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# Corporate Frauds and Crimes are Stumbling Blocks to Investor's Protection in India: A Review from Legal Perspective

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## ABSTRACT

*Corporate frauds have posed a serious threat not only to India but to the entire world today. During the past three decades or so, many giant companies have collapsed like nine pin due to corporate frauds and corporate corruption all over the world. India is no exception to it. It leads to increase in unemployment, reduction in the government revenue and economic instability in the national economy etc. Prevention of corporate frauds and corruption is sine qua non to protect investors interests. Corporate frauds may take place in various ways like misinformation, manipulation of financial records, concealment of debt, employment of fake employees, fake financial records, and disclosure of price sensitive information etc. Investors are the heart and the very soul of the security market. Investor's protection influences the real economy through its effect on the financial market. Investors invest their hard earned money in the corporate securities. If their confidence is shaken due to corporate frauds, that will have an adverse impact upon the economy of the country. In India, SEBI is playing an important role to protect investors interests. Several other regulatory bodies are there to prevent corporate frauds. Various laws and regulations are playing an important role to protect investors interests. However, the paper will discuss the meaning, extent and importance of investor's protection in India. It will analyze the consequences of corporate frauds upon investors' confidence. The researcher will also examine the mechanisms to protect the investors' confidence and prevent corporate frauds.*

**Keywords:** Corporate frauds, Investors Protection, SEBI, Corporate corruption.

## I. INTRODUCTION

“Our ability to manufacture fraud now exceeds our ability to detect it”.

Alfredo James Pacino<sup>2</sup>

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<sup>2</sup> .<https://www.azquotes.com/quote/626253>(Accessed on 19-10-2021).

Corporates play an important role in the growth of Indian economy. Companies are backbone of the Indian economy. India's corporate sector has grown steadily during the past two decades or so in terms of registered companies and amount of paid-up capital. Various reforms measures have been taken by the central government to boost the corporate sector. But, in spite of all these initiatives, corporate fraud poses a serious treat to the future prospect and development of corporates in our country. In fact, the term 'fraud' is an intentionally deceptive action designed to provide the perpetrator with an unlawful gain or to deny a right to a victim. Fraud can have a devastating impact on the victims and it can also cause lasting mental and physical trauma for victims. 'Corporate fraud' consists of illegal or unethical and deceptive actions committed either by a company or an individual acting in their capacity as an employee of the company. Corporate fraud schemes are often extremely complicated and, therefore, difficult to identify. This can be done in various forms such as ad hoc crimes, bribery, embezzlement, counterfeiting, forgery, tax evasion, professional crime, fraud, etc. Corporate fraud may shake the confidence of corporate investors. If investors interest is not protected, they may shift their investment in somewhere else rather than in security market. It will have a disastrous consequence upon the security market. Trade and commerce will be badly affected. Country's economy will be in trouble and it will in turn affect the entire society at large. However, corporate fraud has become a serious issue during the past two decades or so<sup>3</sup>. It has become one of the greatest concerns before the national and international communities today and they are anxious about how to prevent corporate frauds. Corporate Frauds have taken place in all most all developed and developing countries of the world in one form or other. India is no exception to it. It affects not only the company and its stakeholders but the economy of the country as a whole.

However, it is on this socio-legal spectacle the researcher has ventured to write this research paper on the topic- "Corporate Frauds and Investor's Protection: A Review from Indian Perspective". The researcher has discussed the meaning and definition of the term 'corporate fraud'. I have discussed the nature and extent of various corporate frauds in India and the legislative developments in this regard. The researcher has also discussed the relationship between corporate fraud and investors protection and finally the author has given some suggestions to prevent the corporate frauds in India.

