 09.01.2003. Accordingly, the SFIO was set up on 2nd July, 2003 by a resolution and the charter of the Sfio was also issued as a continuation of the same resolution on 21st August, 2003[152].

The SFIO would be responsible for conducting investigation into matters which involve:

i) Matters of complex nature which can have ramifications which are inter-departmental and multi- disciplinary in nature;

ii) an involvement of public interest of a substantial degree to be judged by varied parameters

iii) the possibility that the consequence of the investigation could be an amelioration of in systems, laws or procedures.

The SFIO might take up matters on its own or might investigate into cases of fraud forwarded by the Dept. of Company Affairs. The investigation would be conducted in congruence with The Companies Act, 1956.

- **Central Bureau of Investigation:** The genesis of the Central Bureau of Investigation can be traced back to the Special Police Establishment which was formed in the year 1941 by the Govt. of India to investigate into allegations of bribery and corruption emerging out of the Department of War and Supply of India. The Delhi Special Police Establishment Act of 1946 was introduced in the wake of War World II. It widened the role into all departments and made it subject to the superintendence of the Home Dept.

[152] 'About SFIO history' (*Serious Fraud Investigation Office*) <https://sfio.nic.in/about_history_sfio> accessed 12 July 2021

The DPSE evolved into its present form of Central Bureau of Investigation by a Government resolution dated 1.04.1963. Since 1965, the CBI is responsible for investigating economic offences[153].

- **Enforcement Directorate:** The origin of the Enforcement Directorate dates back to the year 1956. The Enforcement Directorate started out in the beginning as the Enforcement Unit in the department of Economic Affairs. The unit was tasked with the responsibility of handling infringement of the Foreign Exchange Regulation Act of 1977 and the Prevention of Money Laundering Act,2002. It changed to its present form of Enforcement Directorate in the year 1957[154].

  The ED is responsible for enforcing Foreign Exchange Management Act, 1999 and the Prevention of Money Laundering Act, 2002. It is empowered to confiscate and attach property which are proceeds of crime under the Prevention of Money Laundering Act, 2002. Besides investigating into the violations of Foreign Exchange and Management Act, 1999, it can involve itself in cases covering the Fugitive Economic Offenders Act, 2018[155].

- **Securities and Exchange Board of India:** The securities and exchange Board of India is a product of the Securities and Exchange Board of India Act, 1992. It was set up on the twelfth day of April, 1992.

  The preamble suggests that its prime focus is to uphold the welfare of the financial backers and to control and contribute towards the advancement of the market.

---

[153] 'A Brief History of CBI' (*Cbi Central Bureau Of Investigation*)
<https://cbi.gov.in/About-Us/History> accessed 12 July 2021
[154]'Organisational History' (*Enforcement Directorate*)
<https://www.enforcementdirectorate.gov.in/organisational_history.html?p1=1216121626037954631> accessed 12 July 2021
[155] 'Functions' (*Enforcement Directorate*)
<https://www.enforcementdirectorate.gov.in/organisational_history.html?p1=1216121626037954631> accessed 12 July 2021

- **Securities Appellate Tribunal:** The Securities Appellate Tribunal is founded under the aegis of Section 15k of the Securities and Exchange Board of India Act, 1992. It is the appellate authority against the Securities and Exchange Board of India.

- **National Company Law Tribunal: T**he National Company Law Tribunal was founded by the Central government on June 1st, 2016. The tribunal was established by deriving powers from section 408 of the Companies Act, 2013. A total of eleven benches of the tribunal has been established so far.

- **National Company Law Appellate Tribunal:** The **N**ational Company Law Appellate Tribunal was established on the first day of June, 2016 by the Central Government by invoking sections 410 of the Companies Act, 2013. The chairman of the tribunal is Justice A.I.S. Cheema[156].

- **Anti Corruption Bureau:** The Anti Corruption bureau, as the name suggests, shoulders the responsibility of the detection, investigation, enquiry, and prosecution of incidents of corruption. Each state is endowed with an anti corruption bureau of its own. For instance, the Anti Corruption Bureau of Assam was established in the year 1946. A post of 'Vigilance Commissioner' was created consequent to the recommendations put forth by the Santhanam committee[157]. The Anti Corruption Bureau of Assam launches the process of investigation when it receives a direction from the Home & Political Department of the Government of Assam or on receipt of a complaint[158]. The activities in its domain include corruption, misconduct, indulging in malpractices conducted by public servants.

[156] 'Home' (*National Company Law Appellate Tribunal*) <https://nclat.nic.in/> accessed 12 July 2021
[157] 'Our History' (*Govt. of Assam Home and political Vigilance and anti corruption)* <https://dgvigilance.assam.gov.in/about-us/our-history-5> accessed 12 July 2021
[158] 'What we do' (*Govt. of Assam Home and political Vigilance and anti corruption)* <https://dgvigilance.assam.gov.in/about-us/our-history-5 > accessed 12 July 2021

- **Central Vigilance Commission:** The Central Vigilance Commission is a product of the recommendation put forth by the Santhanam Committee. It is the pinnacle body which is answerable for giving guidelines to the Union Government in regions relating to watchfulness[159].

- **Lokpal:** The institution of Lokpal has been established under the aegis of the Lokpal and Lokayukta Act, 2013. The body is responsible for addressing issues concerning corruption. The Lokpal brings the allegations pertaining to corruption against anyone who is or has occupied the office of the Prime Minister, or a Member of Parliament, as well as officials of the Union Government.

  It also covers members, chairpersons, and directors of any board, corporation, society, trust or autonomous body either established by an Act of Parliament or wholly or partly funded by the Union or State government. It likewise covers any society or trust or body that gets foreign commitment above ₹10 lakh[160].

  It is headed by a chairperson and consists of eight other members. Shri Justice Pinaki Chandra Bose is the chairperson of Lokpal[161].

- **Comptroller and Auditor General of India:** The Comptroller and Auditor General of India is the watchdog of the accounts of the Central Govt. And State Government. Article 148 of the constitution portrays an officer and examiner General of India. The obligations, powers, salary of the CAG has been portrayed in The officer and evaluator general's (Duties, Powers and Conditions of Service) Amendment Act, 1971

- **Special Judge Under The Prevention Of Corruption Act, 1988:** The Prevention of Corruption Act provides for the appointment of a special judge under Section 3, Chapter II. The special judge has been bestowed with the power

[159] 'About Central Vigilance Commission' (*Central Vigilance Commission*) <https://cvc.gov.in/?q=about/background> accessed 12 July 2021
[160] 'Jurisdiction and Functions ofLokpal' (*Lokpal of India*) <http://lokpal.gov.in/> accessed 12 July 2021
[161] 'About Lokpal' (*Lokpal of India*) <http://lokpal.gov.in/> accessed 12 July 2021

to try the offences made chargeable under the Prevention of corruption Act, 1988 and any conspiracy, attempt or abetment too commit any such offence.

- **Adjudicating Authority Under The Prevention Of Money Laundering Act, 2002:** The PMLA, 2002 provides for the appointment of. adjudicating authorities by the government under section 6(1) of the Act. The provision expresses that the adjudicatory authority will comprise of a chairperson and two members. The authority is shouldered with the responsibility of attaching, freezing, confiscating property which might be considered proceeds of crime.

6.3. OTHER TOOLS TO AVOID OCCCURENCE OF FINANCIAL IRREGULARITIES:

- **Insurance Regulatory And Development Authority Fraud Policy:** The IRDA fraud policy was evolved to keep a check on the fraud committed within the insurance companies. It mandates each insurance company to have an effective risk fraud monitoring framework to detect, eradicate and prevent frauds[162].

