



INDIAN
NATIONAL
BAR
ASSOCIATION

NETRIKA®

WHITE COLLAR CRIME SURVEY

"Protecting what's important
by revealing what matters"

Everything You Need to Know About White-Collar Crimes : A Survey

"The practitioners of evil, the hoarders, the profiteers, the black-marketers and speculators are the worst enemies of our society. They have to be dealt with sternly, however well placed important and influential they may be; if we acquiesce in wrongdoing, people will lose faith in us"

- Dr Radhakrishnan

By INDIAN NATIONAL BAR ASSOCIATION WITH
NETRIKA CONSULTING INDIA PVT. LTD.



INDIAN
NATIONAL
BAR
ASSOCIATION



INBA
VIEWPOINT
India's No.1 Portal for Legal News



Supporting Associations



DISCLAIMER

Netrika Consulting India Pvt Ltd ("Netrika") and Indian National Bar Association (INBA) has exercised due care and diligence in preparing this report. However, the publication has been prepared for general guidance on matters of interest only and does not constitute professional advice. You should not act upon the information contained in this report without obtaining specific professional advice. No representation or warranty (express or implied) is given as to the accuracy or completeness of the information contained in this report, and to the extent permitted by law of the land. Netrika and INBA does not accept or assume any liability, responsibility or duty of care for any consequences either on your behalf or anyone else acting, or refraining to act, in reliance on the information contained in this publication or for any decision based on it, and will not disclose any personal information or the response under any circumstances. We will thus comply with our privacy laws. If there is anything inappropriate, incorrect, or it has any typographical mistakes, we will not be liable for the same.

Readers are encouraged to inform all concerned about any inaccuracies or to provide additional information for future editions.

White-Collar Crime Survey

Edition

First, 2019

All rights reserved

FOREWORD



Mr. Kaviraj Singh
Secretary General
Indian National Bar Association

With the modernization of crime as we know it, there has been a worrying trend which threatens to globally cripple the economy- alarming increase in white-collar crimes and economic offences. Admittedly, white-collar crimes are highly rampant in the third world countries and therefore by no means a new phenomenon. White-collar crimes find their footing in history upon intersection of business and the law, and its interaction with innovation, moral discourse and public perception, as well as with the changing nature of state policies over the centuries. Thus, it won't be out of the way to say that it took a long time for Law to recognise this kind of malice act under the umbrella of crime, because people who committed white-collar crimes were not perceived as 'typical criminals' who engaged in theft, manslaughter, or murder. Rather, there was the impression that white-collar crimes were in fact victimless and not as damaging to society as offences like robbery.

In some countries, white-collar criminals can still expect much lower sentences than other types of criminals. Thus, on one hand where it can cause serious damage to companies, it was not considered under the ambit of 'Traditional or Conventional Crimes'. The recent initiatives undertaken by our policymakers which range from amendments to be introduced to the Companies Act 2013, an altogether fresh take on insolvency enforced through the Insolvency and Bankruptcy Code, proposed amendments to Indian Penal Code to introduction of Fugitive Economic Offenders Act, 2018 are some of the commendable steps which can aid in mitigating such crimes which threaten to cripple our economy.

The following initiative was taken up by Indian National Bar Association (INBA) and Netrika Consulting India Pvt. Ltd. to present a premier handbook on White-Collar Crimes to serve the legal community.

I sincerely thank the editorial team headed by Ms. Babita Sharma, Editor-in-Chief, INBA and Ms. Bhawna Gandhi, Advisor, Students Section, INBA. I also thank the research team headed by Ms. Palak Arora, Chairperson, Student Section, INBA and researchers Ms. Arushi Sethi, Ms. Avni Agarwal & Mr. Akshaye Ahuja.

The survey is an added extension to serve as a detailed guide for understanding various contours of white-collar crimes. This includes the motives of people committing white-collar crimes and as to the essentials of the same. It cannot be ignored that with the advent of technology and growth of education, white-collar crimes are on the rise, and therefore it's high time that such effective and pro-active measures are developed to tackle the same.



FOREWORD



Mr. Sanjay Kaushik

Managing Director
Netrika Consulting India Pvt Ltd

Globalisation, liberalisation, changing socio-economic situation and development in IT have brought a major shift in ways various businesses are managed today. Keeping pace with these developments, the white-collared fraudsters are also innovating their ways in committing these crimes to make their presence felt. With them continuing to break ethical and regulatory barriers, the nature of white-collar crimes is becoming more complex, causing serious concerns to the business heads. Institutions and industry across sectors have realised the necessity to tackle the growing menace and consequently, the efforts are being made at national, corporate and even individual level.

The recent initiatives and policies, at the Government level, such as amendments to the Companies Act 2013, new Insolvency and Bankruptcy Code, Benami Act, and proposed revisions to Indian Penal Code are some of the enablers that can help in mitigating these crimes. Although the introduction of these policies and some modification in the existing ones can streamline the existing processes, there is no denial that a lot more needs to be done at ground level to make these laws effective and impactful. We all need to fight this menace of white-collar criminals as the threat from them is going to be real in future for the businesses across the world.

At the ground level, regular training of personnel of different enforcement agencies involved in monitoring and controlling the white-collar crimes and the employees, upgrading & leveraging technology, and utilising forensic techniques to nail criminals needs to be ensured. The Government also needs to further build suitable safeguards in the legal frameworks itself. Currently the white-collar crimes are being dealt as any other crimes. The inclusion of a definition of white-collar crimes in IPC can help in easy dealing with recalcitrant white-collar criminals. Additionally, stipulation of a time frame within which the trial in respect of an offence under this category must be completed by the Code and the procedural law thereon (CrPC).

The organisations are also developing new processes in the recruitments to weed out bad apples, multi-level checks for monitoring and internal preventive audits. Public awareness programmes by institutions are also being held which help in educating individuals. This is, however, a continuous process which need to be improved with the sophisticated and new tricks deployed by the fraudsters. The goal should be to create an environment within the organisation where everyone is vigilant and there is no complacency at any level.