## **II. MEANING AND DEFINITION OF THE TERM 'CORPORATE FRAUD'**

Dictionary meaning of the term 'Fraud' is a knowing misrepresentation of the truth or

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<sup>3</sup>.Dr. Sumit Sharma, *Corporate Crimes & Financial Frauds*, Authorspress, p-61.

concealment of a material fact to induce another to act to his or her detriment. It is also a tort arising from a knowing misrepresentation, concealment of material fact, or reckless misrepresentation made to induce another to act to his or her detriment<sup>4</sup>. So, the term ‘corporate fraud’ refers to illegal activities undertaken by an individual or company that are done in a dishonest or unethical manner<sup>5</sup>. Often, this kind of business fraud is designed to give an advantage to the perpetrating individual or company. Corporate fraud schemes go beyond the scope of an employee's stated position and are marked by their complexity and economic impact on the business, other employees, and outside parties<sup>6</sup>. Corporate fraud refers to any fraud committed by corporations or their senior executives<sup>7</sup>. It may include, inter alia, the following<sup>8</sup>-

- a. Misrepresenting assets or revenues in accounting and reporting;
- b. “Cooking the books” for accounting;
- c. Fraudulent transfers of business assets;
- d. Illegal or fake business loans to the company and siphoned by a business leader;
- e. False purchases and other fraudulent transactions;
- f. Intentionally inaccurate financial reports;
- g. Falsification of tax returns;
- h. Bribery and corruptions;
- i. False employment credentials; and
- j. Payroll fraud and Suspense accounting fraud etc

Corporate frauds may also include theft of cash, physical assets or confidential information, procurement fraud, payroll fraud, inappropriate journal vouchers, suspense accounting fraud, false employment credentials and bribery and corruption etc. The nature and types of corporate frauds may vary from case to case and time to time. There is no such specific theory which can cover all types of corporate frauds. Corporate frauds are very harmful for the existence and smooth functioning of corporate houses. Generally, corporate frauds are detected by external and internal audits. Income Tax department can also detect corporate frauds through the investigation of books of account. The board of directors in general and independent directors of the company specifically shall have power to detect the corporate fraud as well. It may be

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<sup>4</sup>. Black's Law Dictionary, Eighth Edition, Bryan A. Garner, Thomson, West, P-685.

<sup>5</sup>. <https://www.investopedia.com/terms/c/corporate-fraud.asp>(Accessed on 15-10-2021).

<sup>6</sup>. <https://www.investopedia.com/terms/c/corporate-fraud.asp>(Accessed on 15-10-2021).

<sup>7</sup>. Corporate Fraud-An introduction to corporate Fraud as a federal crime, <https://www.criminallawyergrgroup.com/practice-areas/corporate-fraud>(Accessed on 16-10-2021).

<sup>8</sup>. Ibid.

divided as below<sup>9</sup>:

**(a) Financial Frauds-**It includes manipulation and falsification of accounts, alteration of accounting records, misrepresentation or internal omission of amounts, misapplication of accounting principles, submission of intentional false accounting statements, misleading disclosure or intentional omission in disclosures etc.

**(b) Misappropriation of Assets-** It includes theft of tangible assets by internal or external parties, sale of proprietary information and causing improper payments etc.

**(c) Corruption-**It includes making or receiving improper payments, offering bribes to public or private officials, receiving bribes, aiding and abetting fraud etc.

### **III. NATURE AND EXTENT OF CORPORATE FRAUDS AND CRIMES IN INDIA**

A corporate fraud takes place when a company or an entity deliberately changes and conceals sensitive information to apparently show the company as healthy company. Company may adopt various unscrupulous methods to commit such corporate frauds such as mis-information in the prospectus, manipulation in the accounting records, hiding and not paying debts, falsification of accounting records etc. However, some of the corporate frauds and corruptions in India are as below:

#### **(A) Fraud by German Auto Company Volkswagen:**

German Auto Company Volkswagen in September, 2015, used 'cheat device' in diesel cars in India and advertised the car as low emission cars. According to National Green Tribunal (NGT) the very fact of deceit devices being installed by the manufacturers calls for an inference of prima facie violation of environment. A 'cheat' or 'defeat device' is a software in diesel engines to manipulate emission tests by changing the performance of the cars globally. The company has recalled 13.25 lakh vehicles in India. The NGT has also asked the German Auto Company to deposit an interim amount of 100 crore with the Central Pollution Control Board (CPCB)<sup>10</sup>.

