AN ANALYSIS OF FINANCIAL CRIMES

G Vijaya Bala Kartheek, School of Law, Mahindra University

ABSTRACT

Financial crimes pose a significant threat to the stability and integrity of financial systems worldwide. This research paper aims to examine the nature, impact, and legal framework surrounding financial crimes with a particular focus on the Indian context. By utilizing the Indian Penal Code (IPC), this study explores various objectives including understanding the types of financial crimes, analyzing their consequences, and examining the role of the IPC in combating such offenses. Through a comprehensive analysis, this paper aims to provide insights into the challenges faced and suggest potential solutions to mitigate the occurrence of financial crimes in India. As the term suggests, financial crime refers to money-related crimes committed by an individual or a group of individuals against the state and its authorities. Financial crime is the manifestation of organized criminal acts with the intention of obtaining wealth by illegal means. The term "illegal" here includes the violation of any statutory or statutory law. There is no specific general definition of financial crime, so it would be correct to have a personal interpretation of what it means to include any conduct carried out with the intent of unlawful financial gain. It can be asserted that no crime can be attributed to having a positive impact on society. Similarly, financial crime has serious negative consequences on the national economy. It has a multifaceted impact on the country's economic growth and development. It undermines the country's stability and affects its international reputation.

Introduction

Financial crime is a white-collar crime that affects the public and has a negative impact on the economy as a whole. Usually, these frauds involve scammers abusing or manipulating public funds to make huge profits for themselves. With advances in technology, cases of financial fraud are on the rise. We have witnessed massive financial frauds carried out by scammers like Vijay Mallya, Harshad Mehta [i1]Harshad S. Mehta vs Central Bureau Of Investigation and Nirav Modi. Financial scams in cyberspace are no less formidable. Fraudsters use the anonymity provided by the Internet to carry out online scams like KYC fraud, identity theft, etc. Recently, technology has become the weapon of choice for scammers. Financial crimes can be committed by an organization (public/private) like a bank through tax evasion, money laundering, insurance fraud, market manipulation, etc. An individual (including public servant) corrupts, embezzled, forged, etc.

TYPES OF FINANCIAL CRIMES

With every second, the global economy becomes more complex and the scale of financial crime increases with it. This section provides an overview of some types/forms of financial crimes and their related laws in India.

It is therefore important for every business in the financial services industry to be aware of the potential threats they face and the measures they need to take to protect against these events. Here are some of the different types of financial crimes.

FRAUD

'Fraus Omnia Vitiate' - Cheating destroys everything.

Fraud in the broadest sense is an intentional deception done for personal gain or to harm another person/organization. Section 17 of the Indian Contracts Act defines fraud as “17. Define "cheating". - "Fraud" means and includes any of the following acts committed by or in connection with a party to the contract, or by its agent1, with the intent to deceive another party or their agent, or instigating the conclusion of a contract: -”

[1] Harshad S. Mehta vs Central Bureau Of Investigation ,1998 (5) BomCR 783,

But what drives fraudulent activity, one might ask?

Cheating is motivated by greed. Furthermore, opportunities to commit such a deceptive practice may arise due to a weak control environment within an organization.

Corporate fraud occurs when a company or organization intentionally alters and conceals sensitive information. Companies use a variety of methods to commit such corporate fraud, which can include false information in prospectuses, manipulation of accounting records, concealment of debts, and more.

Resents scams in India

- **Maharashtra Bank Scam: Rs 836 crore**

It is alleged that from 2012 to 2014, Maharashtra Bank sanctioned various credits to drivers of Siddhi Vinayak Logistics Limited which they never knew. The company cheated the loan amount and did not use the loan for the purpose that was sanctioned. CBI has asked the agent of Maharashtra Bank, Padmakar Deshpande, as well as the director of a private logistics company based in Surat, Siddhi Vinayak Logistics Limited, in connection with the bank fraud of Rs 836.

- **Syndicate Bank Scam: Rs 1,000 crore**

Nine people including a former Syndicate Bank executive have been arrested for allegedly opening 386 accounts at three Syndicate Bank branches in Rajasthan and 'fraud' bank Rs 1,000 using counterfeit checks, letters of credit and LIC policies.

- **ICICI Videocon scam: Rs 1,875**

ICICI Bank CEO Chanda Kochhar, her husband Deepak Kochhar and Videocon Group MD Venugopal Dhoot have been accused of causing irregularities in the bank's loans to group in 2012. ICICI Bank has sanctioned loans worth Rs 1,875 crore to Videocon Group and its affiliated companies. Most of these loans were found to be in complete violation of banking regulations and ICICI Bank policies.

