

CRIMINAL LIABILITY OF DIRECTORS IN CASES OF
COPORATE FRAUD

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INTRODUCTION-

"A company can only act through human beings and a human being who commits an offence on account of or for the benefit of a company will be responsible for that offence himself."

--Glanville Williams.

Fraud is described as "the deliberate deception, trickery, or cheating in order to gain an advantage."¹ Three conditions generally present when fraud occurs. "First, management or other employees have an incentive or are under pressure, which provides them a reason to commit Corporate Fraud. Second, circumstances might exist like the absence of controls, ineffective controls, or the ability of management to override controls, that provide an opportunity for a fraud to be committed. Third, the persons who involved are able to rationalize committing a fraudulent act. Some individuals possess an attitude, character, or set of ethical values that allow them to knowingly and intentionally commit a dishonest act".²

¹ COLLINS CONCISE DICTIONARY OF THE ENGLISH LANGUAGE 445 (2d ed. 1988).

² Jeffrey Cohen, Yuan Ding et. al, *Corporate Fraud And Managers' Behavior: Evidence From The Press*, available at www.ceibs.edu/facultyCV/dyuan/20110614Ding_JBE2011%20final.pdf, p. 5 (last visited on Feb.10th, 2014)

2010-2011 Annual Global Fraud Survey report of Kroll conducted by Economist Intelligence Unit showed that Fraud continues to be a big problem worldwide and more over in India. Of the companies surveyed, globally 75% reported experiencing fraud during the year. In India, the situation is disastrous, with 84% organizations reporting that they suffered from fraud during the year. India, is ranked second worldwide after Africa and shares the position with China. Worldwide management conflict of interest, internal financial fraud, corruption and bribery and vendor procurement related frauds have increased. Physical theft of assets and information theft decreased. Indian business crucial pain points are corruption and bribery, information theft, internal financial fraud, financial mismanagement and vendor procurement.³

The lack of fraud prevention and investigation measures giving huge losses to the companies. Indian companies are ill prepared to the fight fraud menace. Just 50% companies have background screening, third-party due diligence and other fraud prevention measures in place. In my view, India does not have adequately trained fraud investigators as part of the risk management teams.⁴

SCOPE-

The objective of this paper is to discover the cases of fraud in India. The Researcher in this project would aim to analyze the principles which have been evolved with time to administer as to what is fraud, what is corporate fraud. The increasing cases of corporate fraud in India are a problem which needs to be solved by the regulators. Persons who are mainly responsible for this offence are Directors of the company. So, the researcher will further discuss the criminal liability of director in the cases of corporate fraud and how the directors are personally held liable.

For the purpose of research the Researcher will take the help of doctrinal method to come to the conclusion. So, the Researcher would depend on both primary sources and secondary sources as authorities to illustrate the principles as well as justify her arguments. Primary sources relied on

³ G. Nagarajan*; Dr. J. Khaja Sheriff, *White Collar Crimes In India*, Vol.1 Issue 9, INTERNATIONAL JOURNAL OF SOCIAL SCIENCE & INTERDISCIPLINARY RESEARCH (2012) at 162

⁴ *Id.*

would be statutes and case laws. Secondary sources relied upon would be books, journals and articles as well as information from internet.

LIMITATION-

The Researcher will not discuss all the aspects of corporate fraud in detail nor will discuss the other tortuous or contractual liability of directors in cases of fraud. She is going to limit her work to the areas of fraud where directors can be criminally held liable.

RESEARCH QUESTION-

- 1- What is criminal liability of directors in case of corporate fraud?
- 2- Whether the director can be personally held liable?

CORPORATE FRAUD-

According to the Association of Certified Fraud Examiners (ACFE), fraud is “a deception or misrepresentation that an individual or entity makes knowing that misrepresentation could result in some unauthorized benefit to the individual or to the entity or some other party”.

