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White Collar Crime: The Stance of India

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ABSTRACT

White Collar Crime refers to those offences which are non – violent in nature and are usually focused on undue financial gain and in some cases prevention of financial loss, through means such as deceit, forgery, concealment etc. White Collar Crime is on the rise with India seeing an alarming exponential growth in such offences in the past decade, therefore, emphasising the need to study the provisions of law in regard to these offences and analyse them in order to understand whether the legal framework to deal with these crimes is competent and robust enough to deter potential violators and punish offenders. For this purpose, this paper shall explore the stance of the Indian Legal System in relation to white-collar crime, in light of various legislations with a specific focus on Chapter 17 and Chapter 18 of the Indian Penal Code, 1860 and Chapter 29 of the Companies Act, 2013; along with the Prevention of Money Laundering Act, 2002 and the recently legislated Fugitive Economic Offenders Act, 2018. As a rapidly developing economy with the kind of economic and industry growth trajectory India is following, the opportunity cost of an increase in White Collar Crime is inevitable, therefore, the need for strict provisions of law to deter and punish such offenders is emphasised and ergo highlighted in this paper.

Keywords: *White Collar Crime; Fraud; Forgery; Cheating; Personation; Prevention of Money Laundering Act, 2002; Fugitive Economic Offenders Act, 2018; Section 447 of Companies Act, 2013.*

I. INTRODUCTION

(A) Definition and Origin of White-Collar Crime

White Collar Crime refers to generally non – violent crimes in the form of various types of fraudulent activities² usually aimed at gaining undue financial gain or in some cases, preventing financial loss. These crimes may be committed by individuals or businesses, means of deceit, concealment, forgery etc.³ White Collar Crime also refers to offences committed by government officials and / or political offences⁴ of a non – violent nature; however, those aspects are beyond

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² FBI – ‘What is white-collar crime, and how is the FBI combating it?’, < <https://www.fbi.gov/about/faqs/what-is-white-collar-crime-and-how-is-the-fbi-combating-it> > accessed 9 September 2022.

³ Adam Hayes, ‘White-Collar Crime: Meaning, Types, and Examples’ (*Investopedia*, 22 August 2022) < <https://www.investopedia.com/terms/w/white-collar-crime.asp> > accessed 9 September 2022.

⁴ Supra note 2

the scope of this paper.

The term White – Collar Crimes finds its genesis in the work of American Sociologist and Criminologist, Edward Sutherland in circa 1939. He defined White – Collar Crime as offences committed by the respectable, educated and dignified members of the high society strata, through the means of their professions.⁵ This is based on the distinction between White – Collar and Blue – Collar as those skilled and educated professionals who work from offices and the unskilled or semi-skilled labour force that works in factories etc.

Blue Collar Crimes are considered more simplistic and straightforward in nature, for example, burglary or kidnapping. White Collar Crime tends to be more complex in nature, especially owing to the sophisticated technology utilised in the world today.

II. MEANS OF COMMITTING WHITE COLLAR CRIME

There are innumerable forms than white collar crime can assume, it is impossible to create an exhaustive list of the types of white-collar crime. A by-product of the rapid expansion and evolution in business, in markets and in the use of information technology has undoubtedly brought a vast array of benefits to society as a whole, but with these benefits, there is the simultaneous expansion of the darker and more unscrupulous side of things. Through the new avenues created, a multitude of white-collar crimes, with each offence being conceived and executed in a different manner. The large number of variables in processes creates an unfathomable number of potential offences. However, certain broad categories can be identified and defined in this context.

A. Fraud

Fraud simply means an act, omission or concealment with mal intent aimed at gaining any undue advantages or causing injury to another⁶ or preventing any loss. This offence can be committed by an individual or a group of individuals in their personal capacities or in their professional capacities; in the case of the latter, the company may also bear liability for such offences.

