

Challenges In Investigation And Prosecution Of White Collar Crimes In India

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1. Abstract

White-collar crimes (WCC), historically associated with individuals of high social status engaging in non-violent, financially motivated misdeeds, have evolved significantly over time. This transformation mirrors changes in technology, regulation, and the global economic landscape. From its primitive roots to the modern digital era, the ambit of white collar crimes have expanded significantly and now it transcends national borders which creates significant issues for the law enforcement agencies. This research explores the various challenges in investigation and prosecution of white-collar crimes in India. Understanding these complexities, ambiguities, and challenges is crucial for policymakers, law enforcement, and legal authorities to develop effective strategies to combat and prevent white collar crimes in india.

2. Introduction

The earliest incident and scope of White collar crimes (WCC) were rooted in a time where technological advancements were primitive and governmental penetration or control was quite low. Once associated primarily with businessmen and people in positions of power, this form of non-violent, financially motivated wrongdoing has evolved dramatically over the course of history. The evolution of white-collar crime is a reflection of the ever-changing landscape of business, technology, and regulation. It exists in all nations, costing societies normious losses economically, socially, and spiritually

White-collar crimes first defined by the sociologist named Edwin Sutherland in 1939 as “A crime committed by the person of respectability and high social status in the course of their occupation”. Although this definition is not inclusive of current needs and it narrowly deals with the presence of advanced crimes, it did begin scholarly explorations of the same. Notably, the term “white collar” originally referred to individuals of high social class or standing to provide a contrast to blue collar working class and their crimes which were more physically violent in nature such as armed robbery, murder etc.

2.1. Evolution of White collar crimes

White-collar crimes have likely existed as long as human societies have engaged in systems of trade, finance, and governance. In the book Arthashastra, Chanakya extensively talks about how to deal with crimes such as corruption or bribery, which can be considered the most primitive form of white collar crime. According to Kautilya, human nature poses corruption. It is the human psyche. This type of wrongdoing was not limited to any particular culture or period but has been a recurring feature throughout history.

A pivotal shift in the nature of these crimes occurred during the 18th and 19th centuries, during the industrial revolution. This period witnessed a proliferation of businesses and corporations, driven by global trade and mercantilism, emphasizing on export-led growth. Consequently this led to expansion of opportunities for financial fraud and embezzlement and white-collar crime became more prominent. Fraudulent activities such as stock manipulation and embezzlement were not uncommon during this period.

In the age of globalization, post the 2000s, technology has gotten even more sophisticated particularly with the advent of the digital age, the computer era, and the internet boom. In this era white-collar crime frequently transcends national borders. Money laundering, tax evasion, and

other forms of international financial fraud have become more prevalent, requiring international cooperation and coordination in order to combat these crimes. Furthermore, modern experts also include identity theft, hacking, phishing, cryptocurrency-related tax evasion, terror financing, hawala transactions, and intellectual property theft, in the definition of white-collar crimes. In this evolving landscape and technological advancement of the era, Edwin Sutherland's original definition of white-collar crimes appears inadequate.

2.2. Definitional Discrepancy

Herbert Edelhertz provided an alternative definition of white-collar crime which is more comprehensive in nature. He considered it as “an illegal act or series of illegal acts committed by non-physical means and by concealment or astuteness, to obtain money or property, to avoid the payment or loss of money or property, or to obtain business or personal advantage.” He acknowledged the fact that white-collar crimes are not limited to individuals of high social status and can be committed by people from various social classes. This reflects the evolving nature of white-collar crime, especially in contemporary society where people have easy access to computers and mobile phones.. While Sutherland's definition played a foundational role in initiating the scholarly exploration of white-collar crime, Edelhertz's definition is considered more comprehensive and better suited to address the broader and more complex nature of white-collar crimes as they exist in contemporary society.

However, the Federal Bureau of Investigation (FBI) has adopted a narrower approach, in defining white-collar crime as “those illegal acts which are characterized by deceit, concealment, or violation of trust and which are not dependent upon the application or threat of physical force or violence”. This was possibly done to make the law as specific as possible and to prevent overlapping jurisdictions with the state agencies.

Hence, a prevalent issue within the realm of white-collar crime pertains to the existence of definitional disparities. There exists a discrepancy between academic definition, which tries to be as broad as possible, and practical definition, which adopts a narrower approach to better suit the needs of law enforcement agencies. As a result many countries and governments define white-collar crimes according to their specific needs, similar to the approach taken by the FBI in the United States of America.

Under most jurisdictions no specific law exists that defines and punishes white collar crimes. It rather acts as a classification for law enforcement and legal authorities to categorize a broad range of

non-violent, financially motivated offenses, each of which may be governed by specific statutes and regulations designed to address the unique characteristics of these crimes. Furthermore, different agencies investigate different types of crimes based on their particular expertise or jurisdiction. This division of responsibilities allows for a more specialized and effective approach, although siloed creating various inter-coordination issues, to addressing the distinct characteristics and complexities associated with each offense falling under the broad range of white-collar crimes.

Sr. No.	Crime	Enforcement Authority	Act / Legislation
1.	Tax Evasion	Central Board of Direct Taxes	Income Tax act. 1961
2.	Evasion of Excise Duty	Collectors of Central Excise	Central Excise Act, 1944
3.	Money Laundering	Directorate of Enforcement	The Prevention of Money Laundering Act, 2002
4.	Undisclosed Foreign Contributions	Police/CBI	The Foreign Exchange Management Act, 1999 (FEMA)
5.	Corruption and Bribery by Public Servants	Central Bureau of Investigation	Prevention of Corruption Act, 1988
6.	Company Frauds	Police / CBI	The Companies Act, 2013
7.	Fraud relating to Credit/ATM Cards	Police/CBI	The Information Technology Act, 2000 & Indian Penal Code

In India, for example acts such as money laundering are punishable under the Prevention of Money Laundering Act 2002, while cybercrime-related offenses, like hacking, phishing, identity theft, and cyber-extortion, are addressed under the Information Technology Act 2000, both of which comes under the overarching definition of WCC. This decentralized legal approach further complicates the process of investigating and prosecuting white-collar criminals, as each offense may require a unique legal framework.

It is worth noting that advocating for a single law to cover all aspects of white-collar crimes is neither practical nor desirable, but we must acknowledge the problem that this siloed approach has created for our legal system and institutions.