Fraud Law in India

Bank fraud is a genuine problem for the country. But the rate of development of an effective mechanism to combat it is negligible. Bank fraud affects the quality of modern life and has a negative impact on national growth. Both the Reserve Bank of India and the government of India can develop several strategies to reduce the risk of bank fraud. However, these strategies can only be effective if they support the development of a more efficient banking system. In fact, in the banking system, fraud is one of the areas that need immediate and urgent attention. The IPC of 1860 does not recognize bank fraud as a separate offence. Different provisions of IPC 1860 are introduced depending on the circumstances of each bank fraud case. This shows that up to now, there is no independent law to deal with banking frauds independently and comprehensively. In general, bank fraud is a type of white-collar crime committed by unscrupulous people who take advantage of existing loopholes in the current banking system and procedures. In the absence of an independent law to combat bank fraud, the general criminal law in India, i.e., the IPC, provides various provisions to deal with this confusing issue. Bank fraud is an activity that combines many civil and criminal factors, negatively affecting the interests of the public, public money, and the state treasury. Given the above, the document is an attempt to highlight laws and policies related to bank fraud. The author will scientifically demonstrate with a few cases that there is an existing legislative void that needs to be filled. At the end of the document, some hints are also provided.

BRIBERY AND CORRUPTION

Corruption has infiltrated every institution in India, there is no denying it. A fear that the system is so damaged that it is almost impossible to be honest with it. According to a recent study by Transparency International, a Berlin-based NGO dedicated to fighting corruption, India is "the most corrupt country in the Asia-Pacific region". According to research, seven out of ten people in India pay a bribe to gain access to public services. (Your Story, 2017)

MONEY LAUNDERING

Under the Prevention of Money Laundering Act 2002 (PMLA), the offense of money laundering is defined as directly or indirectly, an attempt to engage in, attempt to knowingly assisting, knowingly becoming a party to, or participating in any process or activity involving proceeds of crime, including concealing, possessing, acquiring, or using them, and expected or declared it to be intact property.

Money laundering, commonly known as Hawala transactions in India, involves concealing the true origin of "dirty" money. Prior to the enactment of the Anti-Money Laundering Act 2002, this violation was covered by violations of foreign exchange rules under the FERA.

The Executive Director (ED) and Director of the FIU, may exercise exclusive powers granted under the PMLA to prosecute and investigate matters. money laundering issue. The FIU is an independent agency that reports directly to the Economic Intelligence Council and is responsible for coordinating national and international investigative and enforcement agencies to pursue global anti-money laundering and anti-money laundering efforts. related crimes.

The Income Tax Act of 1961 also provides for certain requirements for certain professionals to keep books of accounts and other supporting documents for financial disclosure and recordkeeping requirements. Shared.

Money Laundering Laws in India

The Indian regulatory framework includes several laws aimed at regulating and minimizing the risk of money laundering. The most recent addition belongs to the 2019 Loi de Finances (Finance Law), which was adopted to implement the central government's fiscal proposals for the 2019-2020 financial year. The Finance Act in its Section XIII introduced provisions to strengthen the Anti-Money Laundering Act 2002 (PMLA) interesting to look at the money laundering cases that have recently caused a stir.

- **ABG Shipyard Case**

A company based in Gujarat, ABG Shipyard Ltd. (ABG SL), banks accused of fraud 22,842 INR crore (approx 3 billion dollars). The company allegedly created a trading network to deceive a consortium of 28 banks led by the State Bank of India (SBI) and ICICI Bank. According to the Central Bureau of Investigation (CBI), ABG SL received loans from banks and then used them for other purposes. ABG SL is alleged to have invested in overseas subsidiaries with loan proceeds, purchased assets on behalf of affiliated companies and also transferred funds to a number of related parties. A forensic examination with the assistance of Ernst and Young was carried out by SBI in January 2019, where it was found that the fraud took place over a period of 5 years, from April 2012 to July 2017. The results of the audit report further revealed that the fraud was committed by "embezzlement, embezzlement and criminal breach of trust for the purpose of illegally profiting from the bank's funds". Although fraud was identified in June 2019 by the SBI Fraud Identification Committee, the first complaint was filed with the CBI much later, in November 2019.