#### **(B) Ponzi Schemes by few Companies in West Bengal-**

Various Ponzi Schemes were lunched by few Companies in West Bengal that enjoyed political patronage and lured millions of investors to deposit money with the promise of abnormally high returns along with facilities of holiday trips etc. The chit fund collapsed and a crackdown was conducted by SEBI and RBI in 2016 onwards in several occasions. Government of West

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<sup>9</sup> .Akanksha Tomar, India: Corporate Frauds: An Analysis, <https://www.mondaq.com/india/white-collar-crime-anti-corruption-farud/696380/corporate-frauds-an-analysis> (Accessed on 15-10-2021).

<sup>10</sup> .Volkswagen's use of 'cheat device' for emission norms indicative of environmental damage: NGT, [www.economicstimes.indiatimes.com](http://www.economicstimes.indiatimes.com)(Accessed on 17-10-2021).

Bengal registered number of cases under the West Bengal Protection of Interest of Depositors in Financial Establishment Act 2013 against Saradha Group, Rose Valley Group, Senco Jewellery Palace Abhusan Pvt Ltd, I-Core Group, The Alchemist Group of Companies etc as these companies lured lakhs and lakhs of small investors to deposit their hard-earned money into various schemes of these companies on the false promise of hefty and quick returns<sup>11</sup>. More than 100 Public Interest Litigations were filed before the Calcutta High Court in respect of these chit fund companies. Many poor small investors deposited their everything and finally committed suicide when their hard-earned money was not returned to them by these companies<sup>12</sup>.

### **(C) Satyam Scandal**

On 7<sup>th</sup> January, 2009 Founder Chairman, B. Ramalinga Raju admitted to the fraud in a letter to the Board of Directors. He falsified revenue, margins and cash balances to the tune of Rs.7,855 crore<sup>13</sup>. The company misrepresented its accounts both to its board, stock exchanges, regulators, investors and all other stakeholders. It was a fraud which misled the market and other stakeholders by lying about the company's financial health. Even basic facts such as revenues, operating profits, intertest liabilities and cash balances were grossly inflated to show the company in good health<sup>14</sup>. The role of external auditors who were tasked to make sure that no financial irregularities took place, were questionable. The company had been falsifying records since 2002 and started with small figures which slowly snowballed into bigger ones<sup>15</sup>. However, Raju brothers charged with breach of trust, conspiracy, cheating and falsification of records and were sent to jail.

### **(D) Kingfisher Fraud-**

Kingfisher Airlines collapsed in November, 2015, with its parent UB Groups chairman Vijay Mallya who was accused of being a "willful defaulter", besides other allegations<sup>16</sup>. Consortium of 16 banks led by SBI approached Supreme Court in March, 2016 to prevent Mallya from leaving the country as he owed them over Rs. 9000 crores<sup>17</sup>. Vijay Mallya faced charges of

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<sup>11</sup> West Bengal Government registers cases against firms involved in Ponzi Schemes, <https://economictimes.indiatimes.com>(Accessed on 17-10-2021).

<sup>12</sup> West Bengal Government registers cases against firms involved in Ponzi Schemes, <https://economictimes.indiatimes.com>(Accessed on 17-10-2021).

<sup>13</sup> Corporate Scams in India, [http://commerce.du.ac.in/web/uploads/e-resources.20201st/M.comsemIv/Dr.Sunainakanojice\\_M.com.sem4corporatescamsII.pdf](http://commerce.du.ac.in/web/uploads/e-resources.20201st/M.comsemIv/Dr.Sunainakanojice_M.com.sem4corporatescamsII.pdf)(Accessed on 9-10-2021).

<sup>14</sup> .Ibid.

<sup>15</sup> .Ibid.

<sup>16</sup> .Ibid.

<sup>17</sup> .Ibid.

cheating, criminal conspiracy, money laundering and diversion of loan funds and loan defaults of over 10,000/- crore to a consortium of Indian Banks led by the State Bank of India. A few of his companies, including Kingfisher Airlines face charges of violating the Companies Act, 2013 and norms laid down by the capital markets regulator. CBI has charged Mallya under Sections 120B and 420 of IPC and Section 13(1)(d) and 13(2) of the Prevention of Corruption Act. In January, a special court in Mumbai declared Mallya a fugitive economic offender, under the Fugitive Economic Offenders Act, 2018. An amount of Rs.9661 crore worth of assets of Vijay Mallya and Kingfisher in India was attached by ED in December, 2016<sup>18</sup>.