3. Types

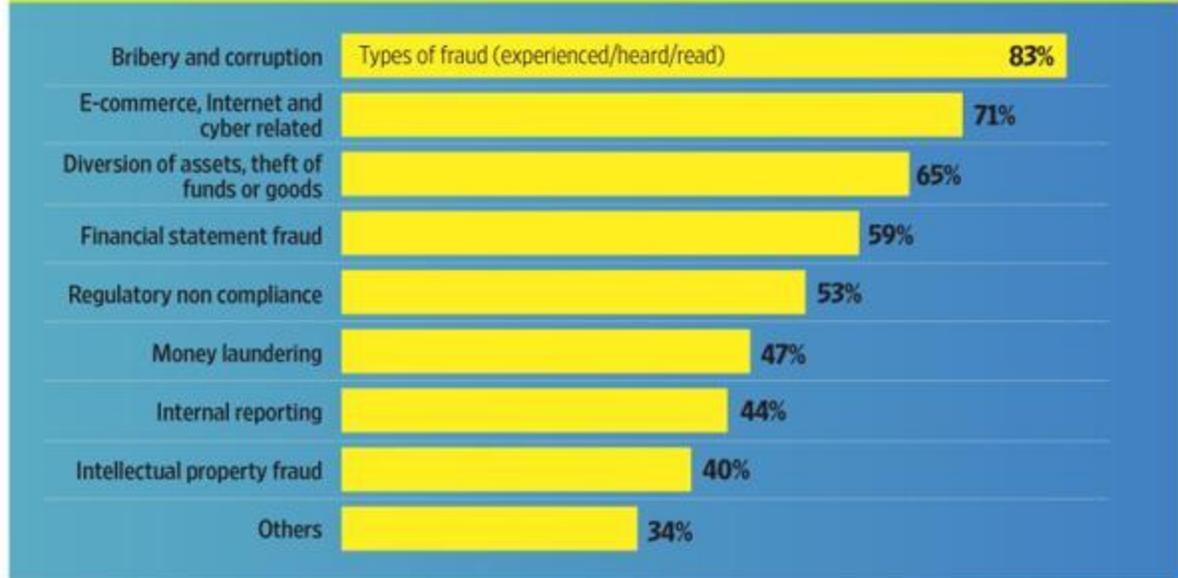
Edwin Sutherland did try to define what constitutes a white collar crimes in 1939, but he simply could not have guessed how far the world would come in terms of technological advancements, and thus the ever expanding definition of white collar crime.

The ambit of WCC includes

1. Money Laundering
2. Embezzlement and fraud
3. Bribery or Corruption
4. Tax evasion
5. Cyber crimes :- including phishing, scamming, ransomware attacks
6. Bank Fraud
7. IP theft
8. Corporate espionage

PATTERNS OF CRIME

As per KPMG's India Fraud Survey 2012, the most common types of white-collar crimes in India include bribery and corruption, cybercrime and diversion of goods or funds, among others.



Source: KPMG

Although I have tried to include many subtypes of white-collar crime, this should not be considered an exhaustive list of types. Also, as society progresses and technology develops, the nature of crime changes, and the definition expands, covering hitherto uncovered areas.

4. Rule of Law and Legal Provisions in India

4.1. Regulatory Agencies

WHITE COLLAR CRIME spans across diverse domains. This complexity underscores the formidable challenge of having a single agency effectively oversee all facets of white collar crimes, not only in India but also globally. In India, various agencies work in collaboration to prevent and prosecute white collar crime.

The Reserve Bank of India (RBI), as India's central banking institution, is entrusted with the regulation and supervision of the banking and financial sector. It also plays a significant role in detection of financial or banking frauds as well as addressing the issue of counterfeit currency and money laundering. In this context, Reserve Bank of India (RBI) has implemented Know Your

Customer (KYC) guidelines - Anti Money Laundering Standards¹ to combat white-collar crimes and financial fraud. It has also issued KYC directions 2016 which governs the implementation of Know Your Customer (KYC) norms in banks, Non banking financial corporations (NBFCs) and other financial institutions regulations², Both are an essential part of the overall anti-money laundering (AML) and counter-terrorist financing (CTF) framework

The Securities and Exchange Board of India (SEBI) focuses on regulating India's securities and capital markets. In accordance with its power under Securities and Exchange Board of India Act 1992 it has made Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 to prevent insider trading. Additionally, SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 aims to curb fraudulent and unfair trade practices in the securities market, such as market manipulation and price rigging. Like RBI, SEBI has also mandated Know Your Customer (KYC) and anti-Money Laundering (AML) requirements for market intermediaries. This supports the investors and various stakeholder interests.

Central Vigilance Commission was created, in 1964 on recommendation of Santhanam Committee, as an apex autonomous body to control corruption within public service. It derives its power from the Central Vigilance Commission Act, 2003. It is empowered to independently conduct inquiries and investigations of complaints disclosing any misconduct or misuse of power by any administrative department or any complaint regarding corruption or any other offense committed under the Prevention of Corruption Act, 1988. The Government of India has authorized the Central Vigilance Commission as the "Designated Agency" to receive written complaints about disclosure on any allegation of corruption or misuse of office and recommend appropriate action. It acts as a watchdog monitoring all the vigilance.

For tax-related offenses, agencies such as the Income Tax Department and the Serious Fraud Investigation Office (SFIO) are responsible. There are other agencies as well which all work in their own domain. All the above agencies work in tandem with the state police in arresting and prosecuting these crimes.

¹ [RBI KYC guidelines](#)

² [RBI KYC Direction 2016](#)

4.2. Prevention of Money Laundering Act 2002

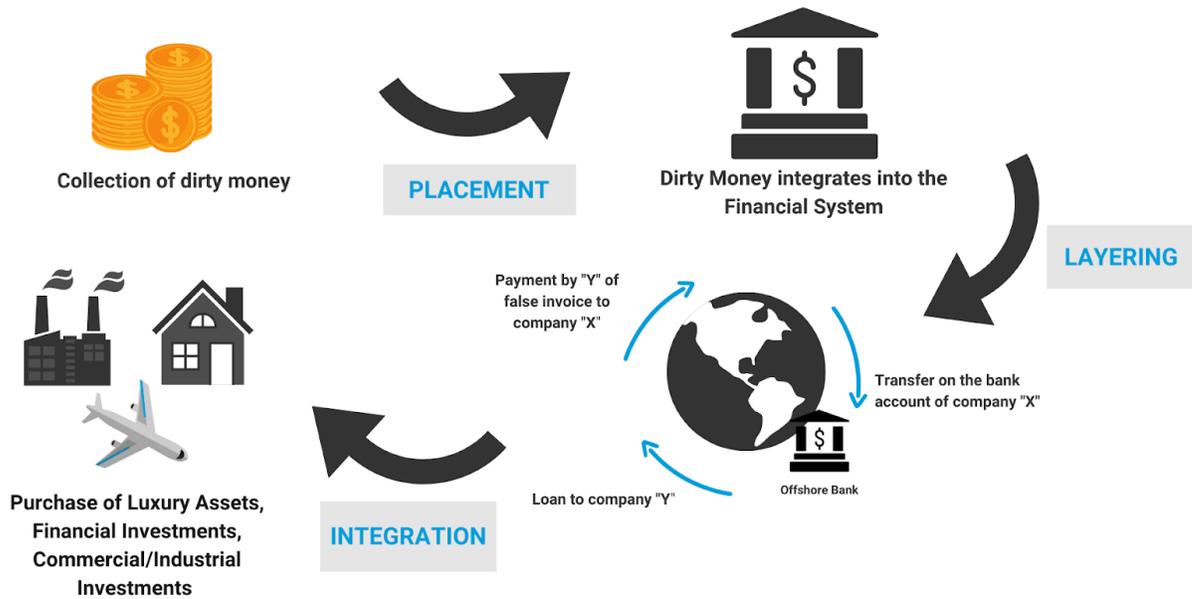
PMLA 2002 was enacted in response to India's global commitment under Vienna Convention 1988 to combat the menace of money laundering. PMLA defines money laundering as any activity or transaction that attempts to legitimize illegally obtained funds, making them appear as if they were legally acquired. Essentially, it means showing the illegal money as legal. Thus Money Laundering is not an independent illegal act, it relies on another crime (predicated offense), identifies earnings of which the subject matter of the crime is Money Laundering. Covering up or disguising the source of certain earnings will not amount to money laundering unless these earnings are obtained from an illegal activity.