Fraud is a very broad term and within itself, it encompasses offences such as intentionally concealing material facts from parties who should be aware of the facts⁷. It can occur in the Annual Reports, Financial Reports, Prospectuses etc. of the company, which would intentionally create a false impression / belief in the minds of the users of the documents,

⁵ Corporate Financial Institute – White Collar Crime, <<https://corporatefinanceinstitute.com/resources/knowledge/finance/white-collar-crime/>> accessed 9 September 2022

⁶ The Companies Act, 2013, S. 447 explanation (i)

⁷ The Indian Contract Act, 1872, S. 17(2)

including shareholders, potential investors, the government etc. This could include acts such as the concealment of large liabilities from shareholders or potential investors in order to induce them to invest in the company⁸. It could also include the concealment of profits in order to evade tax liability or avoid payment of dividends.

On the other hand, fraud could be in the form of intentionally making a false statement or representation in the interest of creating a false belief / understanding in the mind of the other person, with the intent to induce an action or omission which would not have taken place without the false statement / representation.⁹ This would include knowingly overstating profits or faking financial results in a prospectus in order to induce an investor to invest in the company.¹⁰

Fraud could also include knowingly making statements / promises / representations with no intention to fulfil them. For example, obtaining investment in a company with a promise to utilise the funds for a certain project, but having no intention of completing that project / utilising the funds as promised.¹¹

Fraud in itself is such a vast term with several connotations, it can be utilised to describe almost all forms of white – collar crime. The term ‘*fraudulently*’ is used to describe most such acts / offences which involve an element of deception.

B. Forgery

Forgery and fraud usually go hand in hand, as forgery refers to the act of creating a false document / record, either physically or electronically with the aim of committing fraud of any nature. That would include, inducing a person to act in a manner they would not have in the absence of the forged document, inducing a person to enter into a contract or part with property including money.¹² On the other hand, it could also bear the intention of restraining someone from acting in a particular manner, for example, by showing a forged legal notice etc.

Forgery could also form an element of cheating, wherein forged title documents to a piece of property are used to fraudulently sell that property to an innocent unsuspecting buyer. This forged document and its fraudulent utilisation not only causes injury to the buyer who has bought something over which the seller has no right but also to the actual owner whose title is now violated / disputed.

⁸ The Companies Act, 2013, S. 36

⁹ The Indian Contract Act, 1872, s17(1)

¹⁰ The Companies Act, 2013, S. 34

¹¹ The Indian Contract Act, 1872, S. 17(3)

¹² The Indian Penal Code, 1860, S. 463

C. Personation

Forgery can also be clubbed with impersonation, wherein a person may fake identification or credentials in order to assume the identity of another with the intention of defrauding a person or a company / entity. For example, assuming multiple identities to make an application for securities of a company¹³; or impersonating a shareholder of a company in order to exercise the rights of the shareholder, including voting, receiving dividends etc.

Personation can involve a person causing another to believe that he is associated with a company / institution like a bank or insurance company, possibly through forged credentials and identification, in order to fraudulently cause the victim to part with possession of any property¹⁴ and / or money, believing it to be going into the possession of the trusted institution. For example, handing over cash to a person impersonating a bank official, with the belief that the money will be deposited in the bank account, but is instead stolen by the impersonator. Another example could be a person impersonating an insurance agent through forged documents, causing a person to enter into a forged insurance contract with the aim of defrauding the victim of money while making him believe he is buying insurance.

Personation crimes are rampant these days, especially in the form of fraudulent phone calls and messages, wherein under a false pretext, the impersonator causes the victim to divulge sensitive information such as credit card details or social security questions answers. As per a 2021 survey by Microsoft, India has become the epicentre for such scam calls, which loot money from people worldwide. A staggering 31% of Indians reported losing money to such call and tech-based scams in 2021, ranking India at the first position in relation to losses to phone / tech scams.¹⁵

D. Cheating

Cheating refers to using deceit to wrongfully influence the acts of another. This could include causing the person to hand over property, enter into or execute a transaction or any other such act, which would not have been done, in the absence of the element of deceit. This also includes causing the person to omit to do an act which would have otherwise been performed, in the absence of deceit. Such acts of deceit, that cause or are likely to cause damage or injury to the deceived person's body, mind, reputation or property, fall within the ambit of cheating.¹⁶

An example of cheating could be producing goods like diamonds, with counterfeit branding or

¹³ The Companies Act, 2013, S. 38(1)(b)

¹⁴ The Indian Penal Code, 1860, S. 416

¹⁵ Microsoft – 2021 Global Tech Support Scam Research report, pg 32 < <https://blogs.microsoft.com/wp-content/uploads/prod/sites/5/2021/07/MSFT-2021-Global-Tech-Support-Scam-Research-Report.pdf> >

¹⁶ The Indian Penal Code, 1860, S. 415

certifications in order to deceive the other person and have them believe that the goods are of a higher quality than they actually are, or have them believe that the goods are produced by a renowned manufacturer thereby lending credibility to the product which it does not rightfully deserve.

