

LECTURE ON LEGAL & LAW ENFORCEMENT EARLY RESOLUTION MECHANISM

HARIHAR BHAVE

ADVOCATE, SUPREME COURT
PARTNER

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FRAUD



WRONGFUL GAIN

Wrongful Gain is gain by unlawful means of property to which the person gaining is not legally entitled.

WRONGFUL LOSS

Wrongful Loss is the loss by unlawful means of property to which the person losing is legally entitled.

DISHONESTLY

Whoever does anything with intention of causing Wrongful Gain to one person or Wrongful Loss to another person, is said to do the thing “Dishonestly”.

FRAUDULENTLY

A person is said to do a thing Fraudulently if he does the thing with intent to defraud but not otherwise.

FRAUD

Sec. 17 of Indian Contract Act, 1872:

- An act committed by a party to a contract, or with his/her connivance
- Or by his/her agent, with intent to deceive another party or his agent
- Or to induce him to enter into the contract.

The suggestion, as a fact, of that which is not true, by one who does not believe it to be true.

- The active concealment of a fact
- Any other act of deceivment
- Any other act or omission as the law specially declares to be fraudulent.

TYPES OF FRAUDS

Various types of frauds:

- Cheque Frauds
- Deposit Account Frauds
- Purchased Bill Frauds
- Hypothecation Frauds
- Loan Frauds
- Banker's bunks (Frauds committed by dishonest bankers)

Financial fraud is the main sector which affects the economy of an individual, institutions, group of institutions and consequently, the economic fibre of the nation.

The economic fraud slows down the pace of monetary living of an individual to a greater extent.

Fraudsters use persons at effective positions, make/force them to be vulnerable to be their accomplice with or without their knowledge and consent.

In this process fraudsters emotionally and monetarily blackmail the victims, sometimes offering them returns in kind out of their ill-gotten benefits.

What is the Difference Between Fraudsters and Hardcore Criminals?

FRAUD

The most Lucrative Business
wherein money is earned without
actually putting in hardwork by
honorable means.

Fraud is committed with much of thought process and planning. Extraordinary intelligence is used to defraud the Government, Banking and Financial Institutions.

FRAUDS FROM 1960 TO TILL DATE

1960 : Teja loan scandal – 220 million (US\$3.7 million)

1964: Pratap Sigh Kairon Scam

1965: Kaling Tubes Scandal

1971: Nagarwala Scam 6 million (US\$100,000)

1974: Maruti Scandal

1976: Kuo oil scandal – 22
million (US\$370,000)

1981 : Cement Scam of A.R. Antuley

1987 : Bofors Scandal

1989: St. Kitts forgery

1990 : Airbus Scandal

1992 : (Year of Scamsters) :

- Harshad Mehta security scam(US \$ 850 million)
- Palmolein Oil import scam from Kerala.
- Indian Bank Scandal(US \$ 220 Million).

1994: Sugar Import Scam

1996 :

- Sukharam Telecom Equipment scandal (sukhram convicted for 3 years)
- C.R. Bhansali Scam(US \$ 190 Million).
- Fertilizer Import Scam(US \$ 1.33 Billion).

1997:

- Cobbler scam
- Sheregar scam

2000: India- South Africa match fixing scandal

2001 :

- Ketan Parekh security scam (US 320 Million).

2002 :

- Stamp papers :Rupees 200 Billion
- Provident Fund scam

2003:

- Stamp papers :Rupees 200 Billion
- Provident Fund scam

2005 :

- Taj co-operative group housing scheme scam : (Rs. 40 Billion).IAS officer Narayan Diwakar convicted for 2 years.

IPO SCAM:

- Bihar flood relief scam : Rs 170 Million. Sadhu Yadav and ors. Chargesheeted.
- Oil for food scam : K. Natwarsingh had to resign from the Cabinet on 6th Dec,2005.

2006:

- Penny Stock Scam
- Punjab City Centre Project Scam (US\$250 million)
- Uttar Pradesh Ayurveda scam – 260 million (US\$4.4 million)

2008 :

- Hasan Ali black money controversy
- State Bank of Saurashtra scam : Rupees 950 Million.

2009:

- Rice export scam – 25 billion (US\$420 million)
- Austral Coke scam – 10 billion (US\$170 million)

2010:

- Indian Premier League
- Andhra Pradesh Emmar scam – 25 billion (US\$420 million)

2011 :

- Mumbai Sales Tax Fraud(Rs. 10 Billion)
- Maharashtra Education Scam
- Maharashtra Public Distribution System Scam

2012: YEAR OF SCAMS:

Totally 40 major scams reported from all over India. Practically encompassing every major field of the economy and spread over nearly 10 different states of India.

- Forex derivatives scam (Rs 320 Billion)
- Service Tax and central excise duty fraud
Rs.191.59 Billion
- Maharashtra Stamp Duty scam

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- Maharashtra Land Scam :
 - MHADA Repair scam Rs. 1 Billion
 - Himachal Pradesh pulse scam
 - Andhra Pradesh liquor scam
 - Punjab paddy scam
 - Uttar Pradesh stamp duty scam Rs. 1200 crores
 - Tax refund scam Rs. 30 Million
 - MSTC Gold Export Scam Rs. 464. Billion

2013:

- LTC Scam
- Vodafone tax scandal involving Rupees 11,000 crores corruption charges
- Kerala solar panel scam
- IPL Spot fixing and betting scam

2014:

- Delhi Jal board scam
- Rajya Sabha MP Kunal Ghosh is in jail since November 2013

DUBIOUS DISTINCTION

India ranks 94th on Global Corruption Perception Index.

