

# Redefining the Fight Against White Collar Crime: A Moral and Value-Centric Perspective

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## Abstract

This article delves into the intricate nature of White Collar Crime (hereinafter, WCC for short), a subject challenging to define yet easier to understand from a practical lens. It argues that the crux of the issue lies in the moral and ethical values guiding both individual actions and societal norms. The central thesis is that while legal compliance is essential for maintaining order and administering justice, moral standards have a more profound role in effectively addressing WCC. The paper advocates for an approach that transcends traditional legal solutions, proposing the development of a comprehensive socio-economic culture grounded in elevated moral and value-based principles. This perspective offers a more holistic understanding and strategy in combatting WCC, suggesting that the solution lies not just in legal reforms but in a fundamental shift in societal values and ethics.

**Keywords:** White Collar Crime, WCC, Moral Standards, Ethical Values, Legal Compliance, Socio-Economic Culture, Behavioral Phenomenon]

## Purpose of the article

The purpose of this article, titled "*Redefining the Fight Against White Collar Crime: A Moral and Value-Centric Perspective*," is to explore the complex and multifaceted nature of White Collar Crime (WCC) and propose a moral and value-centric approach to effectively address it. The article argues that while legal compliance is essential, it is the moral and ethical values guiding individual actions and societal norms that play a more profound role in addressing WCC.

The paper delves into the intricacies of defining WCC, acknowledging its broad spectrum and the challenges in encompassing its various manifestations within a strict definition. It highlights the historical evolution of the concept and its expansion from crimes committed by individuals of high social status to a wider range of financial and ethical violations.

A significant portion of the article is dedicated to examining the characteristic features of WCC, including its non-violent nature, indirect harm, and societal impacts. It critically discusses the normalization and societal acceptance of white-collar crimes, emphasizing the need for a shift in societal values and ethics to combat these crimes effectively.

The article also assesses the legal mechanisms in place for dealing with WCC in India, critiquing the existing judicial and enforcement approaches and suggesting improvements. It argues that despite legal measures, the real solution lies in fostering a value-based society that condemns white-collar crimes and glorifies honest behavior.

In conclusion, the article posits that combating white-collar crime is not just a legal challenge but also a cultural imperative. It calls for a multi-pronged approach that includes regulatory reform, enhanced

enforcement, public awareness, and most importantly, a cultural shift towards ethical responsibility and zero tolerance towards WCC.

## Introduction

"The government has coddled, accepted, and ignored white collar crime for too long. It is time the nation woke up and realized that it's not the armed robbers or drug dealers who cause the most economic harm; it's the white collar criminals living in the most expensive homes who have the most impressive resumes who harm us the most. They steal our pensions, bankrupt our companies, and destroy thousands of jobs, ruining countless lives". Harry Markopolos<sup>1</sup>

While the concept of white collar crime (WCC) finds its historical roots in antiquity,<sup>2</sup> it was not until the early 20th century that formal recognition and articulation of this phenomenon emerged. Edward Alsworth Ross, in the year 1907, laid the initial groundwork for the conceptualization of WCC, yet it was the seminal work of Edwin H. Sutherland during the period spanning 1939 to 1940 that not only brought this notion into mainstream discourse but also catalyzed its widespread acceptance and understanding. Thus, the inception and maturation of the concept of white collar crime can be traced back to these pivotal moments in the annals of criminological thought.

## Attempt to define 'WCC'

The initial idea of Sutherland about WCC as 'a crime committed by a person of respectability and high social status in the course of his occupation'<sup>3</sup> and added that white collar crimes are violations of law by persons in the 'upper socio-economic class'. However, the definition has been criticized as too restrictive<sup>4</sup>, and considering it as 'behavior' and 'crime' cannot be agreed upon<sup>5</sup>. Further, with regards to WCC, the criminal violation and civil contravention are blurring boundaries<sup>6</sup>. Even the use of WCC has

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1 See, [https://www.azquotes.com/quotes/topics/white-collar-crime.html#google\\_vignette](https://www.azquotes.com/quotes/topics/white-collar-crime.html#google_vignette) visited on 12.02.2023.

2 Though WCC has been popularized from 1940 on, its traces in history can be evidently observed. Often referred to as the Carrier's case, it was the earliest instance of white-collar crime to be recorded in England in 1473. In this instance, the principal specifically assigned the agent the task of moving wool from one place to another. The agent discovered that some of this wool was missing. Following this case, the English Court established the theory of "breaking the bulk," which states that the person entrusted with the items attempted to open them and steal their contents. The United States government outlawed monopolistic activities in 1890 with the passage of the Sherman Antitrust Act. While other nations passed antitrust or competition legislation, the Sherman Act was far more comprehensive than the punishments meted out to British white-collar criminals. Thus, though WCC has been attributed to Edwin Sutherland, who coined the word, it has its traces back in history.

3 Sutherland, Edwin H., *White Collar Crime: The Uncut Version*, Yale University, 1983.

4 As this definition does not comprehend the many crimes committed outside one's occupation, such as false income tax returns, fraudulent claims for social security benefits, concealing assets in a personal bankruptcy, and the use of large-scale buying credit with no intention or capability to ever pay for purchases, See, for more details, Herbert Edelhertz, *The Nature, Impact, and Prosecution of White-Collar Crime*, National Institute of Law Enforcement and Criminal Justice, U.S. Department of Justice, Law Enforcement Assistance Administration, p. 3.

5 Paul Tappan (1947) believes that a behavior could only be considered a white collar crime if the act was legally defined as a crime and if the offender had been convicted for the offenses. Thus, he rejected Sutherland's belief that a white-collar crime could be a violation of civil or administrative law without being condemned by criminal law. See Lawrence M. Salinger, *Encyclopedia of White Collar and Corporate Crime*, Sage Publications 2005 (Vol. 1), p. vii.

6 The reason for WCC being at the blurring boundaries of crime and civil may vary. Sometimes it is too general in nature and committed at every level of society. At once, it is not even regarded as a crime. E.g., an officer entrusted to invest the corpus in a bank chooses one that secretly serves his interest. Sometimes it seems justified, e.g., prohibiting monopolies or restraints of trade. Sometime out of need, deferring tax payments as a source of operating capital for business, or sometimes because everyone commits in casual ways, such as shading taxes or commercial bribery..

been criticized and advised to be replaced by corporate crime and occupational crime.<sup>7</sup> WCC is also defined as ‘non-violent crime for financial gain committed by means of deception by a person having professional status or specialized technical skills.’<sup>8</sup> However, in the present complex scenario, this definition also fails to cover the entire species of WCC. White collar crime is a widespread pattern of anti-social behavior that is financially or materially motivated and affects personal, business, and governmental transactions at the local, national, and international levels.<sup>9</sup> In India,<sup>10</sup> WCC has been defined by the Law Commission of India in its 29<sup>th</sup> report as:

“White collar crime may be defined approximately as a crime committed by a person of respectability and high social status in the course of his occupation.”<sup>11</sup>

The NCRB<sup>12</sup> in its glossary, defines white-collar crime as including criminal breach of trust, cheating, counterfeiting, corruption, and all other organized economic crimes. This definition also enlists the offenses that are white collar, but it does not provide a satisfactory definition. The National White Collar Crime Center, a non-profit organization in the United States, made another attempt to define white collar crime. This center recognized the dilemma faced over defining white collar crime, and in order to formulate a working definition, a workshop was conducted in 1996 in which state and local law enforcement agencies, state regulatory agencies, and others were represented. After a long debate in which ideas were freely exchanged, the following definition was agreed upon:

“Illegal or unethical acts that violate fiduciary responsibility or public trust are committed by an individual or organization, usually during the course of legitimate occupational activity, by persons of high or respectable social status for personal or organizational gain.”

The problem of defining white collar crime has been characterized as an intellectual nightmare and as a lion’s den from which no tracks return. Some scholars have advocated that the term ‘white collar crime’ should be dismissed because there is no common agreement as to its meaning. They typically begin by taking stock of the myriad definitions of white collar crime, highlighting the seeming contradictions and fuzziness in them, and concluding with the bleak prognosis that such disagreements and contentions found

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<sup>7</sup> Marshall Clinard and Richard Quinney (1973) replaced the term white collar crime with two other classification categories: corporate crime and occupational crime. See Marshall B. Clinard & Richard Quinney, *Criminal Behavior Systems: A Typology*, Holt, Rinehart, and Winston 1973.

<sup>8</sup> The 1981 Dictionary of Criminal Justice Data Terminology, Second Ed., BJ8 NCJ-T6939, 1981, p. 215

<sup>9</sup> Prepared statement of Herbert Edelhertz, Director, Battelle Law & Justice Study Center, Seattle, Wash., Hearings before the Subcommittee on Crime of the Committee on the Judiciary House of Representatives, 95th Congress, Second Session on White Collar Crime, Serial No. 69, p. 5

<sup>10</sup> In India, white collar crimes were first discussed by the Santhanam Committee, which was appointed by the government in 1962–64. This committee was appointed to review the problem of corruption and make suggestions to ensure a speedy trial in cases of bribery, corruption, and misconduct. In the report, the committee attached great importance to the emergence of the concept of white collar crime. See the 1962 Report of the Government of India's Ministry of Home Affairs' Committee on Prevention of Corruption, of which Shri K. Santhanam, M.P., served as chair. Available at [https://cvc.gov.in/sites/default/files/scr\\_rpt\\_cvc.pdf](https://cvc.gov.in/sites/default/files/scr_rpt_cvc.pdf), visited on November 24, 2023.

<sup>11</sup> The Law Commission of India, Twenty Ninth Report on ‘Proposal to Include Certain Social and Economic Offences in the Indian Penal Code (1966)’, at p. 8. See for more details, Goyal Shruti, *White Collar Crime* (Doctoral Thesis submitted to Rajiv Gandhi National Law University Patiala, 2015) Available at: [https://shodhganga.inflibnet.ac.in/bitstream/10603/200019/1/01\\_title.pdf](https://shodhganga.inflibnet.ac.in/bitstream/10603/200019/1/01_title.pdf), visited on December 15, 2023.

<sup>12</sup> National Crime Record Bureau of India. The National Crime Records Bureau (NCRB), is an Indian government agency responsible for collecting and analyzing crime data as defined by the Indian Penal Code (IPC) and Special and Local Laws (SLL).

in the approaches taken to white collar crime take the system down a path leading nowhere.<sup>13</sup> Thus, the issue of addressing white collar crime begins with an attempt to define it precisely and agree on a conceptual understanding. Thus, the varied definition of WCC exposes different features,<sup>14</sup> failing to encompass an inclusive definition. White collar crime is difficult to encompass within strict phraseology, and the precise definition of WCC is long disputed amongst criminologists.

In nutshell, navigating the labyrinth of white-collar crime (WCC) definitions reveals a complex, ever-evolving challenge. Originating from Sutherland's depiction of crimes committed by individuals of high social status, the concept of WCC has expanded to include a diverse range of financial and ethical violations. This ongoing debate isn't just academic wordplay; it significantly influences legal and regulatory practices. As the quest for a universally accepted definition intensifies, understanding WCC's multifaceted nature becomes crucial in effectively tackling its various manifestations.

