

Preface

1. **Author has felt when he qualified as Chartered Accountant (CA) in Year 1985 that legal provisions' interpretations are big challenge for legal professionals, govts' officials and public at large in India and outside India.**
2. **Author has realized that something should be developed to resolve this challenge in India and outside India.**
3. **Author has started compiling Frequently Asked Questions (FAQs) on many subjects where his 100% answers are precisely based on Yes or No i.e. white or black nothing is grey**
4. **Author has compiled approximately 150 +(plus) research papers / books with 25 thousand +(plus) pages on many prevailing subjects / acts in India and outside India.**
5. **Author's 1st paper book is now being published under head FAQs on Enforcement Directorate (ED) where 571 FAQs are replied based on Yes or No i.e. white or black nothing is grey**
6. **This book is also containing**
 - (i) Foreign Exchange Management Act (FEMA) 1999 and rules / regulations
 - (ii) Prevention of Money Laundering Act (PMLA) 2002 and rules / regulations
 - (iii) Fugitive Economic Offenders Act (FEOA) 2018 and rules / regulations
7. **This book is published with Sai Kripa and dedicated to my father (late) Mr. M.R. Agarwal, Mother Mrs. R.D. Agarwal, wife Mrs. Snigdha Agarwal, daughter Ms. Soumya Agarwal, daughter Ms. Sanya Agarwal and dedicated team headed by Rajat Kumar**

● **I trust that you will be enriched by reading this book**

With best wishes,
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Author's Profile

Mr. Satish Agarwal (FCA) is heading M/s Satish S Agarwal & Co. Chartered Accountants since 1985 with a team of dynamic young professionals serving clients from various business sectors including public listed companies and government undertakings. Firm was also registered with PCAOB (USA) for undertaking audits and other work of US GAAP.

He is regularly advising on several matters to Institute of Chartered Accountant of India (ICAI) and also to Ministry of Commerce (MoC) for Foreign Trade Agreements (FTAs) and World Trade Organization (WTO) for securing India's best interests.

He is continuously advising on Foreign Investments (FIs) in India and also on Overseas Direct Investments (ODIs) outside India.

He is known for his expertise in incorporating companies in most of countries across the world.

He has written around 150 +(plus) Research papers / books containing 25 thousand +(plus) pages available "freely" on certain portals like:

https://taxguru.in/author/satishagarwal307_1957

Or

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Few out of abovementioned Research papers / books are as under:

1. *Book on Enforcement Directorate (ED) in India- (Book with 617 pages)*
2. *Director of Revenue Intelligence (DRI) in India*
3. *Central Bureau of Investigation (CBI) in India*
4. *National Investigation Agency (NIA) in India*
5. *Serious Fraud Investigation Office (SFIO) in India*
6. *Financial Intelligence Unit (FIU-IND) in India*
7. *Central Vigilance Commission (CVC) in India*
8. *Narcotics Control Bureau (NCB) in India*
9. *Research & Analysis Wing (R&AW) in India*
10. *Economic Offence Wing (EOW) in India*
11. *Intelligence Bureau (IB) in India*
12. *Director General of Income Tax Criminal Investigation (DGITCI) in India*
13. *National Company Law Tribunal (NCLT) in India*
14. *Security Exchange Board of India (SEBI) in India*
15. *Prevention of Corruption (PC) Act,1988 in India*

