
THE LANDMARK EPISODES OF CORPORATE CRIMES IN INDIA

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ABSTRACT

Companies are one of the biggest revenue-generating entities in the country and they are incorporated and operated with the intention of increasing capital and magnifying profit. However, under the ravenous urge to increase profit or take shortcuts to shield themselves from the lengthy regulatory mechanism, some of the company or Company's employees perform certain illicit activities that lead to them committing corporate crimes.

With the surge in the culture of capitalism and globalization, there has been a rise in corporate crimes. Various scams like the Harshad Mehta scam, Ketan Parekh scam, or Demat scam are some of the examples that introduce us to the paradigm of the extent of damage the corporate scam can cause to an individual and society at large and how such corporate crimes can prevent foreign investments and domestic public investment in companies.

In the current era of global capitalism, where there is advanced technology and development of e-commerce (e-commerce), it is expected that corporate crimes will only escalate and that there needs to be vigorous compliance with regards to corporate governance in order to bring a cessation of the ever-damaging reputation of Indian Capital market and corporate behaviour.

Keywords: Corporate crimes, foreign investment, corporate governance, Capital market, illicit activities, scam.

UNDERSTANDING CORPORATE CRIME

In the 14th century, the corporation, which was in its organizational form, was granted or created by either the crown or Parliament.¹ It was the attempts of the crown to build up the ideas and organizations were encouraged to become authorized legally.² In the era of the sixteenth and seventeenth centuries, corporations were grown in the form of universities, hospitals, and other associations which were adapted into the form of corporate. However, at the culmination of this century, the corporations started growing as joint-stock companies. This company was used to promote new industries. In the late seventeenth century, the corporation became entirely profit-oriented³ where eventually malpractices started occurring in an urge to gain more profits.

In order to understand the term “Corporate Crime”, it is very essential to understand what a corporation (word via which corporation is derived) and Crime essentially mean.

A corporation which comes from the Latin word *Corpus*, meaning a body i.e., the body of people, is a legal entity (legal person) that consists of an organized group and is an independent legal subject that is distinct from the employees and shareholders of the corporation. The term Corporation represents one of the highest forms of joint-stock companies⁴. Just like any legal entity, a corporation has the same rights as of a person such as the right to sue or be sued, own property or borrow, etc. The Corporation vehemently works and gains profit as per the commercial legal framework.

On the other hand, the word “crime” means an offense or any form of activity or series of activities that are against the law as well as vehemently dangerous to society since they are contrary and violative to the regulations. Crime should always carry a negative connotation towards the social phenomenon, that attracts contempt as well as violation of the appropriate sanctions. The magnitude of crime depends on the type and degree of social danger that the act of violation has been committed.

¹ Silviya Dixina & S. Indrapriya, *A Study on Corporate Crime in India D.*, volume 2 issue 1 International Journal of Law Management and Humanity (2018) <https://www.ijlmh.com/wp-content/uploads/2019/04/A-Study-on-Corporate-Crime-in-India.pdf>

² Dharm Veer Singh, *Corporate Criminal Liability: A Jurisprudential and Comparative Approach*: Legal Service http://www.legalserviceindia.com/articles/cor_dr.htm

³ Geeta Nerula, *Corporate Criminal Liability In India: An Information Technology Perspective*, Navi.org. https://www.naavi.org/geeta_narula/corporate_criminal_liability_nov12.html

⁴ Šikman, M, *Corporate Crime - New Approaches and Future Challenges*. Ed. Čaleta, D., Vršec, M. Management of Corporate Security – New Approaches and Future Challenges. Ljubljana: Institute of Corporate Security (2013) https://www.researchgate.net/publication/322505963_corporate_crime-new_approaches_and_future_challenges_corporate_crime-new_approaches_and_future_challenges

When both meanings of the terms are combined, the etymological meaning of "corporate crime" can be understood as the socially negative phenomenon act or series of acts that results in a corporation or group of people that are interconnected in a system, i.e., a corporation that has committed illegal acts over a period of time. However, this etymological definition significantly adds features of current corporate crime, such as the realm of banking, stock exchanges, business, insurance, or status offenders (highest social class people) who have influence because of their social status.⁵

EVENTS OF SCAMS IN INDIA

There have been various Corporate Crimes committed by the companies and its individual under the greed to get more profit by abusing the legal requirements and finding loopholes that made their activities illegal. The best way to understand the criminology of corporate crimes is to read about the real-life acts committed by employees/KMP/Directors of the company. There were actions taken by the authorities and judiciary to punish the companies and the individual. The following scams help us understand deeply regarding the act of corporate crimes and the way such corporate crimes are dealt i.e., How are the employees (the main participant of the crime) and the companies punished.