In India, money laundering is often called Hawala Transaction. It is often done in such a way that investigative agencies fail to locate the real source of the income. It is reported that the Indian government loses 18 billion dollars annually due to money laundering, which is a big concern for a developing country. Thus this act also mandates that every banking company, financial institution, and intermediary maintain records of transactions of a specified nature and value, verify and keep records of all customers, and provide relevant information to specified authorities.

Illustration:

The Enforcement Directorate arrested former Delhi Deputy Chief Minister Manish Sisodia in March 2023 on a money-laundering charge, in connection with the Delhi excise policy case.

Money Laundering Cycle



3

4.3. Income Tax act 1961

While not all tax-related violations under the Income Tax Act 1961 are considered white-collar crimes, such as misinterpretation of the law, late filing of returns or small errors of omission, most of the activities related to tax evasion and fraud are deliberate and are financially motivated misconduct. These activities can lead to legal consequences and penalties, making them fall within the definition of white-collar crime.

The Income Tax Act is an essential legal framework for preventing and addressing white-collar crimes related to taxation, tax evasion, and financial impropriety. It includes provisions for penalties, prosecution, investigations, and whistleblower protection, making it a key tool in the fight against financial crimes.

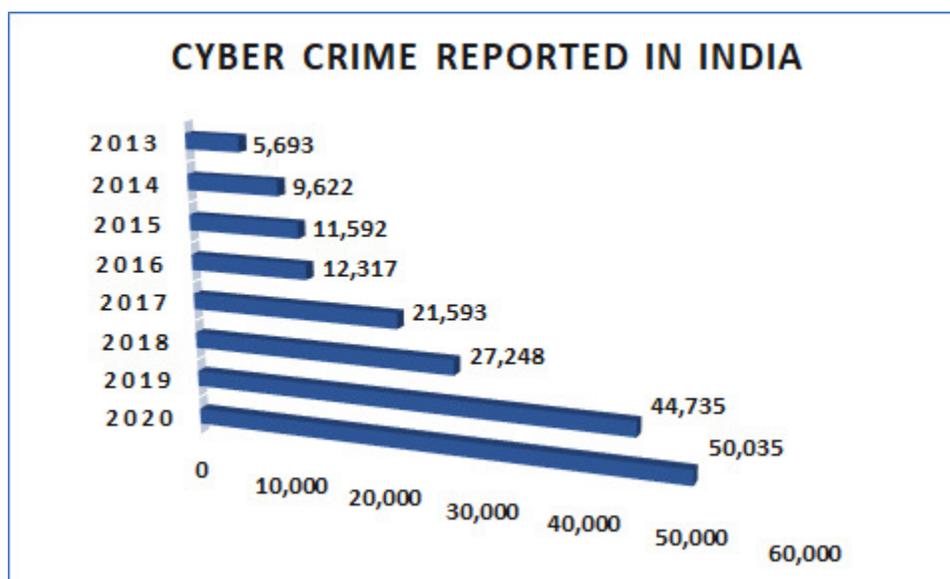
³ https://www.unodc.org/images/money-laundering/images_website_update/Money_Laundering_Cycle.png

4.4. Information Technology Act 2000

Post the internet boom in late 1990s, use of computers and the internet saw phenomenal growth. Simultaneously, India also opened up its economy through LPG reforms in 1991 under Narasimha Rao government, which allowed India to reap the benefits of the internet boom. It opened up new opportunities in each field such as entertainment, business, sports or education. As the use of computers and the internet rose, so was the crime related to it. Computers today have presented us with security risks and the sheer amount of damage that can be done through computers. One person sitting in his home can hack into any computer system he wants, including government systems and the private sector.

The potential for cyberattacks on critical infrastructure, including power stations, telecommunication networks, and the banking and financial sectors, is a looming concern. A cyberattack on such infrastructure could have catastrophic consequences for society. Additionally, the propagation of gaslighting and fake news via social media platforms, as seen during the Arab Spring movements, highlights how digital platforms can be exploited to incite protests and even overthrow governments.

Modern computers are increasingly misused for illegal activities such as email surveillance, credit card fraud, spam, and software piracy. In a clear violation of privacy and ethical standards, these activities have become prevalent. Cybercrimes are on the rise, and it's worth noting that, in the digital age, a man with his computer can cause more harm than a man with a gun.



The Information Technology Act, 2000, often referred to as the IT Act, was introduced to address the burgeoning threat of cybercrimes. Before its enactment, even emails were not recognized as accepted legal forms of communication and evidence in Indian courts. The IT Act, 2000, played a pivotal role in changing this legal landscape by granting electronic formats the recognition they deserved.

Illustration:

In 2005, in MTNL call records case where call detail records of high-profile individuals, including politicians and celebrities, were accessed without authorization. Mumbai police used IT act 2000 to investigate this unauthorised access to personal data.

4.5. Prevention of Corruption Act 1988

Corruption has been a major issue that our country is trying to deal with since its inception. It hampers our nation's development and welfare to a greater extent. In 1985, the then Prime minister Rajiv Gandhi famously said, with regards to corruption, that out of every rupee spent by the government for welfare of the downtrodden, only fifteen paise actually reached the persons for whom it was intended.

POCA 1988 was specifically brought to deal with corruption-related offenses involving public servants. The current provisions of Indian Penal Code, 1860 and the then existing Prevention of Corruption Act, 1947 were observed to be inadequate for effective handling of corruption in public servants. Therefore to supplement and fortify law against corruption, the Prevention of Corruption Act, 1988 was established.