This survey was carried out with the intention of knowing the pulse of the industry and the awareness of this growing menace which is soon likely to become an impediment to the growth of the business. The survey was aimed at getting response from law firms, media houses and corporate houses and was launched by Netrika Consulting India Private Limited (Netrika) in association with Indian National Bar Association (INBA). The report is compilation of the responses and some of the vital topics that is aimed at explaining the growing menace of white-collar criminals.

This report guides corporates on some interesting insights of white-collar crimes. The report highlights and explains types of white-collar crimes, the applicable laws and acts in India, what preventive & corrective measures can be taken to reduce them, the global initiatives, and a survey to assess the awareness level of people at a corporate level. Netrika aims to provoke conversations among stakeholders to create a more vigilant society.



KEY MESSAGE



Ms. Vinakshi Kadan
Advocate Supreme Court of India
INBA

White-collar crimes are big global concerns and is increasing at an alarming rate. The white-collar crimes which are common to the Indian Trade and Business World are hoardings, profiteering and black marketing. Violation of foreign exchange regulations and import and export laws are frequently resorted for the sake of huge profits. Through the survey, INBA aims to address the menace of white-collar crimes and discuss its impact: economic, social, and psychological. White-collar crimes are not just crimes against the society but also infringe the directive principles of state policies and basic human rights. Every individual has the right to livelihood and concentration of wealth in the hands of a few is violative of fundamental statehood principles.

"WHITE-COLLAR CRIMES ARE NOT NEW IN INDIA JUST THAT THEY ARE DIFFERENT AND DIFFICULT TO BE SEIZED. IT REQUIRES MORE VIGILANCE."



KEY MESSAGE



Mr. Mukesh Tyagi

Advisor INBA (Lawyer)

Ex CEO, Enron India

ESSAR

Reliance Power

Self-defense law requires the response to match the level of the threat in question. In other words, a person can only employ as much force as required to remove the threat. If the threat involves deadly force, the person defending themselves can use deadly force to counteract the threat. Typical white-collar crimes could include wage theft, fraud, bribery, Ponzi schemes, insider trading, labor racketeering, embezzlement, cybercrime, copyright infringement, money laundering, identity theft, and forgery. The question arises, are the people engaged in the white-collar crimes get the commensurate punishment? Answer is unfortunately 'no'. Lawyers can specialise in white-collar crimes.

Millions of people are starving to death, not even able to secure food for survival, whereas few smart and crony capitalists engaged in white-collar crime get protected generally by the collusion with politicians and police. They dupe banks and run away and take refuge in the country where it is very difficult to extradite. They enjoy life with ill-gotten money. In contrast, a poor person caught with stealing food or even Rs 10 languish behind the bar. SATYAM promoters cooked the books and made tons of money. ILFS was given triple A rating by the Internationally reputed auditors and Chartered accountants one month before it collapsed like pack of cards. This institution was looted by the conniving stakeholder and robbed poor taxpayer's money. Stock markets got rigged, like Harshad Mehta manipulated the market. Valuation agencies and their analysts are bought to enhance the valuations of the company without any bankable basis. There is a pre orchestrated staged drama to create a team of robbers or white-collar criminals who create perfect paperwork to loot the banks by borrowing millions of rupees from the banks. The director of this play is the borrower who colludes with the bankers, auditors, politicians, regulators, and law enforcement agencies.

There should be separate law with the most stringent punishments and should be delinked from the criminal laws applicable for different offences. The entire personal and other assets of the blood relations should also be confiscated. Bankers, auditors, politicians, ministers, brokers, and enforcement guy should be instantaneously arrested and punished without bail.

Summary trial courts should be set up for early conviction. Unfortunately, our perception of invisible crime is casual so as per the maxim of law, the punishment should be commensurate to the degree of criminal offence.

Exemplary punishment is needed to deter this heinous white-collar crime. No wonder we have 10 lac crore NPA in the banks. Time is up. Is justice subordinates the power of money and political power? If white-collar crime is not contained, the country's economy will be corroded and few privileged oligarchs will corner all the money. Like it is said that 3 percent of the population own 97 percent of the wealth whereas 97 percent own 3 percent of wealth. Is it a fair distribution? Time has come to bridge the gap. Reward honesty and punish dishonesty. These inequities if not addressed can have lots of long-term ramifications and collateral damages. For example, Government has taken bold decisions like IBC code NCLT and much more proactive enforcement agencies.

My recommendation is that the hardened repeat white-collar criminals or robbers should be treated at par with erstwhile COFEPOSA accused with immediate arrest including life imprisonment of all direct or indirect parties participating in white-collar crimes to eliminate corruption from its roots.



KEY MESSAGE



Mr. Sanganagouda Dhawalgi
Executive Director
Head- Forensic Investigations
Netrika Consulting India Pvt. Ltd.

It is indeed high time that we start focusing on white-collar crimes. We lose a lot of money which brings in huge exposure to the businesses all over the world. There is not only financial risk but also the reputational risk. These crimes are only going to increase in due course of time, if we do not take adequate measures to curb them in time. Hence, the importance of instituting proactive measures.

White-collar criminals are going to be the NextGen criminals in years to come where the businesses are likely to lose huge money. These criminals are unsuspecting, highly placed in society/the companies they work for, have access to information and are mostly well to do. They can cause catastrophic damage to organisation in very little time.

The menace of white-collar crimes is real, specially in India. We have had number of cases in the recent past who have looted the exchequer of the Govt and fled the country. After all, it is your and my money which is at stake and needs to be safeguarded well.

We at Netrika Consulting India Pvt Ltd are aware of this fact and are duly focused to help our clients to fight and nip these incidents of crime in the bud by instituting good control measures as safeguards. We not only help our clients to fight these crimes proactively, but also help them in reactive investigations whenever, they are unfortunately hit by such type of crimes.

As a proactive measure to help our clients, we have instituted this survey as an awareness campaign. We are not only helping our clients in fighting such type of crimes, but also trying our level best to make them aware of such futuristic criminal exposures to businesses. As a good beginning in this direction, this white-collar crime survey is a step in the right direction. I am sure you will all appreciate this effort of our team which has put in lot of hard labour in launching and bringing out the survey results in a short span of time to help our clients.



