



WHITE COLLAR CRIMES AND CURRENCY SCHEMES IN INDIA: A CRITICAL ANALYSIS AND THE IMPERATIVE FOR JUDICIAL ACTIVISM

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ABSTRACT

White collar crimes, particularly those involving currency schemes, have seen a significant rise in India, posing challenges to the legal and financial systems. This paper critically examines the nature and impact of such crimes, highlighting the loopholes in existing legislation and enforcement mechanisms. Emphasizing the role of judicial activism, the study advocates for proactive judicial interventions to strengthen the fight against financial frauds. Through doctrinal analysis and case studies, the paper underscores the need for comprehensive reforms to address the complexities of white collar crimes in the Indian context.

KEYWORDS : White collar crime, currency schemes, Ponzi schemes, judicial activism, financial fraud, India.

INTRODUCTION

White collar crimes, characterized by deceit and motivated by financial gain, have evolved with technological advancements, making them more sophisticated and harder to detect. Currency schemes, including Ponzi schemes, fake currency rackets, and illegal forex operations, have defrauded countless individuals and institutions in India. The existing legal framework often falls short in effectively curbing these crimes, necessitating a critical analysis of current laws and the role of the judiciary in addressing these challenges.

Understanding White Collar Crimes And Currency Schemes

Coined by Edwin Sutherland in 1939, white collar crimes refer to offenses committed by individuals of high social status during their occupation. In India, currency-related white collar crimes encompass:

- **Ponzi Schemes:** Fraudulent investment operations promising high returns with little risk, where returns to earlier investors are paid using the capital from newer investors.
- **Fake Currency Rackets:** Involvement in the production and circulation of counterfeit currency, undermining the economy.
- **Illegal Forex Operations:** Unauthorized trading in foreign exchange, violating the Foreign Exchange Management Act (FEMA).

Legislative Framework Addressing Currency Schemes

- **Indian Penal Code (IPC), 1860:** Sections like 420 (cheating) and 406 (criminal breach of trust) and also the new inaugurated criminal laws Bhartiya nyaya Sanhita (BNS), Bharatiya nagarik suraksha sanhita (BNSS) and Bharatiya Sashay Adhiniyam (BSA) are commonly invoked in white collar crime cases.
- **FEMA, 1999:** Governs foreign exchange transactions but lacks stringent punitive measures compared to its predecessor, FERA.
- **Prevention of Money Laundering Act (PMLA), 2002:** Targets money laundering activities but often faces challenges in timely enforcement.
- **Chit Funds Act, 1982:** Regulates chit fund operations but is often circumvented by fraudulent schemes.

Case Studies Highlighting Judicial Interventions

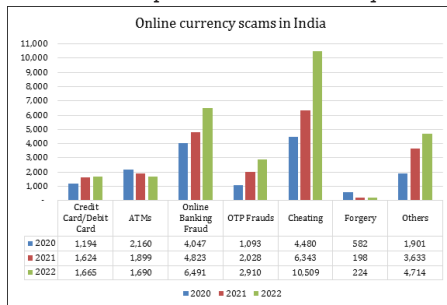
- **INX Media Case:** Involved former Finance Minister P. Chidambaram and his son Karti Chidambaram, accused of facilitating FDI approvals in exchange for kickbacks. The case highlighted misuse of official position and led to arrests and ED investigations.
- **PNB Bank Fraud Case:** Diamond merchants Nirav Modi and Mehul Choksi defrauded Punjab National Bank of over 13,000 crore using fake Letters of Undertaking. It

exposed serious lapses in internal bank controls and regulatory oversight.

