
A BRIEF ANALYSIS ON THE FINANCIAL CRIMES COMMITTED BY INDIVIDUALS

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CHAPTER I: INTRODUCTORY

1.1.INTRODUCTION

The Instances of financial fraud has arisen as an unavoidable product of economic growth. Exploiting the fundamental human ascribes of desire and ravenousness, the scammers have defrauded millions across the world. They exploited the absence of financial literacy among the majority of people. The Global Economy is loaded with such instances and India also has its fair share of such instances. From the recent cases, it can be seen that the combining factors including the recent trend of globalization integrating the financial markets all over the world as well as the deterioration of the social controls and values, has aided this upsurge in financial crimes. On the other hand, the advancement in technology gave rise to the quantitative as well as serious crimes. 1992 Scam¹, Satyam scam², 2G Spectrum scams³ are examples of how these financial crimes had been cancerous towards the Indian Economy and how it is an utmost need right now to protect our economy from such crimes.

What is Financial Crime?

“Economic Crimes known as financial crimes involve crimes committed through deceit and are usually motivated by financial gain. It often involves the unlawful conversion of the ownership of the property to one’s own personal use. What separates them from common theft or robbery is the abuse of a position of trust.”⁴

Financial Crimes by Individuals:

“Financial crime can be committed by an individual through bribery, embezzlement, identity

¹ “SC upholds Harshad Mehta’s Conviction”, Times of India, 14th January, 2003.”

² “Satyam scam: All you need to know about India's biggest accounting fraud, Hindustan times, available at <https://www.hindustantimes.com/business/satyam-scam-all-you-need-to-know.html>”

³ “2G SCAM EXPLAINED, News18, available at <https://www.news18.com.html>.”

⁴ Definition of Financial Crimes, ICA (International Compliance Association).

theft, forgery, etc.”

This paper is motivated by the desire to bring the concept of financial crime into standard contemplating financial sectors in the fields of financial social science and political economy.

1.2.REVIEW OF LITERATURE

Dr. Madan Lal Bhasin⁵, in his paper, has provided an insight towards the Satyam Scam- one of the biggest case of financial crime in India and discussed the impact of these crimes in the downfall of economy. However, there is a scope of further in-depth analysis of the situation of the society and research accordingly to find out how the administration and legislation can be improved to fight all those problems.

Prof. Chandar H. Rohra⁶, has discussed the evolution of the crimes in financial sectors discussing the motivating factors and their impacts, providing few preventive strategies to fight financial frauds. However, the strategies rather focused on preventing the crime and failed to provide suggestive measures to be taken after the crime has happened.

Vanshika Rathore⁷, in her article has described the concept of financial crime followed by a discussion on the laws and regulatory framework available for these crimes in India. The article addresses the vulnerability of the financial institutions and the modus operandi behind these crimes. The only limitation of this article is that it article fails to address any suggestions to secure a better environment which leaves out a scope of further analysis and research.

Jisha James and M. Kannappan⁸ had introduced the concept of frauds and forgery basing his research upon the banking industry in India. He has further contributed a dimensional approach in frauds and corruptions in prior times comparing it with the current time as well as analysed the legislative framework available in India to protect those financial institutions and

⁵ “Dr. Madan Lal Bhasin, *Fraudulent Reporting Practices: The Inside Story of India’s Enron*, Vol. 5, Issue 10, International Journal of Management Sciences and Business Research, Oct-2016, ISSN (2226-8235)”

⁶ “Prof. Chandar H. Rohra, *An Insight of The Evolution of Financial Frauds In India*, Vol. 2, Issue 2, Episteme: an online interdisciplinary, multidisciplinary & multi-cultural journal, Bharat College of Commerce, Badlapur, MMR, India, ISSN (2278-8794)”

⁷ “Vanshika Rathore, *Laws related to Financial Crimes in India*, Legal Desire, (Oct 22, 2020), <https://legaldesire.com/laws-related-to-financial-crimes-in-india/>”.

⁸ “Jisha James and M. Kannappan, *A Study on Frauds, Forgery and Corruption based on Banks and Financial Institutions in India*, Volume 119, International Journal of Pure and Applied Mathematics, 2018, ISSN (1314-3395)” .

their loopholes. However, the study is limited in a sense that it only addresses the problem with the Banking sector leaving out the wider scope of research with other financial institutions.

