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When Governance Fails, Crime Follows: Examining Corporate Governance as a Barrier Against White-Collar Crime

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ABSTRACT

'Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.' - Louis D. Brandeis. The term corporate governance is commonly used in the context of compliance checklists and board resolutions, but its role is far more fundamental: it determines whether the individuals running a business can be trusted with other people's money. This paper treats corporate governance not as a formality but as the first line of defence against white-collar crime, that is, the fraud, falsification and breach of trust committed in boardrooms rather than in back alleys. Drawing on the collapse of Satyam Computer Services, Enron, Wirecard, IL&FS and the more recent implosion of FTX, the paper identifies a common thread: it was not the rules that failed, but the individuals who were supposed to enforce them, the independent directors, auditors and regulators, who either turned a blind eye or were never truly independent in the first place. The paper assesses the legal framework built to avert such failures, including the Companies Act, 2013, the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and the Sarbanes-Oxley Act of 2002, and asks why these measures continue to be circumvented. It concludes that good governance is not a question of whether rules exist, but of whether institutions are willing to act on red flags before a scandal becomes irreversible.

Keywords: *Corporate Governance, White-Collar Crime, Independent Directors, Companies Act 2013, Sarbanes-Oxley Act, Corporate Fraud, SEBI, Whistle-blower Protection, Audit Committee, Regulatory Enforcement*

I. INTRODUCTION

'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.'

- Edwin H. Sutherland[1]

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[1] EDWIN H. SUTHERLAND, WHITE COLLAR CRIME: THE UNCUT VERSION 9 (Yale University Press, New Haven, 1983).

Every company, in theory, runs on trust. A shareholder buys stock without ever meeting the people managing the money; a depositor hands over savings without auditing the bank's vault; an employee contributes to a provident fund without verifying where that fund is actually invested. Corporate governance exists to make that leap of faith safe. It is best understood the way a household understands a lock on the front door: most days the lock does nothing visible, and its value is felt only on the one day someone tries to walk in uninvited. When the lock is weak, or when the person holding the key is also the person planning the burglary, the result is not merely a company that underperforms; it is a company that becomes an instrument of crime.

White-collar crime, a term coined by the criminologist Edwin Sutherland in 1939, refers to non-violent offences committed by individuals of high social standing in the course of legitimate business activity.[2] It rarely announces itself the way conventional crime does. There is no broken window and no forced entry, only a set of falsified numbers that look, until the very end, exactly like every other set of numbers a company has ever filed. That is precisely what makes it dangerous, and precisely why corporate governance, rather than the criminal law alone, has become the primary mechanism through which societies attempt to prevent it.

India's own experience with this problem came into sharp focus in January 2009, when B. Ramalinga Raju, the founder and chairman of Satyam Computer Services, admitted an aggregate overstatement of about Rs 7,136 crore in the company's balance sheet, including non-existent cash and bank balances of about Rs 5,040 crore, built up over several years.[3] What made the Satyam scandal so unsettling was not the scale of the fraud alone, but the fact that it had passed, year after year, through a functioning board, a reputed statutory auditor, and a company that had won awards for its corporate governance practices only months before the truth emerged. The lock, in other words, had looked perfectly intact from the outside.

This paper proceeds from a simple premise: corporate governance is not a decorative feature of company law but a working barrier against economic crime, and that barrier fails in fairly predictable ways. Independent directors stop being independent, audit committees stop asking hard questions, and whistle-blowers are silenced long before regulators ever hear their names. Understanding these failure points, through Satyam, through Enron, through IL&FS and

[2] SUTHERLAND, *supra* note 1, at 9. Sutherland introduced the term in his presidential address to the American Sociological Society in December 1939, published at 5 AM. SOC. REV. 1 (1940).

[3] SECURITIES AND EXCHANGE BOARD OF INDIA, *Order in the Matter of Satyam Computer Services Ltd. in respect of Mr. B. Ramalinga Raju and Ors.*, WTM Order dated July 15, 2014, available at https://www.sebi.gov.in/enforcement/orders/jul-2014/order-in-the-matter-of-satyam-computer-services-ltd-in-respect-of-mr-b-ramalinga-raju-mr-b-rama-raju-mr-vadlamani-srinivas-mr-g-ramakrishna-and-mr-v-s-prabhakara-gupta_27413.html (last visited July 20, 2026).

