

**CORPORATE FRAUDS AND WHITE-COLLAR
CRIMES: CRITICAL STUDY**

Dissertation to be submitted in partial fulfilment for the requirement of the
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DECLARATION

I, hereby declare that the dissertation entitled “**Corporate Frauds and White-Collar Crimes: Critical Study**” is based on original research undertaken by me and it has not been submitted in any University for any degree or diploma.

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LIST OF ABBREVIATIONS

WCC	WHITE COLLAR CRIMES
FDI	FOREIGN DIRECT INVESTMENT
US	UNITED STATES
USA	UNITED STATES OF AMERICA
UK	UNITED KINGDOM
PMLA	PREVENTION OF MONEY LAUNDERING ACT
CVC	CENTRAL VIGILANCE COMMISSION
PFAA	PREVENTION OF FOOD ADULTERATION ACT
FSSA	FOOD SAFETY AND STANDARDS ACT
GPFS	GENERAL PRINCIPLES OF FOOD SAFETY
PCA	PREVENTION OF CORRUPTION ACT
ITA	INFORMATION OF TECHNOLOGY ACT
LLA	LOKPAL AND LOKAYUKTAS ACT
SFO	SERIOUS FRAUD OFFICE
SOCA	SERIOUS ORGANISED CRIME AGENCY
NCA	NATIONAL CRIME AGENCY
FCA	FINANCIAL CONDUCT AUTHORITY
FSA	FINANCIAL SERVICES AUTHORITY
FBI	FEDERAL BUREAU INVESTIGATION
MLAT	MUTUAL LEGAL AID TREATIES
SEBI	SECURITIES AND EXCHANGE BOARD OF INDIA
ED	DIRECTORATE OF ENFORCEMENT

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CHAPTER 1

INTRODUCTION

The Indian corporate sector has two main components, namely, the government owned and privately owned companies.¹ The dimensions of both components, in terms of quantity and capital, have experienced rapid growth, especially since the early 1970s. Government-owned enterprises primarily operate in industries that are fundamental, need significant resources, and involve substantial investment. In contrast, the private sector is mostly focused on industries that directly serve consumer markets. The significant disparity arises from the fundamental distinction that, although the government sector possesses about two-thirds of the productive industrial capital, its contribution to the net value added is less than one-third. The contradiction of the private sector is the public sector.² The private sector entities have limited objectives to pursue. The main goal of a private corporate organization is clear and straightforward: to operate as a profit-oriented entity, focusing on financial benefits rather than offering social services. The Indian economy is poised for a paradigm-shifting business revolution. India's adoption of trade-friendly regulations and tax reforms has not only improved the ease of doing business, but has also made it an appealing choice for international investment. India's ranking in the Global Competitiveness Index has experienced a substantial improvement in the last two years, with a notable increase of 32 positions. Its present position in the index is 39th. It has the second position within the BRICS group, which comprises Brazil, Russia, India, China, and South Africa. China is the only country ranked higher, at 28. According to the Global Investment Report 2016 released by the United Nations Conference for Trade and Development, India had a rise in foreign direct investment (FDI) from US\$35 billion in 2014 to US\$44 billion in 2015. India is ranked among the top 10 countries globally in terms of attracting investments. The primary objective of the corporate sector is to optimize financial gains. Certain individuals partake in illicit behaviors, such as tax evasion, insider trading, fraud, and bribery, in order to generate financial gains. The relentless pursuit of wealth drives individuals in the corporate sector to partake in illicit actions. Corporate crimes are acts

¹ Bashan. A.L., *The Wonder that was India* (2nd ed 2019)

² Bequi, August *“White-collar Crime: A 20th-century Crisis* (1st ed 2020)

committed by corporations. All corporate crimes are socio-economic misdeeds.³ These crimes are also called as “White Collar Crimes”. In 1941, E.H. Sutherland introduced the notion of white collar crime. Sutherland noted that in addition to conventional crimes such as assault, robbery, murder, and rape, individuals from higher social classes engage in various anti-social behaviors as part of their occupation or business. Sutherland uses the term "persons of upper strata" to encompass corporate individuals as well. In many developing nations, where corruption in public life is rampant, the level of white collar crime has also reached alarming proportions. Government personnel at all levels are routinely said to be involved in several criminal activities. Instances of bank scams, Hawala fraud, computer-generated crimes, electronic banking-related crimes, corporate fraud, counterfeiting of coins and currencies, fraudulent practices by doctors and drug businesses, and corruption in business,⁴ black money, misappropriation of Government funds, match fixing etc. are among the examples that are commonly publicized in the media in India. There has been a rise in corporate fraud cases.⁵ The corporate fraud will have significant implications for the reputation of a nation's brand. India's reputation as a prominent player in the information and technology industry suffered a setback when Ramalingam Raju of Satyam InfoTech admitted to falsifying the company's financial records. The topic has been raised regarding the roles of auditors, shareholders, and senior management. It is a committee engaged in non-violent criminal activities driven by financial motives to achieve illicit profits. The economy of the nation and public confidence are being directly impacted by these crimes. Therefore, it is imperative to promptly adopt remedial measures to prevent, identify, investigate, and prosecute economic crimes in order to limit their consequences. The primary obstacle to fully addressing the threat of White-Collar Crime is the lack of public awareness of its gravity. Prioritizing the establishment of wakefulness holds greater significance. Lawmakers must be persuaded of the importance of detecting the detrimental impact of high-tech and economic crimes on society. The majority of individuals are innocent and often unaware of the extent to which their life, financial status, enterprises, families, or privacy can be affected by economic crime. An extensive and rigorous background in inspection or accounting is essential for detecting white-collar crime, as perpetrators are

³ Baxi, Upendra, "Liberty and Corruption (Eastern Book Company), (2nd ed 2018)

⁴ Dr. Manju Koohwal, white collar crimes, (1st ed 2020)

⁵ Ibid

highly adept at manipulating circumstances. As previously said, white collar crimes are widespread in the corporate sector. The crimes committed by corporations not only impact their reputation but also affect the country's economy. Due to the governmental support enjoyed by large corporations, their criminal activities often go unnoticed. Corporations employ their financial influence to exert pressure on investigating agencies, employing political tactics and employing any available means to evade accountability. As a corporation is a legal entity or person, the investigating agency encounters several challenges which will be explained below. Corporate frauds have a detrimental impact not only on the firm itself but also on the individuals linked with it. The initial impact is felt by shareholders or investors. Typically, investors allocate their whole savings or earnings to the company. It is widely acknowledged that the revelation of the Saradha Chit Fund Scam resulted in numerous individuals facing financial ruin, leading to a significant increase in suicide rates. Despite individuals taking their own lives or facing financial ruin, the accused individuals are nonetheless able to move about without restriction. This applies not only to the Saradha Scam, but also to every instance of corporate fraud. Innocent lives have been sacrificed without fault, making it unnecessary. One individual engages in fraudulent activity and manages to evade capture, whereas another individual faces consequences and compensates for such fraudulent actions.⁶

1.1 LITERATURE REVIEW

Examining related studies is valuable for identifying the impact of various research endeavors. A substantial body of literature is crucial for the proposed study, focusing on the complex relationship between white collar crimes and corporate sectors. This literature has been authored and published by esteemed legal professionals, renowned jurists, law academics, and sociologists. A substantial amount of literature, including books, articles, journals, periodicals, encyclopedias, case notes, and reports, extensively cover the several facets of the acceptability and definition of white collar crime. This term was initially developed by American sociologist Edwin Sutherland in 1939.

⁶ Terence Morris, *Crime And Criminal Justice Since 1945*, (Blacwell Publication, 2nd edn USA), 2020

Sutherland (1940)⁷: Sutherland was the originator of the term 'white collar crime'. According to his definition, white collar crime refers to criminal activities carried out by those belonging to the upper class, specifically those who have esteemed positions in business and the professional field. While previous writers had acknowledged the importance of examining the criminal activities of the economic elite, Sutherland was the first to specifically direct the attention of criminologists to this overlooked area. He held the belief that the current theories of criminology placed excessive importance on poverty or on psychopathic and sociopathic conditions associated with poverty. He claimed that the current theories relied on data gathered by law enforcement organizations, which was skewed because it failed to consider crimes perpetrated by the privileged 'upper class' in society. He examined the unlawful actions of individuals involved in commercial and professional fields, as well as the impact and expenses associated with these crimes.

Edelhertz et al. (1977)⁸: white collar crime is considered to be a true form of crime. The reason it is not commonly recognized as such is because it does not include physical violence. Until the publication of Edelhertz et al., the majority of definitions regarding white collar crime primarily centered around the offender's social status. These definitions were criticized for being undemocratic, as they placed greater importance on the offender's status rather than the nature of the offense. Edelhertz provided a concept of white collar crime that is both democratic and practical. The author's interpretation is more widely accepted since it defines white collar crime based on the nature and characteristics of the illegal action, rather than the social and economic standing of the perpetrator. Edelhertz et al. analyze the profound consequences of white collar crime on all sectors of society and argue that tackling the issue of white collar crime should be the foremost concern of every criminal justice system.

Steve West and Timothy Carter (1983)⁹: West and Carter challenge the prevailing notion among criminologists that white-collar crimes are not considered 'genuine' crimes

⁷ Edwin H. Sutherland, "White Collar Criminality", American Sociological Review, Vol.5, No.1, February 1940, pp. 1-12.

⁸ H. Edelhertz, Investigation of white collar crime – A Manual for Law Enforcement Agencies, US Department of Justice, Washington, 1977

⁹ Steve Blum West, Timothy J. Carter, "Bringing white collar crime Back In- An Examination of Crimes and Torts", Social Problems, Vol. 30, 1983, pp. 545- 554

due to their usual resolution through civil law procedures. The primary cause, as per their perspective, is that the majority of criminologists hold the belief that there exists a fundamental difference between civil and criminal infractions. Contrary to popular belief, the two domains of law are not completely separate from each other. There is a significant degree of overlap between criminal and civil law in terms of their culpability rules, moral judgments regarding behaviors, intentions, and the behaviors they govern. According to West and Carter, the essential principles of criminal law, namely intent, immorality of behavior, and purpose of sanctions, are present in both legal systems. The distinction is solely in the degree. They argue that there is no distinction between actions that break criminal laws and actions that break civil laws, as there is no definitive boundary between civil and criminal law. They firmly support the idea that white collar crimes should be considered as actual crimes.

Dr. Manju Koolwal:¹⁰ A study has been undertaken to evaluate the relevant literature. The 29th report of the Law Commission of India in 1966 aimed to comprehensively analyze and study the special enactments of India. Special punitive laws are required for certain offenses like white collar crimes, which involve changing conceptions of mens rea, liability of company officers, and their vicarious liability. The 47th report of the Law Commission of India in 1972 aims to analyze and comprehend the legal responsibility of corporations and their executives. In order to comprehend the progress of new technologies and the rise of white collar crimes, researchers examine the findings of the Santhanam Committee report. They also investigate socio-economic offenses, which are known as white collar crimes, and note that these crimes have distinct characteristics as they do not directly injure an individual victim but instead have detrimental effects on society as a whole.

Singh, Shailesh Kumar:¹¹ it is a good compilation of the different laws and judicial process which gives an idea of preventing this crime. Swamy, Subramanian (Corruption and Corporate Governance in India), refers to the nexus among Criminals, Bureaucrats, Businessmen and Politicians.

¹⁰ Manju Koolwal, “white collar crimes (Indian and Abroad)”, (2023)

¹¹ Singh, Shailesh Kumar, “White-Collar Crime Causes, Prevention, Law and Judicial Trends”, (2014)

Chitra Lele:¹² (Corruption in India: Causes, Effects and Reform), gives detailed information about scams and sandals.

PK Das¹³: (Anti-Bribery and Anti-Corruption, Along with Supreme Court on Acquittal of Public Servants from Corruption Charges, 1st ed. 2019), provides detailed information about the procedure followed in the case of corruption.

Renu:¹⁴ it is useful to know the court's view. It is a good compilation of the decisions of the High Courts, Supreme Court on anti-corruption laws.

1.2 STATEMENT OF THE PROBLEM

As corporate sector crimes are intricate and difficult to detect, there are frequently insufficient convictions and penalties for white-collar crimes problems¹⁵. Since the crime statistics only include cases handled in regular criminal courts, they are unable to provide information about the scope of white-collar crime. Instead, tribunals, administrative boards, and commissions of inquiry handle white-collar crime in the business sector.¹⁶ The corporate sector faces significant challenges when it comes to investigating White-Collar Crime, imposing legal sentences on offenders, and facilitating international cooperation in the fight against Economic and White-Collar Crime.¹⁷ Following are the problems faced during investigation of white collar crimes in corporate sector:

- In White-Collar Crime, the first challenge frequently stems from the lack of a complaint.
- Reporting white collar crime presents a second challenge.

¹² Chitra Lele, "Corruption in India: Causes, Effects and Reform", (2015)

¹³ PK Das, "Anti-Bribery and Anti-Corruption Laws in India", (1st ed. 2019)

¹⁴ Renu, Anti-Corruption Laws, Practice and Procedure, (1st ed. 2015)

¹⁵ Janak Raj Jai, "white collar crimes: Indian Political Scene (Rajiv Publications, New Delhi 2019)

¹⁶ Kashyap, Subhash C., "Eradication of Corruption and Restoration of Values (Sterling Publishers Pvt. Ltd., New Delhi 2019)

¹⁷ Terence Morris, Crime And Criminal Justice Since 1945, (Blackwell Publication, Usa, 1st Ed, 2020)

- The third issue concerning White-Collar Crime is to proving criminal intent and a company's legal liability.
- The issue of specialized knowledge, training, and experience is the fourth factor pertaining to investigative complexity.
- The sixth challenge has to do with the confidentiality and accessibility of suspects' bank accounts.

There is a practical barrier to the enforcement of laws pertaining to white-collar crimes when an investigator identifies the individuals responsible for the majority of criminal acts but does not know who they are. If an individual is identified, they can easily evade criminal sanctions due to their political influence and financial power. It's possible that no victim or group of victims will report an offense to the police, or that victims may not have known about it when it happened. The crime itself can be hard to spot because it's being committed during regular work hours. Gaining the trust of the real policy makers in huge, intricate corporations is extremely challenging. It is very difficult to obtain evidence of such participation two main adverse impacts on society¹⁸

- Individuals, business entities, and the general consumer community all suffer significant financial losses as a result.
- It has an impact on the entire social structure.

1.3 RESEARCH OBJECTIVE

- To analyze and examine the regulatory framework pertaining to white collar crime with respect to India, U.K. and USA.
- To critically examine the role of Indian judiciary in identifying corporate frauds and white collar crimes in India.

1.4 HYPOTHESIS

The regulatory frameworks are sufficient to prevent corporate fraud and white collar crimes in India.

¹⁸ Terence Morris, Crime and Criminal Justice Since 1945 (Making Contemporary Britain 2018)

1.5 RESEARCH QUESTIONS

- What are the developments and changes with regard to white collar crimes in India?
- How does the foreign legislations deal with the corporate frauds and white collar crimes?
- Which statutes are present in India for dealing with such crimes?
- What is the judicial approach towards corporate frauds and white collar crimes in India?

1.6 SCOPE OF THE STUDY

The scope of the current study is limited. The investigation of various statute laws, governmental agencies, and protocols pertaining to white-collar crimes in India is the exclusive topic of this study.

The investigator has carried out an examination of the various organizations and procedures engaged in the probe, litigation, sentencing, and asset seizure pertaining to white-collar offenses. Furthermore, a number of approaches to address the noted problem have been discussed.

1.7 RESEARCH METHODOLOGY

Doctrinal method of research has been opted, which has seen a significant increase in published information over the past few decades. This abundance of resources allows scholar to conduct doctrinal research using both primary and secondary data. The study employed both exploratory and descriptive methodologies. The objective of the design is to investigate, elucidate, and evaluate the current and proposed initiatives aimed at combating corruption in India, as well as the obstacles to their effective implementation. An analysis has been conducted on the government's multiple efforts to find a solution and the resulting impact on its institutional framework. A substantial amount of primary and secondary data has been gathered to ascertain the issue of white-collar crimes in the Indian setting and the role played by anti-corruption agencies in the nation. An emphasis

has been placed on utilizing primary sources, particularly pertinent international and national legislations. They have undergone analysis and evaluation based on court interpretations. The judicial precedents have established a body of law in the field, which has been thoroughly analyzed.

1.8 TENTATIVE CHAPTERIZATION

CHAPTER 1: INTRODUCTION

The research problems, the necessity and importance of the study, the goal, the hypothesis, the methodology, and the literature review are all covered in this chapter, which also acts as an introduction to the work. Together with a strong Défense, it also outlines the study's scope, analysis, and structure.

CHAPTER 2: LEGISLATIVE FRAMEWORK IN RELATION TO CORPORATE FRAUDS AND WHITE COLLAR CRIMES IN INDIA

This chapter discusses the concept, nature, origin, characteristics of white collar crimes, challenges and imperatives of implementing white collar crimes, relevant legislations in India.

CHAPTER 3: CORPORATE FRAUD AND WHITE COLLAR CRIMES IN INDIA: CHALLENGES

This chapter discusses the limitations faced by prosecutions in order to prosecute accused due to loopholes present in different legislations.

CHAPTER 4: JUDICIAL APPROACH TOWARDS CORPORATE CRIMES IN INDIA

This chapter discusses the approach taken by the judiciary in India, case laws and scams related to white collar crimes in India.