### Characteristic features of the WCC

However, the distinctive features of WCC can be more precisely and specifically perceived. WCC is the category of socioeconomic crimes affecting the public at large, like smuggling, hoarding, adulteration, illicit trafficking, and the sale of narcotic drugs and psychotropic substances, etc.,<sup>15</sup> generally committed by well-educated and influential persons holding position or power<sup>16</sup> who understood the consequences of their actions. WCC's motivation is not based on impulsive provocations but rather on a thorough understanding of the consequences.<sup>17</sup> It is non-violent in nature, causes indirect harm, remains unnoticed and less visible, and generally impacts individuals indirectly and fractionally, but has a great bearing on a large population. Sometimes, individuals involved in white-collar crime may genuinely believe that their actions are neither legally nor morally reprehensible, under the impression that their use of legal mechanisms to commit the crime absolves them of wrongdoing.<sup>18</sup> Often, the nature of white-collar crime

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<sup>13</sup> The Law Commission of India, Twenty Ninth Report on 'Proposal to Include Certain Social and Economic Offences in the Indian Penal Code (1966)', at p. 12. See the form for more details. Goyal Shruti, White Collar Crime (Doctoral Thesis submitted to Rajiv Gandhi National Law University Patiala, 2015) Available at: [https://shodhganga.inflibnet.ac.in/bitstream/10603/200019/1/01\\_title.pdf](https://shodhganga.inflibnet.ac.in/bitstream/10603/200019/1/01_title.pdf), visited on December 15, 2023.

<sup>14</sup> It has been argued that there exist two divergent views regarding the nature of white collar crime. According to one view, white collar crimes are 'crimes' in real sense whereas the other side raises doubt regarding the criminality of white collar crimes. Those who advocate the non-inclusion of white collar crimes in 'crimes' say that the vast bulk of white-collar legislation is regulatory rather than penal in philosophy, is administrative in procedure, and by its qualifications is directed chiefly toward the business and professional classes of our society. Most of the statutes dealing with white collar violations are administrative in nature. The discretion is vested on the concerned authority to decide whether penal action must be initiated or not. It is studied under the realm of criminology, which is justified because it is in violation of the criminal law. See, Maity Jayshri, White Collar Crime in India and its Effect in the Society : A Critical Study, International Journal of Creative Research Thoughts (IJCRT), Vol. 8, August 2020 pg. 2175, ISSN : 2320-2882. Available at, <https://ijcrt.org/papers/IJCRT2008234.pdf>

<sup>15</sup> See the 155th Report of the Law Commission of India, Submitted July 1997, on the NDPS Act, 1985.

<sup>16</sup> Though initially it was believed that it had been committed by high-ranking professionals and government officials, in modern times it has been observed that it may be committed by even low-ranking clerks too, if they have the opportunity to do so.

<sup>17</sup> Denying bail to the former CEO of Surana Group of Companies in the alleged case of defrauding various banks to the tune of Rs 10,000 crore, the Madras High Court recently observed that white-collar crimes are particularly harmful to society as they are committed by well-educated and influential persons who understood the consequences of their actions. See, [https://www.livelaw.in/news-updates/madras-high-court-white-collar-crimes-not-done-by-sudden-provocation-but-with-deep-understanding-of-its-consequences-212745?infinite\\_scroll=1](https://www.livelaw.in/news-updates/madras-high-court-white-collar-crimes-not-done-by-sudden-provocation-but-with-deep-understanding-of-its-consequences-212745?infinite_scroll=1) visited on 20.12.2023.

<sup>18</sup> For example, the case of portfolio commandeered by the chief minister of Bombay Abdul Rahman Antulay, who through the allocation of essential commodities mainly funded the Pratishtan, a trust run by family and friends, and which included public officials such as Finance Minister Ramrao Adik and High Court Justice Rajaram Bhole. It was dedicated to Indira Gandhi and her mission, who declared herself as 'happy to associate' 'with the Pratibha Pratishtan'. An extraordinary amount of `5.2

(WCC) assimilates into societal norms to such an extent that it garners a form of social acceptance. This cultural assimilation leads to a notable laxity in social attitudes, resulting in minimal restraint or condemnation against such behaviors. White collar crime has increasingly become normalized in contemporary culture, leading to its general acceptance and even glorification, despite the lack of formal condemnation.

Except for regulatory offenses, WCC has taken advantage of loopholes, legal ambiguities<sup>19</sup>, and escapes. They are carefully and meticulously planned and executed. The motivational factor for WCC is gratification, undue advantage, money, or even power<sup>20</sup>. It may also be coupled with a misuse of power and discretion. WCC may gratify criminals, but it adds human suffering to a larger proportion of victims. In addition, in modern days, WCC does not have social sanction and appears to be more organized, equipped with the most modern technology, and committed by organized gangs with a nexus between the politicians, law-enforcing agencies, and offenders indulging directly in such crimes. There is no organized public opinion against such crimes, and such crimes are not isolated from society<sup>21</sup>. WCC leads to private gain at the expense of the public and leads to economic disaster.

### Categories of the WCC

WCC may have several species, including counterfeiting<sup>22</sup>, forgery<sup>23</sup>, fraud<sup>24</sup>, embezzlement, regulatory offenses<sup>25</sup>, and anti-trust violations<sup>26</sup>. Accounting fraud, insider trading, and embezzlement became easier to pull off as financial systems became more intricate. White collar crimes include things like food adulteration, hoarding, black marketing, trademark and copyright infringement by industrialists, misleading advertising, and so on. Additional research along these lines demonstrated the devastating effects of white-collar crime. Competition, capitalism, and an economy based on resource management and the freedom to earn money in an open market and highly competitive world.

Broadly, the WCC may be categorized on a broad spectrum as follows:

Categories of the WCC	Examples	Victim
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crore was collected for the Pratishtan and ‘Antulay tax’ (collection from farmers of a levy of `2.50 per tonne of sugarcane as donation) helped along. Antulay had strong argument that he had done nothing legally or morally wrong and the law was misused against him by his political opponents since all the donations were made by cheque. See for more discussion, Baxi Upendra, Systemic Governance Corruption : The Dialectics of Law and Nonviolent Social Movements in Contemporary India (Chap 3); Discourses on Corruption : Interdisciplinary and Intercultural Perspectives, Kalpana Kannabiran, Bettina Hollstein and Florian Hoffmann (eds.), Ed. 2022 pp.40-65 Series: Politics and Society in India and the Global South. Available at URL: [https://perspectivia.net/publikationen/psigs/kannabiran\\_corruption/baxi\\_systemic](https://perspectivia.net/publikationen/psigs/kannabiran_corruption/baxi_systemic) Year of Publication on [perspectivia.net](http://perspectivia.net): 2022.

19 For example, tax avoidance. Generally, delay tactics adopted by government officials also fall into this category.

20 Defined by S. 2(d) under the Prevention of Corruption Act, 1988 (Act No. 49 of 1988),

21 Shaukath Ali @ vs. State of Madras CrI.A.(MD)Nos.143, 174, 219 of 2018 and 309 of 2020 and CrI.MP(MD)Nos.891, 6311 and 5114 of 2020.

22 The manufacture or attempted manufacture of a copy or imitation of a negotiable instrument with a value set by law or conventions.

23 The alteration of another person's writing is the creation of work that falsely claims to be their own or to have taken place at a different time or location than it actually did.

24 The intentional misrepresentation of fact to unlawfully deprive a person of his or her property or legal rights.

25 The violation of rules, regulations, and laws. See Dictionary of Criminal Justice Data Terminology, 2nd Edition, BJS, NCJ-76939, 1981.

26 Antitrust violations occur when an antitrust law is broken, protecting trade and commerce from abusive practices such as price-fixing, restraints, price discrimination, and monopolization.

Regulatory offenses and ad hoc violations. Committed for one's personal benefit on an episodic basis.	A crime committed by a person operating on an individual, ad hoc basis, for personal gain in a non-business context	Tax fraud, welfare fraud	Local, state, or central government
Abuses of trust committed by a fiduciary or trusted agent	Crimes committed in the course of their occupations by those operating inside business, government, or other establishments, or in a professional capacity, in violation of their duty of loyalty and fidelity to their employer	Embezzlement, bribe,	Individuals, businesses, or governments are all victims of such crimes.
Collateral Business Crimes, Committed by Businesses in Furtherance to Their Primary Purposes	Crime incidental to the furtherance of business operations but not the central purpose of such business operations	Anti-trust violations, bribery of customers, use of false weights and measures, sales misrepresentations.	The victims would be the public and the government.
Con games, charity frauds, land sale frauds, the sale of worthless securities, or business opportunities	WCC as a business, or as the central activity of the business	Committed by agents and government officers	General public, those least in position to afford losses
Administrative offenses, committed by the government or municipality	Crime committed while holding position and power and misuse of the same	Sanitation, licensing, and tenant maintenance	The general public is entitled to better municipal services.

Source<sup>27</sup>

### Causative factors for the WCC

There are several factors responsible for boosting the WCC. The advance of technological and scientific development is contributing to the emergence of amass society', with a large rank and file and a small controlling elite, encouraging the growth of monopolies, the rise of a managerial class, and intricate institutional mechanisms<sup>28</sup>. Industrial and commercial growth shows proportionate growth in WCC<sup>29</sup>.

27 Quoted and tabulated from the prepared statement of Herbert Edelhertz, Director, Battelle Law & Justice Study Center, Seattle, Wash., Hearings before the Subcommittee on Crime of the Committee on the Judiciary House of Representatives, 95th Congress, Second Session on White Collar Crime, Serial No. 69, pg. 5

28 Refer to the 1962 Report of the Government of India's Ministry of Home Affairs' Committee on Prevention of Corruption, of which Shri K. Santhanam, M.P., served as chairman. Pg. 21. Available at [https://cvc.gov.in/sites/default/files/scr\\_rpt\\_cvc.pdf](https://cvc.gov.in/sites/default/files/scr_rpt_cvc.pdf), visited on December 24, 2023.

29 There is a recognized correlation between industrial and commercial growth and the occurrence of white-collar crime. White-collar crime typically involves financially motivated, nonviolent offenses committed by individuals, businesses, or government professionals. These crimes can include fraud, embezzlement, insider trading, bribery, and other forms of corruption. The reason for such proportional growth may be due to opportunities and motivation for personal gain, complex business practices involving intricate financial structures, regulatory challenges, the role of government and its withdrawal from main market functionaries, pressure to meet targets, and globalization that helps to evolve the international economic structure.