CONTENTS

1. Introduction to White-Collar Crimes	1
2. Emergence of White-Collar Crimes in India	3
3. Reasons for the Growth of White-Collar Crimes	5
4. Types of White-Collar Crimes	7
5. Difference between White-Collar & Blue-Collar Crimes	12
6. Effects of White-Collar Crimes	13
7. Are White-Collar Crimes Accidental or Pre-meditated?	14
8. Measures to Curb White-Collar Crimes in India	15
9. Survey Results	19
10. Legislation against White-Collar Crimes in India	27
11. Global Initiatives to Combat White-Collar Crimes	29
12. About the Survey	31

Introduction to WHITE-COLLAR CRIMES

White-collar crimes are those which are linked with people of high stature and are distinct from traditional crimes in the sense that there is a principle element of breach of trust by carrying out unethical business practices cultivated by motivation to gain financially. It is the offenders' position that accords upon them the opportunity to perpetrate such crimes.

The law of crimes has always been deemed to be the most interesting branch of jurisprudence. Everyone loves to talk about it- be it legal professionals or citizens. However, our attitude toward white-collar crimes is a slightly skewed. While on one hand, it undoubtedly does fascinate us: Why do well-paid professionals commit it—on their own, with colleagues, or as part of an organisation-wide collaboration? However, on the other hand, it is not everyone's cup of tea: complicated financial schemes are genuinely difficult to understand, and the perpetrators and victims are often unclear. Who suffers when a company shifts numbers around on a spreadsheet? Who is to be blamed when it has thousands of employees and layers of bureaucracy? The fact of the matter is in the time we stand today wherein 3,766 incidents of frauds were detected in FY19, a 15 percent spike from a year ago, while the losses incurred saw an 80 percent rise from the last year. It is therefore imperative to gain a deep knowledge into the world of white-collar crimes.

Justice A.K. Ganguli in the infamous case of **Subramanian Swami v. Dr. Manmohan Singh**, explained the impact of white-collar crimes - "Corruption today in our country not only poses a grave danger to the concept of constitutional governance; it also threatens the very foundation of Indian Democracy and the Rule of Law. The magnitude of corruption in our public life is incompatible with the concept of socialist, secular democratic republic. It cannot be disputed that where corruption begins, all rights end. Corruption devalues human rights, checks development and undermine justice, liberty, equality, fraternity which are the core values of our preamble. Therefore, the duty of the court is that any anti-corruption law has to be interpreted and worked out in such fashion as to strengthen the fight against corruption."



The Supreme Court of India in another case of **Jayalatitha v. Union of India** has held that “corruption corrodes the moral fabric of the society and corruption by public servant not only leads to the corruption of the moral fabric of the society but is also harmful to the national economy and national interest as the person occupying high post in government by misusing their powers due to corruption can cause considerable damage to the national economy, national interest and image of the country”.

The term 'white-collar crime' initially coined by Criminologist and Sociologist **Edwin H. Sutherland** was not in any vacuum, but was based on 'criminaloid concept' which was initially put in use by E.A. Ross (1907) in *Sin and Society*. Ross employed this concept by shifting focus on businessmen who divulged in such harmful acts under the veil of respectability. Ross was of the view that the 'criminaloids' are perhaps the most potent danger to the society resulting in huge loss while claiming to be virtuous.

Sutherland preferred to define white-collar crime as “crime committed by a person of respectability and high social status in the course of his occupation”, while Marshall Clinard defined it as “a violation of the law committed primarily by groups such as businessmen, professional men, and politicians in connection with their occupations”. Paul Tappan defined it as “a special type of solitary professional criminality. It involves real violation of criminal law systematically or repeated by business, professional and clerical workers in addition to their occupation”. Moreover, Sir Walter Reckless said, “white-collar crime represents the offences of businessmen who are in position to determine the policies and activities of business”. Frank Hartung defines white-collar crime as a “violation of law regarding business which is committed for a firm by a firm or its agents in the conduct of its business”.

The question remains why these seemingly rich professionals betray the trust they are endowed with which culminates in their journey from the C-suite to a

prison cell. Over the years, people have offered all sorts of explanations: deviant nature, the “bad apple” theory, physical characteristics, poor self-control, lack of empathy, brain chemistry, psychopathy, peer pressure.

Eugene Soltes, a professor at Harvard Business School, conducted extensive interviews with white-collar criminals. The central finding behind his research is that white-collar criminals rarely pause to think about the outcomes or potential victims of their misdemeanors. Consider these revealing quotations from his interviews: “I never once thought about the costs versus the rewards” (insider trading); “I know this is going to sound bizarre, but when I was signing the documents, I didn't think of that as lying” (fraud); and “I never thought about the consequences... because I didn't think I was doing anything blatantly wrong” (insider trading). To address this blatant lack of self-reflection, Soltes delves into the psychology of decision making within organisations. He beautifully chalks out that white-collar crimes tend to result when the “routine un-remarkableness” of everyday actions lets them slip through the perpetrators' moral filters.

The loss to society from white-collar crimes is much greater than the predatory ones because such huge financial scams threaten to cripple the economic stability by eroding the trust of people. After the Harshad Mehta scam, citizens were left in turmoil and were wary to invest in stock market of India. Such is the situation now that PMC Bank has unfurled-depositors are questioning the very fundamental of banking- savings, after all what the use of saving if at the end some rich businessman will plot with few bank officials and erode it all away. It is time Government realises if it continues to function the way it is, it might not have anything to govern because after all how many more scams would we quietly digest? It might be high time to stop testing the patience of a nation, if united, can create huge ripples.

Emergence of White-Collar Crimes in INDIA

The earliest known case of white-collar crime dates to the 15th century in England. There has been a case widely known as the Carrier's case of 1473, wherein the agent who had been entrusted to transport wool attempted to steal some of it for himself. It was during such celebrated case that the Star Chamber and Exchequer Chamber of the English Court of Law adopted the 'breaking bulk' doctrine. However, with the astonishingly rapid growth of industrial capitalism, the jurisprudence of crime came to be based on coercion and robbery. It was the Dutch Marxist, William Bonger who first put forth the contention that criminal's attitude amongst the working class under capitalism develops due to the prevailing conditions of misery while the criminal attitude develops among the bourgeoisie from the avarice fostered when capitalism strives. Such contention saw success in United States of America in 1890, when Congress passed the Sherman Antitrust Act which took the initiative to make the monopolistic trade illegal- a move which came to be replicated by other industrialized countries like Great Britain.

