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FRAUD UNDER INDIAN CRIMINAL JUSTICE SYSTEM

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Abstract

Fraud is an illegal act of cheating someone so that he/she can get money or some profit. As per law, fraud is the intentional duplicity to satisfy inappropriate gain from illegal practices. Fraud can contravene civil law as well as criminal law, or it may underlay no any disadvantage of wealth, assets, or statutory right but still be a constituent of some other civil or criminal demerits. The purpose of fraud may be economic profit or some other advantages. Internal fraud, commonly known as “insider fraud”, is fraud entrusted or to make an effort to accomplish an end by someone within an institution such as a functionary. Fraud completely belongs to the intention of the person who is involved in it and it is done to endow the culprit some illegal profit. Types of fraud comprise tax fraud, credit fraud, fraud related to wire, securities fraud, and bankruptcy fraud. The activity of fraud can be done by either one person or group of person or may by a business firm as a whole. Fraud also deals with the unusual or false representation of the facts to other person for the purpose of earning profit. In other words it can be said that fraud is the taking of advantage of the given information specifically. It is something which is equally punishable in the eyes of law like the other crimes.

1. INTRODUCTION:

Fraud is the massive intention of duplicity to deal with unusual profit from illegal practices. Fraud can infringe civil law as well as criminal law. As per civil law, a fraud sufferer may sue the fraud culprit to cast aside the fraud or defend financial indemnification. And as per

criminal law, a fraud culprit may be chased and sent to jail by the judicial authorities prescribed by government. Sometimes it may cause no loss of money, assets, or legal right but still is a constituent of some other civil as well as criminal wrong. The main purpose of fraud is to earn economic profit or may be some other profit. The examples of fraud may include: – come into the possession of passport, document which is needed for travelling from one place to another, or license needed for driving, etc. where the offender may try to qualify for a contract by way of giving or taking false statements. Types of fraud comprise tax fraud, credit fraud, fraud related to wire, securities fraud, and bankruptcy fraud. The activity of fraud can be done by either one person or group of person or may by a business firm as a whole. Fraud deals with the fables characterization of facts, whether by purposely hiding or may be avoiding some important information or legislating wrong information to another party for the distinct project of earning something that is somehow not possible to earn without doing fraud.

2. ESSENTIAL ELEMENTS OF FRAUD:

- i. Wrong characterization and allegations: – In this, for the commission of fraud the characterization and the allegations must be done intentionally against anyone. If it does not happen then the fraud and the allegations cannot be considered true.
- ii. The representation of the offender
- iii. The intention to seduce the other party



- iv. The characterization made by the party/parties must be according to the fact
- v. Practical refuge of the facts presented
- vi. The promises which are made in absence of the intention to fulfill it
- vii. The fraud must be done having actual characterization
- viii. Any act which is done is voided by the law
- ix. Any action which falls in the criteria of fraud
- x. The party to which the fraud has been done must have suffered some loss whether the loss is small or big

3. THE REASON TO COMMIT FRAUD:

- The selfish nature of any individual to get something more than needed either it is money or property
- The economical need of individuals
- Someone who is suffering from the habit of committing crime because of mental condition or some other reason
- The aspiration to go against the law and the system
- If someone is forced to do crime
- Involved in the selling and purchasing of drugs or illegal substances
- Desire to use sharp ideas in criminal activities such as terrorism

4. SOME POINTS ABOUT FRAUD:

- Fraud involves cheating with the subject matter to illegitimate or unusual behavior which is against social norms for the purpose of earning profit on behalf of other.
- According to financial terms, fraud can be done by many ways such as making false financial insurance or claims, writing the books, some false schemes, or may be some unauthorized identity of theft.
- Every year because of fraud the economy had to face massive losses which are up to billion dollars in terms of monetary value, and because of

this many offenders have to go jail as punishment or have to pay massive amount of fine.

Fraud is the misleading conduct of person to gain some illegal advantage or sometimes to harm someone's rights and liabilities.

5. FRAUD FROM DAY TO DAY LIFE:

- i. **Bank Fraud:-** Now a days it is the most common type of fraud which almost everyone is facing. In today's digital or technical society, it becomes very easy to track someone's bank account details as well as tracking someone online by the medium of cyber crime. Cyber crimes very common type of crime in these days and it has been done by the offenders on a very large scale. Fraud is something which can be commonly done by the medium of cyber crime. The tools which are being used in these cyber crimes are: - phishing (fraudulent email which needs very quick action or response), pharming, spyware etc. The sensitive data which has been extracted by the use of these medium can be often used by the offender to cause some harm or for the purpose of causing great loss or distress to the person. To access someone's official and important data or documents like passport, Pan Card, Aadhar Card, Aadhar Number or some other details which is linked in the bank account, the medium like fake calls, fake digital signatures, some leaked data or information can be used by the offenders.
- ii. **Legal Inferences:-** Fraud is that activity which is equally punishable as crime in India as well as in Abroad. The amount of fine and the sentences regarding crime are determined according to the nature and intensity of the commission of the fraud. Bank fraud is the most common type of fraud or we can say crime which has come into the eyes of everyone and also there are many more examples of fraud related to bank. The most sensitive



bank fraud which is known across the world is – Diamond dealer Nirav Modi, Business tycoon Vijay Malya, and the businessman Mehul Choksi. Though fraud is a crime of criminal nature but in certain scenarios the offender can be convicted in civil court.