The Industrial Revolution marked a significant shift from agrarian and craft-based economies to industrial and manufacturing ones. This shift led to the concentration of wealth and power in the hands of industrialists and business magnates. Thus, the development of advanced industrial and economic systems has occurred along with the escalation of white-collar crimes. There is some connection between the creation and redistribution of money and the commission of white-collar crimes. The relationship between the development of industrial and economic systems and the occurrence of white-collar crimes is complex and multifaceted. The growth of industrial and commercial activities that provide fertile land for WCC marked it as a need, justified by widespread generalization. Further, legal technicality, leniency of investigating agencies, passive approach of victims, resourceful criminals, low conviction rates, lack of strict adherence to high standards of ethical behavior, and lack of Confucius culture<sup>30</sup> are supporting factors for WCC.

Despite this, the impact of WCC cannot only be calculated in terms of monetary losses to the economy or society.<sup>31</sup> Though, according to the majority of specialists, the monetary toll of white-collar crime is far higher than that of blue-collar crime, such as working conditions that are not safe for employees, goods that are not safe for consumers, and community pollution, which has a greater and longer-lasting impact. According to sociologists, in addition to monetary loss, white-collar crimes have a disproportionately negative impact on society because they are perpetrated by individuals in positions of authority who are supposed to be role models for responsible behavior. Although there have been few empirical investigations to back up the prevalent view held in government reports and professional papers, the public does not consider white-collar crime as significant. Alternatively, the public tends to view white-collar crimes, such as embezzlement and those that cause bodily harm or death, as very severe, according to the majority of studies on the topic of perceived crime seriousness. Furthermore, criminologists have not done a lot of research on the harm that white-collar crimes cause to institutions and societal morality. Speaking about the danger of the WCC, the Santhanam Committee rightly observed<sup>32</sup>.

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However, it is crucial to note that, while there's a correlation, economic growth itself doesn't directly cause white-collar crime. Rather, it creates an environment with certain conditions that can be exploited. Additionally, governments and international organizations work to modify laws, enhance enforcement, and increase public awareness in order to lessen the risks associated with white-collar crime.

30 The core tenet of Confucianism is the notion of "cosmic harmony," which states that an individual's moral conduct has an effect on their immediate environment. The emperor's rule will be benign and tranquil if he is morally high and helps to percolate such behavior amongst his subjects. An intriguing study on Confucian culture's influence on people revealed that elites in three spheres of Japanese society—education, the workplace (including labor-management relations and industrial organizations), and the function and mindset of the government bureaucracy—purposefully used these values to boost the country's economy. These values also often showed how people felt about their own morals. Moreover, although it is difficult to measure precisely how much such values impacted the course of modern Japanese development, it is clear that they did have an effect, both positive and negative. Such values and their expression in institutions have also been subtly transformed over time to meet the changing needs of Japan's developing economic and social environment, with the result that, in many ways, they are now better termed "post-Confucian." Yet, at the same time, there is a continuing emphasis on the central values of "respect for learning," "social harmony," "loyalty," and "familism. See Gregory K. Ornatowski, Confucian ethics and economic development: A study of the adaptation of Confucian values to modern Japanese economic ideology and institutions, *The Journal of Socio-Economics*, Volume 25, Issue 5, 1996, p. 571. Available at: [https://doi.org/10.1016/S1053-5357\(96\)90018-9](https://doi.org/10.1016/S1053-5357(96)90018-9), visited on June 22, 2023.

31 Transparency International World Corruption Perception Ranking Report 2022 which ranks India as 85th among 180 countries with 40 points reflect the pathetic scenario of country. See, <https://www.transparency.org/en/cpi/2022>. This is to be noted down that Report speaks about the perception, still an aspect of folklore and not the reality.

32 Refer to the Report of the Committee on Prevention of Corruption, presided over by Shri K. Santhanam, M.P., and established by the Government of India, Ministry of Home Affairs, in 1962. Pg. 21. Available at [https://cvc.gov.in/sites/default/files/scr\\_rpt\\_cvc.pdf](https://cvc.gov.in/sites/default/files/scr_rpt_cvc.pdf), visited on November 24, 2023.

This type of crime (WCC) is more dangerous not only because the financial stakes are higher but also because it causes irreparable damage to public morals. White-collar crimes include not paying taxes or avoiding taxes, selling shares, manipulating the stock market and running a business, tax evasion and avoidance, usury, under- or over-invoicing, hoarding, making a profit, not following through on construction and supply contracts as agreed, breaking economic laws, bribery and corruption, election crimes, and malpractices.

Thus, the WCC has far-reaching consequences that affect public trust and economic stability, in addition to the monetary losses. White-collar crimes like corporate fraud and embezzlement can cause it, which causes a decline in the economy that is characterized by a lack of investment, decreased consumer confidence, and the loss of jobs. Companies that get caught up in white-collar crime scandals end up spending a ton of money on legal expenses and fines, which eats away at their capital that could be better spent on development and innovation. Furthermore, prospective investors and consumers may be scared away by the enduring harm to the company's reputation, which might impede its growth. In addition, the WCC might disproportionately affect small enterprises because they lack strong security measures. Local communities may see employment losses and business closures as a result of incidents such as internet fraud and identity theft.

As a result of diverting funds from public services, white-collar crimes deepen existing social inequities. Public services like schools, hospitals, and welfare programs take a financial hit when businesses engage in tax avoidance or fraud. This has a disproportionate effect on marginalized groups, making it harder for them to get the help they need. The proliferation of online shopping and the interconnection of the world's financial systems mean that white-collar crimes may affect economies all around the world. When one country's financial system collapses, it may destabilize economies all around the globe.

The essence of white-collar crime lies not in the act, but in the values that permitted it. With the advent of new methods and techniques, people now have more freedom and room to maneuver, and they can even find ways to avoid legal provisions altogether, allowing them to amass wealth and power. As a result, it was thought that engaging in immoral and unethical behavior would be safe so long as one could avoid legal consequences. Consequently, a lack of shared social ideals and attitudes and the emergence of materialism, competitiveness, and the rationalization of illegal acts characterize the post-war era's later half. On top of that, the ability to manipulate formal punishments and appeal to prospects makes up an ideal criminal opportunity framework. In a more detailed way, Coleman stated that white collar crimes are prevalent in society and promote a culture of competition, an organization that is financially pressured, an occupation with high financial opportunities, and a subculture that directly or indirectly promotes or encourages illegality<sup>33</sup>. While commenting on this aspect, the Law Commission, in its 29<sup>th</sup> report, narrated,

In recent times, the problem of white-collar crime has received considerable attention. 'White Collar Crime' has been defined approximately as a crime committed by a person of respectability and high social status in the course of his occupation<sup>34</sup>. The emphasis is on the connection with occupation. The office, calling, profession, or vocation of the individual involved facilitates the commission of a crime in this

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33 See UK Essays. (November 2018). An Introduction to White Collar Crimes Criminology Essay. Retrieved from <https://www.ukessays.com/essays/criminology/an-introduction-to-white-collar-crimes-criminology-essay.php?vref=> . Visited on November 14, 2023.

34 See Sutherland, White-Collar Crime (1949), p. 9. See also Sutherland and Cressey, Principles of Criminology (1960), p. 40. Quoted from Law Commission Report No. 29, pg. 5.

category. White-collar crimes, thus, exclude crimes like murder, adultery, and intoxication, even if committed by people of the upper class, since these have nothing to do with their occupation<sup>35</sup>.

Thus, the modern era of economic development and progress has become a boom for the spread of white collar crime across the globe. The emergence of a materialistic mentality and a money-making approach further makes departure from a value-based society easier.

In the early thought pattern of criminologists, it has been believed that the criminal justice system focuses more on the offender when determining sentences and punishment than the crime and the victims. White collar criminals are more often subjected to fines and community service rather than prison sentences like most violent criminals. White collar criminals are non-violent and therefore not considered a threat to society, but this view is naive. White collar crime is of much greater cost to society. The costliest crimes are not committed in the streets but in the polished offices of the unscrupulously powerful. It occurs on a larger scale, and offenders are not always deterred by fines and community service<sup>36</sup>. This makes white collar criminality more dangerous and has a more destructive effect on the structural and welfare patterns of civilized society.

There are growing indications that the category of crime generally referred to as "white collar crime" is a major problem across the world today, as it affects millions of people indirectly<sup>37</sup>. Recently, increasing tension has been directed toward the problems of white collar crime in terms of governmental interest in better welfare governance, attempts by state agencies to improve enforcement efforts, and research efforts by various private and public groups.

### **WCC – Detection mechanism**

However, the million-dollar question regarding WCC is its detection and prevention. Though WCC crime is complex and difficult to define, it is just as important to take measures to identify possible dangers so that society can protect itself from these crimes.

Primarily, WCC can be detected and surfaced by:

#### **1. Individual complaints: Individual complaints are the primary method of detecting WCC.**

Individual complaints can play a role in detecting white-collar crimes, but they are typically just one part of a broader system of detection and enforcement. White-collar crimes, which often involve financial schemes, fraud, and other non-violent offenses committed by individuals or corporations, can be challenging to uncover due to their complex nature. In cases where white-collar crimes affect consumers, such as in cases of financial fraud or deceptive business practices, individual complaints from affected consumers can trigger investigations.

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35 See Law Commission Report No. 29 on 'Proposal to Include Certain Social and Economic Offences in the Indian Penal Code, 1960, pg. 5.

36 Katie A. Fredericks, Rima E. McComas, and Georgie Ann Weatherby, White collar crime: recidivism, deterrence, and social impact, published in Forensic Research & Criminology International Journal, Volume 2, Issue 1, 2016, p. 5. Available at: <https://medcraveonline.com/FRCIJ/FRCIJ-02-00039.pdf>, visited on November 12, 2023.

37 Indirectly affecting the people in the present context means white collar crime is peculiar because it does not directly affect the victims as in the case of traditional crime. The traditional crime or street crime, as it was known earlier, affects the victim, and victims are directly known to the culprit. But in cases of corruption, dacoit, and money laundering, the victims are indirectly affected and, therefore, may not consider the white collar crime more serious. But in sum, the impact of white collar crime on society is more costly than traditional crime, and it has a long-lasting effect. Thus, the faulty road construction may cost the lives of passengers and travelers, and the faulty construction of the dam may cause a flood and cost thousands of people. Therefore, the potential threat of white collar criminality is greater than that of traditional criminality.