While we try to comprehend how white-collar crimes emerged in India, we need to give due consideration to our history. It is an undeniable truth that commission of crime has increased exponentially ever since human beings began to live together. A few kinds of crime are now deemed to be old while with the changing dynamic of our everyday lives, many new forms of crime continue to take shape in the deviant minds

of the society. The concept of white-collar crime is not a new phenomenon. There have been numerous references to such crimes since the Vedic period in India's ancient and medieval literature. Manu who is often accorded the title of being India's great lawgiver, held the view that it was age when 'dharma' prevailed in perfection, but later 'adharma' progressed gradually which naturally gave way to tendencies such as robbery, wrongdoing and fraud.



Corruption might just be one of the species of white-collar crime, but it has always been the most talked about in all spheres- social, economic and political even though not much stringent steps/actions have been taken to curb this widespread menace. The Indian Penal Code, 1860 is perhaps the earliest and most comprehensive codified criminal law of India. It specifically does not mention the word 'white-collar crimes', but deals with many offences which are closely linked to white-collar crimes such as bribery and corruption, counterfeiting of coins and government stamps of offences relating to weights and measures, offences relating to adulteration of food stuffs and drugs, misappropriation of public property and criminal breach of trust, cheating, forgery and offences relating to documents and counterfeiting of currency.

The reason for such rapid growth in white-collar crime in recent decades is often attributed to the fast-developing economy and industrial growth. The Santhanam Committee Report drew a lucid picture of white-collar crimes committed by people belonging to higher social status. It includes businessmen, industrialists, contractors, suppliers and not surprisingly corrupt public officials. The Reports of the Vivin Bose Commission of Inquiry which looked into the affairs of Dalmia Jain group of companies (1963) sought to draw attention to how industrialists often indulge themselves in white-collar crimes such as forgery, fraud, falsification of accounts, tampering with records for personal gains and tax evasion etc. Similar observations were made by Hon'ble Justice M.C Chagla while dealing with the case of business tycoon Mundhra who wanted to build up an industrial empire using dubious means. There were as many as 124 prosecutions against the business magnate and companies owned or controlled by him between 1958 to 1960 and as many as 113 of them resulted into conviction. With the backdrop and scams like that of Satyam scam, fleeing Vijay Mallaya, 2G scams and many more, it was in 2018 that the Government of India passed Fugitive Economic Offenders Act, 2018

Moreover, recent developments in technology, especially in the closing years of the 20th century, have opened new dimensions for deviants to further white-collar crimes. According to the changing dynamics of white-collar crimes in India, the Central Bureau of Investigation (CBI) has found a total of 6,533 cases of corruption over the last 10 years, of which 517 cases have been recorded over the last two years. Statistics showed a trading value of 4,000 crores using fake or duplicate PAN cards. With 999 cases registered, Maharashtra saw a dramatic increase in the number of online cases. The study also said that approximately 3.2 million people have lost their card details, which were stolen from the Bank ATMs. In the light of such staggering numbers, it is safe to say India is well within the grip of white-collar crimes.

White-collar crimes have a significant impact on corporate India. Now, more than ever before, fraudsters are driven by ambition and financial gain, exhibiting deviant or exploitative conduct. New trends in white-collar crime:

- **The average age of fraudsters is dropping**
- **Increasing incidents of informants reporting bribery or other misconduct**
- **Software expansion to avoid detection, for instance, utilising instant messaging or social media networks instead of emails**
- **Innovative forms for kickbacks and favours**



Use of technology by white-collar criminals

A new variety of white-collar crimes, commonly referred to as cybercrimes, has exponentially increased. Such crimes have become a global issue for law enforcement agencies. Due to the specific nature of such crimes, they can be carried out without a physical presence - anonymously and sitting far from victims. Cyber criminals have a huge advantage: they can use computer technology to cause damage to people economically and reputation without the risk of being caught or apprehended. In India, cybercrimes affect the sectors of banking and economy, energy and telecommunications, transportation, trade industry, etc. India's white-collar crimes trend pose a threat to the country's economic development.

RGWCI

Reasons for the Growth of White-Collar Crimes

The general perception amongst the people about white-collar crimes is that they are only committed out of greed, competition and lack of economic instability. Although the above stated factors indeed form the major reasons behind the growth of these crimes in India, there are number of other reasons too:



1. Competition

'Survival of the fittest' is the main panacea for competition followed in the market. It implies that in a battle to succeed, there will always be a competition between the people, and only the best who is able to adapt to the conditions shall survive. White-collar crimes usually eventuate out of the same intent. To win, they do not mind committing crimes like forgery, bribery and frauds. It is often seen that professionals are monetarily compensated and elevated in the organisation for short-term superlative profits. To maximise their performance in competition to others, some don't even hesitate to proceed to circumvent the existing laws. People who are involved in such crimes are smaller in number, higher in hierarchy, and losses incurred are huge.

2. Technology

With the advancement of technology, white-collar crimes have become a global phenomenon and increasing at a tremendous pace in India too. The proliferation of personal computers and smartphones have further aggravated this problem as the use of these not just results in the generation of many more ideas, but also gives open opportunities to the people residing in any corner of the world to commit these crimes.