CHAPTER 5: CONCLUSION AND SUGGESTIONS

In this chapter author has concluded the whole research including all relevant laws of India, also the suggestions has been given regarding loopholes of related legislations in order to prevent white collar crimes.

CHAPTER 2

LEGISLATIVE FRAMEWORK IN RELATION TO CORPORATE FRAUDS AND WHITE-COLLAR CRIMES IN INDIA

2.1 CONCEPT, NATURE AND ORIGIN OF WHITE COLLAR CRIMES

In India, "white collar" crime refers to a variety of offenses primarily "job oriented," meaning they occur during the course of one's employment. For example, manipulating funds, stock exchanges, misrepresenting information in advertisements or financial statements of a corporation, and violating labor, copyright, and patent laws are all examples of white collar crime. However, an employer abusing a personal secretary is not considered a white collar crime.¹⁹ When referring to Sutherland, it was highly probable that crimes committed by members of the "High Social Status" would be classified as white collar crimes; however, in India, the situation is entirely different, with most white collar crimes being committed by members of the lower social strata in the course of their employment, such as when the milk man adulterates milk, the shopkeeper sells adulterated food, the elderly sells medicine that has expired, a few kilograms of gas are removed from the cylinder, and so forth.²⁰ The well-known "license-quota-permit Raj", which was put into place in the early 1970s and gave the Trio—political officials, government employees, and business owners—great authority, greatly aided in the growth of white collar crime, which had become ingrained in society. These three wicked people assaulted our system of governance in a way that encouraged the development of an almost totally corrupted Indian society. In India, businessmen who turned to white collar crime were typically one of the three members of the unholy triangle who engaged in tax evasion, tax avoidance, or breaking foreign exchange restrictions by either over- or under-invoicing imports or exports.²¹ India's traders weren't far behind in causing irreversible harm to society as a whole. Their

¹⁹ Neild, Robert. "Public Corruption - The Dark Side of Social Evolution (Anthem Press, London 2020)

²⁰ Mishra, S. N. "Indian Penal code (Central Law Publications, Prayagraj, Up 2018)

²¹ Paranjape, N.V. "Criminology and Penology (Central Law Publications, Allahabad, UP 2019)

primary activities have been hoarding, profiteering, and black sale of necessities. Furthermore, they occasionally manipulated meals to benefit financially, which might be harmful to an individual's life.

2.1.1 CONCEPT OF WHITE-COLLAR CRIMES

Understanding the concept of crime is necessary in order to comprehend white collar crimes. As old as civilization itself is the law of crimes. Those with greater financial or physical strength should always be the ones who suffer in society.²² E.g Slavery, bonded labour²³ When people organize into the groups or associations, there is a need for rules to govern how members of those groups behave among themselves. Crime is defined as the violation of these rights and duties that results in harm to people, property, or reputation. Where there were social norms, breaking them was unavoidable, hence it became necessary to come up with strategies to stop the social tendencies that cause rule breaking. The law, which humans ultimately rely on to protect them from any harm, can be applied to both individuals and institutions. Everyone who was engaged in and desired the preservation of liberty, life, and law and order. When morality and ethics fail, law takes over. It is resulting in a loss of enjoyment and tranquility. Crime is akin to pollution in that it can result in physical harm. Every organized community has laws prohibiting certain behaviors under threat of punishment. When one person harms another and the harm could be fairly valued in monetary terms, the one who caused the harm was obligated to recompense the victim with damages or other compensation. To maintain social harmony and encourage good behavior toward one another and the community as a whole, the State may, in some circumstances, impose penalties on the perpetrator in addition to the obligation to make compensation. But the question of what behaviors should be outlawed or targeted for punishment by the state or society emerges. Put differently, what behaviors ought to be classified as crimes. By proving that an act is

²² Mansukhani, H.L., "Corruption and Public Servants (Vikas Publications, New Delhi 2020)

²³ Lele, Chitra G "Corruption in India: Causes, Effects and Reform (Atlantic Publishers and Distributor Ltd 2017New Delhi.)

against the law, Terence Morris asserts that "crime is what society says is crime." Crime is deliberate, planned behavior.²⁴

White collar crime is seen to be related to the socioeconomic structure of society, according to study on the subject. When someone believes they are a criminal and is viewed as such by society, they are considered criminals. The nature of man is the source of lawbreaking. Since white collar crime is not linked to poverty or the social or personal characteristics of the offender, it is an emotive topic.²⁵ When considering crimes, people only consider the kinds of crimes that most frighten them and shake or tend to shake their emotional selves. A layperson's understanding of crime is restricted to its traditional components, including stealing, rape, and murder, which have a tendency to dramatically upend the calm seas of human emotions.²⁶ However, thinking of crime as limited to inhumane murder, rape, or burglary is like thinking of mussels as just another kind of skin imperfection. The variety of criminal activity is not represented by these types of crimes, which are referred to as street, conventional, or traditional crimes. Crime is recognized as the subject of criminal study and research to include not only crimes on the streets but also economic, occupational, corporate, and corporate sector crimes, the majority of which are referred to as "white-collar" crimes. Though white collar crime predates social depravity, it was not recognized as crime or a social ill comparable to it until recently. It was only a few decades ago that criminology students were interested in it, and as a result, the general public became aware of it. Professor Edwin H. Sutherland categorized it as a unique type of criminal activity.²⁷ According to him, white collar crime is defined as crimes carried out in the course of a person's employment by respectable and well-to-do people. His goal was to bring elite criminals, businesspeople, and corporations to justice who, up until that point, had been able to elude prosecution due to their high social standing, influential political positions, and potent financial ties. white collar crime is more dangerous to society because it entails a betrayal of trust in fundamental social institutions. When compared to street crimes, white collar crimes cause more financial and societal losses. Sociologists have issued cautionary tales about the dire consequences that the industrial capitalism of the day was

²⁴ Koolwal, Manju "White-Collar Crime India and Abroad (Bright Law House, New Delhi 2020)

²⁵ Akshay Kumar : Information Technology (Authors Press, New Delhi, 2019)

²⁶ Appelbaum, Richard P. & Chambliss, William J A Brief introduction (New Yourk: Longman 2020)

²⁷ Basu, D.D. : Shorter Constitution of India, (Wadhwa, Nagpur,2020)

expected to exact on society's well-being. In a speech given in London in 1872 to the International Congress on the "Prevention and Repression of Crime," Edwin C. Hill drew attention to the social and economic classes that ruthlessly took advantage of the established economic system at the expense of the general populace. These exploiters were referred to by him as criminal capitalists. Although they are guilty in the eyes of the law, their spirituality differs from that of the criminal since they are not guilty in the eyes of the public or themselves.²⁸ The immunity that those who commit fresh sins enjoy has brought into the class. Prominent American criminologist Sir Walter Reckless suggests that white collar crime is a term used to describe the offenses of businessmen who hold positions of authority over the policies and operations of their companies.²⁹ The idea that certain offenders are exempt from the law because of their social, economic, and political standing unites Ross, Morris, and Sutherland. A white collar crime is generally defined as a crime committed in the course of a person's employment by a respectable, high-status individual. White-collar crime exists in society. In India, we have a social welfare state with numerous programs and initiatives aimed at enhancing the state of society. However, people are evading taxes since those who work hard in business want to reap the rewards of their labors without having to share. One of the things contributing to the rise in white collar crimes is the misapplication of democratic ideals. Since the state prosecutes offenders to safeguard society, all crimes are antisocial activities. Socioeconomic offenses are classified as white collar crimes in India. There is a chance that corporate actions will negatively impact society or impede the nation's economic progress.³⁰ These actions may be viewed as violations of regulations or the public welfare and are subject to special laws. Crimes of strict responsibility and socioeconomic offenses might be depicted by intersecting circles, as could socioeconomic offenses and white-collar crimes. It has been discovered that studying criminology without taking into account organized white collar crimes, professional crimes, and commercial crimes has drastic and far-reaching effects. The idea that criminal behavior results solely from poverty or the physical conditions connected to it is likewise untenable when considering crimes from this more modern and comprehensive angle. Since white collar criminals are not typically psychopaths and

²⁸ Clarks, Ronald Situational Crime Prevention (New Yourk. Criminal Justice Press 2018)

²⁹ Cavazos A. Edward and Morin Gavino . Cyber space and Law, (MIT Press, New York, 2016)

³⁰ Choubey. R.K.: An Introduction to Cyber Crime and Cyber Law (Authors Press, New Delhi, 2019)

were not raised in impoverished homes or slums, it does not apply to them. Researchers that looked into the definition of white-collar crime provided by notable authorities discovered that the term was not well defined, and that the conception of the term was imprecise, making it challenging to pinpoint the reasons for illegal behavior.³¹ white collar crime involves many victims, is conducted on a national or worldwide scale, and lasts longer than a year. They are well-educated, strong, and wise individuals. According to the research, a white-collar crime is defined as a conduct that violates the law and ethical standards. In addition to breaking international or regulatory rules and conventions, an illegal conduct holds the perpetrator accountable for breaching the public's confidence or fiduciary relationships.

2.1.2 NATURE AND ORIGIN OF WHITE-COLLAR CRIMES

There cannot exist any crime without legislation, even though moral outrage may lead to the enactment of laws.³² Crime has always been understood in relation to public opinion. Time's public opinion is reflected in law. Criminal law is the most reflective area of law when it comes to public opinion. Understanding what law is necessary before we can comprehend the nature and content of crime, as the two concepts are so intertwined that it is impossible to comprehend one without the other. Law is the body of regulations established by individuals to govern themselves as sovereign or politically superior to other men.³³ Law is an order supported by a consequence that prescribes a behavior that every member of the community must follow. A sovereign may issue a command, a political superior may issue a command to political inferiors, a legally established body may issue a command, or a legally constituted legislature may properly adopt legislation directed at the people of the general public. Political authority determines what behavior on the part of people is criminal. "The political process determines law, which complies with what most people consider to be minimal norms. This process also includes the determination of what behaviors are illegal. As a result, the law establishes expectations

³¹ Ibid

³² Guhan, S. and S. Paul (eds.), "Corruption in India - Agenda for Action (Vision Books, New Delhi 2018)

³³ Gour, Hari Singh, "Penal Law of India (Law Publishers India Pvt Ltd, Prayagraj, Up 2019)

for behavior that members of the public must follow. The general public is in favor of these requirements. Any departure from the socially prescribed norms of behavior is met with consequences.³⁴ As a result, behavior that deviates from the established norm is considered criminal. As a result, formulating a definition of crime that may apply to all nations at all periods is exceedingly challenging. Unlike sin, which has an existence and definition that extends beyond what people can say and do, crime is not absolute. All it is a definition of behavior that is relative and ever-changing. Crime is defined as a person's sinful, wrongdoing behavior. Crime is defined as an act that violates the law, and a criminal is someone who commits a crime. Law serves to safeguard societal interests, and crime is a social phenomenon. Social interests include society's security, safety, and well-being. Social demands that must be protected from actions that violate an individual's moral sensibilities. Thus, immoral inclinations such as corruption manifest as criminal activity. The criminal and social life are related. "Crime is a manifestation of social disarray," claims Sutherland. Crime is a societal harm that can occur anywhere and at any time. Halsbury defines crime as an illegal act against the public for which the offender faces legal consequences.³⁵ A crime is an act that violates a law, is penalized by law, or harms the general welfare. Selling tainted food or using deceptive advertisements is against the public interest. The offense could be a conventional, public wrong, moral, social, or procedural one. Crime is as old as civilization. Crime is a socially harmful act that violates residents' rights to security as well as the nation's social, economic, and political systems. Crime is a destructive behavior that requires both immediate and long-term solutions. The penal code has undergone periodic revisions. Strict or absolute culpability has taken the place of mens rea in contemporary culture.

The question of whether white collar crimes belong in the criminal category or not is a crucial one. The criminologists who categorically opposed the inclusion of white collar criminals in the criminal category provided the most significant critique of the white collar crime concept. For them, "crime" in the traditional meaning of the word does not apply to white collar crime. Ahmed Siddique noted another crucial distinction: in criminal courts, the prosecution must establish its case beyond a reasonable doubt, just

³⁴ Ibid

³⁵ Barnett, Cynthia *The Measurement of White-Collar Crime Using Uniform Crime Reporting* (Vision Books, New Delhi 2020)

as in the standard of proof against the accused. The fundamental element of crime is conduct that the state forbids as harm to the state and that the state may respond to by enforcing penalties.³⁶ white collar crime is defined by two abstract criteria: a conduct that is considered socially detrimental, and a breach of a legal rule that carries a punishment. Criminal courts are given more weight in the decision-making process when it comes to rigorous and deterrent processes than civil or administrative bodies. The people injured can be categorized into two groups: the general public, who are either consumers or members of the social institution impacted by legal infractions, or a relatively small number of people working in the same or related fields as the offender. Similarly, albeit they are not given by criminal courts, sanctions and punishments are also available for the commission of white collar crimes. white collar crime is considered "crime" insofar as it involves both social harm and a penalty. The evidence and proof standards applied in a large number of white collar crime prosecutions differ from those in criminal court. Given their concern for the observance of natural justice laws, common sense, fair play, and restrictions against prejudice, decisions made by civil or administrative authorities resemble fairly fair methods. sH. Mannheim argues that the argument that only defenders who have been found guilty by the courts are criminals is incorrect from a social and legal standpoint since it mixes up concerns pertaining to both substantive and procedural law.³⁷ According to substantive criminal law, a person is a criminal if he has violated any of its provisions, regardless of whether he has been found guilty in accordance with the rules of criminal procedure³⁸ People become more aware of the threats white collar crime poses to the socioeconomic structure of society as literacy and education rise. As a result, the public's perception of the issue of white-collar crime becomes more negative. This is the situation that exists in India. As a matter of fact, the public's awakening against white collar crime has made people more inclined to assist the government in its fight against this type of crime. Lack of social condemnation and criminals' ability to keep their social standing while breaking the law are important topics that need further investigation because of the potential consequences. Given the advancements in science, technology, and the

³⁶ Chris Reed : Internet Law .Text and Materials, Second Edition, (Universal law Pub Co. Ltd, Delhi 2021)

³⁷ Dr. R.K. Tiwari, P.K. Shastry and K.V. Ravikumar : Computer Crime and Computer Forensic, (Select Publishers,Delhi,2019)

³⁸ Ibid

economy, more time and attention must be given to studying and researching criminal behavior in the context of white-collar crime. Lawbreakers must be punished by a special court established under special laws in order to preserve law and order, a peaceful society, and the general public interest. Individual, social, and national harm committed by an individual or by any authorized person through the violation of regulatory laws must be taken into consideration. It is not required to remember that someone who is punished by a criminal court is a criminal. Anyone who disobeys special laws becomes an offender and may face punishment from a special court or a criminal court if they are the cause of an illegal act.³⁹

2.1.3 DEFINITION AND ESSENTIAL CHARACTERISTICS OF WHITE-COLLAR CRIMES

Sutherland points out that higher class persons perform some antisocial acts as part of their business or line of work in addition to more typical crimes like "assault, robbery, dacoity, murder, rape, kidnapping, and other violent crimes".⁴⁰ These actions were long regarded as standard business strategies required of astute professionals or businesspeople. As a result, complaints against these strategies frequently went unanswered and unpunished. Prof. Sutherland was one of those people who understood the risks that the upper socioeconomic class posed to society as a whole. The higher socioeconomic strata pose a threat to society since they mercilessly exploited the established economic system while ignoring the needs and welfare of the general populace.⁴¹ They are referred to as criminal capitalists. Prominent American criminologist Sir Walter Reckless proposes that white collar crime is a term used to describe the transgressions of businessmen who hold authority over the decisions and actions of their companies. According to Goswami, P., people of status conduct white collar crimes out of greed rather than need.⁴² According to Hartung, any legal violation

³⁹ Fadia Ankit : The Ethical Hacking Guide to R o t a t e Security, (Macmillan India Ltd 2020)

⁴⁰ Benson, M. L. Crime and the Life Course: An Introduction. (New York: Routledge 1st edn 2019)

⁴¹ Ibid

⁴² Benson, M. L. and Simpson S. S. White-Collar Crime: An Opportunity Perspective (Abingdon, Oxford shire: Routledge. 2018)

relating to business that is committed by an organization or its personnel while conducting business is considered a white-collar crime. GERAL N. and KATHLEEN T. HILL define white collar crime as a catch-all word encompassing a variety of unethical corporate practices, such as "embezzlement, consumer deception, commercial fraud", and insider trading in the stock market. The moniker originated from the antiquated belief that business executives should wear white shirts and ties. It also erotically distinguishes these crimes and their perpetrators from physical crimes, which are said to be committed by "blue collar" workers more frequently.