a. Harshad Mehta Scam⁶

Harshad Mehta was the owner of a security firm named *Grow More Research & Asset Management Limited* and was involved in the business of stock brokerage. Harshad Mehta was a well-known name in the paradigm of security market and was considered as the 'Sultan of Dalal Street' i.e. King of Broker market. The investors considering Harshad Mehta's skills and name used to blindly follow his footsteps. His scheme started when he became broker of loans between weak banks and strong banks. The weak banks used to take loans from strong banks and in return they used to issue bank receipts. Harshad Mehta was a broker between these 2 kinds of banks. Harshad Mehta subsequently started using this money that weak banks used to give to the strong bank to invest in the security market. Subsequently, Harshad Mehta started issuing false bank receipts for the same. Harshad Mehta used all these tactics started to create

⁵ Šikman, M, *Corporate Crime - New Approaches and Future Challenges*. Ed. Čaleta, D., Vršec, M. Management of Corporate Security – New Approaches and Future Challenges. Ljubljana: Institute of Corporate Security (2013) https://www.researchgate.net/publication/322505963_corporate_crime-new_approaches_and_future_challenges_corporate_crime-new_approaches_and_future_challenges

⁶ Samir K Barua & Jayanth R Varma, *Securities scam: genesis, mechanism and impact*, Volume 18 Issue 1 Sage Journals, (1993) <https://doi.org/10.1177/0256090919930101>

false bubble in the stock market. He started misusing his industrial and economic status and manipulated the stock market. These acts of Harshad Mehta started resulting in the unnatural flow of money in the stock markets that resulting in surge in stock prices of these shares. Apart from minting false bank receipts, all the other scheme of Harshad Mehta was not illegal. However, the problem arose when Harshad Mehta attained the capital to put in the stock market by misappropriating the money of the bank. This act of misappropriation of money is under the paradigm of money laundering. Approximately ₹ 5000 crores were obtained by this scheme.⁷ This form of the scheme led to loss in the market of ₹ 0.1 million in a period of one day. Harshad Mehta scam was the biggest ever corporate crime due to the greed of capitalism under the paradigm of Indian stock market that India has ever experienced. There was visible stringency seen in the SEBI rules and regulations to avoid such mishappening.

b. Ketan Parekh Scam

The scam of Ketan Parekh scam was the second most severe and important scam that occurred after the Harshad Mehta scam. Ketan Parekh was a mentee of Harshad Mehta and he had learned the entire ambit of stock trading from him. Ketan Parekh primarily dealt in Kolkata stock exchange since Kolkata stock exchange is comparatively smaller stock exchange as compared to Bombay stock exchange and National stock exchange. Ketan Parekh was always interest in investing in 3 sectors: Information, Communication, and Entertainment sector i.e. the ICE sector. This interest was due to the fact that in the era of late 90's and early 2000's was the time wherein IT boom was in boom and these stocks were growing by leaps and bounds all over the world.

There was a massive 200% growth in the shares which he invested in however there was not much attraction gained by as compared to Harshad Mehta's scheme.

Ketan Parekh was in lookout for the **stocks that had low market capitalization as well as low liquidity**. On finding such stocks, he would then invest huge amount of money into these shares which would start fictitious trading within his own companies and their networks. A normal stock investing person would lead to believe that stocks were rising and they as per the market sentiment, start investing on them as well leading to increase in the value of share. As

⁷ Rathinaraj, Daniel and Chendroyaperumal, Chendrayan, *Financial Fraud, Cyber Scams and India – A Small Survey of Popular Recent Cases*, (2010)
<https://www.ssrn.com/abstract=1605165%20or%20http://dx.doi.org/10.2139/ssrn.1605165>

soon as the share would gain value, Ketan Parekh would liquidate his own holdings slowly and steadily.

Where did the corporate crime occur?

1. Ketan Parekh used to accept money from the promoters of companies to increase their share price. This is insider trading which is a corporate crime.
2. Ketan Parekh embezzled huge amounts of cash from a commercial bank called Madhavapura Mercantile Commercial Bank. He bribed the officials of the commercial bank in order to persuade them to lend against specific share to a greater extent than was legal. In one of the instances, the commercial bank crossed its prescribed legal limits to lend against the market securities since such lending was given to Ketan Parekh. The bank eventually started making unsecured loans to Ketan Parekh. The loans were sanctioned before the collateral was provided which made them unsecured loan which violated the requirement of law.