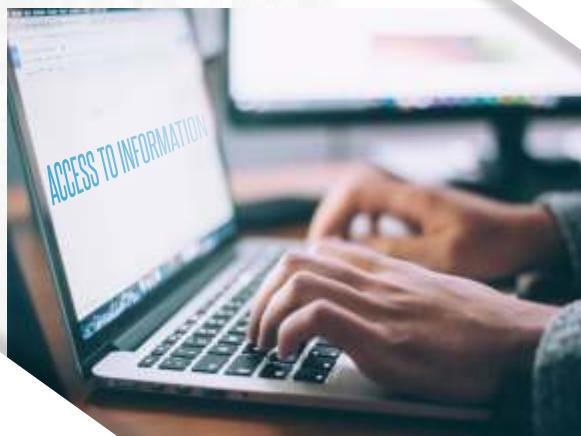
3. Rationalisation

As the nature of these crimes is different from the traditional ones, people fail to define and understand them. This leads to offenders committing the crimes and later convincing themselves that the actions performed by them are not criminal in nature. Many stock traders engaged in insider trading view it as a victimless crime and does not see who is being cheated. Salespeople bribing their clients feel they are doing their job by putting the deal together, while not harming anyone.



4. Work environment

Work environments can elicit both- good and bad behavior out of individuals. The environmental indicators like poorly designed job incentives or management nonchalance toward ethics can tempt individuals to behave very differently when faced with ethical choices. Consequently, certain individuals succumb to such temptations and compromise on their ethical values, leading to criminal acts. Rarely, is there a direct order to break the law.



5. Access to Information

The availability of important sensitive information of individuals such as bank details, investments, passwords, etc. on their smartphones and laptops can provoke the criminal minds to use the data for their own benefit. The target for such white-collar criminals can be rich people/organisations like banks, casinos and financial firms where a huge amount of money flow daily. Hackers can thus steal access codes, retina images, and other information that can easily fool biometric systems and manipulate it further for personal gains.



6. Greed

Human beings are greedy by nature, as rightly quoted by the father of modern political philosophy, Machiavelli. He also said that a man can sooner and easily forget the death of his father than the loss of his inheritance. The same holds true for the people who intend to commit any type of white-collar crime. Else, why will a man who is financially secure and belongs to high social status commit such crimes? It is this vice- greed which can make a person aim for the things that has no limit.

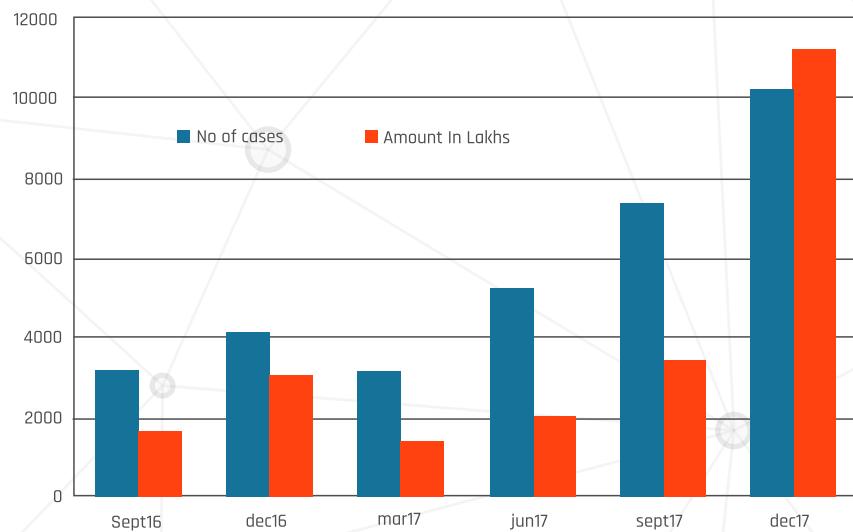
TYPES OF W-C TYPES OF WHITE-COLLAR CRIMES

White-collar crimes are indeed diverse in nature. Some of the white-collar crimes which have emerged are:

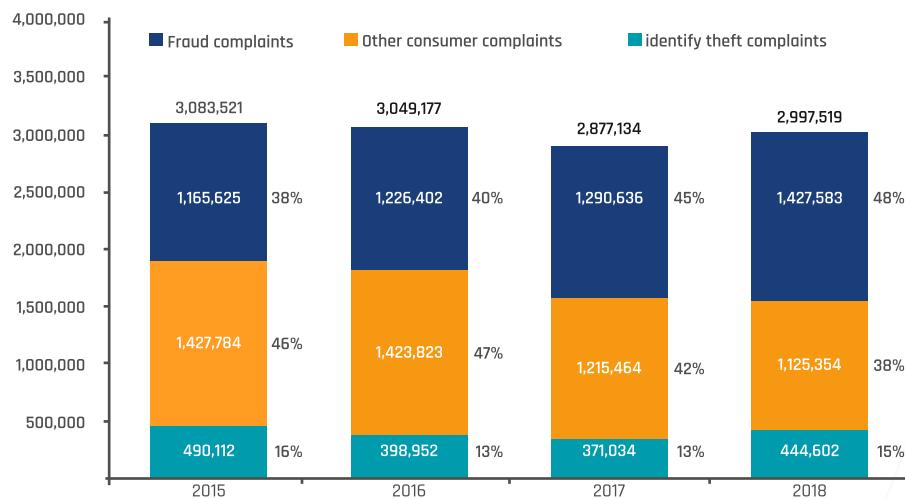
1. Bank Fraud

Fraud is a crime that aims to mislead and gain inappropriate advantages. Bank frauds are financial scams. It is made through false representations by fraudulent companies. It also involves handling negotiable instruments such as cheque bouncing, securities, bank deposits etc. Bank fraud is concerned with the general public as banks and the Governments have a relationship of trust. It is the most prevalent type of white-collar crime as well as a corporate crime. This affects both the public and the country's Government. Despite having a strong regulator, the financial service sector has emerged as the most susceptible sector to fraud. The misuse of technology in the banking sector includes use of banking access for overpayments to vendors or self-bank account, sharing of potential confidential information, and misuse of the company's technology resources for unauthorised activities, which includes conflicting business relationship. Moreover, providing services on mobile and social media platforms with limited knowledge of the security requirements, poses a lot of threats to customers as well as the financial institutions. Given the weaknesses in Indian law enforcement system regarding the investigation and prosecution of fraudsters and ever-increasing social pressure to get rich quickly, fraud remains a constant danger to businesses. The confidence of international investors and domestic entrepreneurs has been low in the last two years, thanks to the various scams that have come to light during this period.