1.3.RESEARCH METHODOLOGY

The topic of this paper requires an in-depth perception which can only be obtained through the help of materials available in forms of books, scholarly papers and case analysis. Hence, the research methodology that will be used in this article is doctrinal research and researcher will mainly use secondary data sources⁹ for the preparation of this research article. No primary data or first-hand information will be used in this research work. The sources and other references of the cases studies mentioned in this research project will be taken from authentic legal databases and will be referred in the bibliography.

1.4.RESEARCH QUESTIONS

The research questions upon which the researcher has based further continuation of the present paper, are mentioned below:

Question 1: *Whether the existing regulatory provisions and legislations dealing with Financial Crimes are effective enough to properly safeguard the Financial Sector? If no, then what measures can be taken for it?*

- What constitutes financial crime?
- Which field of law is most appropriate to address the threats of misdemeanour by financial executives?
- Whether the existing legislations regulating financial crimes are preventive or, counteractive in nature?
- What are the loopholes of the current legislative framework for financial crimes?

Question 2: *What are the causes and factors behind the upsurge of these financial crimes in India?*

- What factors motivate an individual financier to become a criminal?
- Whether the political extremism intersects with the financial crimes committed in India?

⁹ Secondary sources include articles on Protection of witnesses and Indian journals and the primary sources will include statutes and bare acts.

Question 3: *Whether the rising instances of financial crimes indicating towards the vulnerability of the financial institutions and the protective mechanism available?*

CHAPTER II: MAIN BODY OF THE PAPER

2.1.ASPECTS OF FINANCIAL CRIME BY AN INDIVIDUAL AND EXTENT OF THE PROBLEM

The term “economic offence” refers broadly to a non-violent crime which ends in a monetary loss, though at times such losses might be hidden or perhaps not socially perceived as a result. Nevertheless, the class of "economic crime" escapes simple description and its specific conceptualization is still a struggle. The possible damage caused by financial and economic crime is now more and more clear over the past ten years with a series of high profile cases in India as well as in all over the world which has seriously damaged the credibility of a variety of financial institutions and companies, resulting in bankruptcy, loss of serious damage and jobs to each individual and institutional investors.

Extent of financial crimes in India

Because of the absence of an accepted and clear idea of financial and economic crime, it's tough to figure out the entire degree of the trend and whether it's currently far more common than in previous seasons.¹⁰ Collecting such data is actually in any case complicated by the reality that methods for recording financial and economic crime differ significantly from country to country.¹¹ Offences in that wide category can also be identified in ways that are different, and with various constituent components, or perhaps may in several jurisdictions not be discussed at many by the law.

Also, reporting fees are usually lower for economic crimes as compared to for some other crimes, provided that in a lot of serious cases businesses and economic institutions choose to deal with incidents internally to stay away from public scrutiny or maybe unfavourable exposure. Importantly, information in cases reported or perhaps found by the authorities rarely provides a sign of the range of the financial loss incurred. If effective, such crimes might go undetected - a recently available quote implies that just twenty per dollar of frauds, for instance, are actually known to the general public - or maybe might merely be recognized as part of doing politics or business in a few societies or even tolerated due to the worry of reprisals against

¹⁰ “Beware of financial fraud on social media, Economic Times, 21st March, 2016.”

¹¹ “Gottfredson, M. and Hirschi, T, *A General Theory of Crime*, Stanford University Press, Stanford, 1990.”

people who state them. These elements make reaching a precise assessment of the issue difficult.

2.2.FACTORS ENCOURAGING THE MODUS OPERANDI OF THESE CRIMES

Within the developing world, nonetheless, due to the weak point of institutions in several places, the long-term effect on and expense of financial and economic crime for sustainable growth are quite higher. In fact, many developing nations are especially vulnerable to financial and economic crimes, provided a selection of elements, which includes poor regulatory frameworks and limited federal government capacity. However, the key factors encouraging such kind of crimes are discussed below:

➤ ***Technological advancement:***

In this era of technology where hacking, data retrieving are very common, it does not take much for a person to gather information about another person to hack into his financial statements. With the advanced technology, the number of crimes have also been increased and due to certain advanced technology, it's often easier to commit financial crimes in online pay portals like google pay, phonepe, paytm, paypal etc. and in such cases, the identity of the person committing the crime can be hidden well enough not to be traced. Hence, this became one of the major factor encouraging this upsurge in financial crimes in all over the world.

➤ ***Lack of preventive mechanism:***

Lack of preventive mechanism is one of the major factor in the rise of these crimes since most of our population lack awareness for such financial frauds due to which often fall prey to those crimes very easily. Also, the existed legislations does not provide any preventive measures for such cases.