Fraud generally can be defined as to obtain financial or other benefit through misrepresentation, forgery or false declarations which prejudice or cause loss to another. A company may commit fraud by manipulating accounting records, hiding debt, or failing to inform shareholders of loans and bonuses given to its executives.⁵ A corporate fraud occurs when a company or organization deliberately changes or conceals the information in order to make it appear healthy.⁶ They are the crimes which are committed by the so called high profile and sophisticated humans of the society. They reduce the interest and trust in corporate investments and in turn reduce the confidence on the government as well as

⁵ Varsha Rajora, *Corporate Frauds in the world of corporate sector: A Critical Analysis*, available at <http://ssrn.com/abstract=1539013>, p. 4 (last visited on Feb.10th, 2014)

⁶ *Corporate Fraud*, available at http://www.phoenixlegal.in/manage/ArticlesPdf/2583320Sept_2012__Outlook_Corporate_Fraud.pdf (last visited on Feb.10th, 2014)

society.⁷ The falsification of financial information, including false accounting entries, bogus trades designed to inflate profits or hide losses and false transactions will help the organization to attract funds from the lenders and investors. Corporate frauds are more dangerous to the society because financial loss to society from corporate frauds is greater than the financial loss from burglaries, robberies, larcenies etc.⁸

Earlier Fraud was not defined anywhere in the companies act, but in 2013 Act, Fraud is specifically defined u/s 447 (explanation). "fraud" in relation to affairs of a company or anybody 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.

CRIMINAL LIABILITY AND PERSONAL LEGAL RESPONSIBILITY OF DIRECTOR-

The word Director is defined u/s. 2(34) of Companies Act, 2013 means a director appointed to the Board of a Company. As we know from the Hohfeld analysis of Jural Relatives, if you have power, you will have corresponding Liability. Like this Director have powers, rights and duties as provided by the company, along with these, they have liability in tact with their power.

In cases of fraud, there can be 3 types of liability- contractual, tortuous and criminal liability. But in this paper I will only discuss the director's criminal liability in detail.

Criminal Liability can be defined as illegal act of omission or commission, punishable by criminal sanction committed by individual or group of individual in course of their occupation.⁹

Director's are liable for violation of the provisions of the Companies Act and other Acts which may expose them to punishment with fine or imprisonment or with both. The Hon'ble Supreme

⁷ *Id.*

⁸ *Supra* Note. 5, p.4

⁹ K.S. WILLIAMS, TEXT BOOK ON CRIMINOLOGY 64 (2001)

Court of India held in the case of *Maksud Saiyed Vs State of Gujarat and Others*¹⁰ that the vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. If directors are guilty of negligence or found to be misusing their position, they will be liable for civil as well as criminal liability. For example; if directors make any untrue statements in the prospectus, or do not maintain books of account as per provisions of Section 209 or falsify accounts, criminal liability also arises. Director can be relieved of the offence, if he is able to show that he was not in charge or control of the day to day affairs of the company or Offence in question was committed without his consent/knowledge/connivance and he was not negligent in ensuring that laws are complied.¹¹

S. 217 (2AA) of Companies Act, 1956 requires directors to give Directors responsibility statement confirming that: accounting policies adopted reflect the true nature of financial statements and Accounting records are maintained for safeguarding assets and preventing frauds. Directors have to confirm that Proper and sufficient care has been taken for the maintenance of adequate accounting records for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities.¹²

Criminal Liability in Misstatement of Prospectus-

Section 63 of the Act incorporates the provision relating to the criminal liability for misstatement in prospectus. It provides that where a prospectus includes any untrue statement, every person who authorized the issue of prospectus shall be punishable with imprisonment for a term which may extend to 2 years or with fine which may extend to Rs 50,000 or with both.¹³ The offence is compoundable under Section 621A. It has to be noted that under such cases, once the prosecution establishes the falsity of statement in a prospectus signed by a director, etc., the onus is shifted to the defendant of proving either that the statement was immaterial or that he believed it to be true. An expert who has given the

¹⁰ (2008) 5 SCC 668

¹¹ *Rights, Duties and Liabilities of a Director*, available at <http://www.caclubindia.com/articles/all-about-rights-duties-and-liabilities-of-a-director-11239.asp#.UuLlpNK6at9> 6/7 (last visited on Feb.10th, 2014)