iii. **Financial Fraud:**– The most common type of fraud which is faced around the world is financial fraud. It happens when someone takes money or assets or property unlawfully or by any medium which falls under the criteria of criminal activity. It is the medium to harm someone's financial health. Some common type of financial fraud are:

- Fraud related to loan, credit as well as scams related to bank that is done by identity theft
- The fraud like giving advance payment of fee
- Fraud like fake check or cashier's check
- Fraud like refund of task which demand for bank detail
- Fraud like fake charities
- Fraud related to credit cards
- Economical takeovers
- Fraud related to investment
- Fraud done to employees in the name of small business
- Online scams

6. PROCESS OF CONVICTING OFFENDER (INVOLVED IN ACTIVITIES OF FRAUD) IN CRIMINAL COURT:

Complainant needs to prove the fraud which is done is something more than any believable doubts, in any criminal case. It basically means the proof related to the fraud is sufficient; the facts have been instituted and the misdemeanor has been instituted. The conviction of the case has higher level than a civil case, which somehow compose the compensation for convictions are more serious or grievous.

7. DIFFERENCE BETWEEN CRIMINAL FRAUD AND CIVIL FRAUD:

The elements which are needed for both civil and criminal law are almost same. In the conviction of criminal fraud, it results to fine or may be jail as in criminal law the level and criterion of facts which needs to be proved is almost higher also the burden of proof relies in the conviction of the criminal case of fraud. Every element which is present in the case needs to be proved for clarification of the burden of proof so that the court can convict the defendant accordingly.

If we talk about criminal fraud, it is not necessary that the fraud has been committed successfully. The most important thing is that anyone whether any individual has successfully committed the fraud or not, the intention for committing the fraud or the attempt for committing the fraud is enough for conviction. According to the circumstances of the case and considering the jurisdiction of the case, the fraud which is of criminal nature may be charged as the act which can be considered as unacceptable by the people or the society or the crime which is serious in nature and the punishment in which is more than 10 years or may be death.

While coming to the civil fraud, it is the fraud in which the person who has suffered because of the fraud done by the offender needs to prove the basic elements which contains in the fraud in the court and also they have to discuss the damages which they have suffered because of the fraud.

The basic difference between the civil and the criminal fraud is that in the civil case the actual damage needs to be shown by the person in front of the court while in criminal case, only the fact that the offender has attempted the fraud needs to be shown by the prosecution in the court.

8. CONSEQUENCES AND PENALTIES OF CRIMINAL FRAUD:

The conviction of criminal fraud leads to serious consequences. These are the



factors because of which the penalties in criminal fraud may also differ:-

- Jurisdiction,
- Considering the intensity of the fraud committed or attempted
- Any individual or organization who has suffered because of the fraud is also the most important thing which needs to be considered for penalty
- After completion of the fraud, the money or property which the individual has suffered as a loss

Penalties for conviction of criminal fraud are as:-

- Sentenced as jail or sent to jail for certain period of time
- The period of supervision of offender i.e. the period for monitoring the offender that he/she has behaved well or not so that the punishment can be decreased for him/her
- Monitoring of the attitude of the offender in the prison for consideration of the punishment or penalty
- Fine
- Compensation

9. FACTORS FOR DETERMINING SENTENCES FOR CONVICTION OF CRIMINAL FRAUD:

- Nature of the fraud
- If the offender has previously convicted or not (in any crime)
- Whether the offender is a part of any conviction of case
- The amount of money or property which has been loosed because of the fraud committed or attempted
- The condition of the victim who has suffered in the fraud

The penalty is also determined by the court depending upon the kind or type of the crime or fraud. If the organization which has been suffered because of the fraud belongs to federal government, then the charges has not been brought in the state law but it is considered under federal law which leads to harsher penalty or harsher punishment.

10. HOW TO PREVENT FRAUD:

- Do not share contact or personal detail to any person or organization without knowing them or without being completely aware with them.
- If you don't know the person whom you are talking on phone call or the person on call is not completely identified by you then don't share any of your information with them.
- If you are throwing any of your important documents for disposing it, you need to completely destroy it so that no one can gather your personal detail from it.
- If any of your important documents has been lost then you immediately need to report about it.
- Take the review of your financial statement repeatedly.
- Never share any otp or pin or any password with anyone.
- Always use those passwords or pins which are not easy to guess.
- Do not visit any website which you don't know or which is illegal.
- Avoid transaction from your bank on those sites which are not known or not trusted.
- Be in touch with knowledgeable financial as well as legal advisors.
- Do not disclose your personal or professional details with anyone.
- Be aware of the strangers.

11. CONCLUSION:

It is very important to find out the proper solution of the problems which the generation is facing because of fraud and fraudulent activity as soon as possible so that the activities of fraud can be stopped and also the losses which are causing to the individual must be avoided. In addition to all the matters discussed above it is very essential to be sincere towards the day to day activities.



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