- **Clawback Clauses:** Claw back Clauses refer to clauses in the contract of an employee that allows the recoupment of loss. The clause is driven by the motive of claiming back unjust enrichment which an employee might have receive by being engaged in misstatement of financial results or fraudulent acts by employees.

  There is nothing in the Indian legislature which restricts the incorporation of a clawback clause.

  Section 166(5),199, 212(14A),224(5),339,340 of The companies act, 2013 also reflect the very principle behind Clawback Clauses.

[162] 'Insurance Fraud Monitoring Framework' (*IRDAI*, 22 January 2013) <https://www.irdai.gov.in/admincms/cms/LayoutPages_Print.aspx?page=PageNo1871> accessed 12 July 2021

- **Forensic Accounting:** Forensic accounting refers to the application of the theories and principles encompassing every branch of accounting to an issue in a dispute[163]. The Forensic accounting team displays their expertise by studying accounts, tax returns, financial business records and thereafter, develop a report which could aid in research, investigation or even a court proceeding. With the surge in instances of financial irregularities, forensic accounting can be used to detect at an early stage or to understand the intricacies of malpractices. The relevance of the practice can be well estimated by the fact the SEBI itself employed a team of forensic accountants to unearth the Satyam Scam.

- **Whistleblower Protection Regime**: In the day and age characterized by an unquenchable thirst of insatiable financial needs, it goes without saying that several practices can be adopted by corporate conglomerates or by the insiders of the organization which are detrimental to the public inertest. Under such circumstances, the presence of whistleblowers within or outside an organization comes in handy while combating instances of financial needs.

  The term 'whistleblower; refers to individuals, within the structure of an organization or outside it, who divert the attention of the competent authorities towards the misdoings of an organization which might be detrimental to the public interest. The disclosures made by the whistleblowers are not in the form of speculations but rest on the edifice of facts.

  While the utility of whistleblowers cannot be viewed with the slightest amount of skepticism, but more often than not whistleblowers are deterred from making disclosures about unethical practices in apprehension of damage which might be inflicted to them on a personal level by the ones who are engaged in such practices. Hence, it is imperative that corporations have effective whistleblowers

[163] Ahmed Feizizadeh, 'Capital market Fraudulent Financial Practices and Investor Protection Role of Sebi'(PhD thesis Osmania University2014)

regime protection which shield whistleblowers from untoward incidents and provide them with an opportunity to bring unethical practices to the forefront.

The intention of having an effective whistleblowers protection regime is manifested in the Whistle Blowers Protection act,2014. The Companies Act,2013, the Sebi LODR, also incorporate the principles of Whistleblowers protection.

6.4. CONCLUSION:

With the emergence of financial irregularities in the market, the regulatory bodies and the governing pieces of legislations have been constantly experiencing constant efforts of amelioration. It would not be a fallacy to state that the nation is now equipped with diverse laws governing varied facets of financial irregularities. The presence of such regulatory and preventive mechanism together weaves a complex web of counteractive mechanisms against financial irregularities.

CHAPTER 7

INVESTOR PROTECTION REGIME IN INDIA

7.1. NEED FOR INVESTOR PROTECTION

The regime of the interest of the investors into the Indian markets is not a precipitate event. The liberalization measures of the government coupled with the readiness of the investor to take risks in the market and improved awareness of the market resulted in piquing the interest of the financial backer in the financial market.

However, the untainted phase of the markets was soon dappled with malpractices such as fake scrips, dubious companies, practices of insider trading, price rigging etc. It was soon plagued by a series of scandals such as the scandal of 1992, the Ketan Parekh scam, the Vanishing company scam to name a few. Several regulatory agencies have been established to eradicate malpractices from the Indian markets but financial scandals in as late as 2018 have time and again established the need for a legal regime catering to the cause of investor protection.

The economic wellbeing of a nation is hinged on the confidence reposed by the investors on the markets of the country. It is now a globally accepted fact that investor protection has assumed great significance due to the role played by the investors in upholding the sustenance of the financial markets and the welfare of the nation. Investors are persons who allocate capitals in anticipation for financial returns. Investor protection refers to the mechanism for safeguarding the interests of the investors. Investors can be of several type. Some of these include:

Sweat Equity Investor: Sweat Equity Investors refer to the investors who invest in a project by means of effort[164].

[164] Anmol Bhandari and Ellen R. McGratta,' Sweat Equity in U.S. Private Business' (*Federal Reserve Bank of Minneapolis*, January 2021)
<https://www.google.com/search?q=sweat+equity+in+u.s.+private+business&rlz=1C1CHNY_enIN603IN632&oq=Sweat+Equity+in+U.S.+Private+Business&aqs=chrome.0.0j0i390l3j69i61l2.722j0j7&sourceid=chrome&ie=UTF-8#> accessed 12 July 2021

Angel Investor: Angel investors refer to the investors who put their monetary assets fully expecting a profit from his venture or for halfway responsibility for organization or for a voice in the decision making process.

Venture Capitalists: Venture capitalists are the investors who retain the capacity to invest colossal amounts of capital to a company which exhibits a long-term growth rate. This is particularly useful for startups which do not have access to the securities market but are in need of huge capital for realizing their potential[165].

Investors are the axis on which the market revolves. Investors facilitate the growth of the market coupled with also keep the market thriving. It is notwithstanding, basic for the working of the business sectors that the interests of the financial backers stay ensured. Several investors are not well equipped with the prowess required to take a well informed decision before investing in the securities and share market. The investor protection mechanism can be understood as a twofold approach consisting of:

- Stringent and effective legislations, rules, regulations to protect the investors from malpractices
- Secondly, providing financial education to investors which would provide effective assistance to the investor in detecting early signs of fraud or to not fall prey to losses at all.

7.2. THE MEASURES TAKEN TO DEVELOP AN EFFECTIVE POLICY OF INVESTOR PROTECTION:

Below are listed some of the measures taken over the years to develop an effective policy of investor protection:

- **Companies Act, 2013:** The Companies Act, 2013 has delved into the topic of investor protection by addressing various issues which might be impediments in the country's objective of providing an effective investor protection policy in place.

[165] Christopher Bonnet and Peter Wirtz, 'Investor type and new-venture governance:cognition vs. interest alignment'(*Researchgate,*January2010) <https://www.researchgate.net/publication/46479537_Investor_type_and_new-venture_governancecognition_vs_interest_alignment> accessed 12 July 2021

Section 73(1) authorizes the company to accept deposits from the public by mandatorily adhering to the procedure mentioned in the Act. It further states that the Tribunal might be approached for nonpayment of the deposit made or the interest due upon which a punishment of a pecuniary penalty amounting to one crore rupees. On the event of nonpayment within the specified period of time the fine might be extended to ten crore rupees. An imprisonment of seven years or a fine extending to twenty five lakhs rupees which may extend to two crore rupees, or with both might be awarded to every defaulting officer

Section 34 as well as 447 of the Act makes mis statement in the prospectus of a company a punishable offence. Section 35 provides liability which is civil in nature for misstatements in the prospectus.

Section 36 also addresses the issue of inducing investment by taking recourse to fraudulent ways. Personation for acquisition of shares has been made punishable under section 38 and it is also adds that the offender shall be held guilty under Section 447 of the Act.

