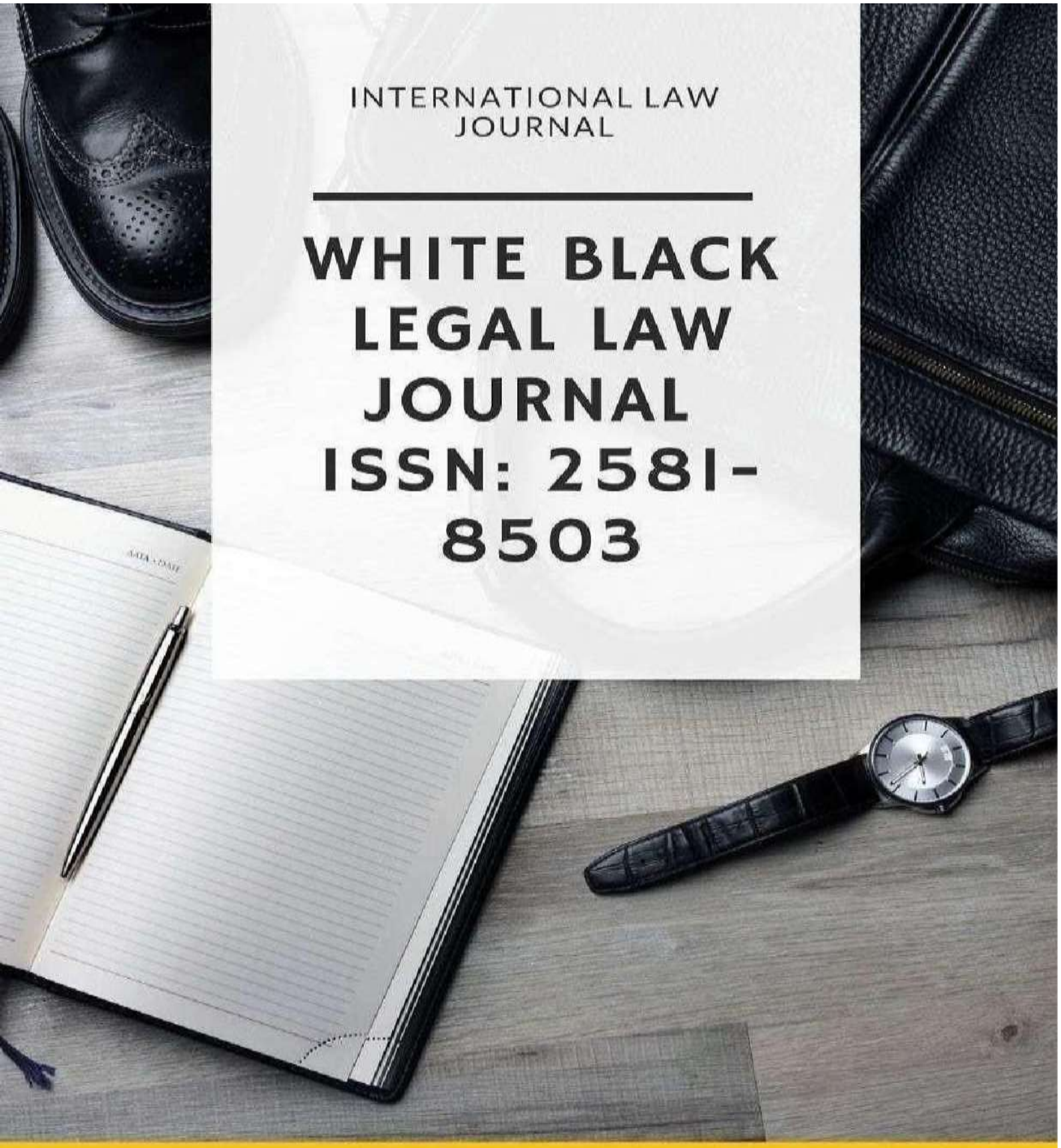

INTERNATIONAL LAW JOURNAL

WHITE BLACK LEGAL LAW JOURNAL

ISSN: 2581-8503

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN

DISCLAIMER

EDITORIAL TEAM

Raju Narayana Swamy (IAS) Indian Administrative Service officer

Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala . He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru and a professional diploma in Public Procurement from the World Bank.

Dr. R. K. Upadhyay

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB , LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.

Senior Editor

Dr. Neha Mishra

Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

Ms. Sumiti Ahuja

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.

Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in ‘Intercountry adoption laws from Uttranchal University, Dehradun’ and LLM from Indian Law Institute, New Delhi.

Dr. Rinu Saraswat

Associate Professor at School of Law, Apex University, Jaipur, M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM
Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.
More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.

Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

www.whiteblacklegal.co.in
Volume 3 Issue 1 | April 2025 ISSN: 2581-8503

TWO FACED ROLE OF TECHNOLOGY IN FACILITATING AND COMBATING WHITE COLLAR CRIMES IN INDIA

AUTHORED BY - AJAI K REJI

Abstract

Technology has undoubtedly played a significant role in both facilitating and combating White collar crimes in India. Technology on the other hand offers many opportunities for freelance criminals to exploit vulnerabilities to commit fraud. On the other hand, it also allows authorities and regulators to identify, investigate and prosecute those involved in white collar crimes.

This study will examine the impact of cultural, social and economic factors that contribute to the prevalence of two faced roles in facilitating white collar crimes.It will highlight weaknesses and flaws in existing laws and regulations that allow individuals to engage in fraudulent activities while maintaining a high reputation. The study will also make recommendations to strengthen the regulatory framework, improve business management and raise public awareness to reduce white collar crime cases in India. Technology has changed all aspects of daily life, including the way crimes are detected. The role of technology in the context of white collar crime is unique. White collar crime (usually non violent crimes committed by business and professional people) has undergone major changes due to advances in technology. With the rapid digitalization of the economy in India, white collar crimes have also increased with the help of technology. This proliferation of digital platforms, online commerce and electronic communication offers new opportunities for fraud. From financial fraud and fraud to identity theft and online fraud, technology has expanded the reach and advantage of white collar criminals obtaining confidential information, maintaining financial control and managing fraud is growing due to the continuous development of technology. On the other hand technology has also made it easier to investigate and prevent white collar crimes.

Keywords*: *White collar crimes, Technology, Facilitating, Combatting, Regulatory

1. INTRODUCTION

Self preservation is the basic instinct of all living beings including human beings. Together with this, there is another instinct of human beings and that is their social nature. One of the greatest political thinkers in the world Aristotle said "Man is a social animal." This is the underlying idea for the birth of societies. Every society has its own values system. Crime is defined by mainly the value systems. Experiences and behavior patterns which have brought the group satisfaction are positively valued and which bring dissatisfaction is negatively valued. The law prescribes some standards of conduct to be observed by the people in the society. This conduct is approved by the society and deviation of conduct fixed by the society is punished in the form of sanctions. These sanctions are embodied in the folkways, mores, conventions, religious ideals and taboos, public opinion, and laws of a society.[1] It is for the society to decide as to what type of behavior is to be encouraged and what is to be discouraged. Even a society which is composed of persons possessing the angelic qualities would not be free from violations of the norms of that society.[2]

If we were all perfect, there would be no need for a criminal law. However, crime has been pervasive in all the societies from traditional to modern. The inevitability and universality of the phenomenon of crime has been described by Emile Durkheim in the following words "there is no society that is not confronted with the problem of criminality. Its form changes; the acts thus characterized are not the same everywhere; but, everywhere and always, there have been men who have behaved in such a way as to draw upon themselves penal repression." Given this argument, crime is something normal. A glance at world history suggests that this assertion is yet to be seriously challenged. Therefore, crime is a phenomenon in every organized social life. For one reason or the other, there has been prevalence of crime in every society throughout history though the rate, type, cause, and effect on each society might have been highly different. From old times to today's modern societies, crime has always been a hot subject and has occupied its place in every day's agenda.