Using such substandard or unauthentic products as collateral / security to obtain a loan or secure a transaction, would also amount to cheating as if the lender was aware of the true nature of the product, he would not have provided the credit or processed the transaction.

Cheating does overlap with fraud to a large extent, but in the broader picture, these forms of crime cannot be viewed in isolation, they usually go hand in hand, wherein a combination of these crimes is used to commit an offence.

III. PUNISHMENT

While punishments under the Indian Penal Code, 1860 are relatively mild and lenient, the Companies Act, 2013 is far stricter and harsher with punishments for these offences.

A. The Indian Penal Code, 1860

1. Cheating

Under the Indian Penal Code, 1860, the punishment for the offence of cheating, as described hereinabove, is merely imprisonment of up to 1 year or with a fine which shall be determined by the court adjudicating the matter.¹⁷

If a person cheats in a transaction wherein they were dutybound by law or contract, to protect the interests of the other, the punishment for the offence increases to imprisonment of up to 3 years, or with a fine. This covers situations wherein a person causes loss or injury to another, whose interests they were mandated to protect as per law or through contractual obligations. This would include situations of cheating / fraud by bankers or stock brokers with their clients. Realistically, cheating / fraud is likely to occur in situations wherein there is a presence of a contract governing and protecting the interest of the parties, therefore, most cases of cheating / fraud are likely to fall within the ambit of this provision.¹⁸

2. Criminal Breach of Trust

Additionally, the provisions related to criminal breach of trust are also applicable in such situations wherein a duty to protect the other party's interests, has been violated. Criminal breach of trust refers to situations wherein one party entrusts their property to the other and the

¹⁷ The Indian Penal Code, 1860, S. 417

¹⁸ The Indian Penal Code, 1860, S. 418

other misuses it, converts it for their personal use or disposes of it in an incorrect manner such as an unlawful sale or transfer, in violation of the law or contract governing the relationship between the parties.¹⁹ For example, a person hands over their asset, like real estate or diamonds, to a banker as collateral for credit extension, but the banker transfers the property to his own name unlawfully, in an instance of criminal breach of trust of the victim.

In such situations, wherein the offence is committed by a person like a banker, lawyer, broker, public servant etc. the punishment is life imprisonment or imprisonment up to 10 years and a fine.²⁰ However, if such an offence is committed by someone other than a public servant, banker, merchant or agent; the punishment is more lenient at imprisonment of up to 3 years and/or with a fine.²¹

3. Criminal Misappropriation of Property

Another provision of The Indian Penal Code, 1860 that would apply in situations similar to that described hereinabove, would be criminal misappropriation of property. If a person misappropriates or converts to his own use, the movable property of another, such person shall be awarded imprisonment of a term up to 2 years and / or a fine.²²

4. Cheating by Personation

In case of cheating by way of personation, the punishment for the offender increases to imprisonment up to 3 years or with a fine. This would include situations wherein the offender has unlawfully assumed the identity of another in order to induce the victim to act or omit to act in a certain manner.²³

5. Forgery / False Property Mark

Forgery or using a false property mark to make goods appear as if they are the property of someone else is also punishable under The Indian Penal Code, 1860.²⁴ This includes situations like a diamond merchant putting a false hallmark on a substandard diamond / diamond packaging, to mislead the other person into believing the substandard or fake diamonds are from a certain manufacturer or are certified by an established certification agency, in order to sell them for a premium. For such offences, the offender would be punished with imprisonment up to one year and / or a fine for the offence of using a false property mark;²⁵ the offender would