➤ ***Statutory loopholes:***

The statutory loopholes often allow the financial offenders to walk away without even getting a single scratch. Before the enactment of Money Laundering Act and Fugitive Offenders Act, there were hardly any provision which properly deals with financial crimes and the existed legislations were faulty and full of loopholes giving them a scope of walk away free.

➤ ***Corruption:***

In India, corruption is one of the biggest factor behind these financial crimes since the criminals often get away with their crimes using their monetary power by way of bribing the officials and

hence, even after conviction, there lies lack of application of that which results in the criminal walking away.

2.3.EXISTING LEGISLATIONS FOR PROTECTION FROM FINANCIAL CRIMES

The legislations regulating financial crimes by individuals are discussed herein-

- ***Indian Penal Code 1860 (IPC)***¹²

Although the Indian Penal Code is certainly not a statute deals exclusively with “financial crimes” yet it has some economic offences in its arrangements. The punishments are additionally expressed alongside the crimes to limit the commission of such violations in the general public. IPC deals with financial crimes like fraud, counterfeiting coins, criminal breach of trust etc.

- ***Income Tax Act***¹³

Income Tax Act deals with financial crimes like tax evasion and provides punishment for such crime like a hefty penalty amount or, even in some cases, imprisonment up to 7 years.

- ***Prevention of Corruption Act***¹⁴

This act was enacted in order to prevent corrupt practices of the government official. Although it is not specifically addressed for financial crimes, few of the provisions of the act addresses financial crimes like bribery and hence, it is considered important.

- ***Banking Regulation Act***¹⁵

This Act was specifically enacted to deal with financial crimes related to banks but few provisions of the Banking Regulation deals with these financial crimes like bank frauds, wrongful transaction, fraudulent bankruptcy, illegal trading etc.

- ***Foreign Exchange Regulations Act***¹⁶

This act was a supplementary before the enactment of Money laundering act for addressing cases of money laundering by individuals and it is considered to have paved the way for enactment of the Money Laundering Act in 2002.

¹² “Indian Penal Code, 1860 § s. 232, 409, 420.”

¹³ “Income Tax Act, 1961 § s. 139(1).”

¹⁴ “Prevention of Corruption Act, 1988 § s. 8.”

¹⁵ “Banking Regulation Act, 1949, § 8, No. 10, Acts of Parliament, 1949 (India).”

¹⁶ “Foreign Exchange Regulations Act, 1973.”

- ***Money Laundering Act***¹⁷

The Money Laundering Act was enacted in 2002 to specifically deal with cases of money laundering and it aims to “to prevent money-laundering and to provide for confiscation of property derived from money-laundering”.

- ***Fugitive Economic Offenders Act*** ¹⁸

The Fugitive Economic Offenders Act was enacted by the Govt. in 2018 for the sole purpose of dealing with “the economic offenders that escape criminal prosecution right after committing economic offences”. According to the act, a fugitive economic offender was identified as “someone who is involved in an economic offence and a warrant is issued against them for an immediate arrest”.

2.4.IMPACT OF THESE FINANCIAL CRIMES ON SUSTAINABLE DEVELOPMENT

However, a mountain of evidence and research, nonetheless, suggests that it is impossible for a nation to attain sustainable economic development through unlawful economic exercise. Increasing national incomes doesn't really arise from the acquisition for financial assets by criminality. Evidently, the majority of the wealth amassed from crimes, especially economic crime, is the product of a redistribution of lawfully obtained income or assets to criminals. Rise of financial crimes leave certain impact on a Nation and its economy which often becomes a bar in attaining sustainable development.

Weaker economy¹⁹:

Overstepping financial laws might be positive as well as even important in nations where organizations and the legitimate and legal framework forestall the improvement of current business sectors and monetary development. While in the momentary such exercises may make abundance, in the more extended term they significantly affect the social orders wherein they happen. At the point when business undertakings become capable at utilizing unlawful crimes to additional their business advantages and, thusly, power any contenders to do likewise, the general outcome is the contortion of the genuine financial market.

¹⁷ “The Prevention of Money-Laundering Act, 2002 § s. 3, Acts of Parliament (India).”

¹⁸ “The Fugitive Economic Offenders Act, 2018.”