16. *Foreign Assets Investigation Unit (FAIU) in India*
17. *Book on International Financial Services Center (IFSC) in India (Book with 290 pages)*
18. *Replacement of Indian Penal Code (IPC) Criminal Procedure (CP) & Evidence Act (EA) in India*
19. *Undisclosed Foreign Income & Asset (UFIA)-Black Money Act, 2015*
20. *Statutory provisions for General Anti Avoidance Rule (GAAR) in India*
21. *Reserve Bank of India (RBI) Act, 1934*
22. *Foreign Exchange Management Act (FEMA) 1999 in India*
23. *Benami Transactions (Prohibition) Amendment Act, 2016 in India*
24. *Advance Pricing Agreements (APAs) in India*
25. *Annual Performance Report (APR) for Investments outside India*
26. *Foreign Trade Agreements (FTAs) executed by India*
27. *Statutory Obligations for Companies Operating in India*
28. *Significant Beneficial Owners (SBO) in India*
29. *Significant Economic Presence (SEP) in India*
30. *Place of Effective Management (POEM) in India*
31. *Liberalized Remittance Scheme (LRS) for residents of India*
32. *Foreign Liability and Asset (FLA) return in India*
33. *FATCA agreement with USA*
34. *Double Taxation Avoidance Agreement (DTAA) with USA*
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36. *Corporate Frauds (CFs) in India*
37. *Export of Goods and Services under FEMA, 1999 in India*
38. *Imports of Goods and Services under FEMA, 1999 in India*
39. *External Commercial Borrowings (ECBs) in India*
40. *Overseas Direct Investments (ODIs) under FEMA, 1999 in India*
41. *Acquisition of Immovable Properties by Non-residents under FEMA, 1999 in India*
42. *Compounding of Contraventions under FEMA, 1999 in India*
43. *Foreign Branch Office (BO) + Liaison Office (LO) + Project Office (PO) under FEMA, 1999 in India*
44. *Annual Information Statement (AIS) in India*
45. *Investments by Non-Residents (NRIs) in India*
46. *Guidance for Doing Business in United States of America (USA)*
47. *Corporate Tax (CT) Law in UAE*
48. *Acquisition & Transfer for Immovable Properties by Non-Residents (NRs) in India*
49. *Foreign Company's Registration in India*
50. *Auditor Checks and Reporting for Indian Companies in India*
51. *Companies Auditor Report Order (CARO) 2020 in India*
52. *Tax Audit Report (TAR) + Accounting Standard (ASs) in India*
53. *World Trade Organisation (WTO) & Benefits for India*
54. *Deposits by Corporate in India*
55. *Expatriates + Foreign Citizens in India*
56. *Book on Foreign Investments (FIs) by Non-Residents of India (Non-RoI) (Book with 346 pages)*



Corporate Fraud in India + Outside India (both)

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Corporate Fraud in India + Outside India (both)

Corporate Fraud under Section 447 of Companies Act (CA) 2013

1. Introduction on Imprisonment + financial penalty against Corporate Fraud

- (i) Corporate frauds are increasing in India by person already directly + indirectly as connected + not-connected (both) with corporate.*
- (ii) Now corporates are required the high standards for corporate governance + strong legal provisions to be introduced by Govt. to stop + tackle the corporate fraud to be committed by Indian corporate.*
- (iii) Now tendency is increasing in corporates to manipulate the financial statements (Balance Sheet and Profit & Loss Account) commonly known as window dressing to demonstrate as healthy + wealthy financial statements (both) in front of Stakeholders + Public + Investors + Creditors + Employee + Govt. + banks + financial institution + Foreign Investors + any other person. This tendency is included under corporate fraud. Hence person as involved in corporate fraud is liable for imprisonment + financial penalty (both)*
- (iv) Now strong provisions are introduced in 2013 through introduction of section 447 under CA 2013 through increasing the roles + duties of independent directors + statutory auditors (both).*
- (v) Now section 447 under CA 2013 is more focusing on stopping + tackling of corporate fraud being committed by Indian corporate.*



(vi) Now corporate fraud is including the financial + non-financial gains to corporate vice-versa financially + non-financially losses to victim are included in corporate fraud.

(vii) Now corporate fraud is treated a criminal liability. Hence person as committing Corporate fraud is liable for imprisonment + financial penalty (both)

2. Comparison between Robbery and Fraud

- Now 2 ways to get something from someone illegally like robbery and fraud (both)

(i) Word Robbery includes:

(a) Robbery is act where officer + any other person + group of persons (all) physically forcing someone by using a gun + any other weapon + brute force + trick someone (all) against snatching someone belonging is called a robbery.

+

(b) Robbery is often more violent + traumatic than fraud + attracting more public attention. However total loss from fraud is much more higher than loss from robbery

(ii) Word Fraud includes:

(a) Fraud is intentional Act with deception + wilful misrepresentation of material facts + described as cheating + stealing (both)

(b) Fraud is coercing the other person to act against his best interest (wish).

