

*Bharat's*

# Corporate Frauds & their Regulation in India

**Dr. Sanjeev Gupta**

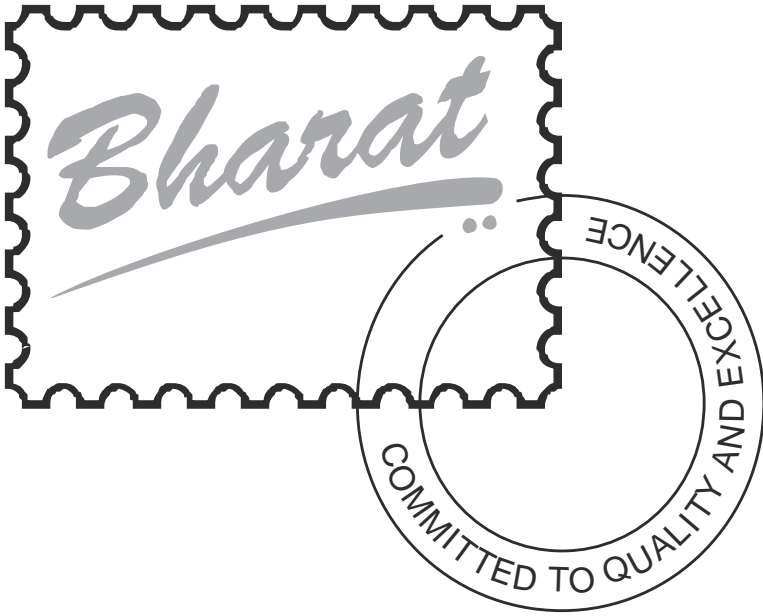
M.Com., FCS, LL.B., Ph.D.

**2016**

**Bharat**



*Bharat's*  
**CORPORATE FRAUDS**  
**and their**  
**Regulation in India**



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# **CORPORATE FRAUDS and their Regulation in India**

**Dr. Sanjeev Gupta**  
*M.Com., FCS, LL.B., Ph.D.*

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## *Bharat?*

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Dedicated  
to my revered father

(Late) Shri Prem Chand Gupta





## PREFACE

Frauds have been rampant in the business world, and India has had its share of corporate frauds. The incidence of corporate frauds has significantly impacted the stakeholders' confidence. The scope of a fraud is not limited to a monetary figure. At the same time, many large corporations maintain consistently good record of ethical practices and compliance with the law that contrast sharply with the behaviour of other corporations. The reasons for these differences present several important issues.

Corporate frauds and abuse of position have been seen in various cases, like National Spot Exchange, Satyam, Ketan Parekh, C.R. Bhansali, UTI, Enron, WorldCom, and Tyco, which have cost the organisations crores of rupees. The perpetrators of corporate fraud are apparently suave, soft-spoken, and well educated in the formal sense and these perpetrators are socially respectable and economically sound having political influence. The losses in human terms are almost incalculable. Business firms face a number of challenges – globalisation, rapidly-evolving technology, rapid development in business and industry, risk and complexity of data. Consequently, the risk faced by such organisations increases manifold and there arises the need to effectively manage and mitigate the risk.

The present book is intended to serve as a handbook to professionals, auditors, investors, directors, company executives, investigators and government agencies whose job is to reduce losses and to regulate Corporate Frauds in India. It examines the nature and types of corporate fraud in India and further discusses about the relevant provisions of different legislations along with various regulating agencies working or set-up for curbing and reducing corporate frauds. Major cases of corporate frauds in India and abroad are discussed in this book. The major causes of corporate frauds have also been addressed.

The book has been organised into ten chapters. Chapter 1 is introductory in nature and provides an understanding of corporate frauds, with some cases and characteristics of those who commit fraud. Chapter 2 describes the types of corporate frauds and the modus operandi of committing various types of frauds. Chapter 3 gives an insight into major corporate frauds in India and abroad and the features of corporate frauds. Chapter 4 examines the relevant statutory provisions of major Indian legislations. Chapter 5 analyses the relevant provisions of various other enactments

related to curbing or controlling corporate frauds. Chapter 6 describes the major regulatory agencies under the Union Ministry of Corporate Affairs. Chapter 7 examines the working of regulatory agencies under other ministries. Chapter 8 deals with regulatory agencies set-up under an Act of Parliament. An overview on the Indian legal system is given in Chapter 9. Finally, Chapter 10 overviews on culmination, consequences and policy implications of corporate frauds in India.

I would feel amply rewarded if the book serves the purpose for which it is written and I would welcome suggestions for its improvement from any corner.

