

WHITE COLLAR – SCAMESTERS

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ABSTRACT

Some crimes are devoid of bloodshed and gore. Modus Operandi of such crimes involves abuse of power attached to public office or technological advancements. At a click of a mouse you can be robbed off your entire life savings. Using a wireless network, credit card machines can be hacked into exposing sensitive details about your transaction. Worthless and fake bonds can be sold to banks which can crash the stock market taking down dalal street. Such crimes highlight the darker side of human intellect and mayhem it can cause which coupled with nuisances of computer science. The essay examines various white collar crimes with respect to scams and laws in place to tackle the same. The most striking feature about such crimes is that it is often committed by persons we have not even met in our lives. Such activities are carried out behind computer screens and the only face is untraceable an I.P address. Future wars in all probabilities shall be fought on keyboards instead of military styled weapons. Is the existing lex loci equipped to handle changing contours of non conventional crimes? The essay seeks to analyze the above foresaid question briefly.

INTRODUCTION: INDIA AND CORRUPTION

The term “White Collar” crimes were first coined by Prof. Sutherland in the year 1939. He defined white collar crimes as crimes committed by individuals enjoying high social status and such crimes are committed during the course of their employment. This definition given by Sutherland is offender based. An offense based definition would be that it is crime which is committed by abusing the power attached to public office which attracts penal provisions. White-Collar criminals are more dangerous than terrorists and such crimes can have long term impacts in the society. The earliest possible case of white-collar crime dates back to 1453, which is popularly referred to as the “Carrier’s Case”. An agent was asked to transport wool from point A to point B and he attempted to steal some of it for him¹. Indian Penal Code, 1860 deals with various white-collar and prescribes punishment for the same. It provides for punishment when it comes to Bribery and Corruption², Counterfeiting of Conies and Government Stamps³, Offences relating to weights and measures⁴, Adulteration of food and drugs⁵, Misappropriation of property⁶ and Criminal breach of public trust, forgery⁷, etc. Coupled with Indian Penal Code, 1860, we have legislations like Prevention of Corruption Act, 1988, Prevention of Money Laundering Act, 2002 in place to keep a check on white collar crimes. The first famous white collar-scam that shook India was the jeep scam in 1948. All protocols were bypassed and a defence deal to import 200 army jeeps from a foreign firm was signed for Rs. 80,00,000 and then Prime Minister’s close colleagues were blamed for the scam. It is no secret that corruption at all the levels of democracy is the most common crime committed in India. India has been ranked 79th among 176 countries in the Corruption Perception Index 2016 released by the Transparency International organisation. Its score marginally improved from 38 in 2015 to 40 in 2016. India had a score of 36 in 2012⁸.

Bofors Scam, 2G Scam, Coalgate Scam, highlight issues of corruption at political level and criminal breach of trust committed by public servants. It won’t be incorrect to state that political

¹ G. NAGARAJAN, DR. J. KHAJA SHERIFF, White Collar Crimes in India, IRCJ, Sept 2012, Pg 158

² Section 168, 169, 171B, 171C, 171E, 171H of Indian Penal Code, 1860

³ *ibid* section 230-263.

⁴ *ibid* section 264-267

⁵ *ibid* section 272-276

⁶ *ibid* section 403-407

⁷ *ibid* section 463

⁸ Niti Kiran, India Ranked 79th in the Corruption Perception Index, (Jan17, 2017, 6:18 pm), <http://www.businesstoday.in/current/economy-politics/india-ranked-79th-in-the-corruption-perception-index-2016/story/245092.html>

corruption is the root cause of major problems in India. It is because of corruption and complicated procedures coupled with ignorance about the law because of which most financial crimes are committed. Kautalya was of the opinion that corruption is like honey and poison on the tongue. One has to taste it in the long run. Absolute power at the hands of government officials corrupts them absolutely and it has a heavy bearing on the background of our elected leaders and degrading social and moral values. Every scam has a direct link to corruption because in order to tamper and eliminate evidence, extract relevant insider information, buy witnesses, evade the due process of law, etc, Corruption is the only incentive to persons involved in such activities. These scams enumerated below gave a new dimension to white-collar crimes and its commission in India.