This legislation repealed Sections 161 to 165A of the IPC and consolidated provisions pertinent to corruption-related offenses. Furthermore, it also repealed the Prevention of Corruption Act of 1947 and the Criminal Law Amendment Act of 1952, thereby streamlining the legal framework for addressing corruption cases involving public servants.

It expanded the definition and scope of public servants. It now includes political corruption and covers MP, MLA, MC, the Chairman of Corporation under the definition of public servants provided in Section 2(c)⁴ of the act. The Act also penalizes a public servant for taking gratification

⁴ [Section 2\(c\) in The Prevention of Corruption Act, 1988 \(indiankanoon.org\)](http://indiankanoon.org)

to influence the public by illegal means and for exercising his personal influence with a public servant.

Prevention of Corruption Act of 1988 stands as an important milestone in India's ongoing struggle against corruption. By comprehensively addressing offenses involving public servants, expanding the scope of their definition to encompass political actors, and streamlining the legal framework for corruption-related cases, this legislation signifies an important step towards fostering greater transparency and accountability with regards to the workings of the public servants.

Illustration:

Former Bihar Chief Minister Shri Lalu Prasad Yadav was charged in fodder scam case under Section 13 (b) of the Prevention of Corruption Act and other relevant sections of the Indian penal code.

5. Challenges in Investigation and Prosecution of white collar crimes

5.1. Judicial leniency and Perceived severity of crime

In contemporary society, public perception plays a critical role even in case of justice delivery. There is a stark difference that exists in how white collar crimes are perceived and sentenced when compared to regular street crimes of violent nature. Street crimes, characterized by their overt physical harm and often sensationalized by the media, tend to capture the public's attention and evoke fear due to their immediate and visible impact. The heinousness of crimes such as murder and rape, which involve tangible and direct suffering, often gets etched into the collective memory of the society, many times resulting into protest or demands for swift justice.

Conversely, white-collar crimes, which encompass various financial and economic transgressions, tend to transpire discreetly and their consequences are typically less obvious or overt. The harm inflicted on the society is quite large, but it is less apparent to the general public. Even the sheer number of people that get affected is quite high in these types of offenses, especially economic offenses. But we rarely see major outcry or uproar in such cases when compared rapes or murder where the crime and its impact is directly visible.

White-collar crimes frequently involve individuals or organizations occupying positions of trust, authority, and financial power, such as politicians and affluent businessmen. These individuals

often possess the means and connections to mitigate the gravity of their offenses or are able to avoid harsh punishments. Often they also have access to the best of the lawyers which makes the prosecutor's job even more difficult.

It is essential to recognize that judges, like all individuals, are not immune to public perception. They have their own biases and attitudes, despite their best efforts to make rational judgments based on the evidence presented. According to John Hogarth (in *Sentencing as a human process*⁵), the sentencing process is a cognitive process. The judge reads the facts, information, and evidence, and then organizes it all into relation with others. They then process the overall result of the case. But judges rarely have all the information or facts that are required to make a rational decision and pronounce an appropriate sentence. Thus in absence of complete facts, the stereotypes and biases are bound to arise and creep in which can influence the judgment.

More often than not, judges rely on available information and the gravity of offense apparent on face. Here the perceived value and impact of the crime comes into play. Obviously, street crimes such as murder, dacoity, and kidnapping would appear much more harsh and violent. Comparatively, white-collar crimes rarely have the elements of bloodshed or physical harm. The harm caused is to the large public but what appears on face is less grievous characterized by deceit and loss of money. This leads to differential treatment in sentencing of white collar criminals. This discrepancy in public perception and the perceived value of different types of crimes results in lenient sentencing for white-collar criminals and, in some cases, easy approval of bail. White-collar offenders often claim to be first-time offenders, further garnering sympathy from judges.

Law commission is fully aware of this lacuna of courts showing leniency in white collar crimes. Law commission in its 47th report⁶ stated :-

“Suggestions are often made that in order that the lower magistracy may realize the seriousness of some of the social and economic offenses, some method should be evolved of making the judiciary conscious of the grave damage caused to the country's economy and health by such anti-social crimes.... [We] hope that the higher courts are fully alive to the harm, and we have no doubt that on appropriate occasions, such as judicial conferences, the subject will receive attention. It is of utmost importance that all State instrumentalities involved in the investigation, prosecution and

⁵ [Hogarth, John. *Sentencing as a Human Process*. Toronto: University of Toronto Press, 1971. <https://doi.org/10.3138/9781487599553>](https://doi.org/10.3138/9781487599553)

⁶ <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022080816-1.pdf>

trial of these offenses must be oriented to the philosophy which treats these economic offenses as a source of grave challenge to the material wealth of the nation"

This leniency primarily stems from courts failing to fully grasp the societal impact of their actions and attitudes. White-collar crime damages a country's economy, hampers its growth prospects, disrupts the business environment, and erodes trust in the police and judiciary among honest citizens who genuinely respect the rule of law. Such lenient sentencing fosters an indifferent attitude towards the state's machinery and its institutions. Even the Supreme Court has stated in *M.H. Hosket v. State of Maharashtra*⁷ that "Soft sentencing justice is egregious injustice where many innocents are prospective victims.

SC also called out this issue of taking white collar crimes seriously in *State Of Gujarat vs Mohanlal Jitamalji Porwal*⁸ and addressing them with the same level of concern as other criminal offenses. In the same case, the Supreme Court emphasizes that when individuals commit these offenses, they do so with careful planning and personal gain in mind, often at the expense of the community or the state's economy. Failure to hold them accountable erodes trust in the judiciary and other institutions, which can have serious consequences for the nation and indirectly punish the law-abiding citizens of the country.

Similarly, in *G.B.S. Omkar v. Shri Venkateswara University*⁹, it was held that white-collar crimes must be dealt with much more severely than crimes of passion. These legal precedents underscore the need for a shift in the approach to sentencing and handling white-collar crimes to ensure a more equitable and just legal system. Criminals, driven by a fear of both the severity and certainty of punishment, should face equitable consequences for their actions, thereby fostering a just and law-abiding society.