2. **Investigations and regular vigilance:** Conducting an audit inspection of an office can indeed be a valuable tool in detecting and preventing white-collar crime. White-collar crime typically involves non-violent, financially motivated offenses committed by individuals, businesses, or government professionals. Here are ways in which audit inspections can contribute to the identification and prevention of white-collar crime. Apart from bringing financial transparency, audits and inspections provide a thorough examination of financial records, transactions, and processes. This transparency can reveal discrepancies, irregularities, or fraudulent activities that may be indicative of white-collar crime.
3. **Regular and close surveillance :** Regular and close surveillance of unusual activities within businesses and government institutions can also reveal the indulgence and occurrence of WCC. Boosting your lifestyle and affording costly and expensive articles may be catchy symbols. Regular disclosure of assets and surveillance may result in detecting the behavior of people involved in WCC.
4. **Whistleblower:** Individuals within an organization or those with knowledge of certain activities may file complaints or act as whistleblowers. Whistleblower reports can provide valuable information about fraudulent activities, corruption, or other unethical practices.
5. **Training, awareness, and education** An essential first step is to educate staff about the subtleties of white-collar crimes and prevalent fraud strategies. Employees are the first line of defense against internal crimes since they are trained to identify possible dangers. Sometimes, individuals may become aware of potential white-collar crimes through media reports, investigative journalism, or other public awareness efforts. This awareness can lead to individuals coming forward with additional information or complaints.
6. **Promoting a vigilant culture:** Programs for Reporting Concerns: Organizations may encourage stakeholders and workers to report suspicious or unethical behavior by establishing strong whistleblower programs. A vital tool in identifying internal white-collar offenses, whistleblower anonymity assures a secure atmosphere for reporting.
7. **Tip Lines and Hotlines:** Many law enforcement agencies and regulatory bodies have established tip lines or hotlines where individuals can report suspicions or provide information about potential white-collar crimes. These systems are designed to encourage the public to come forward with relevant information.
8. **Regulatory compliances:** sometimes regulatory compliances may also help to detect the WCC. It is critical to keep abreast of emerging regulatory activity and compliance requirements in order to ensure regulatory compliance. Not only does compliance reduce the likelihood of legal trouble, but it also promotes a culture of responsibility, which is effective against fraud from inside and outside the company.

In the fight against white-collar crime, the greatest weapon is not just the gavel of justice, but the compass of moral integrity.<sup>38</sup> It is argued that moral and ethical degradation are at the root of the WCC. It has been

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<sup>38</sup> In this regards, the approach of Lon Fuller is appeared to be more confined and practical. Author endorse to adopt this approach as prefunded by Lon Fuller, a renowned legal philosopher, who had placed a significant moral emphasis on the definition and understanding of law in his jurisprudential framework. Fuller's ideas were most notably expounded upon in his work "The Morality of Law," where he articulated several key principles that underscored his moral perspective on law. Therefore, this article, does not only relied to emphasised the legal tools to be used to repress the harm, but also the moral approach which may help to wash out the criminality from within.

One of the central themes in Fuller's moral approach to law was the concept of "the inner morality of law." He argued that for a legal system to be legitimate and just, it must meet certain moral criteria. These criteria include clarity, generality, consistency,

claimed that although our society has progressed economically and socially, it has not improved our value-based culture and white-collar crime has grown alongside it. Therefore, morality has clearly separated itself from law as a result of contemporary progress, and the focus of social consciousness has shifted to the observance of law without or with morals stripped away. Evidently, there has been a slow but steady decline in the ethical standards and corruption-free atmosphere that have been essential to the meteoric rise of businesses, industries, and government institutions. Eventually, when morality is traded for profit, white-collar crime becomes society's hidden tax. To illustrate this point, let's look at Japan as an example. Despite their incredible economic progress, the country's culture, which was based on Confucian principles, has also declined<sup>39</sup>. Crimes involving money and white-collar work flourished because no one could see the magnitude of this need. These atrocities are not carried out by lone criminals or small groups acting alone, but rather, to use a crude and unfinished expression, organized power structures are mostly to blame. The two world wars had a significant impact on the rise of white-collar crime because the shortages and soaring demands of war drastically altered conventional norms and ethical constraints<sup>40</sup>. The sum total of these capitalistic progresses devoid of moral and ethical principles hurled the entire economic world into profit-making, lusty, greedy mindsets where social values have lost their way in the desert. Thus, at present, one can easily conclude that the scenario is to earn money and make a profit by any means. This led to a fertile environment for the boosting of white collar crime. Thus, despite the original description that white collar crime is the business of the elite and wealthy class of society, today, even the clerk in the revenue office can be involved in white collar criminality. The magnitude of the percolation of white collar crime has gravitated up to this level.

Like other countries, India has also shown concern about dealing with the WCC. Several committees had been constituted to that effect<sup>41</sup>.

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and the avoidance of retroactivity. In other words, Fuller believed that laws should be clear and understandable, applicable to all citizens equally, consistent over time, and not applied retroactively to punish individuals for actions that were legal when committed. This emphasis on the inner morality of law reflects Fuller's conviction that law should serve as a means to promote justice and fairness in society.

Furthermore, Fuller introduced the concept of the "principle of legality," which holds that individuals should be able to know in advance what the law requires of them and what the potential consequences of their actions may be. This principle aligns with the moral idea that people should have the opportunity to conform their conduct to the law and avoid unknowingly violating it, reinforcing the idea that law should be transparent and just.

39 The use of such Confucian values is examined in terms of their appearance in three different areas of Japanese social life: education, the workplace (including both labor-management relations and industrial organizations), and the role and attitudes of the government bureaucracy. Elites used these values consciously to promote economic development, but they also frequently reflected their own personal ethical values. Moreover, although it is difficult to measure precisely how much such values impacted the course of modern Japanese development, it is clear that they did have an effect, both positive and negative. Such values and their expression in institutions have also been subtly transformed over time to meet the changing needs of Japan's developing economic and social environment, with the result that, in many ways, they are now better termed "post-Confucian." Yet, at the same time, there is a continuing emphasis on the central values of "respect for learning," "social harmony," "loyalty," and "families. See Gregory K. Ornatowski, Confucian ethics and economic development: A study of the adaptation of Confucian values to modern Japanese economic ideology and institutions, *The Journal of Socio-Economics*, Volume 25, Issue 5, 1996, p. 571. Available at: [https://doi.org/10.1016/S1053-5357\(96\)90018-9](https://doi.org/10.1016/S1053-5357(96)90018-9), visited on June 22, 2020.

40 See you for more discussion, Goyal Shruti, White Collar Crime (Doctoral thesis submitted to Rajiv Gandhi National Law University Patiala, 2015) Available at: [https://shodhganga.inflibnet.ac.in/bitstream/10603/200019/1/01\\_title.pdf](https://shodhganga.inflibnet.ac.in/bitstream/10603/200019/1/01_title.pdf), visited on December 15, 2019.

41 To name a few, the Government of India, Ministry of Home Affairs, established the Shri K. Santhanam M.P.-led Santhanam Committee in 1962 to report on the prevention of corruption. Available at [https://cvc.gov.in/sites/default/files/scr\\_rpt\\_cvc.pdf](https://cvc.gov.in/sites/default/files/scr_rpt_cvc.pdf), visited on November 24, 2023; In 1966, the Law Commission of India, in its twenty-ninth report, discussed 'Proposal to include Certain Social and Economic Offences in the Indian Penal Code.; The Report on the Commission of Inquiry on the Administration of Dalmia Jain Companies, 1963; The Report on L.I.C. Mundra Affairs; Das Commission Report, 1964; 47th

## Legal Mechanism to Deal with WCC

The Indian Penal Code, 1860 (IPC), and the Indian Contract Act, 1872, are two examples of laws that deal with fraud. Offenders convicted of white-collar crimes, such as fraud or criminal breach of trust, are subject to the provisions outlined in the Indian Penal Code (IPC). Besides a few provisions of the IPC and other laws that can impose punishments for white-collar crimes as well, PMLA<sup>42</sup>, POCA<sup>43</sup>, and CA<sup>44</sup> are the main pieces of legislation. Indian courts are constantly building on the jurisprudence that has developed from these enactments, which have been modified on a regular basis.

While POCA primarily focuses on the corruption of public servants and prohibits "promise" or "accept" any "undue advantage"<sup>45</sup> in exchange for dishonesty or improper performance of a public function, public officials are the main beneficiaries of POCA. Any citizen who works for the government and receives compensation to do official business is considered a public servant. The Supreme Court of India included trustees of charity trusts established to manage these institutions, along with employees of private banks and deemed universities, in the definition of "public officials"<sup>46</sup>. The Supreme Court has expanded the scope of the POCA to encompass private hospital employees, physicians, and private or deemed university employees<sup>47</sup> as well. The Prevention of Corruption (Amendment) Act, 2018, has expanded the scope of POCA and made businesses formally subject to the act.<sup>48</sup> The POCA makes it a crime for corporations to bribe individuals or other entities through intermediaries.

The prime object of PMLA is to ensure that no money is laundered. Stop the flow of funds into criminal enterprises and other economic crimes. Make provisions for the seizure of assets acquired through or utilized in the commission of money laundering. Those who commit crimes related to money laundering should be punished. It gives the government the power to take everything that comes from illicit profits. It further defines the process for adjudication of crimes involving money laundering, to ban and penalize money laundering, to regulate the freezing or seizure of illicitly obtained wealth, and to do more.

The Companies Act, 2013, (CA) is the principal statute in India that regulates corporations and corporate fraud and gives the Serious Fraud Investigation Officer (SFIO) the authority to look into claims of fraud involving corporations and their officials. It mandated the reporting of fraud to the government within a stipulated time period<sup>49</sup>. Any effort by a person to obtain an unfair advantage over the company's interests

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Law Commission Report; Committee on Reforms of Criminal Justice System Government of India, Ministry of Home Affairs, headed by Dr. Justice V.s. Malimath, 2003; at all.

42 Prevention of Money Laundering Act, 2002.

43 Prevention of Corruption Act, 1988.

44 The Company Act, 2013

45 The phrase "undue advantage" encompasses all types of bribes, including gifts, favors, and any kind of corrupt "quid pro quo," according to the POCA. This includes bribes in the form of cash or monetary equivalents.

46 CBI v. Ramesh Gelli (2016), 3 SCC 788. The Supreme Court ruled that officers of a private bank, specifically its chairman, directors, and other officers, are 'public servants' who can be prosecuted under the Prevention of Corruption Act, 1988.

47 The Supreme Court gave a broad interpretation of "public servants" covered by the PC Act, including "university," in the case of State of Gujarat v. Mansukhbhai Kanjibhai Shah 2020 SCC OnLine SC 412. This case was about more corruption claims against a private person in the context of a deemed university.

48 According to Report of NCRB 2022, there is increase in crime under the POCA. A total of 4,139 cases have been registered in 2022 by State Anti-Corruption Bureaux (ACBs) as compared to 3,745 cases in 2021, showing an increase of 10.5% Out 4,139 Cases, majority, i.e., 69.7% were Trap Cases (2,883 cases) followed by 13.2 % of Criminal Misconduct (547 Cases). A total of 4,993 persons were arrested, 852 persons were convicted and departmental action was taken against 445 persons. See, Table 8C of the report.

49 S. 143 of the CA mandates internal auditors to report fraud to the central government within the prescribed time frame in certain situations, such as where the fraud involves an amount of at least 10 million rupees.

is considered fraud under the Companies Act<sup>50</sup>. The Companies Act, 2013 prescribes punishment for fraud<sup>51</sup>, punishment for false statements<sup>52</sup>, punishment for furnishing false evidence<sup>53</sup>, and also strengthens punishment for repetition<sup>54</sup>.