All acts prejudicing a community are not 'crimes' and only those acts which are made punishable by law are considered as crimes. Crimes are entwined with the religious belief and cultural landscape of a community. The problem of crime in any society is not a legal problem

[1] The Law Commission of India, Twenty Ninth Report on 'Proposal to include certain Social and Economic Offences in the Indian Penal Code (1966)', p.29.72.
[2] S.M.A. Qadri, Criminology and Penology, Eastern Book Company, Lucknow, 2009, p.1.

but is a social and economic one. However there is a difference between crime and moral wrong and all moral wrongs are not criminalized. Only those which are epitomized in the statute book of a country become crimes. The word ‘crime’ is derived from the Greek expression “krimos” which means social order and it is applied to those acts that go against social order and are worthy of serious condemnation.

Crime is not static, it is relative. With the progress of civilization in various walks of life, newer crimes have come into vogue. In recent years, jurisprudence has had to deal in increasing measures with offenses that deviate in fundamental ways from the traditional concept of crime. In the traditional criminal law, offences such as murder, rape, theft and robbery were only viewed as crimes which were commonly stigmatised as being of real moral turpitude. Traditional theories of crime explained poverty, unemployment, underemployment, poor health care, bad housing, mental illness, and alcoholism as the root causes of crime. However today, such crimes, although they have constantly increased in number, exist only as a small fraction of all the criminal offenses on the statute book. With industrialisation and urbanization, another form of crime known as “white collar crime” has come into being. White collar crimes are relatively new offenses, having been established with the expanding regulation of the modern state by many social and economic spheres, such as employment, commerce, taxation, public health, safety at work and on the roads, and the like.

The rise of white collar crimes has coincided with the progress made in the economic and industrial fields. The white collar crimes are directly or indirectly associated with the production and distribution of wealth. The Industrial Revolution initiated changes in the economic and social structure of the society. The transformation gave birth to the large sized corporations replacing individual entrepreneurs. This development led to concentration of economic wealth in a few hands. The emergence of ‘mass society’ and a small controlling elite necessitated the adherence of people to high standards of ethical behavior for the honest functioning of the new social, political and economic processes. However the incapacity of all sections of society to appreciate this need resulted in emergence and growth of white collar and economic crimes. These are the crimes that are not committed by individual perpetrators or a few people on the basis of an independent initiative, but for which - to use preliminary and imprecise wording - organized power structures are primarily responsible. The two world wars contributed significantly towards white collar crimes because during these wars the traditional mores and ethical restraints were vitally affected due to scarcity of things and mounting

demands. The end of the Second World War almost coincided with the independence of the country which further worsened the situation.

The term 'white collar crime' was first coined by Edwin Sutherland in the year 1939 when he stood before a gathering of the American Sociological Society. Sutherland used this term to impress upon that group the need to expand the boundaries of the study of crime to include the criminal acts of respectable individuals committed in the course of their occupations. He labeled these crimes for the apparent lack of a better name, 'white collar crimes', and thus was born a term soon to become an established part of the vernacular of criminoloy.

1.1 **Definition Of White Collar Crime**

The term 'white collar crime' has been widely incorporated into popular and scholarly language throughout the world. However, there does not exist a universal definition that is agreed upon by all. Sociologists and criminologists, though disagreeing among themselves about exactly what the term means, have been talking about it for more than seventy years. As a class of criminal activity, white collar crimes have as yet no legislative or legal definition. Different jurists, law enforcement agencies, and international organizations have given their own meanings to the term.

The best place to start our discussion is at the beginning, and that means with Edwin Sutherland who coined this term. It must, however be stated that others before Sutherland like Steffens (1903)[3], Sinclair (1906)[4], E.A. Ross (1907)[5], W. A. Bonger (1916), and Albert Morris (1934) had also pointed out the need to study the crimes of the rich and powerful along with more traditional criminological fare.[7] However, it was Sutherland with his lofty status in the discipline, his phrase making ability, and his groundbreaking research, that really got this endeavor going. Sutherland's study of white collar crime was prompted by the view that criminology had incorrectly focused on social and economic determinants of crime, such as family background and level of wealth. Sutherland defined 'white collar crime' as "a crime committed by a person of respectability and high social status in the course of his occupation".

Sutherland excluded many crimes of the upper class, such as murder, adultery, and

[3] L. Steffens, The Shame of the Cities, Phillips McClure, New York, 1904.
[4] U. Sinclair, The Jungle, Doubleday and Page, New York, 1906.
[5] E.A. Ross, Sin and Society: An Analysis of Latter-Day Iniquity, Houghton Mifflin, Boston, 1907.

intoxication, because these are not customarily part of the occupation procedures. Likewise, he excluded con games operated by "wealthy members of the underworld, since they are not persons of respectability and high social status". Later on in his book Sutherland modified his earlier definition in the following way: "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.

1.2 Generic Features Of White Collar Crimes

After analyzing the definition the next step is to examine and conceptualize the various features of white collar crime. These features run as a common thread in all types of crimes and are unique to white collar crime. They are typically used to distinguish white collar crime from other types of crime. The study of these features provides a better insight into the concept of white collar crime. The features that may be attributed to white collar crime are discussed hereunder.

1.2.1Occupational Crime

White collar crimes are occupational crimes. An occupational crime means violation of legal norms governing lawful occupational endeavors during the course of practicing the occupation. The reference to norms governing the occupation is meant to exclude violations of the usual criminal law such as murder and assault while on the job. The reference to lawful occupations is meant to exclude the activities of those whose entire job or profession is illegal, such as smugglers, professional forgers, thieves and organized criminals. Thus white collar crimes are committed in the course of legal occupation by violating the rules set for governing that occupation.

Occupation is used in a wider sense and covers organizational or corporate crime also. White collar crimes can be committed by individuals as well as by organizations. When they are committed by individuals or small groups in connection with their jobs and businesses, it is for personal gain and when it is committed by collective or aggregate of discrete individuals in an organization, it is to gain advantage for the corporation and is known as corporate crime. Thus, if a corporate official violates the law in acting for the corporation it is deemed a corporate crime, but if he or she gains personal benefit in the commission of a crime against the corporation, as in the case of embezzlement of corporate funds, it is occupational crime. The

lines between occupational and corporate crime therefore frequently blur.[6]

Thus, crime can be committed in different capacities such as crimes by persons operating on as individuals for personal gain in business context, crimes in the course of occupations or professions which involve abuse of trust and crimes in furtherance of business operations[7]

1.2.3 Fraud

White collar crimes essentially include an element of fraud. This fraud may be against the government, employer, employee, consumer, public or may be against the person to whom there is a duty of trust. The word 'fraud' as such is not defined anywhere in the Indian legislation. The dictionary meaning of the word is wrongful or criminal deception intended to result in financial or personal gain.

Another word that is sometimes used in close association with 'fraud' is 'scam'. The word 'scam' does not find place anywhere in the legal jurisprudence but has been evolved by the media. According to media practice, any act of cheating the public that involves public funds such as, government fund, public deposit, public investment, is an act of 'scam'. [8]White collar crimes cover both fraud and scams within its ambit.

In the Indian scenario, a person can be held liable for fraud under three dimensions viz. contractual, tortuous and criminal. The Indian Contract Act, *1872* governs the law relating to contract. Under the Act if a party to a contract enters into a contract with fraud then the contract becomes voidable i.e. the party suffering from the fraud may terminate or continue with the contract on his option. The Act for this purpose gives the meaning of fraud.[9] This definition is, however, limited for the purposes of contract.

Everyone has a right not to be defrauded in any situation. So if any fraud is caused to any person in any other situation other than the contractual situation whether it does or does not fall under any specified crime, then the person can bring the matter to the notice of the civil

[6] Zachary Bookman, "Convergences and Omissions in Reporting Corporate and White Collar Crime",
[7] De Paul Business and Commercial Law Journal, Vol.6, 2008, pp. 347-392, at p. 356.
Herbert Edelhertz, The Nature, Impact and Prosecution of White Collar Crime, U.S. Government Printing Press, Washington D.C., 1970, p. 19
[8] N. L. Mitra, 'The Report of the Expert Committee on Legal Aspects of Bank Frauds (2001)', p. 9.
[9]

court for obtaining remedy. This explains the tortuous dimension of fraud. However, the liability is limited to civil action for remedies.

