

# Role of White Collar Criminals with Special Reference to Bank Loan Scams in India

Paper Submission: 15/01/2021, Date of Acceptance: 26/01/2021, Date of Publication: 27/01/2021

## Abstract

Unfortunately crime is an indispensable element of any society. With the passage of time society grows and likely the nature and intensity of crime. It was a time when people knew about the traditional or conventional crimes such as theft, robbery, dacoity, murder etc. On the other hand development of society evolved the new types of crime as unconventional crimes eg.- white collar crimes, transnational crimes, organized crimes etc. Recent exposure of so many bank scams proves the relevance of this research paper.

**Keywords:** White Collar Crime, Bank Fraud, Bank Loan Scams, CBI, ED.

## Introduction

Concept of White Collar Crime was introduced for the first time by Prof. Edwin Sutherland in 1941. He defined white collar crime as a "crime committed by the respectable and high social status persons in the course of their occupation."<sup>1</sup> Such offences basically include the activities of false advertisement, embezzlement, money laundering, forgery, infringement of patent rights, concealment of defects in the commodities for sale etc. This type of offences are called silent offences till they are discovered. These offences cause severe harm to society in comparison to an ordinary crime. These offences also affect the public at large.

White Collar Crime has now become a global phenomenon especially with the growth in the area of commerce and technology. This type of offence has become a challenge before the law enforcement agencies. Following factors are responsible for the growth of white collar crime in India-

1. Human greediness towards money, power, position etc.
2. Well-off position of such offenders makes them carefree from the fear of conviction.
3. Technological expertise of offenders.
4. Time taking and lengthy court procedures provide sufficient time to such offenders to flee out of the reach of Indian law.
5. Such offences are very difficult to trace because they are committed in privacy and with secrecy.

Bank frauds are the most common kind of white collar crime in India. It is easily done with the involvement of bank officials and the so called reputed business class persons. These kinds of scams are not new in the Indian history. We memorize Harshad Mehta for the India's biggest Stamp paper scam in 1992 done by him. He did financial scandal by means of stamp paper fraud and bank receipt fraud worth Rs. 100 billion. Later he was convicted by the Bombay High Court and Supreme Court.<sup>2</sup> But it would not be wrong to say that the loopholes of our banking system paved way for the scam. In India, Indian Penal Code, 1860 is considered to be the biggest criminal penal law though it does not defines white collar crimes. But it deals with certain similar offences as bribery,<sup>3</sup> Adulteration of food, drink & drugs,<sup>4</sup> Criminal Misappropriation of property,<sup>5</sup> Criminal Breach of Trust,<sup>6</sup> Cheating<sup>7</sup> Forgery and related offences.<sup>8</sup> Government of India has also been introduced various other regulatory legislations, the breach of which will amount to white-collar criminality. Some of these legislations are The Import and Exports (Control) Act, 1947; The Foreign Exchange (Regulation) Act, 1974; The Industrial (Development and



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Regulation) Act, 1951 Essential Commodities Act, 1955; Companies Act, 1956; Prevention of Money Laundering Act, 2002. These laws served the purpose and several convictions were made by judiciary as in Harshad Mehta scam, Lalu's Fodder scam, Sahara Shri Subroto Rai case etc. etc.

Recently so many bank loan scams have been highlighted in the newspapers, in which the accused adopted a new tendency of fleeing out of the jurisdiction of Indian Courts. This has created new challenge before Indian Justice System. These cases are as follows-

#### **Vijay Mallya's Scam**

Vijay Mallya, a well known business man and the owner of Kingfisher Airlines, Kingfisher beverages and many more other projects. He came into limelight when he refused to repay bank loan of 9000 Crore rupees owned by 17 banks including SBI, PNB, BOB, UCO, IDBI etc. and charges of money laundering has been imposed on him. Before the investigation authorities could have arrested him, he flew away to United Kingdom in 2017. At present Government of India is trying for his extradition. As per the reports, Mallya's property worth 11,230 Crore has been attached by ED till now.<sup>9</sup>

#### **Punjab National Bank Fraud Case**

This is another big bank loan scam worth Rs. 11356 Crore in India. Famous jeweler and designer Nirav Modi, his wife, brother, uncle and partners of different firms along with the bank officers and employees of Punjab National Bank were named as guilty in the charge sheet filed by the CBI. Nirav Modi and his family members left India before the scam came into light. This scam was done by the issuance of fake document named Letter of Understanding (LOU) and bypassing the bank's international trade system called SWIFT. This could have never been done without the help of bank officers and employees.