Since 2021, the Ministry of Corporate Affairs has implemented more stringent financial reporting standards through the Companies (Auditor's Report) Order, 2020 (CARO). These standards include increased transparency in financial reporting, expanded protections for whistleblowers, and the requirement that auditors disclose more information. Any whistleblower concerns received by the corporation during the audited year must now be considered by the auditor, according to the CARO. Along with reporting any instances of fraud discovered or reported by the company or by the company itself throughout the year, auditors are also obligated to disclose if any fraud, other than that perpetrated by company officials or employees, has occurred.

The CARO has also imposed disclosure requirements on statutory auditors, who must disclose any fraudulent transactions or conduct in their audit reports. These disclosure obligations, however, are only mandatory in cases where the statutory auditor is the first to discover the fraud in question while performing their duty<sup>55</sup>. According to the 'Guidance Note'<sup>56</sup>, in order to determine if fraud has occurred, the auditor must apply their professional judgment. They must also examine the measures taken by the management of the firm to either disclose or reduce the impact of the fraud. Also, the government of India has hinted that it plans to change the Companies Act such that statutory auditors can't help customers with anything other than audits. Further, S. 134(5) of the CA provides that the director's responsibility statement must reveal, in accordance with, the steps taken by the firm to prevent fraud. In order to identify instances of fraud or other abnormalities, directors must vouch for their diligent efforts to keep correct financial records. As an added precaution against fraud and other irregularities, directors of publicly traded corporations must detail the company's internal financial controls and attest to their sufficiency and effectiveness.

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<sup>50</sup> See S. 447 of the Companies Act, 2013 for an explanation.

"Fraud" in relation to the affairs of a company or any body corporate includes any act, omission, concealment of any fact, or abuse of position committed by any person or any other person with the connivance in any manner, with the intent to deceive, to gain undue advantage from, or to injure the interests of, the company, its shareholders, its creditors, or any other person, whether or not there is any wrongful gain or wrongful loss; "Wrongful gain" means the gain by unlawful means of property to which the person gaining is not legally entitled; "Wrongful loss" means the loss by unlawful means of property to which the person losing is legally entitled.

<sup>51</sup> S. 447 of the Companies Act, 2013. (as amended in 2018) provides punishment for fraud: a person shall be imprisoned for a period not less than 6 months, which may extend to 10 years. And they may also be subjected to a fine.

<sup>52</sup> S. 448 of the Companies Act, 2013. (as amended in 2018) provided that if a person deliberately makes a false statement, knowing it to be false, or deliberately omits any material fact, knowing it to be material, he would be held liable for his wrongful act. This false statement can be made either through a return, report, certificate, financial statement, prospectus, statement, or any other documents required for the purpose mentioned under this Act or any rules made under it.

<sup>53</sup> S. 449 of the Companies Act, 2013 provides for punishment for furnishing false evidence.

<sup>54</sup> See S. 451 of the Companies Act, 2013. (As amended in 2018)

<sup>55</sup> See, for more details, the 'Guidance Note on Reporting on Fraud under S. 143(12) of the Companies Act, 2013' published in 2016 by the Institute of Chartered Accountants of India. Available at: <https://icai-cds.org/ICAIShop/resources/productImages/Guidance>

%20Note%20on%20Reporting%20on%20Fraud%20under%20Section%20143(12)%20of%20the%20Companies%20Act,%202013%20(Revised,%202016)%20Pubn%2019.pdf visited on 23.12.2023.

<sup>56</sup> See the 'Guidance Note on Reporting on Fraud under S. 143(12) of the Companies Act, 2013' published in 2016 by the Institute of Chartered Accountants of India. Available at: <https://icai-cds.org/ICAIShop/resources/productImages/Guidance>  
%20Note%20on%20Reporting%20on%20Fraud%20under%20Section%20143(12)%20of%20the%20Companies%20Act,%202013%20(Revised,%202016)%20Pubn%2019.pdf visited on 23.12.2023.

Listed firms are also required to have a compliance certification that is presented to the board of directors by the chief executive officer and chief financial officer. Under the SEBI Rules<sup>57</sup>, directors are obligated to inform the auditors and audit committees of any fraud involving the company's financial reporting system if the offender possesses substantial control over it. Furthermore, within a 24-hour window, the listed entity must notify stock exchanges of any fraud involving a promoter, key managerial person, or arrest related to fraud. If the fraud is deemed a material event, the entity must also disclose any information regarding fraud committed by directors or employees.

There are also a number of other laws and ordinances that govern financial crimes. These include the Lokpal and Lokayuktas Act of 2013,<sup>58</sup> the Central Vigilance Commission Act of 2003<sup>59</sup>, the Prohibition of Benami Property Transaction Act of 1988<sup>60</sup>, the Fugitive Economic Offenders Act of 2018<sup>61</sup>, and the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act of 2015<sup>62</sup>. The Fugitive Economic Offenders Act, 2018<sup>63</sup>, International laws, such as the UK Bribery Act (UKBA)<sup>64</sup> and the US Foreign Corrupt Practices Act (FCPA), may have extraterritorial effect over companies based in India that also have activities abroad.

However, a cursory glance of statistics available shows that entire legal mechanism to curb WCC only leads to trap only 'small fishes'. In the sphere of WCC, a noteworthy observation emerges, delineating a disconcerting pattern wherein the reporting of enforcement outcomes manifests a significant discrepancy. This discrepancy is characterized by the apprehension of lower-level participants, often referred to as "small fishes," juxtaposed against the relative impunity experienced by prominent figures, often denoted as "big fishes," who remain untouched by the legal apparatus.

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57 Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations 2015

58 The main goal of the Lokpal and Lokayuktas Act, 2013 is to set up a body called Lokpal for the Union and Lokayukta for the States to look into claims of corruption against certain public officials and other issues related to or occurring in the course of their work.

59 The preamble of the Central Vigilance Commission Act, 2003, says that an act must be made to set up a Central Vigilance Commission. This commission's job is to look into or make sure that investigations are carried out into crimes allegedly committed under the Prevention of Corruption Act, 1988, by certain types of Central Government employees, corporations set up by or under any Central Act, government companies, societies, and local authorities owned by the Central Government.

60 The main object of the Prohibition of Benami Property Transactions Act of 1988 An act is to prohibit benami transactions and the right to recover property held by benami for matters connected therewith or incidental thereto.

61 The Fugitive Economic Offenders Act 2018 was enacted in India to address the issue of economic offenders who flee the country to evade criminal prosecution or refuse to return and face justice. The act aims to confiscate their properties and assets acquired through illegal means.

62 The Black Money (Undisclosed Foreign Income & Assets) & Imposition of Tax Act, 2015 ("BMA") is a strict taxation law that seeks to heavily tax and criminally punish taxpayers having undisclosed foreign incomes and assets located outside India.

63 In order to prevent offenders accused of economic offenses from evading prosecution within the country, the Fugitive Economic Offenders Act, 2018 ("FEOA") was enacted in 2018. The FEOA targets fugitive economic offenders with arrest warrants issued against them for certain predicate economic offenses involving ₹100 crore who have either left the country to avoid criminal prosecution or are abroad and refuse to return to face criminal prosecution. Predicate offenses under the FEOA cover cheating and counterfeiting under the Indian Penal Code, 1860; offenses under the PCA and PMLA; corporate fraud under the Companies Act; benami transactions; and tax evasion. The strength of the FEOA lies in its far-reaching measures of immediate confiscation of all properties of any absconder, which act as a strong deterrent against fleeing the country. See ABZ Partners, Compliance & Investigation/White Collar Crime Practice, 2023, p. 3. Available at: <https://www.azbpartners.com/wp-content/uploads/2021/07/AZB-Partners-CIP-1.pdf>, visited on December 21, 2023.

64 India is subject to the UK Bribery Act (UKBA). The enactment levies penal rates of tax on any undisclosed asset or income held abroad by a person resident in India and penalizes individuals for non-disclosure of foreign income or assets, willful attempt to evade tax, and failure to furnish requisite returns. The Black Money Act's goal is to go after undeclared incomes and assets that Indian citizens may have stashed abroad as a result of illegal activity, including corruption. See ABZ Partners, Compliance & Investigation/White Collar Crime Practice, 2023, p. 3. Available at: <https://www.azbpartners.com/wp-content/uploads/2021/07/AZB-Partners-CIP-1.pdf>, visited on December 21, 2023.

This observation encapsulates a critical area of concern within the field of criminology and white collar crime research, prompting a nuanced examination of the dynamics at play. It underscores the potential structural and systemic factors that may contribute to the differential treatment of individuals involved in financial transgressions. The asymmetrical consequences faced by these distinct categories of offenders invite scholarly investigation into the intricacies of the criminal justice system, corporate governance, and regulatory oversight.

This phenomenon raises questions regarding the equitable application of legal norms and the efficacy of enforcement mechanisms, warranting empirical inquiry and multidisciplinary analysis. By adopting a research-oriented perspective, scholars can delve into the complexities of this issue, seeking to unravel the underlying factors and consequences associated with the apprehension and exoneration of white collar criminals, thereby contributing to a deeper understanding of the dynamics shaping the landscape of financial misconduct and its repercussions.

### **Enforcement agencies**

Specialized enforcement agencies enforced the legal mandate to curb WCC. Law enforcement investigates crimes like terrorism, rioting, murder, forgeries, swindles, money laundering, bank fraud, and other similar issues. Beside the police, there are a number of specialized investigative bodies, such as the Directorate of Enforcement (ED), the CBI,<sup>65</sup> the CVC,<sup>66</sup> the Serious Fraud Investigation Office (SFI), customs officials, income tax officials, and the Competition Commission of India. These agencies adopt the processes of search and seizure, arrest, summons, document production, etc. while dealing with WCC.

#### **1. Enforcement Directorate (ED)<sup>67</sup>**

The Directorate of Enforcement ("ED") is the multifunctional agency responsible for investigating crimes including money laundering and breaches of foreign exchange regulations. ED mainly looks after the FEMA<sup>68</sup> and PMLA<sup>69</sup>. Several cases such as the INX Media case<sup>70</sup>, the BRD Group case<sup>71</sup>, the National

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65 The CBI was assigned many functions, primarily of investigation under the Prevention of Corruption Act, 1988, or an offence under the Criminal Procedure Code for certain categories of public servants.

66 The CVC was entrusted with a large number of superintendence functions. The CVC initially established by executive order in 1964, obtained statutory powers by the Act of 2003 after the direction issued by the Supreme Court in Vineet Narain v. Union of India (1997) (1998) 1 SCC 226. This case serves as a landmark precedent for ensuring independence in investigations of corruption and upholding the principles of justice and rule of law. The judgment's emphasis on autonomous and unbiased functioning of central investigative agencies has had far-reaching implications for the governance and administration of justice in India. The case remains a significant reference point in discussions on the balance between judicial activism and the separation of powers in the Indian constitutional framework.