(c) Fraud is intentional act to induce the other person to part with something as valuable + to surrender his legal rights (both).

(d) Fraud is deliberate misrepresentation + concealment of information's to deceive + mislead the other person (both).

(e) Fraud can be from minor employee theft to large scale misappropriation of assets + manipulation of financial statements (both).

3. Main reasons for committing corporate fraud in India + outside India (both)

- (i) Corporate fraud is generally being committed as due to external factors like economic + competitive + social + political + poor control mechanism (all).
- (ii) Some persons are more prone to commit fraud rather than other persons.
- (iii) Besides external + internal factors (both) nature of persons is more important against committing corporate fraud.
- (iv) Normally Frauds are committed by white collar criminals.
- (v) Generally Corporate is artificial juridical person + invisible + intangible as created by laws of country with discrete legal entity + perpetual succession + operated through common seal. Hence corporate is fraud prone entity.
- (vi) Moreover Corporate is association of stakeholders as commonly known shareholders + public + investors + customers + employees (SPICE) + vendors + Govt. + any other person (all).
- (vii) Hence stakeholders are expressed in 1 word like SPICE where :-
 - (a) S for shareholders
 - (b) P for public
 - (c) I for investors
 - (d) C for customers
 - (e) E for employees
 - Hence company be fair + transparent with stakeholders.



4. *Corporate fraud has certain reasons in India + outside India (both)*

- (i) *Against economical accessing the global resources*
- (ii) *Against attracting + retaining (both) best human capital globally*
- (iii) *Against having partnership with vendors for collaboration + need to live in harmony with society.*
- (iv) *Against having embraces + demonstrate (both) ethical conduct by corporate.*

5. *Concept of Corporate Fraud under CA 2013 in India*

- (i) *Indian Corporate sector is regulated through CA 2013 under different provisions + rules (both) for regulating the affairs of corporate.*
- (ii) *CA 2013 is first time defining about corporate fraud.*
- (iii) *Definition of fraud is representing following actions:*
 - (a) *Misrepresentation of material facts*
 - (b) *Misrepresentation has made by person as knowingly + deliberately + intent to deceive other person (all).*
 - (c) *Victim of fraud has relied on misrepresentation*
 - (d) *Injury + damage (both) be result of reliance by victim against misrepresentation*

6. *Definition of Corporate fraud under CA 2013 in India*

- *Now definition of corporate fraud + punishments (both) against committing corporate fraud are incorporated under section 447 of CA 2013*

7. *Imprisonment + financial penalty (both) against committing corporate fraud*

- *Now officer + any other person (both) guilty against committing corporate fraud are liable for imprisonment + financial penalty (both) under section 447*



8. Quantification for Imprisonment + financial penalty (both) against corporate fraud

(i) (a) CA 2013 is providing an imprisonment for minimum 6 month + maximum 10 year where corporate fraud is minimum INR 10 lac or 1% of turnover whichever lower

+

(b) Financial penalty is minimum @100% + maximum @300% of amount of corporate fraud where fraud is not involving the public

(ii) (a) CA 2013 is providing an imprisonment for minimum 3 year + maximum 10 year where corporate fraud is minimum INR 10 lac or 1% of turnover whichever lower.

+

(b) Financial penalty is minimum @100% + maximum @300% of amount of corporate fraud where fraud is involving the public.

(iii) (a) CA 2013 is providing an imprisonment for maximum 5 year where corporate fraud is not exceeding INR 10 lac or 1% of turnover whichever lower

or

(b) Financial penalty is maximum INR 20 Lac or both where fraud is not involving the public.

9. Non-compoundable offence against committing corporate fraud

- Punishment against corporate fraud like imprisonment + financial penalty (both) non-compoundable offences. Hence non compoundable offences having serious consequence against person committing corporate fraud.

10. Special Features of Corporate Fraud in India + outside India (both)

(i) (a) Now corporate fraud is treated as criminal liability under Section 447 of CA 2013.

(b) Hence person as involved in corporate fraud is liable for imprisonment + financial penalty (both) under Section 447 of CA 2013.