Wirecard, and through the more recent collapse of FTX, is the surest way of understanding what effective governance would actually require.

II. Objective of the Study

The aims of the study are:

- To examine the concept and functions of corporate governance in relation to the prevention of white-collar crime.
- To study the statutory and regulatory framework governing corporate boards, auditors and disclosures in India and abroad.
- To analyse landmark corporate governance failures and to identify the common patterns behind them.
- To evaluate the practical challenges in enforcing governance norms and to suggest measures for strengthening accountability.

III. Literature Review

The literature on corporate governance has grown considerably since the Cadbury Committee's 1992 report first framed governance as the system by which companies are directed and controlled.[4] The OECD's Principles of Corporate Governance built on that foundation, identifying the protection of shareholder rights, the responsibility of the board and the integrity of disclosure as the pillars on which investor confidence rests.[5] In India, the Companies Act, 2013 gave statutory teeth to several of these principles by requiring listed companies to appoint independent directors, to constitute audit committees and to establish a formal vigil mechanism.[6] In the United States, the Sarbanes-Oxley Act of 2002 was enacted directly in response to the Enron and WorldCom scandals and remains the most far-reaching legislative response to corporate fraud in modern history.[7]

Academic assessment of how these frameworks operate in practice is considerably more pessimistic. Where independent directors are nominated by the very promoters whose conduct they are meant to oversee, the assumption of independence is compromised structurally, long

[4] Committee on the Financial Aspects of Corporate Governance, Report of the Committee on the Financial Aspects of Corporate Governance para. 2.5 (Gee and Co. Ltd., London, 1992).
[5] OECD, *G20/OECD Principles of Corporate Governance* 9 (OECD Publishing, Paris, 2015). The 2015 text has since been revised: OECD, *G20/OECD Principles of Corporate Governance 2023* (OECD Publishing, Paris, 2023).
[6] The Companies Act, 2013 (Act 18 of 2013), ss. 149(4) (appointment of independent directors), 149(6) (criteria of independence), 177(1) (audit committee) and 177(9) (vigil mechanism).
[7] Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745; see in particular section 302 (codified at 15 U.S.C. section 7241) (corporate responsibility for financial reports).

before any misconduct takes place.[8] It is this gap between the formal architecture of governance and its actual operation that this paper addresses: not whether the rules exist, but whether those subject to them have any real incentive to comply with them.

IV. Corporate Governance and White-Collar Crime: Locating the Connection

Corporate governance is best described as the system of rules, relationships and procedures by which a company is directed and controlled, and through which the interests of shareholders, employees and the wider public are balanced against the discretion conferred on management. It is a descriptive formulation rather than a statutory one: no Indian statute defines the term.[9]

The idea is more easily grasped through the image of a football match. The players, that is, the executive management, may attack, defend and take risks in the pursuit of a win. A referee who owes no allegiance to either side ensures that the match is not won by a foul that nobody sees. Independent directors, statutory auditors and regulators are meant to be that referee. Once the referee begins taking instructions from one of the teams, the result cannot be relied upon, however clear the scoreline on paper may appear.

It is where this refereeing role fails that white-collar crime thrives. In most cases it is not the work of a single dishonest executive acting alone; it requires a board that does not ask awkward questions, an auditor willing to sign off on figures it has not fully tested, and a regulator that intervenes only once the scandal has surfaced. Good governance cannot remove the temptation to commit fraud, because no rule can, but it raises the likelihood that the fraud is caught early, while it is still a discrepancy on a spreadsheet rather than a criminal conviction.[10]

V. Statutory Safeguards: The Mechanisms Meant to Act as Barriers

Modern company law relies on a cluster of overlapping mechanisms rather than on any single safeguard, on the theory that fraud is easier to conceal from one gatekeeper than from several. Listed Indian companies must maintain a minimum proportion of independent directors on their boards and on their audit committees, precisely so that at least some voices in the room have no

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[8] Lucian A. Bebchuk & Assaf Hamdani, *Independent Directors and Controlling Shareholders*, 165 U. Pa. L. Rev. 1271 (2017).

[9] Committee on the Financial Aspects of Corporate Governance, *supra* note 4, para. 2.5; OECD, *supra* note 5, at 9. The Companies Act, 2013 contains no definition of corporate governance; for the duties of directors see The Companies Act, 2013 (Act 18 of 2013), s. 166.

