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A PERSPECTIVE ON WHITE COLLAR CRIMES IN INDIA

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Abstract

The 'Make in India' initiative started by of Government of India, has boosted business thereby creating positive sentiments and increased investor confidence in Indian companies.With the Indian government's effort to further liberalize strategic sectors under the foreign direct investment policy, ithascurrently boosted business for the country and will further enhance the future foreign investment perspectives .But all theseglorifying initiatives taken by the Indian government are not immune to the risk of financial and reputational damagescausedby white-collar crimes or corporate crimes such as antitrust violations, environmental law violations, financial and securities fraud, insider trading, evading corporate taxes, misappropriation of funds, embezzlement, etc.

Since there is a huge cost involved in dealing with frauds and cases of corruption rigorous anti-fraud and anti-corruption frameworks should be developed secured withstringent penalties on fraudsters. Such elaborate frameworkswill help India to transform into a mature market that would createsecure business environment with zero tolerance to corporate crimes done by white collared people.

Key Words: White Collar crimes, fraud, corruption, corporate crimes, Make in India

Introduction

Within the study of crime, corporate crimes or the white-collar crime was first suggested by sociologist Edwin Sutherland in the year 1939 as "a crime committed by a person of respectability and high social status in the course of his occupation". Crimes like bribery, insider trading, labour racketeering; embezzlement, fraud, money laundering, cyber-crime and forgery are typical kinds of white collar crimes committed by people at large. White-collar crime is not only limited to the developed countries of the world, but has emerged significantly in rapidly growing economies such as India (Bakshi , 2016).

There is a significant impact of white-collar crimes on Indian corporates today. The statistics reveal that 469 numbers of companies were probed by Serious Fraud Investigation Office (SFIO) between 2004 and 2016 (PTI, 2016). Also 6533 number of corruption cases were been prepared byCBI over last 10 years (Bakshi, 2016).

The present scenario reveals that largely fraudsters are motivated by financial gains more than ever before leading to deviant behaviour. Largely it is been seen thatperpetrators of white-collar crime do not have any past criminal record and believe that their activities will go unnoticed. They misuse their position of trust to breach the trust.

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Commonly committed corporate crimes in India

Some commonly committed corporate crimes in India can be categorized as:

- Antitrust Violations: The antitrust laws apply to every level of business with the purpose of prohibitingthose practices that restrain trade in any way (Bhattacharjea,2012). Recently India's antitrust watchdog Competition Commission of India, found Google to be guilty of search bias. It has fined Google $ 20 million for abusing its position in online searches.

- Bank Fraud: India's apex bank that is,Reserve Bank of India (RBI)reportedover 23,000 cases of fraud involving a whopping Rs 1 lakh crore in the past five years in various banks. A total of 5,152 cases of fraud, were reported in banks from April, 2017 to March 1, 2018, the highest ever amount of Rs 28,459 crore is said to have been involved in these cases of bank fraud in India (PTI, 2018).

- Bankruptcy Fraud: Bankruptcy fraud is a white-collar crime where a debtor conceals assets to avoid having to forfeit them. The corporations lie to creditors or bankruptcy officials about assets or debts with the purpose of fooling creditors in order to defer their burden of payment (Srivastava & Mukherjee, 2015)

- Embezzlement: It involves the use of money or goods entrusted forthe benefit of oneself. Recently, Rs 11,000 crore embezzlement scandal has hit one of the India's public sector bank. This bank in India has reported a Rs. 11, 400 crore ($2,24 billion) scam involving fraudulent transactions that amounted roughly to one-third of the bank's total market capitalisation.

- Insider Trading: Insider trading is said to be fairly prevalent in the Indian stock market. "Active investors regularly track company disclosures and adjust their portfolios depending on the nature and substance of announcements. As disclosures are often price sensitive, insiders are always in a better position to make bigger trading gains. But since this will be unfair to other investors, and in order to maintain trust and confidence in the market, trading on the basis of unpublished price-sensitive information is illegal" (Livemint, 2017).

White collar crime cases in India

The Harshad Mehta Scam:

In the year 1991 India opened its doors to rest of the world by ushering the new economic policy which is often referred to as Liberalization, Privatization and Globalization (LPG). Where this new regime opened opportunities for India's economy to flourish, in the backdrop India was about of uncover the most audacious scam done by a stock broker named Harshad Mehta in the year 1992. Taking advantage of the loopholes that existed that that time in the Indian banking system, Harshad Mehta fraudulently laundered over 24000 crores (adjusted for inflation today) in the stock market over the period of 3 years (Palande, 2014).Often referred to as the 'Big Bull', Mehta bought stocks on Bombay stock exchange by siphoning approximately Rs. 1000 crores from Indian Banks. This led to infusion of huge amount of money in the stock market. Between 1991 to 1992, the Sensex stormed. It returned 274 percent, moving from 1,194 points to 4,467. This was the highest yearly return for the index. This scam was revealed when the SBI (State Bank of India) discovered a deficit in government securities. Later the investigation revealed that Mehta had fiddledwith approximately Rs 3,500 crore in the system. After the exposure of scam in the year 1992, the markets crashed by 72 percent bringing the biggest fall in the stock market accompanied with a despairing phase that lasted for 2years(Palande, 2014).