¹² *Companies Act, 2013*, available at <http://www.caclubindia.com/articles/the-companies-act-2013-provisions-relating-to-directors19471.asp#.UuLceNK6at8> 4/6(last visited on Feb.10th, 2014)

¹³ Section 63 of Companies Act, 1956

consent will not be deemed to be *ipso facto* a person who authorized the issue of prospectus.¹⁴

SEBI as the regulatory body may take actions against the persons who undertook those fraudulent actions and they may also be held to be guilty of making a mis-representation and commission of fraud not only before the prospective purchasers of the shares but also before the statutory authority.¹⁵

Director's Liability under Section 463 of the UK Companies Act, 2006- Section 463 applies to directors of all companies. Under section 463, subject to the knowledge requirement, a director is liable to compensate the company for any loss that the company suffers as a result of any untrue or misleading or knew the omission to be dishonest concealment of a material fact.¹⁶ A director may still incur liability for a criminal offence, for example, under section 397 of FSMA for misleading statements and practices¹⁷

The words "untrue statement" a statement included in a prospectus shall be deemed to be untrue, if the statement is misleading in the form and context in which it is included.¹⁸

In *Hafez Rustom Dalal v. ROC*¹⁹ Though there were mis-statements in the prospectus of the company, the company was not included in the list of vanishing companies. Penal action initiated against the directors and promoters on that basis was held to be not justified the complaint was also barred by limitation.

In *G. Ramesh v. ROC*²⁰, The purpose of notice is to enable the person accused to answer the charges. This would, therefore, require that the material forming the basis of opinion should be disclosed so that the opportunity granted is realistic in its content and form. The court may not interfere in the matter of a notice proposing an action. But where the notice does not disclose

¹⁴ Company Law Committee Report, Para 62

¹⁵ Manendra Singh, *Liability for Misstatement in Prospectus: Where to stop?*, available at <http://www.jdsupra.com/legalnews/liability-for-misstatement-in-prospectus-43544/> (last visited on Feb.10th, 2014)

¹⁶ Section 463(3), UK Companies Act, 2006

¹⁷ Section 463(6), UK Companies Act, 2006

¹⁸ A RAMAIYA ,GUIDE TO THE COMPANIES ACT, Part 1-1023 (2010)

¹⁹ (2005) 128 Com Cases 883 (Guj).

²⁰ (2007) 77 CLA 271 (Mad).

the basis of the opinion, or where there is no intelligible nexus between the reasons and materials, High Court interference certainly becomes necessary so as to assure fair play.

In *B.R. Bajaj v. State of Maharashtra*²¹, There was the failure to disclose material information in the prospectus. The complaint was substantially against full time directors and the company. The court allowed relief to nominee directors. Prosecution of other directors was allowed to be continued. The court further said that persons who signed the prospectus would come within S. 63(1).

Fraudulent trading:

Directors may also be made personally liable for the debts or liabilities of a company by an order of the court under section 542. Such an order shall be made by the court where the directors have been found guilty of fraudulent trading. Section 542(1), in this regard, provides that if in the course of the winding up of a company, it appears that any business of the company has been carried on, with intent to defraud creditors of the company or any other person, or for any fraudulent purpose, the court, on the application of the Official Liquidator, or the liquidator or any creditor or contributory of the company may if it thinks it proper so to do, declare that any persons who were knowingly parties to the carrying on business in the manner aforesaid shall be personally responsible without any limitation of liability, for all or any of the debts or other liabilities of the company as the court may direct. Further, section 542(3) provides that every person who was knowingly a party to the carrying on of the business in the manner aforesaid, shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to fifty thousand rupees, or with both.

Section 993 of UK Co. Act, 2006 part 29 creates a specific, but widely defined, criminal offence of carrying on the business of a company with intent to defraud the creditors²² of the co. or of any person or for any other fraudulent purpose. Every person knowingly party to the carrying on of the business in this manner commits a criminal offence. Fraud is a general criminal offence, of

²¹ (2009) 148 Com Cases 636 (Bom).

