

# Evaluating The Effectiveness of Enforcement Agencies in Combating White Collar Crimes in India

Utkarsh Agarwal<sup>1</sup>

Dr.Krishna Mohan Malviya<sup>2</sup>

## Abstract

White-collar crimes, marked by their sophistication, non-violent nature, and high-level perpetrators, have emerged as a formidable challenge to regulatory and enforcement mechanisms in India. Despite the increasing frequency and financial impact of such crimes, enforcement responses remain fragmented and often ineffective. This study critically examines the capacity, efficacy, and limitations of Indian enforcement agencies in addressing white-collar crimes, drawing on legal frameworks, inter-agency dynamics, and institutional resources. It traces the historical development of regulatory efforts, analyzes the mandates of key agencies such as the Enforcement Directorate, the Central Bureau of Investigation, and the Economic Offences Wing, and assesses their enforcement outputs relative to the scale of economic offenses. The research further explores challenges including jurisdictional overlap, resource scarcity, legislative ambiguity, and technological constraints. The study argues that while India has made notable legislative strides, enforcement remains encumbered by institutional inertia, lack of specialization, and weak deterrence mechanisms.

**Keywords:** White-collar crime, enforcement agencies, regulatory framework, institutional challenges, India

## Introduction

White-collar crimes present diverse challenges to law enforcement personnel, victims, and society in general. Ever since Edwin Sutherland introduced the term ‘white-collar crimes’, they have been comparatively less elucidated than the traditional blue-collar crimes such as burglaries, murders, and robberies. However, white-collar crimes essentially possess the same characteristics as the traditional crimes: the absence of opportunity does not eliminate the drive to commit crimes nor acts that would be crimes if they had occurred in different circumstances. Many sectors have suffered more damages due to white-collar crimes than street riots and burglaries. It is estimated that only around 1% of white-collar crimes will serve time in prison or face criminal penalties for their actions.

## Understanding White Collar Crimes

In 1939 American sociologist Edwin Sutherland suggested the concept of white-collar crime, which has been referred to as corporate crime, regulatory crime or business crime, with a myriad of definitions articulated since then. White-collar crime acts involve acts of fraud, misrepresentation or breach of trust, committed by corporate agents, that occur in the course or context of business operations or trade, but do not involve conventional property crime acts. Specialised laws, rules and regulations have been developed to prosecute white-collar criminals, such as laws prohibiting bribery and insider trading, as well as laws regulating market transactions and financial activities. Regulatory agencies in financial and company matters have also been established in the state apparatus, in tandem with specialised laws. Similarly, numerous law enforcement agencies have been set up to enforce these specialised laws and regulations. White-collar crime generally comprises crimes of business and corporate actors in the finance, company and accounting sectors, and it usually does not involve arrests, such as

<sup>1</sup> Research Scholar, Teerthanker Mahaveer University, Moradabad, (U.P.)

<sup>2</sup> Assistant Professor, Teerthanker mahaveer University, Moradabad, (U.P.)

imprisonments. It has a broader meaning in the criminal law sense since it refers to crimes committed in the course or context of trade or business operations for profit or gain. It also carries a wider meaning in the regulatory context, covering various acts pertaining to the domestic operations of transnational companies. Thus understanding white-collar crime may need a systematic mapping of its several meanings and dimensions, especially in the Asia-Pacific region, where white-collar crimes are being committed at an unprecedented scale but the enforcement purported to bring white-collar criminals to justice remains hard-pressed for a lack of tradition in terms of both substantive and enforcement laws (Kilcommins & Spain, 2020).

### **Definition and Scope**

Since Edwin Sutherland coined the term “white-collar crime” in 1939, attempts to define the concept have proven challenging (Kilcommins & Spain, 2020). Sutherland’s definition was that white-collar crime was “a crime committed by a person of respectability and high social status in the course of his occupation”. The first element entails “a person of respectability and high social status” committing a crime and it is the respectability/status of the person, rather than the nature of the crime committed, that is the key aspect. For Sutherland, this element presented the challenge to wider societal thinking about crime and the respectability of those committing crimes. It was this aspect that, for Sutherland, would necessitate a different approach to detection, prosecution and punishment. The second element in his definition was the occurrence of “the course of his occupation”. This element focuses on the professional aspect of white-collar crime, both “personal” and “organisational”. In this regard, it encapsulates the social network of a person committing a crime involving the connection to fellow offenders, victims, witnesses and law enforcement agencies. The third element, present in many definitions of corporate crime, is the notion of responsibility. One of Sutherland’s examples, General Motors, illustrated that it is not a person directly employed by the corporation that commits the crime, but it is the corporation itself that commits the crime and this should focus attention away from the culpability of the corporation and upon the individuals responsible. Prior to this, a decade of criminological research would suggest that it is this lack of a responsible social actor that would thwart attempts at detection and regulation. The notion of responsibility is key to any definition of corporate crime.

