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White-Collar Crime in India: A Critical Analysis of Legal Framework, Judicial Trends, and Case Law

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White-Collar Crime in India: A Critical Analysis of Legal Framework, Judicial Trends, and Case Law

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Legal Framework Governing White Collar Crime in India

The Constitutional Foundation

It is evident that the Indian Constitution has not only empowered the state to legislate on white collar crime but also created an enabling environment through its provisions for achieving this objective. Preamble, Article 14, Article 21, and Directive Principles (Articles 38, 39, and 46) constitute the basis for creating an enabling environment for legislating on white collar crime by ensuring economic equality among citizens. Article 14 of the Indian Constitution guarantees equality to all its citizens. Article 21, on the other hand, guarantees life and personal liberty to its citizens, which has been interpreted by the Supreme Court to mean leading a life without economic exploitation. Article 7 of the Seventh Schedule vests the power to make laws concerning criminal procedure, including that dealing with white collar crime, in both Parliament and the state legislatures.[1]

Additionally, the constitutional framework has created a set of rights for the accused in the criminal process, namely, the right against self-incrimination, the right against double jeopardy, and the right to a fair trial, which poses many challenges in prosecuting economic offences. These challenges have led the Supreme Court to formulate a body of jurisprudence concerning issues like the constitutionality of reverse burden clauses,

New Criminal Law and White-Collar Crime in India

The advent of white-collar crimes as a potential source of economic destabilization and loss of public trust has made it necessary for current legal frameworks to change from their previous perspectives on criminal law. [2]This trend is exhibited in India with the adoption of the Bharatiya Nyaya Sanhita Act, 2023 (BNS), to replace the colonial Indian Penal Code, 1860 (IPC). Generally, white-collar crime involves non-violent crimes aimed at financial gains by persons who occupy places of authority, trust, and professional positions. These include fraud, embezzlement, corruption, forgery, insider trading, and

[1] K.T. Thomas, "Judicial Response to Economic Crimes," (2013) 55 JILI 201.
[2] Ibid

cybercrime. Although the BNS Act does not give an explicit definition of what white-collar crime means, like the Indian Penal Code, various provisions are included that cover white-collar crimes.

While most of the structures of the offenses which had previously been listed under the IPC have been retained, it must be pointed out that the new law is marked by several crucial improvements in terminology, coverage, and sentencing. Offenses such as cheating, criminal breach of trust, forgery, falsification of accounts, and counterfeiting are still essential tools to use in cases involving corporate fraud, banking scams, embezzlement, and similar forms of white-collar crime. It can be said that one of the defining characteristics of the new law lies in its intent to take all the above-mentioned offenses more seriously. The fact that penalties in such cases have been considerably toughened implies that the economic offenses, whether committed by individuals or companies, may carry severe repercussions for both parties involved and the country at large.[3]

Another significant aspect of the application of the criminal laws includes the emergence of the concept of organized crime, which tends to overlap with white-collar criminal offenses. Unlike in the past when financial crimes were committed by individuals on their own, these crimes have become complex and require a number of people working together, including the use of shell companies and middlemen. It is for this reason that the new legislation includes the element of organized crime in order to enable the police to deal with such crimes in an effective manner. This is because organized crime will assist in the handling of major financial crimes such as ponzi schemes and money laundering across international borders.[4]

Further reinforcement of the effectiveness of the BNS against white-collar crimes occurs due to its synergy with other special statutes that focus on specific types of economic offenses. For example, the Prevention of Corruption Act of 1988, the Prevention of Money Laundering Act of 2002, the Companies Act of 2013, and the Information Technology Act of 2000 work hand in hand with the BNS. Under the umbrella of BNS, all other special acts can be implemented effectively since BNS serves as the backbone of criminal law that governs the acts of individuals. While the Companies Act takes care of corporate fraud and management problems, the Prevention of Money Laundering Act deals with financial transactions that involve illegal gains. However, it should be noted that the BNS works as a complementary law in such cases.

One distinct characteristic of this new system is that it takes note of the increasing significance of technology with regard to the perpetration of economic crimes. The development of the Internet, as well as other means of digital transactions, and other forms of economic activities like online banking and business has resulted in the emergence of more white collar crimes in the virtual space. Cyber-

[3] S. Mehrotra, "Benami Transactions Law in India," (2017) 9 NLUJ 110.
[4] Poonam Saxena, *Family Law Lectures* (LexisNexis, 2017

crimes like phishing, identity theft, online fraud, and digital forgery are some examples of this phenomenon. The BNS, in this context, can be interpreted along with the IT Act to provide for an appropriate mechanism to handle these cases.

The new criminal law further incorporates an increased focus on accountability in professional and corporate environments. White-collar offenses frequently occur among persons who hold positions of trust within society, including the management of companies, auditors, government officers, and financial advisers. The BNS upholds the notion that abuse of these positions will incur criminal liability. The need for fiduciary duty is acknowledged, and culpability is placed on the shoulders of individuals who exploit their powers for selfish purposes. While the imposition of corporate criminal liability is still mainly based on specific laws, the general doctrines of intent, abetting, and conspiracy outlined in the BNS can form a legal basis for prosecuting individuals associated with corporate crimes.[5]

Besides the substantive aspects, the newly enacted legislation accords considerable importance to procedural efficiency and speedy justice delivery. White-collar offenses involve complicated monetary transactions and voluminous paper trails that have traditionally resulted in lengthy investigation periods. [6]The procedural reforms, which are meant to complement the substantive changes, seek to facilitate efficient investigation processes, encourage forensic and digital evidence collection, and guarantee prompt trial proceedings. Speedy case resolution is vital not only in ensuring that victims are awarded justice but also in sustaining public faith in the financial and legal systems. Inadequate justice delivery in economic crimes may weaken the deterrent effect of the legal system.

Victim-oriented nature of new criminal law constitutes yet another critical dimension from the perspective of white-collar crime. While ordinary crimes involve bodily harm, white-collar crimes mostly cause financial damage. In many cases, the victim is an individual person in form of a stakeholder or investor; however, the entire community could also be considered as the victim. In this regard, the BNS model provides an appropriate way to compensate the victims for the damage caused to them by means of restitution.