TERRORIST FINANCING

As the name suggests, terrorist financing is the illegal transfer of money to terrorist organizations. One of the key aspects of the war on terror for any country is to stem the flow of money spent on terrorism. In India, more and more resources and efforts must be devoted to launching the financial war against terrorism. This is a much more secretive and different operation as terrorist financiers purposely do not spend large amounts of money at a time to avoid the attention of governments as well as financial institutions.

Insurance fraud

Insurance fraud occurs when a claimant attempts to make a false claim from an insurance company to which they are not entitled, or when the insurance company knowingly and lawfully denies a claim. demand caused by the plaintiff. Insurance fraud can also occur in other forms such as selling policies from fake insurance companies, falsifying medical history, impersonating, changing the cause of death to claim due to an accident. accident, etc.

Identity theft and identity fraud

Simply put, identity theft is the use of someone's identifying information without their permission. Identity theft occurs when someone steals your personal financial information, such as your bank account number, by deception and uses that information for economic gain. This can happen in several ways, such as in a public place when glancing over your shoulder where a scammer catches you typing your CVV code into your phone, etc. or when you choose to reply to spam that promises you a reward but asks for your login information and personal data first. Identity theft can be done simply by guessing your password or accessing your details from your social network, or it can involve complex methods like installing software. malware, etc. Your personal details such as bank account numbers or credit card numbers will then be used to make fraudulent withdrawals. your account. Fraudsters can use your information to open credit accounts on your behalf, making you liable for fees. Identity theft leads to identity theft when fraudsters impersonating you use your stolen information to access accounts and receive financial services.

Examples of identity theft include stealing bank cards, stealing your banking information and examples of identity theft include creating fake IDs, passports, fake credit cards , etc. and use it for illegal personal gain.

Mortgage fraud

Mortgage fraud is any form of material misrepresentation, misrepresentation or omission relating to a potential property or mortgage that a guarantor or giver borrow against it to finance, purchase, or secure a loan. For example, intentionally falsifying details in a mortgage application.

Mass Marketing Fraud

In this case, spam, call, mass spam is used to steal the target's personal financial information. This type of scam targets many victims from different jurisdictions. Mass marketing scam schemes generally fall into two categories, schemes that defraud many victims with relatively small amounts of money, and schemes that defraud fewer victims with large sums of money. An example of mass marketing fraud might be "too good to be a real payment system".

Bank fraud

Bank fraud is an attempt to extract or obtain money or other property from a financial institution. The RBI defines fraud as "an intentional act of omission or commission by any person, carried out in connection with a bank transaction or book of accounts maintained manually or by computer system. in a bank, resulting in an unjust gain for any person over a period of time or otherwise, with or without monetary loss to the bank." Some of the famous bank scams are scams. PNB-Nirav Modi , ABG shipyard scam, Vijay Mallya scam, etc.

Duping Strategy

We all receive emails about special prizes or giveaways. These types of scams are not aimed at anyone, but are used as a mass marketing strategy as part of a larger net to catch vulnerable people. These tactics include mass mailing, sweepstakes, cold calling, or spam emails to get your attention. These marketing tricks also include issuing fake checks, sending out invitations to bogus events and parties, announcing sweepstakes, and more. Organized using mass marketing strategies, most people are scammed when scammers gain access to personal information by pretending to collect donations from fraudulent organizations. island.

Marketing Apps

The Reserve Bank of India has repeatedly warned against clicking on links sent via email, social networking platforms, SMS or instant messaging services. These associations are suspiciously similar to application links used by existing applications by authorized entities and are designed to mask internal anomalies. Customers who accidentally click on these app links only to be directed to a web page that leads to downloading unverified apps to their mobile phones or laptops. Since most people perform banking or financial transactions using their phones or laptops, they inadvertently leave space for crooks to fully access the financial details stored on the computer. your device. These financial details include confidential information stored on the device and messages or passwords that are received and used to log in after downloading these apps.

QR Code Scanning

Paying utility bills by scanning QR codes through various payment apps is now commonplace. Aware of this common payment behavior of many people, scammers often contact their targets under various cryptocurrencies to request payment for products and services. They then encourage them to scan the given QR code using apps on their mobile phones. By scanning a QR code, customers unwittingly pay for services that don't exist or give scammers access to withdraw money from their accounts.

Financial crimes are more sophisticated than ever. Digital payments fraudsters are banking on the ignorance of customers unfamiliar with the idea of protecting their finances.