The criminal dimension of fraud is that as such, 'fraud' is not a criminal offence in India. If a person is defrauded and wants to initiate penal action against the accused, then he has to initiate proceeding under the Indian Penal Code, 1860[10] or any other special law enacted specifically to deal with that aspect of violation. The Indian Penal Code, 1860 does not define the word fraud anywhere and uses the word 'fraudulent' in place of fraud. A person is said to do a thing fraudulently if he does that thing with the intent to defraud. The expression 'defraud' involves two elements namely firstly deceit or an intention to deceive or in some cases mere secrecy and secondly injury to the person deceived. Injury may be actual or possible injury. Injury is something more than mere economic loss (that is, deprivation of property, whether movable or immovable, or of money), and includes any harm whatever caused to any person in body, mind, reputation or such others. In short, it may even be a non- economic or non-pecuniary loss. A benefit or advantage to the deceiver will in most cases cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition would be satisfied as in case of environmental violations.

Thus, fraud in India is not defined as such. However, the term fraud has been defined under The Fraud Act, 2006 of the United Kingdom. It enumerates the ways in which fraud can be committed.[11] Fraud can be committed by false representation or by failing to disclose information or by abusing the position. A person is liable for fraud by false representation if he dishonestly makes a false representation and by making the representation intends to make a gain for himself or another or cause loss to another or to expose another to a risk of loss.[12] A person is liable for fraud by failing to disclose information if he dishonestly fails to disclose to another person information which he is under a legal duty to disclose and intends, by failing to disclose the information to make a gain for himself or another, or cause loss to another or to expose another to a risk of loss.[13]A person is liable for fraud by abuse of position if he occupies a position in which he is expected to safeguard or not to act against the financial interests of

[10] If a person commits fraud, then he can be held liable under various Sections of the Indian Penal Code, 1860 like misappropriation of property, cheating, breach of trust etc.
[11] Section 1 of the Fraud Act, 2006 of U.K.
[12] Section 2 of the Fraud Act, 2006 of U.K.
[13] Section 3 of the *Fraud Act*, 2006 of U.K.

another person, dishonestly abuses that position, and intends by means of the abuse of that position to make a gain for himself or another or cause loss to another or to expose another to a risk of loss. A person may be regarded as having abused his position even though his conduct consisted of an omission rather than an act.[14]

So, fraud in legal sense is any deceitful or dishonest conduct, involving acts or omissions or making of false statements knowingly, orally or in writing, with an object of obtaining money, or other benefits or gains, in illegal manner, from any person or authority, whether public or private or evading liability for personal benefit etc.

1.2.4Motive

The motive in white collar crimes is avarice or rapaciousness and not lust or hate.[15] It is committed for money, profit, greed, power and general financial gain. Traditional street crimes may be committed for a variety of goals but white collar crime is always oriented toward instrumental goal which includes personal as well as institutional gain.

The perpetrator of white collar crime commits a wrongful act to achieve a purpose inconsistent with law or public policy. It is a calculated risk, with the risk-taker seeking to achieve immunity from the consequences of his acts. Thus, the reasons are financial gain for self or business or career advancement.

1.3. Means Of Committing The Offence

The white collar crimes are generally considered as non-violent crimes or ones in which no actual force is used. These crimes are committed through non violent means by placing reliance on a victim's ignorance or carelessness, and concealment of the crime through creation of a deceptive transactional facade or some similar action.

Ignorance or carelessness of the victim is crucial to the success of the white collar criminal. Thus mental deception in place of physical force is used in white collar crimes. In those areas in which regulatory agencies have a statutory mandate to protect the public; the ignorance of the public is maintained by misleading the agency or circumventing its disclosure requirements.

[14] Section 4 of the *Fraud Act*, 2006 of U.K.
[15] N. L. Mitra, 'The Report of the Expert Committee on Legal Aspects of Bank Frauds (2001)', p.8.

Although the means of committing crime is non violent, the injury caused may be violent. In the modern context these offenses can extend to physical injury, sickness, and even deaths. The offenses where a huge amount of money is involved and there is threat of detection the white collar criminal commits the brutal act of violence to silence those who threaten to expose him or to prevent further disclosure. [16]As the threat of detection increases, so does the probability of using force or violence increases.[17]

1.3.1.Social Acceptability

White collar criminals have more social acceptability and less stigmatisation in comparison to others who have committed traditional forms of crime. Stigma is a social concept and means 'what is perceived by the public for the act'. It is the process by which citizens publicly and self-consciously draw attention to the bad dispositions or actions of an offender, as a way of punishing him for having those dispositions or engaging in those activities.[18] Man is a social animal and societal sanctions play a major role in molding the sketch and behavior of the people. Lack of social acceptability or stigmatization of an individual in the society is a major tool of combating crime.

However, in case of white collar crimes, the public does not perceive the offender as a 'criminal'. The offenders are regarded as 'shrewd businessmen'. The main reasons for this social acceptability are firstly the violations of laws in white collar cases are complex, and can be appreciated only by experts. This complexity of the laws and regulations which govern the business world seems to facilitate the offender by giving rise to an ambiguity in the connection between the act and its motive. Secondly, the offenders persuade themselves and others that the crime committed was not intentional but accidental. This means that the motives underlying conduct cannot be automatically inferred as in case of street crimes. Crimes committed out of ignorance or inattention are considered less offensive to the social conscience than those deliberately committed. Thirdly, crime is not the predominant activity. These people are otherwise engaged in lawful occupation and this distinguishes them from some other elite

[16] The stories of Manjunath Shanmugam, Satyendra Dubey and many more are heart rendering. Manjunath Shanmugam, an IIM graduate and a young manager with Indian Oil Corporation was shot dead for pointing out irregularities in the quality of fuel being marketed. Satyendra Dubey, who was a pass out from the Indian Institute of Technology working with National Highways Authority of India was murdered for pointing towards the misdeeds going on in the Golden Quadrilateral Project.

[17] Richard G. Brody and Kent A. Kiehl, "From White Collar Crime to Red Collar Crime", Journal of Financial Crime, Vol. 17, 2010, pp. 352-364, at p.353.

[18] John B. Owens, "Have We No Shame?: Thoughts on Shaming, "White Collar" Criminals, and the Federal Sentencing Guidelines", American University Law Review, Vol.49, 1999-2000, pp. 1047-1058, at p.1049.

crime such as professional and organized crime. Fourthly, in most of the cases, white collar criminals are governed by regulatory statutes rather than penal statutes.

This societal attitude has led to flourishing of white collar criminality. The Supreme Court of India has observed "An economic offense is committed with cool calculation and deliberate design with an eye on personal profit, regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system of administration of justice in the even handed manner without fear of criticism from the quarters which view while collar crimes with a permissive eye unmindful of damage done to the National Economy and National Interest."[19]

The study of these characteristics is basic for the fruitful exploration of other avenues like detection, investigation and prosecution of white-collar crime which shall be discussed in the later part of the study.

1.4. Nature Of White Collar Crimes

After analyzing the definitions and studying the unique characteristics of white collar crime, the next step is to see the nature of these crimes. Crime or an offense is "a legal wrong that can be followed by criminal proceedings which may result in punishment." The hallmark of criminality is that it is a breach of the criminal law. There exist two divergent views regarding the nature of white collar crime. According to one view, white collar crimes are 'crimes' in a real sense whereas the other side raises doubt regarding the criminality of white collar crimes.

Those who advocate the non-inclusion of white collar crimes in 'crimes' say that the vast bulk of white-collar legislation is regulatory rather than penal in philosophy, is administrative in procedure, and by its qualifications is directed chiefly toward the business and professional classes of our society. Most of the statues dealing with white collar violations are administrative in nature. The discretion is vested on the concerned authority to decide whether penal action must be initiated or not. They treat white collar crime as a tort.