67 Established in 1956 as an "Enforcement Unit" within the Ministry of Finance's Department of Economic Affairs, it will be renamed the 'Directorate of Enforcement' next year.

68 The Foreign Exchange Management Act, 1999 ("FEMA")

69 The Prevention of Money Laundering Act, 2002 ("PMLA").

70 The INX Media case is related to allegations of irregularities in the Foreign Investment Promotion Board's (FIPB) clearance of media group INX Media receiving overseas funds to the tune of Rs 307 crore during the Congress-led United Progressive Alliance (UPA) government. See Business Standard, Thursday, December 21, 2023. Available at: <https://www.business-standard.com/about/what-is-inx-media-case> visited on December 22, 2023.

71 The BRD Group case is an alleged case of investor cheating. After taking cognizance of more than a hundred FIRs filed against him and others on the charge of defrauding numerous investors, Kerala police detained William Verghese, the CMD of the Thrissur-based BRD group. ED files charge sheet against BRD Group, its chairman, and 5 others, ZEE BUSINESS (November 23, 2022), <https://www.zeebiz.com/india/news-ed-files-chargesheet-against-brd-group-its-chairman-and-5-others-209240>.

Herald case<sup>72</sup>, Bhupinder Singh Honey in the sand mining case<sup>73</sup>, Pooja Singhal in the Jharkhand mining case<sup>74</sup>, Satyendar Jain in the money laundering case<sup>75</sup>, the purported fraud in West Bengal school recruitment<sup>76</sup>, and many more.

The investigative powers of the Economic Crimes Unit (ED) are primarily focused on investigating claims of money laundering, seizing and searching properties, attaching assets and properties, and prosecuting individuals and organizations involved in money laundering and associated crimes. If the Union government suspects an individual or business of breaking any of the laws or regulations enacted as a result of FEMA, it has given the executive branch the authority to investigate the matter.

During its proceedings, the ED has all the authority of a civil court as set forth by the CPC<sup>77</sup>. The PMLA gave the ED the power to look into and find people who illegally acquire assets, as well as to seize and take back assets and property<sup>78</sup>, and if necessary, to do all of this for scheduled offenses, even ones that happen outside of India. ED can also enter, search, and seize the property without judicial warrants<sup>79</sup>. In cases of money laundering, the ED also lends a hand to law enforcement authorities abroad. If the ED has probable cause to believe that money laundering has taken place and the information is in their hands, they can conduct a search and seizure of any person.

The powers of search and seizure under S. 17 of PMLA include entering and searching any place having reason to suspect an offense; seizing and breaking open any lock, box, locker, or safe if required; and seizing any record or property. The ED has the power to arrest any person alleged to be guilty under the PMLA Act. The ED also has the power to arrest any person guilty of any offense punishable under the PMLA, and the manner in which the arrest can be affected is postulated<sup>80</sup>.

There have been challenges to the constitutionality of ED's power. Nevertheless, in the case of Vijay Madanlal Choudhary v. Union of India<sup>81</sup>, the Supreme Court upheld the broad powers of the ED to conduct searches and seizures, summon anybody, and make arrests, stating that these powers are not arbitrary. The PMLA also gives the ED the authority to make arrests without having to give the accused a copy of the "ECIR" (Enforcement Case Information Report). Due process does not require the mandatory disclosure

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72 I Subramanian Swamy filed the National Herald case in a Delhi court against Congress officeholders Sonia Gandhi and Rahul Gandhi, their businesses, and related individuals. Subramanian Swamy filed a complaint (2012) before a trial court, alleging that some Congress leaders were involved in cheating and breach of trust in the acquisition of Associated Journals Ltd. by Young Indian Ltd. (YIL). He alleged that YIL had 'taken over' the assets of the National Herald in a 'malicious' way.

73 The ED conducted a raid at Bhupinder Singh Honey in an alleged illegal sand mining operation. See Times of India, August 4, 2022. Available at: <https://timesofindia.indiatimes.com/india/10-high-profile-ed-cases-of-2022-that-made-headlines/articleshow/93344039.cms> visited on 20.12.2023

74 ED has raided and enquired the Pooja Singhal, IAS, and aide of Jharkhand DM Hemand Soren in a MGNREGA fund. Ibid

75 AAP leader and Delhi's Health Minister Satyendar Jain was arrested under the provisions of PMLA by the ED after the CBI registered an FIR against him in a disproportionate assets case.

76 The West Bengal School Service Recruitment Scam is an ongoing education SSC scam in West Bengal, India, since 2022. [1] The Central Bureau of Investigation and Enforcement is currently jointly investigating the scam. The scam was revealed following the arrest of Partha Chatterjee, a Trinamool Congress leader, who has served as the Minister of Education in Mamata Banerjee's cabinet until his arrest on July 23, 2022. Recently, on December 21, 2023, SC issued a notice to ED seeking a response to the plea of accusation for his bail. See, [https://en.wikipedia.org/wiki/2022\\_West\\_Bengal\\_School\\_Service\\_Commission\\_recruitment\\_scam](https://en.wikipedia.org/wiki/2022_West_Bengal_School_Service_Commission_recruitment_scam) visited on 23.12.2023.

77 See S. 50 of the PMLA. Every civil court has the authority to conduct discovery, inspection, production of evidence, summons, examining, issuing commissions, etc. in accordance with CPC regulations.

78 S.s 5 and 8(4) of the PMLA empower the ED with wide discretionary powers to attach the property of the accused.

79 See S. 17 of the PMLA.

80 See S. 19 of the PMLA.

81 Vijay Madanlal Choudhary v. Union of India, Special Leave Petition (Criminal) No. 4634 of 2014.

of an Electronic Criminal Investigation Report (ECIR) to an accused person, according to the Supreme Court, which upheld this rule.

## 2. CBI (Central Bureau of Investigation)

The CBI has its genesis in the Special Police Establishment (SPE)<sup>82</sup>. In 1963, IT was set up as the premier police investigative agency, which is the nodal police organization that undertakes inquiries on behalf of Interpol Member Nations. CBI needs the prior approval of the respective state government to exercise power. With regards to power, the CBI has similar powers, duties, and privileges as the police<sup>83</sup> in connection with the offenses committed. In addition, the CBI Manual<sup>84</sup> also prescribes detailed guidelines. Availing power under Cr.P.C., the CBI, being an investigating officer, may seek any particular documents<sup>85</sup> and issue a written order to be sought, if required, procured through the process of search and seizure. The CBI may conduct searches under the warrants<sup>86</sup>, but it even has the power to search without a warrant<sup>87</sup> and may seize property that is suspected to have been stolen<sup>88</sup>. It may direct any person to attend<sup>89</sup>. The CBI is also empowered to interrogate witnesses.<sup>90</sup>

## 3. The Serious Fraud Investigation Office (SFIO)

The Serious Fraud Investigating Office is an outcome of the Naresh Chandra Committee<sup>91</sup>, which was tasked with the responsibility of examining and suggesting significant changes to the laws that govern the relationship between auditors and their clients, as well as the role of independent directors. The committee aimed to propose guidelines that could enhance corporate governance in both theory and practice.

The Naresh Chandra committee recommends forming the Serious Fraud Investigation Office (“SFIO”), consisting of experts in the fields of accountancy, forensic auditing, law, information technology, investigation, company law, capital markets, and taxation for the detection, investigation, and prosecution of white-collar crimes<sup>92</sup>. The SFIO was granted statutory force<sup>93</sup> through S. 211 of the Companies Act, 2013.

An investigation into the affairs of a company is assigned to the SFIO, where the government is of the opinion that it is necessary to investigate the affairs of a company.

1. on receipt of a report of the registrar or inspector under S. 208 of the Companies Act, 2013;
2. on learning that a company has passed a special resolution requiring an investigation into its affairs;
3. In the public interest, or on request from any department of the central government or a state government.<sup>94</sup>

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82 The legal powers of the CBI are derived from the Delhi Special Police Establishment Act, 1946 (“DSPE”). The Special Police Establishment (SPE), established in 1941 by the Government of India, is the genesis of the Central Bureau of Investigation. Afterwards, the SPE was tasked with looking into allegations of corruption and bribery involving dealings with the War and Supply Department of India during WWII.

83 As prescribed by the Criminal Procedure Code of 1973, see more, particularly Ss. 41–60 of the Act.

84 CBI (Crime) Manual, Government of India, 2005. Updated in 2020.

85 See S. 91 of the Cr.P.C.

86 See S. 93 of the Cr.P.C.

87 See S. 165 of the Cr.P.C.

88 See S. 102 of Cr.P.C.

89 See S. 160 (1) of the Cr.P.C.

90 See Ss. 161 and 162 of the Cr.P.C.

91 The Union Government of India's Department of Company Affairs (DCA), which is a division of the Ministry of Finance and Corporate Affairs, established the Naresh Chandra Committee on January 21, 2002.

92 Serious Fraud Investigation Office, GOI (2023), <https://www.mca.gov.in/content/mca/global/en/about-us/affiliated-offices/sfo.html>.

93 Vide Notification No. S.O.2005(E), dated July 21, 2005

94 See the official website of the SFIO. Available at: <https://sfo.gov.in/en/about-sfio-history/>, visited on December 21, 2023.

A SFIO may be entrusted to investigate the affairs of a company. The SFIO has the sole power to undertake investigations allotted to it under the Companies Act, barring any other investigating agency of the central government or any state government from investigating such cases. The SFIO has all the power to arrest a person guilty of an offense for a violation of company law. The SFIO can't start the investigation on its own. Instead, it could start with the central government and then go to the SFIO.

Thus it is evident that over the years, India has fought against WCC such as fraud, corruption, money-laundering, scams, abuse of power and other issues by utilizing the aforementioned investigative organizations and attempting to eradicate the same; however, it seems difficult. This has ensured the safety and integrity of the nation. But external considerations like politics, bureaucracy, and the constant challenges to the authority of the investigative authorities under various Acts, etc., limit and restrict these agencies' capabilities, which leads to ineffective working and external corruption. However, the public interest may be compromised if these authorities are granted unchecked authority through an increase in their authority that does not include any checks and balances. In order to foster better functioning, impartial inquiry, and the promotion of national welfare without favoring any individual or organization in particular, India requires a balance in the powers of the investigative authorities. Neither of these extremes is ideal.

### Judicial contribution

The judiciary, too, contributed to developing WCC jurisprudence through its several verdicts. The court ruled that economic crimes (WCC) are always carefully and meticulously planned and executed. The court observed that economic offenses constitute a class apart and need to be visited with a different approach<sup>95</sup>, particularly in the matter of bail. No leniency will be shown. Because offenses of such nature having deep-rooted conspiracies and involving huge losses of public funds need to be viewed seriously and considered grave offenses affecting the economy of the country as a whole and thereby posing a serious threat to the financial health of the country<sup>96</sup>,

The Court lashed at and observed that these are species of crimes that strike at the financial foundation of the state, and the convict does not deserve any clemency so that the deterrent effect of punishment is not completely diluted.<sup>97</sup>

Further, while taking a stringent stand on socio-economic offenses, Rohit Tandon vs. Directorate of Enforcement<sup>98</sup> held,

"21. Economic offenses having deep-rooted conspiracies and involving huge losses of public funds need to be viewed seriously and considered grave offenses affecting the economy of the country as a whole and thereby posing a serious threat to the financial health of the country. Further, when an attempt is made to project the proceeds of crime as untainted money and also that the allegations may not ultimately be established, but having been made, the burden of proof that the monies were not the proceeds of crime and were not, therefore, tainted shifts on the accused persons under Section 24 of the 2002 (PMLA) Act."