- (ii) Now Inflating + deflating of purchase + expense + income + diversion of fund to related party as directly + indirectly (both) + misappropriation of fund through any other mode are known as corporate fraud. Hence liable for imprisonment + financial penalty (both)
- (iii) Now Debiting any personal expense of director + promoter in company's books of accounts are known as corporate fraud. Hence liable for imprisonment + financial penalty (both)
- (iv) Now Reducing the tax liability under head direct tax + indirect tax (both) are known as corporate fraud through inflating purchase + direct + indirect expense. Hence liable for imprisonment + financial penalty (both)
- (v) Now claiming of non-allowable allowance + exemption under direct tax + indirect tax with intention to reduce tax liability are known as corporate fraud as directly + indirectly (both) effecting the welfare scheme of public. Hence liable for imprisonment + financial penalty (both)
- (vi) Now Manipulation through related party transaction without matching with Arm Length Price (ALP) principle + taking personal benefit of company's income + asset are known as corporate fraud. Hence liable for imprisonment + financial penalty (both)
- (vii) Now directly + indirectly involvement of promoter + director + CEO + CFO + Company Secretary + independent director (any) for personal benefit is known as corporate fraud. Hence liable for imprisonment + financial penalty (both)

11. Imprisonment + Financial Penalty under PMLA, 2002 for corporate fraud

- (i) Now corporate fraud is included in list of 29 schedule offences under Prevention of Money Laundering Act (PMLA), 2002.



(ii) Hence person as involved in corporate fraud is liable for imprisonment + financial penalty under PMLA, 2002 + imprisonment + financial penalty under Section 447 of CA 2013 (both) acts.

12. Role of Serious Corporate fraud Investigation Office (SFIO) in India

(i) Now Govt. of India has established the SFIO to investigate the corporate fraud in scientific + systematic manner (both).

(ii) Now experts from different areas + experience (both) are included in forming of team of SFIO as below:-

- (a) With Banking experience
- (b) With Corporate affairs experience
- (c) With Direct + Indirect Taxes experience
- (d) With Forensic audit experience
- (e) With Capital market experience
- (f) With Information technology (IT) experience
- (g) With legal experience

(iii) Now During investigation by SFIO the other investigating agencies like Govt. + police + Income tax authority (all) are not permitted to proceed with ongoing investigation + other investigating agencies are required to transfer 100% documents + records (both) to SFIO.

(iv) SFIO is required to submit the report to govt. of India on investigation against corporate fraud.

13. Role of Statutory Auditors of corporate in India

(i) Now statutory auditors are required to report to govt. of India against corporate fraud.



- (ii) (a) Now Partner + firm of statutory auditors (both) are personally + jointly liable against corporate fraud through abetting + colluding (both) in corporate fraud
- (b) However court to conclude the involvement of statutory auditors in corporate fraud.

14. Role of corporate in India

- (i) Now corporate is required to recover the amount as paid in excess of 11% of profits from MD + WTD + Manager + CEO (all) where financial statements are revised (re-stated) due to accounting fraud like happened in Satyam Computers Limited (SCL).
- (ii) Now corporate is required to recover the asset + property + cash (all) from Director + KMP's + any other officer or person as derived undue advantage + benefit through corporate fraud.

15. Conclusion on corporate fraud in India + outside India (both)

- (i) Now corporate fraud is treated as criminal liability. Hence person as involved in corporate fraud is liable for imprisonment + financial penalty (both)
- (ii) Now Introduction of section 447 against corporate fraud is providing stringent provision to show the seriousness of Govt. of India in tackling the problem of corporate fraud.
- (iii) Now Provisions of section 447 to be tested for unearthing the corporate fraud as leading towards scams by Indian corporate.
- (iv) Now SPICE include list of main stakeholders like shareholders + public + investors + customers + employees (all 5 together).



(v) Now Directly + indirectly as involvement of promoter + director + CEO + CFO + Company Secretary + independent director (any) for personal benefit + advantage (both) are known as corporate fraud. Hence liable for imprisonment + financial penalty (both)

(vi) Now courts to decide that anyone is actually involved in corporate fraud. Hence liable for imprisonment + financial penalty (both)



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