¹⁹ The Indian Penal Code, 1860, S. 405

²⁰ The Indian Penal Code, 1860, S. 409

²¹ The Indian Penal Code, 1860, S. 406

²² The Indian Penal Code, 1860, S. 403

²³ The Indian Penal Code, 1860, S. 419

²⁴ The Indian Penal Code, 1860, S. 481

²⁵ The Indian Penal Code, 1860, S. 482

also be liable to imprisonment up to 2 years and / or a fine for counterfeiting the property mark of another²⁶; and the offender would be awarded imprisonment of up to 1 year and / or fine for selling a product with a counterfeit property mark.²⁷

For the offence of counterfeiting material, device or mark used for the purpose of authenticating, with the intent of fraudulently creating the appearance of the authenticity of any forged document, The Indian Penal Code, 1860 prescribes a punishment of imprisonment up to 7 years and a fine.²⁸ This offence covers situations such as creating counterfeit bank guarantees and letters of credit to fraudulently obtain funds, for example.

B. The Companies Act, 2013

As per the Companies Act, 2013, the punishment for fraud, of an amount less than Rs. 10,00,000/- (ten lakhs) or less than 1% of the turnover of the company, the punishment shall be imprisonment up to five years and a fine up to Rs. 50,00,000/- (fifty lakhs). However, if the amount of fraud exceeds the lower of Rs. 10,00,000/- (ten lakhs) or 1% of the turnover of the company, the punishment is imprisonment for a term of 6 months up to 10 years and with a fine that is at least the equivalent of the amount of the fraud and may extend to thrice the amount involved. In the event that public interest has been violated through fraud, the minimum imprisonment term is extended to 3 years.²⁹

In the event of a repeat offence, the monetary sanction doubles up for the company and every officer in default, in addition to the specified term of imprisonment.³⁰

This provision of the Companies Act, 2013, is applicable to a vast range of offences / defaults of The Companies Act, 2013, including but not limited to;

- i. Making a false statement in documents such as the prospectus, financial statements, annual reports etc.³¹
- ii. Wrongfully incorporating a company as a Company with a Charitable Object under Section 8 of the Companies Act, 2013³²
- iii. Fraudulently inducing investment in the company through false or misleading statements, concealment of relevant information etc.³³

²⁶ The Indian Penal Code, 1860, S. 483

²⁷ The Indian Penal Code, 1860, S. 486

²⁸ The Indian Penal Code, 1860, S. 476

²⁹ The Companies Act, 2013, S. 451

³⁰ The Companies Act, 2013, S. 451

³¹ The Companies Act, 2013, S. 448

³² The Companies Act, 2013, S. 8(11)

³³ The Companies Act, 2013, S. 36

- iv. Personation in an application for incorporation of a company, subscription to shares of a company etc.³⁴
- v. Fraudulently issuing duplicate share certificates.³⁵
- vi. Fraudulently altering the books and registers of a company³⁶

Essentially, any offence or fraudulent default / violation of the provisions of The Companies Act, 2013, shall attract the penalty under Section 447 of The Companies Act, 2013, as described hereinabove. Furthermore, for violations not expressly stated to fall under the purview of Section 447 of The Companies Act, 2013 nor having an express punishment provision, the punishment shall be a penalty of Rs. 10,000 and an additional Rs. 1,000 for every day the contravention continues, up to a maximum of Rs. 50,000 for the officer in default and a maximum of Rs. 2,00,000 for the company in default.³⁷

IV. PREVENTION OF MONEY LAUNDERING ACT, 2002

Money laundering refers to the acts of concealment, possession, acquisition and enjoyment of the monetary proceeds of crime and further claiming it to be or making it appear to be legitimate and untainted.³⁸ There was a lacuna in the law in regard to such offences and hence The Prevention of Money Laundering Act, 2002 was introduced to crack down on those knowingly indulging or assisting in such acts. For the purposes of this Act, the term 'person' refers to individuals, Hindu Undivided Families, companies, firms and their branches / divisions / subsidiaries.³⁹

A. Previous Mechanism for Money Laundering

Prior to the introduction of The Prevention of Money Laundering Act, 2002, such offences were governed by the provisions of Section 477A of The Indian Penal Code, 1860, which spoke about the falsification of accounts. The offence under this section was of falsifying, altering or destroying any records or accounts for the purpose of committing fraud, by the clerk or employee of a person. The punishment under this section is 7 years imprisonment and / or a fine.⁴⁰ Evidently, this was not an apt mechanism to address money laundering as it only related to altering books of account and was only enforceable against the servant or employee of the person. In reality money laundering is an elaborate scheme that involves much more than just

³⁴ The Companies Act, 2013, S. 38(1)

³⁵ The Companies Act, 2013, S. 46(5)

³⁶ The Companies Act, 2013, S. 229

³⁷ The Companies Act, 2013, S. 450

³⁸ The Prevention of Money Laundering Act, 2002, S. 3

³⁹ The Prevention of Money Laundering Act, 2002, S. 2(S.)