- **Santiago Martin v. Union of India (Kerala High Court, 2023):** Lottery baron Santiago Martin challenged enforcement actions under PMLA, alleging procedural violations. The case underscores constitutional scrutiny over enforcement agencies' powers.
- **YES Bank Case:** Rana Kapoor, former CEO, was arrested for accepting bribes and sanctioning bad loans leading to a banking crisis. The case exposed deep-rooted corruption in private banking practices.
- **DHFL Scam:** Promoters Kapil and Dheeraj Wadhawan allegedly siphoned off 34,000 crore from Dewan Housing Finance Corporation Ltd. It became one of India's largest financial frauds, prompting forensic audits and ED action.
- **PMC Scam:** Punjab & Maharashtra Co-operative Bank officials concealed bad loans worth 6,700 crore given to HDIL. The scam triggered depositor protests and raised concerns over RBI's co-operative bank regulation.
- **SREI Group Fraud:** SREI Infrastructure Finance allegedly diverted funds and defaulted on massive loans. The case is under insolvency proceedings and regulatory scrutiny for financial mismanagement.
- **IL&FS Scam:** IL&FS defaulted on repayments due to inflated asset valuations and fund diversion, impacting mutual funds and banks. It led to government intervention and restructuring of NBFC norms.
- **Anil Ambani Fraud Case:** Anil Ambani-led Reliance Group companies were accused of financial misstatements and loan defaults. The case spotlighted corporate debt restructuring and opaque accounting practices.
- **ABG Shipyard Bank Fraud Case:** ABG Shipyard defrauded a consortium of banks of 22,842 crore via fund diversion and misreporting. CBI filed charges, making it one of the biggest bank frauds in India.
- **Videocon Group Loan Fraud Case:** ICICI Bank's former CEO Chanda Kochhar allegedly sanctioned loans to Videocon in return for personal gains. The case exposed conflict of interest in high-level corporate lending.
- **Sterling Biotech Bank Fraud Case:** Sterling Biotech promoters allegedly defrauded banks of 8,100 crore through shell companies and fake transactions. The ED attached multiple properties under PMLA.
- **Bharat Bombardier Scam:** Involved irregularities in procurement contracts and fund transfers linked to defense and rail projects. The scam revealed possible collusion between officials and private entities.
- **ABG Cement Bank Fraud Case:** ABG Cement was accused of availing loans and not repaying, with funds allegedly diverted. It added to the growing list of non-performing asset-linked frauds in the infrastructure sector.
- **Avantha Group Fund Diversion Case:** Gautam Thapar of

Avantha Group was arrested for misappropriating loans and diverting company funds. The case raised concerns over governance in large family-run businesses.

- **Cox & Kings Bank Fraud Case:** Cox & Kings defrauded banks through falsified balance sheets and fictitious customers, with fraud estimated at over 5,500 crore. The case involved multiple international money trails.



Source: National Crime Records Bureau (NCRB) (<https://www.ncrb.gov.in/>)

The Need For Judicial Activism

Judicial activism involves the judiciary taking an active role in enforcing laws and ensuring justice, especially when other branches of government fail to act. In the context of white collar crimes:

- **Proactive Interpretation of Laws:** Courts can interpret existing laws to cover emerging forms of financial fraud.
- **Monitoring Investigations:** Judicial oversight can ensure timely and impartial investigations.
- **Victim Compensation:** Courts can mandate compensation mechanisms for victims of financial frauds.

Recommendations for Strengthening the Legal Framework

- **Specialized Courts:** Establish courts dedicated to handling financial fraud cases to expedite proceedings.
- **Enhanced Regulatory Coordination:** Foster collaboration among agencies like SEBI, RBI, and the Enforcement Directorate.
- **Public Awareness Campaigns:** Educate the public about common financial frauds to prevent victimization.
- **Legislative Reforms:** Update existing laws to address the complexities of modern white collar crimes.

CONCLUSION

White collar crimes involving currency schemes pose a significant threat to India's financial stability and public trust. While existing laws provide a foundation, their effective enforcement requires proactive judicial involvement. Judicial activism can play a pivotal role in interpreting laws, overseeing investigations, and ensuring justice for victims. A concerted effort involving legal reforms, regulatory coordination, and public awareness is essential to combat the menace of white collar crimes effectively.

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