Those who advocate the other view say that white collar crime is real 'crime'. It is studied under the realm of criminology, which is justified because it is in violation of the criminal

[19] State of Gujarat v. Mohanlal Jitamalji Porwal and Anr, AIR 1987 SC 1231.

law.[20] White collar crimes are crimes but they differ from conventional crime in five ways i.e. origin, determination of responsibility, philosophy, enforcement and trial procedure and sanctions.[21]

The main contention is that according to one view these regulatory crimes are 'civil' in nature whereas according to others they are 'criminal' in nature. Most of the statues on white collar crime prescribe both civil as well as criminal liability for the same offense. Thus, the reason for this confusion is the result of a variety of remedies available to enforce white collar crimes.

The two realms of law i.e. civil law and criminal law are not mutually exclusive. They share more than just terminology. There is frequently no difference between behaviour that violates the criminal law and behavior that violates the civil law.[22]They are similar in the way of determining liability, the purposes of sanctions, the objects they protect, and in the actual behaviors regulated by these two bodies of law.

The only difference that exists is the legal procedure in civil cases differs from those of criminal cases. Many offenses like negligence, defamation, trespass etc. can be tried both under the law of torts and they are also dealt under the Indian Penal Code, 1860. The cases under the torts are pursued according to the provisions of Civil Procedure Code, 1908 whereas the case under the criminal law has to be pursued in light of Criminal Procedure Code, 1973. They differ in evidential matters as civil liability is decided against the defendant by a "preponderance of possibilities" while criminal cases must be decided only by evidence of guilt "beyond reasonable doubt."

Moreover, the availability of both criminal and civil sanctions for regulatory law gives those responsible for the enforcement of these rules an enormous amount of discretion in determining whether to treat a given offense as a crime or as a civil violation. If some forms of illegal behavior are dealt with by tort law rather than by criminal law simply because of tradition or some administrative reason, then the argument that white collar crime is not really crime because offenders are dealt with under civil law loses much of its strength. Therefore, in the

[20] Sutherland, 1940, p. 5.
[21] Donald J. Newman, "White Collar Crime", Law and Contemporary Problems, Vol. 23, No. 4, Autumn 1958, pp.735 - 753 at p.738.
[22] Timothy J. Carter and Steve Blum West, "Bringing White-Collar Crime Back In: An Examination of Crimes and Torts", Social Problems, Vol.30, No. 5, June 1983, pp.545-554, at p.550.

modern arena, when the white collar crime has reached astronomical heights, there does not exist any justification for not treating white collar crime as ‘crime’ in the real sense.

2. CURRENT LEGAL MEASURES IN INDIA TO ADDRESS WHITE COLLAR CRIMES

Accountability for White Collar Crimes The concept of white collar crime is not monolithic. A single collection of facts suggesting wrongdoing could start more than one legal action. Laws designed to control white-collar crime frequently offer a variety of different punishment options. The punishments may consist of jail time, monetary fines or forfeitures, the seizure of property, or penalties imposed by the adjudicating authority created under the Act. Controlling the actions connected to criminal activity in the white collar sector is the same goal shared by these sanctions. However, how things transpired could change according to how serious the "act" is. The following discusses the various circumstances under which an "act" of white collar crime has been held accountable.

2.1. Civil Liability

The "acts" classified as white collar crimes are carried out when a person is employed. The legislature has created several rules and regulations to control actions in the workplace. The way the business or vocation is to be conducted is covered by these regulations.

If these regulations are broken, civil penalties may be applied. The adjudicating authority created by the relevant Acts has the competence to impose civil fines. When determining culpability, the adjudicating authorities are often free from adhering to the technical provisions of the Indian Evidence Act of 1872, and instead have the authority of a civil court. The department that was established to administer, regulate, and oversee the Act's provisions includes the adjudicating authority. These authorities have specialized knowledge or abilities necessary to comprehend the Act's intricate technical details. Generally speaking, the Act also grants the ability to appeal to a higher authority. Civil cases are less punitive in nature, contain less procedural protections for the offender, and demand a lighter weight of evidence

2.2. Criminal Liability

The statutes allow for the implementation of criminal culpability additionally to civil liability. There are two reasons why criminal penalties are necessary. First off, by providing law

enforcement agencies equipped with an additional tool, it gives the whole treatment offered greater depth. Secondly, white collar crime is a crime against society as well as an individual. Thus, it may be useful in controlling businessmen's behavior. These clauses are additional to the civil penalty that has been imposed, not a substitute for it.

Typically, the concerned department files a complaint to start a criminal investigation. A criminal prosecution has a strict standard of proof and aims to punish the accused in order to demonstrate that society condemns the alleged behavior. The criminal penalties that may be imposed for breaking certain Acts are mentioned in detail in the Acts that address a particular type of white collar crime. When An individual is accused under the general penal provisions of the Indian Penal Code, 1860, the criminal responsibility is not specified.

2.3. Others

Depending on the type of offense and the offender, numerous further actions may be taken in addition to civil and criminal culpability, which is upheld by the legal system. For instance, "internal" procedures may be started against the offender if the infraction occurs in a business. "Internal" refers to occurring within a business or organization without the intervention of outside law enforcement. To safeguard the internal consistency of the member operations, internal procedures are started. Corporate governance, or moral business conduct, is the foundation upon which India's system of instituting internal controls in corporations is built. The Securities and Exchange Board of India implements the idea through Clause 49 of the Listing Agreements. Under this, the businesses or organizations create policies on various topics such as whistleblower protection and grievance redress. They were put in place to operate as a watchdog over organizational operations in an effort to stop evil before it starts. As a result, when a corporation discovers criminal activity, such as fraud, it examines the matter internally and imposes appropriate punishment rather than reporting it to the police. Internal authorities have an investigative mindset. The penalty might range from termination to whenever some suspicious activity is detected or reported the internal mechanisms swing into action.

"Disciplinary" proceedings are an additional type of proceedings that may be started in the event of certain white collar crimes. When a civil servant commits wrongdoing, certain procedures are carried out. The Central Civil Services (Conduct) Rules, 1964 and the All India Services (Conduct) Rules, 1968, among other documents, specify the standards of behavior

that every employee in the civil service is expected to adhere to. Disciplinary actions may be taken against a government servant who disobeys these regulations or is suspected of abusing his official position. There are no legal definition for "disciplinary proceedings" in any one of the regulations. It refers to a process started to determine whether a worker has broken an explicit or tacit code of morality and professionalism so that the employer can penalize the offending worker. The Central Civil Services (Classification, Control and Appeal) Rules, 1965 contain the guidelines for disciplinary proceedings and how they may be carried out. There are two types of penalties that are issued during disciplinary proceedings: minor penalties and significant penalties. Minor sanctions include reprimands, a period of time in which promotions and increments are withheld, and the recovery of the entirety or a portion of the employee's financial losses from their compensation. After requesting and taking into account the accused employee's explanation, a minor punishment may be applied. Major punishments include being removed from duty, being forced to retire, or having your rank reduced by being returned to your parent cadre, lower pay scale, etc. This kind of fine can only be applied following a thorough investigation, unless it is impractical. Thus, several parallel and collateral prosecutions will follow significant fraudulent conduct. Companies may take internal action in addition to external action from other bodies. A public servant may have both criminal and disciplinary actions brought against them. However, there is a unique essential for every proceeding White collar crime is a broad category. Numerous statutes establish criminal responsibility for white-collar offenses. The following discusses the criminal penalties that can be applied to white collar crimes. Crimes Covered by the Indian Penal Code of 1860

White collar crimes are not punished by the Indian Penal Code, 1860. Furthermore, it has not made "fraud" as a whole illegal, despite the reality that it is the cornerstone of all white collar crimes. Nonetheless, the Code contains rules that apply to the punishment of white collar offenses. The proceedings are criminal in nature because the Code is a substantive criminal law code. Below is a discussion of the numerous Code provisions that are used to address white collar crime.

2.4. Corruption

Corruption has always been the dominant force in society. It has become deeply embedded in modern society. Corrupt practices have crippling consequences on every facet of public life. In addition to stunting economic progress, it also exacerbates inequality, increases poverty, adds to human misery, weakens the battle against organized crime and terrorism, and damages

the nation's reputation abroad.