THE HARSHAD MEHTA SCAM; THE STOCK BROKER WHO BROKE THE MARKETS (BANKING FRAUD)

In this famous scam, a stock broker named Harshad Mehta, invested heavily in the shares of ACC Company in the year 1990. His investments would result in manipulation of prices and he was being referred to as the “Big Bull” of the stock market. Ready Forward bonds were used for this scam. The RF is in essence a secured short-term (typically 15-day) loan from one bank to another⁹.

Banks sell their governmental securities in exchange of short term loans through such ready forward bonds. The banks selling the securities issues bank receipts which acts as a confirmation of money received by the selling bank. Mehta got hold of a couple so small-time banks to issue fake bank receipts which were not backed by any governmental security. These receipts were then passed on to other banks which in turn gave money to Mehta in expectation that they were buying securities. This money was then used to invest in the stock market which increased the prices of the same and the stock was then sold at a profit. The money due was given to the bank after the shares were sold in the market. Once the scam was exposed, banks were left with worthless bank receipts. Ashwin Mehata, brother of Harshad Mehta is fighting

⁹ Indian Economy at a Glance, available at <http://indianeconomyataglance.blogspot.in/2009/03/harshad-mehtas-scam.html>

the case in court. According to him the liability of Harshad Mehta was assessed by I.T Department not on the basis of his Income but on the basis of his revenue.

The scam lead to a loss of nearly 4000 Cr to banking institutions in the country and the stock markets crashed heavily. One Manager of a bank also committed suicide when the news of the scam broke out. RBI through a circular in 2015 classified frauds as stated below;

In order to have uniformity in reporting, frauds have been classified as under, based mainly on the provisions of the Indian Penal Code:

1. Misappropriation and criminal breach of trust.
2. Fraudulent encashment through forged instruments, manipulation of books of account or through fictitious accounts and conversion of property.
3. Unauthorized credit facilities extended for reward or for illegal gratification.
4. Negligence and cash shortages.
5. Cheating and forgery.
6. Irregularities in foreign exchange transactions.
7. Any other type of fraud not coming under the specific heads as above.

Cases of 'negligence and cash shortages' and 'irregularities in foreign exchange transactions' referred to in items (d) and (f) above are to be reported as fraud if the intention to cheat/defraud is suspected/ proved. However, the following cases where fraudulent intention is not suspected/ proved at the time of detection will be treated as fraud and reported accordingly:

(a) Cases of cash shortage more than ₹10,000/-, (including at ATMs) and

(b) Cases of cash shortage more than ₹5,000/- if detected by management / auditor/ inspecting officer and not reported on the day of occurrence by the persons handling cash¹⁰.

The bull is long dead and banks are still yarning to recover their money. This scam is also referred to as the Stock Market Fraud, 1992.

¹⁰ Reserve Bank of India, DBS.FrMC.BC.No.1 /23.04.001/2013-14 dated July 01, 2013, (14th July, 2014), available at https://www.rbi.org.in/Scripts/BS_ViewMasCirculardetails.aspx?id=9062

THE SATYAM SCAM; BOOKS OF ACCOUNTS GONE WRONG? (ACCOUNTING FRAUD)

This is perhaps India's biggest corporate law fraud. In this case M/s Satyam Computer Service Ltd forged bank statements, invoices, etc with the help of internal and external auditors and caused loss to the investors to the tune of Rs.14, 162 Cr¹¹. The revenue of the company was falsely represented to be high which lured investors into investing in the company. Within 45 days CBI filed its first chargesheet against the company and offenders were charged Forgery, Falsification of Accounts¹², Criminal Conspiracy¹³ and Cheating. The company was listed in Bombay Stock Exchange, New York Stock exchange and National Stock Exchange. Ramalinga Raju violated insider trading norms and used dummy account of Satyam to trade in shares. According to the report submitted by C.I.D, Mr Raju used to withdraw Rs 20,000 Cr every month to pay 13,000 non-existent employees. He used the money of the company to buy properties. He was responsible for using investor's money to run family business and funds from satyam company were being diverted to the companies of his sons. A web of 356 fake companies was also created to complicate the books of accounts. Payments were made through inter-corporate transactions. One such company having a paid-up capital of Rs 5 lakhs invested around Rs 90 Cr to obtain an unsecured loan from the bank¹⁴. The board of the company was suspended from functioning by the Company law Board. Banks cancelled its agreements with the company. The share prices of the company shot to an all time low. Reputation of other U.S listed Indian companies was compromised and Satyam became the least valued I.T Company in the year 2009. Credibility of regulatory authorities in India was also questioned after the scam broke out. Since this whole scam was possible because of auditors, it is really important for companies to have internal checks and balance to prevent such errors from happening in future. Establishing of audit committees is imperative and strong punishment to perpetrators should be sought after. Such scams tarnish the image of the country at a global level and no country would want to invest in an infested economy. The case is also referred to as India's own Enron Scam.