[10] OECD, *supra* note 5, at 11.

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financial stake in agreeing with management.[11] The SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 further require related-party transactions to be governed by a board-approved policy on materiality, to carry the prior approval of the audit committee and, where the transaction is material, the prior approval of shareholders, with the related party barred from voting. Those requirements close off one of the more common routes through which promoters have historically siphoned funds out of listed entities.[12]

Whistle-blower protection performs a similar function from a different angle. The Sarbanes-Oxley Act of 2002 protects employees who report suspected fraud: section 806 gives an employee who suffers retaliation an administrative complaint route through the Occupational Safety and Health Administration and a civil action for reinstatement, back pay and compensatory damages, while section 1107 makes retaliation against a person who provides truthful information to a law enforcement officer a federal criminal offence.[13] The premise of both provisions is that the earliest and most reliable warning of corporate wrongdoing usually comes from someone inside the building rather than from an external audit. These mechanisms work the way a smoke detector works in a house, not by preventing a fire, but by ensuring that a fire is noticed while it is still small enough to put out with a bucket of water rather than a fire engine.

VI. Case Studies: When the Barrier Collapsed

The value of governance mechanisms is best tested not in ordinary times but at the moment they are needed most, and a review of major corporate collapses shows the same weaknesses recurring across very different legal systems.

A. Satyam Computer Services (India, 2009)

Ramalinga Raju's confession revealed years of fabricated invoices and inflated bank balances that had gone undetected by both the internal audit function and the statutory auditor. On 9 April 2015 the Special Court for CBI Cases at Hyderabad convicted Raju and nine co-accused, each of whom was sentenced to seven years' rigorous imprisonment, but only after thousands of employees and investors had already absorbed the losses.[14]

[11] SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, regs. 17(1)(b) (board composition) and 18(1)(b) (audit committee composition).
[12] SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, reg. 23.
[13] Sarbanes-Oxley Act of 2002, section 806 (codified at 18 U.S.C. section 1514A) (civil anti-retaliation remedy); Sarbanes-Oxley Act of 2002, section 1107 (codified at 18 U.S.C. section 1513(e)) (criminal retaliation offence).
[14] *Central Bureau of Investigation v. B. Ramalinga Raju and Ors.*, Special Court for CBI Cases, Hyderabad, decided on Apr. 9, 2015 (unreported).

B. Enron Corporation (United States, 2001)

Enron used off-balance-sheet special purpose entities to conceal debt and to overstate profits, with the knowledge, or at least the studied indifference, of its auditor, Arthur Andersen. The scandal did not merely bankrupt an energy company; it destroyed an entire accounting firm and brought the Sarbanes-Oxley Act into being.[15,16]

C. Wirecard AG (Germany, 2020)

The German payments company recorded almost two billion euros of cash as held in trustee accounts with Philippine banks. EY had accepted those balances in earlier audits on the strength of third-party confirmations; the two banks later stated that the confirmation documents bearing their letterheads were forgeries, and EY refused to sign the 2019 accounts, which is what precipitated the collapse. The episode showed that even a Big Four sign-off can conceal an empty shell where the auditor never independently verifies the bank confirmations on which it relies.

D. IL&FS (India, 2018)

Infrastructure Leasing and Financial Services defaulted on its debt obligations despite carrying a high credit rating almost until the point of collapse. The episode exposed the weakness of board oversight and of the credit rating process alike, the latter being the mechanism investors rely upon for early warning of financial strain.

E. Punjab National Bank and Nirav Modi (India, 2018)

Letters of undertaking issued over the bank's SWIFT terminal without being recorded in its core banking system were, on the account given in the bank's own disclosure to the stock exchanges in February 2018 and in the subsequent charge sheet of the Central Bureau of Investigation, allegedly used by a diamond trader to raise credit of roughly USD 1.8 billion from the overseas branches of Indian banks. The arrangement persisted for years because a basic governance safeguard, the reconciliation of SWIFT messages against the core banking record, was simply not being applied.