CARD AND NET BANKING FRAUD IN INDIA



* Source- Ultranews



*Source- Insurance information Institute

2. Bribery

Bribery is a very common type of white-collar crime. In bribery, we give the individual money or goods in exchange for a favor. Bribery in simple words is when a man gives money to the other person who has authority. It is done to insist on something or discourage something from being done.

3. Cybercrime

Cybercrime is the crime of 'computer networks'. With the rapid increase in technology advancement, there is also a rapid increase in technology-related crime. It is directly or indirectly committed against the victim to damage his image physically or mentally using the internet and other technical sources. Cybercrime is deemed to be a threat to nation's security and financial status of the person. The only law dealing with cybercrime offences in India is the Information Technology Act, 2000.

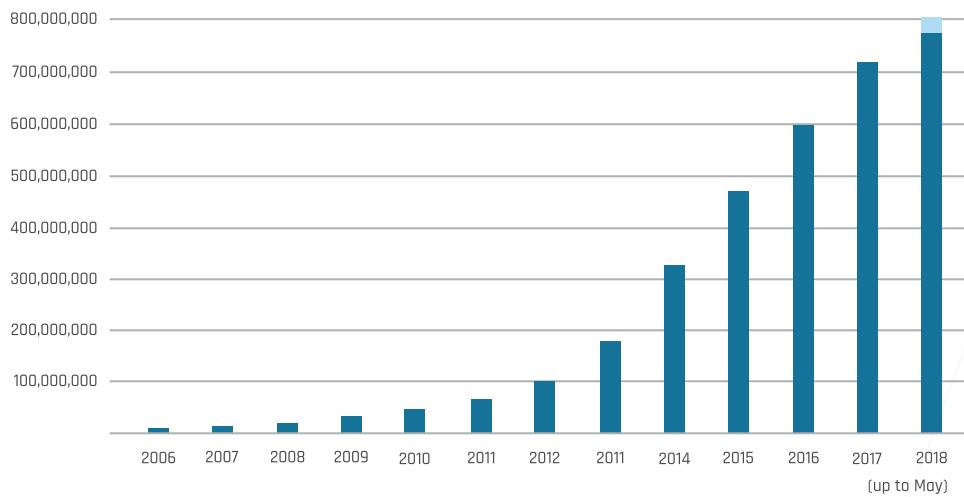
The IT developments and electronic media have given rise to a new variety of computer related white-collar crimes which is commonly called cybercrimes. The widespread growth of these crimes has become challenge for the law enforcement agencies in the new millennium, and because of the peculiar nature of these crimes, they can be committed anonymously and far away from the victim, without being physically present there. Cybercrime readily fix into the classification of white-collar crimes. All cybercrimes satisfy the three elements contained therein, deceit, concealment and violation of trust and hence they readily qualify to be white-collar crimes for the purpose of prosecuting them.

Offences like industrial espionage, dissemination of pornographic and sexually offensive material in cyberspace, electronic money laundering and tax evasion, electronic vandalism, terrorism and extortion telemarketing frauds, illegal interception of telemarketing frauds, illegal interception of telecommunication etc. presently, viruses are the most common problems which are causing serious damage to computer systems. ght and use his higher position in the company to force another person to give money or transfer assets for providing services.

Information Technology Act, 2000-

Information Technology Act was enacted to regulate the e-commerce sector and that's why it contains only few provisions related to cybercrime. There is dire need for the Legislature to enact a comprehensive act for defining and penalising various forms of cybercrimes. Section 65 and 66 of the IT Act deals with the act of hacking, whereas section 70 of the Act defines the punishment for the same. Hacking includes various activities as per the law like introducing malicious software, destroying information, downloading of copies, interference, unauthorised access to the information. Section 43 and 44 of Information further recommends the punishment for the accompanying offences:

- Unapproved replicating of a concentrate from any information.
- Unapproved get to and downloading records.
- Presentation of infections or vindictive projects.
- Harm to PC framework or PC arrange.
- Dissent of access to an approved individual to a PC framework.



*Source- AV-Test

4. Money Laundering

Money laundering is a crime wherein criminals try to mask the identity of the money. In such crime, criminals attempt to cover up the original ownership of the money and the source, since it is usually obtained illegally. Money laundering means showing the illegal money as legal. Money laundering is specified in accordance with Section 3 of the 2002 Money Laundering Act.

They do their job in such a way that even the investigative agencies are not able to trace the real source of the money. This is how individuals who spend their black money in the capital market succeed in transforming black money into legal wealth. Typically, the criminals place the black money using banking channels, and move from banking institutions to other banking institutions in order to layer the money and disguise its origin. They then pay to buy something in order to integrate black money into financial system.

INTERPOL had defined Money Laundering as “any act or attempted act to conceal or disguise the identity of illegally obtained proceeds so that they appear to have originated from legitimate sources.” As per the White Paper of May 2012 by the Ministry of Finance, Government of India, the Money-Laundering is not only the wealth earned through illegal means, the same would also include legal income that is concealed from public authorities:

- To evade payment of Taxes (Income Tax, Excise Duty, Sales Tax, Stamp Duty, etc);
- To evade payment of other statutory contributions;
- To evade compliance with the provisions of Industrial laws such as the Industrial Dispute Act 1947, Minimum Wages Act 1948, Payment of Bonus Act 1936, Factories Act 1948, and Contract Labour (Regulation and Abolition) Act 1970; and / or
- To evade compliance with other laws and administrative procedures.