²² This section embraces fraud on future, as well as present creditors: *R v. Smith* (1996) 2 B. C. L. C. 109, CA.

course, but it has been regarded as less confusing for juries to face them with a single charge of fraudulent trading rather than with numerous charges of individual acts of fraud.²³ In *R v. Kemp*²⁴ – when a person carries on the business of two companies with the fraudulent intent of defrauding the company's customers, he commits the offence of fraudulent trading. The legislature thought so well of the offence that it enacted in S. 9 of the Fraud Act, 2006 a similar offence in respect of those business carried on by persons falling outside the scope of S. 993. In *Adams v. The Queen*²⁵ An agreement by director to dishonestly conceal the facts to get some benefits or gains so as to prevent the company from recovering it may constitute the offence of conspiracy to defraud. If a person found to be knowingly carrying on a business with intent to defraud its creditors for any fraudulent purpose, then the person will be guilty under the criminal offence for being a part to the fraudulent trading and may undergo a sentence of up to 10 years may be imposed under Section 993 (3) (a) of CA Act, 2006.²⁶ And a disqualification order can be made against that person who has been guilty of this offence.

A person is guilty of fraudulent trading if when he incurs a debt on the company's behalf on the course of managing its business he has no reason to believe that company will be able to pay its creditors in full by the dates their respective debts become due.²⁷ If there is any false statement made in the prospectus, then the person responsible will be held liable. If the director proves that he did not take part in the relevant board meeting while his fellow directors were issuing the prospectus, then he will not be held personally liable.²⁸

A dictum of Lord Radcliffe in *Welham v. DPP*²⁹ is also worth noting: "It requires a person as its object: that is, defrauding involves doing something to someone. Although in the nature of things it is almost invariably associated with the obtaining of an advantage for the person who commits the fraud, it is the effect upon the person who is the object of the fraud that ultimately determines

²³ GOWER AND DAVIES, PRINCIPLES OF MODERN COMPANY LAW. 215 (2008)

²⁴ [1988] Q. B. 645, C.A.

²⁵ (1995) 1 WLR 52

²⁶ STEPHEN MAYSON, DEREK FRENCH AND CHRISTOPHER RYAN, COMPANY LAW 691(2010-2011)

²⁷ ROBERT R PENNINGTON, COMPANY LAW 326 (2006)

²⁸ *Id.*

²⁹ (1960) 1 All ER 805

its meaning.” Onus of proof is on those who allege fraud. Liability under this section may be imposed only if it is proved that the business of the company has been carried on with a view to defraud the creditors. *Re, Augustus Barnett & Son Ltd.*³⁰

Intent to defraud³¹—To establish ‘intent to defraud’ it is not necessary that the person accused must believe that there is no reasonable prospect of ever paying the creditor. It is sufficient to show that he believed that the debt could not be paid when it became due or shortly thereafter. A person would be knowingly a party to the business of a company having been carried on with intent to defraud creditors if (a) at the time when debts were incurred by the company he had no good reason for thinking that funds would be available to pay those debts when they became due or shortly thereafter and (b) there was dishonesty involving real moral blame according to current notions of fair trading. The offence of fraudulent trading requires proof that someone carried on the business of the company with a fraudulent intent and that the other directors sought to be held liable were knowingly party to his fraud.³²

In *Official Liquidator of Aryodaya Gng & Mfg Mills Ltd. v. Gulabchand Chandatia*³³ - Where the allegation was that the directors had understated losses and overstated the net value of the company's assets and thereby induced the creditors to advance more moneys to the company and also to renew their deposits, but all this was not supported by any material particulars, the High Court refused to sustain the charge.

Fraudulent conduct of business is a criminal offence in India. Where any business of the company is carried on with the intent to defraud creditors, every person who was knowingly a party to the carrying on of the business shall be punishable with imprisonment and fine. Criminal proceedings for fraudulent trading can be initiated by the liquidator with the sanction of the Company Law Tribunal.³⁴ The tribunal cannot pass any penal order of punishment for

³⁰ 1986 BCLC 170 (Ch D).