Ketan Parekh was arrested and tried in the court of law. There was a prohibition on trading imposed on Ketan Parekh in the Bombay Stock Exchange for a period of 15 years i.e., till 2017. Ketan Parekh was sentenced to jail for 1 year of rigorous imprisonment for the corporate crime committed by him.

This is one example of corporate crime wherein the individual was sentenced to imprisonment.

c. Demat Scam

The scam came into its inception in the year 2004 wherein the investments by small investors in the IPO were surrounded by banks, DPs (the HNI investor's funds were given to retail segment for them to receive better allotment). This scam comprised of about 53 IPOs involving 5 crores of shares along with about 1 lakh of bogus demat accounts. This scam threw a light on lack of regulatory and surveillance authorities. There was a disgorgement order issued which asked NSDL, CDSL and other eight such depository participants (DPs) to pay as compensation

116 crore rupees to the retail investors in this IPO scam⁸.

d. Saradha Chit fund Scam

The Saradha Chit fund scam was caused via the collapse of Ponzi scheme which was run by the Saradha Group of Companies. This group of companies constituted of 200 private companies that were collectively running investment schemes popularly referred to as Chit Fund. This scam is a consequence of chit funds being prohibited sector in the Foreign Direct Investment Policy. Saradha Group of Companies collected nearly ₹300 billion from 1.7 million depositors with the promise that there will be a return given to them either in cash or real estate.

There were allegations on about 10 group companies for committing fraud from the money collected from public. SEBI subsequently barred the company along with its MD Sudipta Sen from dealing in the securities market till they wind up their Collective Investment Schemes (CIS) and makes refunds to the public.

Later in May 2014 Supreme Court of India, after receiving allegation against company for international money laundering, alleged political nexus and severe regulatory failures gave the case to CBI.

Due to this scam and related scams such as the Sanchayita investment have led to legislation of Prize Chits and Money Circulation Schemes (Banning) Act, 1968.

e. Jet Airways

The airline that was once India's best came to IBC for help. It took 18 months for Jet to get a bidder (with an investor) who wasn't very well-known in the airline business.

Jet had become the best airline for business people, the country's top industrialists, and the country's CEOs. Those were its main points of difference, or "USP." Around Rs. 8500 crores of debts are owed by lenders to airlines. This includes debts to vendors, employees, the AAI, and the lessors of planes.

The company did a lot of things that were malicious.

- misrepresenting the amount of commission paid to a Dubai-based party for years. This led to a lot of overstating of expenses and understating of profits.

⁸ Mohapatra Sidhartha, *Dematerialization and the IPO Scam: An Analytical Study* (2009) <http://dx.doi.org/10.2139/ssrn.1384583>

- giving loans of about Rs.3353 Crores
- the accounting of invoices for fake miles on Jet that were paid for with fake money
- and other transactions

Employees lost their jobs with a lot of money owed to them. In addition, Jet Airways bought Sahara Airlines, a low-cost service airline. In the end, the acquisition was its downfall and pushed Jet Airways even further down the road.

f. PMC Bank Scam:

Promoters of DHFL were in charge of the operations of PMC bank, which is a cooperative bank. They kept frauds going by using the same methods. The bank had a lot more money from middle-class depositors, who put their hard-earned money in the bank for things like medical treatment, the cost of their kids' education, retirement, and other things. In the bank, more than 60% of its customers had small amounts of money like 10,000 in it.

On March 31, 2019, HDIL had a loan book of Rs 8,383 crore, which was about 70%.

The bank is said to have been running fraudulent transactions for years to help HDIL get loans through fake accounts and break single-party lending rules. Depositors are having a hard time getting their money back, and some of them have killed themselves. It's taking a long time for officials to get the properties that were bought by promoters back. According to the most recent newspaper reports, the bank is looking for people who want to invest and own part of the bank when it is rebuilt.

g. YES Bank Scam:

Fraud led to the sudden and unexpected fall of a private bank that had been seen as a good rival to other private banks, but then went under. The bank had a unique business model that put a lot of emphasis on technology, branches, retail loans, and so on.

It took Rana Kapoor a short time to build a strong reputation in the industry and build relationships with the country's most powerful business people. Most of the decisions about important things, like big loans, were made by him. YES Bank was his goal. It may have been this desire for success that caused the bank's fortunes to fall even faster than they had risen to the top of the banking industry.