People who work for the government are called "public servants. "These public employees engage in dishonest behavior that jeopardizes the credibility of government agencies and protocols. An individual who works for the government, a local government, an organization established by the government, or anyone tasked with performing a "public duty" is called a "public servant."

Judges, justice court officers, office holders of officially recognized cooperative societies that receive government funding, chairman, member, or staff of any service commission or board, vice chancellor, faculty member, or staff member of any university, and office holders or staff members of any educational, scientific, social, or cultural or another establishment that is getting government funding. The Prime Minister, Governors, Members of State Legislatures, Members of Parliament, and the President of India are among them.[23]

Corruption can take many different forms. It can manifest in a variety of ways, and in the Indian context, it can be classified as either major or minor corruption. Petty corruption refers to when a public official uses coercion or collusion to manipulate a member of the public over little transactions in order to undermine the system. Therefore, lower-level governmental authorities are mostly involved. Grand corruption is the system's subversion by powerful government figures and political executive groups, typically with cooperation from participants in the business sector.

If a public servant commits corruption, they may face departmental or criminal punishment, depending on the seriousness of the offense. A number of statutes that are covered here can establish criminal culpability for the offense of corruption.

2.4.1 Prevention Of Corruption Act, 1988

After the First World War, corruption increased significantly. Thus, to be able to combat corruption, the Prevention of Corruption Act, 1947 was formed in addition to other prohibitions that were already included in the Indian Penal Code, 1860. As time went on, corruption became a greater threat. As a result, the Prevention of Corruption Act, 1988—a more extensive statute

[23] P.V. Narasimha Rao v. State (CBI/ SPE), (1998) 4 SCC 626.

on the topic—was passed. The previous Act of 1947 was repealed by this Act. The Indian Penal Code, 1860's anti-corruption clauses were also removed. The following section discusses the various offenses that the Act of 1988 makes available.

The Act forbids public employees from receiving any form of compensation other than what is required by law. The definition of gratification is not limited to financial gain or to pleasures measured solely in terms of "money." Thus, it is employed in a more general sense as denoting anything that gives the taste buds or the mind happiness, joy, or gratification. The following conditions must be met for an individual to be found guilty of an offence: the accused must be a public servant; it must be demonstrated that the accused has obtained or attempted to receive satisfaction of any kind from somebody other than that which is required by law; and the gratification must be used as a justification or reward for doing or refusing to do, in the course of performing his official duties, favor or disfavor to any person. When someone is found guilty, they could face a minimum sentence of six months in prison, a maximum sentence of five years, and additional fines.

Additionally, the Act forbids public employees from accepting gifts of any kind. The main idea of the Section is that public employees who aren't forbidden from accepting bribes but are permitted to accept "presents" will be able to easily get around the law by accepting a bribe in the form of a present. The accused must have been employed by the government when the offense was committed, have taken or agreed to accept, or have made an attempt to gain a valuable item for himself or another person. The person supplying the thing must be a person concerned or interested in any proceeding or business performed or about to be transacted by the public servant him or any other to whom he is subject. He must have given the person giving the thing no regard or insufficient consideration. If found guilty, the offender faces a minimum sentence of six months' imprisonment, a maximum sentence of five years' imprisonment, and a fine.

The purpose of Sections 8 and 9 of the Act is to discourage any member of the public from providing or accepting any kind of reward; the beneficiary need not be a public servant. The accused must have solicited, accepted, agreed to accept, or attempted to accept any gratification For it to be considered an offense under these Sections; furthermore, the gratification must be payment that the accused is authorized by the government or the organization he works for to accept. be for himself or for anyone else; such satisfaction must have been requested, made

available, or paid for as a reason or reward for coercing a public servant to use unlawful or dishonest means; the public servant must then perform an act or refrain from performing an act, render or attempt to render any service or disservice to any person with the federal, state, local, or other government agency, or with any other public servant, named or otherwise. If found guilty, the offender faces a minimum sentence of six months' imprisonment, a maximum sentence of five years' imprisonment, and a fine. In contrast to the previous Section, which allowed for the use of one's own influence, Section 8 permits the public workerto be affected by dishonest or unlawful means.

Apart from the aforementioned designated offenses, the Act also establishes the criminal misbehavior offense. This clause aims to address public employees who commit crimes on a regular basis. While no particular action can be brought against them by demonstrating how they accepted bribes or obtained money through unethical means, they enjoy lives above their salaries.

This Section's goal is to identify and discipline officers in possession of somehow managed to avoid detection. Any employee of the government who routinely accepts, obtains, If someone takes something valuable without giving it enough thought, or if someone dishonestly or fraudulently misappropriates any property entrusted to him or under his control as a public servant, or allows another person to do so, they may be held accountable for criminal misconduct. They may also be held accountable if they gain something valuable, like money, or if they misuse their official position. amasses a financial advantage or valuable item without the public's interest; or possesses assets or property out of proportion to his recognized sources of income. The phrase is fairly broad since it assumes that the situation resulted from the individual's frequent acceptance of bribes or corruption and that the individual possesses assets or financial resources that are disproportionate to the recognized sources of his income.

A public official who is found guilty of criminal misconduct faces a minimum one-year prison sentence and a maximum punishment of seven years in prison, in addition to a fine. Even trying to misuse property entrusted to you or take advantage of your official position is prohibited by Section 15 and carries a fine and a maximum sentence of three years in prison.

The Prevention of Corruption Act, 1988, created a crime of aiding and abetting Every single one of the aforementioned offenses in an effort to combat corruption. It is not required for the

individual to commit an offense as a result of such abetment in order for them to be held accountable under these Sections. The individual found accountable for this kind of assistance faces a minimum sentence of six months in prison, with the possibility of up to five years in prison, in addition to a fine. For repeat offenders, Section 14 of the Act prescribes harsher penalties. An individual who commits repeated offenses will be sentenced to a minimum of two years in prison, with the possibility of up to seven years.

3. THE PROCEDURES FOR INVESTIGATIONS, PROSECUTIONS, AND AGENCIES HANDLING WHITE COLLAR CRIMES IN INDIA

Criminality in white collar offenses is made possible by the nation's criminal justice system. Such laws influence society metaphorically just because of their existence. Even though there are criminal penalties for white collar crime violations, these have not been effective as a tool for attaining compliance or as a deterrence. If criminal and antisocial behavior is not identified, stopped, and dealt with, law enforcement will lose credibility and credibility People have more flexibility to engage in social and economic interactions, which improves their quality of life, when traditional crimes are prevented from occurring in the community. White collar crimes also lend credibility to this quality. Ignoring white-collar crime is akin to undermining the integrity of society when we refuse to address common crime; it also undermines society's safety. It is an abandonment of law enforcement duty to delay or postpone taking action in cases of white collar crime. As to a Supreme Court ruling, a country's level of the methods used by a civilization to enforce its criminal laws are the main means of evaluating that civilization.

The two main processes in the effective implementation of white collar crime legislation are investigation and prosecution. Investigating white collar crime is significantly more difficult than investigating most other traditional crimes. The events in question have typically occurred at a substantially more remote location over a significantly longer time span. The crime is not just dynamic but multifaceted as well. A number of related incidents need to be demonstrated in court. Finding the one piece of evidence an investigator needs to bolster his allegation requires a great deal of searching.

The prosecution is a crucial step that comes after the relevant investigating agency has finished its investigation. The foundation of every effective criminal justice system is the prosecution. It strikes a balance between the investigating agencies' capture of criminals and the court's

determination of guilt and imposition of punishment. A case with a strong investigation won't be worth anything if the state's prosecution system runs poorly. The researcher has looked at the various organizations in charge of investigating and prosecuting white collar crimes in this chapter, as well as the procedures that go along with it.

3.1Examining and prosecuting the offenses that were committed Under Indian Penal Code, 1860

The main agency in India in charge of carrying out criminal investigations is the Police. The police are designated as the investigating agency by the Code of Criminal Procedure, 1973, It forms the basis of the criminal justice system in India. The Code gives police the right to investigate any offense. The process and actions involved in conducting a criminal inquiry are outlined in the Code. Nonetheless, if any special statute has procedural provisions, those provisions will take precedence over those in the Code.