F. FTX (United States, 2022)

The cryptocurrency exchange founded by Sam Bankman-Fried collapsed after it emerged that customer deposits had been transferred to a related trading firm without independent oversight,

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[15] *SEC v. Andrew S. Fastow*, Litigation Release No. 17762 (Oct. 2, 2002), available at https://www.sec.gov/enforcement-litigation/litigation-releases/lr-17762 (last visited July 21, 2026); see also *SEC v. David B. Duncan*, Litigation Release No. 20441 (Jan. 24, 2008).

[16] Sarbanes-Oxley Act of 2002, *supra* note 7.

without disclosure, and without even a functioning finance department. Bankman-Fried was convicted on all seven counts in November 2023 and sentenced to 25 years' imprisonment in March 2024, in a case widely described as a textbook illustration of what happens when a company has no board capable of saying no to its own founder.[17]

G. Theranos (United States, 2022)

Elizabeth Holmes was convicted of defrauding investors after years of misrepresenting the capabilities of the company's blood-testing technology to a board that included several high-profile but professionally disengaged directors, none of whom had the technical expertise to challenge the claims being made in the boardroom.[18]

Taken together, these are not unrelated accidents. They describe one recurring institutional failure: a governing body that lacked the independence, the information or the will to act before the fraud grew too large to hide.

VII. Why the Barrier Keeps Failing: Structural Challenges

That decades of governance reform have not prevented these failures points to structural rather than individual causes. In most jurisdictions, including India, independent directors are nominated and remunerated by the very promoters they are meant to police, which produces a quiet conflict of loyalty.[19] A director who owes his seat, and in many cases a substantial part of his annual income, to the chairperson can hardly be expected to be the one who asks an inconvenient question at an inconvenient time.

Auditors face a comparable difficulty. The firm that certifies a company's accounts frequently earns substantial further fees from the same client for non-audit advisory work, a financial dependence that sits uneasily with the scepticism an audit is supposed to bring, even if the evidence on its effect on audit quality remains contested. Regulators, for their part, tend to act reactively rather than proactively, intervening only after a whistle-blower complaint, a credit rating downgrade or a media investigation has already brought the matter into the open.

There is also a timing problem in complex financial and technology businesses. By the time a regulator such as the Insolvency and Bankruptcy Board of India is called in to deal with the consequences of a corporate collapse, the governance failure that led to it is usually several years old. Prevention, in other words, continues to lose ground to resolution.

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[17] *United States v. Samuel Bankman-Fried*, No. 22-cr-00673 (LAK) (S.D.N.Y.) (jury verdict Nov. 2, 2023; sentenced Mar. 28, 2024).

[18] *United States v. Elizabeth A. Holmes*, No. 18-cr-00258-EJD (N.D. Cal.) (jury verdict Jan. 3, 2022; sentenced Nov. 18, 2022).

[19] Bebchuk & Hamdani, *supra* note 8.

VIII. Recommendations

If corporate governance is to work as a real deterrent to white-collar crime, reform must address incentives rather than paperwork. The selection of independent directors should be insulated from promoter influence, and their remuneration should be fixed and transparent rather than dependent on the goodwill of management. Auditors should be barred from providing material non-audit services to companies whose accounts they certify, so as to reduce the financial dependence that quietly erodes scrutiny. Whistle-blower protection needs to move from policy to practice, and regulators should be seen to act publicly on credible tip-offs rather than merely to receive them, so that employees understand that reporting carries real consequences. Finally, regulators need access to primary financial information of their own, including bank confirmations, related-party ledgers and custodial records, rather than waiting for annual filings which, as Wirecard and Satyam both showed, can themselves be fabricated.[20]

IX. Conclusion

> 'Governance is not what a company says about itself; it is what a company does when nobody outside the room is watching.'
>
> \- Author's formulation

Corporate governance was never intended to be an ornamental feature of an annual report. It is, in practical terms, a company's internal immune system, a set of checks designed to identify and counter misconduct before it reaches shareholders, employees and the wider economy. The failures of Satyam, Enron, Wirecard, IL&FS, Punjab National Bank, Theranos and FTX did not occur because no rule applied to them; they occurred because the people charged with enforcing those rules lost their independence, or acted too late. The law can require that there be a lock on the door. It cannot, by itself, ensure that the person holding the key will be accountable. That depends on incentives, on genuine independence, and on institutions willing to respond to a red flag the first time it appears rather than the tenth. Until governance is treated as an active discipline rather than a compliance exercise, white-collar crime will continue to find its way around the very systems built to stop it.

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