5.2. Changing Technological Landscape

Since the early definition of white collar crimes, technology has advanced a lot. The advent of the personal computer (PC) in the 1970s and 1980s, with the introduction of computers like the Apple II and IBM PC, brought computing power to the hands of individuals and small businesses. Combined with the internet boom of late 1990s and early 2000s, and the proliferation of

⁷ [Madhav Hayawadanrao Hoskot vs State Of Maharashtra on 17 August, 1978 \(indiankanoon.org\)](#)

⁸ [State Of Gujarat vs Mohanlal Jitamalji Porwal & Anr on 26 March, 1987 \(indiankanoon.org\)](#)

⁹ [G.B.S. Omkar vs Shri Venkateswara University And ... on 19 February, 1981 \(indiankanoon.org\)](#)

information communication technology (ICT), virtual reality, computer-mediated communications and the growing establishment of artificial intelligence (AI) has directly challenged the traditional discourse of white collar crimes. The synergy between technology and white-collar crime is a dynamic and evolving narrative, one that has seen immense transformation over the years. During the nascent stages of white-collar crime, criminals predominantly relied on traditional methodologies such as currency counterfeiting, hawala transactions, corporate frauds, including insider trading, and intellectual property theft. However, the advent of technology and the widespread digitization of the world have endowed technology with a pivotal role in enabling these offenses.

The emergence of new technologies, such as the internet, cryptocurrency or bitcoin, white collar criminals have found new ways to facilitate their illegal activities, from the comfort of their home or from a far away country. Technology has made it easier for white collar criminals to carry out their activities in a covert manner by providing new tools and opportunities for fraud, embezzlement, and other financial crimes. For example, the use of digital financial transactions and online banking has made it easier for criminals to launder money and move funds between accounts that are located in different countries / jurisdictions which makes tracking them a logistical nightmare. The anonymity and decentralization provided by blockchain technology has also enabled the creation of anonymous and untraceable platforms for carrying out illegal activities.

This predicament is exacerbated by the massive volume and intricacy of data involved in white-collar crime investigations. Combined with anonymity offered by today's technologies, it could take police significant time just to locate and recognise the offender as he might live in a different city, state or even different country altogether. Anonymity serves as a significant enabler, fostering both criminal motivation and a reduced risk of apprehension. Consequently, eyewitness accounts are typically unavailable, paper trails are scattered or non-existent, and apprehending perpetrators in flagrante delicto (caught red handed) is exceedingly challenging. For investigation of just one crime it could take law enforcement agencies thousands of manhours to find incriminating evidence, and then present it in court. This whole process could take years before the criminal is finally convicted in court of law.

5.2.1. Gap between laws and technology

The law enforcement agencies as well as judges are also limited by the application of existing laws and statutes. To worsen matters, law enforcement often lags behind the technological world. In many cases, law doesn't even exist with regards to a crime being committed. For

example cryptocurrencies such as bitcoin were used to conduct money laundering and other crimes related to corruption. Cryptocurrencies as a payment medium in India are not regulated by any central authority. There are no rules and regulations or any guidelines laid down for settling disputes while dealing with cryptocurrency. They are not taxed either.

RBI had, through its notification dated 6 April 2018, entitled 'Prohibition on dealing in Virtual Currencies'¹⁰, banned all banks and financial institutions from providing services to transactions related to cryptocurrency. Consequently, they could be widely used for carrying out illegal transactions, due to lack of state control. Although a sort of pseudo ban exists in India regarding cryptocurrency, it is near impossible to track who owns these cryptocurrencies and who all are dealing with them, due to the decentralized nature of the technology. So hypothetically speaking, even if we make such a law banning these cryptocurrencies, enforcing the law would be a whole different ball game.

And no matter how many laws we enact or exact / specific our laws are, in the end it's the judiciary which, in any legal system, is responsible for interpretation of those and administration of justice. Since cybercrime is relatively a very recent phenomenon, the judicial response in terms of interpretation of various statutes of cyber law assumes vast significance. In traditional crimes, there is a plethora of judicial decisions but in case of cyber-crimes it is not so. Here we have very little to go ahead and look forward to interpretation of laws on the matter.

The rapid integration of technology into the financial sector and the evolving technological landscape has opened new avenues for criminals to engage in illicit activities while concealing their identities and operations. Furthermore, legal and regulatory frameworks are unable to keep pace with this rapidly changing technological environment. In this ever-changing landscape, dealing with these challenges is a continuous endeavor, forcing law enforcement agencies to continuously adapt and improve in order to counter white collar crimes effectively.

5.3. Jurisdiction issue and Cross-border Investigation

Law enforcement agencies dealing with white-collar crimes often confront a significant challenge that frequently overshadows all other obstacles, to a point of even halting investigations entirely. This pervasive issue stems from the fact that in many instances, white collar crimes are not

¹⁰ [Reserve Bank of India - Notifications \(rbi.org.in\)](https://www.rbi.org.in)

restricted to one single country. White-collar crimes frequently transcend national boundaries, with both the perpetrator and the victim residing in different countries, thereby complicating matters in terms of jurisdiction. This globalization of illicit activities poses significant jurisdictional challenges to law enforcement agencies.

Cross-border investigations have become a formidable challenge, often constrained by a myriad of legal and logistical impediments and even political considerations. It makes even simple processes more complex and time consuming. The more countries and jurisdictions are involved in a matter, the harder it becomes to run and complete an investigation quickly, efficiently, and comprehensively. Various issues arise like language barriers, different cultural perceptions, local laws, data privacy provisions, and blocking statutes. All of which have to be considered and coordinated at the same time.

Cross-border investigations are extremely complex and burdensome. This complexity arises because, especially in cases involving financial crimes, multiple foreign (non-local) authorities may express an interest in asserting their legal authority and jurisdiction over the illegal activities being investigated. There is also a sheer volume of data which needs to be accessed and analyzed, as many of the financial crimes can be document driven, which make the investigation process extremely lengthy. Several countries have also imposed restrictions on cross border data transfers, similar to India's Personal Data Protection Act 2023, which complicates cross-border investigations for law enforcement agencies. For instance, under the General Data Protection Regulation (GDPR) for the European Union, the transfer of personal data to law enforcement authorities in a non-EU member country (which is India) can be subject to certain conditions and safeguards¹¹.

Navigating through multijurisdictional investigations also requires an extremely high level of awareness and astute legal reflexes since it implies multiple potential pitfalls. These "pitfalls" can include issues related to varying legal frameworks, conflicting regulations, different investigative procedures, and so on. Therefore, handling multijurisdictional investigations demands a deep understanding of the legal system and its intricacies in each jurisdiction and the ability to respond swiftly and effectively to any legal issues or complications that may arise.

This jurisdictional complexity persists even when countries have extradition treaties and robust diplomatic relations. For instance, the protracted efforts to extradite Julian Assange from the United Kingdom to the United States, despite the historical alliance and both being part of Five

¹¹ <https://gdpr-info.eu/art-45-gdpr/>

Eyes Alliance, illustrates the complexities of such cases. Furthermore, should apprehending the perpetrator become possible, navigating the whole extradition process can become a bureaucratic nightmare. These challenges are magnified when diplomatic relations between the countries involved are strained or non-existent. In such cases, nations may even refuse to acknowledge the commission of the crime, stalling the investigative process and rendering it effectively useless.

