

Definition of Fraud:

Definition of Fraud as per various authorities:

As per section 17 of Indian Contract Act 1872:

“Fraud Defined – Fraud means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent¹, with intent to deceive another party thereof or his agent, or to induce him to enter into the contract.”

- 1) The suggestion, as a fact, of that which is not true, by one who does not believe it to be true.
- 2) The active concealment of a fact by one having knowledge or belief of the fact
- 3) A promise made without any intention of performing it
- 4) Any other act fitted to deceive
- 5) Any such act or omission as the law specially declares to be fraudulent.

RBI has defined the term Fraud in its guidelines on frauds which reads as under:

“A deliberate act of omission or commission by any person, carried out in the course of a banking transaction or in the books of accounts maintained manually or under computer system in banks, resulting into wrongful gain to any person for a temporary period or otherwise, with or without any monetary loss to the bank.”

As per Section 447 of Companies Act, 2013:

“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.

“Wrongful gain” means the gain by unlawful means of property to which the person gaining is not legally entitled.

“Wrongful loss” means the loss by unlawful means of property to which the person losing is legally entitled.

Meaning of Fraud:

Fraud is a purposefully deceptive action designed to supply the committer with an unlawful gain or to deny a right to a victim. Fraud will occur in finance, real estate, investment and insurance. It will be found in the sale of real estate, like land, personal belongings, such as art and collectibles, additionally as intangible property, such as stocks and bonds. Sort of fraud comprise tax fraud, credit card fraud, wire fraud, securities fraud and bankruptcy fraud.

Fraudulent activity can be conceded out by one individual, multiple people or a business organisation as whole.

Fraud involves the false depiction of facts, whether by deliberately concealment important information or providing incorrect statement to another party for the specific purpose of gaining something that may not have been provided without the dishonesty.

Often, the committer of fraud is aware of information that the intended victim is not, allowing the committer to mislead the victim. At heart, the individual or company committing fraud is taking advantage of information misdeed; specifically, that the resource cost of reviewing and verifying that information can be significant enough to create a discouragement to fully invest in fraud prevention.

European legal codes and their derivatives often broadly defined fraud to include not only intentional misrepresentation of fact, clearly designed to trick another into parting with valuable property, but also misunderstanding arising out of normal business transactions. Thus, any omission or concealment that is injurious to another or that allows a person to take unconscionable advantage of another may constitute criminal fraud. In Anglo-American legal system, this latter type of fraud may be treated as deceit, subject to action in civil rather than criminal law.

Following are some examples of Indian Banking Frauds:

PNB Scam (Nirav Modi & Mehul Chowkshi)

The Punjab National Bank scam relates to fraudulent letter of undertaking (LoUs) worth Rs.11,356.84 Crores at its Brady House branch in Fort, Mumbai.

The LoUs were opened in favour of branches of Indian Banks for import of pearls for a period of one year, for which Reserve Bank of India guidelines layout a total time period of 90 days from the date of shipment.

The bank initially said that two of its employee at the branch were involved in the scam, as the bank's core banking system was bypassed when the corrupt employees issued LOUs to overseas branches of other Indian banks including Allahabad Bank, Axis Bank and Union Bank of India using the international financial communication system (i.e. SWIFT). The transaction was noticed by a new employee of the bank.

A case of money laundering has also been lodge against Nirav Modi and other.

PMC Bank Scam (HDIL and its associates companies):

The crux of this bank fraud is that the higher management of the PMC bank has given huge loan to the Housing Development and Infrastructure Limited (HDIL) and its group entities. This fraud case is related to transfer of 70% approx. of the total credit facilities of the PMC bank to HDIL and its associates companies. If we talk about the total amount of the bank fraud then it was Rs.4,355 crores. At this point of time total NPA of the bank has grown to 73%.

The PMC bank allegedly favoured to the promoters of Housing Development and Infrastructure Limited (HDIL) and allowed them to operate password protected masked account. As per one of news article "It is found that around 21,049 bank account were opened by bogus names to conceal 44 loan accounts. The bank's software was also tampered to conceal these loan accounts."

Likewise, there were many cases available in which bank fraud has been conducted by concealing the information to/from bank.

Example on Insurance Fraud:

For instance, thoroughly reviewing an insurance claim may take so many hours that an insurer may determine that a more cursory review is warranted considering the size of the claim. Knowing this, an individual may file a small claim for a loss that didn't really occur. The insurer may decide to pay the claim without thoroughly investigating since the claim is small. In this case insurance fraud has been conducted.

Enron Scam:

Enron was a company that provided energy, commodities and services to a large variety of Americans. However, during the early 2000's, the company became known as the poster child for corporate fraud in the new millennium. It was discovered that Enron was using special purpose entity (SPE) to hide its losses and debt, by keeping those losing businesses off of the main company's books and financial statements. Although this practice was commonplace. Enron took it to a new level by capitalizing the SPE's with Enron stock and making guarantees to the partners of the SPEs. Additionally, its accounting firm, a well-known and respected organisation, Arthur Andersen, either wilfully ignored or was complacent in the fraud.

Enron hid over \$591,000,000 in losses by December 2000. It later filed for bankruptcy the following year. This example, perhaps the most astonishing instance of corporate fraud in the past 16 years, shows the level of deceit and influence that corporate scheme has in the financial world. The greed of Enron's executive toppled a billion-dollar company, and left a bad taste in the mouths of investors and financiers.