2.1.4 WHAT KIND OF CRIME IS WHITE COLLAR CRIME?

White collar crime is a byproduct of a more modern civilization brought forth by advancements in science. Moral and ethical ideals are the driving force for the creation of white collar crimes. White collar crime stems from pure greed, avarice, and caprice and is not emotionally driven like conventional crimes, which are the result of lust, hostility, and hate. All crimes, including traditional and white-collar crimes, are detrimental to society. ⁴³There may be certain minor exceptions. white collar crime often affects the individuals via society, i.e. ⁴⁴ People suffer because society as a whole suffers while they are members of it. Conventional crimes involve direct harm to the victims, and as a result, society as a whole suffers. Although society always suffers when a crime is committed, it is meant to be highlighted that in white collar crimes, harm to the community as a whole is more common than harm to specific people, which is more likely to be the reason of concern in traditional crimes. Every community, civilization, or even the entire country or state is the victim of white collar crime. All of this can be put this way: victims' resistance will be more dispersed and less organized the more harm a specific white collar crime case causes, and victims' resistance will be better organized the higher their levels of social awareness and knowledge. In our evolving society, the types and tactics of crime are as diverse as human behavior. Individuals with the ability to commit crimes behave within the parameters of their circumstances, molding their behavior accordingly. Price fixing and bank fraud are not committed by the

⁴³ Innovation in Information Systems and Technology (Macmillan Pub India Ltd. 2019)

⁴⁴ Leap, Terry L Dishonest Dollars: The Dynamics of white collar crime. Ithaca (Cornell University Press 2020)

impoverished because they lack the means. In the Satyam case, Vijay Malya and Modi are breaking the law because they have the means and the social standing that comes with being well-regarded by society. This claim could be used to explain why members of the middle and upper classes are typically the ones that commit white collar crimes. The majority of conventional criminals are impoverished individuals; therefore their penalties are harsher. When comparing the two categories of offenses, the majority of businesspeople receive light punishment.⁴⁵ The general population is likewise unaware of the crimes that powerful people commit. Since it is difficult to identify, government organizations are certain that businesspeople will follow the law. They don't fit the mold of the typical criminal. Most people in society have achieved high status as a result of their position; examples include religious leaders, businessmen, and priests. These individuals are respected by the public and are never thought to have a direct or indirect involvement in criminal behavior.⁴⁶ White collar crimes have the potential to cause harm to people, but this harm is not the goal of the crime nor is it the result of direct physical contact. It has to do with industrial workers' personal safety and environmental contamination. We are aware of the numerous manufacturing workers who are exposed to hazardous materials, occupational illnesses, environmental pollution, and other issues that cause great hardship for society, such as global warming and health issues.⁴⁷ When white-collar crime is conducted on a large scale, such as by a corporation, it takes on an additional uniqueness. Due to their power, businessmen hide the existence of crimes. Fraud 28 in advertising refers to legal infractions that are made possible by corporate identity and brand identities. Corporate avoids charges by avoiding publicity and the written record. Since the dawn of human history, there has been crime of one type or another. Actually, there isn't a civilization on the planet that hasn't struggled with the issue of crime. Along with society's development, crime has surged. The development of science and technology has given rise to a new type of criminal activity known as "white collar crime." Edwin H. Sutherland first proposed the idea of "white collar crimes" in the realm of criminology in 1939 when he published a study on the subject in "America Sociology Review." Over time, the industrial, commercial, and trade sectors in the free countries were plagued by numerous malpractices and irregularities, largely due to the

⁴⁵ The Emerging Legal Framework, University Casebook Series, (Foundation Press, 2021)

⁴⁶ R.K. SuriJParag Diwan,Shammi Kapoor Information Technology Laws, (Pentagon Press, Delhi 2019)

⁴⁷ Ibid

effects of urbanization, industrialization, and the creation of a new structured society. In a similar vein, various transgressions and corruption were also displayed by the colonial officers.⁴⁸ The entire socioeconomic fabric of the society and the State was impacted by these widespread malpractices, irregularities in trade, commerce, and industry, as well as official corruption. This was a more recent and virtually unheard-of type of gravely unethical, immoral, and anti-social behavior.⁴⁹ These included the following: false or misleading advertisements; inhumane treatment of workers, especially young and female employees; misbranding of goods; violations of standards, weights, and measures; production and distribution of subpar or contaminated food items and medications; and evasion of taxes, customs, bribery, and corruption. All of these were done in the name of furthering the financial and strategic interests of legitimate callings. Extreme business rivalry, the pursuit of monopolistic benefits, and tacit and explicit criminal behavior all developed in India at the same time.⁵⁰ Due to the fact that monopolies and extreme economic competition often involve criminal activity, white-collar crime has become a problem in India as well. Strong action is needed to put an end to these malpractices, irregularities, and transgressions that are harming the community's wealth, health, and material well-being. White collar criminals have destroyed the country's economy, progress, health, and happiness, demoralized citizens, and created a culture of contempt for the legal system and law enforcement apparatus. Thus, it is imperative that we reconsider our accepted and customary understanding of crime. The definition of crime should be expanded to include all antisocial and illegal acts carried out by members of middle and upper socioeconomic classes, regardless of whether the punishment is criminal, civil, or administrative. It should no longer be restricted to offenses against the human body, property, or state. White-collar crimes should also be subject to severe punishment, contingent on the seriousness of the offense and the resulting social harm. Regardless of whether the crime was deliberate or not, the White-Collar Criminal should be held accountable for it.

⁴⁸ Abbott, K. and Snidal, D. *The Governance Triangle: Regulatory standards institutions and the shadow of the state.* (Global Governance Project, Oxford University 2019)

⁴⁹ Abbott, K. and Snidal, D *Taking responsive regulation transnational: strategies for international organizations* (Regulation and Governance 2020)

⁵⁰ Ayres, I., and Braithwaite, J. *Responsive Regulation: Transcending the Deregulation Debate.* (New York: Oxford University Press 2018)

2.1.5 ESSENTIAL CHARACTERISTICS OF WHITE COLLAR CRIMES

White collar crimes differ significantly from regular or conventional crimes in a number of ways, including:

- i. In addition to civilians and criminals, white collar crime is committed by members of the upper classes of society, including government officials, physicians, advocates, chartered accountants, and other professions and businesspeople.⁵¹
- ii. The methods of committing crimes are not the same as those of classic crimes, such as adultery, fraud, misrepresentation, malpractice, and irregularity.
- iii. These atrocities are carried out by well-thought-out, purposeful schemes that are devoid of emotion.
- iv. The majority of the community and society are typically the victims of white-collar crimes. It is not necessary for mens rea to be present in white collar crimes. The only thing that holds the perpetrator accountable for the offense is their actus reus.
- v. White collar crime undoubtedly causes society to suffer more financial losses than robberies, burglaries, and larcenies carried out by people from lower socioeconomic classes.⁵²
- vi. White-collar crime is not regarded as a breach of the "business code," so a criminal does not lose his standing with his peers. Actually, a large number of prosperous felons in this group are praised for being vibrant and creative leaders in both business and society.
- vii. White-collar criminals are rarely terrified of law enforcement because they believe that if they are caught, their punishment will only be a small fine, transfer, or brief simple incarceration.⁵³

⁵¹ Benson, M. L. and Simpson S. S. White-Collar Crime: An Opportunity Perspective (Oxford shire: Routledge 2021

⁵² Benson, M. L., Madensen, T. D. and Eck, J. E. White-collar crime from an opportunity perspective' (New York: Springer 2020

⁵³ Ibid

- viii. Instead of using force or violence, they entail the use of deceit and concealment to get goods, money, or services illegally.
- ix. white collar crimes don't involve any violence.
- x. It violates both legal regulations and criminal statutes, as well as confidence.
- xi. The desire for wealth, status, and power is the root cause of white collar crime.

2.2 CONCEPT, NATURE AND ORIGIN OF CORPORATE FRAUDS

Corporate fraud is a broad term that refers to a variety of unethical and dishonest business actions that compromise investor confidence and the integrity of the financial system.⁵⁴ Corporate fraud may be considered a breach of civil or criminal law. Fundamentally, corporate fraud is the fabrication or withholding of important facts in order to benefit an individual or an entity. Financial statement manipulation, asset theft, bribery and corruption, corporate espionage, and Ponzi schemes are just a few ways this might show itself. Financial statement fraud is one of the most prevalent types of corporate fraud, when businesses fabricate accounting statements to deceive investors.⁵⁵

The post-independence period, when economic constraints and restricted globalization first held fraudulent practices in check, is when corporate fraud in India first emerged. But when businesses started taking advantage of legal gaps, economic deregulation in the late 1990s and the lightning-fast development of technology in the years that followed led to a boom in corporate crime. Prominent scandals like the Satyam incident in the early 2000s and the Harshad Mehta scam in 1992 brought attention to the technological flaws that allowed these dishonest activities to continue long after they were discovered.

India has passed a comprehensive legal framework, including the Companies Act of 2013, the Securities and Exchange Board of India Act of 1992, and the Prevention of Money Laundering Act of 2002, to combat the increasing menace of corporate fraud. In an effort to uphold corporate integrity and safeguard stakeholders, these rules provide regulatory authorities the authority to keep an eye on, punish, and prosecute fraudulent

⁵⁴ Investopedia, "What Is Corporate Fraud? Definition, Types, and Example" (Jun 21, 2021) <https://www.investopedia.com/terms/c/corporate-fraud.asp>.

⁵⁵ *ibid*

activity.⁵⁶ With the recent changes to the Listing Obligations and Disclosure Requirements (LODR) Regulations, 2021, which require the prompt notification of any fraud, default, or arrest of key individuals, the disclosure and corporate governance requirements for publicly traded businesses have been significantly enhanced.⁵⁷

A number of causes, including fierce market rivalry, the drive for personal gain, and the need to maintain an appealing company image, have been linked to the growth in corporate fraud. However, by spotting irregularities in business dealings and financial statements, the use of modern data analytics and machine learning technologies may improve the detection and prevention of these illegal activities.

2.2.1 ORIGIN OF CORPORATE FRAUD

Corporate fraud has its roots in the early stages of corporate advancement, when the desire for power and profit drove people to take advantage of legal gaps and falsify financial records. Within the Indian setting, the development of corporate fraud is intimately linked to the nation's economic liberalization and the ensuing acceleration of technical progress.⁵⁸

Corporate fraud was comparatively uncommon in the pre-liberalization period because of economic constraints and constrained globalization. But when economic reforms were implemented in the late 1990s, the business climate changed significantly, which made deception easier to pull out.⁵⁹ Corporate fraud increased as a result of the quick creation of complex financial instruments and the fast expansion of technology, which allowed businesses to take advantage of legal gaps and use dishonest tactics to promote their objectives.

The absence of efficient regulatory monitoring was one of the main causes of the rise in corporate fraud. At first, the regulatory agencies, including the Securities and Exchange

⁵⁶ iPleaders, "All about corporate fraud" (Jun 21, 2021) <https://blog.ipleaders.in/all-about-corporate-fraud/>.

⁵⁷ Ibid

⁵⁸ Corporate Finance Institute, "Corporate Fraud - Overview, Reasons, and Examples" (Jun 21, 2021) <https://corporatefinanceinstitute.com/resources/esg/corporate-fraud/>.

⁵⁹ Supra note 54

Board of India (SEBI), lacked the tools necessary to keep an eye out for and stop fraudulent activity. This made it possible for fraudulent activities to continue for long periods of time without being discovered, often causing stakeholders to suffer large financial losses.

A good illustration of the scope and intricacy of corporate fraud during this time period is the Harshad Mehta scandal of 1992, which featured manipulation of the Indian stock market and embezzlement of monies from bank transactions. The scam, which cost the nation more than four thousand crores, brought attention to the technological flaws that allowed fraudulent activity to continue for such a long time without being discovered. The early 2000s Satyam affair served as additional evidence of the necessity for stricter regulatory procedures.⁶⁰ The firm collapsed as a result of the scandal, which entailed the manipulation of financial accounts and the embezzlement of cash, and investors suffered large financial losses. The Indian government has established a comprehensive regulatory framework to tackle corporate fraud as a reaction to these instances. In order to maintain corporate integrity and safeguard stakeholders, regulatory agencies are now able to monitor, sanction, and prosecute fraudulent actions thanks to the Prevention of Money Laundering Act, 2002, the Securities and Exchange Board of India Act, 1992, and the Companies Act, 2013.

The corporate governance and transparency requirements for publicly traded businesses have been reinforced by the most recent changes made to the Listing Obligations and transparency Requirements (LODR) Regulations, 2021.⁶¹ To improve accountability and transparency, the changes mandate that listed firms report any fraud, default, or arrest of key persons within specified deadlines.

2.2.2 MEANING OF CORPORATE FRAUDS

The term "corporate fraud" refers to a wide variety of unethical and unlawful actions carried out by businesses or people in a commercial setting. The deliberate falsification of facts in order to get an unfair advantage or hide the actual nature of a transaction is what defines corporate fraud.

⁶⁰ Supra note 56

⁶¹ LODR (Second Amendment) Regulations, 2021, Regulation 30(6) and Regulation 30(7).

A common definition of "fraud" is the use of fraudulent claims in order to get unfair advantage or commit criminal deceit. This might involve falsifying financial documents, concealing debt, or neglecting to reveal executive bonuses and loans in the context of corporate fraud. Financial gain is often the major driver behind corporate fraud, as businesses try to provide a misleading picture of their financial situation to investors or the public in order to draw in business.

Corporate fraud may take many different forms, such as dishonest accounting techniques, product or service deception, and financial information hiding. For example, a business may fabricate financial figures to give the impression that it is in a better financial situation than it really is, or it may make false claims about the effectiveness or quality of its goods in an effort to draw in clients. Corporate fraud may have serious repercussions, including financial losses for investors, harm to a company's brand, and even criminal prosecution. The 2001 Enron affair is a prime illustration of the disastrous effects of corporate deception. Major energy business Enron used dishonest accounting techniques to hide billions of dollars in debt, which finally caused the company to file for bankruptcy and resulted in the criminal prosecution of many executives.

Corporate fraud is a serious problem in India, where the Commission on Prevention of Corruption has noted that advances in technology and the country's fast-growing economy have made fraudulent acts more prevalent. The Indian Contract Act of 1872 defines fraud as "any of the following acts committed by a party to a contract, or with his connivance, or by his agents, with intent to deceive another party thereto his agent, or to induce him to enter into a contract".

"Fraudulently" is further defined by the Indian Penal Code, 1860, as acting with the intention of defrauding but not in any other way. The Companies Act of 2013 and the Prevention of Money Laundering Act of 2002 are two examples of the steps that regulatory agencies, including the Securities and Exchange Board of India (SEBI), have put in place to stop and identify corporate fraud.

2.2.3. ESSENTIAL CHARACTERSTICS OF CORPORATE FRAUD

Corporate fraud refers to a wide variety of unlawful and immoral behaviors that are perpetrated by corporations or people within a commercial setting. Corporate fraud is

defined as the deliberate act of deceiving or misrepresenting facts in order to get an unfair advantage or to hide the actual nature of a transaction.

An essential characteristic of corporate fraud is the wilful manipulation of financial data. This include activities such as falsifying financial documents, concealing debt, and omitting information about loans and bonuses provided to executives. Corporate fraud is primarily driven by the desire for financial gain, as corporations aim to deceive investors or maintain a favorable public image by presenting a misleading picture of their financial well-being.

High-level executives have a crucial role in corporate fraud. Corporate fraud committed by high-ranking executives sometimes involves embezzlement on a massive scale, amounting to billions of dollars. The individuals affected by corporate fraud include customers or clients, creditors, investors, other firms, and ultimately, the corporation perpetrating the scam and its staff.

Corporate fraud may occur in several ways, such as via deceptive accounting methods, misrepresentation of goods or services, and hiding financial data. For example, a firm may manipulate financial accounts to reflect a more advantageous financial status than it really has, or it may distort the quality or performance of its goods to entice buyers. Corporate fraud may have significant repercussions, including financial losses for stakeholders, harm to a company's brand, and even criminal prosecution. The Enron crisis, which occurred in 2001, serves as a prominent illustration of the severe consequences of corporate deception. Enron, a prominent energy corporation, camouflaged a substantial amount of debt by engaging in deceitful accounting methods, resulting in its insolvency and the subsequent legal action taken against several executives.

The Commission on Prevention of Corruption has noted that the fast economic development and technical improvements in India have led to a rise in fraudulent operations, making corporate fraud a major worry. Fraud, as defined under the Indian Contract Act of 1872, refers to specific actions carried out by a party involved in a contract, or with their cooperation, or by their representatives, with the intention of deceiving another party or their representative, or persuading them to enter into a contract.

The Indian Penal Code, 1860, provides a more specific definition of "fraudulently" as engaging in an action with the deliberate intention to deceive or cheat, without any other purpose. Regulatory authorities, such the Securities and Exchange Board of India (SEBI),

have enforced many measures to hinder and identify corporate fraud, such as the Prevention of Money Laundering Act, 2002, and the Companies Act, 2013.