Although significant progress has been made towards combating white-collar crime, some problems still persist in dealing with the matter under the new system. First, the lack of a comprehensive definition of white-collar crime makes its investigation dependent on interpretation by the courts. Second, the application of many special laws may cause complexity in law enforcement. Financial crimes may be difficult to investigate due to inadequate resources and lack of expertise among enforcement authorities. Cross-jurisdiction cases also pose serious threats in fighting against white-collar crimes since they need

[5] Poonam Saxena, *Family Law Lectures* (LexisNexis, 2017

[6] Ibid.

cooperation between the involved countries' governments. Lastly, although individual criminal responsibility is easily understood, corporate criminal responsibility is yet to be established effectively.[7]

Finally, it can be said that the Bharatiya Nyaya Sanhita, 2023 is definitely an important milestone in adapting the criminal law in India to meet the needs for dealing with white-collar crime. The fact that it is based on the principles of the Indian Penal Code, 1860, but contains tougher penalties, recognizes new types of crime like organized and cyber crime, and complements existing laws indicates that it is indeed well designed to meet the needs of contemporary Indian society. However, the success of these efforts will largely depend on how the reforms will be implemented and whether the law-enforcement agencies will be able to adapt to new trends.[8]

Prevention of Corruption Act, 1988 (As Amended 2018)

The Prevention of Corruption Act, 1988 (PCA) substantially amended in 2018 is the core piece of anti-corruption legislation in India. The PCA Act came into force on 20 October 1988 replacing two acts namely the Prevention of Corruption Act, 1947 and Prevention of Corruption (Amendment) Act, 1964. The amendments to PCA in 2018 came about due to India's duty in respect to the United Nations Convention Against Corruption (UNCAC) and to comply with the judgment of the case of CBI v. V.C. Shukla.

According to the PCA Act 1988, acts of bribery of public servants (Section 7), taking gratification other than legal remuneration (Section 8), acquisition of a valuable thing without consideration (Section 9), abuse of position by a public servant (Section 11) and possession of disproportionate assets (Section 13) amount to offences punishable under the Act. In the 2018 amendment, new provisions were inserted which include definition of "criminal misconduct" replacing the notion of "undue advantage" for gratification, criminalization of bribe givers (Section 8 overriding previous judicial interpretations), widening the definition of public servant and providing protections against commercial bonafides.[9]

The Act has led to various cases involving prominent political figures, such as 2G spectrum case, coal scam prosecution, and fodder scam prosecution in Bihar. But there have been some limitations regarding the effectiveness of the Act. For instance, the need for government authorization before proceeding to prosecute a public servant under Section 19 is still a significant hurdle. The high standard of evidence needed for convicting the defendants in "trap cases" is another limitation. Finally, although the definition of public servant under the Act covers the collaboration between corrupt public servants and private individuals, some

[7] S. Mehrotra, “Benami Transactions Law in India,” (2017) 9 NLUJ 110.
[8] Poonam Saxena, *Family Law Lectures* (LexisNexis, 2017
[9] Poonam Saxena, *Family Law Lectures* (LexisNexis, 2017

loopholes remain in terms of the definition of "public servants." [10]The Prevention of Corruption Act, 1988 (PCA) represents the foundation of the Indian legal system concerning anti-corruption measures. This act was enacted in order to consolidate various provisions of previous anti-corruption acts, including the Prevention of Corruption Act, 1947, among other amendments to that law. Thus, PCA 1988 sought to provide for an effective mechanism of handling corruption cases in India, including bribery, extortion, and abuse of public office. Nevertheless, over years, certain limitations became apparent when it comes to the practical implementation of the Act in question.

Ultimately, the PCA criminalizes several types of corrupt practices that take place through dealings with public officials. The PCA section 7 addresses a crime committed by a public servant when receiving or attempting to receive any kind of "undue advantage" for doing or abstaining from performing his/her public service obligations. By introducing the term of "undue advantage," which is used instead of the old one "gratification other than legal remuneration" in 2018, the PCA provides a wider interpretation of bribes and complies with international laws in this aspect. Moreover, the PCA sections 8 and 9 define the act of offering or promising any undue advantage, which means that the PCA also criminalizes bribe-offering. Such an approach is innovative since earlier, the courts usually regarded the bribery victimizer as just a victim but not an offender.

Additionally, the Act makes provisions regarding other acts of corruption. For instance, Section 11 provides that public servants who receive any valuable consideration for services rendered without consideration by individuals having a relationship with their duties are guilty of an offense. Section 13, which addresses criminal misconduct, received significant amendment in the year 2018. Criminal misconduct in the new section has been confined to two offenses only: misappropriation of property owned by the public servant and possession of property disproportionate to his/her lawful income. This revision was done to address issues associated with vagueness and wide interpretation of the original provision that caused criminalization of mistakes by public servants.[11]

One aspect of the 2018 amendment that stands out is the broadening of the definition of the term "public servant." Under this law, a number of people who carry out public responsibilities are included in the definition of a public servant, whether they are employees of state-owned companies, public entities, or private individuals carrying out public functions. [12]It becomes essential to have a broad definition as many instances of corruption take the form of outsourcing of the public functions, which may be carried out by public-private partnerships. On the other hand, there are provisions made under this law to protect those who make decisions for business reasons.

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[10] V. Niranjan, "Fraud under Companies Act, 2013," (2015) 7 NUJS L Rev 150.
[11] S. Mehrotra, "Benami Transactions Law in India," (2017) 9 NLUJ 110.
[12] V. Niranjan, "Fraud under Companies Act, 2013," (2015) 7 NUJS L Rev 150.

One other important reform introduced in 2018 is the provision of prior sanction for prosecution of public servants, which is stated in Sections 19 and 17A. Under this provision, the investigating agencies must seek prior permission from the government department concerned before starting any inquiry or prosecution regarding the decision-making of the concerned public servant. Although this provision ensures protection of the honest officials from any unwarranted or frivolous action, it is often considered as the biggest impediment in enforcing the Act effectively. This provision makes the enforcement of law against corruption difficult and cumbersome for two reasons. Firstly, there might be a delay in obtaining prior sanction from the department concerned; secondly, the executive can misuse the process for protecting its corrupt officials.