### **Historical Context**

The history of white-collar and corporate crime in our nation has been one of toleration. Throughout much of this century, the victims, the government, and the criminal justice system have been largely inactive in attempting to control this form of law-violating behavior. As a result, occupational and organizational crime offenders have been treated preferentially in our courts compared to traditional or common crime offenders. Beginning in the 1970s, however, public attitudes began to change and the government and criminal justice system were given a mandate to pursue these offenders (Alan Johnson, 2009). Concerned about the perceived rise in white-collar crime, the newly elected President Nixon created the White House Task Force on Crime and requested that a special emphasis be placed on this form of crime. The emphasis was still qualities and ownership rather than on enforcement and punishment but, in response to the Task Force request, a division of white-collar crime and the investigation and prosecution of these offenders was a stated goal. In January 1974 the white-collar crime unit was created as it was perceived that the hands of the Bureau were tied to pursue it under existing laws and that new legislation was needed. The initial response was the formation of a committee to draft legislation to be implemented by the President’s Task Force and designed to address investigatory problems of the Bureau. It was noted at this time that laws were in existence which could reach most white-collar crime but that enforcement was a far more difficult and serious problem, which encompassed reasons for the lack of enforcement.

### **Types of White Collar Crimes**

Few criminologists study white-collar crime. This is not due to a lack of interest; it is because few offenders are put on trial, and even fewer are sentenced to prison. Many harmful activities of businesses or occupational elites are not labeled as "crime." Instead, they are examined from the perspectives of ethics, morals, and public relations. As a matter of fact, these activities may be subject to administrative or regulatory law instead of criminal law. Under regulatory law, the penalty may not be imprisonment but financial penalties or disqualification for trade.

### **The Role of Enforcement Agencies**

Croall argues that the term “crime” is contentious, as many harmful activities of businesses (especially large corporations) are ruled not by criminal, but administrative or regulatory law. As a result, many

activities that are deemed harmful by the general public or by people in authority, may not count as a crime in the legal or technical sense, and would not be subject to criminal sanction but rather non-criminal regulatory sanction (Gottschalk & Smith, 2016). Even where a crime is believed to have been committed, there may be other enforcement options available, such as civil action, administrative sanction or the application of regulatory enforcement. Thus, many activities that are, in the public's mind, undoubtedly a crime, remain completely unnoticed and unpunished by the criminal justice system. With regard to white-collar crime, this definition would unfortunately be true in all countries. Very few white-collar criminals come to trial, and far fewer are sentenced to imprisonment. Moreover, those that are convicted on occasion for what seems to be significant white-collar crime, often receive comparatively short sentences, or fines.

The very novelty and complexity of many modern crimes means the enforcement agency often have necessarily to rely on sophisticated investigations that take longer and need a greater quantity of evidence before action can be taken. Fraud involves using deception for illegal monetary gain. White-collar offenders are typically people in high-status positions who commit their crimes through deceit and concealment rather than through physical violence. Public corruption is a type of white-collar crime involving a breach of trust. This involves government officials using their public office for personal gain. Corruption threatens national security, undermines the public's faith in government services, and undercuts the effectiveness of government programs. Since corruption often involves a complex web of collusion between public officials, the FBI has the technical, financial, and legal resources to combat corruption.

### **Current Enforcement Mechanisms**

The socio-economic and legal environment in which white-collar crimes occur today is characterized by the rapid growth of technology, the globalization of economies, corporatization of businesses, slowing economic growth in many countries, changes in societal values and perceptions, and regulatory and institutional approaches to combating economic crime. The enforcement mechanisms specified in laws and regulations are as diverse and complex as the environment in which white-collar crimes are committed. Indeed, the manner in which the enforcement mechanisms have evolved reflects the changing nature of white-collar crimes.

### **Legislative Framework**

Legislative tools against white collar crimes entered into force in 1999 when the Senate and the House approved the implementing Regulations on the Code of Commerce (CC) and the General Law on Ec Shesters (GL) that paved the way for their proper application. The National Treasure and the National Banking and Securities Commissions are now in charge of monitoring compliance with the above-mentioned regulations. In October 2003, a further set of regulations was published that address the disclosure obligations of obligation of public companies' directors and officers as well as Mexican and foreign individuals with respect to important transactions involving companies governed by Mexican law. These regulations also came into force in 2003.