#### **(E) Amrapali Corruption Case-**

Amrapali Group is a construction company that collected money from 42000 aspirant buyers and siphoned off the amount into its shell companies. M.S. Dhoni was the brand ambassador to the group<sup>19</sup>. However, the Supreme Court of India said that serious fraud has been committed by Amrapali Group in connivance with Noida and Greater Noida authorities by failing to give possession of flats to 42000 home buyers. The apex court has also cancelled registration of all projects of Amrapali Group of companies under Real Estate Regulatory Authority (RERA)<sup>20</sup>.

#### **(F) Jaypee Infratech Fraud case-**

The Jaypee Infratech project started its wish town city project in Noida. Two subsidiary companies of Jaypee group were involved. Firstly, the Jaiprakash Associates Ltd and secondly, Jaypee Infratech Ltd. Jaypee Infratech Ltd collected Rs. 25000 crores rupees from around 35000 homebuyers. However, years after its inception the project remained abandoned and merely a Skelton had been built for the purpose of appeasing the homebuyers that something was built. It was alleged that in the name of wishtown city project that the money was diverted to Jaypee group's other flagship projects<sup>21</sup>.

#### **(G) SUN Pharmaceutical Industries Scam-**

Sun Pharmaceutical Industries, India's largest pharma company and fifth largest specialty generic company globally was under cloud in 2017-2018. Its stock price fell down after various allegations of faults in corporate governance practices and insider trading. Several questions were raised like the role of promoter Dilip Shanghvi's brother-in-law Sudhir Valia, Sun's past links with banned traders Ketan Parekh and Dharmesh Doshi, related party transactions involving promoter Shanghvi and guarantees given to real estate firm Suraksha Realty. The

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<sup>18</sup> .<https://indianexpress.com/article>(Accessed on 17-10-2021).

<sup>19</sup> .<https://www.outlookindia.com>(Accessed on 17-10-2021).

<sup>20</sup> .Ibid.

<sup>21</sup> .<https://www.mondaq.com>(Accessed on 17-10-2021).

question was also raised about the selection of little-known London based firm Jermyn Capital to manage Sun's \$275 million in 2004-07<sup>22</sup>. Valia was a director in Sun Pharma. The company, however, denied all the allegations and said that the information which was already available in the public domain had been portrayed in a way to indicate that something inappropriate had been done by the company<sup>23</sup>. In August, 2017, Sun Pharmaceutical, its managing director Dilip Shanghvi and nine other entities settled an insider trading case on payment of Rs.18 lakh towards settlement charges<sup>24</sup>.

#### **(H) IL & FS Scam-**

IL & FS Ltd. or Infrastructure Leasing & Finance Services is a core investment company and serves as the holding company of the IL & FS Group, with most business operations domiciled in separate companies which form an ecosystem of expertise across infrastructure, finance and social and environmental services<sup>25</sup>. A brain child of the late MJ Pherwani, IL & FS was founded in 1987 with equity from Central Bank of India, Unit Trust of India and Housing Development Finance company to fund infrastructure projects when peers IDBI and ICICI were focused more on corporate projects<sup>26</sup>. The detailed probe by the Serious Fraud Investigation Office (SFIO) into the affairs of IL&FS Financial Services Ltd. had revealed a plethora of lapses, violations, ever-greening of loans, and deliberate delay in recoveries etc. The audit committee failed to act properly with respect to the complaint and simply followed the instructions of the management. It did not inquire into the allegations made in the whistleblower complaint<sup>27</sup>. IL & FS group had accumulated debt burden of more than Rs.90,000/- crore. The company converted the funds of banks and public as profit with fraudulent lending activities and the profits were also utilized for payment of managerial remuneration and dividend to the holding company. The audit committee did not raise any objection to these fraudulent activities<sup>28</sup>.