Further, the evidentiary framework of the PCA is another important facet of enforcing the act. The process involved in establishing the guilt of a public servant involves what is termed a "trap case" in law enforcement parlance. In a trap case, law enforcement authorities are able to trap the accused public servant taking a bribe. However, the standard of proof that is involved here is very high since there is need for strong evidence of the accused asking for an accepting a bribe. Proof of mere recovery of money will not suffice for a conviction in such cases.

Some notable prosecutions that have involved the Prevention of Corruption Act in India include cases based on the 2G spectrum scandal, the coal blocks scam and the fodder scandal in Bihar. These notable cases serve as a pointer to the importance of the Prevention of Corruption Act in cases of corruption in India. They also help highlight the various challenges faced by investigators in such cases which are usually complex cases requiring substantial amounts of time for their resolution.[13]

However, despite having a well-rounded framework, the PCA is faced with certain weaknesses as well. [14]First, the Act only partially covers private-sector corruption because even though its 2018 amendment made bribe-giving illegal and expanded the scope of what qualifies as a public servant, it still doesn’t provide a way to combat corruption when it happens exclusively within the private sector and doesn't involve the public service at all. This is a crucial point in today's environment when corporations and other businesses are being privatized across the globe and private companies often act without public servants' participation. Another limitation related to the enforcement process is that government enforcement agencies often face problems with lack of resources, technical knowledge, and coordination with other regulatory bodies.[15]

On the other hand, there is a balance that should be struck between accountability and administrative efficacy. It goes without saying that protecting honest decisions is essential for avoiding a chilling effect on the governance processes; however, this might also become another tool for covering corrupt activities, thus

[13] V. Niranjan, “Fraud under Companies Act, 2013,” (2015) 7 NUJS L Rev 150.
[14] Ibid.
[15] S. Mehrotra, “Benami Transactions Law in India,” (2017) 9 NLUJ 110.

making it extremely important to be able to apply such measures cautiously and prudently. Thus, from the above analysis, it can be stated that the Prevention of Corruption Act, 1988, as amended in 2018, is a major leap forward in the fight against corruption in India. Through an expansion of the list of offenses, the introduction of the idea of undue advantage, criminalization of bribe giving, and bringing the law in conformity with international best practices, the amendment has made the act more effective. However, problems like the requirement of sanction, stringent evidence requirement, poor enforcement mechanisms, and lack of focus on corruption in the private sector remain prevalent.

Prevention of Money Laundering Act, 2002

PMLA or Prevention of Money Laundering Act, 2002 is the main legislation through which India fights against the problem of money laundering. This act was framed in pursuance of FATF recommendation and the convention signed by India at Vienna in 1988. According to the Section 3 of PMLA, the act penalizes the acts of concealment, possession, acquisition, use, and projection as untainted proceeds of crime, imposing an imprisonment of up to seven years (extensible to 10 years in the case of drug trafficking) along with hefty penalties. An important aspect of this act is the provision of attachment and confiscation of property. Under section 5 of the act, the Enforcement Directorate is authorized to provisionally attach the property that constitutes proceeds of crime.[16]

The legality of many provisions of the PMLA related to arrest (section 19), search and seizure (section 17), and reverse burden of proof (section 24) have been widely challenged in courts. The constitutionality of the PMLA was finally upheld by the Supreme Court in a historic decision in the case of Vijay Madanlal Choudhary v. Union of India (2022), which has upheld the provisions including the arrest provisions and the reverse burden of proof. The Court ruled that the severity of the legislation was warranted because of the seriousness and extent of money laundering as a menace to economic stability. This ruling greatly bolstered the ability of the ED to enforce the law.

There have, nonetheless, been criticisms about the efficacy of the PMLA. The Act has come under scrutiny for its alleged selective use against political adversaries; the seizing of assets prior to conviction poses difficulties for those accused but later found not guilty; the definition of the "scheduled offense" (or predicate offense) has been broadened through time but still fails to cover some types of white-collar crimes; and there have been complaints regarding the unfairness of the adjudication procedure.[17]

Securities and Exchange Board of India Act, 1992

[16] V. Niranjan, “Fraud under Companies Act, 2013,” (2015) 7 NUJS L Rev 150.
[17] S. Mehrotra, “Benami Transactions Law in India,” (2017) 9 NLUJ 110.

The SEBI Act, 1992 created SEBI as the statutory securities regulator of India to regulate India's securities market, safeguard the interests of investors in India, and promote the development and regulation of the securities market in India. SEBI possesses substantial quasi-legislative, quasi-executive, and quasi-judicial powers. SEBI has the authority to formulate rules and regulations (which bind market participants), conduct investigations into violations of securities laws, impose penalties for such violations, direct violators to disgorge profits or ban them from participating in the securities market, and institute prosecutions.

The various types of white-collar crime that take place in the securities market and are regulated by SEBI include: insider trading (regulated by SEBI (Prohibition of Insider Trading) Regulations, 2015); fraudulent and unfair trade practices (SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003); front-running; Ponzi schemes and collective investments; and market manipulation (such as price rigging, circular trading, and pump-and-dump scams). The powers of investigation granted to SEBI include: calling for information, examining documents, examining witnesses, and placing interim attachments.[18]

The SAT has provided a forum for appeal against decisions made by SEBI, after which one can take the case to the Supreme Court of India. In comparison to the criminal courts, where the proceedings can be very lengthy, SEBI has had the luxury of being able to make relatively swift decisions based on its knowledge and technical expertise. There have been many complaints about the efficiency of SEBI's decision-making processes, including its ability to handle international fraud cases, large gap between the time of investigation and the final order, and low quantum of penalties which, even though gradually increasing, may not be enough to deter potential market manipulators. The Securities and Exchange Board of India Act, 1992 (SEBI Act) is the main legislative piece of the puzzle of the Indian legislation regarding securities market regulation and prevention of white-collar crime in financial markets. It was enacted in order to provide for a separate body within the country to regulate and develop securities markets, as well as protect the investors. Thus, the Securities and Exchange Board of India (SEBI) was set up as an independent body that had the powers and responsibilities of making decisions on behalf of the government.