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95 Y.S. Jagan Mohan Reddy vs. CBI: (2013) 7 SCC 439 (para 34)

96 Ibid

97 Observation of the Jharkhand High Court while upholding the conviction of former Minister Anosh Ekka under S. 4 of the Prevention of Money Laundering Act, 2002 (PMLA). See, for more details, Anosh Ekka vs. The Directorate of Enforcement 2023 Taxscan (HC) 204.

98 Rohit Tandon vs. Directorate of Enforcement (2018), 11 SSC 46.

The court also observed that the provision of the Prevention of Money Laundering Act contains a totally different procedure for investigation. The investigation is never to be done by the police, but rather by the officer of the Directorate of Enforcement or any other officer specially authorized by the Act, and the Act prohibits a police officer from taking an investigation of the case under the Prevention of Money Laundering Act<sup>99</sup>, whereas for the scheduled offenses, it is for the police to take up the investigation.

In *Nimmagadda Prasad vs. CBI*<sup>100</sup>, the Supreme Court observed that the alarming rise in white collar crimes has affected the fiber of the country's economic structure. Economic offenses have serious repercussions for the development of the country as a whole. While putting WCC as a serious offense and emphasizing treating it on a different footing, the Apex Court in *State of Gujarat v. Mohanlal Jitmalji Porwal*<sup>101</sup> observed,

The entire community is aggrieved if the economic offenders who ruin the economy of the state are not brought to book. A murder may be committed in the heat of a moment when passions are aroused. An economic offense is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters that view white-collar crimes with a permissive eye, unmindful of the damage done to the national economy and national interest."

Thus, despite the fact that most of the proceedings of the WCC have been initiated, executed, and criminal proceedings, the WCC needs a different and more stringent treatment and its affect and impact seriously on the social morality and economic fabric. Thus, in the case of *State of Bihar vs. Amit Kumar*<sup>102</sup>, it has been held that while considering bail involving socio-economic offenses, stringent parameters should be applied. While elaborating on the need to treat WCC on a different footing, more specifically during criminal proceedings, and while granting bail, the court emphasized the need to consider parameters such as

1. the nature of accusations;
2. the nature of evidence in support thereof;
3. the severity of the punishment that a conviction will entail;
4. the character of the accused;
5. circumstances that are peculiar to the accused;
6. reasonable possibility of securing the presence of the accused at the trial;
7. reasonable apprehension of the witnesses being tampered with;
8. the larger interests of the public or state, and other similar considerations.

The court had adopted this stance in several WCC cases<sup>103</sup>. Thus, it is evident that the above factors must be taken into account while determining whether bail should be granted in cases involving grave economic offenses. The Court looked at the rules for giving bail that were set out in *Ranjitsing Brahmajeetsing*

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99 *Anosh Ekka vs. The Directorate of Enforcement* 2023 Taxscan (HC) 204.

100 *Nimmagadda Prasad vs. CBI*: (2013) 7 SCC 466.

101 *In State of Gujarat v. Mohanlal Jitmalji Porwal* [(1987) 2 SCC 364]

102 *State of Bihar vs. Amit Kumar* (2017), 13 SCC 751.

103 See *Gautam Kundu v. Directorate of Enforcement* [*Gautam Kundu v. Directorate of Enforcement*, (2015) 16 SCC 1; (2016) 3 SCC (Cri) 603]; *State of Bihar v. Amit Kumar* [*State of Bihar v. Amit Kumar*, (2017) 13 SCC 751; (2017) 4 SCC (Cri) 771] at all.

Sharma v. State of Maharashtra<sup>104</sup>. This case talks about the effects of the two necessary conditions for giving bail for crimes covered by the Maharashtra Control of Organized Crime Act, 1999<sup>105</sup>.

In the case of Serious Fraud Investigation Office vs. Nitin Johri and another<sup>106</sup>, the Supreme Court reiterated its position on different treatment in WCC cases. It also stressed the importance of considering the factors to be taken into account when deciding bail for serious economic crimes and said,

"24. At this juncture, it must be noted that even as per Section 212(7) of the Companies Act, the limitation under Section 212(6) with respect to the grant of bail is in addition to those already provided in CrPC. Thus, it is necessary to adhere to the principles governing the grant of bail under Section 439 of the CrPC. Pay attention to the strict stance this Court has taken regarding the granting of bail in relation to economic offenses. In this regard, it is pertinent to refer to the following observations of this Court in Y.S. Jagan Mohan Reddy [Y.S. Jagan Mohan Reddy v. CBI]<sup>107</sup>: [Emphasis added]

The Court further clarifies that the socio-economic legislation is special legislation having an overriding effect on general enactments. While dealing with these issues, the court in Anil Mittal vs. U.O.I. Through Enforcement<sup>108</sup> held that

S. 45 of PMLA starts with a non-obstante clause, which indicates that the provisions laid down in S. 45 of PMLA will have an overriding effect on the general provisions of the Code of Criminal Procedure in case of conflict between them. S. 45 PMLA imposes the following two conditions for the grant of bail to any person accused of an offense punishable for a term of imprisonment of more than three years under Part A of the Schedule to PMLA:

1. That the prosecutor must be given an opportunity to oppose the application for bail; and
2. The court must be satisfied that there are reasonable grounds for believing that the accused person is not guilty of such an offense and that he is not likely to commit any offense while on bail.

The court further made it crystal clear that the conditions specified under S. 45 of PMLA are mandatory and need to be complied with, which is further strengthened by the provisions of S. 65 and also S. 71 of PMLA. The provisions of this Act must also be applicable, within the restrictions set forth in S. 65 of the CrPC. S. 71, on the other hand, says that the provisions of the PMLA take precedence over any other laws that are currently in effect that are inconsistent with them. PMLA has an overriding effect, and the provisions of CrPC would apply only if they were not inconsistent with the provisions of this Act. Therefore, the conditions enumerated in S. 45 of PMLA will have to be complied with even in respect of an application for bail made under S. 439 CrPC. When put together with S. 24, that means that, unless proven otherwise, the authority or the court will assume that the proceeds of crime are involved in money laundering. It is up to the appellant to show that the proceeds of crime are not involved. The court further added,

The object of PMLA is to prevent money-laundering and to provide for confiscation of property derived from or involved in money-laundering. S. 44 of the PMLA confers jurisdiction on a special court to deal

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104 Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra, 5 SCC 294; 2005 SCC (Cri) 1057

105 As laid down in S. 21(4) thereof, similar to the conditions embodied in S. 212(6)(ii) of the Companies Act.

106 Serious Fraud Investigation Office vs. Nitin Johri and another (2019) 9 SCC 165.

107 Y.S. Jagan Mohan Reddy [Y.S. Jagan Mohan Reddy v. CBI, (2013) 7 SCC 439; (2013) 3 SCC (Cri) 552] (SCC p. 449, paras 34–35)

108 Anil Mittal vs. U.O.I. through Enforcement... on December 9, 2020, 31. Anil Kumar Sharma vs. Enforcement Directorate, Lucknow Zone (Allahabad High Court) Appeal Number 5974 of 2020 Bail Application No. 2458 of 2020 filed in ED Case No. ECIR/06/PMLA/LKZO/2019 under S. 3/4 of the PMLA.

with the offenses under the PMLA. S. 45 of the PMLA makes the offense of money laundering cognizable and non-bailable, notwithstanding anything contained in the Code of Criminal Procedure, 1973. Money laundering is a serious economic offense and a serious threat to the national economy and national interest, and these offenses are committed with cool calculation with the motive of personal gain, regardless of the consequences for society.

Thus, the court has strictly dealt with the offenses of the WCC without leniency. The court hardly favors showing any concession to accuse in the offenses booked under the socio-economic legislation.

Dismissing the plea for quashing the FIR by the project manager, the Karnataka High Court ruled that POCA can also be invoked against the person who, by virtue of his office, discharges public duty<sup>109</sup>. In the case of *Ravina and Associates Pvt. Ltd. v. CBI*<sup>110</sup>, the Delhi High Court determined that courts are required to take into account the value of the property acquired via the crime while imposing fines under the POCA. It was determined that the amount that can be confiscated in criminal processes, such as the POCA, is limited to the amount that is genuinely engaged in the criminal action. Further, the Apex Court mandated in *CBI v. Thommandru Hannah Vijayalakshmi*<sup>111</sup> that a preliminary inquiry in a corruption case shall be conducted only after the FIR is lodged as prescribed by the CBI (Crime) Manual of 2005.

However, the perceived performance of India's key law enforcement agencies – the Central Bureau of Investigation (CBI), Enforcement Directorate (ED), and police – particularly in the realm of white-collar crime, has been mired in controversy and debate. A deep dive into their operations reveals a landscape marred by operational inefficiencies and, more alarmingly, a shadow of potential biases and political manipulation.

### **Unmasking the Reality: A Critical Exposé on enforcement agencies**

In the intricate tapestry of India's governance, the effectiveness of its premier law enforcement agencies - the Central Bureau of Investigation (CBI), Enforcement Directorate (ED), and the police - especially in their crusade against white-collar crime, is a subject that ignites fervent debate and scrutiny. This critical examination delves into the heart of their operations, laying bare the dual challenges that beleaguer these institutions: operational inefficiencies and the ominous clouds of potential bias and political influence.

Amidst the country's burgeoning economic landscape, the cunning sophistication of white-collar crime has evolved dramatically, demanding an equally adept and technologically advanced response from these agencies. However, the reality often presents a stark contrast – a scenario where limited resources, outdated methods, and bureaucratic inertia impede effective action against these complex financial

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109 G. Krishnegowda v. Karnataka, CrI.P.No.2801 of 2021.

110 *Ravina and Associates Pvt. Ltd. v. CBI*, 2021 SCC OnLine Del 4249.