#### **(I) ICICI Bank Scams-**

The Rs. 3250 crores ICICI bank scam had first surfaced after a whistle-blower, Arvind Gupta, demanded an appropriate investigation into 'illicit banking and commercial relationship between Videocon Group of Venugopal Dhoot and ICICI Bank's MD & CEO Chanda

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<sup>22</sup> .<https://m.economictimes.com>(Accessed on 18-10-2021).

<sup>23</sup> .Ibid.

<sup>24</sup> .Ibid.

<sup>25</sup> .<https://m.economictimes.com>(Accessed on 18-10-2021).

<sup>26</sup> .Ibid.

<sup>27</sup> .Ibid.

<sup>28</sup> .Ibid.



Kochhar's family-owned NuPower Renewable Group steered by her husband Deepak Kochhar. According to the complaint, Dhoot provided Rs 64 crore to Chanda Kochhar's husband in 2010<sup>29</sup>. Dhoot then allegedly transferred proprietorship of the company to a trust owned by Deepak Kochhar for Rs 9 lakh. Six months after the incident he received the loan of Rs 3,250/- crore from ICICI Bank. In 2018, the Securities and Exchange Board of India (SEBI) had served notices to ICICI bank and the then CEO Chanda Kochhar asking their responses on alleged non-compliance of the "erstwhile 'Listing Agreement' and the Listing Obligations and Disclosure Requirements Regulations, 2015"<sup>30</sup>. In fact, Chanda Kochhar was in loan sanctioning committee for Videocon and she never disclosed that Videocon had business relationship with her husband Deepak Kochhar. As a result, she had to step down as the ICICI CEO in 2018 because of the investigation. She had denied all charges against her and her husband. The central probe agency registered a case on the issue on 30 January, 2019. An investigation against Deepak Kochhar, Chanda Kochhar, Venugopal Dhoot and their related firms began following the case registered by the Central Bureau of Investigation (CBI) on 22 January, 2019<sup>31</sup>.

#### **(J) Bhushan Steel Scam-**

The Bhushan Steel is also involved in corporate scams. The Enforcement Directorate (ED) had alleged that Bhushan Steel defrauded 33 banks and financial institutions in a period of seven years. The ED claimed this in its chargesheet that was filed against Bhushan Power and Steel Limited (BPSL) in connection with a money laundering case pertaining to an alleged bank loan fraud. The Enforcement Directorate (ED) was probing a bank fraud running into Rs 47,000 crores allegedly committed by Sanjay Singal, former Chairman and Managing Director of BPSL<sup>32</sup>. Punjab National Bank, the country's second largest public sector bank has alleged that BPSL misappropriated bank funds and manipulated its books of accounts to raise funds from its consortium of lenders<sup>33</sup>. Further investigation in the case is going on by Serious Fraud Investigation Office (SFIO). Inefficiencies of Board of Directors were also revealed in this case.

#### **(K) Unitech Construction Management Scam-**

The Ministry of Corporate Affairs unearthed a scam of around 700 crores in real estate company Unitech in 2017. It was alleged that Unitech siphoned off huge amounts of money to

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<sup>29</sup> . <https://www.jantakareporter.com/business/.....>(Accessed on 18-10-2021).

<sup>30</sup> . <https://www.jantakareporter.com/business/.....>(Accessed on 18-10-2021).

<sup>31</sup> .Ibid.

<sup>32</sup> . <https://m.economictimes.com>(Accessed on 18-10-2021).

<sup>33</sup> .Ibid.

various shell companies. Unitech promoters Sanjay Chandra and his brother Ajay Chandra were in Delhi's Tihar Jail since August, 2017 for allegedly siphoning off homebuyers' money. They were arrested by the economic offences wing of the Delhi Police in April, 2017<sup>34</sup>. Unitech promoters took out money from the main company and created assets such as land banks and buildings under various shell companies. The Supreme Court had ordered a forensic audit of the company's books and assets. Forensic auditors reported that Rs.14,270 crores were collected from 29,800 home buyers. Out of this, Rs.13,364 crores had been traced in bank statements<sup>35</sup>. The court directed the promoters to deposit 750 crores which was homebuyers' money but they failed to deposit that and they were facing the jail terms.