This situation underscores a common challenge wherein the jurisdiction of law enforcement agencies is limited and as such their capacity to investigate and prosecute criminals involved. In such cases, nations may often resort to applying diplomatic pressure as a means to address and resolve such disputes. International diplomacy becomes a key tool for governments in tackling such kinds of transnational crimes, where legal jurisdiction and enforcement mechanisms are limited.

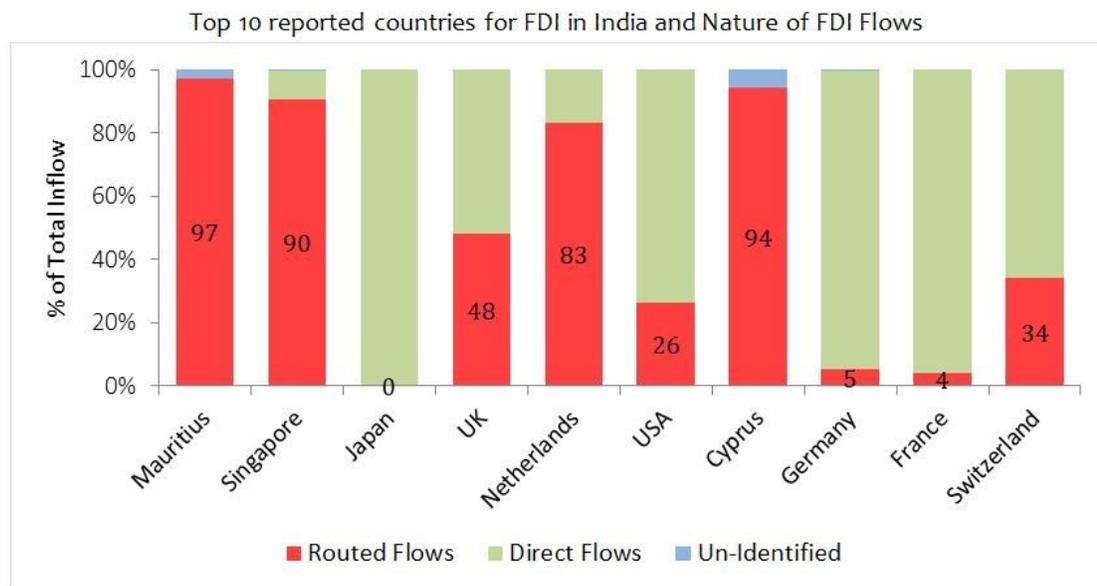
5.4. Tax treaty abuse and Tax havens

Over the last decades, bilateral tax treaties, concluded by nearly every jurisdiction in the world, have served to prevent harmful double taxation and remove obstacles to cross-border trade in goods and services, and movements of capital, technology and persons. India also has various such agreements such as Double Taxation Avoidance Agreement (DTAA) with various countries such as Italy, Spain etc. This extensive network of tax treaties (3000 to 4000 treaties in force worldwide) has, however, also given rise to treaty abuse and so-called "treaty-shopping" arrangements.

The concept of "treaty shopping" involves investors establishing an entity in a country with a favorable tax treaty, through which they route their investments into the source country, where they expect to earn income.

Taxpayers engaged in treaty shopping and other treaty abuse strategies undermine tax sovereignty by claiming treaty benefits in situations where these benefits were not intended to be granted, thereby depriving jurisdictions of tax revenues.

5.4.1. Case study and Mauritius Route



Source: CBGA (2017): *Foreign Direct Investment in India and Role of Tax Havens*

Mauritius is a small island nation in the Indian ocean with an estimated GDP of nearly 12 billion dollars in 2022. The most curious thing about this country is its contribution to Foreign Direct Investment (FDI) in india. It has consistently ranked among the top 3 list of countries contributing FDI inflows in india. In 2021-22, FDI inflows from Mauritius were around \$9.39 billion, a country with a GDP of approx. 14 billion dollars . Mauritius accounted for 34% of foreign direct investments in the country between 2000 and 2015.

Mauritius has been prominently labeled as a tax haven. Most of the investors who invest from Mauritius are not its own citizens, but citizens of other nations who route their investment through Mauritius to mitigate their tax obligations. A notable case in point is the acquisition of Hutch by Vodafone, a transaction structured through Mauritius to circumvent Indian tax liabilities.

The process is colloquially referred to as the "Mauritius Route. The channelization of foreign money into India via any company in Mauritius is known as the 'Mauritius route'. This route is designed to convert black money into white, by evading tax- legally (as capital gains tax rate in Mauritius is 3%). Importantly, Mauritius found itself placed on the grey list of the Financial Action Task Force (FATF) in February 2020, a status that has since been removed. This list primarily includes countries which have lax regulatory frameworks to effectively respond against money laundering and terror financing, or they actively support it (ignore it). The presence of a lax regulatory framework in Mauritius, coupled

with lenient regulations have made it easy for companies to round-trip money into India through name-plate entities and shell companies, thereby doing tax evasion and converting their black money into white.

The case of Mauritius serves as a stark reminder of the need for vigilance against this form of treaty abuse. This underscores the challenges in addressing white-collar crimes within the global financial landscape. The misuse of such treaties not only deprives nations of their rightful tax revenues but also facilitates money laundering which is an enabler for various illicit activities. Addressing these issues requires a comprehensive approach including enhancing regulatory frameworks, strengthening international cooperation, and promoting transparency to deter illicit activities and safeguard the integrity of global financial systems.

5.5. Issues within the law

The legal framework surrounding white-collar crimes in India is a complex and multifaceted system that encompasses various laws and regulations. However, this framework is not without its criticisms due to the limitations and the existence of legal loopholes and various lacunas in the law itself.

5.5.1. Loopholes within Prevention of Corruption act, 1988

The Prevention of Corruption Act, 1988 is the foundation of the anti-corruption law in India, primarily enacted to deal with corruption in public servants. Some changes were made into this act to protect honest public servants, but it ended up shielding dishonest ones.

In the case of *Dr. Subramanian Swamy vs. Director, CBI & Anr*¹² on May 6, 2014, Supreme court struck down Section 6-A (1)¹³ of the DSPE Act 1946, which necessitated prior permission from the Central Government to conduct an inquiry or investigation into offenses under the Prevention of Corruption Act, 1988, concerning Central Government Officers of the rank of Joint Secretary and above.

But in the 2018 amendment of the POCA, Section 17A¹⁴ was inserted. As per new changes prior approval is again mandated for any inquiry or investigation into an offense

¹² [Dr.Subramanian Swamy vs Director. Cbi & Anr on 6 May. 2014 \(indiankanoon.org\)](http://indiankanoon.org)

¹³ [Section 6A in the Delhi Special Police Establishment Act. 1946 \(indiankanoon.org\)](http://indiankanoon.org)

¹⁴ [India Code: Section Details](http://indiankanoon.org)

committed by a public servant, unless the public servant is caught red handed which is often a rarity, especially at higher administrative levels / ranks. Furthermore, Section 19¹⁵ of the act mandated that previous sanction is also necessary for prosecution of the public servant.

