

**CORPORATE FRAUDS IN INDIA - A STUDY OF COMPANIES ACT, 2013**

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**I. WHAT IS A CORPORATE FRAUD?<sup>1</sup>**

Corporate Frauds are the activities carried on by industrialists and big business houses with dishonest intentions. These are the illegal carried on with the aim of serving some personal interests and gains. These are the white collar crimes committed by the very esteemed persons and dignitaries of the field. For example scams like Satyam Scam, Adarsh Housing Scam, Harshad Mehta Case, Sahara Case are some of the cases which have left a deep scar in the Corporate World. These are just the names of a few big scams, our corporate world is full of such frauds, no wonder India is one of the most corrupt nations of the world.

Corporate frauds include practices like deliberately changing and concealment of vital information. The corporates use various methods in order to execute these practices. Thus these frauds can take various forms. Such as :-

- Alteration, Manipulation, Falsification and Misrepresentation of Accounts.
- Addition and Omission in accounts by using false methods.
- Theft of Tangible and Intangible Assets within and outside the Corporations.
- Insider Trading
- Various forms of corruptions in the form of giving and receiving bribes, aiding illegal practices.

These activities have posed a great deal of pressure on the legal world and have compelled legal experts to make laws targeting these fiascos. Also the increasing complexity of the crimes has always led to a constant need of amendments and changes in order to be in consonance with the existing scenario.

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<sup>1</sup> <https://taxguru.in/corporate-law/corporate-fraud-meaning-type-how-to-avoid-legal-provisions.html>

Thus there are various regulatory provisions existing which define, rule, guide, guard and redress such issues. For example :- Indian Contract Act 1872 , Indian Companies Act 2013 , Prevention of Corruption Act 2013, Prevention of Money Laundering Act 2012, IT Act 2008 etc.

So we got to know that there are various regulatory legislations but here we will mainly focus on the provisions of the Companies Act, 2013.

## **II. COMPANIES ACT, 2013 AND CORPORATE FRAUDS**

The Companies Act, 2013 acts as an apex legislation which works for the issues related to corporate frauds.

Companies Act defines Fraud and the punishment of Fraud under Section 447 mentions that - “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.”<sup>2</sup>

From the above mentioned definition we can conclude that every act leading to fraud should accompany the mens rea. Any act done with no ill intention would not amount to fraud. And the Section also provides for the punishment, it says that any person who is guilty of fraud is liable to serve a sentence not less than 6 months which can exceed upto 10 years. Along with this the person liable is also entitled to pay a fine which is not less than the amount of fraud but it can extend to 3 years in certain conditions. In cases of public interest, the imprisonment term is not less than 3 years.

Section 448<sup>3</sup> talks about the False statement and section 449<sup>4</sup> talks about false evidence and its punishment, and all of these acts in one way or another constitutes frauds and these provisions of the act defines them and also provides remedy of them

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<sup>2</sup> <http://www.aubsp.com/section-447-punishment-for-fraud/>

<sup>3</sup> <http://www.aubsp.com/section-448-punishment-false-statement/>

<sup>4</sup> <http://www.aubsp.com/section-449-punishment-false-evidence/>

There is one important thing which we need to understand that when Section 447 defines fraud it does not narrow down the definition of Fraud. There are 17 other instances in the act which also attracts the same punishment as in Section 447 and it also include any other practices which can be deemed as 'fraud' by looking at its broader definition

Some of those other practices which invites punishment under this section of the act are :-

- (a) incorporation of a company based on false or incorrect information, the first directors, first subscriber and the professional who made declaration will be liable (b) for untrue, misleading statement in prospectus or inclusion or omission of any matter
- (c) for fraudulently inducing persons to invest money
- (d) for personation for acquisition of securities, etc.
- (e) acceptance of deposits with intent to defraud depositors or for any fraudulent purpose
- (f) cases where auditor acts in a fraudulent manner or abets or colludes in any fraud
- (g) when business of a company is carried on for a fraudulent or unlawful purposes or with intent to defraud creditors, members or any other persons
- (h) for making fraudulent application for removal of name
- (i) for furnishing of false statements, mutilation, destruction of documents during inspection, inquiry or investigation.<sup>5</sup>

And it is flexible this way and has a broader outlook and new acts can be added here in future whenever any changes happen.

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<sup>5</sup> <https://www.icsi.edu/media/webmodules/companiesact2013/Annexure-B.pdf>

As by now we got to know that punishment of the fraud includes both fine and imprisonment making it a non compoundable offence.<sup>6</sup> along with section 447, there are 20 other sections in the act which talks about the punishments related to the acts of fraud and similar offences. We are not discussing all those provisions here.

Section 211 gives power to the central government to establish an office Serious Fraud Investigation Office(SFIO) , which has all the authority to deal with the fraud cases related to Companies and no other authority can proceed in such matters once a case is under the supervision of SFIO. It also has power to arrest persons and it submits the concluding reports to the central government. Government can order SFIO to initiate proceedings against the companies. There is a lot more provisions in the act which can be easily understand by the deep reading of the Act.

### **III. CONCLUSION**

The Companies Act, 1956 was the primitive law dealing with all such matters related to corporations but because of lack in its effectiveness in certain scenario it was replaced by the Companies Act, 2013 which led to the establishment of a far better machinery in order to deal in a better and precise manner with the cases related to Corporate frauds, even though it is not hundred percent up to the mark and has its limitations but still it is a good step ahead in the field of Corporate Frauds.

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<sup>6</sup> <https://legodesk.com/legopedia/compoundable-and-non-compoundable-offence-in-india/>

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