Structuring, Bulk Cash Smuggling, Cash Intensive Businesses, Trade-based Laundering, Shell Companies and Trusts, Round-tripping, Bank Capture, Gambling, Real Estate, Black Salaries, Fictional Loans, Hawala, False invoicing are some of the common methods of money laundering. There are three stages of Money Laundering:

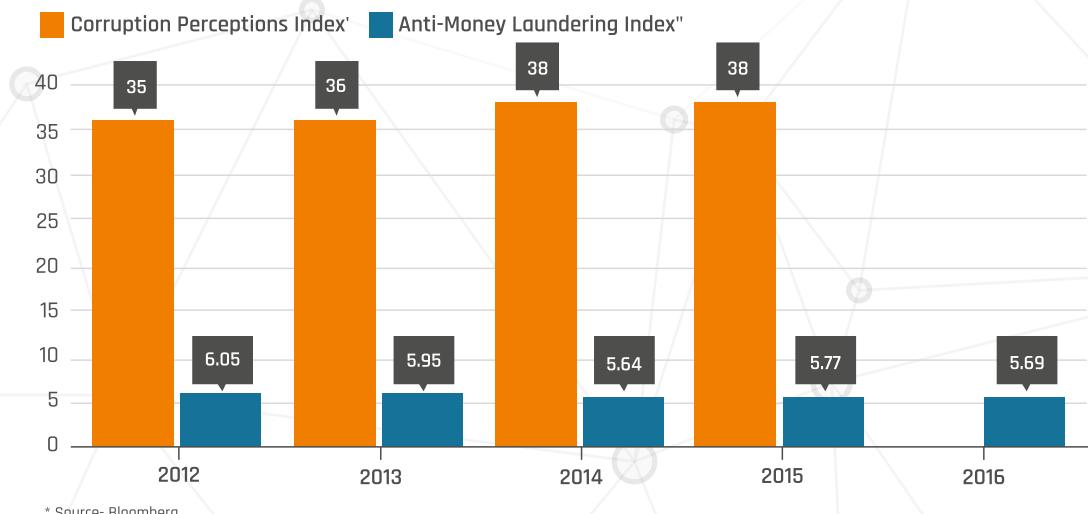
1. **First stage:** Placement, where the criminals place the proceeds of the crime into normal financial system.
2. **Second stage:** Layering, where money introduced into the normal financial system is layered or spread into various transactions within the financial system so that any link with the origin of the wealth is lost.
3. **Third stage:** Integration, where the benefit or proceeds of crime are available with the criminals as untainted money.

In view of an urgent need for the enactment of a comprehensive legislation for preventing money laundering and connected activities, confiscation of proceeds of crime, setting up of agencies and mechanisms for coordinating measures for combating money laundering etc., the Prevention of Money Laundering Act was passed which came into effect from 1st July 2005. Under the Act, an offence of money laundering is said to be committed when a person in any way deals with the proceeds of crime. The proceeds of the crime referred above include the normal and the scheduled crimes. The prescribed punishment is 3-7 years rigorous mentioned under Part A, imprisonment would extend up to 10 years.

The Directorate of Enforcement in the Department of Revenue, Ministry of Finance is responsible for investigating the offences of money laundering under the PMLA. Investigation usually begins with the registration of an Enforcement Case Information Report (also known as ECIR) which sets the investigation into motion.

This authority is empowered to carry out interim measures such as survey, search, seizure and arrest of the accused. Similarly, if an asset is found to be the proceeds of crime, the same can be confiscated and appropriated by the Government.

Financial Intelligence Unit - India (FIU-IND) under the Department of Revenue, Ministry of Finance is the central national agency responsible for receiving, processing, analysing and disseminating information relating to suspect financial transactions to enforcement agencies and foreign FIUs.



5. Tax Evasion

Tax evasion, also known as tax fraud, is the purposeful failure to pay taxes due. The term covers all those who earn income, do not report it or conceal the earnings by falsifying a return or supporting documents. It is true, nobody wants to pay more tax than their fair share, hence, taxpayers often try to find ways to reduce their tax liabilities to the Government. This means intentionally failing to pay or underpay your fair share of taxes, and it may take multiple forms. Tax evasion is a common activity related to the informal economy. The tax evasion offense is punishable in accordance with Chapter XXII of the Income Tax Act, 1961, which may impose a heavy fine or even send you to prison.

6. Forgery

Oscar Wilde said, "Imitation is the most genuine type of flattery." but if an artist attempts to transmit the imitation as the real thing, it is called forgery. Forgery refers to the counterfeiting of cheques or securities intended to defraud the other individual. It also involves a false document, signature, or other imitation of a value object used for the purpose of deceiving another. It is very popular in the company's accounting department, where the clerks and employees make false reports and run away with the company's money causing the company to lose.

7. Insider Trading

Insider trading is characterised as a malpractice in which a company's individuals, who because of their jobs, have exposure to the otherwise non-public information that can be crucial to making investment decisions. Insider trading is an unfair practice in which other stakeholders are extremely disadvantaged due to the lack of valuable non-public insider information.

8. Counterfeiting

Counterfeiting is a criminal act specified in section 28 of the Indian Penal Code, 1860, where something real is imitated to steal, damage or replace the original work of someone. It makes it easier to make profits from illegal transactions and to mislead a person who believes that the portrayal is real and that the imitated work is of greater value. Counterfeit products contain fake logos and brand names, copyright violations, trademark infringements and funding to terrorist organisations and harmful chemicals have also been found in some products that lead to the death of the consumer.

9. Hawala Trading

Hawala is a way to transfer money without moving the money. Hawala is an alternative transfer channel outside conventional banking systems. Transactions between hawala agents without promissory notes are made because the system is strongly based on confidence and the book balance of hawala agents. Hawala originated from South Asia in the 8th century and is nowadays commonly used as an alternative means of transferring funds, particularly in the Islamic community. In comparison to the traditional method of cross-border transactions via bank transfers, money transfers to HAWALA are performed via a network of hawala dealers or hawala dealers. Hawala promotes money flow between poor countries where it is too expensive or difficult to access formal banking.

10. Ponzi Scheme

A Ponzi scheme is a fraudulent investment scam that promises high return rates for investors with little risk. Through acquiring new investors, the Ponzi scheme produces returns for early investors. This is like a pyramid scheme because both are focused on the use of funds from new investors to pay for the earlier supporters. Companies that engage in Ponzi Schemes are all about attracting new customers to make investments. The schemes are focused on a steady flow of new investments to ensure that older investors continue to benefit. The plan falls apart when the flow runs out.



"As economies adapt to change in the Global Ecosystem, it is accompanied by several risks. White-collar crime is one such consequence and represents a threat to any commercial enterprise. I am glad to hear that Netrika has taken an initiative to launch this programme with Indian National Bar Association."