This was done primarily to protect honest public servants from false and frivolous cases, but it inevitably made prosecution of corrupt public servants even more difficult. Many times even getting approvals for an inquiry can be tricky because corruption can be organizational where even the approving authority might be involved in the corruption as well. One additional issue pertains to the fact that this act has limited capacity to punish crimes of omission.

Likewise, there exist challenges in addressing a spectrum of white-collar crimes due to deficiencies in other legislative enactments as well. For instance, the Lokpal and Lokayukta Act of 2013 does not allow for anonymous complaints. This is problematic because whistleblower protection in India is already quite lackluster, which makes people hesitant to reveal their identities as they are going against the government. Even the Whistleblowers Protection Act, 2013 covers disclosures related to corruption and misuse of public office, leaving out a wide range of other potential areas where whistleblowers may be needed, such as environmental violations or corporate misconduct. These are just a few of the legal loopholes, and white-collar crime is such a vast category which involves a wide range of laws and statutes that discussing them all comprehensively would be nearly impossible.

In light of these complexities and challenges, the efficacy of the legal framework in addressing white-collar crimes needs careful reconsideration and reform. Addressing these issues is crucial to foster accountability, transparency, and justice in India, in both the public as well as private sector.

5.6. The Manpower Shortage Conundrum

In the complex realm of white collar crimes, where financial misdeeds and corrupt practices often remain hidden beneath a veneer of respectability and obscurity, the Central Bureau of Investigation (CBI) and the Enforcement Directorate (ED) play pivotal roles in safeguarding the financial integrity of India. As the custodians of justice, these investigative agencies are tasked with

¹⁵ [India Code: Section Details](#)

unraveling intricate webs of financial impropriety and holding individuals accountable for their actions

5.6.1. Manpower shortage in CBI and Issue of General Consent

In the complex realm of white collar crimes, where financial misdeeds and corrupt practices often remain hidden beneath a veneer of respectability and obscurity, the Central Bureau of Investigation (CBI) and the Enforcement Directorate (ED) play pivotal roles in safeguarding the financial integrity of India. As the custodians of justice, these investigative agencies are tasked with unraveling intricate webs of financial impropriety and holding individuals accountable for their actions

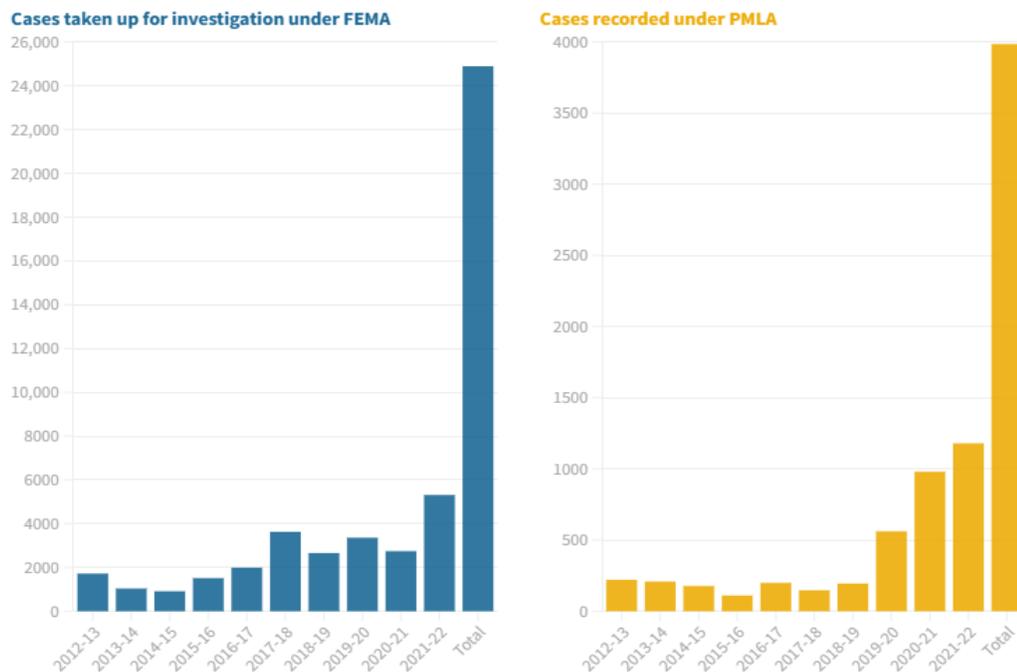
However, despite their important functions, the CBI, India's premier investigative agency, faces a critical challenge in the form of insufficient manpower. As far back as 2016, the then Director of the CBI, Anil Sinha, highlighted the issue of manpower crunch and stated “CBI will collapse without manpower”, emphasizing the organization's pressing concerns regarding its workforce. At that time CBI had 1531 vacancies in the organization. Such high vacancies reflect the huge gap between sanctioned strength of investigating officers and the number of vacancies. Regrettably, even seven years later, the situation remains largely unchanged. In 2023, the CBI still grapples with a shortage of expert personnel, with 1,709 vacancies against its sanctioned strength of 7,295. This persistent shortage of personnel significantly impedes the CBI's ability to provide prompt and efficient responses to cases of financial misconduct and other white collar crimes.

The other issue that CBI faces with regards to investigation is the issue of ‘general consent’. The CBI is governed by The Delhi Special Police Establishment (DSPE) Act of 1946, which requires the investigative agency to obtain the consent of state governments before it can investigate a crime in a particular state. Although the Central Government can authorize the CBI to investigate a crime in a state, it must require the consent of the concerned State Government.

This consent can be of two types, either case specific or general consent. General consent, if given by the state government, allows CBI to operate and conduct investigation within a state border seamlessly. This streamlines the process for the CBI and allows for more efficient and independent investigations.

Now due to various reasons whatsoever, many states withdraw this general consent to CBI. This creates multitudes of issues. It significantly hampers the CBI's ability to conduct investigations within that state's jurisdiction. Without general consent, the CBI would need to seek specific permission from the state government for each case. The process of obtaining specific permissions for individual cases can be administratively complex and time-consuming. It requires extensive paperwork and coordination between the CBI and the state government, which may impede the timely pursuit of investigations. It also affects the efficiency of the organization as some cases that might require immediate attention get delayed, potentially affecting the agency's ability to prevent and combat various types of financial and non-financial white collar crimes which may affect the country as a whole.