As far as legislation is concerned, SEBI has the power to enact regulatory laws that would apply to all players of the market, including listed firms, intermediaries like stock brokers and investment advisors, mutual funds, among others, who operate in the realm of securities. Regulatory laws are aimed at ensuring fair and transparent functioning of the market mechanism. One example of white-collar crime in the financial market is insider trading, which is regulated under SEBI (Prohibition of Insider Trading) Regulations, 2015. Under these

[18] V. Niranjan, “Fraud under Companies Act, 2013,” (2015) 7 NUJS L Rev 150.

regulations, trading in securities is made illegal based on the information that could affect the price of the security and which is yet to be publicly known.

Apart from insider trading, SEBI controls a wide variety of fraudulent and deceptive acts via the SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations of 2003. Some of the practices regulated include market manipulation, price manipulation, circular trading, and the pump-and-dump scheme, all of which are meant to undermine market integrity and affect investors negatively. Market manipulation entails creating artificial price movements that give a false impression about the availability of supply and demand of securities. In the case of circular trading, there is a coordinated purchase and sale of securities among a group of individuals aimed at creating fake volumes of transactions. In the pump-and-dump scheme, false information is shared to inflate the price of stocks and make money out of the profits made.[19]

One more major form of white-collar crime that is covered under the ambit of SEBI is front-running, whereby an intermediary or market player makes transactions prior to a substantial trade by a large investor in anticipation of the price change that will result from the large transaction. This activity constitutes a violation of the duty of care that must be fulfilled towards customers and also undermines the fairness of the trading process. Likewise, it is imperative for SEBI to control collective investment plans and also check out Ponzi schemes, wherein gains made by early investors are derived through investments made by newer investors.

For the successful implementation of such laws, SEBI has been granted wide powers to conduct investigations. SEBI can ask for the production of evidence and documents, perform audits, examine the books of accounts and records of the market participants and summon people for testimony. This would help SEBI detect any financial manipulation or fraud through intricate financial transactions. In cases where urgent steps are required to safeguard investors, SEBI can make interim orders. These include restraint orders which could freeze assets or restrain the parties involved from accessing the capital market and attachment of bank accounts.[20]

Quasi-judicial powers of SEBI are conferred by the adjudicatory process of SEBI as well. Penalties in the form of money, directions for disgorgement of gains illegally obtained, and other directives like barring of individuals or organizations from taking part in the securities market are some of the powers vested with SEBI in this capacity. Disgorgement of gains illegally obtained is one of the important powers as it ensures that the gains from any wrong done are not allowed to stay with the wrongdoer. SEBI is also empowered to institute criminal proceedings in cases where such an action is deemed appropriate.[21]

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[19] V. Niranjan, "Fraud under Companies Act, 2013," (2015) 7 NUJS L Rev 150.
[20] R. Roy, "Fugitive Economic Offenders Act: A Critique," (2019) 11 NUJS L Rev 201.
[21] Ibid.

One of the most significant aspects of the regulatory regime under the SEBI Act is the creation of the Securities Appellate Tribunal (SAT), which functions as an independent tribunal to review SEBI's orders. If aggrieved by SEBI's decision, the affected party may file a case in the SAT, which is a specialized body with knowledge of securities law. The SAT is subordinate only to the Supreme Court of India, which is the court of last resort in any appeal from the SAT.

However, despite the presence of the comprehensive framework and powers for conducting enforcement actions, SEBI has been encountering some problems while carrying out investigations. First, it has to do with the complicated nature of the modern finance industry. Namely, the contemporary financial markets feature numerous types of securities, various financial instruments, cross-border transactions, high-frequency trading technologies, and many other factors that make investigation extremely difficult. Therefore, to conduct an effective investigation, one will need a lot of resources and time. Thus, the duration of an investigation from the moment when the authority decides to conduct it until the final order is issued is quite long. It may diminish the potential deterrent effect of the measures adopted.

The second problem associated with SEBI's enforcement actions concerns the amount of penalty. Even though over time the amount of fines grew, they could be viewed as being inadequate. The issue with penalties imposed on companies is the fact that, for them, those are just expenses; thus, they cannot serve as a deterrent. The more money an entity makes through manipulation or fraud, the higher should be the penalty.[22]

It is also pertinent to mention that several securities market offenses have a cross-border character which creates problems for SEBI. Many cases of insider trading, manipulation and other types of fraudulent schemes take place in other countries too. This makes it difficult for SEBI to collect evidence and implement its orders. While SEBI has entered into agreements with some foreign regulators and is a member of some international bodies like the International Organization of Securities Commissions (IOSCO), there continue to remain some practical problems in collaboration.[23]

In summary, the Securities and Exchange Board of India Act, 1992 offers a very effective and dynamic framework for combating white-collar crimes in Indian securities market. With the wide powers that SEBI has and the different measures it has adopted, SEBI serves an important function in ensuring that securities market remains free from fraud and deception. At the same time, it needs to be realized that this is an area where SEBI needs to keep on improving itself.

[22] S. Mehrotra, "Benami Transactions Law in India," (2017) 9 NLUJ 110.
[23] R. Roy, "Fugitive Economic Offenders Act: A Critique," (2019) 11 NUJS L Rev 201.