³¹ A RAMAIYA, GUIDE TO THE COMPANIES ACT, Part 3-5392 (2010)

³² *Id.*

³³ 2002 CLC 1303 (Guj).

³⁴ *Powers, Duties & Liabilities Of Board Of Directors Of A Company In India*, available at <http://www.indiajuris.com/pdf/Directors.pdf>, p. 5 (last visited on Feb.10th, 2014)

fraudulent trading. The tribunal can only give permission to the official liquidator or the liquidator to prefer an application before court of competent criminal jurisdiction. For enforcement of the criminal action the official liquidator shall seek the permission of the tribunal to prosecute the guilty person by filing an application before it. If it has been found that the parties involved has indulged in fraudulent conduct of business the tribunal may permit the official liquidator or liquidator to move the court of criminal jurisdiction for appropriate order to ensure punishment provided under the Act.³⁵

‘Any person who is knowingly a party to the carrying on of the business of the company’ with the intent to defraud the creditors of the company or for any fraudulent purpose is liable to be punished for the offence of fraudulent trading. Courts in India, while interpreting the provision, have held that persons who are not actively involved in the management of the company cannot be parties to the carrying on of business with intent to defraud.³⁶

In *Sandal Chit Fund Financiers Ltd. v. Narinder Kumar Sharma*³⁷, the court dismissed the petition filed against the directors of the company for fraudulent trading on the ground that there was no allegation against the directors that they were actively running the affairs of the company. The court held that to establish liability against the respondents specific allegations are to be raised against him. Where there is no specific allegation against a particular director, he cannot be made liable for fraudulent trading.

The intention to defraud may be inferred from the conduct of the accused persons. The transactions entered into during the period when the company was in financial distress are examined for the purpose. Intention to defraud can be established if it can be shown that any debt was incurred or if the company has entered into any non-commercial transactions during the period of financial difficulties.³⁸ A company can be said to be in financial difficulties if it has an excess of liabilities over its assets.

³⁵ *Id.*

³⁶ Preetha S., *The Fraudulent Trading Offence: Need For A Rereview*, 4 NUJS L. REV. 231 (2011), p. 241

³⁷ (1994) 79 CompCas 25 (P&H)

³⁸ *Supra* Note. 36, p. 242

In *Official Liquidator v. Ram Swaroop*³⁹, the statement of affairs filed with the official liquidator showed that the ex-directors had withdrawn huge amounts of money as interest free loan but had not been returned it to the company despite the fact that the financial condition of the company was bad. The court held that where the directors of the Company had unjustifiably withdrawn huge amounts out of the capital of the company and continued to carry on the business of the company even after knowing fully well that the company is running at a loss and was unable to pay its dues, it would be sufficient to charge them with liability for fraudulent trading. A declaration that the persons concerned have indulged in fraudulent trading is a precondition for initiation of criminal proceedings. The declaration can be made only if winding up proceedings are completed.

It is well settled by the decisions both in England and India that liability under the Companies Act may be imposed only if there had been dishonesty or fraud, negligence equivalent of fraud or constructive/ equitable fraud.⁴⁰ If a director is closely or personally associated with the management of the company, it is his duty to look after the affairs of the company as a man of ordinary prudence.⁴¹ A company though a legal entity can act only through its board of directors. Managing director is prima facie in charge of and responsible for the company's business and affairs and can be prosecuted for offences by the company, when they are in charge and responsible for the conduct of business.⁴² Fraud must be proved. The claimant must further prove that the false representation contained in the offer document was fraudulent in the sense that it was made knowingly or without belief in its truth or recklessly without caring whether it was true or false. The fact that a statement was made through carelessness and without reasonable ground for believing it to be true, may be evidence of fraud. Where a statement is ambiguous and capable of more than one meaning, the onus is on the claimant to show first that he has