Section 124 of the Act orders to store the sum proclaimed as profit within seven days from the date of expiry of the time of thirty days from the date of affirmation of dividend. The store will be made in a different account of a bank. In case of a default, a fine adding up to five lakh rupees however which is extendable to 25 lakh rupees will be forced .A fine adding up to one lakh rupees yet which may stretch out to five lakh rupees will be forced on defaulting officials.

Section 125 of the Act also establishes an Investor’s Education and Policy Fund by the Central govt. The Fund accepts deposits in the form of unpaid or unclaimed amount of money to be paid.

Section 125 of the Act likewise builds up an Investor's Education and Policy Fund by the Central govt. The Fund acknowledges stores as neglected or unclaimed measure of cash to be paid.

Section 136 vests the option to acquire duplicates of balance sheets and report of auditors. A punishment stretching out to 25 thousand rupees will be forced in case of a default and each defaulting official is exposed to a punishment of 5,000 rupees.

- **Securities and Exchange Board of India Act, 1992:** The Securities and Exchange Board of India is considered to be the watchdog of the Securities Market in India. Section 11(2)(e) prohibits unfair and fraudulent trade practices relevant to securities market. Section 12A provides for prohibition of manipulative and deceptive devices, and insider trading.

  Section 15-15HA enlists penalties for defaults of several kinds ranging from failure to furnish information to default of stock trade practices which are fraudulent in nature. Section 24 further expresses that the default in adherence is culpable with imprisonment upto 10 years or with fine which may reach out to ' 25 crores or with both.

- **Securities Contracts (Regulation) Act, 1956:** The Securities Contracts (Regulation) Act, 1956 has engraved on itself the concept of Investor Protection in Sections 23, 23A to 23H. Sec 23 gives that the contradiction of the arrangements of the Act will be culpable with an imprisonment stretching out to 10 years or with pecuniary penalty which may reach out to 25 crores or with both. **Sec**tion 23A to 23H describes penalties for various defaults ranging from failure to furnish information to failure to furnish periodical returns.

- **The Reserve Bank of India Act, 1938:** The RBI Act of 1938 regulates the collection and furnishing of credit information under Chapter IIIA. Chapter IIIB directs the provisions identifying with non-banking organizations qualified for get deposits. Chapter IIIC depicts the restriction of of acceptance of deposits by unincorporated bodies. Guidelines of transactions in derivatives, currency market instruments, securities, has been described in chapter IIID.

7.2.1. INVESTOR EDUCATION

The second step for achieving absolute investor protection is to provide financial literacy which would provide effective assistance to the investors in detecting early signs of financial irregularities and from steering clear of any bad investments.

- **Initiatives by The Reserve Bank of India:** The RBI has launched an initiative, 'Financial Education.' It seeks to shed light on financial information and to provide financial literacy. A step has been taken in this direction by the RBI by providing a volume of literature on its website in thirteen different language for aiding the process of financial education amongst banks and other stakeholders. Financial literacy Week was observed on February 8th to 12th in the year 2021. The chosen topic for discussion was a) Borrowing from Formal Institutions b) Responsible Borrowing (c) Timely Repayment[166]. A financial Literacy guide has also been provided[167].

- **Securities and Exchange Board of India:** The Securities Exchange and Board of India has also left no stones unturned in providing financial education. The website of SEBI provides financial information in the form of Booklets, Working Papers, Workshops, Series Book etc[168].

- **Ministry of Corporate Affairs:** The Ministry of Corporate Affairs has also appreciated the cause by launching a website called Investor Education and Protection Fund Authority(iepf.gov.in). The site covers data on a relevant issues[169].

---

[166] 'Reserve Bank of India's Financial Education 'Initiative' (*Reserve Bank of India*) <https://www.rbi.org.in/FinancialEducation/Home.aspx> accessed 12 July 2021

[167] 'Financial Literacy Guide' (*Reserve Bank of India)* <https://rbidocs.rbi.org.in/rdocs/content/pdfs/GUIDE310113_F.pdf> accessed 12 July 2021

[168] 'Financial Education Material' (*Securities and Exchange Board of India*) <https://investor.sebi.gov.in/fin-edu-mat/fem-workshop-material.html> accessed 12 July 2021

[169] 'Investment Education and Protection Fund Authority' (*Investment Education and Protection Fund Authority*) <http://www.iepf.gov.in/> accessed 12 July 2021

- **Market Players Initiative:** Market players such as commercial banks, Stock exchange, Broking Houses etc. have also attended to their responsibility of disseminating information about financial literacy by working towards Financial Literacy and Counseling Centers and Rural Self Employment Training Institutes on financial literacy., publishing FAQs, Dos and Donts.

7.2. CONCLUSION:

Investors are the axis around which the economy of a nation revolves. Hence, their protection in the market is essential for the welfare of the nation. The grievances faced by the investors and the vital role played by the investors has necessitated the implementation of an investor protection regime. The reflection of the same can be found under the Companies Act, Sebi Act, 1992, Securities Contracts (Regulation) Act, 1956, The RBI Act, 1938. Apart from regulatory and preventive measures, initiatives have also been taken to educate investors and to delineate the nuances of investing. Initiatives by the Market Players, Ministry of Corporate Affairs, RBI, SEBI are manifestations of this very line of thought.

CHAPTER 8

LOOPHOLES IN THE COUNTERACTIVE MECHANISMS AGANST FINANCIAL IRREGULARITY

8.1. THE FLAWS EMBEDDED IN THE COUNTERACTIVE MECHANISM

It would be no exaggeration to state at this juncture that India has been constantly trying to tighten its screws in the securities and share market. However, perfection is seldom found in the world of flaws. The counteractive mechanisms against financial irregularities too are no exception. The flaws embedded in the mechanism are:

- **PREVENTION OF MONEY LAUNDERING ACT, 2002**:

  Ambiguity in interpreting the phrase 'relatable to' in section 2(1)(u): The Prevention of Money Laundering act, 2002 has been amended multiple time in 2015,2018 and 2019 respectively. The Amendment Act of 2019 broadens the ambit of Section 2(1)(u) which describes the term 'proceeds of crime' by appending an explanation to the provision which suggests that any property which may be gained in the course of any misdoing which is related to the scheduled offence shall also attract the legislative enactment. It might appear on first blush that the provision has tightened the screw over money laundering but in reality, the words 'relatable to' have been left undefined and vague. The Act is silent on the amount of degree of proximity to a scheduled offence required for an offence to be termed as related to a scheduled offence.

  Immensely Wide Definition of the term 'Scheduled Offences': Secondly, the Act now comprises of 'scheduled offences' from 30 different pieces of legislations providing a quite contrasting view to its original 6 legislations. Some of these offences are not grave enough. The net of the Act has been cast too wide. The Enforcement Directories should adopt a more targeted based approach rather than diverging their efforts towards multiple causes.

Predicate offences and the offence of Money Laundering: The Bombay High Court in Babulal Verma & Ors. vs Enforcement Directorate & Ors[170]. opined that a scheduled offence is required to have been committed only for registering an offence under the Act. The offence stands on its own and does not require to be pursued further on the clutches of scheduled offences. The quashing or compounding of the scheduled offence or the acquittal of the offender for committing a scheduled offence does not have any bearing on the investigation being committed by the Enforcement Directorate under the Act.