3.1.1 Police

Since the Indian Constitution primarily governs state lists for police, all matters pertaining to them fall under the jurisdiction of the various state governments. State-level organization, as opposed to federal organization, governs the police force. The names of the states, such as Rajasthan Police, Assam Police, Bihar Police, etc., to which the police agencies are attached are used to identify them. State-specific Police Acts exist. The police forces in that particular state are structured and managed in compliance with the guidelines established by the relevant Police Act. The state police forces' Police Manuals contain a description of these policies and procedures. There are many things that police forces have in common, even though they are diverse.

The reason for this is that the Police Act of 1861, which remains the fundamental law managing the operation of the Indian police, governs the composition and operations of state police units. The principal model for the State Police Acts is the 1861 act. Second, important criminal laws including the Indian Evidence Act of 1872, the Code of Criminal Procedure of 1973, and the Indian Penal Code of 1860 apply to almost every part of the country. The state police force is under the direction of the Director General of Police, who oversees all aspects of the state's police administration. In the pyramidal structure, he has the highest rank among superintendents of police, assistant inspector general, and deputy inspector general. States are divided administratively into districts based on their physical separation. An officer with the

title of Superintendent of Police is in charge of the district police force. A range is a group of districts that are under the command of a deputy inspector general of police. There are zones with two or more ranges that are overseen by an Inspector General of Police officer in several states. Every district has subdivisions of its own. A subdivision is under the direction of a person with the title of Assistant Superintendent of Police or Deputy Superintendent of Police. Every subdivision has a different police station assigned to it depending on characteristics including area, population, and crime rate. The police station is the essential building block of a district's law enforcement organization. The person in charge of a police station is called an Inspector of Police. Every offense needs to be reported in line with the procedures at the police station.

The Financial Violations The state and union territory police forces have created a specialized section called Wing to look into economic violations. Investigating serious economic violations and offenses with consequences for other states is within the purview of this branch. The wing also provides district police with financial crime case-related advice, assistance, and communication. In order to look into white-collar crime, the Economic Offenses Wing typically has multiple departments. The sections on anti-fraud and cheating, for instance, deal with frauds pertaining to the banking sector, financial institutions, and businesses; The anti-criminal breach of trust section, on the other hand, deals with cases of criminal breach of trust, multi-level marketing fraud, share trade fraud, corporate fraud, and cybercrimes. On the other hand, the anti-forgery division deals with frauds including document forgeries. Other departments include the Special Branch and the Criminal Investigation Department. These divisions oversee the attempts to reduce crime and look into significant and challenging situations.

3.1.2. Central Bureau Of Investigation

The CBI, a central investigative agency of the central government, is another organization that is heavily engaged in the probe of white-collar crimes. It was first established in 1941 by an executive order to combat the corrupt practices that had arisen following World War II. However, The Delhi Special Police Establishment Act, 1946, was passed in response to the necessity for a central agency. which gave rise to the agency's current powers and functions. Initially, the Special Police Establishment was only responsible for investigating corruption-related offenses; later on, many offenses under the Indian Penal Code, 1860 were included under its jurisdiction. All offenses or categories of offenses that are reported under Section 3

of the Delhi Special Police Establishment Act, 1946, by the Central Government, are being looked into by the CBI. These offenses are listed by the Division of Prosecution of the Central Bureau of Investigation (CBI). As of right now, 243 offenses under the Indian Penal Code, 1860, 19 State Acts, and 74 Central Acts have been notified by the central government. The CBI can only investigate these offenses in union territory. The federal government may extend its authority to cover more states and regions, subject to state government permission.

Furthermore, the CBI may be ordered to investigate a case by the Supreme Court or the high courts pursuant to the authority granted to them under Article 32 and 226 of the Indian Constitution of 1950. But because these are extraordinary powers, the courts should only use them sparingly, cautiously, and in dire circumstances where it's essential to carry out justice completely.

The state police's authority and the CBI's authority are coextensive. Considering the agency's limited resources and avoiding duplication, the CBI has reached an administrative agreement with state-run law enforcement agencies.

When it comes to corruption matters, If federal government employees are significantly and fundamentally involved, the CBI looks into them; if not, the state anti-corruption bureau looks into them. Additionally, the CBI looks into cases involving The Indian government's primary focus in relation to the application of central laws, as well as cases with across the country implications; significant instances of embezzlement, fraud, and other similar crimes involving public joint stock companies and substantial sums of money; cases with implications for other states and countries that are being looked into by multiple agencies; cases where it is located thought that only one The investigation should be overseen by an investigating agency; and cases involving the the interests of any statutory business or organization, including the federal government established and funded by the Indian government, especially those involving public servants or substantial sums of money. Despite the fact that there is a general agreement, there remains discretion, and the police or CBI may investigate the issues raised by section 3 reports.

4.1.3. Procedure Of Investigation

The investigative procedure and the authorities' available powers are enumerated in the 1973 Code of Criminal Procedure. To start the investigation of a cognizable offense, a case under

Section 154 of the Code is registered. However, the magistrate hears complaints about infractions that are not recognized. If the magistrate feels that an inquiry is necessary, he may order one; in that case, the same procedure would apply.

Finding the truth in order to successfully detect and prosecute a crime is essentially the art of investigation. Gathering proof is the key goal. This is accomplished by having the investigating officer record. the testimony provided by witnesses and the accused. Anybody who knows the specifics of the case may be contacted by the investigating officer and questioned in person. However, these remarks have minimal evidentiary value because the prosecution cannot use them to bolster its case. The accused may utilize these remarks in accordance with Section 145 of the Indian Evidence Act, 1872, but the prosecution may only do so with the court's permission and only to disprove the witness. Furthermore, such a statement cannot be used to support the maker as a preceding assertion.

The investigator is also authorized to make an accused person's arrest. Arrest refers to a person being taken into custody by the law and having their freedom taken away from them.It gives the investigating team an opportunity to speak with the defendant. Depending on whether the situation meets the requirements for being cognizable, an arrest may or may not need a warrant.

An arrest takes away someone's freedom, hence this power should only be used when there is strong proof and a plausible suspicion that the person being arrested committed the crime. The arrested individual has several rights that have been established by the legislature and the courts. It has been explicitly stated that the arrest must be carried out strictly in compliance with the law. The individual may be detained for up to 24 hours while an investigation is conducted after being apprehended. Conversely, however, the person must appear before the court and additional detention is only ermitted with the magistrate's permission if it seems that the inquiry cannot be finished in a day The magistrate has the authority to place the defendant in judicial or police custody. In judicial custody, the subject is being held by the jail authorities and cannot be questioned by police without the magistrate's consent. In police custody, additional investigation is conducted by the police. Conversely, however, for crimes for which bond is required, an arrested individual has the right to bail. In cases where bail is not required, the judge may decide to grant him bail.

If any particular document or item is needed or desired for the inquiry, The individual whose

possession or power such a document or item is deemed to be may get a formal order from the investigating officer requiring its production. A summons requiring the item or document to be shown may also be issued by a court. The police have the right to go through any documents or other items that are important to the investigation or trial that someone refuses to turn over, or if the item is in the hands of an unidentifiable individual. A search can be carried out without a warrant. A search is an infringement on someone's right to privacy and the sanctity of their home. Consequently, the legislation has created specific guidelines and protocols to be followed when conducting a search.

Additionally, there are occasionally directives from different departments that serve as guidelines for the police and ensure that a fair inquiry process is followed, even though they lack legal force.

4. PUNISHMENT AND ASSET FORFEITURE

4.1. Introduction

The goal of criminal law is to ascertain an accused person's guilt or not and, in the event that guilt is proven, to specify the appropriate course of action based on a complex web of laws, both procedural and substantive. There are two main components to a trial in the adversarial system. The second phase, sentencing, starts as soon as the court issues the judgment of conviction. There is little question that deciding on the second issue, which is what course of action to take, is crucial. It establishes the extent of the offender's punishment, which may involve deprivation of freedom. Even though sentencing is the last step in the criminal process, The defendant has it front and center. of his thoughts from the beginning when he considers committing crime, especially white collar crime.