2.3 CHALLENGES AND IMPERATIVES IN COMBATTING CORPORATE FRAUDS AND WHITE-COLLAR CRIMES

White collar crime has a negative impact on India's national economic and cultural legacy. It is inimical to our democracy and rigid social order. The etiology of WCC is influenced by socioeconomic variables and inequality between social strata. Massive white-collar crimes are the biggest obstacle to progress; they are not unique to any one nation, but their severity varies from one to the next.⁶² The World Chamber of Commerce (WCC) is a result of inflexible laws, a lack of adaptability, artificial shortages of commodities, total discretionary power, opaque decision-making, and protracted trial delays. While there is a code of behavior for public personnel, political leaders are not covered by it. A minimum education requirement is necessary to enter the government, however political leaders are exempt from this need.⁶³ India, the world's largest democracy, is a signatory to the UN convention against white collar crime (Corruption), which was adopted by the UN General Assembly in 2003. However, it is noteworthy that India has not ratified the UN convention against WCC to this day, despite having disregarded several of its provisions, including those found in Articles 6, 30, and 36.⁶⁴ The same anti-White Collar strategy that UNC used against WCC has also been emphasized by the Apex court. These days, white collar crime is a worldwide phenomena that typically stems from upper levels of the administrative structure. WCCs have permeated every aspect of society, and these crimes have drawn the attention of legislators, legal scholars, and the populace at large. They have also turned civilization into a threat. These days, it is spreading like wildfire and has infiltrated offices, educational institutions, engineers, doctors, lawyers, and politicians, as well as high-

⁶² Benson, M., Van Slyke, S. R. and Cullen, F. T. Core Themes in the Study of White-Collar Crime (The Oxford Handbook of White-Collar Crime, Oxford: Oxford University Press 2019)

⁶³ Braithwaite, J. and Drahos, P. Global Business Regulation (Cambridge University Press Babiak, P 2021)

⁶⁴ Clarke, M. Business Crime. Its Nature and Control, (Oxford: Polity Press 2020)

ranking bureaucrats in the central government such as the IAS, IPS, IFS, and IRS. white collar crimes, such as bribery, corruption are pervasive in the bureaucratic structure we now have. The Honorable Apex Court and other high courts have noted in a number of rulings that white collar crimes are on the rise because of the avaricious and violent nature of bureaucrats. It is currently exceedingly difficult to rid our county of white collar crimes because those tasked with stopping them are not taking red tape seriously at all. The potential cause of WCCs worldwide is human avarice. India is currently experiencing a moral crisis of sorts. It is exceedingly tough to gain work in government offices without providing quick cash.⁶⁵ The virus of the WCCs is not only entered into the capitalistic society but it has been extended to socialistic society too⁶⁶ Even if there are a lot of really impoverished people in society, they all uphold a high standard of honesty and even decline to take gifts or perform labor for payment. The Supreme Court has noted unequivocally in *Narinderjit Singh Sahni and others v. Union of India* and others that hundreds of investors have sacrificed their lives while saving money as a result of being tricked by White Collars. Since it is a "economic Murder" of the nation, the government must respond to it with very extreme severity. The victims in the majority of WCC cases are deprived of their economic and property rights. The crime is just as horrible as ending the investment of innocent people. The severity of the crime involved is indicated by the high number of suicides that occur after such WCC. In actuality, concerned economic criminals' activities are becoming more widespread across several Indian states. Because each act of cheating involves deceiving the court, it is considered a distinct offense and revokes the right to property. A great number of India's impoverished population have been targeted by white collar criminals who have also violated Article 21 of the Indian Constitution. The Hon'ble Apex Court correctly noted in the cases of *Rajendra Prasad et al. and the State of Uttar Pradesh* that neither white collar crime nor antisocial offenses are punishable by death under our criminal codes. Criminal law is based on the testimony of the sentenced man in the prison cell, not what is stated in the printed document. Human rights are violated by WCCs, and they thrive in environments where there is tolerance for them. It is no secret that they (WCCs) swept through every branch of the government like wildfire. Corrupt practices

⁶⁵ Clinard, M.B. and Quinney, R *Criminal Behavior Systems: A Typology* (New York: Holt, Rinehart & Winston 2019)

⁶⁶ Clinard, M.B. and Yeager, P. C *Corporate crime*, (New York: Free Press 2021)

were not curbed by the PC Act of 1998 either. The remaining laws have also remained meaningless. Because there is no way to restrain one's greed or the impulse to acquire fortune at the expense of others. According to the Law Commission of India's 29th report, the WCC was founded as a result of scientific and technological advancements in the commercial sector. The rising economy and rapid advancement of technology in India are the causes of the enormous rise in WCC in recent times.⁶⁷ In addition, the intricacy of Indian tax regulations has made it possible for taxpayers to evade paying taxes. Prominent individuals who engage in these kinds of activities include business owners, dealers, attorneys, engineers, and doctors. It is imperative that lawmakers take a careful look at this matter and quickly pass legislation along the recommended lines to avoid repeatedly embarrassing citizens. WCC is a high-profit, low-risk venture that doesn't require any capital. It seems that corrupt nations spend less on education, which could lead to illiteracy. Due to WCC's obstruction of numerous financial ventures, especially foreign ones, the World Bank has demonstrated reluctance to extend loans. The WCC was founded in India and other countries as a result of a lack of awareness among the populace. People should therefore be aware of their rights while interacting with different government offices. The WCC has an impact on our country's economy and is against democracy and socialist rule. Therefore, a concerted effort should be undertaken to develop acceptable and relevant recommendations and solutions.⁶⁸

2.4 OVERVIEW OF LAWS AGAINST CORPORATE CRIMES IN INDIA

A number of provisions are in place to identify white collar crime. The government has introduced the following laws to make sure that those who conduct white collar crime are held accountable.

1. The Prevention of Money laundering Act, 2002
2. The Prevention of Corruption Act, 1988
3. The Companies Act, 2013

⁶⁷ Ibid

⁶⁸ Djelic, M-L. and Sahlin-Andersson, K. Transnational Governance (Cambridge University Press 2017)

4. The Income Tax Act, 1961
5. The Central Vigilance Commission Act, 2003
6. The Prevention of Food Adulteration Act, 1954
7. The Food Safety and Standards Act, 2006
8. General Principles on Food Safety
9. The Information Technology Act, 2000
10. The Lokpal and Lokayuktas Act, 2013
11. Indian Penal code, 1860
12. The Benami Transactions (Prohibition) Act, 1988

(1) THE PREVENTION OF MONEY LAUNDERING ACT, 2002

Money Laundering refers to the changing or “Laundering” of money which is wrongfully acquired, in order to show that it is acquired from a lawful source. Popularly this is known as making black money white. Money Laundering is being utilized by launderers worldwide to cover crime related with it such as drugs/arms trafficking, terrorism and extortion. The Prevention of Money Laundering Act, 2002⁶⁹ states money laundering as whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected proceeds of crime including its concealment possession, acquisition or use and projecting it as untainted property shall be guilty of offence of Money Laundering. Thus Money Laundering is not an independent illegal act, it relies on another crime (predicated offence), identifies earnings of which the subject matter of the crime is Money Laundering. From the lawful perspective, the Achilles „Heel in characterizing and condemning money laundering identified with the alleged „ The term "predicted offence" refers to the criminal acts that produced the earnings, indicating the significance of money laundering. Unless particular earnings are gained by unlawful conduct, hiding or masking their origins will not be considered money laundering. As a result, the precise predicate offense for the money laundering purpose determines

⁶⁹ Section 3 of the Prevention of Money Laundering Act, 2002

whether behavior qualifies for money laundering, who can be charged, and to what extent.⁷⁰

Objectives of the Act

- i. To prevent, combat and control money laundering
- ii. To protect the company from being used for money laundering
- iii. To confiscate and seize the property obtained from the laundered money
- iv. To perform a thorough Customer Due Diligence (CDD) procedure prior to customer registration.
- v. To keep track of and monitor any cash transactions above ten lakh rupees.
- vi. To keep track of every sequence of closely related monetary transactions that occur in a single calendar month.
- vii. To keep an eye on and report questionable transactions.
- viii. To deter and pinpoint money laundering and financing of terrorism.
- ix. To take the necessary and proper action to adhere to the PMLA's spirit.

(2) THE PREVENTION OF CORRUPTION ACT, 1988

Prevention of corruption is one of the issues which our nation has been looking from a long time. Corruption delays our nation's development and welfare to the greater extent. According to Stroud's Judicial Dictionary ⁷¹corruption implies moral obliquity or good perversity. Corruption means that something is left from the original one. In India the first classified criminal law for example the Indian Penal Code, 1860 contained a full chapter which deals with corruption. Therefore, it confined its operation to define public servants under section 21 of the Indian Penal Code, 1860. For the most part unfortunate behavior and misuse of power by public servants were provided under this Code. Being represented in the conventional rule of criminal liability the provisions in the Indian Penal Code, 1860 couldn't effectively fight corruption by public servants who

⁷⁰ K.D. Gaur - Criminal law and Criminology (Universal law Publishing – An Imprint of Lexis Nexis, Delhi, 2020).

⁷¹ Tompkins, Dorothy Campbell. white collar crime, (Oxford University Press, London 2nd edn 2012)

established a ruling class which has an impressive impact for tilting the scale of justice. Besides, the meaning of public servants experienced numerous faults the same numbers of essential functionaries occupied with releasing public justice were out for the meaning of public servants⁷² The extent of bribery and corruption by public servants had greatly expanded because of First World War Indeed, even after the Second World War chances for the corrupt practices remained for the greater time. Dynamic plans for post war remaking opened wise new avenues for corruption among public servants. However, the current provisions of the Indian Penal Code, 1860 were observed to be inadequate for effective handling of corrupt public servants. Therefore to supplements and fortify law against corruption, the Prevention of Corruption Act, 1947 was established. The Act being a social enactment aimed for destroying corruption changed the customary principle of criminal liability by assuming mens-rea with respect to the public servant if acts-reus was demonstrated. Criminal misconduct in release of official obligation was made an offense under section 5 of the Act.⁸ However it neither gave separate meaning of public servants nor made any enhancements in section 21 of the Indian Penal Code, 1860. In pursuance of the Santhanam Committee for taking stringent measures against corruption, the Act was changed in 1964. In spite of the changes in the Act, the circumstance vitiated by corrupt practices couldn't be saved. Rather corruption expanded its circle of movement be immersing the whole society. The Prevention of Corruption Act, 1988 has taken the place of The Prevention of Corruption Act 1947, and it has also included section 161 to 165 of Indian Penal Code, 1860.⁷³ The new act has also been imagined as a comprehensive legislation for the prevention of corruption in India by extending its scope and smoothening procedural and related issues. The Act of 1988 has mainly adopted the modern changes in the concept of corruption as now understandable in criminal law. Political corruption is also stated under this Act. The Act has adopted the independent meaning of public servants under section 2(e) of the Prevention of Corruption Act, 1988. The definition stated under section 21 of the Indian Penal Code, 1860 is no more applicable on the Act as was mentioned under the Prevention of Corruption Act, 1947. The definition of public servant under section 2(c) especially

⁷² Bowley, G. F. Law Enforcement's Role in Consumer Protection (Authors Press, New Delhi 3rd edn 2002)

⁷³ Section 31 of The Prevention of Corruption Act 2016.

under sub-section (ii), (iii), (vii) and (ix) has covered political corruption as elected representative such as MP, MLA, MC, the Chairman of Corporation are now public servants.

(3) THE INFORMATION TECHNOLOGY ACT, 2000

We are living in an era of digital technology. The emergence of an IT society and IT culture coincided with the revelation of information technology. Its progression has been enormous in less than fifty years, incorporating the shift from Raja to Praja's Sovereign to subject. From support to incineration, there isn't really any area that it has left pristine. Technology plays a crucial role, replacing human exercise in a profoundly established way that affects our routine daily activities. Twelve nations have cyber laws, including the United States, Singapore, France, Malaysia, and Japan. India is the next in line. The internet is growing quickly. It has made new opportunities available in every conceivable industry, including business, sports, entertainment, and education. Cybercrime, or unlawful activity carried out online, is one of the main drawbacks of the internet, but there are always two sides to every story. The internet and all of its points have also exposed us to the security threats that come with being a part of a large system. Computers are being misused these days for illegal activities such as credit card fraud, spam, software piracy, and email espionage, which violates our privacy and offends our sensibilities. Cybercrimes are becoming more common. A computer is a more useful tool for modern thieves than a rifle. The terrorist of tomorrow might likely cause more damage with a console than with a bomb. To further exacerbate the problem, criminals are increasingly turning to using computers and the internet as tools for traditional crimes as they realize how effective they are at carrying them out.⁷⁴ The objectives by which the United Nations Commission on Trade Law adopted the Model Law on Electronic Commerce for the General Assembly were deemed significant by the

⁷⁴ Dr. Jyoti Rattan and Dr. Vijay Rattan – Cyber law and Information Technology

Indian parliament. It led to the passage of the Information Technology Act of 2000 and its upholding on May 17, 2000.⁷⁵

(4) THE LOKPAL AND LOKAYUKTAS ACT, 2013

In 1968, during the fourth Lok Sabha, the idea of an ombudsman to investigate matters of corruption was initially proposed. After that, attempts were made in 1971, 1977, 1985, 1989, 1996, 1998, and 2001 to turn this theoretical idea into a reality. However, due to a perceived lack of political will, these initiatives remained largely ineffectual. These efforts reached their pinnacle in 2010–11 when social worker Anna Hazare embarked on a death fast to pass the Act pertaining to the creation of the Lokpal organization. A joint committee made up of representatives from the government and common society was established to write the bill after Anna Hazare's popularity forced the administration to submit. But since there was insufficient agreement, the administration introduced its own version of the bill in the Lok Sabha. The Parliamentary Standing Committee on Law and Justice evaluated the measure before the Lok Sabha approved it. Referred to the upper house's Select Committee, the bill was amended in light of its recommendations. As a result, the 2013 Lokpal and Lokayuktas Act was passed. It is noteworthy to note that in 2016, amendments were made to both the Lokpal and the Lokayuktas Act.

(5) THE PREVENTION OF FOOD ADULTERATION ACT, 1954

One of the most important things for life's sustenance is food. A diet that is pure, fresh, and substantial is essential for the general public's health. The statement that people's health is a nation's greatest asset is hardly shocking. Food adulteration was so widespread, unchecked, and persistent that legislation addressing the issue was urgently required. By approving a central enactment on the subject in 1954 while bearing in mind the breaking points of the Indian Penal Code, 1860, a significant step toward addressing the issue of food adulteration was taken. It does not, for example, cover the mixing of

⁷⁵ Caplin, Mortimer. *The I.R.S. Racketeers, and white collar crime*, (Space Publication, New Delhi 1st edn 2019)

harmless ingredients such as water in milk and stone and inferior grain in pulses. The Indian Penal Code, 1860, was the first piece of legislation enacted to tackle the threat of food adulteration and to safeguard the health and happiness of consumers. The objects and the need behind the Act are to dispose the dangers to human life from sale of unwholesome article of foods. It is authorized to control the evil of food adulteration and is authoritative measure for social Defense⁷⁶ It is expected to put an end on socio-economic harm, an evil that endeavors to harm, for money related increases, therefore, it is a source of substance of life and well-being of the society.⁷⁷ The Act accommodates a Central Food Laboratory to which food tests can be referred for final opinion in debated cases and the Central Committee for Food Standards. The central government is vested with the rule making power. According to the need, the Act was revised multiple times 1964, 1971, 1976 and 1986. It is appropriate to specify here that the Prevention of Food Adulteration Act, 1954 was repealed by the Food Safety and Standards Act, 2006.

The Prevention of Food Adulteration Act, 1954 was made to:

- 1) Prevent adulteration and misbranding of foods;
- 2) Punish the food adulterators adequately;
- 3) Secure purity of food to maintain public health;
- 4) Regulate to some extent the consumer-supplier relations;
- 5) Warn producers or manufactures of food to ensure safety in realm of food;

(6) THE FOOD SAFETY AND STANDARDS ACT, 2006

The Food Safety and Standards Act, 2006 is intended to consolidate the laws relating to food and to establish the Food Safety and Standards Authority of India for laying down science based standards for articles of food and regulate their manufacture, storage, distribution, sale and import to ensure availability of safe and wholesome food for human consumption and for matters connected therewith or incidental thereto.⁷⁸

⁷⁶ Ibid

⁷⁷ Dr.S.R. Myneni Crime and Criminology (Allahabad Law Agency, Faridabad, 1st edn, 2020).

⁷⁸ Dr.S.R. Myneni – Crime and Criminology (Allahabad Law Agency, Faridabad 2019)

(7) GENERAL PRINCIPLES OF FOOD SAFETY

According to Section 18 of the Food Safety and Standards Act, 2006, below mentioned are the General Principles of Food Safety:⁷⁹

- i) Endeavour to achieve an appropriate level of protection of human life and health and the protection of consumer's interests, including fair practices in all kind of food trade with reference to food safety standards and practices.
- ii) Carry out risk management which shall include taking into account the results of risk assessment, and other factors which in the opinion of food Authority are relevant to the matters under consideration and where the conditions are relevant, in order to achieve the general objectives of regulations.
- iii) Where in any specific circumstances, on the basis of assessment of available information, the possibilities of harmful effects on health is identified but scientific uncertainty persists, provisional risk management measures necessary to ensure appropriate level of health protection, may be adopted, pending further scientific information for a more comprehensive risk assessment.
- iv) The measures adopted on the basis of clause (c) shall be proportionate and no more restrictive of trade than is required to achieve appropriate level of health protection, regards being had to technical and economic feasibility and other factors regarded as reasonable and proper in the manner under consideration.
- v) The measures adopted shall be reviewed within a reasonable period of time, depending on the nature of the risk to life or health being identified and the type of scientific information needed to clarify the scientific uncertainty and to conduct a more comprehensive risk assessment,
- vi) Where any food which neglects to comply with food safety requirements is a part of a group, lot, or dispatch of food of the same class or description, it will be assumed until the opposite is same class or description, it shall be presumed until the contrary is proved, that all of the food in that batch, lot or consignment fails to conform with those necessities.

⁷⁹ The Food Safety and Standards Act, 2006

(8) INDIAN PENAL CODE, 1860

This foundational law covers various white-collar crimes, such as fraud, forgery, and criminal breach of trust. Sections 405 to 409 of the IPC specifically deal with criminal breach of trust, while Sections 463 to 477 cover forgery and falsification of accounts.

(9) THE BENAMI TRANSACTIONS (PROHIBITION) ACT, 1988

This law targets property transactions made under fictitious names to conceal the real ownership, thereby tackling a common method of money laundering and tax evasion.