#### **(L) Harshad Mehta Scam-**

Harshad Mehta was an Indian Stock broker accused in a scandal in the year 1992. It was a systematic fraud committed by Mehta in the Indian stock market. It occasioned complete collapse of security systems<sup>36</sup>. He was involved in a fraud of over 1 billion from the banking system to buy stocks. Between April 1991 and 1992, Mehta manipulated Sensex in a way that it surged from just over 1,000 points to almost 4,500 points. This resulted in a large scam of Rs.4,000 crores. The funds were diverted from the banks to a group of stockholders led by Harshad Mehta. He had fooled 4 banks of an amount of Rs.1,700 crores<sup>37</sup>.

#### **(M) CRB CR Bhansali NBFC Scam-**

The Bhansali scam took place in the year 1995 and is worth Rs. 1,200 crores and the key person involved in this scam was Chain Roop Bhansali (CRB). Between the years 1992-1996, Chain Roop Bhansali was running a lot of financial firms like CRB Capital Markets, CRB Mutual Fund and CRB Share Custodial Services. He offered various attractive schemes and attracted common people to invest in these firms<sup>38</sup>. In this process he collected huge money from market transferred these elsewhere. But his financial firms faced a serious challenge during the share market crash in 1995. He very cleverly transferred away the investors money of near about Rs 1200 crores and transferred these to other ventures. Once the scam was brought to the notice by the media, Chain Roop Bhansali escaped from the country to Hong Kong along with his wife Manjula, parents, sister and his two children. Thereafter he was arrested by CBI. Several cases were lodged by the CBI against Chain Roop Bhansali and his other officials<sup>39</sup>.

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<sup>34</sup> .<https://www.business-standard.com>(Accessed on 19-10-2021).

<sup>35</sup> .Ibid.

<sup>36</sup> . [https://www.tickertape.in/blog/...](https://www.tickertape.in/blog/)(Accessed on 5-11-2021)

<sup>37</sup> .[https://www.tickertape.in/blog/...](https://www.tickertape.in/blog/)(Accessed on 5-11-2021)

<sup>38</sup> . <https://www.indianmirrior.com>(Accessed on 11-11-2021).

<sup>39</sup> .<https://www.indianmirrior.com>(Accessed on 11-11-2021).

#### **IV. LEGISLATIVE DEVELOPMENTS TO PREVENT CORPORATE FRAUDS IN INDIA**

##### **(A) The Companies Act, 1956 & 2013-**

However, there are many provisions of the Company Act, 2013 which prevent corporate frauds and reduce corporate corruptions in India. Some of these provisions are as below:

##### **1. Punishment for fraud (Section 447)-**

Section 447 of the Company Act, 2013 says any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud. A proviso to this section says that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years. An explanation to this section also says 'fraud' in relation to affairs of a company or any body-corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss.

##### **2. Punishment for false Statement (Section 448)**

Section 448 of the Company Act, 2013 inter alia, says if in any return, report, certificate, financial statement, prospectus, statement or other document required by, or for, the purposes of any of the provisions of this Act or the rules made thereunder, any person makes a statement, —

(a) which is false in any material particulars, knowing it to be false; or

(b) which omits any material fact, knowing it to be material,

he shall be liable under section 447.

##### **3. Punishment for false evidence (Section 449)-**

Section 449 of the Company Act, 2013 inter alia, says, if any person intentionally gives false evidence—

(a) upon any examination on oath or solemn affirmation, authorized under this Act; or

(b) in any affidavit, deposition or solemn affirmation, in or about the winding up of any company under this Act, or otherwise in or about any matter arising under this Act,

he shall be punishable with imprisonment for a term which shall not be less than three years

but which may extend to seven years and with fine which may extend to ten lakh rupees.

#### **4. Punishment where no specific penalty or punishment is provided (Section 450)**

Section 450 of the Company Act, 2013 inter alia, says if a company or any officer of a company or any other person contravenes any of the provisions of this Act or the rules made thereunder, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in this Act, then the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to ten thousand rupees, and where the contravention is continuing one, with a further fine which may extend to one thousand rupees for every day after the first day during which the contravention will continue.