However, it is noteworthy that the observation made by the Bombay High Court might be against the notions enshrined in the legal maxim *sublato fundamento cadit opus* which means that once the substratum of the matter is removed, the structure built thereupon must fall

Striding on an extremely contrasting path than the Bombay High Court, several High Courts[171] have observed that the compounding, quashing, or the acquittal of the offender in connection with scheduled offences will have a direct bearing on the proceedings initiated under the Act. The natural consequence would be that the ECIR would be rendered infructuous.

The lack of unanimity amongst the judicial community with regard to the ECIR after the quashing, compounding of the scheduled offence or the acquittal of the offender has birthed incertitude in the matter which needs to be resolved.

- **THE COMPANIES ACT, 2013:**

  In N Sampath Ganesh vs. Union of India and Anr. (Cr. Writ Petition No. 4144 of 2019), relief was granted to the former auditors of IL&FS by setting aside the order of the National company Law Tribunal which had the effect of debarring the ex auditors of the beleaguered company. The edifice of the relief granted rests

[170] 2021 SCC OnLine Bom 392

[171] M/S Obulapuram Mining Company Pvt. Ltd. vs. Joint Director, Directorate of Enforcement ILR 2017 Karnataka 1846; Rajiv Chanana v. Dy. Director of Enforcement 2015 (316) ELT 422 (Del.)

on the fact that the auditors had already tendered their resignation. It was likewise expressed that Section 140(5) is attracted when the 'suspected auditor' opts to not tender a resignation and continue as the auditor of the company. The reasoning provided by the High Court appears to be a punishment for merely choosing to contest a claim of suspicion cast upon him. The provision can be understood to be tacitly providing the option of resignation as a defence even before the NCLT passes its final order. This can result into rife speculations which might cause mental agony, caprice in adjudication, stigma and professional loss.

- **THE FUGITIVE ECONOMIC OFFENDERS ACT, 2018**:

  The Act portrays the term 'fugitive' under Section 2(f) as someone against whom a warrant is given for carrying out a scheduled offense and who has left India to stay away from criminal indictment or who, having left India, will not get back to confront criminal arraignment.

  Section 5 engages a director with the authorization, of a Special Court, to append the properties of the Fugitive Economic. Section 12 also states that his property shall stand confiscated by the Govt.

  Effect on Creditors: The adverse impact on the credit debtor can be realized when it is found that the Creditors of the Company might have on their books any property which stands confiscated or declared as 'proceeds of crime' or 'benami property'. The inevitable consequence would be that the value of the assets might be depressed. Banks too, might have to bear the consequence of misdeeds never committed by them.

- **SECURITIES AND EXCHANGE BOARD OF INDIA:**

  The Securities and Exchange Board of India has attempted to eradicate insider trading since a long time now but reports suggest a grim picture.

  Absence Of Power In The Past To Call For Phone Records: Sebi had not been allowed the ability to call for telephone records of suspects over the span of examination until the year 2014. The Saradha Scam of 2013 prompted the

government to pass the Securities Laws (Amendment) Second Ordinance, 2013 which permitted the board to call for the phone records

Until this power was bestowed upon SEBI, it had to rely on patterns of trade by suspected companies. However, the companies adopted tactics like trading through dummy companies to deceive the board.

Lacking the Power of Wiretapping Calls: The year 2017 brought to the forefront the practice of insider trading through WhatsApp chats in India. In the backdrop of such technological methods of committing a crime, it can be safely assumed that the SEBI too, has been technologically well endowed to keep up with the technological advancement of perpetrators. However, it is indeed shocking that the SEBI does not have the power to wire tap phone calls. Denying such an effective tool to the board, on the grounds of misuse, can be a curse for the Indian market.

Non Utilisation Of Power: It cannot be falsified that certain powers have been denied to the Board. However, it ought to be likewise recalled that few viable and stringent provisions have additionally been given in its arsenal by the Act. IT is appalling that the highest penalty imposed by SEBI was Rs.60,0000[172] as of 2013 despite the presence of Section 15G

Lack of Employees: The Securities and Exchange Board of India has a total of 867 employees as on March 31,2020 while the Securities and Exchange Commission of the United States is manned by 4,200 employees[173]. The number of the investigations taken up and the number of investigation completed in the recent years has been tabulated below:[174]

[172] 'Insider Trading Regulations - A Primer'(*Nishith Desai Associates*, July 2013) <http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/Insider_Trading_Regulations_-_A_Primer.pdf> accessed 12 July 2021

[173] 'Public Service Recognition Week' (US Securities and Exchange Commission) <https://www.sec.gov/spotlight/sec-employees.shtml> accessed 12 July 2021

[174] 'SEBI Annual Report' (*SEBI*, 25 June 2013) <https://www.sebi.gov.in/sebi_data/attachdocs/1378192045802.pdf > accessed 12 July 2021

YEARS	INVESTIGATION TAKEN UP	INVESTIGATION COMPLETED
2010-11	104	82
2011-12	154	74
2012-13	155	119
2014-15	122	70

Hence, hiring more staff appears to be the need of the hour.

- **WHISTLE BLOWERS PROTECTION REGIME**: It would be unfair to negate the fact that the efforts of the Indian Government to usher in an era of whistle blowers protection regime are laudable. The Whistle blowers protection Act is the manifestation of that very intention of the legislature. However, there are several maladies in the regime of whistle blowers protection in India which need to be addressed.

  Dearth of Protection of Whistleblowers in Private Unlisted Companies:

  The Whistle Blowers Protection Act,2015 is applicable on public servants. The Act does not attract unlisted private companies. The unlisted public companies barring a few which are listed under the Companies Act, are not mandated to adhere to whistleblowers protection regime under any legislative enactment. While corporations can opt to incorporate an effective whistle blower's protection regime into the organization, an incapacity to do so would not attract legal ramifications.

  Lack of Clarity with Regards to the Manner of Investigation

  There is a lack of clarity as to the manner in which investigations ought to be made into complaints made by whistle blowers. The manner in which an internal investigation should be made into such complaints is also shrouded with vagueness. For instance, it is still obscure as to when a disclosure made by a whistle blower should be brought to the attention of the stock market.

Obscurity Around Mechanisms of Whistleblowers Protection

The Companies Act,2013 and the rules thereunder introduce a regime of whistle blower protection, the mechanisms of doing which still remain cloaked by a shroud of uncertainty. There is nothing to prescribe the manner in which safeguards for whistle blowers should be introduced[175].

8.2. CONCLUSION:

It cannot be falsified that the efforts of the society has fructified into enacting legislations which encompass several aspects of financial irregularities in India. However, while such efforts deserve appreciation, it must also be remembered that there still lie flaws within such enactments which can be rectified to ameliorate the standards of the Indian Financial market.

[175]Bhavana Sunder, Payel Chatterjee & Sahil Kanuga, 'WHISTLEBLOWING IN INDIA: ARE WE THERE YET?'(*Nishith Desai*, 19 March 2020)
<https://www.nishithdesai.com/information/research-and-articles/nda-hotline/nda-hotline-single-view/article/whistleblowing-in-india-are-we-there-yet.html?no_cache=1&cHash=b5747c0cd8db654635cb5ee27689acaa> accessed 12 July 2021

CHAPTER 9

CONCLUSION

The conflict between man and his greed for wealth is as old as time. While man's desire for wealth remains insatiable, the passage of time has provided him with countless measures to quench his materialistic thirst. One such method which is incongruous with the validity provided by legislative enactments is indulging in the practice of financial irregularities. Financial irregularities are the dregs of the society the eradication of which still remains much coveted.

The Banking sector, Corporate Sectors, Security and capital markets are the nerve of the thriving Indian economy. An effective combination of policies contributes massively towards the economic growth and development.