2.5 RESTRICTIONS UPON RELEVANT LEGISLATIONS

(1) THE PREVENTION OF MONEY LAUNDERING ACT, 2002

i) No Limitation Period

The PMLA does not impose a fixed time restriction for problems pertaining to money laundering. The general law of criminal process applies, meaning that there is no statute of limitations for any offense that carries a sentence exceeding 3 years. The Enforcement Directorate (ED) has the authority to commence procedures at any point in time, regardless of the number of years that have passed. The Financial Intelligence Unit (FIU-IND) is not subject to any time constraint under the Prevention of Money Laundering Act (PMLA) when it comes to initiating an enforcement action.⁸⁰

⁸⁰ Nishka Kamath, Prevention of Money Laundering Act (PMLA), 2002, Ipleaders, (Mar. 29, 2023)

ii) **Burden of Proof on Accused**

According to the PMLA, the accused bears the responsibility of providing evidence to demonstrate that the suspected property/assets were not acquired through illegal activities. The Act is limited by the reversal of the burden of proof.

iii) **Definition of Money Laundering**

The concept of money laundering as stated in Section 3 of the PMLA is characterized by a lack of clarity and encompasses a wide range of activities. It involves presenting any property as pure property, without a clear definition. This lack of clarity can result in the improper utilization of the Act.⁸¹

iv) **Lack of Clarity on Scheduled Offences**

The PMLA is applicable to the profits obtained from criminal activities that are associated with the specific offenses mentioned in its schedule. Nevertheless, the schedule is not comprehensive and continues to be revised. There is ambiguity over the specific offenses that fall under the terms of the PMLA.⁸²

v) **Excessive authority enforcement agencies**

The 2019 revisions to the PMLA have faced criticism for granting unrestricted authority to enforcement organizations such as the ED. As an illustration, the ED now has the authority to apprehend a suspect without a warrant in some situations. The Act is significantly constrained by the excessive exercise of authority by government entities.

vi) **Disproportionality**

The PMLA permits the seizure and forfeiture of assets prior to a person's conviction. The Act is significantly flawed due to the absence of proportionality between the alleged offense and the corresponding remedy taken.

⁸¹ Prevention of Money Laundering Act, 2002 (Act 15 of 2003), S.3

⁸² Supra note 85.

(2) THE PREVENTION OF CORRUPTION ACT, 1988

i. Definition of Public Servant

The PCA has a limited and specific meaning of the term "public servant". It excludes private company employees and NGOs that get government subsidies. This restricts the extent to which the Act can effectively address corruption.⁸³

ii. Burden of proof

According to the PCA, the accused bears the responsibility of providing evidence to demonstrate that the suspected property/assets were not acquired through corrupt methods. The Act is limited by the reversal of the burden of proof.

iii. Uncertainty regarding certain criminal acts

The Proceeds of PCA is applicable to the funds obtained via criminal activities that are specifically mentioned in its schedule of scheduled offenses. Nevertheless, the schedule is not comprehensive and continues to be revised. There is ambiguity over the specific offenses that fall within the requirements of the PCA.

iv. Excessive exercise of authority by law enforcement agencies

The 2018 revisions to the PCA have faced criticism for granting unrestricted authority to enforcement agencies like as the CBI. As an illustration, the Central Bureau of Investigation (CBI) now has the authority to apprehend a suspect without a warrant in specific situations. The Act is significantly restricted by the excessive exercise of authority by agencies.

v. Disproportionality

The PCA enables the seizure and forfeiture of assets prior to an individual's conviction. The Act is significantly flawed due to the absence of proportionality between the purported offense and the corresponding remedy implemented.

⁸³ Prevention of Corruption Act, 1988 (Act 49 of 1988), S.2(c)

vi. **Insufficient Penalty**

The penalties stipulated under the PCA are insufficient to effectively discourage corruption. The maximum penalty for accepting a bribe is a mere 5 years of incarceration.

vii. **Time Limit for Trials**

Absence of a specified duration for legal proceedings. There is no prescribed timeframe for the completion of trials under the PCA. Trials frequently experience significant delays over the course of several years, thereby undermining the intended objectives of the Act. A stringent time constraint should be mandated.

(3) THE COMPANIES ACT, 2013

i. **Complication and the presence of overlapping provisions**

The Act implemented multiple provisions that, in certain instances, exhibited overlap or lacked clarity. As a result, there was a lack of clarity among organizations, especially smaller ones, regarding the requirements they needed to meet in order to comply. The intricacy of the Act posed challenges for corporations in understanding and adhering to the new laws, perhaps leading to non-compliance or delayed compliance.⁸⁴

ii. **Regulatory Obligation**

The legislation enhanced the level of regulatory obligations imposed on firms, especially those of smaller scale. The implementation of several reporting obligations, such as the Corporate Social Responsibility (CSR) expenditure and the submission of annual returns in XBRL format, increased the administrative responsibilities of firms. The heightened obligation to comply with regulations

⁸⁴ Taxmann's Research and Advisory Team, Compliances Based on Threshold Limits Under the Companies and SEBI Laws, (May 6, 2024), <https://www.taxmann.com/post/blog/compliances-based-on-threshold-limits-under-the-companies-act-2013/>

could result in extra expenses and perhaps redirect resources from primary business operations.⁸⁵

iii. **Compliance expenses**

The Act's regulatory obligations, particularly those pertaining to corporate social responsibility (CSR) and audit, resulted in higher expenses for firms. Smaller enterprises may find it challenging to bear the extra costs, which could pose a substantial strain. The escalated expenses may also result in a decline in the competitiveness of Indian enterprises in the international market.⁸⁶

(4) THE INCOME TAX ACT, 1961

i. **Inability to transfer losses to future periods**

An important drawback of the Income Tax Act is its lack of provision for carrying forward losses. Consequently, if a taxpayer has a financial loss in a specific year, they are not allowed to offset it against their future income. This might provide a substantial drawback for organizations or people who incur a financial loss in a specific year.⁸⁷

ii. **Severe penalties for late filing**

The legislation imposes a substantial fine of Rs 5000 for the late submission of income tax returns. For people or organizations unable to file their taxes on time owing to different reasons, this can be a substantial burden. The assessing officer possesses the jurisdiction to exempt the penalty, but this procedure can be protracted and expensive.

⁸⁵ Cleartax, Threshold Limits Under the Companies Act, 2013, (Jan 10, 2022), <https://cleartax.in/s/threshold-limits-companies-act-2013>

⁸⁶ Rupal Jain, Threshold Limits- Companies Act, 2013, (Aug. 25, 2022), <https://taxguru.in/company-law/threshold-limits-companies-act-2013.html>

⁸⁷ Jaya Vats, Income Tax Act, 1961: A Comprehensive Overview, (May 12, 2022), <https://blog.ipleaders.in/income-tax-act-1961-a-comprehensive-overview/>

iii. Limited deductions

Chapter VIA of the Income Tax Act permits restricted deductions. These deductions typically apply to investments in insurance premiums, medical premiums, and other tax-saving mechanisms. Nevertheless, those who do not pay income tax in India are ineligible for these deductions. This can provide a substantial drawback for persons who do not possess any income that is subject to taxation.⁸⁸

iv. Impact on Willingness to Work and Save

The Income Tax Act might adversely affect individuals' motivation to engage in labor and accumulate savings. Elevated tax rates can dissuade individuals from exerting effort and accumulating savings, as they may perceive that their income and savings are subject to substantial taxation. This can result in a decline in economic activity and a contraction in the overall tax revenue.⁸⁹

v. The phenomenon of inflation and the devaluation of currency

The Income Tax Act can potentially exacerbate inflation and lead to currency devaluation. Imposing a tax on a commodity results in an increase in its price, which in turn can result in elevated production costs and ultimately higher prices for consumers. This can worsen inflation and lead to a devaluation of the currency.

(5) THE CENTRAL VIGILANCE COMMISSION ACT, 2003

i. Insufficient authority to conduct investigations

A significant drawback of the CVC Act is its failure to confer direct investigation authority upon the “Central Vigilance Commission”. The CVC is dependent on external entities such as the “Central Bureau of Investigation (CBI)” and “Chief Vigilance Officers (CVOs)” to carry out investigations.

⁸⁸ Ibid.

⁸⁹ Research Team OkCredit, Advantages and Disadvantages of Income Tax in India, (Feb. 1, 2022), <https://okcredit.in/blog/advantages-and-disadvantages-of-income-tax-in-india/>

Relying on other agencies might result in delays, lack of coordination, and significant disruption in the investigative process. The CVC's efficacy in addressing corruption issues is hindered by its absence of autonomous investigation capacities.⁹⁰

ii. **Restricted Jurisdiction**

The jurisdiction of the CVC is restricted to organizations that are under the executive authority of the Government of India. This specifically excludes a substantial segment of the public sector, such as public sector banks, financial institutions, and autonomous agencies that do not fall directly under the jurisdiction of the central government. The CVC's lack of competence to supervise these groups diminishes its efficacy in combating corruption throughout the whole public sector.

iii. **Lack of sufficient resources and staffing**

The CVC encounters difficulties as a result of insufficient resources and staffing. The Commission depends on officers seconded from other government agencies and organizations to fulfill its duties. This might result in a dearth of continuity, experience, and dedication among the personnel. The CVC's capacity to efficiently oversee and probe corruption cases is hindered by the absence of specialized and highly skilled staff.⁹¹

iv. **Insufficient authority to enforce regulations**

The CVC Act lacks sufficient enforcement powers for the Commission. Although the CVC has the power to suggest measures against corrupt officials, it lacks the jurisdiction to directly enforce penalties or sanctions. The successful execution of the CVC's recommendations hinges upon the readiness and collaboration of the relevant government departments and entities. The CVC's limited authority to enforce laws hampers its capacity to hold corrupt officials responsible and serve as a deterrence against corrupt practices.

⁹⁰ Anshika Agarwal, All You Need to Know About Central Vigilance Commission, (Aug. 25, 2020), <https://blog.ipleaders.in/need-know-central-vigilance-commission/>

⁹¹ Ibid.

(6) THE NEGOTIABLE INSTRUMENT ACT, 1881:

i. Insufficient transparency regarding electronic transactions

An inherent deficiency of the Negotiable Instruments Act, 1881 is its failure to effectively tackle the emergence of electronic payment mechanisms in the contemporary period. The Act was initially formulated during the late 19th century and largely focuses on tangible documents such as promissory notes, bills of exchange, and checks. Nevertheless, as the usage of electronic fund transfers through NEFT, RTGS, and other digital payment systems continues to grow, the Act lacks explicit legal provisions that regulate these emerging payment methods. The absence of clearness might result in uncertainty and disagreements when electronic payments are rejected or susceptible to deceit. It is necessary to revise the Act in order to explicitly address electronic negotiable instruments and establish legal remedies for parties in the event of defaults or anomalies.⁹²

ii. Insufficient sanctions for disgraceful behavior

Many people view the sanctions outlined in the Act for the dishonor of negotiable instruments as insufficient and ineffective in deterring such behavior. Under Section 138, the punishment for bouncing checks due to inadequate funds is restricted to a maximum of 2 years of imprisonment, a fine, or both. Nevertheless, because to the substantial amounts typically at stake in business transactions, numerous individuals perceive this penalty as excessively mild. The legislation should be revised to incorporate more rigorous sanctions, such as increased monetary penalties and extended periods of incarceration, in order to deter individuals from writing checks without adequate funds and safeguard the integrity of negotiable instruments.⁹³

iii. Insufficient measures for electronic presentation and truncation

The Act lacks provisions for the electronic presentation and truncation of negotiable instruments. Presentment is the action of presenting the instrument to

⁹² Oishika Banerji, Negotiable Instrument Act, 1881, (Dec. 8, 2022), <https://blog.iplayers.in/negotiable-instruments-act-1881/>

⁹³ Anhad Law, Typo Mistakes do Make a Notice Illegal, (Mar. 1, 2024), <https://www.lexology.com/library/detail.aspx?g=1f92b729-b999-4122-b7ab-df85c6875ef7>

the drawee in order to obtain acceptance or payment. Truncation refers to the cessation of the physical instrument's flow and the subsequent utilization of an electronic picture of the instrument for additional processing.⁹⁴ The Act's failure to include legal protections for these contemporary practices poses operational challenges and legal ambiguities for banks and financial institutions. Additionally, it complicates and lengthens the procedure for clearing and settling negotiable instruments. By including clauses for electronic presentment and truncation in the Act, it would be possible to bring it in line with contemporary banking practices and enhance the efficiency of clearing negotiable instruments.

iv. **Uncertainty in the meanings and extent of definitions**

The Act is plagued with ambiguity in the definitions and scope of some essential terminology and concepts. For instance, the meaning of "holder in due course" as stated in Section 9 lacks clarity and has given rise to varying interpretations by courts. Moreover, the Act's coverage of different types of instruments lacks clarity.⁹⁵ The lack of clarity in the interpretation of the Act has resulted in uncertainty and disagreements, often leading to legal action in order to obtain a clear understanding of its applicability in specific instances. The legislation must be revised to offer more exact and unequivocal explanations of crucial phrases and to explicitly outline its extent and relevance.

2.6 CORPORATE CRIMES: IMPACT UPON THE SOCIETY

Corporates have gone far enough from being implicated in tort law or accused of causing public nuisances. They are clearly having a significant negative impact on how any society functions today.⁹⁶ These days, they are considered essential evils. They are essential to the survival of society, yet their presence is becoming more and more problematic. The most difficult aspect of the problem is not only placing the blame on

⁹⁴ Geeksfor Geeks, Dishonour of Negotiable Instruments: Types, Effects and Notice, (Apr. 9, 2024) <https://www.geeksforgeeks.org/dishonour-of-negotiable-instruments-types-effects-notice/>

⁹⁵ Ibid.

⁹⁶ Levi, M. (2008). *The Phantom Capitalists: the Organisation and Control of Long-Firm Fraud*, 2nd edition, Aldershot: Ashgate.

the corporations for any criminal wrongs they may have committed, but also on the individuals who should bear the responsibility for such wrongs. Who implemented the plan, who wrote it, and why was it written? The few questions that keep corporate crime investigators busy are what profits might be realized. Even if the firm has a long history of having a distinct legal presence and existence established by the courts, determining the true perpetrator acting on behalf of that legal personification can be a laborious procedure due to the intricate hierarchy of today's mainstream body corporate. It is possible to hold directors, agents, workers, and other stakeholders accountable for the company's illegal activities.⁹⁷ A few of the crimes that have been linked to the contemporary multinational behemoths include money laundering, privacy scams, nuclear accidents, human trafficking, environmental disasters, corruption, bribery, violence, etc. Due to their new personas, the courts have been compelled to reinterpret the idea of a corporation's criminal accountability. This has also resulted in the adoption of new laws that include new government jurisprudence on how to handle corporate guilt and crime. The researcher has sought to analyze the idea and theories of corporate crime and criminality in this chapter. They have also attempted to identify the many sorts of corporate crimes and their effects on society, as well as who can be held accountable for committing a corporate crime.

2.7 ENFORCEMENT AND REGULATORY BODIES

Several agencies are involved in the investigation and enforcement of laws against white-collar crimes:

- i. **Central Bureau of Investigation (CBI):** Handles significant cases of corruption, fraud, and financial crimes.
- ii. **Enforcement Directorate (ED):** Focuses on the enforcement of economic laws, particularly those related to money laundering and foreign exchange violations.
- iii. **Securities and Exchange Board of India (SEBI):** Regulates the securities market and protects investor interests, tackling insider trading, and other market-related frauds.

⁹⁷ Paranjape, N.V. "Criminology and Penology (Central Law Publications, Allahabad, UP 2020)

- iv. **Reserve Bank of India (RBI):** Implements banking regulations and KYC norms to prevent banking frauds and money laundering.