#### **5. Punishment in case of Repeated Default (Section 451)**

Section 451 of the Company Act, 2013 says if a company or an officer of a company commits an offence punishable either with fine or with imprisonment and where the same offence is committed for the second or subsequent occasions within a period of three years, then, that company and every officer thereof who is in default shall be punishable with twice the amount of fine for such offence in addition to any imprisonment provided for that offence.

#### **6. Punishment for wrongful withholding of property (Section 452)**

Section 452 of the Company Act, 2013 inter alia, says if any officer or employee of a company—

- (a) wrongfully obtains possession of any property, including cash of the company; or
- (b) having any such property including cash in his possession, wrongfully withholds it or knowingly applies it for the purposes other than those expressed or directed in the articles and authorized by this Act,

he shall, on the complaint of the company or of any member or creditor or contributory thereof, be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

#### **(B) Securities And Exchange Board Of India (Prohibition Of Insider Trading) Regulations, 2015**

Chapter II, regulation number-3 of this regulation has imposed restrictions on the communication or procurement of unpublished price sensitive information. It, inter alia, says no insider shall communicate, provide, or allow access to any unpublished price sensitive

information, relating to a company or securities listed or proposed to be listed, to any person including other insiders except where such communication is in furtherance of legitimate purposes, performance of duties or discharge of legal obligations. This regulation also says that no person shall procure from or cause the communication by any insider of unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, except in furtherance of legitimate purposes, performance of duties or discharge of legal obligations. This provision is intended to impose a prohibition on unlawfully procuring possession of unpublished price sensitive information. Inducement and procurement of unpublished price sensitive information not in furtherance of one's legitimate duties and discharge of obligations would be illegal under this provision.

However, other legislations which directly or indirectly prevents corporate frauds and corporate scams in India are as below:

- (c). Indian Contract Act, 1872,
- (d). Indian Penal Code 1860,
- (e). Prevention of Corruption Act, 2013,
- (f). Prevention of Money Laundering Act, 2012,
- (g). Information Technology Act, 2008 etc.

## **V. INVESTORS PROTECTION AND CORPORATE FRAUDS**

Investors are the backbone of the corporate houses. They are the heart and the very soul of business organization. The term 'investors protection' means a process or a mechanism by which interests of the investors are protected and saved in the security market<sup>40</sup>. The scope of the term 'investors protection' is very wide. It includes all sorts of protection to the investors to protect their interests including their protection from corporate frauds. Investors should be protected from corporate frauds, malpractices and other corporate crimes. In fact, investors are consisted of various groups of people. Some of them may be educated, rich and expert and some others may be uneducated, poor and inexperienced about the trade, investment and share market. But each and every investor should be protected from corporate frauds and corruptions. Steps should be taken to protect the investors' confidence in the security markets. Otherwise, there would be serious problem to collect funds in the market. If investors interests are shaken, they will be reluctant to invest their hard-earned monies in the market. Fund collection will be

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<sup>40</sup> .Investors protection,  
[https://rajdhnicollege.ac.in/admin/CK\\_editor/CK\\_finder/user\\_files/files/Investor\\_Protection.pdf](https://rajdhnicollege.ac.in/admin/CK_editor/CK_finder/user_files/files/Investor_Protection.pdf).(Accessed on 19-10-2021).

a troublesome and difficult task. In order to protect the interests of the investors, various mechanisms have been taken by the Government of India. The two terms 'Corporate fraud' and 'investors protection' are inversely proportionate to each other. The more there will be corporate frauds the less there will be investors protection. Investor's protection will be reduced with the increase of corporate frauds and corruptions. The regulatory bodies in India like SEBI and RBI are playing the important role of watch dog towards the security market. One of the main objects of SEBI is to protect the interests of existing and prospective investors. SEBI has taken various initiatives to protect investors interests. Some of these are:

- (a). Issue of guidelines from time to time;
- (b). Public interest advertisements;
- (c). Dealing with complaints/grievances of investors;
- (d). Investors Education;
- (e). Investors Surveys;
- (f). Disclosure requirement by Companies etc

In addition to the above, SEBI has also taken steps to register and regulate the intermediaries of the business-like brokers, transfer agents, bankers, trustees, registers, portfolio managers and merchant bankers etc to protect the interests of the investors. SEBI has also constant vigil on frauds and unfair trading methods related to the securities market for the protection of investors. However, in spite of all these efforts the problem of corporate crimes has increased to a great extent<sup>41</sup>.