⁴⁰ The Indian Penal Code, 1860, S. 477A

altering books and in the recent past, it has been proven that these schemes are orchestrated by the owners / employers of large business setups.

B. Situational Examples of Money Laundering

Money laundering scams include situations wherein a company fraudulently obtains loans, through methods such as cheating, forgery etc. by citing the purpose of the funds to be different from the purpose for which they actually intend to use the funds. It has been seen in the past that funds obtained for the expansion of the business have been utilised to fund the lavish lifestyles of the owners and directors of the company. Therefore, those funds are tainted as criminal proceeds on account of being fraudulently obtained under false pretences and being used for a purpose other than the one specified. Such movement and usage of funds fall under the ambit of money laundering. This was seen in the case of Vijay Mallya, wherein he obtained funds for his airline company Kingfisher under the pretext of expansion of the fleet, meeting short-term working capital requirements etc. and instead used those funds to sponsor his lavish lifestyle including parties, exotic cars, travel, jewellery and watches etc.

Money laundering is often linked to tax evasion wherein businesses opt for cash transactions to avoid the scrutiny accompanying recorded transactions. As these funds are not disclosed to the Income Tax Department, they become tainted as criminal proceeds on account of being concealed funds and hence any movement or usage of those funds falls under the purview of money laundering.

Criminal syndicates are known to set up seemingly legitimate businesses such as casinos, motels and laundromats to launder their 'dirty money'. The modus operandi is to set up a business that has a lot of cash transactions and then deposit illicit money obtained through trafficking, extortion etc. as business income by creating fake invoices; so as to make the illegitimate tainted money appear to be legitimate business income. This practice is common abroad in countries like the United States of America but has also been seen in India in the form of the mafia and gangsters setting up production houses to fund movies in order to window dress their illicit income as legitimate business income.

C. Punishment and Sanctions under the Prevention of Money Laundering Act, 2002.

The prescribed punishment for the offence under The Prevention of Money Laundering Act, 2002 is rigorous imprisonment for a period of at least 3 years extending up to 7 years and a fine.⁴¹ Comparatively, the punishment for falsifying accounts under Section 477A of The Indian

⁴¹ The Prevention of Money Laundering Act, 2002, S. 4

Penal Code, 1860 is simple imprisonment of no minimum term with an upper limit of 7 years. Evidently, the punishment for this offence was intensified by way of The Prevention of Money Laundering Act, 2002. In addition to the aforementioned punishment under The Prevention of Money Laundering Act, 2002, the allegedly tainted assets of the person in possession of criminal proceeds or reasonably believed to be in possession of such criminal proceeds can be attached for a period of 180 days. The person can still enjoy the attached immovable property and cannot be excluded from its usage.⁴² This refers to the property associated with the alleged money laundering, belonging to a person who is reasonably suspected to be involved in money laundering, on the basis of documentary evidence. Such property when attached is legally restricted from being transferred, converted or moved for a period of 180 days.⁴³ This order can be made by an authorised person of the Central Government.

Furthermore, the Central government can also, on the basis of reasonable grounds, forcefully enter, search the building/place and seize the property or records relating to the alleged money laundering.⁴⁴ Such property shall be frozen and kept under the possession of the Central Government⁴⁵ beyond 180 days if the case of money laundering is proved prima facie. If the property proved to be associated with the offence of money laundering by a person charged under Section 3 of The Prevention of Money Laundering Act, 2002, such property shall be retained by the Central Government⁴⁶; unless proven to not be associated with the money laundering by the person so charged.⁴⁷

Any property confiscated under The Prevention of Money Laundering Act, 2002, shall be maintained/administered by officers appointed by the Central Government and upon directions of the Central Government, such property can be disposed of in a suitable manner, i.e., by sale/auction etc.