2.8 METHODS OF INVESTIGATION AND REPORTING CORPORATE CRIMES IN INDIA

Many laws are in place in India to combat corporate crime. Legislation, Commissions, Boards, and various studies have been passed by the Government of India to combat corporate crimes. Some of the authorities entrusted to investigate and report corporate crimes under different enactments are discussed here under:

(1) REGISTRAR OF COMPANY

Companies Act 2013 allows the registrar of companies to approve an inspection, investigation, or investigation of businesses or the company in order to ensure the safety of any records presented by the company, to receive information on information filed by the company, or to receive information on information obtained by the company. The Registrar ⁹⁸may also appoint an inspector if necessary to conduct such an inquiry. A number of other regulators and agencies have been granted statutory authority to undertake inquiries. A complainant's fundamental cause is more likely to be discovered and prevented if an investigation is conducted, rather than just punishing the workers involved. As a result, such inquiries would lead to "lessons learned" and assure compliance with relevant legislation. All in all, the company's goodwill would be maintained and become a valuable asset⁹⁹ Aside from the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redress) Act, 2013, there are no legislative requirements or procedural directions in India for conducting internal investigations in a firm. When it comes to conducting investigations, there is no specific protocol or system that must be followed because of the extremely subjective nature of the inquiry at hand. A few general rules of thumb may be used here (in aid of investigation subsequent to the formation of the team of investigations) which are referred to here as:

⁹⁸ Renu, "Handbook On Anti-Corruption Laws, Practice and Procedure (M/s, Kamal Publishers, New Delhi 2020)

⁹⁹ Lord, N. Regulating corporate bribery in international business, (Ashgate Publishing 2017)

- i. Gathering of data.
- ii. Verification from the source and assessment of data.
- iii. Structuring the investigation's framework.
- iv. Engagements of experts.
- v. The interview.
- vi. Drawing inferences and preparing the investigation report

(2) SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)

The Securities and Exchange Board of India (SEBI) became a statutory regulatory body on January 30, 1992, when the Securities and Exchange Board Act was passed by the Indian Parliament.¹⁰⁰ The Capital Issues (Control) Act of 1947, one of the first laws approved by the Indian Parliament upon its independence from the British Empire, required SEBI to take over as Controller of Capital Issues. "What is the Securities and Exchange Board of India-SEBI?" is a question that has to be answered. The most significant regulatory organization overseeing the securities industry in the Indian republic is the Securities and Exchange Board of India (SEBI). Unlike the US Securities and Exchange Commission (SEC), India's Securities and Exchange Board of India (SEBI) is the primary securities market regulator in the Republic of India. In light of this, SEBI makes investments and implements compliance measures in line with its legal authority. Other institutions criticize SEBI for its complete incompetence and lack of transparency.¹⁰¹

(3) CENTRAL VIGILANCE COMMISSION (CVC)

The CVC was established in the year 1964 initially by a Government of India resolution date 11th February 1964. It received mandate to fight corruption in public administration

¹⁰⁰ Lord, N. and Levi, M. Organising the Finances For and the Finances From Transnational Corporate Bribery (European Journal of Criminology press 2020)

¹⁰¹ Ibid

by the Central Vigilance Commission Act, 2003 It is autonomous in its functioning and free from control of any executive authority¹⁰² This Act in fact, empowers itself to exercise superintendence over the functioning of Central Bureau of Investigation (CBI), in relation to certain Acts of corruption under the Prevention of Corruption Act, 1988. In its Annual Report of 2018, the CVC recommended initiation of criminal proceedings in 49 cases. The CVC has wide powers with reference to superintendence, enquiry, investigation, review and advice which are mentioned under the Chapter III of the Act. In terms of combating white-collar crimes, the scope of its enquiry extends to the members of Group A category of the All-India Services, Officers in the Corporations, Government Companies, Societies and other local authorities of the Central Government. This multi-member agency is mainly responsible for investigating offences believed to have been committed under the Corruption Act, 1988, or a felony that a public service employee may commit in accordance with the 1973 Code of Criminal Procedure. In terms of the Corruption Prevention Act, 1988, and the Central Government's vigilant oversight, the commission is regarded as the supervisor of the CBI. In addition, the Commission aims to raise public knowledge of transparent, accountable, and corruption-free government policies, with a focus on young people Rabi Narayan Dash, “Role of Central Vigilance Commission of India in Maintaining its public accountability with reference to Public sector banks” (2005) 291 Central Vigilance commission, —The Central Vigilance Commission prepares its annual report in accordance with Section 14 of the CVC Act, 2003, and submits it to the Indian President. The report outlines the work completed by the Central Vigilance Commission in order to achieve its mandate as stipulated by the CVC Act, 2003, for the year that ended on December 31, 2018. A zero-tolerance stance against corruption will be enforced to the letter by the Commission.

FUNCTIONS AND POWER OF CVC

- i.** Section 8(1)(c) states that the Central Government may request an investigation or inquiry¹⁰³

¹⁰² Nelken, D. White-Collar and Corporate Crime (Oxford University Press 2017)

¹⁰³ Sethi and Anand, “Prevention of Corruption Act, 1988 and Accomplish (Law Book Company, Allahabad 2019)

- ii. Section 8(1)(d) authorises the CVC to conduct an investigation or inquiry into any allegation of wrongdoing by any person who falls within sub-section 2 of Section 8 of the CVC Act, 2003.
- iii. The Delhi Special Police Establishment (DSPE) conducts investigations into suspected violations of the Prevention of Corruption Act, 1988, or an offence under Section 8(1) (e) of the Code of Criminal Procedure.¹⁰⁴
- iv. CVC Act, 2003, section 8(1) (f) authorizes to check upon the status of the application for prosecution pending with the appropriate authorities under the Prevention of Corruption Act, 1988.
- v. Section 8(1) (g) of the Act states that the Central Government and its agencies may request the opinion of the Commission on any topic.
- vi. Central Government Ministers, departments, and organisations of the Central Government are all subject to vigilant administration under Section 8(1)(h) of the Act.
- vii. When conducting an investigation, a civil court must have all of the authorities of a civil court under section 11, CVC Act, 20003
- viii. Section 12 of the act authorizes the commission to act as a quasi judicial body.
- ix. Before making any rules or regulations governing vigilance or discipline in relation to the public services and posts in connection with the Union's affairs or the All India Services under section 19 and section 20 respectively, respond to the central government on its obligation to consult the Commission.

(4) DIRECTORATE OF ENFORCEMENT

It is a government agency that enforces the country's economic laws and fights economic crime. With its own trial courts and appellate tribunals, it is a financial investigative organization that uses newer, more efficient procedures in order for it to better serve its clients¹⁰⁵ The teams are trying to improve their academic knowledge by studying from

¹⁰⁴ Ogus, A. I. Regulation: Legal Form and Economic Theory, (Oxford: Clarendon Press 2018)

¹⁰⁵ Sharma, Dr. M.P. and B.L. Sadana, "Public Administration in Theory and Practice (Kitab Maha 2018)

the best practices throughout the globe, assigning duties and adhering to tight regulations on how to function, and discussing all the laws for which they are responsible. Communication amongst members of the team is also a priority. Investigations are undertaken at any time, collect evidence without fear, and make the proper conclusion without following anybody. The term is responsible for a tradition and acts on its goals. An economic intellectual property agency is also working to execute two significant legislation affecting the country's economic structure. The Revenue Department of the Ministry of Finance oversees this organization. At the zonal and sub-zonal levels, it has five regional offices in cities throughout India. The Enforcement director is in charge of the agency's headquarters in New Delhi. It is done by pulling officers from other agencies, and the police are recruited directly from other agencies. There are personnel from the Indian Revenue Service (IRS) involved. As a tax officer, an excise or customs agent or an IAS, an Indian Police Service or IAS is one of the most important laws in the country.

(5) CENTRAL BUREAU OF INVESTIGATION

According to the Delhi Police Act, the CBI ¹⁰⁶is an investigating body. A director and a group of forensic experts oversee the operation. The Central Vigilance Committee, for example, receives a report on his request for a punishment opinion from the Ministry of the Interior. Following the completion of the inquiry, the committee will consult with experts. Rather of conducting its own inquiry, the Committee instead looks to a third party. It is the country's foremost investigative agency, the Central Bureau of Investigation (CBI). It was originally established to investigate bribery and government corruption, but the Ministry for Personal, Public Greece, and Pensions increased its powers in 1965 to include the CBI. Many economic crimes, special crimes, corruption cases, and other high-profile cases have been brought to the attention of the Agency¹⁰⁷ When India's government formed a bribery and corruption investigation bureau in 1941 it was for the Department of India's Special Police Establishment (SPE). Its main office was located in Lahore, Pakistan. Special Police Superintendent Qurban Ali Khan

¹⁰⁶ Shah, Dr. Giriraj, "The Tidal Wave of Corruption", (Anmol Publications Pvt. Ltd 2020)

¹⁰⁷ Ibid

eventually made the decision to go to Pakistan after India's division. The first legal adviser to the War Department was Rai Sahib Karm Chand Jain ¹⁰⁸The central authority continued to need to pursue cases of corruption and bribery even after the conflict was finished. The Sahib Karam Chand Jain was moved to the Home Department in 1946 as a result of the Special Police Establishment Act in Delhi. A separate police force was established for the Indian government. The Union territories have authority and may be expanded to encompass the Member States with the permission of the respective State Governments. Sardar Patel, the first free Indian vice minister and head of the homeland ministry, was able to eradicate corruption in the erstwhile princely realms of Jodhpur, Reva, and Tonk. Patel tasked Legal Advisor Karm Chand Jain with tracking down pending criminal proceedings against the Dewans and chief ministers of these states. The Central Bureau of Investigation is the new common name for the Department of Special Police, as a result of a Home Ministry decree passed on April 1, 1963. (CBI). Several high courts around the country have begun to use their petitions to request that the CBI investigate crimes such as assassinations, kidnappings, and terrorism. There are five divisions within the CBI: (1) the Anti-Corruption Division (2) Directorate of Prosecution (3) Administrative Division (4) Procurement Division (for economic crimes) (for strategy and foreign police cooperation) (5) Strategy and Foreign Police Collectivity Division. The Administrative Division was restructured in 1995 (Amended by the 2013 Lokpal and Lokayukta Law). Special Police Establishment Act of Delhi empowers Delhi's selection committees to choose the director of the CBI. The panel will include the Lok Sabha's opposition leader (Member), the Chief Justice, or a judge nominated by the Chief Judicial Officer, to the Supreme Court (Member). As a result of the Delhi Special Police Formation Act, which was passed in 1946, Union Territories Officers of the Delhi Special Police Establishment (CBI) Union Territories have judicial powers of investigation. In accordance with the approval of the government of the relevant country, sub-inspectors of the CBI may be granted additional powers and jurisdiction by the federal government to conduct an inquiry in any part of the country (excluding the Union Territories). In order to conduct an investigation, the CBI must get a notification from the government of the United States of America.¹⁰⁹

¹⁰⁸ Pontell, H. Theoretical, Empirical, and Policy Implications of Alternative Definitions of "White-Collar Crime (Oxford: Oxford University 2nd edn Press 2018)

¹⁰⁹ Ibid

2.9 PENALTIES

The penalties for corporate frauds in India are outlined in various legislative acts. Here is an overview of the penalties:

Companies Act, 2013

1) Section 447: Punishment for Fraud:

- Imprisonment: Up to 10 years
- Fine: Minimum of the amount of fraud involved, but not less than 100% of the amount of fraud involved, and maximum of three times the amount of fraud involved.

2) Section 447A: Punishment for False Statement:

- Imprisonment: Up to three years
- Fine: Up to five thousand rupees or both.

Prevention of Money Laundering Act, 2002 (PMLA)

1) Schedule Offences:

- Imprisonment: Up to five years
- Fine: Up to twice the amount of fraud involved.

Indian Penal Code, 1860 (IPC)

1) Section 405: Criminal Breach of Trust:

- Imprisonment: Up to seven years
- Fine: Up to twice the amount of fraud involved.

2) Section 415: Cheating:

- Imprisonment: Up to seven years
- Fine: Up to twice the amount of fraud involved.

3) Section 463: Forgery:

- Imprisonment: Up to seven years
 - Fine: Up to twice the amount of fraud involved.
- 4) Section 477A: Falsification of Accounts:
- Imprisonment: Up to seven years
 - Fine: Up to twice the amount of fraud involved.
- 5) Other Penalties
- Section 448, 449, 450: Non-Compliance of Provisions:
Fine: Up to five thousand rupees and, in the case of continuing defaults, to further fine which may extend to hundred rupees for each day during which such default continues.

Serious Fraud Investigation Office (SFIO)

- 1) Investigation and Reporting:
- Imprisonment: Up to five years
 - Fine: Up to twice the amount of fraud involved.

Statutory Auditors

- 1) Personal and Joint Liability:
- Imprisonment: Up to five years
 - Fine: Up to twice the amount of fraud involved.

Corporate Recovery

- 1) Recovery of Amounts Paid in Excess:
- Imprisonment: Up to five years
 - Fine: Up to twice the amount of fraud involved.
- 2) Recovery of Assets and Properties:

- Imprisonment: Up to five years
- Fine: Up to twice the amount of fraud involved.

Judicial Trends

1) Emerging Legal Architecture:

- Imprisonment: Up to five years
- Fine: Up to twice the amount of fraud involved.

These penalties are designed to deter and punish corporate fraud, ensuring the integrity of financial transactions and protecting the interests of investors, creditors, and stakeholders.

2.10 DEVELOPMENT AND CHANGES WITH RESPECT TO CORPORATE CRIMES IN INDIA

The goals of law enforcement, advancements in technology, and modifications to the law have all influenced the growth of white-collar crime in India. Here are a few noteworthy additions and updates:

i) Legislative Reforms: India has passed and amended a number of laws throughout the years to better address white-collar crime. They consist of both brand-new legislation, such as the Prevention of Money Laundering Act (PMLA), and amendments to previously enacted legislation, such as the Prevention of Corruption Act (PCA). These laws have expanded the definition of offences, tightened fines, and included new processes in response to the evolving nature of white-collar crime¹¹⁰

ii) Technological Progress: The widespread use of technology has led to the emergence of new white-collar crimes such as identity theft, cyber fraud, and internet

¹¹⁰ Shover, N. and Hochstetler A. Choosing White-Collar Crime, Cambridge (Cambridge University Press 2020)

scams. India established the Information Technology Act (IT Act) and specialised cybercrime investigation teams to look into and prosecute acts relating to cyberspace in order to address these issues.

iii) International Cooperation: India has stepped up its cooperation with its international counterparts in the fight against transnational fraud and money laundering because many white-collar crimes are cross-border in nature and financial institutions are becoming more globalised. This covers taking part in international conferences and conventions, mutual legal aid treaties, and extradition treaties (MLATs).

iv) Regulatory Enforcement: To detect and stop financial irregularities and corporate fraud, agencies such as the Securities and Exchange Board of India (SEBI) and the Reserve Bank of India (RBI) have improved their enforcement capacities. Among the primary focus areas have been strengthening transparency laws, strictly observing corporate governance requirements, and keeping a tight check on market activity.

v) Emphasis on Prevention and Awareness: There has been a drive to inform professionals, companies, and the general public about white-collar crimes as the necessity of prevention becomes more apparent. Campaigns for public awareness, conferences, and training courses have all been used to educate interested parties about the perils of deception and the importance of acting morally¹¹¹

vi) Protection for Whistleblowers: The Whistleblower Protection Act is one of the laws that India has put in place to protect the rights of whistleblowers and encourage people to come forward with reports of wrongdoing. These regulations are intended to protect informants from reprisals and to give them channels for reporting infractions pertaining to white-collar crimes and seeking recompense. The development and evolution of the white-collar crime landscape in India can be ascribed to several strategies, such as international collaboration, technical progress, law enforcement, and

¹¹¹ Sutherland, E.H. White-collar Crime: the Uncut Version, (Yale University Press 2020)

awareness- and prevention-raising initiatives. White-collar crimes in India encompass a wide range of non-violent offenses committed for financial gain, often involving deceit or breach of trust. The legal framework addressing these crimes includes several key legislations, which have seen updates and amendments to strengthen enforcement and adapt to new challenges.¹¹²

¹¹² Healy Paul, Eugene Soltes. "Rajat Gupta." Harvard Business School Case, December 2016. (Revised.), 2022

CHAPTER 3

CORPORATE FRAUDS AND WHITE-COLLAR CRIMES IN INDIA: CHALLENGES

3.1 INTRODUCTION

Corporate fraud and white-collar crimes have emerged as a major issue in India, characterized by prominent instances and governmental initiatives aimed at addressing these activities. These illicit behaviors, driven by financial motives, include dishonesty, fraud, or breach of trust for personal or organizational benefit. These incidents often involve persons who have positions of power or influence inside a firm, such as CEOs, CFOs, and other executives. Instances of corporate fraud and white-collar crimes include embezzlement, insider trading, accounting fraud, bribery, money laundering, and securities fraud. Engaging in these actions may result in significant repercussions, both in terms of financial and social impact. They have the potential to undermine investor trust, negatively affect employees, and compromise the entire integrity of fiscal and commercial institutions.

3.2 CHALLENGES

3.2.1 COMPLEXITY OF EVIDENCE

White-collar crime investigations usually include a mountain of paperwork and complex financial activities. It can be challenging to compile sufficient evidence to demonstrate credibility and intent beyond a reasonable doubt, especially when dealing with intricate strategies intended to conceal fraudulent activity.

3.2.2 RESOURCE INTENSIVE INVESTIGATIONS

Corporate fraud investigations require a variety of resources, including financial capability, forensic accounting knowledge, and access to vast volumes of data. Law

enforcement organisations might lack the tools and expertise required to carry out thorough investigations, which could lead to the postponement or abandonment of investigations.¹¹³

3.2.3 LIMITATIONS OF STATUTE

White-collar crimes may entail both international and domestic authorities. It can be difficult to coordinate judicial proceedings and investigations across several jurisdictions, particularly when bilateral legal assistance treaties and extrusion are involved.

3.2.4 CORPORATE SECRECY AND PRIVILEGE

A statute of limitations may apply to some white-collar offences, limiting the length of time that can be spent filing a lawsuit. Intricate financial frauds may take years to uncover, and by then, the statute of limitations may have run out, making prosecution challenging or unfeasible.

3.2.5 CORPORATE SETTLEMENTS AND DEFERRED PROSECUTION AGREEMENTS (DPAS)

Corporate secrecy and privilege: Businesses may publicise their attorney-client privilege and other legal safeguards to keep internal correspondence and records private during an investigation. This might make it more difficult for prosecutors to build a strong case.

3.2.6 POLITICAL AND REGULATORY INFLUENCE

Corporate fraud investigations can be hindered or delayed, but strong people and organisations might also take advantage of this to flex their regulatory and political clout. This can be used to evaluate the efficacy and objectivity of law enforcement and regulatory organisations entrusted with preventing white-collar crime.

¹¹³ Friedrichs, D. O. (2010). *Trusted Criminals: white collar crime In Contemporary Society*. Cengage Learning.

3.2.7 CORPORATE OBSTRUCTION

It refers to the actions taken by corporations accused of fraud to impede investigations, prolong legal procedures, or engage in lengthy legal disputes. These tactics, which include using their financial resources and legal teams, create difficulties for authorities in their pursuit of these cases.

3.2.8 CROSS-BORDER COMPLEXITY

White-collar crimes sometimes include cross-border complexities, such as the involvement of foreign aspects like money laundering or offshore accounts. Conducting investigations and gathering evidence across international boundaries may be an intricate and time-consuming procedure.