## **VI. CONCLUSION AND SUGGESTIONS**

Our society is consisted of numerous people. Each person is different from others. Some of them may be very honest and some other may not be so. Again, these persons are appointed or assigned the responsibility to manage the day-to-day activities of the company. So, it is quite expected that some of them may be honest and some of them are not. But, the activities of the companies will be continued. So, in order to reduce and prevent corruptions and fraudulent activities in the company, some strategies are to be taken. An effective anti-fraud and anti-corruption strategy may help us to achieve this objective. An effective anti-fraud strategy is generally consisted of the following elements<sup>42</sup>:

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<sup>41</sup>.Dr. Vijay Kumar Singh, Corporate Power to corporate crimes: Understanding corporate criminal liability in India, Satyam Law International, p-203.

<sup>42</sup> .Corporate Fraud, Chartered Institute of Management Accountants, UK, [www.cimaglobal.com/documents/importedddocuments/cid\\_tg\\_corporate\\_fraud\\_may09.pdf](http://www.cimaglobal.com/documents/importedddocuments/cid_tg_corporate_fraud_may09.pdf).(Accessed on 9-10-

- (a). Fraud Prevention
- (b). Fraud Detection,
- (c). Fraud Deterrence and
- (d). Fraud Response

Fraud can be prevented through developing a sound ethical culture and through sound internal control systems. Fraud detection is very important to prevent fraud. Because, unless fraud is detected it will never be prevented. So, an internal mechanism should be established to detect fraud. Various warning signals e.g. business risks signals, financial risks signals and IT and Data risks signals may be introduced. For example, in IT and data risks signals, any unauthorized access to company's computer system and anomalies during company's IT return filing may give this signal. As a fraud detection measure, a fraud alert mechanism should be introduced. For example, if any discrepancy is found between earnings and lifestyle or if photocopied documents are kept in place of originals etc then a fraud alert should be given. As a part of fraud detection measure, ongoing risk assessment, trend analysis, data matching etc may be incorporated. Fraud response plan of the company must be very strong. The company's approach to deal with fraud should be clearly described in its fraud policy and fraud response plan. Fraud deterrence policy of the company generally creates a fear psychosis in the minds of persons who are involved in fraud. A fraud response plan of the company should include company's strong intention to deal with the fraud, the investigation policy and strong response of the company etc. Reiss and Tonry(1993) suggests that for fraud prevention the role of the government is very important as the government frames the laws and regulations to prevent frauds in corporate houses<sup>43</sup>. However, government of India has enacted several laws to prevent fraud in corporate houses. The regulatory agencies like SEBI & RBI have framed various rules and regulations to prevent corporate crimes and frauds. These are to be implemented by the law enforcing agencies in true letter and spirit. However, following steps can be taken to reduce the corporate frauds:

- (a). To introduce 'know your employees' initiatives;
- (b). To make the employees aware or set up reporting system;
- (c). To strictly introduce internal control mechanisms;

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<sup>43</sup>.A.J. Reiss and M. Tonry(1993), "Beyond the law: crime in complex organization", *Organizational Crime and Justice*, USA, vol.18, pp.1-10.

- (d). To take initiatives to hire various experts for the smooth functioning of the company;
- (e). To fix clear and easier standards/code of conduct for employees in the form of employee manual and it must not be arbitrary.
- (f). To take steps in decentralizing responsibilities and duties of employees in such manner that one employee doesn't have too much control over an area or duty.
- (g). To incorporate independent checking and verification process through surprise checking, inventory counts or other procedures by independent outside experts;
- (h). To start independent reporting mechanisms through whistle blowers or otherwise;
- (i). All books of accounts should be audited by an impartial external auditor, in addition to existing audit procedure of the company, who will be appointed on yearly basis and who are not connected with the company.
- (j). The government and the regulatory agencies should take initiatives to train advocates and other officers in commercial laws and regarding intricacies of commercial fraud detection mechanisms.

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