Therefore, under The Prevention of Money Laundering Act, 2002, money laundering is considered a serious offence and the sanctions imposed by the Central Government are of a grave nature, which act as an effective deterrent to such offences on paper. However, in reality, there have been numerous major cases of money launder post the enactment of The Prevention of Money Laundering Act, 2002 and the offenders have escaped the repercussions by fleeing India to a country with difficult extradition laws.

⁴² The Prevention of Money Laundering Act, 2002, S. 5

⁴³ The Prevention of Money Laundering Act, 2002, S. 2(1)(d)

⁴⁴ The Prevention of Money Laundering Act, 2002, S. 17

⁴⁵ The Prevention of Money Laundering Act, 2002, S. 9

⁴⁶ The Prevention of Money Laundering Act, 2002, S. 20

⁴⁷ The Prevention of Money Laundering Act, 2002, S. 24

V. FUGITIVE ECONOMIC OFFENDERS ACT, 2018

In order to evade criminal prosecution and face the repercussions of their offences, offenders have been known to flee India and seek refuge in another country with which the extradition treaty of India is not especially strong. Offenders such as Vijay Mallya and Nirav Modi are examples of people who have escaped India and fled to the United Kingdom to avoid prosecution and face charges. In order to address these issues, the Indian government enacted The Fugitive Economic Offenders Act, 2018.

A 'fugitive economic offender' is any individual who has a warrant issued against him by any Court in India, for a scheduled offence and has left India to avoid prosecution and refuses to return to face the charges.⁴⁸ The provisions of The Fugitive Economic Offenders Act, 2018 are applicable for certain offences under the following legislations:

- i. The Indian Penal Code, 1860 (cheating, counterfeiting, forgery, fraud etc.);
- ii. The Negotiable Instruments Act, 1881;
- iii. The Reserve Bank of India Act, 1934;
- iv. The Central Excise Act, 1944;
- v. The Customs Act, 1962;
- vi. The Prohibition of *Benami* Property Transactions Act, 1988
- vii. The Prevention of Corruption Act, 1988
- viii. The Securities and Exchange Board of India Act, 1992
- ix. The Prevention of Money Laundering Act, 2002;
- x. The Limited Liability Partnership Act, 2008
- xi. The Foreign Contributions (Regulations) Act, 2010
- xii. The Companies Act, 2013
- xiii. The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015
- xiv. The Insolvency and Bankruptcy Code, 2016
- xv. The Central Goods and Services Tax Act, 2017⁴⁹

The Central Government, upon application by the empowered authority, can declare an

⁴⁸ The Fugitive Economic Offenders Act, 2018, S. 2(1)(f)

⁴⁹ The Fugitive Economic Offenders Act, 2018, Schedule 1

individual to be a fugitive economic offender if they satisfy the criteria laid down in the definition hereinabove.⁵⁰ The Central Government is also empowered to attach the property of such fugitive economic offenders or those reasonably believed to be fugitive economic offenders on the basis of documentary evidence, in a manner similar to that described hereinabove in regard to the provisions of The Prevention of Money Laundering Act, 2002.⁵¹ Furthermore, the Central Government also has the authority to forcibly enter and search the places associated with the charges and seize assets and records associated with the offence, in a manner similar to that detailed hereinabove in regard to the provisions of The Prevention of Money Laundering Act, 2002.⁵²

Therefore, it calls into question the effect of The Fugitive Economic Offenders Act, 2018 as the powers bestowed upon the authority are similar if not identical to those in regard to The Prevention of Money Laundering Act, 2002. The relevance of The Fugitive Economic Offenders Act, 2018 is that it covers 14 legislations other than The Prevention of Money Laundering Act, 2002 and thereby imposes these penalties / sanctions on offenders who have violated the provisions of the abovementioned legislations. However, it does not impose any additional punishment on these offenders for absconding, hence failing to create serious repercussions for fleeing the country and evading criminal prosecution. The punishment levied shall be as per the provision in the legislation violated.