¹⁹ “White Collar Crime Survey, Indian National Bar Association, available at <https://www.indianbarassociation.org/wp-content/uploads/2020/01/White-Collar-Crime-Survey-2019.pdf>”

Barring socio-economic development²⁰:

Economic offences represent a genuine long haul danger to serene and vote based financial advancement in numerous nations. While in the momentary such violations normally have costs that are quantifiable, in the event that they happen more than once over the long haul, their effect—while less immediate—turns out to be substantially more genuine, holding the possibility to subvert the viable working or union of majority rules system, responsibility and law and order. Monetary and monetary wrongdoings bring basic contortions into unregulated economy economies. Legitimate financial practices are sabotaged by presenting falsely high components of hazard in venture and business dynamic, just as giving impetuses to people to get rich rapidly outside the proper designs of the managed economy.

Unequal distribution of wealth²¹

The execution of economic offences has various direct expenses in non-industrial nations. Most prominently, such violations regularly genuinely affect poor people, given that they bring about the redirection of assets from government. In agricultural nations, normal residents, with few reserve funds or assets to assimilate the results, are, for instance, misled by limited scope misrepresentation at an impressively more elevated level than their partners in created nations.

Rise of Financially corrupt society²²

When created, criminal associations have a need to build up a social encouraging group of people in the public eye. Such organizations have numerous reasons: they work with unlawful economic action; keep contenders from going into similar business sectors; ensure tax evasion frameworks and ventures made with assets of illegal birthplace; and safeguard criminal pioneers from law requirement endeavours. Social encouraging groups of people incorporate gifted people required in the criminal behaviour and those needed to permit the criminal behaviour to be performed. The outcome is a generally undermining of society, with the monetary compensations which become political sometimes, of taking an interest in the illegal area frequently more prominent than for those taking part in the licit economy.

²⁰ “Achim M.V. & Borlea S.N., *Economic and Financial Crime: Theoretical and Methodological Approaches*. In: *Economic and Financial Crime. Studies of Organized Crime*, Springer, Cham., vol 20., p.3, 2020, available at https://doi.org/10.1007/978-3-030-51780-9_1”

²¹ “Aubert, V. (1956), *White-Collar crime and social structure*, American Journal of Sociology, Vol. 58 No. 3, pp. 263-271.”

²² “Fighting Financial Crime, OECD, available at <https://www.oecd.org/ctp/fightingfinancialcrime.htm>”

2.5. JUDICIAL PERSPECTIVE ON FINANCIAL CRIMES

In this technologically evolved world, despite the seriousness of this kind of instances, the effect may be found, provided both the dimensions of the economies in what they've occurred and the capability of the places concerned to put inappropriate regulatory mechanisms to keep the occurrence of more incidents. In order to understand the judicial perspective of these crimes, some landmark cases where financial crimes were committed by individual, are discussed herein,

➤ *Harshad Mehta Scam*²³

Harshad Mehta scam was one of India's biggest financial scam where Mr. Harshad Mehta, an wealthy Indian stockbroker, was charged with several monetary crimes which captured spot in 1992. Of twenty seven criminal costs brought from him, he was just convicted of 4, ahead of the death of his at giving age range forty seven within 2001.²⁴ Mehta was convicted with the Bombay High Court along with Supreme Court of India for the part of his within a monetary scandal estimated during 49.99 billion that got spot on the Bombay Stock Exchange (BSE). The scandal uncovered the loopholes within the Bombay Stock Exchange (BSE) transaction program as well as SEBI more launched brand new guidelines to go over the loopholes. He was experimented with for nine years, unless he died within late 2001

➤ *"Vijay Mallya Scam"*²⁵

Vijaya Mallya is the owner of Kingfisher Airlines He took credits of 9000 crores by 17 banks. In spite of the fact that SBI has pronounced them as bankrupt different banks continued loaning him credits since he was an individual from Rajya Sabha and a few gatherings upheld him. His organization kingfisher additionally - held help duty of travelers, PF, Income Tax of Employees, yet didn't submit to the PF or IT specialists. The organization additionally didn't pay the compensation of its representatives or ran out of money. In 2012 the organization needed to close down its activity. Vijay Mallya had a credit of 9000 from various banks and he denied to pay this advance. Although, before the court come to a decision, he fled to England and claiming to acquire british citizenship and hence, could not be extradited at the time. He was declared as a fugitive offender by the Indian Govt.

²³ "Harshad S. Mehta & Ors vs The State Of Maharashtra, 319-320 of 1996 (2001)."