While a lot has been done to bolster the economic growth rate of India, it must also be realized that in order to sustain the growth it is important to create a safe haven for investors and eradicate financial irregularities..

The ebb and growth of the market coupled with the malpractices plaguing it have contributed to a the development of stringent rules and regulations to ensure transparency in the functioning of the parties. Several acts, regulations, rules, practices have collectively contributed towards weaving a complex web of security and thereby, being a method by which the government has tightened its screws over the market. The topic of financial irregularities has been broached by the counteractive mechanism by adopting a cautious approach which ensures that the sentiments of the investors are not hurt.

While a lot has been done to provide a safe haven for transactions, a lot still remains to be done. It would not be too early to state at this juncture of time that perfection is a fallacy and reality is often tainted with imperfections.

9.1. FINDINGS

1. What are Financial Irregularities?

   The term 'Financial irregularity' embraces within its purview multifaceted activities. It is an ever expansive term and embraces within its ambit a wide range

of activities. 'Irregularity" can be defined as Violation or nonobservance of established rules and practices[176]. It is the breach of an established rule or an omission to do something that is necessary. Irregularities are characterized by the want of adherence to established practices, rules, regulations. Financial Irregularities are thus, a violation of established rules and practices in financial transactions. It is indicative of impropriety in financial transactions and includes instances of financial mismanagement. Financial irregularities include the following

Cheating, Forgery, Accounts being falsified, Willful attempt to evade tax, Misappropriation of property, Fraud against creditors, Insider Trading, Unfair and Fraudulent trade practices relating to securities market, Financial Statements Fraud, Falsification of Records and Statements, Money Laundering, Fraud by Auditors, Market manipulation, Misleading disclosures, Violation of takeover guidelines, Affairs of the company conducted fraudulently, Mis-statements in prospectus , engaging in personation for the purpose of acquisition, etc. of securities, Default by stockbrokers, Misstating information to investors, Being unfaithful to the stock exchange, Fraud against creditors, Bank Fraud, Fraudulent Bankruptcy, Stock Market Manipulation, Insurance Fraud.

2. What are the instances of financial irregularities in India?

   The instances of Financial irregularities which have surfaced over the years are innumerable. These include the Harshad Mehta scam, The Satyam Scam, the Benami account scam, the Sharda Scam, the Sahara Scam, the IL&FS scam, the Nirav Modi scam, the Fodder scam, the Vijay Malya Scam, the Vanishing Companies Scam, The Ketan Parekh Scam, the PACL

YEAR	**NAME OF SCAM**
1992	Harshad Mehta Scandal

1996	Fodder Scandal
1997	The Dummy Computers Scam
1997	Vanishing Companies Scandal
2001	Ketan Parekh Scandal
2005	Benami Accounts Scandal
2009	The Satyam Scandal
2010	Sahara India Pariwar Sandal
2013	Sarada Group Scandal
2015	PACL Scandal
2017	Vijay Malya Scandal
2018	IL&FS Scandal
2018	Punjab National Bank Scandal

3. What are the causes of financial irregularities?

   The Indian market has witnessed several impediments in the form of instances of financial irregularities. There are several factors which have contributed towards making such scams a reality. Some of these have include

- To have access to sensitive information,
- A ruse to gain investors,
- An attempt to conceal the company's deplorable financial conditions,
- To attain loans from banks by employing fraudulent means: ,
- To bridge the gap between the artificial assets of the company as displayed in the accounts book and the actual figures,

- Lapses on the part of the auditors of the company ,
- To prevent the winding up of a corporation,
- To display a higher share volume in the market,
- Personal enrichment,
- Corrupt officials.

4. What is the impact of financial irregularities?

The impact of the instances of financial irregularities can be far worse than one can imagine. These include:

- Impact on the investors:
- Impact on unaccounted assets:
- Impact on finances:
- Impact on the morale of the society
- Impact on the illiterate class of the society

5. Whether liability can be fastened on corporations involved in activities of financial irregularities?

   Corporations are an association of individual. Despite its peculiar legal character, criminal liability can be fastened on corporations involved in activities of financial irregularities. There are several doctrines such as the Agency theory, the aggregation theory the Attribution theory, the Identification theory, the doctrine of piercing the corporate veil which supports the concept.

   The intention of subjecting corporate conglomerates to corporate liability can be reflected in several legislations. These legislations include section 2 of The Indian Penal Code**,** Section 53,Section 118(12),Section 128(6), Section 129(7), Section

134, Section 188(5), Section 57, Section 58(6), Section 182(4), Section 184(4), Section 187(4),Section 447 of the Companies Act,2013,Sec 21(2) of The Transplantation of Human Organs Act, sec 305 of the criminal procedure code 1973, section 38 of The Narcotic Drug And Psychotropic Substance Act, 1985, Chapter V of The Essential Commodities ACT, 1955.

6. Whether there is an effective system of preventive measures and counteractions which deter the occurrence of financial irregularities?

   The Indian Market has born witness to several instances of financial irregularities. In response to the calamitous consequences of the instants of financial irregularities, several legislative enactments as well as enforcement agencies were introduced as elements of a web of counteractive mechanism against financial irregularities.

   Some of these legislations include The Securities and Exchange Board of India Act, 1992, Prevention Of Money Laundering Act,2002, Prevention Of Corruption Act, 1988, Banking Regulation ACT, 1949**,** The Income Tax Act, **1961,** Lokpal And Lokayuktas Act,2013,The Black Money And Imposition Of Tax Act, 2015 , The Fugitive Economic Offenders Act,2018, The Prohibition Of Benami Property Transaction Act, 1988: Securities And Exchange Board Of India (Listing Obligations And Disclosure Requirement) Regulations,2015, Securities And Exchange Board Of India (Stock Brokers And Sub Brokers) Regulations,1992, Securities And Exchange Board Of India (Underwriters) Regulations,1993, Sarfaesi Act, 2002, Central Vigilance Commission Act.

   Similarly the agencies to combat financial irregularities include police force, serious fraud investigation office, the central bureau of investigation, the enforcement directorate, securities and exchange board of India, securities appellate tribunal, national company law tribunal , national company law appellate tribunal, anti corruption bureau, central vigilance commission, lokpal, comptroller and auditor general of India, special judge under the prevention of

corruption act, 1988, adjudicating authority under the prevention of money laundering act, 2002

Practices like including Clawback Clauses in the employment contract, Forensic Accounting and having an effective whistleblowers protection regime too add to strengthening the counter active mechanism against financial irregularities. Hence, it would not be erroneous to state that there is an effective system of preventive measures and counteractions which deter the occurrence of financial irregularities

7. Whether the legal regime provides effective protection to investors?

   Ever since the nation had broken free from the shackles of colonial hegemony, it has born witness to a decades long journey to become what it is. Efforts are under way towards broadening the penetration of investors into the economy

   The economic wellbeing of a nation is dependent upon the confidence reposed by the investors in the markets of the country. The practice of investor protection lies in S.34, 447, 36, 124,125, 73(1) of The Companies Act, 2013, Section 11(2)(E),12A,24,Securities And Exchange Board Of India Act, 1992, Section 23A To 23H, Securities Contracts (Regulation) Act, 1956, The Reserve Bank Of India Act, 1938. The initiative of Investor Education provided by the RBI, SEBI too adds to the measure of investor protection**.** Hence, it can be stated that the legal regime provides effective protection to investors

8. Whether the legal regime to address financial irregularities is embedded with maladies and needs modification?

   It would be no exaggeration to state at this juncture that India has been constantly trying to tighten its screws in the securities and share market. However, perfection is seldom found in the world of flaws. These pieces of legislations too are no exception. These flaws are:

- The Prevention of Money Laundering Act, 2002:

The Prevention of Money Laundering act, 2002 has been amended in 2019 to widen the term 'proceeds of crime' by annexing an explanation to the provision which recommends that any property acquired throughout any crime relatable to the scheduled offense shall attract the Act. The Act maintains silence on the degree of proximity to a scheduled offence required for an offence to be termed as related to a scheduled offence. The Act provides an excessively wide interpretation of the term 'scheduled offences'. It borrows offences from 30 different pieces of legislations resulting in an immensely wide gamut of the Act. The consequence of casting the net too wide could do more harm than resulting in the welfare of the society. This might result in diverting the attention of the authorities towards offences which are less serious in gravity as compared to other scheduled offences. The efforts required towards investigating serious crimes might dwindle.