ED cases in the last 10 years



Source: Lok Sabha question

Similar to CBI, the Enforcement Directorate also faces the same issue of not enough manpower. In 2014, the agency worked at just 33% of the sanctioned strength. Out of a sanctioned strength of 2064, it has just 686 employees. An internal assessment of the ED, indicated that if the current number of investigating officers were to handle the existing PMLA caseload, it would take an estimated 5.5 years to complete.

In 2017, this position only marginally improved wherein out of a total approved strength of 2,064, the agency had a working strength of 864 employees, with 56% of sanctioned posts being vacant. On top of it the workload of ED has increased substantially in recent years, as per data presented in the Lok Sabha by Union Minister of State for Finance, Pankaj Chaudhary.

Ashok Bhan, senior special counsel for the Central Bureau of Investigation (CBI) said understanding the above need said “Economic liberalization means more money coming into the country and more chances for white collar criminals to loot. ... Hence, ED cadres need to be strengthened with proper training on latest technologies and they should be placed in various parts of the country.¹⁶”

This problem also plagues the judiciary as well. Compared to developed nations, India has only 21 judges per million citizens while the US has 107 judges per million. This low people to judges ratio issue is compounded by the vacancies in the judiciary. For example, out of the 840 positions for High Court judges, more than a third are vacant. The lower judiciary in India has vacancies of around 20 percent. This leads to high pendency of cases and it delays justice.

In the landscape of combating white-collar crimes, the Central Bureau of Investigation (CBI) and the Enforcement Directorate (ED) in India serve as crucial guardians of financial integrity. Despite their vital roles, both agencies face challenges, primarily due to personnel shortages and complexities related to 'general consent' for investigations. The judiciary as well is plagued by the same issue. The need for augmenting their workforces and equipping their cadres with modern training is evident, given the evolving nature of financial crimes in the digital age. These challenges underline the importance of structural reforms and resource allocations to fortify these agencies in their pursuit of justice and accountability.

6. Recommendations

- 6.1. ***Addressing the manpower shortage*** :- The top investigating agencies of the country like the Central Bureau of Investigation, the Enforcement Directorate, the Income-tax Department should promptly address their manpower shortages. Without enough manpower, it is near impossible to prevent and investigate white collar crimes, considering they are proliferating at such a rapid pace. As the Indian economy expands, so must these agencies as well. This will also

¹⁶ [Nimmagadda Prasad vs C.B.I., Hyderabad on 9 May, 2013 \(indiankanoon.org\)](http://indiankanoon.org)

increase the risk of apprehension in criminals, making him examine the cost benefit analysis of committing the crime.

- 6.2. ***Extensive training and developing expertise :-*** India's bureaucratic system has historically favored a generalist approach, wherein civil servants, including Indian Administrative Services (IAS) officers, are often rotated through different government departments during their careers. As white collar crimes continue to grow in complexity and sophistication there is a pressing need to develop a specialist approach in the civil service. Comprehensive training programs are required with respect to an individual's chosen career path. Promotions can be linked to the expertise they develop. Specialization can enhance the government's capacity to prevent, detect, and investigate white-collar crimes with precision and efficiency.
- 6.3. ***Stringent regulatory laws and drastic punishment:-*** for white collar criminals may help in reducing these crimes. Recognition of collusive bribery and punishment for crimes of omission under definition of corruption can be a good start. Even legislation with retrospective operation may be justified for this purpose. Dr. Radhakrishnan, the Second President of India, in this context once observed: "the practitioner of this evil (i.e. white collar and socio-economic crimes) the hoarders, the profiteers, the black marketers, and speculators are the worst enemies of our country. They have to be dealt with sternly, however well placed, important and influential they may be, if we acquiesce in wrong-doing, people will lose faith in us". The penalty for white collar crime which is a potential risk to human lives may even be extended to the imprisonment for life or even to death if the circumstances so demand. Stricter punishment, combined with high risk of apprehension, acts as deterrence for the criminals engaged in such activities.
- 6.4. ***Increased international cooperation and applying diplomatic pressure:-*** White collar crimes are not just restricted to a single country. Thus international cooperation is necessary to prevent and prosecute these crimes. Cooperation can take various forms, including information sharing, extradition treaties, joint investigations, and the harmonization of legal frameworks. These measures serve as potent tools to prevent and prosecute white-collar criminals who seek refuge in different jurisdictions. The collective sharing of knowledge, best practices, and intelligence can help authorities stay ahead of these white collar criminals. Applying diplomatic pressure also remains a potent tool in the prevention of white-collar crimes. The complexities involved in cross-border investigation, especially where nations may resist or obstruct investigations within their jurisdictions, the strategic application of diplomatic pressure can prove instrumental in achieving desired outcomes. Diplomatic

pressure may encompass various strategies, including formal requests, negotiations, sanctions, or the threat of strained diplomatic relations.

- 6.5. ***Creating public awareness:-*** against these crimes through the media of press, platform and other audio-visual aids. Intensive legal literacy programmers may perhaps help in reducing the incidence of white collar criminality to a considerable extent. Furthermore, this will also reshape the attitudes of judges, as well as the executive and legislature, making them view these matters with greater seriousness and advocating for more stringent punitive measures. Better education of the public also could lead to increased reporting and sentencing of white-collar offenders. Better information could be collected, and the public's cooperation in ensuring prosecution could be secured. In general, improved public education would make it possible for citizens to recognize white-collar crime when they see it. At present, the public's attitude toward such crime is one of relative indifference, especially when the crime is committed by individuals of high social standing and when the victims are the government or large companies, rather than individuals.

7. Conclusion

The prevention of white-collar crimes is an ongoing battle, one that necessitates constant adaptation and evolution for law enforcement agencies and the government. As white-collar crimes continue to grow in terms of sophistication and scope, it is important for the law enforcement agencies as well to adapt and remain proactive in countering this menace.

White collar crimes erode trust in institutions, hinder economic growth, and contribute to social inequality. The investigation and prosecution of these crimes also presents us with unique challenges due to its complexity, ever evolving technological aspect, and the chronic manpower issues that Indian agencies face..

Addressing these challenges requires a holistic approach involving strengthening law enforcement capabilities, enhancing international cooperation, and reforming legal frameworks. Law enforcement agencies require specialized training, including developing expertise in financial forensics and cybercrime investigation, to effectively investigate and prosecute such crimes.

International cooperation is also crucial in combating white-collar crimes as these crimes transcend national boundaries. This involves establishing robust mechanisms for information sharing, mutual legal assistance treaties, and extradition treaties. Additionally, legislative reforms should be carried out to address the loopholes and ambiguities that exist in laws.

Tackling white-collar crime requires a collaborative effort from law enforcement agencies, legal authorities, policymakers, and the public alike. By addressing the challenges outlined in this paper and implementing effective countermeasures, India can safeguard its economy, protect its citizens, and uphold the principles of justice and fair play.