VI. OTHER LEGISLATIONS RELATING TO WHITE COLLAR CRIME

There are several other legislations that are concerned with white-collar crime in India. A vast majority of such offences relate to capital markets and hence fall under the purview of The Securities and Exchange Board of India, the regulator for the capital markets in India. The Securities and Exchange Board of India legislates through regulations issued under the power of the Securities and Exchange Board of India Act, 1992. Other legislations vary from banking related offences to taxation laws' contravention and foreign exchange management laws amongst others. The following is an inclusive, not exhaustive list of some of the most prominent white-collar crime-related legislations in India.

A. *The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015*

This legislation deals with the offence of dealing in securities on the basis of certain publicly

⁵⁰ The Fugitive Economic Offenders Act, 2018, S. 4

⁵¹ The Fugitive Economic Offenders Act, 2018, S. 5

⁵² The Fugitive Economic Offenders Act, 2018, S. 8

unavailable/unpublished price-sensitive information obtained through the privity of the company and its management.⁵³

B. *The Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market Regulations, 2003*

This legislation deals with the offence of fraudulently dealing in securities with the purpose of receiving undue gains or unlawfully preventing losses through misrepresentation or concealment of material facts.⁵⁴

C. *The Securities and Exchange Board of India (Stock Brokers) Regulations, 1992*

This legislation deals with the obligations and duties of stock brokers and lays down penalties for contravention of the Securities and Exchange Board of India Act or any of the Rules and Regulations framed thereunder.⁵⁵

D. *The Income Tax Act, 1961*

This legislation focuses on the direct taxation regime in India and imposes penalties for contravention of the same in the form of simple and rigorous imprisonment as well as monetary fines. The offences under this act include wilful evasion of tax,⁵⁶ concealment of income, failure to furnish information / true information⁵⁷, underreporting or misreporting income⁵⁸ etc.

E. *The Reserve Bank of India Act, 1934*

This statute established the central bank of India and laid down its powers vis-a-vis regulating the banking sector in India. It imposes penalties including imprisonment and fines, on companies and people for contravention of the Act, in the form of making fraudulent statements, failure to furnish information and records when demanded, publishing of sensitive and restricted information, illegally accepting deposits etc.⁵⁹

F. *The Customs Act, 1962*

This legislation is focussed on the import of goods into and the export of goods out of India, their clearance to be brought into the country and customs duty payable upon import and export of these goods. The offences under this Act are fraudulently misdeclaring the value of these

⁵³ The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015, R. 2(1)(g)

⁵⁴ The Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, R. 2(1)(c)

⁵⁵ The Securities and Exchange Board of India (Stock Broker) Regulations, 1992, R. 25

⁵⁶ The Income Tax Act, 1961, S. 276C

⁵⁷ The income Tax Act, 1961, S. 271-I

⁵⁸ The Income Tax Act, 1961, S. 270A

⁵⁹ The Reserve Bank of India Act, 1934, S. 58B

goods to evade duties, importing or exporting goods that are liable to be confiscated under this Act including the storing, concealing, buying and selling such goods. The punishment levied for contravention of these provisions is imprisonment and a fine.⁶⁰

G. The Foreign Exchange Management Act, 1999

This legislation is aimed at regulating the inflow and outflow of foreign currency as well as the regulation of international asset holding of domestic individuals as well as the domestic asset holding of foreigners. The Act imposes punishment for exceeding the threshold of foreign asset holding by domestic entities, including bank accounts, immovable property and any other securities. The punishment for offences under this Act includes imprisonment as well as fines.⁶¹

H. The Insolvency and Bankruptcy Code, 2016

This code lays down the legal procedure and requirements for entities which have declared insolvency and are in the process of liquidating their assets to repay their creditors. Offences under this legislation include the concealment of property to avoid its liquidation, falsifying books and records, making false statements and material omissions in disclosures, making false representations to and defrauding creditors etc. The punishment for such contraventions ranges from varying prison terms and extremely heavy monetary penalties extending to crores of rupees.⁶²

VII. ANALYSIS AND CONCLUSION

In light of the extensive but not exhaustive above discussion, it is vital to address the initial question of whether the laws relating to white-collar crime in India are stringent enough to punish the perpetrators and act as a deterrent for such crimes. The answer is not as simple as a yes or no, as the multitude of legislations present varying degrees of sanctions, punishments and consequences for such criminal acts. The Indian Penal Code, 1860 does offer rudimentary confrontation to such offences, however, the fact remains that it is a 152-year-old legislation and is hence not adequately equipped to tackle these situations owing to the fact that the volume and complexity of white-collar crime has seen tremendous growth in the past few years. Therefore, the situations covered and the severity of the punishment imposed do not present a comforting level of deterrence to such offences.