- The Companies Act, 2013: Section 140(5) of the Act is attracted solely when 'suspected auditor' opts to not resign and continue as the auditor of the company. The provision can be viewed as a punishment for merely choosing to contest a claim of suspicion cast on him. The provision demands a resignation as a defense even before the NCLT passes its final order. This can result into rife speculations which might cause mental agony, caprice in adjudication, stigma and professional loss

- The Fugitive Economic Offenders Act, 2018: The adverse impact of the Act on the credit debtor can be realized when it is found that the Creditors of the Company might have on their books any property which stands confiscated or declared as 'proceeds of crime' or 'benami property'. The undeviating impact of the Act would be that the value of the assets might be depressed or might even be excluded from insolvency proceedings. Banks too, might have to bear the consequence of misdeeds never committed by them.

- Securities and Exchange Board of India: The Securities And Exchange Board of India has been facing several challenges in the form of a)absence of power in the

past to call for phone records b)lack of the power of wiretapping calls c) under utilization of power d) lack of employees

- Whistle Blowers Protection Regime:

  The Whistle Blowers Protection Act,2015 is applicable on public servants. The Act does not attract unlisted private companies. The unlisted public companies barring a few which are listed under the Companies Act, are not mandated to adhere to whistleblowers protection regime under any legislative enactment. While corporations can opt to incorporate an effective whistle blowers protection regime into the organization, an incapacity to do so would not attract legal ramifications.

  There is a lack of clarity as to the manner in which investigations ought to be made into complaints made by whistle blowers. The manner in which an internal investigation should be made into such complaints is also shrouded with vagueness. For instance, it is still obscure as to when a disclosure made by a whistle blower should be brought to the attention of the stock market.

  The Companies Act,2013 and the standards thereunder introduce a system of whistleblowers protection but the mechanisms of doing so in any case still stay shrouded by a cover of vulnerability. There is nothing to prescribe the manner in which safeguards for whistle blowers should be introduced.

9.2. SUGGESTIONS OR RECOMMENDATIONS:

- The principles of natural justice is violated by Section 140(5) of the Companies act,2013. Changes should be introduced in the provision to guarantee that the culprit be brought to justice while at the same time maintain that the innocent should not be put through a cycle of unnecessary mental agony.
- The term ‘relatable to’ should be interpreted by the Supreme Court in the Prevention of Money Laundering Act, 2002 in order to remove confusion around it.

- The list of 'scheduled offences' under the Prevention of Money Laundering Act, 2002 is too wide. The ever expanding net cast by the Act is too expansive. This might result in diverting the attention of the authorities towards less serious offences. The efforts required towards serious crimes might dwindle. Hence, the list should be pruned for providing a more target based approach.
- The Fugitive Economic Offender's Act, 2018 was enacted to safeguard the financial institutions and banks to recover it's assets. However, the impact of the Act on the corporate debtor can be quite contradictory to the legislative intent. Hence, the Act should be amended to include safeguards for the protection of the creditors and individual lenders.
- The Securities and Exchange Board of India has faced several impediments such as a)lack of the power of wiretapping calls b)under utilisation of power c) lack of employees.

  The power to call for phone records is extremely vital for identifying areas of insider trading. The board should thus, be endowed with the power to call for phone records. The presence of technology has presented new avenues for indulging in financial malpractices. The absence of power to call for phone records and for wiretapping calls can prove to be obstacles in eradicating malpractices from the securities market. The Sebi is also encountering the problem of insufficient number of employees. With the practices of financial irregularities constantly on the rise, it is imperative for to recruit adequately numbered employees.
- Furthermore, it is also important for the board to realize its full potential and to impose punishments proportional to the offence so as to reform the individual and to deter others from committing the same offence.
- To introduce a mandatory regime of Whistle Blowers Protection for unlisted private companies
- To have a stringent compliance policy to adhere to the Whistle Blowers protection policy
- To introduce a stringent policy and removing the obscurity around investigating into whistle blowers protection.

From the aforementioned discussion on financial irregularities, the term 'Financial irregularity' embraces within its purview multifaceted activities. It is an umbrella term and embraces within its purview a broad range of activities.

India has born witness to numerous such occurrences of instances of financial irregularities. Due to its multifarious nature, the mechanisms and the range of activities might appear to be non identical but are still very much part and parcel of the ambit of financial irregularities. The Indian legislature too has responded to the needs of the hour by adopting legislations suitable to specified arena of operation. However, it is only for time to tell whether the future of the nation would be replete with such occurrences or whether the nation would be a safe haven for the Indian markets and its participants.

BIBLIOGRAPHY

LIST OF BOOKS

M.A. H, *Black's Law Dictionary* (4th rev. Edn. West Publishing Co. 1968)

Gupta S, *Corporate Frauds and their Regulation in India (*Bharat Law House Pvt. Ltd. 2016)

Palmer's Company Law (25th Edn. Vol. 2, Sweet & Maxwell 2010)

Dr. Singh A, *Company Law* (17th Edn. Eastern Book Company 2018)

Justice Thomas KT, *The Indian Penal Code* (35th edn. Lexis Nexis 2017)

Ramaiya A, *Guide to the Companies Act* (17th rev. Edn. Butterworth Wadhwa,

Dutta CR, *The Company Law* (6th Edn. Lexis Nexis Publishers, 2010)

LIST OF JOURNALS

Osei A, 'Corporate Fraud: Causes, Effects, and Deterrence on Financial Institutions in Ghana'(2018) 14 European Scientific Journal

Barua S & Varma J, 'Securities Scam: Genesis, Mechanics and Impact' (1996) 9, Vikalpa

Bhasin M, 'Corporate Accounting Scandal at Satyam: A Case Study of India's Enron' ' (2013) 1European Journal of Business and Social Sciences

Chanchal, 'Satyam Scandal (A case study)'(2014) 5 International Research Journal of Commerce Arts and Science'

Chandok S, 'The growth Of SEBI- from Harshad Mehta to Subrata Roy' (2015) 1, International Journal For Legal Developments & Allied Issues

Dogra A,'Banking Frauds in India: Case Studies of Nirav Modi And Vijay Mallya Case' (2018) 6 IJCRT

Dogra A& Dogra M, 'Sustainability and Ethical Banking: A Case Study of Punjab National Bank' (2019) Amity Journal of Corporate Governance 4 (1), (15-27)

Devi S, 'Fraudulent Financial Practices - A Case Study of Vijay Mallya' (2016) International Journal of Economics And Business Management