Sentencing is a challenging and intricate process. It's said that "the law of sentencing is Cinderella's illegitimate baby if the criminal law as a whole is the Cinderella of jurisprudence." The criminal justice system's sentencing phase is when the judge determines the defendant's actual sentence. Decisions on sentencing carry significant symbolic and instrumental value. These choices are an outward manifestation of the central principle of a government and a way to operationalize basic symbols, such as the concepts of justice and equality. It expresses how that type of crime is despised by society. Sentence is therefore the trial's most crucial stage.

Penalties for sentencing include fines and jail time. Nonetheless, the loss of any illicit assets that the accused may have obtained is a significant penalty for fighting crime in the context of contemporary crimes, particularly white collar crimes. The researcher's goal in this chapter is to examine the nation's sentencing practices as well as the problems associated with the sentencing of white collar offenses. The researcher has also looked into the forfeiture provisions found in current Indian laws as a means of punishment to fight white collar crime.

4.2. India's Legal Framework for Sentencing

The accused is found guilty of an offense, at which point the punishment process begins. In India, The defendant must be heard by the court regarding The duration of the punishment, unless the accused is released on probation or with warning. The Crpc, 1973, Section 235, lays forth the overall process for post-conviction hearings. The hearing's goal is to provide the accused to present the court with the proof that ought to be taken into consideration while determining the appropriate sentencing. Consequently, The court takes into account the numerous both exacerbating and mitigating factors at this point.

With little assistance from prior judicial decisions and little input from attorneys, the judge must make a decision based on pertinent aggravating and mitigating circumstances. The judge presiding over sentencing may refer the case to the Chief Judicial Magistrate if he believes that his legal authority is insufficient to allow in order to impose a suitably harsh sentence. But the clause offers no instructions on how the magistrate will phrase his judgment.

The judge presiding over the sentence should consider that The penalty should be appropriate for the transgression committed to be able to establish the right sentence. In order to do this, the judge must balance the various theories of discipline while keeping the goal of punishment in mind.

In addition, other elements like the offender's background and the nature of the offense should be taken into account. The theory of punishment takes into account the purpose of punishment. The court ought to determine the sentence based on the goal that the punishment in that specific case—or class of cases—is intended to achieve. There isn't a one, all-encompassing philosophy of punishment, and theories have developed over time. These four theories are reformative, preventive, retributive, and deterrent. The deterrence hypothesis depends on fear and danger to prevent the recurrence of crimes that are

4.3. Issues with White collar crime Sentencing

The country's sentencing jurisprudence has evolved in a fashion that prioritizes the idea that punishment ought to be commensurate with the offense committed. While the "principle of proportionality" provides assistance to the sentencing court when determining the appropriate punishment for typical crimes, it offers less guidance when it comes to white collar crimes. Determining "proportionality" is a challenging task since there is a lack of information regarding the criteria something needs to be considered.

Certain traits are common to white collar crimes that are absent from other types of criminal activity. When it comes to punishing white collar crimes, the reasoning behind it differs greatly from that of non-white collar offenses. In the national conversation on sentencing, white collar criminals hold a special place since they are frequently criticized for being too lenient, ineffectual, and unjustifiable. When Supreme Court declared in the State of Gujarat v. Mohanlal Jitmalji Porwal case that the legislature, in its wisdom, had made provisions for the imposition of sentences of up to seven years in cases of violations under the Customs Act, 1962, and that the court was obligated to enforce those provisions. The court expressed distress over the lenient sentence imposed by a lower court to use the provision. In this instance, the lower court had imposed a two-year sentence along with a nominal fine. The supreme court declared: "In the hands of the Deity of Justice, punishment is a holy weapon, like a sword." The same is intended for more than just exhibition purposes, such as brandishing or whipping! The field's standing crop is not being damaged by scarecrows used to frighten off birds and other animals! Instead, in the right circumstances, swords must be used repeatedly. Similarly, harsh sentences of incarceration and fines must be given in order to make the accused of harming the national economy understand just how powerful their penalty is the court's procedure and the fact that the sentence's sword is not made of wood. Highlighting a number of paradoxes that arise when sentencing white collar crimes may be the greatest method to demonstrate the issues with sentencing white collar offenders. The following is a discussion of these challenges.

4.3.1. Legislative Dilemma

Legislation has a significant impact on punishment. It outlines what behavior is illegal as well as the maximum penalty that can be applied for such behavior. Regarding statutory guidelines, there are significant gaps in cases of white collar crimes. First of all, compared to violent or tangible property crimes, the consequences for white collar crimes like fraud, embezzlement,

and insider trading are substantially less severe. For instance, the longest sentence that can be given for crimes involving white collar workers is seven years. Additionally, a number of statutes stipulate a maximum sentence of three years.

Second, the judge must determine which of the several conceptions of punishment should take precedence in a given situation. White collar crimes are expertly carried out by people who appear to be well-respected members of the community and cause serious harm to the country's wealth and health. The judge must make his own determination regarding whether, in such circumstances, retribution—i.e., a punishment commensurate with the offense—should be the focus or whether deterrence—i.e., keeping the offender from committing the same crime—should be the primary purpose. Furthermore, it is unclear how the rehabilitation approach will be included into the sentence guidelines for white collar offenses.

Thirdly, there isn't minimum obligatory punishment specified in the statutes pertaining to criminality in cases of white collar offenses. The purpose of minimum penalty guidelines is to prevent judges from leniently addressing criminal offenses. Even in the few laws that specify a mandatory minimum sentence, Judges are free to choose whether to impose a lighter sentence if they believe it serves the interests of justice.

Fourth, white collar offenses are punishable by fines. The most important component of white collar crimes is money. The severity of the offense should determine how much of a fine is imposed. Most of the laws pertaining to white collar crime include fines as a form of punishment; however, none of the laws specify a minimum amount below which the fine is prohibited. Consequently, fines are typically more akin to symbolic punishment than an actual punishment.

Consequently, the judiciary is essentially left on its own when it comes to figuring out the pertinent goals and tenets of sentence as well as the appropriate amount of punishment or tariffs, both in terms of general policy and case-by-case

4.3.2. Legal Dilemmas

The judge follows the law when enforcing criminal justice, at least until the point where he or she must record the accused person's guilt. The most difficult part, though, comes when it comes to sentences because the judge now needs to serve as a sociologist, psychologist,

sociotherapist, reformist, and administrator in addition to the letters of the law.

The temptation exists for judges to be forgiving to white collar criminals. The judges receive constant criticism for acting in this way. When imposing a sentence on a white collar criminal, a court should consider two things: first, that the victim thinks that justice has been served, and second, that the punishment meted out is commensurate with the offense committed.

The hardest thing for a court to do when deciding on a sentence for a white collar criminal is to figure out how much "harm" the perpetrator has caused. Numerous factors, such as the number of victims, the loss, and the way society perceives the particular crime, influence the extent of harm. Since the power in the white collar sector is often shared by multiple individuals, it is difficult to pinpoint the precise number of victims. White collar crimes are less impulsive and more calculated than crimes of passion or opportunity.

since there isn't any violence or fear of violence, The amount lost in money is seen as less significant. Crimes like murder and rape have a much higher dread and anxiety factor than financial crimes, which mostly cause financial hardship. Most of the time, it is impossible to determine the precise financial loss, so the amount predicted is only a general estimate. The harm's social nature is hidden by its economic one. In actuality, weakening the economy, widening the wealth gap and poverty, destroying trust, and robbing people of their time and financial resources all result in significant harm to society

4.4. Guidelines for Sentencing in Other Jurisdictions

Developing a technique for generating sentencing recommendations by sitting down with a blank sheet of paper is unlikely and difficult. The guidelines that are now in place in other nations can be useful while creating regulations for India. There are different sets of rules in different legal systems. Some jurisdictions use alternate techniques rather than sentencing guidelines bodies. For example, sentencing guidelines and goals are referenced in laws in Canada and Ireland, and in other countries, information systems take the place of sentencing guidelines bodies. National law was followed in the establishment of these organizations. Sentimental guidelines bodies have been established in a number of nations to help with guidelines or to support courts with sentencing matters.