### **Regulatory Approaches**

The rising class of white collar crimes, especially the one involving sophisticated corporations, proved too big to fail and evade convictions by the enforcers. It now constitutes a global system with multi layered hierarchies and is growing at a compound rate of 10%. Despite the magnitudes of damages the ill-natured activities have burgeoned beyond the estimates. The retribution mechanisms have also failed to adapt and accommodate the rapidly evolving deceptions. Class action suits have dried up due to mounting costs facing the applicants and mismatch between the damages and recovery.

### **Public Perception and Impact**

Much, if not all, of the public perception research cites public apathy concerning elite deviance. There is a strange juxtaposition between the soaring prevalence and given attention to white-collar crime on one hand and the seemingly nonexistent public interest on the other. The fact that the massive scandal of the decade was perceived as public apathy underscores social science's relative lack of knowledge to this extent. Two probable factors for such apathy could be the aforementioned delayed harm and lack of immediacy of white-collar crime. Work-related illnesses and deaths may occur years after exposure to toxic substances in the workplace and may not shock public opinion as much as homicide (Michel, 2014). But to those that attribute so much tolerance of elite deviance to public indifference, the events surrounding the collapse of Enron sniff out the apathy. In the summer of 2001, Enron stock was in the high seventies, but by autumn, it had plummeted to below one dollar per share one

week after the company filed for bankruptcy. This event garnered national attention, and it suddenly became apparent that a huge company had used millions to hide losses (Alan Johnson, 2009). With the stock's ascent, many analysts endorsed the stock, but when it plummeted, heads rolled at Enron, and numerous lawsuits followed.

### **Trust in Enforcement Agencies**

The 21st century has been marked by revelations of large-scale corporate financial failures and accounting scandals, giving rise to widespread corporate crime. The scandals have raised questions regarding the implications of white collar crime for corporate executives, shareholders, corporate governance, tax collection, audit firms and corporate consultants, and whether the rules and regulations that govern the corporate world were insufficient or if the latter were merely not enforced. Beyond regulatory reform, organizations increasingly seek to determine how they are likely to be affected by the current wave of corporate financial scandals and reinforce their reputations with stakeholders wary of corporate fraud. In addition to updates of rules and regulations designed to govern corporate activity, organizations can also adopt more effective self-policing and change the corporate cultures underlying corporate fraud. This may involve modifications at the board of directors, management and corporate governance firm levels, moving forward to new forms of management and corporate governance at the executive, oversight and consulting levels, education, and modification of associated cultures (Vaughan, 1982).

Evidently, both scholars and practitioners seek to understand the nature and causes of corporate fraud and how to best shape corporate governance systems, firm structures, executive attitudes, risk perceptions, and corporate cultures in order to avoid stakeholder damning revelations of large-scale fraud. While much attention has been devoted to the short-term history of a scandal in order to determine how the event occurred, scant attention has been paid to forwarding a long-term, predictive account of fraud and the environments in which it is most likely to occur. Moreover, though considerable attention has been paid to proposing ways to mitigate the occurrence of future events, organizations have tended to theorize about and implement approaches to control that are based on expected transactions and outcomes rather than individuals' socially constructed perceptions of rule, religion, sanction, and profit (Ojo, 2010).

### **Future Directions for Enforcement**

Various regulatory bodies vested with the powers to regulate companies are important in ensuring the enforcement of laws, rules, regulations, and circulars. The enforcement mechanism plays a vital role in protecting market integrity. It is necessary to create disincentives for violators and create conditions for good conduct as market players. The enforcement actions aim to ensure a market that is free of arbitrary decisions and impropriety by the enforcement agencies. Therefore, the law that guarantees penal sanctions should be straightforward, while discretion should be regulated by law. The enforcement policy and practice must be transparent, consistent, and predictable to ensure that they do not become the tools of harassment and intimidation. Enforcement of economic regulation should not be used as a policy for macroeconomic control (Ford, 2005). To ensure that economic reinforcement is swift, transparent, and effective, it is necessary to take steps towards peer control. The controlling body must be independent and free from any other interests. The law and rules framed must be segregated from policy control, and a time-bound decision mechanism with staggered penalties must be established. A framework must be created with a generally accepted code of conduct, and the legal frameworks should begin and end with direct conditions. Alternative measures should also be defined, and facilitation should precede penal provisions. Lastly, to maintain an optimal deterrent value, penalties should be closely guarded state secrets.