Drew K and Clark K, 'Twentieth Survey of White Collar Crime: Article Corporate Criminal Liability' (1998), Crim.L. Rev. 1998,277

Gochchait S,. Tripathy P.C., 'A Case Study of Chit Fund Scam In India' (2015) 3(1) IJRMS

Ghosh S and Bagheri M, 'The Ketan Parekh Fraud and the supervisory lapses of the Reserve Bank of India (RBI): A case study)' (2006) 13(1) Journal of financial crime

Gupta S and Gupta S, 'Case Study From Riches to Rags: The Story of Vijay Mallya' (2017) 9 Pacific Business Review International

Kaur L,'PNB SCAM: Shining Diamond Trader Took Away PNB's Shine' (2020) 8 International Journal of Engineering Development and Research

Khandelwal V, 'Sahara India's Downturn; A Study on Awareness and Customer's Perspectives'

Kumar N and Mausam, 'Corporate Governance Regime in India: A Tale of Constant Emerging Challenges' (2017) National Capital Law Journal 145

Prakash V and Srivastava M , ‘Satyam Scam : Lesson from Corporate Governance’, (2012) 2 International Journal of Research in Economics & Social Sciences

Rao Medha and Babu Kishore, ‘A Case Study on Punjab National Bank Scam
(Is it only a scam or failure of the combined banking system?)16’ Journal of Xi' an Shiyou University, Natural Science Edition

Sharma JP and Goyal R, ‘Corporate Governance Failure of Five-Star Accredited “Kingfisher Airlines (2017) 14 Journal of IMS Group

Singh D and Gopalan P, ‘An Analysis of White Collar Crime in India: A Study’’, (2018) 7 International Journal of Trade and Commerce

Singh A & Gupta R, ‘Gem of Scam: Nirav Modi’ (2018) 19 Delhi Business Review

Tak I, ‘Impacts and Losses Caused By the Fraudulent and Manipulated Financial Information on Economic Decision’ (2011) 12 Review of International Comparative Management

LIST OF REPORTS

Company Law Committee, *Report of the Company Law Committee* (2019) para 1.1

Law Commission, *Twenty ninth report to include certain social and economic offences in The Indian Penal Code* (Law Com no.29,1966) para 6

Law Commission, *Forty seventh report on the trial and punishment of Socio Economic Offence* (Law Com No. 47, 1972) para 1.4

Report joint Committee on Stock Market Scam and Matters Relating Thereto’ (2002)

LIST OF THESES

Barik S, ‘An Analysis on the Role of Investigative Agencies and the Government to Prevent Corporate Frauds in India A Case Study on Satyam and PNB Scandal’ (PhD thesis, National Law University Odisha 2020)

Feizizadeh A, 'Capital market Fraudulent Financial Practices and Investor Protection Role of Sebi'(PhD thesis Osmania University2014)

Kataria P, 'Role of government in corporate governance in India a critical study' (PhD Thesis Kurukshetra University 2014)

Mallappa KB, 'An analytical study of corporate criminal liability under Indian legal system' (Ph.D Thesis, University of Mysore 2014)

PV A 'A study on the application of forensic accounting tools in progressive accounting practices for detection and prevention of fraud'(PhD Thesis, Hindustan University2016)
Rinku, 'Prevention and control of corporate frauds : a socio legal study of financial market in India' (Maharshi Dayanand University 2014)

Sharma R, 'Impact of corporate governance on financial performance of selected companies in India' (Guru Nanak Dev University 2012)

Srinivasan K., 'The Indian Financial cam of 1992: causes, consequences and lessons' (Jawaharlal Nehru University2020)

U S, 'Study of SEBI with special reference to effectiveness of provisions against frauds and malpractices in the share market' (PhD thesis, Swami Ramanand Teerth Marathwada University 2013)

LIST OF WEBSITES

A.C Fernado , "Satyam – Anything but Satyam"

http://www.publishingindia.com/uploads/samplearticles/mm-sample-article.pdf

Amrish Dogra & Manu Dogra, "Sustainability and Ethical Banking: A Case Study of PNB(2019)Amity Journal Of Corporate Governance
https://amity.edu/UserFiles/admaa/6561aPaper%202.pdf

Bajramg Lal, A "Case Studies" on Corporate Fraud in India – Sahara and Saradha'', https://bajrang75.files.wordpress.com/2017/07/case-study-sahara-and-saradha-b-s.pdf

Bhavana Sunder, Payel Chatterjee & Sahil Kanuga, "Whistleblowing in India: Are We There Yet?'', https://www.nishithdesai.com/information/research-and-articles/nda-hotline/nda-hotline-single-view/article/whistleblowing-in-india-are-we-there-yet.html?no_cache=1&cHash=b5747c0cd8db654635cb5ee27689acaa

Chanchal,''Satyam Scandal(A case study)'' https://www.academia.edu/10971389/SATYAM_SCANDAL_A_case_study_?auto=download

''Corrigendum to Notice of Attachment of Bank Accounts and Demat Accounts dated March 1, 2021 against 32 associates of PACL under Recovery Certificate No. 832 of 2015'',https://www.sebi.gov.in/enforcement/recovery-proceedings/mar-2021/corrigendum-to-notice-of-attachment-of-bank-accounts-and-demat-accounts-dated-march-1-2021-against-32-associates-of-pacl-under-recovery-certificate-no-832-of-2015_49550.html

''Data of Prosecution cases launched for violation of SEBI cases other than Collective Investment Schemes'', https://www.sebi.gov.in/sebi_data/attachdocs/aug-2018/1534135819755.pdf

Deloitte "Corporate Resiliency: Managing the growing risk of fraud and corruption A holistic approach", https://ficci.in/spdocument/20310/FICCI-Deloitte.pdf

Dr. Vijaya Lakshmi Kanteti, "Corporate Social Irresponsibility Towards Investors", https://www.worldwidejournals.com/paripex/recent_issues_pdf/2015/May/May_2015_1430744248__59.pdf

Dr. Meda Srinivasa Rao and Dr. B. Kishore Babu, "A Case Study on Punjab National Bank Scam'', https://amity.edu/UserFiles/admaa/6561aPaper%202.pdf

Dr. M Sree Rama Devi, ''Fraudulent Financial Practices - A Case Study of Vijay Mallya'' http://iaard.net/images/IAARD-Journals-IJBEM-2016-2(2)-237-240.pdf

Enforcement Directorate, "Faqs Frequently Asked Questions On The Prevention Of Money Laundering Act,*"* https://www.enforcementdirectorate.gov.in/faqs_on_pmla.pdf

''Financial Education Material''

https://investor.sebi.gov.in/fin-edu-mat/fem-workshop-material.html

"Financial Literacy Guide"
https://rbidocs.rbi.org.in/rdocs/content/pdfs/GUIDE310113_F.pdf

Fredrick Odhiambo Olongo, "The Effects of Financial Fraud and Liquidity On Financial Performance,"http://erepository.uonbi.ac.ke/bitstream/handle/11295/58568/the%20effects%20of%20financial%20fraud%20and%20liquidity%20on%20financial%20performance%20of%20commercial%20banks%20in%20kenya?sequence=3"

Functions'',https://www.enforcementdirectorate.gov.in/organisational_history.html?p1=1216121626037954631

Gaddam Naresh Reddy, ''Fraudulent Financial Practices and Investor Protection in the Indian Capital Market Role of Sebi",
https://www.osmania.ac.in/UGC%20MRP%20final%20Reports2018/FFP%20AND%20IP-PROJECT%20FINAL%20REPORT.PDF