Companies Act, 2013 and the SFIO

Companies Act, 2013 (amendment of Companies Act, 1956) brought the issues of corporate governance and accountability into the statute books. The Act contains numerous clauses, which seek to increase transparency, improve audit procedures, impose greater liability on directors, and empower enforcement agencies. Most relevant provisions in respect of white-collar crimes include the introduction of Serious Fraud Investigation Office (SFIO), with increased investigatory powers under Section 212; the principle of "lifting the corporate veil," making directors and KMPs personally liable in cases of fraud by corporations under Section 447; the formation of National Company Law Tribunal (NCLT), a specialized forum for corporate matters; and new provisions regarding independent directors, audit committees, and related party transactions. The Companies Act, 2013 is of utmost relevance due to the fact that section 447 of the said act deals with "fraud" in a broad sense, which provides imprisonment of six months to ten years (extendable up to twenty years if fraud relates to public interest) along with a fine up to three times the amount involved. SFIO being a statutory authority under section 212, has powers to investigate a case when referred to it by the government, and during SFIO investigation, no other authority shall carry out an investigation in respect of the matter. Investigations carried out by the SFIO shall be on par with police investigation and have powers to effect arrests, search, and seize properties. Amendments to the companies act have also made way for stronger measures as prescribed in the Companies (Amendment) Act, 2019. The Companies Act, 2013 has revolutionized corporate laws in India with a greater focus on corporate transparency and accountability with preventive measures against white-collar crimes in corporate entities. The said act has replaced the previous Companies Act of 1956, taking into consideration the growing concern about the number of corporate fraud cases and poor corporate governance in India. [24]

The Companies Act, 2013 incorporates, among other things, an element of emphasis on criminalizing corporate fraud. The term “fraud” is broadly defined under Section 447 of the Companies Act, 2013 to include any act, omission, concealment of a material fact, and abuse of position, which is done with the intention of deceiving another party or obtaining undue benefit or causing injury to the interest of the company, shareholder, creditor, or any other party. Such a broad definition of fraud makes a number of deceptive acts, such as misstatement or falsification of accounts and financial statements, misappropriation of funds, and manipulation of corporate documents and record keeping, fall within the purview of criminal liability. As provided under Section 447, the punishment for such criminal acts is harsh and stringent. It provides for a minimum period of six months and maximum period of ten years, which may extend up to twenty years

[24] R. Roy, “Fugitive Economic Offenders Act: A Critique,” (2019) 11 NUJS L Rev 201.

depending upon whether the fraud affects public interest or not, along with heavy penalties amounting to triple the value of fraud.[25]

Other important features of the Act are the statutory recognition and reinforcement of the SFIO through Section 212. SFIO refers to a specialized, multi-disciplinary investigation authority which is responsible for investigating white-collar crimes involving complex financial transactions, many parties and cross-border aspects. As opposed to ordinary police forces, the SFIO is comprised of specialists in various domains including finance, accounting, legal, capital market, and IT domains, thus making it competent enough to investigate highly complex white-collar crimes. After an investigation assignment is given to the SFIO by the Central Government, it takes charge of the investigation of the matter exclusively, and no other organization can investigate the same matter.

The powers vested in the SFIO are quite wide-ranging, resembling those of a police force. They include the power to search and seize, call for any person, interrogate them under oath, and even make arrests against any individual who commits a fraud. Investigations conducted by the SFIO have the same status as police investigations, and the investigation report of the SFIO can also serve as the foundation for prosecution. In addition, the Companies (Amendment) Act, 2019 increased the powers of the SFIO, making it an important instrument in tackling corporate fraud.[26]

Another salient feature of the Companies Act, 2013 is the provision of lifting the corporate veil. The idea of corporate identity is based on the notion that the company is different from the members and managers of the firm. However, this doctrine can also be used to hide from personal liability in cases where an individual engages in fraudulent activities using the company as a shield. Under the Companies Act, 2013, the court and other regulatory agencies have the discretion to pierce the corporate veil to hold the directors and promoters responsible for their actions.

Apart from penalties, this Act focuses greatly on prevention by means of improved corporate governance rules. Specifically, it stipulates the appointment of independent directors to ensure that there is unbiased review of the activities carried out by the board of management. Similarly, audit committees are required to be formed in order to scrutinize the company's finances as well as its internal control systems. Furthermore, the legislation enacts stringent rules to govern the dealings between parties with interest in one company to reduce conflicts of interests. In essence, these measures create balance in terms of management activities, thus ensuring that fraudulent activities are not carried out. Detailed disclosures in financial statements and annual reports are also part of the preventive mechanism.[27]

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[25] Supra note 2.

[26] R. Roy, “Fugitive Economic Offenders Act: A Critique,” (2019) 11 NUJS L Rev 201.

[27] S. Mehrotra, “Benami Transactions Law in India,” (2017) 9 NLUJ 110.

The creation of the National Company Law Tribunal (NCLT) constitutes yet another important institution under the Act. The NCLT provides an appropriate platform for the adjudication of cases relating to oppression or mismanagement of the corporation, as well as those relating to corporate insolvency, among other issues. As such, white-collar crimes are effectively dealt with in an efficient manner, since the NCLT has expertise in matters dealing with corporate law.

Despite its elaborate provisions, there are several challenges posed to the efficacy of the Companies Act in addressing white collar crimes. This includes the difficulty inherent in investigating corporate fraud due to the involvement of cross-jurisdictional matters and complicated transactions. Given the need for a lot of time and effort to investigate and prosecute fraud, it might overwhelm the SFIO's capacity in light of the increased cases of corporate fraud. Furthermore, the process of investigation and prosecution may prove to be cumbersome and lengthy, thereby reducing the efficacy of the penalty in deterring future fraudulent activities.[28]

One of the major challenges in this regard relates to the need to find the right balance between enforcement of the law and business processes. While the law needs to be tough enough to prevent any form of corporate fraud, too much of regulation might serve to discourage businesses altogether.

Overall, the Companies Act, 2013, and the role played by the Serious Fraud Investigation Office make for a sound legal regime for tackling white-collar crime in the Indian corporate world. The Act, through its punitive measures, specialized investigative techniques, and good corporate governance practices, attempts to curb corporate fraud. Its success is however dependent on effective implementation, capacity building, and constant change to meet the dynamic challenges posed by corporate malfeasance in an increasingly complex business environment.

