

White Collar Crimes – India

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A series of high-profile financial and corruption scandals since the year 2011 galvanized the Indian anti-corruption movement into action, resulting in increased enforcement activity and legislative actions. Though India has taken strides to achieve the status of a global player yet appears to not have made substantial efforts in improving its ranking in the Corruption Perception Index, recently being ranked at 85. Particularly, these ranking shows no drastic change even in the aftermath of amended provisions concerning corruption and other reporting regulations.

India's tryst with white collar crimes which includes money laundering, tax evasion, bribery, insider trading etc. dates to several decades and several legislations enacted to counter white-collar crimes. Some of the key legislations are:

Indian Penal Code, 1860 (IPC) - The primary penal statute dealing with a host of offences which guides the criminal law machinery. Several provisions in the IPC could be termed as falling under category of white-collar crimes such as dishonest misappropriation of property, criminal breach of trust, cheating, dishonestly inducing delivery of property, forgery, falsification of accounts and criminal conspiracy.

Prevention of Corruption Act, 1988 (POCA) – A legislation which penalizes giving or taking of any type of illegal gratification. The scope of POCA however, is restricted to public sector, that is provisions get attracted only with respect to a public servant and not to acts of private bribery.

The amendments of 2018 brought in sweeping changes to POCA. For instance, bribe givers are now expressly punished under the amended regime, as opposed to, being treated as abettors prior to the amendments. Furthermore, abetment of any offence under POCA has also been made punishable.

Amended provisions of POCA specifically provide for offences committed by commercial organizations and deals with offences committed with consent or connivance of any director or official of the company. This amendment along with insertion of provision for attachment or confiscation of money/property, procured by means of an offence under POCA act as a deterrent for companies.

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Prevention of Money Laundering Act (PMLA)– seeks to prevent money laundering and provides for confiscation of property derived from or involved in, money laundering. PMLA also seeks to recover proceeds of crime vis-à-vis offences of cross-border implications. The level of meticulous planning and attention to detail, coupled with large networks involved in commission of money laundering, makes it one of the most nuanced white-collar crime.

Recently, the apex Court has rendered a landmark judgment, upholding the constitutional validity of the PMLA. This judgment though subsequently is *sub judice* under a review, is rather significant for on-going and future investigations triggered under the PMLA. There is no gainsaying that the judgment, impacts right of the accused persons. It upholds the wide investigative powers including powers of arrest and attachment as necessary means in combatting the menace of money laundering. Further, safety valve for aggrieved persons has also been recognized by the Court, in cases where authorities initiate action without a nexus between predicate offence and proceeds of crime.

Companies Act, 2013 – deals with aspects related to financial irregularities, fraud, fraud reporting, related party transactions, corporate criminal liability, and penalizes such offences.

Apart from the above, **other statutes** in the sphere of white-collar crimes are, Fugitive Economic Offenders Act, 2018, Essential Commodities Act 1955, Import and Export Act, 1947, Benami Transactions (Prohibition) Act, 1988, Whistle Blower Protection Act, 2014 etc.

Key regulations – amendments to SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 extends requirement of constitution of Risk Management Committee to a larger number of listed entities. Further, all Stock Exchanges, Clearing Corporations and Depositories, now require formulation of a code of conduct to regulate, monitor and report trading by designated persons and their immediate relatives. Such bodies are required to establish an institutional mechanism for prevention of fraud or market abuse, system of internal controls and effective whistle-blower policy. Recently, a notification regarding delisting of inactive companies and de-registering them has also been issued. This process may also, aid in curbing financial fraud and other white-collar crimes.

While the India economy has been resilient post the pandemic, increasing instances of white-collar crimes is a cause for alarm. Historically, a crisis is often followed by rise in the number of financial crimes, which may be attributed to stimulus packages, subsidies, grants, and other ways and means of pumping in cash flow. India is seeing a huge spike in cases relating to cybercrime, employee fraud,

illegal profiteering, accounting malpractices, money laundering, corruption in the grant of government contracts etc. which are expected to grow going forward.

Even amidst unprecedented pandemic times, Indian enforcement and investigative agencies, continued to be active and clamped down heavily on high profile cases, cybercrimes and made significant arrests. This came at the cost of enforcement agencies garnering critique from political and constitutional gurus amongst questions on impartiality and due process. Even though arrests were made, and action was taken in realm of prevalent statutes, it has often been given color of politico-social vendetta.

The trend of white-collar crimes in India poses a threat to the economic development of the country and has the potential of tarnishing its image and credibility as a favoured investment destination. It, therefore, requires immediate and serious intervention by the government, by not only making stricter laws, but also ensuring its proper and strict implementation.

Current times not only require agencies to be stricter, but also warrants corporate entities, putting in place adequate procedures and working in overdrive to restrict white-collar crimes. These procedures would commonly include:

- (i) frequent checks and training/hygiene drives - exercises for identification of risks coupled with assessment of controls/checks and balances
- (ii) proper vigil mechanism incentivising whistle-blowers to raise their concerns
- (iii) rules regarding maintenance of proper documentation to curb illegal practices
- (iv) prompt internal investigations and enquiries, of suspected instances, of illegality with a view to fix liability of individuals concerned
- (v) monitoring of high-risk areas with the help of data analytics.
- (vi) creation of hotlines for an anonymous, safe and easy reporting mechanism
- (vii) data backups and cybersecurity

Entities engaged in business having government interface, cash flow and areas which are regulated and traditionally considered high-risk, as well as, organizations dealing with sensitive personal data, must look at swift implementation of such procedures.

Fast paced technological advancements without adequate legal checks and balances are often seen to lead to novel ways adopted by offenders in committing crimes of a financial nature. Though there

have been changes in governance norms, regulatory and reporting requirements, these changes may not be enough to counter the complexities for rising white-collar crimes. The Indian legislature is required to address these issues with advanced mechanisms and laws. At the same time, companies doing business in India must make their internal compliance programs, practices, and policies more robust and in tandem with the myriad laws that hold the field in relation to white collar crimes in India.