"Golden Peacock leads a strategic tool to lead the competition,"

http://goldenpeacockaward.com/global-award-for-excellence-in-corporate-governance.html

Gyan Prakash Tiwari, ''Corporate Criminal Liability: An Analytical Study"

,https://www.researchgate.net/publication/341105952_CORPORATE_CRIMINAL_LIABILITY_AN_ANALYTICAL_STUDY

‘’Home’’, https://nclat.nic.in/

Henry Campbell, “Blacks Law Dictionary’’,

https://www.latestlaws.com/wp content/uploads/2015/04/Blacks-Law-Dictionery.pdf

Hunton Andrews Kurth LLP, “Satyam crisis highlights security and corporate issues for outsourcing customers’’
https://www.lexology.com/library/detail.aspx?g=51c6c41b-f461-4813-b667-e53e2321bda8

“Investor Trading Regulations: A Primer”,

http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/Insider_Trading_Regulations_-_A_Primer.pdf

“Insurance Fraud Monitoring Framework,”
https://www.irdai.gov.in/admincms/cms/LayoutPages_Print.aspx?page=PageNo1871

Isa Tak ‘’Impacts and Losses Caused By the Fraudulent and Manipulated Financial Information on Economic Decision’’
https://www.researchgate.net/publication/227490361_Impacts_and_Losses_Caused_By_the_Fraudulent_and_Manipulated_Financial_Information_on_Economic_Decisions

J.Balaji, “Lalu, Sharma disqualified’’
https://www.thehindu.com/news/national/lalu-sharma-disqualified/article5260738.ece

J.P Sharma “What Went Wrong With Satyam?”,

https://iodglobal.com/Articles/Inst%20of%20Directors-WCFCG%20Global%20Covention-Paper%20Prof%20J%20P%20Sharma-What%20Went%20Wrong%20With%20Satyam%20new.pdf

JP Sharma and Ruchi Goyal, "Corporate Governance Failure of Five-Star Accredited" Kingfisher Airlines,"
http://www.publishingindia.com/GetBrochure.aspx?query=UERGQnJvY2h1cmVzfC80NTk2LnBkZnwvNDU5Ni5wZGY

"Jurisdiction and Functions of Lokpal'', http://lokpal.gov.in/

Kavya Bhargava, " Satyam Scam : A case Study"
https://prezi.com/wbfypervlfu8/satyam-scam-a-case-study/

Legal Correspondent, "U.K. has said it cannot extradite Vijay Mallya, Centre informs Supreme Court''
https://www.thehindu.com/news/national/uk-has-said-it-cannot-extradite-vijay-mallya-centre-informs-sc/article33600253.ece
.

Lovejit Kaur, "PNB SCAM: Shining Diamond Trader Took Away PNB's Shine'' https://ijedr.org/papers/IJEDR2001010.pdf

Madan Basin "Corporate Accounting Scandal at Satyam: A Case Study of India's Enron"
https://www.researchgate.net/publication/_ACCOUNTING_SCANDAL_AT_SATYAM_A_CASE_STUDY_OF_INDIA'S_ENRON

Matseki Muhwezi, "The Case for Criminal Liability",

https://www.academia.edu/29045498/THE_CASE_FOR_CORPORATE_CRIMINAL_LIABILITY

Michael Levi, "Organized fraud and organizing frauds: Unpacking research on networks and organization"
https://journals.sagepub.com/doi/pdf/10.1177/1748895808096470

Ms Sweety Gupta and Mr. Shiv Gupta , "Case Study From Riches to Rags: The Story of Vijay Mallya", http://www.pbr.co.in/2017/2017_month/Jan/22.pdf ''

Ministry of External Affairs, "Overview of The Indian Economy",
https://www.indembassyisrael.gov.in/pdf/Overview_of_Indian_economy.pdf.

Mohamed Bechir Chengue, "Financial Fraud and Managers, Causes and Effects", https://www.researchgate.net/publication/346444930_Financial_Fraud_and_Managers_Causes_and_Effects

Ministry of Corporate affairs, "Press Release",
http://www.mca.gov.in/Ministry/pdf/pressReleaseILFS_01102018.pdf

"Organisational History'',
https://www.enforcementdirectorate.gov.in/organisational_history.html?p1=1216121626037954631''

Petter Gottschalk and Gunnesdal Lars , ''White-Collar Crime Research'',

https://www.researchgate.net/publication/323939569_White-Collar_Crime_Research

''Public Service Recognition Week'' https://www.sec.gov/spotlight/sec-employees.shtml

"Ramalingam Raju EX CEO, Chairman and founder of Satyam,"
http://ramalingaraju.blogspot.com/2010/11/ramaling-raju-profile.html

Rangana Mitra and Mayuri Asamwar , “Merger of Tech Mahindra and Satyam Computer Services Ltd. with specialreference to HR Issues’’ , http://www.iosrjournals.org/iosr-jbm/papers/ies-mcrc-volume-2/14.pdf

“Report joint Committee on Stock Market Scam and Matters Relating Thereto”, http://loksabhaph.nic.in/writereaddata/InvestigativeJPC/InvestigativeJPC_635612541266248975.pdf

“Reserve Bank of India's Financial Education ‘Initiative’’, https://www.rbi.org.in/FinancialEducation/Home.aspx

‘‘Reserve Bank Cancels the Licence of The Madhavpura Mercantile Co-perative Bank Ltd., Ahmedabad (Gujarat)”, https://www.rbi.org.in/scripts/BS_PressReleaseDisplay.aspx?prid=26606

Samir K. Barua & Jayanth R. Varma, “Securities Scam: Genesis, Mechanics and Impact’’, https://faculty.iima.ac.in/~jrvarma/papers/vik18-1.pdf.

Saptarshi Ghosh and Mahmood Bagheri , “The Ketan Parekh Fraud and the supervisory lapses of the Reserve Bank of India (RBI):A case study)’’ https://www.academia.edu/10925909/The_Ketan_Parekh_Fraud_and_Supervisory_Lapses_of_the_Reserve_Bank_of_India_RBI_A_Case-Study

“SEBI Annual report”, https://www.sebi.gov.in/sebi_data/attachdocs/1378192045802.pdf

“Satyam Computer Services Limited” https://www.ibef.org/download/Satyam.pdf

Simran Chandok, “The growth Of SEBI”, https://thelawbrigade.com/wp-content/uploads/2019/05/simran-chandok.pdf

Srijoy Das Archer & Ange ‘‘The Curious Case of Satyam Computers: the story behind India’s biggest corporate scandal’,
http://www.archerangel.com/wp-content/uploads/Resources2015811111128.pdf

Sunil Dasgupta and Daresh Parekh, “Stock markets face downslide as investors lose money and issues bomb’’
,https://www.indiatoday.in/magazine/special-report/story/19930531-stock-markets-face-downslide-as-investors-lose-money-and-issues-bomb-811119-1993-05-31

“Vanishing Companies” ,https://mca.gov.in/MinistryV2_hn/vanish_west.html

Wamick Aijaz, “Essay on Kingfishers airlines”
https://www.researchgate.net/publication/344742979_Essay_on_Kingfisher_Airlines_Scandal_Kingfisher_Airlines

‘‘What we do’’,(*Govt. of Assam Home and political Vigilance and anti corruption)*
https://dgvigilance.assam.gov.in/about-us/our-history-5

“Who we are’’, https://www.ilfsindia.com/about-us/group-profile/