India's rank has remained the same since 2012.

**We should change the country
from SCAM INDIA TO SCHEME
INDIA**



NARENDRA MODI
Prime Minister of India



CRIMINAL LAW IN RESPECT OF THE FRAUDS

- Indian Penal Code
- Code of Criminal Procedure
- Prevention of Corruption Act
- Money Laundering Act

CASE STUDY 1

Mr. Anand, a branch manager, attends the office. Staff is yet to come. Mr. Anand is a very honest person, God fearing and a very strict human being. He restricts himself only to work and is known for his honesty and integrity. Mr. Anand has a brilliant idea and wants to see whether the idea can work. He passes the following entries.

10.08.07 am:- Mr. Anand being a branch manager, debits general ledger and credits his account by Rs. 1,00,000/-

10.08.15 am:- Mr. Anand converts Rs. 1,00,000/- into FDR.

10.08.35 am:- Mr. Anand marks the lien on FDR and disburses the loan to himself, he being the sanctioning authority. The loan amount is the same as face value of the FDR, i.e. Rs. 1,00,000/- .

10.09.07 am Mr. Anand credits his account.

10.09.17 am:- Mr. Anand credits General Ledger.

Whether any fraud is
committed?

Who are the wrongful gainers
and who are the wrongful
losers?

How will you deal with
the report as a
controller?

How the fraud must
have taken place?

Is there any system
failure?

Will you be able to
prevent it?

Who should complain
against whom?

Will you be able to
prevent it?

CASE STUDY 2

Bharat Education Society, a trust registered under Indian Trusts Act, 1882.

(1) Mr. Shailesh Tambe, (2) Mr. Aniket Shinde, (3) Mrs. Jaimini Purohit (4) Ms. Reema Naik and (5) Ms. Jyoti Jain, are the Trustees of Bharat Education Society (hereinafter referred to as “the Trust”).

The Trust runs various educational institutions comprising of Arts College, Commerce College, Science College, Management Institutions and Prestigious Schools.

In the month of January, 2013 Mr. Shekhar, an Investment Consultant, approached the Trust and presented his scheme which offers 1% higher rate of interest than the interest rate offered by various banks.

On this basis, the Trust agreed to deposit the amount with First Citizen Bank, a Nationalized Bank at its Andheri branch.

The branch manager, Mr. Kabir opened an account strictly following KYC norms. An amount of Rupees 10 crores and 50 thousand was deposited with the Andheri branch of the First Citizen Bank.

Mr. John D'souza, from the office of the Trust and an accountant with the Trust, completed all the formalities for and on behalf of the Trust.

Mr. John D'souza presented Account Opening Forms for opening Fixed Deposit Account.

Mr. Shekhar accompanied Mr. John D'souza during the formalities at Andheri Branch of First Citizen Bank.

The amount was transferred to Andheri Branch of the First Citizen Bank by RTGS on 15th April, 2013. Mr. Kabir, issued the fixed deposit receipt generated by the computer. The fixed deposit receipt was duly handed over and accepted by an authorized person of the Trust.

After the fixed deposit account was opened and FDR was issued, the Trust presented another set of forms requesting to open Current Account and OD facilities to the said account.

The Trust requested the OD against the security of FDR. The Trust presented original FDR with the said set of forms and applications. The said set of documents also had the necessary resolutions.

All these submissions were on the letter head which was different than the one used for opening Fixed Deposit Account.

The fixed deposit receipt carried the regular interest rate on the face of it. Thereafter, the Trust requested the Bank to open a current account with Andheri Branch of the First Citizen Bank.

The trust, through its authorized person, deposited Rupees 5,000 by way of cash with Andheri Branch of the First Citizen Bank. 15 days later, the Trust requested for OD facility against the fixed deposit receipt by properly presenting the resolution and signature. The letter head of the Bank used was not identical with the earlier letter head.

Branch Manager, under his own authority as per the prevalent norms, issued credit facilities by way of OD. Amount is credited to the current account opened by the Trust.

The entire amount is transmitted by RTGS to various accounts in various other banks, as per the instructions of the said Trust. The Trust then made an application to increase the OD limit facility. The same was processed at zonal/ regional office and the request was duly accepted and limit is duly sanctioned.

At the end of 1 year, i.e. on/ or about the 1st week of April, the various amounts were deposited by RTGS in the current account and were adjusted towards the interest on loan. The balance amount was paid to the trust which is the maturity value of the fixed deposit receipt.

Whether any fraud is
committed?

Who are the wrongful gainers
and who are the wrongful
losers?

How to fix responsibility on:

- Branch Manager,
- Zonal Managers,
- Regional Managers,
- Trustees,
- Trust,
- Authorised Signatories,
- Chartered Accountants of the trust,
- Mr. Shekhar, the investment agent who presented this scheme to the trustees.

How will you deal with
the report as a
controller?

How the fraud must
have taken place?

Is there any system
failure?

Will you be able to
prevent it?

Who should complain
against whom?

What view will be taken by Police
and Courts in both the
above cases?

THANK YOU

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