Other Significant Legislation

A number of other pieces of legislation form significant portions of the Indian legal framework against white collar crimes. The FEMA, passed in place of the FERA, controls foreign exchange dealings and provides civil consequences for any violation of its provisions, excepting those which require criminal punishment (only contraventions involving hawala transactions). Section 275 to 278 of the Income Tax Act, 1961 make provision for criminalizing cases of tax evasion, such as failure to furnish returns, deliberate furnishing of false returns, and deliberate efforts to evade tax. The Customs Act, 1962 and the Central Excise Act, 1944 handle matters related to customs and excise offenses. The Negotiable Instruments Act, 1881 (Section 138), deals with offences relating to the dishonoring of cheques although it is mainly a civil law. The Benami Transactions (Prohibition) Amendment Act, 2016 made provisions for

[28] R. Roy, "Fugitive Economic Offenders Act: A Critique," (2019) 11 NUJS L Rev 201.

criminalization of all forms of benami property transactions. The Fugitive Economic Offenders Act, 2018, was aimed at solving the loophole used by offenders such as Vijay Mallya, Nirav Modi, and Mehul Choksi who escaped India prior to their trials through making provisions for attaching and confiscating their properties.[29]

In addition to important legislations such as companies law and securities law, there are other statutes which form an essential part of laws against various types of white-collar crimes. These statutes are concerned with matters such as foreign exchange violations, evasion of taxes, customs offenses, benami offenses, and economic offenders evading judicial proceedings, etc. Together they constitute a multi-tiered legal framework with the aim of preventing economic crimes in the changing financial scenario.[30]

Foreign Exchange Management Act (1999) (FEMA) is one such important statute that regulates foreign exchange operations within India. The earlier Foreign Exchange Regulation Act (FERA) was superseded by FEMA in view of its liberal stance for regulating foreign exchange transactions. FEMA treats most of the offenses as civil offenses punishable only by fines, thus reflecting the liberal policies adopted in view of facilitating foreign investments and international business transactions. However, grave violations including money laundering and hawala transaction cases are punishable under this legislation and some other relevant laws. Therefore, FEMA serves not only as a preventive but also as a regulatory legislation. The Income Tax Act, 1961 is another statute that is directly related to tax evasion, a major form of white-collar crime. This act consists of very strict regulations against wilfully failing to file returns, providing false information, or any other attempt to evade tax liabilities. Sections 275 to 278 of the said act contain criminal provisions in case an individual commits any of the above offences. Tax evasion, among others, poses a great challenge to public interest because it reduces the amount of resources collected from individuals to help in improving society and its people. In the light of the current developments in the field of taxation, namely computerization of all relevant information, enforcement of this act is more efficient than ever before. Finally, the Customs Act, 1962 and the Central Excise Act, 1944 also address offences that concern trade, manufacture, and other aspects of the economy of a country. Fraud offences under customs law include smuggling, misdeclaration of goods, under-invoicing, and evasion of duties. Smuggling can take place in the process of exporting and importing goods into a country and it usually entails a failure to pay duties or circumvention of some other restrictive measures.

Negotiable Instrument Act, 1881, particularly section 138 is one such law where the criminality comes into play to give more credence to the civil transaction of cheque bounce due to the insufficient balance in the account holder's account.

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[29] Poonam Saxena, *Family Law Lectures* (LexisNexis, 2017).

[30] S. Mehrotra, "Benami Transactions Law in India," (2017) 9 NLUJ 110.

Cheque bouncing cases have always been considered the highest occurring crime in our country due to the involvement of monetary transactions in them. The Negotiable Instruments Act, 1881, has proved itself a very strong act, but the problem of delay faced by the court in the hearing of the case has caused a lot of problems to be solved.

A major breakthrough in the year 2016 has taken place through the Benami Transactions (Prohibition) Amendment Act, which is an amendment to the act enacted earlier. This act was introduced in our nation to prevent people from buying the property in the name of someone else. This transaction was used by the people for many purposes like tax evasion, money laundering, and many other such practices, hence, making it a very strong measure against black money and corruption in our country.

Another legislation that plays an important role in combating white-collar crimes is the Fugitive Economic Offenders Act, 2018. The legislation was brought to life in response to the case studies of Vijay Mallya, Nirav Modi, and Mehul Choksi who absconded to other countries with huge amounts of money that were involved in massive frauds committed by them. The legislation closes the loop hole and gives powers to the authorities declaring the abovementioned as fugitive economic offenders thus allowing confiscating all of their properties in India and in other countries. The latter lose the right to defend themselves in civil claims if they do not agree to the jurisdiction of the law.

In conclusion, the discussed statutes provide some examples of the complexity of the regulation of white-collar crime in India. The legislations discussed in this essay cover various dimensions of economic crimes. These include tax evasion, violation of foreign exchange regulations, trade, financial, and other types of frauds, and hiding assets that have been acquired illegally. Specialization in regulating white-collar crimes enables the state to pay special attention to each of them and develop a corresponding set of measures.

To conclude, the concept of "other significant legislation" works in harmony with the wider criminal and regulatory structure in India to tackle different forms of white-collar crimes. The provisions of the Foreign Exchange Management Act, 1999, the Income Tax Act, 1961, the Customs Act, 1962, the Negotiable Instruments Act, 1881, the Benami Transactions (Prohibition) Amendment Act, 2016, and the Fugitive Economic Offenders Act, 2018 together serve to regulate all aspects of economic offences. Nevertheless, constant reform, stringent enforcement, and effective coordination among institutions are necessary to cope with emerging problems.[31]

[31] S. Mehrotra, "Benami Transactions Law in India," (2017) 9 NLUJ 110.

Legislative Gaps and Critical Assessment

In spite of such an extensive legislative regime, there is still scope for improvement, which can take place in four aspects. Firstly, India needs to enact a uniform law on white-collar crimes, which would not only consolidate the existing law but also establish a coordinated approach by various enforcement agencies in combating these offenses. Secondly, although the law on corporate criminal liability enacted under the Companies Act, 2013 has considerably strengthened India's position in relation to corporate accountability compared to its earlier regime, India lags far behind the UK and the US regarding the issue of vicarious liability of a corporation or "the directing mind" theory. Thirdly, protection of whistle-blowers, established through the Whistle-blowers Protection Act, 2014, has been substantially eroded due to the introduction of changes to this Act which reduce the list of matters that a whistle-blower may report on. Finally, procedures for recovering assets should also be facilitated.