How the fraud was done:

- Risky lending practices
- Loans that stay open for as long as possible.
- Charged high commissions to borrowers that were not in line with industry practices
- An overestimation of profits because commissions are paid in the front of the year. According to the guidelines set by the RBI, the gross under provisioning of NPAs.
- During a special inspection by the RBI (Asset quality reviews-AQR, which was done for all banks), a lot of discrepancies were found between what the banks actually had and what they needed to have.
- It was quickly done by the Finance Ministry to restore people's faith in the banking system, and SBI bought a majority stake in the bank. Efforts are still being made to make sure that the bank is healthy again by giving it a lot of money from institutional investors and other things.

h. Cafe Coffee (CCD) Scam:

CCD was the first company to open a lot of coffee shops across India, and it set the trend. This led to the downfall of the company, which had a good business model that included growing coffee in its own fields and serving a wide variety of coffee to customers. Over-leverage to find more stores and money being used for non-core business led to the company's downfall.

The founder of the company took his own life because of the company's failure. People owe about Rs. 2500 crores to banks. Tata group is in talks with CCD about buying its coffee shops, which would save the company and put it back on the road to recovery.

i. Bhushan Steels Scams:

Bhushan Steel was the first time that major Indian banks were defrauded. In the end, Tata Steel bought the company. Promoters of the otherwise profitable company, which had modern, large-scale plants, committed a number of frauds.

Loans or advances made by the company to people who are related to it. The accounting of bills for capital and other purchases that never happened, and the money that came from them

was used by the promoters to help them. At least 50,000 crores were spent.

Another company in the group, Bhushan Power and Steel (BPSL), is in the IBC right now, too. JSW Steel is likely to buy BPSL.

People at BPSL are said to have taken about \$2,348 million in loans from banks and put it in the accounts of more than 200 shell companies that didn't seem to have a good reason for it.

j. DHFL Scam:

When DHFL was founded, it was the first time that a housing finance company went bankrupt. The main reason for this is that the company's founders were involved in syphoning money and allegedly laundering money.

How the fraud was done:

- Loans to people who are related to the people who run the show.
- Loans were given to people who didn't have good credit or didn't know who they were, but had the same address in a place that was hard to find.
- Keeping bad loans around so they can be used again and again.
- The creation of around 6 million fake accounts at one branch, using the names of people who had already paid back their loans. They were used to give loans that were used to get money for companies that were going to help the company. These loans turned out to be unrecoverable at the end of the day.
- Using borrowed money for personal things, like buying personal homes, yachts, and so on. It led to huge amounts of money being shown as recoverable on the balance sheet, even though they were not recoverable at all.

k. PNB Bank Scam

The Punjab National Bank scam is about a fake letter of undertaking worth Rs 10,000 crore that the bank sent out.

Details about the scam:

- In the case, Nirav Modi, his maternal uncle Mehul Choksi, other relatives, and some employees of the PNB are some of the main people charged. Nirav Modi and his family left India in early 2018. Before the news of the scam was made public, they left.

- The PNB scam has been called the biggest fraud in the history of Indian banks.
- Fake Letters of Undertaking (LoUs) were used by bankers at the Brady House branch of the PNB in Mumbai's Fort neighborhood.
- It took a year for the LoUs to be set up for branches of Indian banks so that they could import pearls for a year. The Reserve Bank of India set a total time frame for 90 days from when pearls were shipped.
- This rule was not followed by Indian banks that opened branches in other countries. PNB didn't get any documents or information that the businesses gave them when they took out loans from them.
- They didn't share them with the bank. Nirav Modi got his first fake guarantee from PNB on March 10, 2011. Over the next 74 months, he got 1,212 more.
- The Enforcement Directorate (ED) found the bank token devices used by the fugitive diamond trader to move the stolen money.
- After the scam broke out, the brother of Nirav Modi, Nehal Modi, threw away the devices and even took over a server in the United Arab Emirates (UAE). These fake companies had been getting the fraudulent PNB LoUs and were based in places like the British Virgin Islands and other tax havens.
- The PNB fraud case has already led to the seizure of movable and immovable property worth more than Rs 2362 crore, so far.

How did the management of the Punjab National Bank not know about this?

- PNB employees used the SWIFT network to send messages to Allahabad Bank and Axis Bank about how much money they needed. This was done with SWIFT passwords, but the transactions never made it into the bank's core system, which kept the PNB management from knowing about them for years, so they didn't know about them. There was a scam.
- A FIR was filed with the CBI on January 29, 2018, by PNB, which said that fraudulent LoUs worth Rs 2.8 billion (Rs 280.7 million) were first given out on January 16. Three diamond companies were named in the complaint: Diamonds R Us, Solar Exports, and Stellar Diamonds, to name a few.
- As of May 18, 2018, the scam has grown to over Rs 14,000 crore.

