



**Chandrawat
& Partners**

FRAUD AND ASSET RECOVERY

A comprehensive guide.

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PREFACE

India follows a federal legal system and operates under the common-law jurisdiction. It has an extensive network of courts and tribunals that administer both central and state laws. Within this legal framework, there exist multiple remedies available under various legislations to address fraud and facilitate the tracing of assets. Organizations must comprehensively assess the associated risks and carefully consider their available options when undertaking the asset tracing and recovery process.

Fraud is defined as deliberate deception or dishonesty carried out by an individual or organization with the objective to gain something of value for themselves or others, hurt them, or manipulate them. It frequently entails fabrication, deceit, or the misuse of power or position of trust. Financial fraud, identity theft, insurance fraud, securities fraud, and other types of fraud are just a few of the many ways that it can happen. Contrarily, asset recovery describes the process of locating, tracking down, and reclaiming assets that have been acquired through dishonest or unlawful means. It entails taking legal and investigative steps to recover assets that were obtained or hidden dishonestly.

Restoring misused or stolen property to its rightful owners or victims is the aim of asset recovery. Investigating the fraudulent operations, following the flow of money, and starting legal proceedings to recover the assets are frequently steps in this process that require cooperation with law enforcement organizations, legal professionals, forensic accountants, and other specialists. In order to prevent cross-border fraud and recover assets stored in many jurisdictions, asset recovery measures may also entail freezing or seizing assets, pursuing civil litigation or criminal prosecution, negotiating settlements, and participating in international cooperation. As a result, fraud and asset recovery are intertwined.



INDIAN ECONOMIC REVIEW



India is observing a surge in white collar crimes which broadly includes financial fraud, money laundering, identification theft, digital crimes, bank frauds, embezzlement etc. Loan frauds accounts for the majority among these types of crimes. This upward trend is a result of various factors combined with technological advancements and operative loopholes found in legal and administrative framework.

According to the research, 66% of firms reported encountering at least one type of economic crime in the previous two years. Economic crime and fraud continue to be major challenges for Indian businesses. Platforms have become a brand-new way to conduct crime. According to the poll, platforms like financial, social media, goods, businesses, media sharing, information sharing, and services have been at the forefront of 99 percent of fraud instances in the last 24 months in terms of value. The number of frauds in baking sector went up to 13,530 in 2022-23 year-on-year, but the amount has been halved at nearly Rs 30,252 crores, showed RBI's data report.

Frauds occurred predominantly in the category of digital payments, in terms of number, said the RBI's annual data report 2022-23. A total of 9,097 frauds had taken place in 2021-22 involving Rs. 59,819 crores and in 2021 the number of frauds was 7338 amounting to 1,32,389 crores. An assessment of group wise fraud cases over the last three years indicates that while private sector banks reported Maximum number of frauds, public sector banks also continued to contribute maximum to the fraud amount in the year 2022-23, the report mentioned.

GOVERNING RULES AND LAWS



According to the Companies Act, 2013, the term fraud refers to any act, omission, concealing of information, or abuse of power committed by a person with the intent to deceive, obtain an unfair advantage over, or harm the interests of, the company, its shareholders, creditors, or any other person, regardless of whether there is any wrongful gain or loss. Instead of focusing on the loss or damage to the affected parties, the Act focuses on the fraud's commission. A key component of the crime of fraud is the accused's intent or motivation to carry out the fraud.

In accordance with the Act, certain behaviors are also punishable as fraud, including making false claims in a company prospectus, accepting a deposit with the intent to defraud depositors, starting a business with fraudulent intent, falsifying documents, changing the name of the company to avoid liabilities, and making false claims in annual reports or financial statements, among other things.

Fraud offences are ultimately targeted at the individuals in charge of an organization who intended to deceive, gain an unfair advantage over, or harm the interests of a company, its shareholders, or its creditors rather than the organization itself because the Companies Act, 2013 ultimately provides for imprisonment. However, Act uses the term person to provide the clause relating to fraud the broadest connotations.

Indian Penal Code, 1860 ("IPC"):

The IPC criminalizes various forms of fraud, such as cheating, forgery, criminal breach of trust, and misappropriation of funds. These offenses are punishable under specific sections of the IPC.