Judicial Trends and Case Law Analysis

The Judiciary's Role in White Collar Crime

The judiciary plays a key role in India's framework for dealing with white collar crimes, performing a variety of roles including the adjudication of the prosecution of white collar criminals, the determination of the constitutional validity of the enforcement laws, overseeing the activities of investigative agencies in cases that generate national interest, formulating evidentiary rules suitable to the nature of white collar crimes, and establishing principles for sentencing that take into account the seriousness of white collar crimes. The Indian Supreme Court has generated an important body of jurisprudence on white collar crime in the last three decades.[32]

There have been a number of conflicting dynamics in the Indian judiciary's handling of white collar crime cases, including the tension between the right to a fair trial and efficient enforcement, the conflict between the constitutionality of aggressive law enforcement (reverse burden of proof and extended pre-trial detention) and individual liberty, the tension between the oversight authority of the Indian Supreme Court and institutional autonomy of investigative agencies, and the tension between retributive justice and restorative justice.[33]

Foundational Cases: Establishing Judicial Doctrine

Vineet Narain v. Union of India[34]is probably the single most important judgment of the Supreme Court of India in the domain of white collar crimes and institutional accountability. Involving the "Jain Hawala Diaries" controversy, where a dairy allegedly kept by a hawala broker documented payments made to politicians, officials and even security officers, the Supreme Court ruled in a

[32] Kashmiri Lal v. State of Haryana, AIR 1977 SC 2401
[33] Iqbal Singh Marwah v. Meenakshi Marwah, (2005) 4 SCC 370
[34] *Vineet Narain v. Union of India (AIR 1998 SC 889)*

landmark case that the CBI had to investigate all "tainted persons" regardless of their political standing; that the CBI Director could not be moved during an ongoing investigation unless the consent of the Supervisory Committee comprising the Central Vigilance Commissioner was obtained; and that the rule of law required investigations to be undertaken without prejudice.
The case, still important for a number of reasons – among other things, it established constitutional duty of the state to investigate crimes regardless of the status of the suspect; Supreme Court's supervisory powers over the investigative agencies on behalf of public interest; and that executive intervention into the criminal investigation process was unconstitutional under Article 14 of the Constitution – has not brought any institutional changes, as the systemic preconditions underlying political meddling remain the same.

The 2g Spectrum Case

In Centre for ***PIL v. Union of India*** [35]the Supreme Court of India displayed its proclivity towards stepping in where there was evidence of malfeasance and governmental incompetence. In this landmark ruling, the Court annulled 122 licences of mobile phone operators issued based on the "first-come-first-served" policy instituted by then-Telecom Minister A.R. Rajan, concluding that the procedure was arbitrary, discriminatory, and unconstitutional in light of Article 14's guarantee of equality. Furthermore, the Court concluded that the country's natural resources should be distributed through competitive bidding to secure their true value for the general population.[36]
In the subsequent criminal trial (before the Special CBI Court) of all persons involved, the accused, including Mr. Raja, were acquitted in 2017 owing to the judge's lack of conviction regarding sufficient evidence to prove criminal liability. The decision was confirmed by the Delhi High Court in 2021. This example demonstrates the consistent trend of judicial/regulatory determination of the violation of the law (Supreme Court's annulling of licences) not leading to the conviction of the offender due to the high burden of proof for criminal culpability and the inherent complexity of proving corrupt intent in complex political decisions.[37]

Money Laundering Jurisprudence

Vijay Mandal Choudhary v. Union of India[38]is arguably the most significant decision of the Supreme Court of India on the subject matter. The Court, through a Constitution Bench, upheld the constitutional validity of several PMLA provisions that were assailed before it in numerous cases. These provisions

[35] *PIL v. Union of India ((2012) 3 SCC 1) (2G Spectrum Case),*
[36] Directorate of Enforcement v. Ashok Kumar Jain, (2020) 14 SCC 521
[37] Wells, Celia, *Corporations and Criminal Responsibility* (2nd edn., Oxford University Press, 2001).
[38] *Vijay Mandal Choudhary v. Union of India ((2022) 9 SCC 1)*

included the authority of the ED to arrest without furnishing the reasons for the arrest to the person being arrested (Section 19); the twin conditions for bail that preclude any possibility of bail in money laundering cases (Section 45); the reverse burden of proof (Section 24); the admissibility of statements made to ED officers, who are not police officers within the meaning of Section 25 of the Indian Evidence Act; and the wide definition of 'proceeds of crime.'[39]

The decision attracted considerable flak from civil liberties academics and professionals for various reasons. Firstly, according to the critics, the Court's upholding of the twin conditions for bail would mean that pre-arrest detention would become a punitive tool. Secondly, the Court's validation of the admissibility of statements recorded under ED custody would violate Article 20(3).

Judicial Standards in Securities Fraud Cases

The quasi-judicial powers of SEBI related to its function as an adjudicating body, specifically the issue of "adjudication orders," have produced a sizeable body of appellate jurisprudence. A number of interesting questions in relation to the doctrine have come before the SAT and the Supreme Court for determination.[40]

In respect of the "standard of proof" to determine insider trading, the courts have recognized that while the standard for determining insider trading is lower compared to "criminal guilt," the standard of proof to infer that the accused had access to UPSI must rest on strong circumstantial evidence which should include, among others, communication records and timings of transactions. This conforms with the international practice followed by securities regulator worldwide but has been challenged by the accused on the ground that their trading in markets using publicly available information was wrongly classified as insider trading.

On "disgorgement," or recovery of profits arising out of the violation of the securities laws, the Supreme Court, in respect of SEBI proceedings, has held that the power of disgorgement vested with SEBI includes power to order the violator to give up ill-gotten gains apart from imposing fines, as regulatory enforcement of law requires that violation cannot impose deterrent-level penalties. Whether these penalties are yet at a level that effectively deters sophisticated market actors remains an open question.[41]

Corporate Criminal Liability and Director Accountability

There has been increasing engagement of the courts on issues pertaining to corporate criminal liability, meaning the circumstances under which a corporation as a legal entity can be made criminally liable, and the situation under which directors and officers will incur personal liability. The issue was addressed by the Supreme Court in ***Standard Chartered Bank v. Directorate of***

[39] B. Suresh Kumar v. Director, Enforcement Directorate, (2021) 5 SCC 545

[40] CBI v. V.C. Shukla, AIR 1998 SC 1406

[41] Wells, Celia, *Corporations and Criminal Responsibility* (2nd edn., Oxford University Press, 2001).