I am grateful to the Puliani brothers of M/s Bharat Law House Pvt. Ltd. for bringing out this publication in its present content and form.

*11th April, 2016  
New Delhi*

Dr. SANJEEV GUPTA

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I acknowledge the contribution of my clients, friends and my dedicated staff by way of help in bringing the work into existence. I would like to acknowledge the generosity of the company executives who provided me valuable information. My indebtedness to each of them is profound.

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I owe a special word of indebtedness to my mother, Shrimati Krishna Gupta, who has been an eternal source of inspiration and affection to me in all my endeavours. I must also thank my wife, Anubha, who has endured countless weekends and without whom the book would not have seen the light of the day. My son Sarthak and daughter Ridima, deserve appreciation for their emotional support and the odds faced by them during this period.

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Dr. SANJEEV GUPTA



## LIST OF ABBREVIATIONS

<b>ACFE</b>	Association of Certified Fraud Examiners
<b>AICPA</b>	American Institute of Certified Public Accountants
<b>AIR</b>	All India Reporter
<b>BIFR</b>	Board of Industrial and Financial Reconstruction
<b>BR</b>	Bank Receipt
<b>BSE</b>	Bombay Stock Exchange
<b>CA</b>	Chartered Accountant
<b>CAG</b>	Comptroller and Auditor - General of India
<b>CARO</b>	Companies Auditor's Report Order
<b>CBI</b>	Central Bureau of Investigation
<b>CBDT</b>	Central Board of Direct Taxes
<b>CCI</b>	Competition Commission of India
<b>CEIB</b>	Central Economic Intelligence Bureau
<b>CEO</b>	Chief Executive Officer
<b>CEPR</b>	Centre for Economic Policy Research
<b>CFO</b>	Chief Financial Officer
<b>CJM</b>	Chief Judicial Magistrate
<b>CII</b>	Confederation of Indian Industry
<b>CLB</b>	Company Law Board
<b>CMM</b>	Chief Metropolitan Magistrate
<b>COFEPOSA</b>	Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974
<b>CS</b>	Company Secretary
<b>CSR</b>	Corporate Social Responsibility
<b>CVC</b>	Central Vigilance Commission
<b>DCA</b>	Department of Company Affairs
<b>DOE</b>	Directorate of Enforcement
<b>EIC</b>	Economic Intelligence Council
<b>EOW</b>	Economic Offences Wing
<b>ESOP</b>	Employee Stock Ownership Plan
<b>FDI</b>	Foreign Direct Investment
<b>FEMA</b>	Foreign Exchange Management Act, 1999
<b>FERA</b>	Foreign Exchange Regulation Act, 1973

<b>GOI</b>	Government of India
<b>ICAI</b>	The Institute of Chartered Accountants of India
<b>ICOFR</b>	The Company's Internal Control Over Financial Reporting
<b>ICSI</b>	The Institute of Company Secretaries of India
<b>IFRS</b>	International Financial Reporting Standards
<b>IPC</b>	Indian Penal Code,1860
<b>IPO</b>	Initial Public Offer
<b>IT</b>	Information Technology
<b>ITAA</b>	Information Technology Amendment Act
<b>KMP</b>	Key Managerial Personnel
<b>M&amp;A</b>	Merger and Amalgamation
<b>MCA</b>	Ministry of Corporate Affairs
<b>MD</b>	Managing Director
<b>MOA</b>	Misappropriation of Assets
<b>NBFCs</b>	Non-Banking Financial Companies
<b>NSE</b>	National Stock Exchange
<b>PMLA</b>	Prevention of Money Laundering Act, 2002
<b>PSUs</b>	Public Sector Undertakings
<b>PWC</b>	Price Water-House Coopers
<b>RBI</b>	Reserve Bank of India
<b>RD</b>	Regional Director
<b>ROC</b>	Registrar of Companies
<b>RPC</b>	Ranbir Penal Code
<b>SBI</b>	State Bank of India
<b>SCRA</b>	Securities Contracts (Regulations) Act,1956
<b>SC</b>	Supreme Court (of India)
<b>SEBI</b>	Securities and Exchange Board of India
<b>SEC</b>	Stock Exchange Commission (USA)
<b>SFIO</b>	Serious Frauds Investigation Office
<b>SICA</b>	Sick Industrial Companies Act,1985
<b>SMEs</b>	Small and Medium Enterprises
<b>USA</b>	United States of America
<b>UTI</b>	Unit Trust of India
<b>XBRL</b>	Extensible Business Reporting Language

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