- **Section 415:** Deals with the offense of cheating, which involves fraudulently inducing a person to deliver property or valuable security.
- **Section 417:** Criminalizes the offense of cheating by personation, where someone pretends to be another person to deceive and gain property.
- **Section 419:** Covers the offense of cheating by impersonation, where someone assumes a false identity to cheat another person.
- **Section 420:** Addresses the offense of cheating and dishonestly inducing delivery of property by deceiving someone.

Prevention of Money Laundering Act, 2002 ("PMLA"):

The PMLA aims to prevent money laundering and the generation of illicit funds. It provides for the identification, tracing, and seizure of proceeds of crime, including assets acquired through fraudulent activities.

- Provides provisions for the prevention, detection, and prosecution of money laundering offenses.
- Empowers authorities to seize, attach, and confiscate properties derived from the proceeds of crime.
- Requires reporting entities to maintain records, identify and verify the identity of clients, and report suspicious transactions.
- Establishes the Financial Intelligence Unit ("FIU") as the central agency for receiving, analyzing, and disseminating information related to suspicious transactions.





Securities and Exchange Board of India (SEBI) Act, 1992:

This act contains provisions against securities fraud and market manipulation. Key sections include:

- **Section 11:** Functions of the Board.
- **Section 12:** Registration of stockbrokers, sub-brokers, share transfer agents, etc.
- **Section 15:** Penalties and adjudication.

Information Technology Act, 2000:

The Information Technology Act, 2000 contains provisions dealing with cyber fraud and financial frauds committed using computer resource.

- **Section 43 Unauthorized access to computer systems:** This section deals with unauthorized access to computer systems, computer networks, or computer resources. It covers acts such as hacking, cracking, or gaining unauthorized access to data or computer systems.
- **Section 66 Computer-related offences:** It encompasses a wide range of computer-related offenses, including various forms of fraud conducted through electronic means. It covers offenses such as cheating by personation using a computer resource, dishonestly receiving stolen computer resources, and falsifying digital signatures.

Transfer of Property Act, 1882:

- A specific focus of the Transfer of Property Act, 1882 is on safeguarding creditors including a decree holder from immovable property fraud.
- The only exception is that a bona fide purchaser who has no knowledge of a prior dispute regarding an immovable property is spared from any proceedings instituted to set aside immovable property purchased by him/her.
- In these circumstances, the only option left is to seek restitution for damages from the offending party.
- The Act gives the victim party the right to seek the annulment of any transaction undertaken to defeat the claim of any creditors, including decree holders.

DISPUTE RESOLUTION



There are numerous legal options for pursuing asset recovery. They may consist of any of the following methods, depending on whether they are primarily domestic or also international:

- Following domestic criminal prosecution and seizure on the basis of conviction, an MLA request to enforce orders abroad is made.
- Confiscation based on non-conviction, then an MLA request to have orders enforced in other countries.
- Including formal insolvency proceedings, private civil actions.
- Administrative seizure
- Other options include taxes, penalties, and compensation judgements in criminal proceedings.



The Companies Act, 2013:

The Companies Act provides provisions for dealing with corporate fraud, including fraudulent practices by directors, officers, or employees of companies.

- It establishes the Serious Fraud Investigation Office ("SFIO") to investigate complex fraud cases involving companies.
- The act provides mechanisms for the prevention, detection, and reporting of fraud, including whistleblower provisions and mandatory reporting requirements.
- It empowers regulatory authorities and shareholders to initiate legal action against fraudulent activities, such as mismanagement, insider trading, and false financial reporting.

Civil Procedure Code, 1908 (CPC):

The CPC lays down the procedural rules for civil cases, including those related to fraud and asset recovery.

- It governs the procedural aspects of civil litigation, including fraud-related case and asset recovery proceedings.
- It provides rules and procedures for filing civil suits, presenting evidence, conducting trials, and enforcing judgments.
- The CPC allows for the appointment of receivers or injunctions to preserve or recover assets pending the resolution of a dispute.

Insolvency and Bankruptcy Code, 2016 ("IBC"):

The IBC provides a mechanism for resolving insolvency and recovering assets in a time-bound manner. It includes provisions for the investigation and recovery of assets obtained through fraudulent means. It also empowers the resolution professional to examine and report on the avoidance of undervalued or preferential transactions.