³⁹ AIR 1997 All 72

⁴⁰ HALSBURY'S LAW OF INDIA, VOL. 27 (COMPANIES AND CORPORATIONS) 40.861 (2008)

⁴¹ Ravindra Chhaba and Shyam Sunder Chhaba, *Directors's liabilities under the Company Act, 1956 & Company Bill, 2011*, 2COMP.LJ (2012) at 153

⁴² N. Vijaya Kumar , *Offences by Companies- Persons responsible*, 97 SEBI & CORP. LAWS (2010) at 11

interpreted the words in the sense in which they were false and has been deceived by them as so interpreted.⁴³

There could be two types of incentives for persons involving in fraudulent activity, one which relates to the motives of individual employees towards personal aggrandizement at the cost of the company (and other stakeholders) involved, which amounts to pure fraud or cheating. The other is a larger issue, which revolves around the concept of earnings management where companies are under pressure to meet earnings estimates, especially where quarterly reporting is involved (as in the case of public listed companies in India), and may hence fail to truly represent the state of affairs of the company.⁴⁴

Satyam case⁴⁵- Satyam Computer Services Ltd was founded in 1987 by B.Ramalinga Raju. The company offers information technology (IT) services. The company employs 40,000 IT professionals across development centers in India, Satyam has strategic technology and marketing alliances with over 50 companies. The global corporate community was shocked and scandalized when the Chairman of Satyam, Mr. Ramalinga Raju resigned on 7th January, 2009 and confessed that he had manipulated the accounts by \$1.47-billion. In his confession letter, he has told for several quarters he was repeatedly fudging the books to overstate profits and assets. The confession only reveals about the peak level of the fraud. It was being perpetrated on a continuous basis over many quarters or several years. They most likely made these entries during the last week of the reporting period so that the invented profits filled the blanks perfectly for analyst purposes. In this case the culprit Raju, who stepped down as chairman after admitting to the fraud was arrested under five sections of the Indian Penal Code—section 120B for criminal conspiracy, section 420 for cheating, section 409 for criminal breach of trust, section 468 for forgery and also section 471 for falsification of records. All the charges are non-bailable offences. But, five years down the line still the case has not yet decided.

⁴³ LORD MACKAY OF CLASHFERM, HALSBURY LAWS OF ENGLAND, VOL 7 (1)- COMPANIES 708(2004)

⁴⁴ *Corporate Frauds; Earnings Management*, available at <http://indiacorplaw.blogspot.in/2009/08/corporate-frauds-earnings-management.html> (last visited on Feb.10th, 2014)

⁴⁵ Ahmad, Tabrez and Tabrez, Malawat and Kochar, Yashovardhan and Roy, Ayan, *Satyam Scam in the Contemporary Corporate World: A Case Study in Indian Perspective* (August 23, 2009). IUP Journal, 2010. Available at SSRN: <http://ssrn.com/abstract=1460022>, pp. 1-3 (last visited on Feb.10th, 2014)

PROVISIONS OF OLD COMPANIES ACT, 1956 AND COMPARISON WITH THE PROVISIONS OF NEW COMPANIES ACT, 2013 -

- 1- S. 63 old Act states that every person who authorised issue of prospectus which included any untrue statement is criminally liable. S.34 of the new act states the same but S.63(2) which provides exemption to the officer in default is omitted & the person responsible will be liable for fraud u/S. 447 of new act. Penalties under this act are more stiffer.
- 2- S. 84(3) states that if a company with intention to defraud renews /issues a share certificate, then officer in default will be liable for 6months & fine 1 lakh. But in S. 46 of new act states that officer in default will be liable u/s. 447.
- 3- S. 105 of old act states penalty for concealing name of creditors, it remains same in S. 66(10) of new act, just added that officer doing the same will be liable u/S. 447.
- 4- S. 234(7) of old act provides power of registrar to call for information and in S. 206 (4)- of new act Proviso added that where business of a company has been or is being carried on for a fraudulent or unlawful purpose, every officer of the company who is in default shall be punishable for fraud in the manner as provided in section 447.
- 5- S. 237 of old act provides investigation of company affairs in other cases and in S. 213 of the new act Provided that if after investigation it is proved that—
 - (i) the business of the company is being conducted with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose, or that the company was formed for any fraudulent or unlawful purpose; or
 - (ii) any person concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, then, every officer of the company who is in default and the person or persons concerned in the formation of the company or the management of its affairs shall be punishable for fraud in the manner as provided in section 447.
- 6- S. 542 of old act provides for the liability of fraudulent conduct of business and it is same in S.339 of new act with added clause that where any fraudulent business going on, every person party to it shall be liable u/S. 447.