3.2.9 WHISTLEBLOWER PROTECTION

Although India has measures for whistleblower protection, people may still be apprehensive about potential reprisal or lack confidence in the system, which discourages them from disclosing information about corporate misbehavior.

3.2.10 REGULATORY OVERLAP

Several regulatory bodies in India have authority over different elements of corporate governance and financial markets. Facilitating collaboration across various entities may be difficult and may result in overlapping or contradictory measures.

To solve these concerns, strong regulatory frameworks, adequate funding for law enforcement agencies, platforms for international cooperation, and legislative changes that improve the transparency and accountability of corporate governance are all required. Furthermore, in order to hold CEOs and companies accountable for dishonest activities, a thorough investigation and increased public knowledge may be required.

The prosecution of white-collar crime, both in the UK and the US, faces several significant limitations:

Compared to most types of crime, white collar crime is a relatively new phenomenon. After several high profile cases in the mid-1900's in the United States, white collar crime emerged into the national spotlight. The idea materialized that there should be a separate and distinct category of crime aside from the everyday common crimes, like murder or burglary.¹¹⁴ More recently, large-scale scandals and frauds have been uncovered worldwide with public losses on the scale of billions of dollars. In the United States, white collar crimes have cost losses of more than \$200 billion annually.¹ In 2004, the United States Corporate Fraud Task Force recorded over five hundred corporate fraud convictions, which was twice many than was recorded in 2003.² In the United Kingdom, in 2002, the estimated cost of fraud in the United Kingdom was approximately £14 billion.³ The term white collar crime was first coined by Edwin Sutherland,⁴ who stressed the need to expand the study of criminology to include crimes committed by “respectable individuals in the course of their occupation.”⁵ Since then, many definitions have arisen, describing white collar crime as separate and distinct from “common crimes and street crime which led to the mistaken belief that white collar criminals were all from the upper class.

Today, white collar criminals run the spectrum from executives, upper and middle management to general accountants.⁷ Sociologists in the past, like Sutherland, defined offenses only by the type of a violator, meaning white collar crimes were defined as any crime committed by wealthy, high standing individuals in the course of their occupation.⁸ In the alternative, today white collar crime is defined by the offenses committed, such as fraud or embezzlement. In an international context, the United Nations uses the term “abuse of power” when discussing white collar crimes. The United States Federal Bureau of Investigation defines white collar crime as:

Some illegal acts which are characterized by deceit, concealment, or violation of trust and which are not dependent upon the application or threat of physical force or violence. Individuals and organizations commit these acts to obtain money, property, or services; to avoid the payment or loss of money or services; or to secure personal or business advantage. Within the past several decades, losses stemming from white collar crime have increased tenfold. In the United States, the “junk-bond king,” Michael Milken was responsible for over \$650 million in losses and ordered to pay the same amount as

¹¹⁴ Shover, N., & Wright, J. P. (Eds.). (2015). *Crimes of Privilege: Readings in White-Collar Crime*. Oxford University Press.

restitution before he was sentenced. Bernard Madoff is responsible for over \$50 billion in losses. With the economic structure and the fast pace markets in place today, losses from white collar crimes are on a Herculean scale. To compound the problem, the public is hard pressed to grasp the magnitude of loss from white collar crime because the actual cost and damage to people's lives and the national economy are extensive and often impossible to calculate.

Because most white collar crimes are largely based on deception or fraud, it hard to detect. White collar crime might pose such a problem since many times there are no readily identifiable victims and often times the perpetrators are only discovered after extensive investigation. Even when there are cognizable injured parties, the injured parties are unaware of even being victimized until it is too late. As a consequence, said individuals are not good witnesses nor reliable source of information. Furthermore, victims and, more importantly, prosecutors often lack the financial acumen necessary to understand and properly prosecute cases involving complex and sophisticated schemes. The nature of white collar crimes enables no detection long after its commission. Thus, the increase in commercial crime can be linked to "[t]he idea that white-collar offenders commit their crimes because they are unlikely to be punished." In response to national scandals and fraud often linked to white collar crime, both the United States and the United Kingdom have enacted statutes and other procedures aimed at curbing the occurrence of major commercial crimes. Today, both countries have weapons to combat would-be white collar offenders in various stages to prevent a second-round of national scandal.

CHAPTER 4

JUDICIAL APPROACH TOWARDS CORPORATE CRIMES IN INDIA

4.1 ROLE OF JUDICIARY IN CORPORATE LAWS

The judiciary plays a crucial role in determining corporate matters, ensuring that justice, fairness, and compliance with legal principles are upheld within the field of corporate law. Corporate lawsuits often include intricate legal matters related to corporate governance, shareholder entitlements, contractual conflicts, regulatory adherence, mergers and acquisitions, and breaches of securities laws, among other topics. The judiciary, consisting of judges and justices responsible for interpreting and enforcing the law, has a vital role in settling these conflicts and influencing the legal framework that governs business enterprises. This article seeks to explore the multifaceted function of the court in corporate disputes, emphasizing its importance, difficulties, and influence on corporate governance and legal precedent.

The judiciary primarily acts as the final decision-maker in resolving conflicts that arise inside the business domain. It offers a platform for parties to submit their arguments and evidence to unbiased adjudicators. Judges have the responsibility of using statute law, common law principles, and legal precedents to analyze the circumstances of each case and make impartial and equitable conclusions. By interpreting and clarifying legal norms, contractual commitments, and fiduciary duties, they provide assistance to companies and stakeholders on their rights and responsibilities as governed by the law. Furthermore, court rulings in business cases establish legal principles that have an impact on future legal disputes, regulatory investigations, and changes in legislation, therefore impacting the evolution of corporate law and policy.

Additionally, the judicial system has a vital function in maintaining the supremacy of the law and guaranteeing responsibility inside business organizations. Courts engage in judicial review to carefully examine company acts and decisions in order to ascertain their legality and adherence to relevant laws and regulations. The role of supervision is especially crucial in instances of accusations of corporate wrongdoing, such as fraud,

violation of fiduciary responsibility, insider trading, or other breaches of securities regulations. The judiciary promotes openness, honesty, and confidence in the business sector by ensuring that firms and their executives are held responsible for their activities. This helps protect the interests of shareholders, investors, and the general public.

Moreover, the judicial system acts as a safeguard against the exertion of corporate influence, by weighing the concerns of different parties involved and resolving any potential disputes that may occur among them. When there are disagreements among shareholders, courts are tasked with resolving issues related to control, management decisions, dividend payments, or business activities that might affect the value of the shareholders' investments. Courts aim to achieve equilibrium between the authority of majority owners to exert control and the entitlement of minority shareholders to equitable treatment and safeguarding of their interests. Similarly, when it comes to matters of corporate governance, such as the makeup of the board, executive pay, or proxy battles, courts have a vital function in guaranteeing that corporate decision-making is equitable, open, and carried out in the corporation's and shareholders' best interests.

Nevertheless, the court has several difficulties and constraints when it comes to adjudicating corporate disputes. Judges have significant difficulties in comprehending and resolving sophisticated legal matters due to the intricate nature of corporate law, as well as the fast progress in business operations and financial instruments. Furthermore, the process of determining legal decisions in business disputes may be affected by several elements, including the judicial philosophy, legal precedent, and the courts' experience in corporate affairs. Moreover, the confrontational character of legal procedures and the differences in resources between corporate litigants may influence the fairness and effectiveness of judicial processes, possibly resulting in uneven results or delays in resolving conflicts.

4.2 JUDICIAL REVIEW IN CORPORATE FRAUD CASES

Judicial review in situations of corporate fraud is an essential tool that guarantees accountability, maintains the rule of law, and safeguards the interests of shareholders, investors, and the general public. company fraud, which involves dishonest or misleading

behavior by company executives, directors, or staff members for personal profit or to manipulate financial markets, presents substantial threats to the honesty and stability of the corporate industry. Judicial review is a process that examines the activities and choices of corporations involved in fraudulent behavior. Its purpose is to hold those responsible for wrongdoing accountable and to provide compensation to the victims of fraud. This article examines the significance of judicial review in situations of corporate fraud, assessing its function, difficulties, and influence on corporate governance and regulatory enforcement.

Judicial review in corporate fraud cases include the scrutiny of company acts and decisions by courts to ascertain their legality, conformity with relevant laws and regulations, and adherence to fiduciary obligations due to shareholders and investors. Courts are essential in resolving accusations of corporate fraud, including accounting discrepancies, substantial misrepresentations, insider trading, or other breaches of securities laws, via civil lawsuits, regulatory enforcement proceedings, or criminal prosecutions. Courts offer various remedies to investors who have been deceived, including financial compensation, orders to stop harmful actions, confiscation of illegally obtained profits, or criminal penalties for those responsible for the fraud. These measures aim to prevent future wrongdoing and enhance investor trust in the equity and honesty of the financial markets.

In addition, judicial review acts as a means of oversight on regulatory organizations responsible for monitoring business behavior and implementing securities legislation. Courts scrutinize the acts and conclusions of regulatory agencies, such as the Securities and Exchange Commission (SEC) or the Department of Justice (DOJ), to verify their adherence to legislative mandates, due process requirements, and constitutional standards. When regulatory agencies take legal action against corporations or individuals for suspected fraud, courts evaluate the adequacy of the evidence, the legality of investigative techniques, and the fairness of the penalties imposed. This ensures that the rights of the defendants are protected and encourages accountability and transparency in regulatory enforcement.

4.3 LANDMARK JUDGEMENTS IN CORPORATE CRIME CASES

SUKESH CHANDRASHEKAR VS STATE OF NCT

Co-artist, Sukesh Chandrasekhar became well-known for his seemingly opulent lifestyle after pulling off a number of con games. The current home minister, Amit Shah, was one of the government figures that Sukesh, a dropout, exploited to con unsuspecting parties out of millions of rupees.¹¹⁵ His name was also associated with the Bollywood actresses Jacqueline Fernandes and Nora Fatehi, whom he showered with expensive cars, designer handbags, and racehorses. Recent sources claim that Sukesh helped “AIADMK deputy general secretary” TTV Dhinakaran obtain a good standing with the electoral commission. The inquiry in case of Sukesh and Dhinakaran's alleged bribing of the electoral commission began in 2017, when they were first taken into custody by the Delhi Police Crime Branch. Sukesh was accused of stealing, while he was incarcerated, at least 200 crore rupees from several gullible people.

THE SECURITIES AND EXCHANGE BOARD OF INDIA VS RAMALINGA RAJU AND OTHERS

The most remarkable method was used to reveal the Satyam incident, which is without a doubt one of the worst accounting scams in our nation. In 2009, B Ramalingam Raju of Satyam Computers acknowledged in a testimony published in the Times of India that he had forged his books. The 14,000 crore fraud, based on Lego Desk, made the bad “recession of 2009” worse. SEBI launched a crackdown on Raju and his friends, accusing them of “financial fraud, insider trading, and other major financial scams. A Lego Desk report states that SEBI sentenced the wrongdoer to pay 3000 crore rupees in 45 days and barred them from the securities markets for 14 years.

¹¹⁵ Geis, Gilbert. *Deterring Corporate Crime, Corporate Responsibility*, (Walters Kluwer publication London 2008)

THE STATE OF WEST BENGAL V. SUDIPTA SEN AND OTHERS

A case study after this fraud was discovered, hundreds of people from lower socioeconomic backgrounds took their own lives. The Saradha Chit Fund, a Ponzi scheme run by Bengali investors, was dubbed "Bonzi". The creator of program, "Sudipto Sen", lured enticed rural investors to participate in the plan by offering huge profits and a dash of religion in the shape of "Sarada Devi," who was the wife of Bengal's most revered saint, Ramakrishna Paramahansa, according to a Trade Brains study. The organization raised an incredible 300 billion rupees from one million investors before collapsing. In addition, some of the most credulous celebrities in the film industry gave the group high-profile endorsements. Sen used the money to support his local football teams, several TV news programs, and local motion pictures. Transferred funds Sen used the money to support his local football teams, several TV news programs, and local motion pictures. Sen generously supported political influencers to stifle the investors' protests. In the process, Saradha created over 200 companies as a means of creating shell companies to deflect SBI's investigation. Sen and his associates faced several consequences, one of which was a securities market suspension imposed by SEBI until all reimbursements were received. Sen fled after confessing to the CBI about his wrongdoings, and several FIRs were thereafter lodged against him.

CM Mamata Banerjee established a 70-million-dollar relief fund for angry low-income depositors, and a SIT started an ongoing probe. As of 2021, Trade Brains reports that Sen possesses 98 outstanding claims.

HARSHAD S. MEHTA VS CENTRAL BUREAU OF INVESTIGATION

The most well-known instance of white-collar crime that has been given is the Harshad Mehta Scam. The movie "Scam 1992" pays tribute to the life and times of Harshad Mehta, the most well-known businessman and stockbroker in Bombay. In Mumbai's trading scene, Mehta was well-known, and there were rumors that he was manipulating stock prices, causing share prices to spike. Lego Desk reports that Mehta allegedly profited little more than 5000 crore rupees through his use of deceit. Thanks to the diligent investigation of renowned financial journalist Sucheta Dalal, the deception was

eventually uncovered. Mehta took advantage of inherent systemic vulnerabilities, making his conduct more immoral than illegal. Following the discovery of this fraud, the SEBI significantly amended market laws and regulations. Mehta's attempts, according to Lego Desk, resulted in panic selling.

THE KETAN PAREKH CASE (2001)¹¹⁶

The securities market was somewhat overly concerned about these brokers and merchant bankers after the infamous Harshad Mehta Scam, and it attempted to find ways for these individuals or groups to be properly controlled and regulated. However, the market was shocked twice when the Ketan Parekh Scam emerged in 2001. Ketan Parekh worked as a chartered accountant. Like his scam predecessor Harshad Mehta, he was so skilled at the markets that he was also given the moniker "Bombay Bull." Using his good connections and conditions, Ketan Parekh created a network of businesses and acquired shares in Satyam Computers, DSQ, Mukta Arts, ABCL, and HFCL, among others. Reviving memories of the Harshad Mehta days, the largest bull on Dalal Street following his demise caused one of the largest erosions of wealth. Even when Ketan Parekh unleashed one of the most insane episodes in Indian financial history and manipulated the market to suit his own ends, his picks still doing well after their master's passing. Ketan Parekh capitalized on the rapidly expanding companies' limited liquidity by rebranding them as K-10 stocks. At a time when the share price was lower, he pledged the shares to banks as collateral security. Shares were pledged as collateral for bank loans during periods of high prices. His strategy was to raise money by issuing bank shares as collateral security. He was under pressure to increase security or return money as the prices fell. Sensitive information was given to the International Bear Cartel in 2000, when he faced significant problems with his K-10 stocks. To gain an advantage over the market, he borrowed about Rs. 1000 crore from Madhavpura Mercantile Bank and another amount of Rs. 250 crore from Global Trusts Bank. After KP's loan providers ran out of money and felt duped, SEBI immediately opened a probe into the stock

¹¹⁶ Friedrichs, D. O. (2010). *Trusted Criminals: white collar crime In Contemporary Society*. Cengage Learning.

market volatility.¹¹⁷ This was the first occasion that the Board as a whole as well as the individual in question were perceived as being overly indolent and uninformed of even the most basic details. The Board's reactive strategy was criticized, and going forward, it was anticipated that the Board will take a slightly more proactive stance. This marked the start of SEBI's actual reforms, which gained a tangible form and structure following two more significant market shocks: the IPO scam in 2005 and the Satyam scandal in 2009. The market has been able to self-regulate thanks to these frauds.

THE IPO DEMAT SCAM (2005)

This particular scam had a greater connection to the Depositories Act of 1996, which had an impact on the market and gave rise to a new angle to frauds that were previously mostly tied to company laws and banking regulations that were incidental to securities laws. Initial Public Offerings (IPOs) were used by YES Bank to enter the Indian market, and many fake demat accounts were opened in order to acquire shares. When SEBI discovered anomalies in these accounts in 2005, it launched an inquiry into the IPO issue. The Board looked into it and discovered that there were irregularities in the IPOs of significant businesses like Jet, Punj Lloyds, IDFC, NTPC, and PVR. Numerous IPOs that were conducted for the purpose of raising stock prices and related items were discovered to be unlawful during the YES Bank investigation. After the Board froze these demat accounts, around 1200 crores were taken out of these falsely locked demat accounts.

SEBI VS SAHARA INDIA REAL ESTATE CORPORATION LTD.