¹¹ Central Bureau of Investigation's Official Website, available at <http://cbi.nic.in/fromarchives/satyam/satyam.php>

¹² Section 477 of the Indian Penal Code, 1860

¹³ *Ibid* Section 120A

¹⁴ HT Correspondent, Satyam Case, (9th April, 2015, 7:58 p.m), available at <http://cbi.nic.in/fromarchives/satyam/satyam.php>

SHARADHA SCAM; NO DEPOSITE IS SAFE (NON-BANKING FINANCIAL INSTITUTION FRAUD)

Sharadha Realty is based out of Calcutta. The company devised a ponzy scheme and many innocent investors fell victim to it. It lured in investors to invest in Collective Investment Schemes and promised high-end returns. It also promised to give attractive holiday packages failing which cash incentive would be given to investors. The most appealing feature of this scheme was its simplicity. An investor could invest as low as Rs 100 and there was no upper limit for the same. It had a number of agents which got 30% to 40% ¹⁵of commission on investments made. The company would take money from one investor to pay off another. After a certain amount of time cash inflow was hit, investments dried up and schemes were maturing at the same time. The company simply never had enough money to pay off its investors which resulted in an enquiry being initiated against the company. The scam brought to light dirty nexus between such ponzi schemes and politics at the state of West Bengal. Two of Shardha offices were inaugurated by the Chief Minister, One of the members of the ruling party was the head of media division and the other one was featured in one of its pamphlets. Market regulator SEBI ordered Shardha Realty to close all its collective schemes and refund the money collected from investors within three months, amid continuing protests against the alleged fraudulent activities of the group. The regulator also warned of launching a criminal case for "fraud, cheating, criminal breach of trust and misappropriation of public funds" and initiation of winding up of the entire company through a reference to the Ministry of Corporate Affairs, if its orders are not complied within three months in 2013 April¹⁶. The investigation was launched against the company in the year 2010. Leading political figures of the state were associated with the scheme which is gloomy. The government had to defend itself against a lot of criticism as the opposition came down with a heavy hand. The perpratator, Mr Sudip Sen was arrested in Kashmir.

¹⁵ Jnanki Fernandis, Chit Fund Scam, (April 24th, 2013, 12:15 p.m), available at <https://www.ndtv.com/india-news/chit-fund-scam-how-saradha-duped-its-investors-520076>

¹⁶ Press Trust of India, Market...to refund money of the investors, (24th April, 2013, 11 A.M), available at <https://www.ndtv.com/india-news/market-regulator-sebi-orders-saradha-realty-to-close-schemes-refund-money-520074>
[20]M.G Arun, Unsafe Deposit, (May 26th, 2013), <http://www.businessday.in/magazine/cover-story/saradha-group-chit-fund-scam/story/194622.html>

ADARSH HOUSING SCAM; WAR HEROES BACKSTABBED (REAL ESTATE FRAUD)

Kargil was a huge victory for Indians. Men in uniform laid their lives in the line of duty to protect the territorial sanctity of the country. Adarsh Housing Project was introduced to give apartments to War heroes and widows in Mumbai but eventually was occupied by politicians and bureaucrats. The issue had been doing rounds since 2003 and Army coupled with Central Bureau of Investigation had to launch separate probes to look into the matter. This is what the CAG had to say on the scam, Adarsh “is a classic example of the fence eating the crops; of those holding fiduciary responsibility betraying the same for personal aggrandisement. It reflects a consistent failure across all departments, State and Central government and a cross-section of the officialdom. It is an example of how a group of select and powerful elite could collude to subvert rules and regulations for personal benefit,”¹⁷ The building itself was illegally constructed. It had not obtained an objection certificate from the Ministry of Environment and Forest and it had permission only to construct 6 floors. The navy had objections to the establishments as well because it was located in a sensitive military area which could have had its own security concerns. It turned out that it was a became construction as well. An R.T.I revealed that the Revenue Minister granted permissions to give away 40% of the flats to civilians most of which were his relatives. Mother-in-Law of the CM had three flats in her name. This is what the Bombay High Court had to say on the issue, it “a clear-cut manipulation by the Collect orate, the Revenue Ministry and the Urban Development Ministry,” pointing out that “everyone who cleared the file was gifted with a flat.”¹⁸, which was disgraceful. Recently the government introduced Real Estate (Regulation and Development), Act, 2016 to curb the menace of Real Estate Frauds in the Country. Some of the key features of the Act are as follows;