111 *CBI v. Thommandru Hannah Vijayalakshmi*, 2021 SCC OnLine SC 923. The Supreme Court held that the registration of an FIR is mandatory under Section 154 of the Code of Criminal Procedure if the information discloses the commission of a cognizable offence, and no Preliminary Enquiry is permissible in such situations. If the information does not disclose a cognizable offence but indicates the need for an inquiry, a Preliminary Enquiry may be conducted to ascertain whether a cognizable offence is disclosed or not. The scope of Preliminary Enquiry is not to verify the veracity of information but only to ascertain whether it reveals any cognizable offence, with the necessity of such an enquiry depending on the facts and circumstances of each case. This judgment clarifies the mandatory nature of FIR registration in cases where information prima facie indicates a cognizable offence, while also acknowledging the role of Preliminary Enquiries in certain cases to prevent the misuse of criminal law powers. It reinforces the balance between the need for immediate legal action in clear cases of cognizable offences and the requirement for preliminary investigation in more complex scenarios, particularly in corruption cases involving public servants.

offenses. The issue of the operational functionalism and political inefficiency of these agencies can be summarily discussed in following manner -

- **Operational Effectiveness: A Veil of Inefficiency?** - The struggle of these agencies to grapple with the complex labyrinth of white-collar crime is glaringly apparent. Despite some commendable strides in investigating high-profile cases, these agencies frequently fall short, hamstrung by limited resources and archaic technological tools that are laughably inadequate in today's fast-paced digital crime scene. The result? A tepid response to the spiraling sophistication of financial crimes.
- **Political Puppetry and Selective Blindness: A Harsh Reality?** - The darker side of this narrative, however, lies in the allegations of these agencies being pawns in the hands of political overlords. Accusations of selective prosecution and targeting of political adversaries paint a grim picture of agencies caught in the web of power politics, their autonomy hanging by a thread. This selective blindness and alleged misuse of power undermine public faith and question the very foundation of justice and fairness these institutions are meant to uphold.
- **Transparency and Accountability: More Myth than Reality?** - The cloak of opacity that shrouds the functioning of the CBI, ED, and police only fuels skepticism about their impartiality. The demand for transparency and accountability is not just a cry in the dark; it's a clarion call for reform, echoing through the corridors of power.
- **A Call to Action: The Need for Radical Reformation** - The time is ripe for a radical overhaul. Ensuring genuine operational autonomy, fortifying these agencies with state-of-the-art resources, and embedding a culture of transparency and accountability are not just ideals but urgent necessities. The agencies must evolve, not just to keep pace but to stay ahead in this relentless battle against white-collar crime.

This is not just a matter of enhancing efficiency; it's about restoring public trust and safeguarding the pillars of democracy. The eyes of the nation are watching, waiting for a change – a shift from the status quo of dubious practices to an era of unassailable integrity and effectiveness. The question remains – will these agencies rise to the challenge, or will they remain ensnared in the quagmire of political machinations and operational lethargy? The answer to this will shape the very future of justice and governance in India.

### Critical assessment

In the intricate dance of law and societal movements against the shadowy backdrop of WCC, the narrative is both complex and multifaceted. Recognized now as a layered tapestry, WCC weaves through various levels of social fabric and state structures, embodying diverse patterns of acceptance and resistance. This phenomenon, as intricate as it is, cannot be completely eradicated from a society or state. Each generation, bound by a moral imperative of justice, grapples with its more flagrant manifestations, striving to mitigate its impact.

Yet, in this ongoing battle, the lines blur between the types of WCC that are begrudgingly tolerated and those that are actively confronted. Civil society and governmental bodies find themselves in a perpetual tug-of-war, negotiating these boundaries. This contested landscape is further complicated by intersections of caste, class, and gender, with prevailing hegemonic cultures significantly influencing the strategies adopted in addressing WCC.

In understanding and tackling this complex issue, it is crucial to turn our lens towards the cultural underpinnings of societies. It is here, in the nuances of cultural norms and values that the roots of WCC can be better understood, and more effective strategies for its control and combat can be developed. This

approach demands a shift from a simplistic, one-size-fits-all solution to a more nuanced, culturally informed perspective in the ongoing struggle against WCC.

In the realm of white-collar crime, the interplay between legal frameworks and social movements takes on a unique hue when considering the socialization of corruption. This phenomenon, intriguingly woven into the societal fabric, is often paradoxically perceived as both a bane and a boon. It's as if corruption, in some circles, is almost mystified, and viewed not as a societal ill but akin to a benevolent force, a shower of grace and energy bestowed from the divine.

This peculiar veneration of corruption illustrates a deep-seated normalization within certain societal segments.<sup>112</sup> Here, corrupt practices are not merely overlooked but are subtly celebrated, ingrained in the collective psyche as an acceptable, even necessary, aspect of socio-economic interactions. This warped admiration challenges the traditional antagonism typically directed towards white-collar crimes.

To effectively address this nuanced perspective, it is essential to delve into the cultural and psychological underpinnings that foster such an outlook. This requires a shift from conventional legalistic approaches to a more holistic strategy, encompassing educational reforms, ethical reorientation, and grassroots-level advocacy. By understanding and deconstructing the almost spiritual reverence for corruption, it becomes possible to reshape perceptions, thereby weakening the insidious grip of white-collar crimes on the social conscience.

Close scrutiny of the WCC emphasised separate approach and treatment. The pattern of WCC commission reflect the planned, determined and awareness about consequences.<sup>113</sup> Offender have behavioral inclination and moral/ethical degradation. Despite its non-violence nature, the socio-economic impact is far damaging, and therefore, need strict treatment. Present approach of judicial, especially with regards to denial of bail to such offender is justified on this ground. However, such offences shall also be tried by 'fast-track court' within fix time period. The procedural delay, scot-free offenders add incremental injustice to society and to the system. Even, forensic techniques shall be liberally ordered in such offences, and such offenders shall not be given liberty to avail strict principles of penal laws. Inquisitorial model best suited to such criminality. The principle of 'guilty, unless proved innocent' shall be the rule in such cases.

But more than emplacing on criminal procedure to deal WCC and punishment aspect, preventive strategies also need special attention. WCC is much associated with money, comfort, misuse of power, moral degradation, which is nothing but the outcome of faulty socialization coupled with moral and ethical degradation. Education may help in value building, thus curriculum must have awareness content. Every

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112 As explained by 'the interactionist theory of motivation' which presents a fascinating perspective that integrates various elements influencing an individual's motivation. Unlike theories that focus solely on internal drives or external stimuli, the Interactionist Theory posits that motivation is the result of the dynamic interplay between the individual and their environment. This theory acknowledges that personal traits such as needs, desires, and goals interact with environmental factors like social context, cultural norms, and external rewards or punishments. Thus at the heart of this theory lies the belief that neither internal nor external factors alone can adequately explain human motivation. Instead, it's the interaction between a person's characteristics (like their personality, experiences, and values) and the situational factors they encounter that shapes their motivational drive.

113 White collar crimes exhibit a distinctive character, as they are meticulously planned and systematically executed by individuals possessing a profound awareness of the ramifications of their actions. In light of this calculated approach, it is evident that the concept of *Mens rea*, or the guilty mind, is inherently ingrained within the commission of such offenses. Consequently, the latitude or leniency typically afforded by criminal law finds minimal extension to individuals engaging in white collar criminal activities. These individuals operate within a sphere where their deliberate actions and cognizance of the consequences serve as a foundational cornerstone, rendering them less amenable to the traditional concessions and concessions that the criminal justice system may extend to other offenders.

graduate must have compulsory court contents on WCC and its impact. In addition, those who are in power must be given compulsory lesson on value based society. Need of detection mechanism of WCC need to be evolved. Most important is the delink age of WCC and political interferences and influence must be broken down. Condemning culture to White Collar Crime in society, rather than their glorification is need of an hour.

However, a more pressing concern emerges from recent developments in the Indian context, particularly regarding the diminishing public trust in key investigative agencies tasked with combating corruption and white-collar crime (WCC), such as the Central Investigation Panel (CIP) and the Enforcement Directorate (ED). These institutions, once perceived as bastions of neutrality and justice, are increasingly seen as compromised, losing their image as impartial enforcers of the law.

This erosion of confidence regarding autonomy of these agencies in investigating corruption, could have far-reaching implications, potentially undermining public support in the broader fight against corruption.<sup>114</sup> There is a growing perception that these agencies, rather than serving as unbiased instruments in the battle against corruption, are being manipulated as tools to target specific groups. This politicization of anti-corruption efforts not only weakens the legitimacy of these institutions but also risks alienating the public, whose support is crucial for any meaningful progress in this fight. If left unchecked, this trend could lead to a scenario where public sentiment becomes apathetic or even antagonistic towards anti-corruption initiatives, seeing them as veiled attempts at political witch-hunts rather than genuine efforts to cleanse the system of corruption.

As a part of comprehensive solution, seven scale foundational parameters can be suggested that required multifaceted attempt to compact crime involving moral turpitude like WCC. It may include, but not fined to cultivating integrity and honesty more particularly from their early age, creating a culture of accountability and adherence to value standards, ethical leadership and role modelling, engaging society and community for reinforcing social norms, strengthening legal and institutional framework, promoting transparency and openness, fostering community engagement and encouraging personal responsibility and self-regulation may help to minimise the WCC. Thus, while legal measures and institutional controls are essential in combating WCC, the role of moral and ethical standards in society is equally crucial. They form the bedrock upon which legal systems operate and are fundamental in shaping the behaviors and attitudes that deter such crimes. Ultimately, experience radiates that preventing white-collar crime isn't just a legal challenge; it's a cultural imperative and laws can curb the illegal, but only ethics can restrain the immoral.

## Conclusion

In conclusion, a critical assessment of white-collar crime reveals that it poses substantial challenges to society, the criminal justice system, and regulatory agencies. Addressing these challenges requires a multi-pronged approach, including regulatory reform, enhanced enforcement, and public awareness to mitigate the economic and social consequences of these offenses. Additionally, it's crucial to ensure that the legal system treats white-collar offenders fairly and consistently, regardless of their social status or financial resources. The close analyzing of WCC revealed that despite its legal nature, the effective solution may

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<sup>114</sup> Recent outcry of use of ED in its political manner is one of the example of shaking of public confidence in enforcement agencies. Number of news flashed on this points. See, news item in The Hindu, 'Selective prosecution: on the Enforcement Directorate and T.N. Ministers' dt. 19.07.2023;

be lies in better social culture where population having zero tolerance towards ‘WCC’ condemn it,<sup>115</sup> and glorify the simple, non-corrupt, honest behavior from all its level. In the fabric of society, white-collar crime is a stain that can only be removed with the detergent of ethical responsibility.

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115 Despite, Dr. Upendra Baxi opined that total eradication of corruption is (and has proved to be) impossible to achieve in any society, (see, note (19), pg. 43). Nevertheless, in an era where culture evolves, technology advances, and the pursuit of minimal governmental interference intensifies, there is a beacon of hope for mitigating white-collar crime (WCC) substantially. This optimism is anchored in a multifaceted strategy that integrates a power check approach with enhanced transparency. As we embrace these systemic changes, they collectively forge a formidable defense against the insidious spread of WCC. By leveraging technological innovations for more effective monitoring and enforcement, reducing excessive governmental control to eliminate loopholes often exploited by white-collar criminals, and fostering a culture of accountability and transparency, we can significantly reduce the prevalence of these sophisticated crimes. This approach heralds a new era of corporate integrity and ethical business practices, promising a substantial reduction in the incidence of white-collar crime.