Once one of the most varied corporate houses, India Parivar witnessed a significant downturn in the twenty-first century as a result of its attempts and indulgences in numerous non-profit ventures, as well as its discovery that it had been involved in numerous unfair activities intended to deceive the stakeholders. In the well-known case of Sahara v. SEBI, the regulatory authority of SEBI and the status of hybrid securities

¹¹⁷ Vakul Sharma, Information Technology Law and Practice (Universal Law Publishing Co., New Delhi, 3rd Edition, 2013)

with regard to SEBI laws were at question. Both sides have been involved in a heated regulatory dispute since 2009, when the Sahara Group's operations initially came under SEBI's scrutiny and before Sahara India Parivar founder Subrato Roy was arrested in 2014. SEBI alleged that Sahara India Real Estate Corp Ltd (SIRECL) and Sahara Housing Investment Corp Ltd (SHICL), which issued Optional Fully Convertible Debentures (OFCD), illegally collected investor money. Meanwhile, Sahara denied SEBI had any jurisdiction in the matter.¹¹⁸ SEBI went on to order Sahara to issue a full refund to its investors, which was challenged by Sahara before the Securities Appellate Tribunal (SAT). When the SAT upheld SEBI's order, Sahara moved to the Supreme Court in August 2012, which ordered Sahara to refund investors 'money by depositing it with SEBI. Sahara then declared that most of the US \$3.9 billion had already been repaid to investors, save for a paltry US \$840 million, which it handed over to SEBI. This was disputed by SEBI, which claimed that the details of the investors who were refunded had not been provided. When Sahara failed to deposit the remaining money with SEBI and Subrato Roy skipped his hearing, the Supreme Court of India issued an arrest warrant for the Sahara chief in February 2014. Amid rumors of black money laundering and the misuse of political connections, Sahara vehemently denied all charges and continued to defy SEBI. The regulator persevered through what the Supreme Court 3 referred to as the —ridiculous game of cat and mouse^l and finally managed to pin down Sahara chief Subrata Roy in 2014. In this rare victory, SEBI not only brought Sahara to justice, but also made an excellent case for why the regulator, and others like it, require greater autonomy and penalizing powers

**M/S. SATYAM COMPUTER SERVICES LIMITED VS
DIRECTORATE OF ENFORCEMENT, GOVERNMENT OF
INDIA¹¹⁹**

Satyam Computer Services, one of India's largest IT services companies, was embroiled in a massive corporate fraud scandal. The company's founder and chairman, Ramalinga

¹¹⁸ V.M. Sukhla, Legal Remedies (Eastern Book Company, Lucknow, 8th Edition, 2007).

¹¹⁹ 8 Roy, M. N. Statutory Auditors' independence in corporate accounting Scandals, (Asia Publishing House, New Delhi 5th edn 2020)

Raju, admitted to inflating the company's profits and assets by about \$1 billion. The fraud involved fictitious bank balances and non-existent accrued interest.

The scandal resulted in a loss of investor confidence in Indian IT companies and led to a significant drop in the stock market. Satyam was eventually acquired by Tech Mahindra, and Raju and other involved executives faced legal proceedings.

KINGFISHER AIRLINES LTD VS UNION OF INDIA AND ORS

Kingfisher Airlines, owned by liquor tycoon Vijay Mallya, defaulted on loans and accumulated significant debts¹²⁰ The airline faced financial troubles due to mismanagement, high operating costs, and aggressive expansion plans. Mallya was accused of diverting funds meant for the airline for his personal use.

The airline was grounded, and Mallya left India for the United Kingdom, where he faced extradition proceedings. The case highlighted issues related to corporate governance and the accountability of promoters.

NIRAV MODI-PNB FRAUD (2018)

One of the largest banking frauds in India, involving jeweler Nirav Modi and Punjab National Bank (PNB). Modi and his associates obtained fraudulent letters of undertaking (LoUs) from PNB, allowing them to raise credit from other banks overseas without collateral. The fraud amounted to over \$1 billion.

The case led to increased scrutiny of the banking sector's risk management practices and prompted regulatory changes. Modi was arrested in the UK and faced extradition proceedings.

¹²⁰ Ibid

UNION OF INDIA VS INFRASTRUCTURE LEASING AND FINANCIAL SERVICES LTD. & ORS

Infrastructure Leasing & Financial Services (IL&FS), a major non-banking financial company (NBFC), faced a severe liquidity crisis¹²¹

IL&FS concealed its financial stress and mismanaged funds, leading to defaults on payments to lenders and bondholders.

The crisis had broader implications for the Indian financial sector and raised questions about the oversight of NBFCs. The government took control of IL&FS and initiated a restructuring process.

RANA KAPOOR VS DIRECTORATE OF ENFORCEMENT

Yes Bank, a private sector bank, faced a severe financial crisis. The bank had high levels of non-performing assets (NPAs) and questionable lending practices. Its founder, Rana Kapoor, was arrested and faced allegations of financial irregularities¹²²

The crisis led to concerns about the stability of India's banking sector and raised questions about regulatory oversight. The Reserve Bank of India (RBI) stepped in to rescue the bank and initiated a restructuring process. These case studies illustrate the diversity and complexity of corporate fraud and white-collar crime in India. They also highlight the importance of robust regulatory mechanisms, corporate governance, and transparency to prevent and address such issues in the future.

¹²¹ Hoover, J. Edgar. "Investigation of Fraudulent Bankruptcies by the FBI, (Anmol Publication, New Delhi 3rd edn 2017)

¹²² Ibid

CHAPTER 5

CONCLUSION AND SUGGESTIONS

5.1 CONCLUSION

In summary, corporate fraud and white-collar crime pose a severe danger to the integrity of the financial markets, corporate governance, and public trust. The collaboration of law enforcement agencies and regulators has not resulted in any reduction in the difficulty or expense of prosecuting these actions. Complex financial transactions, jurisdictional issues, and legal intricacies can all hinder investigations and prosecutions. The implementation of accountability and deterrence measures is complicated by the ubiquity of settlement agreements, political influence, and corporate secrecy. A multimodal approach is required to address these issues; this should include enhancing regulatory oversight, promoting transparent business practices, strengthening enforcement mechanisms, and fostering international cooperation.

Furthermore, lowering public awareness and promoting an ethical company culture are essential to lowering corporate fraud and white-collar crime. Governments, businesses, civil society organizations, and individuals must collaborate to advance accountability, integrity, and the rule of law in the corporate sector in order to successfully address these transgressions.

White collar crimes are offenses that negatively impact the nation's economy overall. Economic theft, tax evasion, bank fraud, and other crimes pose a threat to the nation's economy. It has a detrimental effect on society in addition to a nation's or individual's financial situation. Money laundering, corruption, and bribery are just a few of the crimes that have a negative impact on society. Indian laws lack a precise definition for "white collar crime." The government shouldn't treat these socioeconomic crimes lightly. Stricter penalties should be applied to white collar crime since these crimes can be significantly prevented by severe penalties. Life in prison could potentially be the punishment if the offense is very horrible. Most of these crimes go unreported, so raising public awareness through all available channels of communication is equally essential.

Strict laws should be implemented by the government to prevent economic theft of the nation.

India has to cut back on corruption and fraud in the public and commercial sectors if it hopes to keep up its current economic track. Multinational companies are discouraged from investing in the country due to fraud and corruption, as mentioned above. The reduction in foreign direct investment in 2011 and the removal of capital from stock markets by international financial institutions are clear indicators of the detrimental effects of fraud and corruption. As a result, the Indian government needs to strengthen law enforcement and administer harsh punishments to offenders.

The next stages are being outlined by the “Comptroller and Auditor General”; political parties must now summon the guts to tidy up the mess. In order to lower fraud, the private sector needs to prioritize ethics and put fraud prevention mechanisms into place. The two industries need to collaborate in order to reduce the danger of fraud in India. The tactics employed to combat white-collar crime have rationales, and the fuzziness of society's reaction to this type of crime is associated with more general societal variables that contain both objective and subjective elements.

The assumption that there is less public concern about these behaviors when they are referred to as white collar crimes and, consequently, less support for harsh sanctions than in the cases of traditional street crimes, has been suggested as a more subjective source of ambivalence in the social response to "white collar crimes." Even though the public's opinion of white collar crimes is more mixed than that of traditional crimes, writers like Box have seen this as a further barrier to their attempts to inform the public about the significance of not viewing the procedures through which they become victims of crimes as mishaps or tragedies.

Consequently, the driving idea should be that therapy is never superior to prevention. Since the actions involved misleading the public's trust and conviction, everyone should come forward to protect society as a whole from these greedy individuals who are progressively destroying the morals and fundamental qualities of the general public in order to pursue their own narrow personal circumstances.

Large or little, corporate fraud is becoming a common occurrence in today's world. When one looks behind the surface of the corporate world, one finds an almost incredible amount of significant corporate frauds that involve extreme deception. The perpetrators of these frauds weave a complex web of deceit, initially seducing the stakeholders to invest their hard-earned money, and eventually turn into fugitives by allegedly deceiving these stakeholders and leaving them for dire repercussions. In order to minimize financial disasters, it becomes necessary to raise awareness by educating readers about the main reasons behind these frauds and giving them the tools to analyze fraud risk and the legal remedies that are available under various regulatory frameworks for effective fraud prevention. The current manuscript deftly explores the nature of different business scams both domestically and internationally by offering a useful investigation of their less obvious features. It talks about the pertinent laws' provisions and the regulatory agencies that oversee them in order to stop and lessen these kinds of scams. Although there are others who argue that fraudulent and dishonest practices are not the only reason behind the near collapse of large corporations, abuse and misuse undoubtedly played a part. In particular, for individuals who are stakeholders in such corporate entities, Dr. Sanjeev Gupta's explanation of the roots of various corporate frauds and the duty of regulatory organizations in dealing with such abuse is thought-provoking. Those who are committed to maintaining the integrity of corporate procedures to increase the confidence of stakeholders shouldn't overlook the issues addressed in this really important work. The purpose of this manuscript is to act as a guide for professionals in the field. It is divided into ten chapters that cover a range of topics including definitions, methods of operation, corporate frauds both domestically and internationally, incidental legislation and regulatory provisions to combat this threat, statutory bodies that oversee enforcement, the legal system that administers punishments, and policy implications of corporate frauds. These chapters offer the necessary understanding of this intricate phenomena and the legal tactics that are needed to solve it.

The term "corporate crime" refers to behavior that is regulated by law or that is committed by a corporation or its agents. Therefore, corporate crimes are done to benefit corporations or to damage other corporations or individuals. These kinds of crimes are carried out in quiet settings. These are also regarded as common types of white-collar crimes. Nonetheless, corporate crimes differ from typical crimes committed by people in

terms of their illegal behavior. Corporate crimes are actions that are considered socially harmful or guilty and that result in financial, physical, or environmental harm, as well as harm to employees and the broader public. It is thought that learning about how corporations operate leads to criminal action on the part of the corporations. Significant moral and social transformation is also linked to this conduct. It is possible to use illegal methods in an effort to reach objectives or targets. Additionally, there is the neutralization hypothesis, which attempts to justify behavior under the conditions.

Inadequate supervision may also encourage illegal activity. Corporate criminal conduct is also linked to other elements, such as cost-benefit analysis, socioeconomic developments, organizational structure, and the criminal market. Within corporate control, there exists both the criminality of the corporation and the potential for vicariously fixing the liability of the culpable individuals. The definition of law in this instance needs to be clarified.

India continues to rely on identification theories and vicarious liability to interpret the extent of corporate criminal accountability, while the rest of the world has moved on to incorporate corporate fault theories in dealing with the concept of corporate criminal liability. The Indian Courts have noticed that the attribution of the wrong also falls under the person in charge's liability, adhering to the rulings made in the Tesco and Meridian instances through their interpretation of numerous case laws. However, the supreme court recently ruled in the Sunil Bharti Mittal case that, in the absence of a statutory mandate, the director's vicarious liability for a corporation offense cannot be automatically attributed.

5.2 SUGGESTION

Given the widespread danger that corporate fraud and white-collar crime pose, preventative actions can be taken to lessen the impact of these crimes and improve accountability in the business sector. Regulatory bodies ought to prioritize the establishment of strong supervisory methods, including frequent audits, strict reporting requirements, and open disclosure norms. Moreover, it is imperative to fortify

enforcement capacities and sufficiently fund investigative organizations entrusted with detecting and halting fraudulent conduct. Effective cross-border investigations and prosecutions can be aided by the information and intelligence sharing amongst government agencies, law enforcement, and international partners. Stopping dishonest activity also requires establishing a business integrity and ethical behavior culture.

In order to do this, it is crucial to establish a strong tone at the top and demonstrate the value of compliance and moral decision-making through comprehensive training initiatives and whistleblower safeguards. In the end, increasing public knowledge of the consequences of corporate fraud and promoting involvement in this process can empower interested parties to hold corporations accountable for their actions and advocate for reforms that enhance transparency and accountability in the corporate sector. As a team, stakeholders can make these recommendations a reality and collaborate to create a stronger, more secure corporate environment that protects against the negative impacts of white-collar crime and corporate fraud. Company wealth is severely undermined by corporate frauds and scams. Republic of India as a whole has an unwavering interest in stopping and minimizing business scams and frauds. Serving as a freelance administrator on audit committees is one of the best methods to support both annual statutory audits and internal audits. They ought to be fiercely independent. In the end, government pay is ethical and may only be loosely regulated with relation to relevant incentives. Company fraud should have all-encompassing and thorough responses. There are more recommendations made to strengthen corporate governance in the Republic of India. Several of such consist of: A strong fraud workplace should be endowed with statutory powers by the Company Law, and work groups made up of senior officials seconded from the police departments, rhetorical accountants, and company lawyers should form.

Although corporate fraud should be thoroughly examined, it's crucial to remember that an overly restrictive framework may limit the strength and competitiveness of businesses. The ninety-five different law-imperishable firms typically find life difficult due to powerful establishments and harsh, comprehensive paper laws whenever five firms are deemed guilty. Notably, because the other ninety-five enterprises are concerned with their own reputation, they will follow the rules and respect them honestly whether or not such regulations exist. The government can create these non-

interfering regulations in a few different ways. It will consider tax implications for businesses that voluntarily set reasonable pay ceilings.

There exist various elements or causes that contribute to the occurrence of white-collar crime. These include social, political, and economic issues. white collar crime is mostly caused by globalization and liberalization, which is the other issue. Here are a few of them: Such crimes have been made possible by the shifting socioeconomic landscape of society as well as the rise in wealth and success. Among all the variables, the expansion of the global economy and industry may have had the most impact on the rise in white-collar crime in recent years.

An Analytical Study of India's White-Collar Crimes the Law Commission noted in its 29th Report that monopolistic business practices, along with contemporary scientific and technological advancements, have contributed significantly to the rise in white collar crime in India. India's post-independence era brought in a wave of welfare initiatives that called for government regulation to control the means of production and distribution in order to further the interests of the general public. white collar crime typically results from the violation of such regulatory restrictions. Marshal B. Clinard claimed that the competitive business community, which strives to drive out competing competitors in order to generate enormous profits, is the source of the white-collar crime problem. These kinds of crimes can occasionally be performed just to survive in the cutthroat industry. To give an example, even though practicing attorneys are required to adhere to a code of ethics, their profession by its very nature encourages conflict and rivalry, so they frequently use illegal strategies like hiding or distorting the truth—which, if discovered, is illegal. Another example would be the private educational schools in India that accept grants or public help and provide fraudulent information merely to stay in business. Similarly, people in the commercial and industrial classes who are well-regarded in society may conceal their true earnings by providing fictitious information about their income and assets in order to avoid paying high taxes or to claim exemptions from paying taxes. The relatively high socioeconomic position of white-collar criminals is another factor contributing to the proliferation of this type of crime; these individuals are part of a powerful and influential group that can handle the complexities of their line of work with finesse, thus the victims are rarely aware that they are being exploited.

Additionally, there is a general lack of public outrage towards these kinds of crimes, which hinders the investigation and punishment of white-collar criminals. It's a common accusation that judges and criminal law administrators, who belong to higher social classes, have a tendency to be more lenient toward white-collar offenders while interacting with them. However, this statement doesn't seem to have any jurisdiction. It may be argued that the high number of white judges who have acquitted these criminals refutes the claim that there is a line separating immorality from criminality in white collar crimes. White-collar crime has taken on new dimensions thanks to the recent advancements in information technology, especially in the last years of the 20th century. The number of new, computer-dominated white collar crimes, or "cyber crimes," has increased at an unprecedented rate. Thirteen In the new millennium, these crimes have drawn attention from all around the world and presented a challenge to the law enforcement apparatus. Due to the unique nature of these crimes, they can be carried out in secret and from a distance without the victim's personal presence. Cybercriminals also benefit greatly from the fact that they may utilize computer technology to cause harm without worrying about being discovered or apprehended. It has been projected that as the number of new websites on the internet rises, cybercrimes would rise in tandem. Cybercrimes impact a variety of industries, including banking and finance, energy and telecommunications, transportation, and business.

Corporate scams have been common in India, and frauds in the business sector have been widespread. The confidence of stakeholders has been greatly affected by instances of corporate fraud. An act of fraud might include more than just money. Most of the time, it has caused the organization to lose its goodwill, reputation, and other things. In stark contrast to other firms, many multinational corporations have a consistent track record of upholding the law and engaging in ethical business practices. The causes of these variations raise a number of significant problems. In a number of incidents including scams, malpractices, insider trading, price rigging, and other related issues, such as the IPO, PACL, Sahara, Harshad Mehta, Ketan Parekh, Satyam, and Sardha Chit Fund scams, corporate frauds and abuse of position have been observed. The perpetrators of corporate scams are not like other criminals; rather, they are typically extremely perceptive individuals who are able to identify loopholes even more adeptly than the law's authors. A corporate scam begins with identifying the gaps in the current process. The more brilliant, soft-spoken, clever, and intelligent the corporate scammers,

the more serious the corporate crime. They are knowledgeable about the law in the sense that they have not only read and comprehended the governing laws and regulations, but they have also applied their interpretation to the point where they are able to exploit the law to their advantage. Fraud comprises lying, cheating, and stealing and is defined as an intentional deceit or a willful misrepresentation of a material fact. It is the process of forcing someone to act against their own better judgment.

However, when we discuss corporate crimes, frauds, and scams, we are primarily talking about all those financial offenses that damage investors' capital and are typically committed by individuals in positions of actual or perceived authority.

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These materials offer a comprehensive summary of theories, answers, and manifestations pertaining to white-collar crime from a range of disciplines, including law, criminology, economics, and sociology.