Investment Scams

How many times have we been bombarded by warnings that scream, “Read the material carefully before investing. Your mind will suddenly return to various insurance and mutual fund ads displaying them at the bottom of the screen or hastily announcing their contents.

Indians are not new to investment fraud cases. Representatives of financial institutions selling investments or securities with false or misleading information. A common example is the number of people who have been scammed in the past by purchasing capitalization policies under the guise of unit-linked insurance. Then there is a popular sales strategy of covering up the downsides of various investment instruments, making false promises, hiding the truth and sharing insider trading tips.

Scams or confidence tricks

A scam is a dishonest scheme to deceive multiple entities. Scams often cause high-value financial losses. Regulators that urge customers to buy insurance or bogus call centers looking for login information are all examples of scams.

Tax evasion

Since the birth of mankind, taxes have been a financial burden on ordinary people. Whenever a taxpayer has the opportunity, he loves to save on taxes. However, as taxpayers become more active to save more taxes, it leads to tax evasion. There are two types of direct taxes and indirect taxes. There are different methods for evading Treasury taxes.

Forgery and counterfeiting

Includes counterfeit money production and consumables. It is not just a matter of copying but also plagiarism of documents, signatures, banknotes. Financial crime can involve additional criminal activities, such as computer crime and elder abuse, or even violent crimes such as robbery, armed robbery, or murder. Individuals, businesses, cartels elder abuse and computer crimes and even violent crimes such as robbery, armed robbery, or murder. Individuals, companies, corporations' scam. Victims can be individuals, businesses, governments, and entire economies.

Conclusion

The analysis of financial crimes under the IPC reveals that while the legal framework covers a broad spectrum of offenses, the prevention, detection, and enforcement mechanisms can be further enhanced. The limitations in awareness and reporting, rapidly evolving technological advancements, capacity constraints, and judicial delays hinder the effectiveness of the IPC in combating financial crimes. However, with the implementation of improved measures such as strengthening the legislative framework, enhancing law enforcement capabilities, promoting international cooperation, and raising awareness, the IPC can play a more robust role in deterring and addressing financial crimes.

Financial offenses in India are not considered to have the same status as other crimes and therefore they carry lenient punishments that do not prevent individuals in the society from committing such crimes in the future. These financial crimes are sometimes more serious than criminal ones because they have the potential to impact the national economy in an instant. The government has enacted legislation to curb financial crimes but there has been no significant reduction due to the offender's ability to find loopholes. It is uncertain whether the announced reforms will be enough to reduce crime, but will certainly strengthen the system of government in this regard.

Financial institutions should exercise caution in their efforts to identify and detect red flags related to potential product and investment fraud, scams, and schemes to defraud support schemes. government, charities, and other organizations that front illegal activities and online fraud. They must do this while operating with reduced resources. Points to remember to avoid financial crimes.

- Request for loan funds sent to an unconnected third party and/or high-risk jurisdictions outside of the US.
- Support requests from multiple customers sharing the same address or phone number.
- Request government-funded loans from non-regional businesses.
- A small volume of government-financed loans made by a group or small group of loan officers within a financial institution.
- Multiple emergency assistance payments received by the same company or person.
- The use of money transfer services for charitable donations.
- The crowdfunding platform has restrictive policies and procedures to protect funds and identify customers.

- Pop-ups are created to launder and mix funds that are often laundered by other entities, such as cash-intensive businesses.

- Companies that are or should be in trouble suddenly start receiving unexplained payments.

- Using a customer's personal account for activities related to the sale of medical supplies, potentially indicating that the seller is unregistered/unlicensed or engaged in medical transactions fraud economy.

In conclusion, financial crimes remain a significant challenge worldwide, including in India. The Indian Penal Code (IPC) plays a crucial role in addressing these offenses, but there is a need for continuous improvement to ensure the effectiveness of the legal framework. By addressing the limitations and challenges identified, policymakers, law enforcement agencies, and society as a whole can work together to combat financial crimes.

Financial crimes pose a significant threat to the stability and integrity of the global economy. The Indian Penal Code (IPC) encompasses a wide range of offenses related to financial crimes, providing a strong legal foundation for addressing these illicit activities. However, there are certain limitations and challenges that need to be overcome to effectively combat financial crimes. Strengthening the legislative framework, enhancing law enforcement capabilities, promoting international cooperation, and raising awareness are essential steps to mitigate the occurrence of financial crimes. By adopting a comprehensive approach, we can deter potential offenders, safeguard the financial system, and protect the interests of individuals, businesses, and the nation as a whole.

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