1) According to the new law, the developer can’t make any changes to the plan without the written consent of the buyer. This provision will not allow the developer to increase the cost of their projects.

¹⁷ Rahi Gaikwad, Adarsh, a classic case of fence eating crop,(December 25th,2011, 2 P.M), available at <http://www.thehindu.com/news/national/adarsh-a-classic-case-of-fence-eating-crop-cag/article2745204.ece>

¹⁸ Deepalakshi.K, The Adarsh Scam, Story...Occupants, (April 29th 2016, 5:53 p.m), available at <http://www.thehindu.com/news/national/adarsh-scam-background/article14264528.ece>

- 2) The law ensures that realty project is completed in time. If delayed, then the developer will have to pay interest on the amount paid by the buyer.
- 3) Registration is mandatory for all commercial and residential real estate projects where the land is over 500 square meters or includes eight apartments & which are under-construction.
- 4) As per the new act, every phase of apartment will be considered a standalone real estate project, and separate registration needs to be obtained for each project.
- 5) It is compulsory for a state to establish a State Real Estate Regulatory Authority as per the new act. Buyers could approach this body for redressal of their grievances.
- 6) The property will have to be sold to buyers based on carpet area and not on super built-up area which will become illegal under the new law.
- 7) Failing to register a property will attract a penalty up to 10% of the project cost and a repeated violation could send the developer in jail.
- 8) As per the new law, the developer will have to place 70% of the money collected from a buyer in a separate escrow account to meet the construction cost of the project. This will keep a check on developers who divert the buyer's money to start a new project, instead of finishing the one for which money was collected & also ensure that the respective project is completed in time.
- 9) If the buyer finds any shortcomings in the project then buyer can contact the developer in writing within one year of taking possession.
- 10) The law has a provision of a maximum jail term of three years with or without a fine, for a developer who violates the order of the appellate tribunal of the RERA¹⁹.

¹⁹ India inonline, 10 features of RERA, (aPRIL 18th, 2017, 2:04 p.m), available at https://www.indiainfoline.com/article/news-top-story/features-of-rera-10-key-features-of-rera-act-117041800433_1.html

AUTHOR'S NOTE; CONCLUDING REMARKS

Scams have a deep rooted impact not just on economy but also in the lives of an ordinary taxpaying citizen. Trust and credibility that a government enjoys takes a serious beating. International Image is tarnished which hinders off shore investments. Governmental policies come in and are discarded which takes its time and cost. This scam disturbs allocation and distribution of resources which increases the gap between have and have knots. It takes a lot of time to unearth these crimes and ascertain people who were affected by it. These casters are powerful enough to employ the best of the best legal help which works for them more often the not. Ram Jethmilani representing the accused in Fodder Scam bears testimony to the fact. National Economy ends up on life support and it takes substantial amount of time to recover from the blows of such criminal ventures. Well educated people coming from high ends of the society are lured into committing such crimes and these points at Motivation and Opportunity theory given by James Coleman. It states that a particular individual is motivated to commit a white collar crime as soon as an opportunity presents itself. Even if we were to weight thru risks of committing that particular crime to the reward, latter comes out to be heavier as the black money which can earned out of these crimes is astronomical. Such crimes impose a value system and though revoking message in the society that punitive side of Lex is only for the poor and those with enough money, power and social standing most of the time dodge the law. This is what the Apex Court had to say but more often the scenario is quite different.

“Let not the mighty and rich think that courts are their paradise and in the legal

Arena they are the dominant players”²⁰.

²⁰ Supreme Court of India in Rathinam v. State of Tamil Nadu & Anr, (2011) 11 SCC 140.