Nirav Modi's huge scam with the PNB and the auditors' inability to find it led to the creation of the National Finance Reporting Authority by the Union Cabinet (NFRA). The

National Financial Reporting Agency (NFRA) would be an independent body that doesn't need to be approved by parliament. It would have strong powers to punish erring auditors and auditing firms that have helped economic criminals. The NFRA will be a watchdog, and it will take away a lot of the power that the Indian Institute of Chartered Accountants (ICAI) has now, which is a good thing. Until now, the institute was the only one who could regulate and punish auditors, and it was against the change. There would be no more ICAI monopoly and self-regulation of the accounting profession if NFRA was formed. NFRA would be in charge of training, certifying CAs, and other things.

GRAVITY OF CORPORATE CRIMES

A company can only act by human beings, and a human being who commits an offence on behalf of or for the profit of a company is personally liable.⁹

As markets have become more international and more global, scams like Harshad Mehta have also affected the international integrity of the market.

The IPO scam and the Satyam scandal happened right in front of the eyes of the SEBI. Do we really need to punish the people who are in charge of these crimes? People who work for the government, run a small business, or invest in the stock market have money to invest in the securities market, too. Ordinary people would not be deterred from giving their money away if there was no punishment for fraudsters. If there was no punishment in the form of fines, the corporate executives would continue to do frauds, at a very low risk of getting caught.

People who commit corporate crimes:

Corporate Governance; Ethics; and the Culture of the Company

The way a company acts when there is no one to look over its shoulder can show how well it is running its business. This includes how well it is following local and international laws, as well as ethical and moral standards, and how well it is meeting other environmental, social, and political rules. Corporate honesty, transparency, and innovation are important to business leaders, who pay attention to how companies interact with society. Social and environmental responsibility are also important to them.

⁹Anushka Aggarwal, *Landmark Corporate Crimes in India*, https://thecompany.ninja/landmark-corporate-crimes-cases-in-india/#_ftn1

The values that corporations should live by as part of their responsibility to the community and keep their businesses going can be the most important part of good corporate governance. Immanuel Kant, a German philosopher, said that "ethical behaviour" means an act by someone who is not motivated by fear of punishment or a desire for rewards, but by his own awareness, "in such a way to treat mankind, either himself or the others, as an end and never as a mere means to achieve an end."¹⁰

When the concept of ethics is used widely in the field of corporate ethics, it can be thought of as things like "Company's Social Responsibility," "Corporate Accountability," and "Corporate Citizenship," among other things. Businesses usually think about basic ethics like autonomy, honesty, justice, mutualism, moral integrity, and no harm when they make decisions about what to do. All of these things should be very important to the way that corporations work so that they can be transparent, accountable, and not have any problems. Then, we can say that corporate ethics is an important and modern business practice that should be used by businesses all over the world.

The ability of a company to run its business in a way that respects the legitimate interests of its associates, followers, owners, and customers, as well as the preservation and protection of the environment for future generations. The right way to talk about values, norms, and morals is important in preventing crimes because it makes people think about ethical limits, makes them aware of legal limits, and makes them feel like they belong to a group.

Corporate accountability talks about the issues that are important for both the economy and the environment. Depending on the size of the company, what it wants to do, what it does, and how it does it, there are a lot of different kinds of corporate crimes that happen all over the world. These crimes are called "corporate crimes." Because the area is so big, it's easy to see where the problem is and how big it is.

Supervise, control, or check to see if things are going right. In general, corporate governance refers to how the company is run and the need for more check, control, monitoring, and accountability of corporate activities.¹¹

¹⁰ Dr. Vijay Kumar Singh, *Corporate Power to Corporate Crimes : Understanding Corporate Criminal Liability in India*, Satyam Law International (2013) ISBN: 978-93-82823-01-8

¹¹ Id

CONCLUSION

The growing recognition that corporations can do bad things hasn't led to a change in the way criminal law works. So far, the only thing that has been done is to try to fit corporate wrongdoing into the existing structure.

This hasn't worked, as shown by the steady rise in corporate misdemeanors. Corporations have done a lot of damage by fixing prices, lying to customers, and defrauding them, and they have hurt a lot of people with their impudence. However, they are not treated or seen as having the same stigma as individual criminals. Corporations still don't get punished for doing things that aren't right. The harms caused by these activities must be called "conventional harms." When businesses do bad things, they hurt people's trust and confidence in both the government and the business world. Companies that commit crimes should be prosecuted as hard as people who commit crimes in the real world. In order to make sure that everyone has the same rights and that the law is enforced fairly, corporate criminality must be taken more seriously because it can harm the country's social, economic, and political institutions.

As a tool for social change, the law should be changed to fight the rise of corporate crimes, which will keep businesses clean.