New Sections added in Companies Act, 2013-

S. 75-Damages for fraud.

S. 229- Penalty for furnishing false statement, mutilation, destruction of documents.

S. 251- Fraudulent application for removal of name.

S. 447 states Punishment for Fraud- it provides that 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. In the explanation meaning of "Fraud" is also defined.

LITERATURE REVIEW-

- 1- *Corporate Fraud And Managers' Behavior: Evidence From The Press* by Jeffrey Cohen, Yuan Ding et. al – discusses about the the role of managers' behavior in the commitment of the fraud. This study integrates the fraud triangle (FT) and the theory of planned behavior (TPB) to gain a better understanding of fraud cases.
- 2- *Corporate Frauds in the world of corporate sector: A Critical Analysis*, by Varsha Rajora- critically analyses the various instances of frauds that had taken place in the corporate world, the reasons of committing such crimes and study the role of the legislature for the prevention of such crimes.
- 3- *Corporate fraud* by phoenix legal discusses that India Has a Long Way to Go in Tackling Corporate Fraud, The Existing Law and Regulatory Framework Is Not Adequate for the Detection and Prevention of White Collar Crimes. A Lot Remains To Be Done In This Sphere
- 4- *White Collar Crimes In India* By G. Nagarajan*; Dr. J. Khaja Sheriff**- this paper discuss in detail about the white collar crimes in India and how fraud is a part of this.
- 5- *Directors's liabilities under the Company Act, 1956 & Company Bill, 2011*, by Ravindra Chhaba and Shyam Sunder Chhaba discusses about various provisions of Co. Act, 1956 relating to the liability of directors and how it changed in the Company Bill, 2011.

- 6- *Offences by Companies-* Persons responsible, by N. Vijaya Kumar- discusses about the crimes that can be committed by the company and company as it is a legal entity cannot be held liable or cannot be punished, so the persons responsible and directing the mind on the better of carrying business in a company i.e. the directors and the managers can be held liable.
- 7- *The Fraudulent Trading Offence: Need For A Relook* by Preetha S discusses in detail the what is fraudulent trading, how it is a criminal offence and the laws relating to this offence in Indian Companies Act, 1956 and UK Companies Act.
- 8- A Ramaiya's *Guide to the COMPANIES ACT-* Part 1 in section 63 discusses in detail about the criminal liability in case of misstatement of prospectus and Part 3 in Section 542 discusses about the Fraudulent Trading of Business.

Conclusion-

Fraud occurs when any statement is made without belief in the truth or carelessly. Corporate fraud occurs when the corporate personal involves in the fraudulent business. As, we know the company is a legal entity and it cannot act on its own. For the smooth running of the business the managers or the officers i.e. directors are responsible. If any fraud committed during the course of business then finger will be pointed toward the director. Directors are liable for fraud involving the company's property or assets if they have knowledge of the fraud or have personally participated in any misrepresentation. The Directors are mainly responsible for the criminal liability in the cases of corporate fraud. The directors owe a duty of care towards the third party i.e. the investors and the creditors, so if the directors are involved in any type of fraud during the course of business in the company, they can be held personally liable.

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- 1- Jeffrey Cohen, Yuan Ding et. al, *Corporate Fraud And Managers' Behavior: Evidence From The Press*, available at www.ceibs.edu/facultyCV/dyuan/20110614Ding_JBE2011%20final.pdf,
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