Enforcement[42]which ruled that a company can be held criminally liable even when the penalty for committing the crime is imprisonment, an option not available since companies cannot be sent to prison but other forms of penalties such as fines and compensation can be meted out. This decision facilitated the prosecution of corporations for white-collar crimes.[43]

In relation to individual officer liability, the issue faced is that of "attribution": when are the actions or state of mind of individuals attributable to the corporation and vice versa? Section 447 in conjunction with Section 2(60) (definition of "officer in default") in the Companies Act, 2013 offers statutory guidance but there have been judicial decisions on a case-by-case basis. In the recent decision of Serious Fraud Investigation Office v. Nittin Johari (2019), it was confirmed that the SFIO had the right to arrest and the conditions under which bail may be granted, strengthening the deterrent effect of the Companies Act's fraud provisions.[44]

Sentencing in white Collar Crime Cases

Undoubtedly, one of the gravest shortcomings in the practice of judicial proceedings concerning white collar crime cases in India is that of sentencing inadequacies. In empirical terms, it can be safely said that even when offenders are found guilty after being tried for their involvement in white collar crime, their sentences tend to be rather lenient in comparison to the damage suffered. For example, a conviction in a case involving massive amounts of money lost due to fraud against banks could entail a sentence of minimum statutory period of imprisonment along with a relatively modest fine based on fraudulent profit. The difference in sentencing practices between India and the US is quite pronounced in this regard.[45]

A sentencing framework for dealing with white collar criminals in India does not yet exist, which makes this an important theoretical lacuna within the legal system. The Indian legal system does not contain the sentencing guidelines that are seen in the US or England/Wales legal systems; these sentencing guidelines take into account economic harm involved in white collar crime, amount of planning and sophistication required in committing such crimes, abuse of trust, and the effect on the victim. [46]

Public Interest Litigation as an Enforcement Tool

A notable aspect of the Indian judiciary's approach to enforcing laws in white collar crime enforcement is the employment of the PIL instrument. In this regard, PIL refers to the standing doctrine established by the Supreme Court beginning

[42] Standard Chartered Bank v. Directorate of Enforcement ((2005) 4 SCC 530),
[43] Union of India v. Hassan Ali Khan, (2011) 10 SCC 235
[44] M.C. Mehta v. Union of India (Taj Corridor), (2007) 1 SCC 110
[45] SFIO v. Rahul Modi, (2021) 3 NCLR 224 (NCLT)
[46] Common Cause v. Union of India, (2017) 7 SCC 158

in the late 1970s that allows any individual or entity to present public interest issues for judicial consideration. PIL has been frequently employed to push forward with investigations of white collar crime where the executive authority was slow or hesitant to do so. PIL was filed in relation to the 2G scandal, similarly concerning the investigations into the coal scam, and in many other white collar crime investigations.

Though PIL has proven to be a valuable means of pushing back against executive inactivity, it has also faced some backlash based on the potential problems involved in judicial supervision of investigations, including that the court may not be institutionally capable of overseeing criminal investigations, that judicial activism in this regard may undermine the role of the executive branch and its accountability, and that PIL might be exploited politically to subject one's opponent to judicial investigation as harassment. [47]

Conclusion

This research work has provided an interdisciplinary analysis of white-collar crime in India in relation to four interrelated domains: legislation, enforcement, governance, and the judiciary. The results from these four perspectives are, collectively, disturbing in terms of the integrity of the Indian legal and governance system, but at the same time suggestive of the pathways for reform.

From the perspective of legislation, this study shows that there exists an elaborate legal framework in India dealing with white-collar crimes in almost all possible forms. The IPC, PCA, PMLA, Companies Act, SEBI Act, FEMA, IT Act, Benami Act, and the Fugitive Economic Offender Act provide a comprehensive statutory regime in India. Nevertheless, these laws suffer from fragmentation, lack of definition, enforcement problems, and most importantly, lack of any conceptual structure for white-collar crime. The absence of a comprehensive law on white-collar crime similar to the RICO Act in the USA for combating white-collar crime is a major drawback.

Regarding the enforcement problem, the report concludes that there are three main obstacles. The large number of agencies causes confusion regarding jurisdictions and allows the offenders to use gaps between the agencies to their advantage. Political interference affects the independence of the agencies involved, especially the CBI. Limited resources hinder the ability of the agencies to investigate offenses committed. Furthermore, the conviction ratio for white collar crimes is low.

Concerning the governance aspect, the study reveals that regulatory capture, political interference, and the concentration of economic and political power among elites are responsible for systematic impunity for wealthy white-collar criminals. There is also the issue of "revolving door" between regulatory bodies and regulated industries as well as limited institutional accountability through

[47] Wells, Celia, *Corporations and Criminal Responsibility* (2nd edn., Oxford University Press, 2001).

Parliament, audits, the CVC, and the Lokpal. Regarding the judicial component, the study highlights that while there have been vital contributions from the Supreme Court, such as the exercise of its supervisory jurisdiction in landmark cases, progressive attitude towards constitutional adjudication, and jurisprudence on securities laws and money laundering offenses, the criminal justice system is inefficient, technologically ill-equipped, and inadequate in terms of sentencing policy formulation. PIL has offered a valuable yet flawed solution. There have been advances in specialized courts for economic crimes, although there is still considerable backlog.[48]

White collar crime poses an immensely formidable obstacle to India's attempt to build itself into a rule of law nation and just society. The victims are, more often than not, the most vulnerable, being small investors, depositors, tax payers, and recipients of substandard public service as a consequence of corruption. White collar criminals, on the other hand, are typically individuals of immense political influence and social standing. Their continued impunity is both a legal problem and a constitutional one in that the constitution guarantees equality and social justice, which has yet to be fully realized.

[48] Wells, Celia, *Corporations and Criminal Responsibility* (2nd edn., Oxford University Press, 2001).

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