For the guidelines to be effective, they must be given by a body that is respected and has

authority. There should be a procedure in place for the continual review and amendment of guidelines, and the guidelines themselves must be the result of a logical process involving widespread participation and, if feasible, consensus.

There are primarily two sorts of guidelines that the guidelines drafting organizations have created. There are two types of guidelines: numerical and narrative. Diverse guidelines aim to provide consistency in sentencing approaches in different ways. Certain jurisdictions have changed the sentencing landscape by enacting strict guidelines that are hard to modify. While some have opted for a moderate approach by developing advisory guidance programs, a third group has opposed any attempts to codify judicial discretion.

4.4.1 Forfeiture of property

Every act of white collar crime inevitably leads to the offending individual gaining substantial riches illegally that he will be unable to account for through any legal or other acceptable ways. The riches are gathered in the form of real estate or proprietary ownership of businesses, which can be held in the names of the criminal, his family, or other people he has total influence over. Others become discouraged and lose faith in the nation's criminal justice system when white collar criminals enjoy their ill-gotten money without restraint. Therefore, property forfeiture is an additional punishment that can be imposed on white collar crimes in addition to fines and jail time. i.e., to seize the money they brought in from their businesses and illicit activities, which served as the foundation for their criminal activity

4.5. Reasoning behind the Forfeiture

There are several reasons why the proceeds of white collar crime should be forfeited. First off, by lowering both actual and predicted profits, it discourages crime. Crimes of calculation are white collar crimes. A white collar criminal takes a risk by committing crimes in order to continue operating a lawful business. The motivation to participate in white collar crime activities can be greatly diminished by seizing ill-gotten wealth. Criminals should be discouraged from committing particular crimes if they believe that "crime does not pay" and that they would lose their hard-earned money if they are discovered. Furthermore, it is meant to discourage others from concluding that the potential financial gain from these illegal acts justifies the risk that is typically involved in being found guilty of a white collar crime.

Second, the economy is depleted of crores of rupees by white collar criminals. White collar

criminals flaunt their illicitly obtained wealth. Making sure the white collar criminal does not profit from his wrongdoings is crucial. Therefore, forfeiture corrects the unfair enrichment of individuals who make money off of society's suffering.

Thirdly, the deception performed against them causes the victims of crime to lose their money. White collar criminals' forfeited property may be used to make up for the hurt, suffering, and misery the crime caused to both the victim and society as a whole. Additionally, it stops new crimes from being committed by reducing the ability of offenders to fund new crimes.

Fourth, the state spends a lot of money looking into and prosecuting white collar crime. The state's expenses related to these offenses are covered by forfeiture. Moreover, by proving that crime is not profitable, it fosters public trust in the administration of justice.

Several international multilateral accords have acknowledged asset forfeiture as a vital instrument in the fight against crime. In Chapter V of the United Nations Convention on Prevention of Corruption, member nations are urged to establish a framework that will make it easier to track down, freeze, seize, forfeit, and return assets that have been obtained by fraudulent means. This convention was ratified by India in 2011.

The United Nations Convention against Transnational Organized Crime mandates that its member governments establish laws pertaining to the seizure of criminal proceeds. This convention was ratified by India in 2011. The Financial Action Task Force's (FATF) Forty Recommendations stipulate that nations must enact laws permitting the seizure of profits or instruments. India is under FATF observation. Prescriptions for confiscation are also included in the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions by the Organization for Economic Co-operation and Development. Furthermore, forfeiture is recommended as a helpful instrument for deterring criminality in the United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances. India has ratified it since 1990.

4.6. Types of Forfeiture

A legal concept known as the forfeiture sanction entails the implementation of processes that transfer the offender's property ownership to the government. There are two different kinds of forfeiture: civil forfeiture, sometimes known as forfeiture in rem, and criminal forfeiture, also

known as forfeiture in personam. It is possible to distinguish between the two because of their various differences, including firstly, the general threshold at which property may be taken; secondly, the standard of proof required to forfeit property; and thirdly, in some situations, the kinds of property interests that may be forfeited. Actions taken against the owner, or forfeiture actions in personam, are typically illegal in nature. Only when an individual is charged with a crime is criminal forfeiture implemented. Prior to forfeiture, it is predicated on and requires the defendant's guilt and conviction. In other words, the forfeiture happens after the defendant is found guilty. As a result, asset forfeiture results from conviction and serves as a kind of punishment directed at a particular person (in personam). In criminal trials, the prosecution bears the burden of proof while the prisoner is typically granted the presumption of innocence. Not the "guilt" of the property, but the owner's guilt is the reason for the forfeiture of the property. The United Kingdom is the nation that usually uses this kind of forfeiture.

The idea that "guilt" is attached to the property itself is adopted by forfeiture in rem. Another name for it is forfeiture that is non-conviction based (NCB). "Guilty property" is a legal fiction that taints the actual property. When civil forfeitures were first established, they provided the government with a means of punishing people whose property was found within the jurisdiction but over whom courts could not have personam jurisdiction. This method tends to humanize the object or animal that is employed in criminal activity, making it seem as though it did it voluntarily and is accountable for its disgusting actions. The procedures in rem forfeiture are of a civil character. Money and other items that the law enforcement authorities suspect have been used, are intended to be used, or are the proceeds of illegal conduct are subject to seizure. Success in civil forfeiture depends on the government's capacity to show a connection between the illegal activity and the specific property that is being seized. Generally speaking, this is only possible for assets that can be linked to the offense in some way, meaning they were obtained or used unlawfully. Prior to seizure or forfeiture, there is no requirement for a conviction. Actually, there is no need to file criminal charges against the property owner. Nobody is facing legal action. The onus of proof is on the defendant, while the state merely satisfies the civil standard of proof. The USA is the nation that usually employs this kind of forfeiture.

4.7. India’s Forfeiture Laws

Since "money" is the main motivator behind white collar crime, forfeiture is an effective instrument in the fight against it. The purpose of forfeiture laws is to prevent criminal activity

by seizing the proceeds obtained through illegitimate means. In India, property that is either stolen or illegally possessed has always been seized as part of the criminal process. However, if the criminal behavior resulted in financial gain for the offenders, the state may find it challenging to reclaim this profit. The provisions for forfeiture are dispersed over several statutes, which are covered here, as there is no comprehensive law governing the subject.

4.8. Prevention Of Corruption Act, 1988

Corruption is the most common type of white collar crime. The Prevention of Corruption Act, 1988 was passed in order to provide the anti-corruption laws some degree of effectiveness. Any other laws are superseded by the provisions of the Act. Although the Act does not expressly set forth the forfeiture penalty, Section 29 of the Act discusses changes made to the 1944 Criminal Law Amendment Ordinance. According to a joint interpretation of the two Acts, the Ordinance's provisions will also be applicable if the accused is punished in accordance with the Prevention of Corruption Act, 1988. The Ordinance specifies how property acquired by specific offenses is to be disposed of or hidden. As a result, it follows that, by necessary implication, someone found guilty of committing crimes, accepting illicit rewards, etc., will also face additional penalties, including the seizure of their property, which will happen in line with the Ordinance's specified process.

4.9. Criminal Law Amendment Ordinance, 1944

The process for seizing property is outlined in the Criminal Law Amendment Ordinance of 1944. Pre-independence legislation known as the Ordinance aims to stop the selling or hiding of property obtained via crimes covered under the Prevention of Corruption Act of 1988 and the Indian Penal Code of 1860.Two arguments were made against the constitutionality of the aforementioned ordinance in the High Court: first, whether a pre-independence ordinance has any legal standing or can be upheld even after the Indian Constitution of 1950 takes effect, and second, whether the Criminal Law Amendment Ordinance of 1944 has any legal standing beyond the six-month period specified by Article 123 of the Indian Constitution of 1950. Kerala High Court.