#### **Yes Bank Scam**

Rana Kapoor, founder of Yes bank is a famous banker. CBI filed a charge sheet against him and his family members for the commission of money laundering, criminal conspiracy, criminal misappropriation. Rana Kapoor misappropriated public money by drawing it and investing it in different companies indirectly held by him and his family members. In total rupees 5050 Crore were messed up.

On the basis of above case study it can be clearly understood that the high officials, business class, politicians etc. enjoy privileges through banking system in granting loans to them. Sometimes they are given over drafted amount without any security. On the other hand a common man faces too many challenges in taking loan of small amount.

In the above mentioned scams a common feature is that the accused left the Indian Territory before any action could have been taken against them. Later they stayed upon the foreign land in order to protect themselves from criminal proceedings. In order to solve this issue Government of India took initiative and passed The Fugitive Economic Offenders Act, 2018.

#### **The Fugitive Economic Offenders Act, 2018**

Government of India enforced The Fugitive Economic Offenders Act, 2018 in order to deal with the fugitive offenders of economic offences. This Act is aimed at providing punitive measures for the fugitive economic offenders who remains outside the jurisdiction of Indian courts in order to evade the process of law. Salient features of this Act are as follows-

1. It defines Fugitive Economic Offender as a person against whom an arrest warrant has been issued for committing any offence as listed in this Act.<sup>10</sup>
2. It provides for the confiscation of properties of FEO whether it is proceeds of any crime or Benami or otherwise. Even a property situated abroad may be confiscated under this Act.<sup>11</sup>
3. The Fugitive Economic Offenders Act, 2018 provides that all the rights and titles in confiscated property shall vest into Government of India.<sup>12</sup>
4. The Fugitive Economic Offenders Act, 2018 puts a bar upon the declared FEO from filing any defence suit in civil courts.

#### **The Main Text**

##### **Objective of the study**

In this paper an attempt has been made to study the role of rapid growth of white collar criminals in the bank loan scams in India.

##### **Aim of the Study**

This paper aimed at studying the efficacy of available legislative provisions as well as to analyze the newly introduced "Fugitive Economic Offenders Act, 2018" in this regard.

##### **Review of Literature**

On reviewing the existing literature it has come to our knowledge that the high reputed business man, bank officials, politicians etc. plays key role in the commission of bank frauds.

##### **Concept and Hypothesis**

The concept behind writing this paper is that the sudden growth in economic offences under white collar crimes especially in cases of fraudulent bank loan is the result of ineffective legislation in this regarding.

The hypothesis for writing this paper is to check whether the Fugitive Economic Offenders Act, 2018 will upgrade the position of Indian legal system in dealing with this kind of offences.

##### **Research Design**

I have gone through Bare Acts and the study material available in the authentic articles, journals and websites for writing this paper. Thus I adopted doctrinal method for writing this paper.

##### **Findings**

In the course of writing this paper I found that due to pendency of cases, lengthy court procedures and loopholes in existing legislation, our judicial system is equally responsible for the failure of preventing such type of offences. At present we need to strengthen our enforcement agencies as C.B.I, E.D, C.V.C, Income Tax Dept., Custom dept. etc.

The newly introduced Fugitive Economic Offenders Act, 2018 will definitely fill the lacuna in the

existing legal system and restore the faith of common man in justice system.

### Conclusion

On the basis of above study I would like to conclude that the enforcement of "Fugitive Economic Offenders Act, 2018" by the Government of India is a good attempt in order to curb these kinds of offences. Along with the passing of this Act, several amendments have been made in the Prevention of Corruption Act, 1988.

### Suggestions

On the basis of above study author would like to suggest following -

1. Speedy trial should be ensured in such offences.
2. When such offenders are caught and held guilty should be punished with the highest degree of punishment available.
3. Fugitive Economic Offender Act, 2018 provides for the confiscation of Fugitive Economic Offender's (FEO's) property situated abroad. But for the implementation of this provision any agreement or memorandum of understanding should exist between India and such other country.

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### Endnotes

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