Ketan Parekh Scam:

Often referred as Pied Piper of Dalal Street, Ketan Parekh actions were followed by marketmen because all that he touched turned into gold.From the year 1999 till 2001, Parekh got involved in circular trading and stock manipulation in multiple companies. "Parekh purchased large stakes in less known small market capitalization companies and jacked up their prices through circular trading with other traders, and collusion with these companies and large institutional investors. This resulted in steep hikes in share prices" (Chakraborti, 2016). "This set of ten stocks was colloquially referred to as K-10 stocks and Parekh was playfully referred to as Pentafour" (Indian Today, 2009).On March 1, 2001, just after the government had presented Union Budget, the Bombay Stock Exchange Sensex fell 176 points, that led to setting up of an inquiry by the governmentto check the manipulations done by Ketan Parekh. Investigations revealed that the promoters of various companies along with many industrialists often handed funds to Parekh for artificially inflating their share prices. "Thus in just a few months, scrips of virtually unknown companies like VisualSoft rose from Rs 625 to Rs 8,448 per share and Sonata Software rose from Rs 90 to Rs 2,150" (Lok Sabha Report, 2002).As the consequence of this scam, the loopholes that existed in the market were sealed. Since then the trading cycle has been reduced. The scam led to the ban on Badla. Forward trading was formally introduced regulate futures market and the stockbroker's control over stock exchanges was demolished.

Satyam Scandal:

In the year 2009, a corporate scandal rocked the India based company 'Satyam Computer Services, scandalizing the global corporate community at large. The chairman Ramalinga Raju confessed the falsification of company accounts,manipulatingthe accounts worth Rs 14,162 crore in several forms. "This scam uncovered many loopholes in the Indian corporate governance structure that included unethical conduct, fraudulent accounting, insider trading, oversight by auditors, ineffectiveness of Board, failure of independent directors and non-disclosure of material facts to the stakeholders"(Pushkar and Naushad, 2018). Since then numerous measures have been taken to strengthen corporate governance in India.In the year 2009, the Ministry of Corporate affairs issued Voluntary Guidelines for Corporate Governance.In 2014 Securities Exchange Board of India amended the Listing Agreement to include provisions regarding the establishment of a vigil mechanism, role of Audit Committee in case of fraud and irregularity along with the role of the Chief Executive Officer and the Chief Financial Officer relating to financial reporting and disclosure to the Audit Committee. "SEBI framed the "Listing Obligations and Disclosure Requirements Regulations" in the year 2015,that extends to all listed companies and provided for stringent guidelines relating to reporting / disclosure of material events and actual and suspected fraud" (Pushkar and Naushad, 2018).Further, Companies Act 1956, was repealed with a new Companies Act, 2013 that introduced several measures for benefit of stakeholder community.

Punjab National Bank Fraud:

In the year 2018, Punjab National Bank (PNB) disclosed a Rs. 11,000 crore fraud purported by one of the India's richest men, diamantaire Nirav Modi(ET Bureau, 2018). Between the year 2011and 2017, the alleged PNB employee furnishedmany fake PNB letters of undertaking(LOU) without any collateralto Nirav Modi. The bank claimedthat these people bypassed the internal messaging for lenders so as to avoid any kind detection. Then the instructions were placed through the Swift global payment system soliciting overseas branches of the Indian banks to pay out the loans in cash (ET Bureau, 2018).

Conclusion:

In the light of corporate scams that have jolted the Indian financial sector from the past three decades, that has left the investor and stakeholder community scandalized and traumatized, a host of measures are been taken up by government of India to protect the interest of stakeholders community with respect to corporate government initiatives. The new Companies Act 2013, has sets clear obligations on the auditors, companies secretaries and cost accountants for reporting any instances of fraud.It emphasizes on active role of independent directors in proper functioning of corporates. As a vigil mechanism, the 'the directors responsibility statement' has become mandatory part of the report of Board of Directors. Also, under the new act, the Serious Fraud Investigation Office has been actively investigating cases of corporate fraud and has been granted the power to make arrests.

There have been many occasions where the economic offenders who committed white collar crimes in India flee the jurisdiction of Indian courts. Certain economic offenders that are involved in non-repayment of bank loans like Vijay Mallya(for unpaid loans of now defunct Kingfisher airlines) and Nirav Modi (for PNB fraud case) have fled the country after eroding the financial health ofIndianbanks. The absence of such offenderserodes the importance of Indian judiciary. It also hampers the investigation of several criminal cases. Since the present provisions of law were not enoughtomanage the profundity of the problem, the union cabinet of India has recently approved the promulgation of Fugitive Economic Offenders Ordinance, 2018. Thisordinance makes provision for the special court (under the Prevention of Money Laundering Act 2002) to declare a person as a Fugitive economic offender. "A fugitive economic offender is that person against whom an arrest warrant has been issued fora scheduled offence and who has fled India in order to avoid criminal prosecution or while being abroad, refuses to return to India to face criminal prosecution". Thisordinancelists those provisions that empowers Indian authorities to not only attach but also confiscate the proceeds of crime related with fugitive economic offenders along with the properties of suchoffenders.Thiswill not only discourage economic offenders from escaping the procedurefollowed by Indian law by remaining outside the jurisdiction of Indian courts but would also force them to return to India to face trail for the offencescommitted by them.

It is been expected that the Fugitive Economic Offenders Ordinance, 2018, would help thefinancial institutions and thebanks in India to attaingreater recovery from financial defaulters. This willthereforeimprove the financial health of such institutions at large.

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