STEPS OF DISPUTE IDENTIFICATION AND RESOLUTION: -

1. Fraud identification:

- **Detection:** The first step is to identify signs or indications of potentially fraudulent activities. This can be done through internal controls, audits, whistle-blower complaints, or suspicious transaction monitoring. Internal controls and audits are typically carried out by the company's internal audit department or external auditors.
- **Investigation:** Once a suspicion of fraud arises, a thorough investigation is conducted to gather evidence, identify the perpetrators, and determine the extent of the fraud. This may involve engaging forensic accountants, conducting interviews, and reviewing financial records. The investigation can be conducted by internal teams, external forensic auditors, or specialized agencies such as the Central Bureau of Investigation ("CBI"), state police, or the SFIO.

2. Reporting and documentation:

- **Reporting to Authorities:** If fraud is substantiated, it should be reported to the appropriate authorities. Depending on the nature and magnitude of the fraud, the appropriate authorities can include local police stations, the CBI, the SFIO, the ED, or other specialized agencies.
- **Documentation:** Maintain comprehensive documentation of all relevant information, including evidence, witness statements, financial records, and any other supporting documents related to the fraud.

3. Asset tracing:

- **Identifying assets:** Determine the assets that have been misappropriated or obtained through fraudulent means. This may include funds, real estate, vehicles, bank accounts, or other valuable assets. The identification of assets can involve collaboration between the investigating team, legal professionals, and relevant government departments.
- **Tracing transactions:** Investigate the flow of funds and transactions to identify the movement of assets. This can be traced through examining bank statements, financial records, contracts, other relevant documents with cooperation involving financial institutions and regulatory authorities.
- **Collaboration with authorities:** Collaboration with government departments such as the Income Tax Department, FIUs, and other regulatory bodies is often necessary to trace and identify the assets held domestically or internationally.

4. Legal action and recovery:

- **Initiating legal proceedings:** File legal complaints or initiate civil or criminal proceedings against the individuals or entities involved in the fraud. This may involve filing a police complaint, initiating civil litigation, or reporting the fraud to specialized agencies like the SFIO or the Enforcement Directorate (“ED”).
- **Court proceedings:** Legal professionals representing the victim's interests will engage with the relevant courts to present evidence and argue for the recovery of the assets. This may include obtaining freezing orders, attachment orders, or other legal remedies to prevent the dissipation of assets. The specific courts will depend on the jurisdiction and the type of case, such as the, High Court, or specialized tribunals like the National Company Law Tribunal (“NCLT”) or the Debt Recovery Tribunal (“DRT”).
- **Asset recovery:** Work with the appropriate authorities to execute court orders, seize or freeze assets, and recover the misappropriated or fraudulently obtained assets. This may involve liquidation, auctioning, or other methods to monetize the assets and return the proceeds to the victims.

The execution of court orders and the recovery of assets can involve collaboration with enforcement agencies, including the local police, the CBI, the ED, and the revenue department. These agencies may carry out asset seizures, attach properties, or take other necessary actions to recover the misappropriated assets.



HOW WE CAN HELP

Chandrawat and Partners specializing in asset recovery can provide valuable assistance in navigating the dispute. Our law firm's attorneys have in-depth knowledge and expertise in the laws and regulations governing the asset recovery sector.

- We analyze the facts and circumstances of the dispute, assess the applicable laws, and provide legal advice on the best course of action.
- Our law firm evaluates the strengths and weaknesses of the case and provide an objective assessment of the potential outcomes and risks involved. Based on our legal expertise and experience, lawyers can help develop a strategic approach to resolving the dispute.
- Our law firm can represent clients' interests throughout the dispute resolution process. We can engage in negotiations with the opposing party, attend mediation sessions, or advocate for position of client in arbitration or litigation proceedings.
- Such cases often involve complex contracts, agreements, and legal documents. We review and analyze these documents to identify potential issues or breaches of contract. We also draft necessary legal documents, such as settlement agreements or arbitration clauses.
- We provide businesses with expert services from market evaluation and financial viability to planning, approvals, and deal management



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