²⁴ "Harshad Mehta: From Pied Piper of the markets to India's best-known scamster, Sucheta Dalal, 31st December, 2001."

²⁵ "Dr Vijay Mallya vs State Bank Of India, W.P.No.22111/2018."

➤ **“Nirabh Modi Scam”²⁶**

The Punjab National Bank trick identifies with false letter of undertaking worth Rs 10,000 crore gave by the bank. The critical blamed for the situation were diamond setter and planner Nirav Modi, his maternal uncle Mehul Choksi, and different family members and some PNB workers. Nirav Modi and his family members got away from India in mid-2018, days before the information on the trick got public. PNB trick has been named as the greatest misrepresentation in India's financial history.

➤ **“Ketan Parekh Scam”²⁷**

Ketan Parekh, prevalently known as KP, is a previous stock merchant from Mumbai, India, who was sentenced in 2008, for association in the Indian securities exchange control trick in late 1999-2001. As of now he has been suspended from exchanging the Indian stock trades till 2017. Parekh is claimed to have been engaged with roundabout exchanging for the duration of the time span and with an assortment of organizations, including Global Trust Bank and Madhavpura Mercantile Cooperative Bank.

From these cases, it is very evident that although Judiciary never fails to convict the financial offenders but it is more theoretical than practical since these economic offenders, even after receiving convictions, often get away with crime committed with their monetary power and taking advantage of the statutory loopholes.

CHAPTER III: CONCLUDING REMARKS

3.1.CONCLUSION

Associations are confronting various difficulties in the current economic situation. They continually manage pressing factor of questionable business sectors, heightening information costs, high work turnover and coming of innovation. Also, organizations need to satisfy rising customer need across item classifications with value development. Such difficulties place further tension on organizations and their colleagues. Such pressing factors may give opportunity and motivations to fraudsters to submit fakes. Employing dependable administration and building associations with certifiable customers, providers and accomplices are of most extreme significance for associations.

²⁶ “Nirav Modi vs The State Of Maharashtra And Anr, (901)APLNo.15052019.doc.”

²⁷ “Ketan Parekh v. SEBI, Appeal no. 2 of 2004.”

The absence of right foundation data can prompt both standing and business hazards. Successful personal investigations of workers and partners are in this manner suggested. It is troublesome yet in addition important to coordinate information from different sources to have the option to infer the advantages of investigation strategies. Monetary establishments do confront difficulties in keeping up the effectiveness of against extortion security controls at an undertaking wide level. Difficulties emerge while incorporating channels or inside applications and instruments. The tone at the top is basic in the battle against misrepresentation. Absence of client and additionally staff mindfulness can bring about disappointment of even the best of innovation arrangements. It requires a coordinated exertion to have the option to fabricate, keep up and support a viable misrepresentation hazard the board program. The previous decade has seen a lofty ascent in the associations which have confronted an expanded danger of extortion openness.²⁸ With any adjustment of the climate of the organizations, the need to adjust to these progressions is an essential to accomplish maintainable development.

Hence, in such a situation, business associations should prepare themselves against extortion dangers and openness through a methodical program of misrepresentation hazard appraisal, checking, episode reaction and remediation. Nonetheless, organizations alone can't battle the events of fakes. It is basic that the public authority and other law requirement offices guarantee the compelling execution of the laws. This further suggests the battle to diminish defilement and pay off in government organizations itself. Activities for extortion mindfulness and schooling among residents should be embraced also. Hence, obviously the issue of monetary fakes is a hard squeezing one that needs prompt consideration, to totally moderate it from its underlying foundations.

3.2.RECOMMENDATIONS

After analysing all the points discussed above, the author hereby has made these recommendations for ensuring a more secure society by battling financial crimes-

- There should be **stricter punishments** for such financial crimes which might set a precedent for the future offenders for an understanding of the gravity of their crimes and the impacts.

²⁸ “Financial crime in India: overview, Thomson Reuters practical law, available at <https://uk.practicallaw.thomsonreuters.com/>”

- The Administration should rather focus on **proper application of the laws** rather than enacting the laws. They need to strengthen the criminal justice system as well to omit the scope for bribery and negligence.
- The Govt. should introduce a curriculum on financial management for the purpose of **spreading awareness amongst people** who often became victim due to their lack of knowledge on such things.
- A new and **improved protection mechanism** is much needed in order to provide better security to people and prevent such financial frauds.
- The financial sectors including banking and trading industry should be more careful in keeping proper records of the transactions and provide **transparency**.

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