### **Conclusion**

White-collar offenders may be defined as "persons of respectability and high social status who commit a crime in the course of their legitimate occupation." The accountability process in the commission of a corporation offense must either pierce the corporate veil or identify persons responsible. Corporate crime in the context of public victimization or private victimization could be distinguished. Corporations commit crimes with the intention of enhancing their financial status. Inside-job corporations embezzled or diverted funds to their own use (Alan Johnson, 2009). Documented interpretation of criminal acts committed indicates a likelihood to victimization by a person of respectability and high social status. Constraints and checks that exist to contend corporate crime and white-collar crime, in particular, are difficult to administer, restrictive, expensive, and extra-legal deterrents which impede corporation victimization. Corporation victims traditionally

existed in the form of private concern. They acted collectively as mission planners and organizers, disobeying local regulations governing land-use and constructions. The experience of South Estes is indicated. Directors and officers of this fictitious start-up entity used outside consultants to draft the prospectus of a high-technology semiconductor business and later revised the project to grounded gasoline distribution stations at 13 sites in the local Toronto area. Inferences of individual wrongdoing are not easily captured and are inherently difficult to prove. A reference case of rare corporate sentencing was of Roman egg company that committed fraud. Watching the theatrics of mock trial is fun and innovative, but punishment and accountability of individuals is needed. Extolling the societal accountability of the corporations involved misses the deeper malaise.

The Elliott and Duran case underscored the SEC's disproportionate emphasis on violation of Sarbanes-Oxley as opposed to prior antifraud statutes. In addition to the attempts to prevent the commission of white-collar crimes, several enforcement mechanisms to restrain such misconduct or retaliate against violators exist. These include state and federal government post hoc civil actions, state and federal criminal prosecutions of individuals and corporations, dismissal and debarment, tax enforcement, and private civil actions in both state and federal courts. Such remedies act mainly to penalize the perpetrators of white-collar crimes or to recover losses inflicted

by these crimes. However, some of the remedies, such as dismissal and debarment, civil and criminal actions, seriously affect the competitive viability of corporations found responsible for white-collar crimes. These remedies are available to governmental agencies only against the corporations involved. Therefore, the analysis of the enforcement mechanisms proceeds in that context.

SEC civil actions, which stem from the violation of applicable securities regulations, are the principal enforcement mechanism available against publicly-traded corporations with regard to their white-collar crimes. The ability and willingness of the SEC to investigate potential violations and to prosecute detected violations strongly influence the probability of those violations, which is weighed against the expected losses stemming from commission of the violations in the analysis of profitability of white-collar crimes. Since 1934, the SEC has championed the federal government's efforts to prevent and remedy violations of the laws and regulations related to the offering and exchange of securities. The SEC post hoc enforcement actions against the white-collar crimes committed by publicly traded corporations or their managers has primarily relied on civil actions. Restraining violations of the Sarbanes-Oxley Act was hardly mentioned in the SEC forum speeches. A more notable deficiency in the SEC speeches was an almost non-existent mention of traditional antifraud statutes, except a few acknowledgments in the form of general statements.

## References :

- Kilcommins, S. & Spain, E. (2020). *Defining corporate, white collar and regulatory crime: offences, defences and procedure*. [PDF]
- Alan Johnson, K. (2009). *Federal Court Processing of Corporate, White Collar, and Common Crime Economic Offenders Over the Past Three Decades*. [PDF]
- Gottschalk, P. & Smith, C. (2016). *Detection of White-Collar Corruption in Public Procurement in Norway: The Role of Whistleblowers*. [PDF]
- Vaughan, D. (1982). *Toward Understanding Unlawful Organizational Behavior*. [PDF]
- Elmore, A. (2018). *Collaborative Enforcement*. [PDF]
- Sieber, U. & Engelhart, M. (2014). *Compliance Programs for the Prevention of Economic Crimes : An Empirical Survey of German Companies*. [PDF]
- Gadinis, S. & University of California, C. (). *Collaborative Gatekeepers. Berkeley Mangels*. [PDF]
- Erfã, R. (2018). *PREVENTION AND ERADICATION OF WHITE-COLLAR CRIMES USING POLICY AND VALUE APPROACHES*. [PDF]
- Spellberg, G. (1984). *Extraterritorial Discovery: Extension of Jurisdiction by the Eleventh Circuit*. [PDF]
- O\u27Brien, J. & Dixon, O. (2014). *Deferred Prosecutions in the Corporate Sector: Lessons from LIBOR*. [PDF]
- Michel, C. (2014). *Public Knowledge and Sentiments about Elite Deviance*. [PDF]
- Ojo, M. (2010). *Building on the trust of management: overcoming the paradoxes of principles based regulation*. [PDF]
- Ford, C. (2005). *Toward a Reform-Minded Model for Securities Law Enforcement*. [PDF]
- Walker, K. (1994). *Federal Criminal Remedies for the Theft of Intellectual Property*. [PDF]
- deVilliers, M. (2011). *Enabling Technologies of Cyber Crime: Why Lawyers Need to Understand It*. [PDF]