On the other hand, The Companies Act, 2013 does present fairly severe punishments for violating the provisions of the Act in the form of very heavy monetary penalties and

⁶⁰ The Customs Act, 1962, S. 135

⁶¹ The Foreign Exchange Management Act, 1999, S. 13

⁶² The Insolvency and Bankruptcy Code, 2016, Part II, Chapter VII

imprisonment. The provisions of this Act, as it is a fairly new legislation at under a decade old, are better suited to addressing the modern-day situations of white-collar crime. It understands the severity of the offences that can be committed and the potential injury that can be caused to the victims of such offences and hence stiffens up the protective field around them. However, the range of the offences covered under this Act is quite generic in scope and does not effectively confront the more devious and heinous complex crimes that can be committed.

The Prevention of Money Laundering Act, 2002 is a fairly well-drafted legislation as it does address the issues of money laundering effectively and imposes heavy sanctions, essentially completely eliminating the undue gain of the perpetrators by snatching away the fruit of their ill-gotten gains. However, as discussed above, the primary and fundamental issue with this legislation is that the perpetrators can evade the ramifications of their actions by fleeing the country. They can continue to lead a good life abroad if they stash away their illicit assets in countries with inept extradition treaties with India. Often these assets abroad as well as in India are stashed under other identities, shell corporations etc. and hence prove it difficult to link these assets with the offender.

While The Fugitive Economic Offenders Act, 2018 was enacted with the purpose of addressing the issue of offenders fleeing the country, it fails to provide any concrete mechanism to bring them back to face the repercussions of their crimes. Serious offenders like Vijay Mallya, Nirav Modi, Mehul Choksi and Lalit Modi, have all escaped the Indian legal system by fleeing to another country and enjoying the assets they hold there. The law, in order to attack these lacunae, needs to employ faster mechanisms to freeze and seize passports, preventing the escape of such fugitives. As part of the mechanism for attaching assets of potential offenders when under the scanner, their passports should be seized as well. Furthermore, India needs to strengthen the extradition treaties it has with countries like the United Kingdom etc. thereby enabling the swift repatriation of offenders seeking refuge in these countries.

Other legislations including the ones explained in brief hereinabove, provide a vast framework to tackle several forms of white-collar crime. However, due to the vastness of the legal framework, there are bound to be loopholes, vacancies and lacunae in the laws, which can be exploited by criminally clever minds. The only way to identify and subsequently address/eliminate the potential issues is through extensive review which can only be effectively done when there is an abuse of the law. Therefore, unfortunately, the road to creating a stringent and airtight legal framework to address the issues in the law involves the commission of offences highlighting the failures in the system.

In reality, no matter how strict and rigid the law is, the true determinant of punishment is the trial. Due to the extremely overburdened judiciary in India, decisions take time and justice delayed is justice denied. Furthermore, these offenders are people/companies of great resources by default, therefore they can afford the best defence from the best attorneys. When these attorneys go up against the relatively underfunded, under-resourced and less experienced prosecutors, the defence tends to have a stronger hand as the prosecutor has to prove the case. This issue has been addressed to a certain degree by various statutes imposing the burden of proof on the accused, such as in The Prevention of Money Laundering Act, 2002; but at the end of the day, the skilled and powerful attorneys appointed by these offenders can greatly reduce the sanction if not completely acquit the accused.

In conclusion, white-collar crime is undoubtedly a pressing issue worldwide, especially in our country which is experiencing rapid economic development, at a pace faster than the system and legal framework can cope with, and therefore, there is a vital need for a concrete framework to deter potential offenders and hold the perpetrators accountable. Our present framework does address these crimes in a reasonably stern manner, especially through legislations passed in the past two decades; but there are undoubtedly shortcomings and silences in the law which need to be addressed to create a truly ironclad justice mechanism in regard to these offences. The system has come a long way, but there is yet a lengthy and arduous journey to be paved through.