Mr. Madhavan Menon
Chairman Thomas Cook India



DIFFERENCE BETWEEN BLUE-COLLAR CRIME and WHITE-COLLAR CRIME



S.No	Point of Difference	Blue-Collar Crimes	White-collar Crimes
1.	Definition	Blue-collar crimes are the ones that are committed by people from a lower social class for immediate gain or satisfaction. Examples: Armed robbery, Burglary, Drug abuse, Petty cash theft, etc.	These crimes refer to non-violent criminal acts committed by people from a higher social class. Example: Wage theft, Money laundering, Copyright infringement, Identity theft, Theft of insider information, Bank frauds, etc.
2.	Meaning	Blue-collar crimes refer to people who do manual work and are entitled to low hourly wages. Examples: Janitors, Construction workers, Production labourers, etc.	White-collar crimes refer to people working in an office setting. They are educated and use their knowledge to commit such crimes. Examples: Accountants, Business managers, Doctors, Lawyers, etc.
3.	Social & Personal Conditions	The genesis of blue-collar crimes is primarily the financial and social status. A person from this background gets inclined to commit such a crime to fulfil his basic needs.	White-collar crimes are not dependent on the social conditions, like their financial status or education. Researches show that a white-collar criminal is generally a person of high social status and considerable influence, enjoying respect and trust.
4.	Resources and Power Required	The blue-collar criminals doesn't have a direct access to his target. For example: A carpenter cannot easily commit tax fraud, because he doesn't ordinarily have either knowledge or access to the financial resources that a banker will have.	The people who commit white-collar crimes are generally at a higher position in a company, and so they have easy, valid and direct access to their targets
5.	Veiled Offenders	Blue-collar crimes directly harm the victim and often requires the criminal to be present at the 'scene of the crime'.	White-collar crimes do not require the criminal to be there at the 'scene of the crime'. In fact, the increasing use of Internet and methods of digital marketing give access to an anonymous person to commit the crime from any corner of the world.
6.	Damage Incurred	The damage caused in blue-collar crimes is typically physical, directly aimed at the victim or other related persons.	In case of white-collar crime, damage is typically to the victim's resources/money and not physical. The harm caused may even extend to the organisations and institutions associated with the victim.

Effects of White-Collar Crime



Effect on the Company

The negative effects that white-collar crimes have on a company are massive. Losses incurred by the company due to one deviant employee in connivance with or without an outsider can have a direct and exponential impact on the overall profitability of the company. Moreover, once the information spreads to the public domain, it can tarnish the reputation of the company in the long-term which is difficult to quantify, and eventually may even force it to close.

Effect on Customers

Everyone prefers to purchase products from a company which has a friendly trading environment. Customers do not like getting into any trouble with the legal authority. Thus, when any business is in the midst of any such crime situations and investigations, it creates uncertainty in the mind of the customer. A section of customers may become hesitant in dealing with the company for the fear of getting into unnecessary trouble. Consequently, they start looking for alternative options available in the market.

Effect on Society

White-collar crimes have high financial impact on the society as well. When a company shuts down or is under any kind of investigation due to a criminal act, there are job losses at all levels, drop in stock prices eroding the capital of its shareholders, and loss of confidence in the financial system. We have many examples spread across all major businesses which have resulted in the above.



Are White-Collar Crimes Accidental or Pre-mediated?

It is true that most of the white-collar crimes are pre-meditated i.e. there is proper planning involved before it is executed. It is well planned, the targets, marketing theme and even the strategies are well defined in advance. The geographical spread and finances for the criminal activity too are taken care of in order to facilitate proper implementation.

The famous Kotler's principle of 4 P is practiced and implemented in such cases- in order to deceive the customers, accumulate their target money and then proceed to exit quickly.

- **P1-Product-** Identification of which product to launch in the fraudulent scheme.
- **P2-Price-** Identification of the price for the product which needs to be sold to the target audience.
- **P3-Placement-** Identification of the deemed gullible target population for the product.
- **P4-Promotion-** Identification of the marketing strategy aimed to attract such gullible customers to invest/purchase their products.

That being said, it cannot be ignored that some of the crimes do accidentally get classified as white-collar crimes since they tend to meet the technical definitions, but there is an element of Genuity in the purpose of the business. Though efforts are made to succeed but somehow the results fail to achieve the profitability mark and end up making losses due to some wrong business decisions. Hence, they are not able to honor the commitment with the creditors and customers, which consequently leads to premature closure of businesses. However, such crimes are less frequent in both number and volume.

MEASURES TO CURB White-Collar Crimes in India

There is no one entity who can alone get rid of this public enemy. Laws alone cannot do anything if they are not enforced properly, "law is as good as it is enforced". Similarly, institutions/organisations alone cannot do anything if they do not have the support of the public. Most importantly, it is you and I (the general public) who need to remain updated and vigilant in order to avoid being made a fool.

Organisational Action

The organisations need to initiate certain actions in order to develop fear in a potential white-collar criminal from acting and carrying out their nefarious activities. Such actions might turn out to be extremely effective in acting as a deterrent to everyone.

1. Screen Employees Properly

The companies must vet their employee credentials and look for red flags which can be several- as fake certifications/provision of false information before onboarding. This assures the company about employee's honesty, morality and discipline towards work. In order to conclude integrity check of respective employees, a feedback from previous employers on the grounds of ethics, unfair trade practices, continuous odd working hours, approach to a given task etc. can be a helpful practice. A comprehensive employee screening includes examination of recent bank statements/credit checks, attention to lifestyle and sudden changes in it. Thus, employee screening goes a long way in safeguarding the organisation from white-collar criminals. Moreover, such screening must go on till the person is employed with your organisation- this can help in nipping the bud.

2. Introduce Maker-Checker System

It is not a good idea to allow one employee to handle all contracts, financial transactions or fiscal management since this not only provokes him to indulge in malpractices, but also provides him with ample resources to indulge in such provocation. Implementing a multi-level verification or checks and balances system can prove to be helpful in preventing white-collar crimes within an organisation. A thorough verification of any transaction or contract at multi-levels can identify dishonest and corrupt employees at an early stage and prevent occurrence of any major crimes. An organisation must determine its risk appetite and its willingness to tolerate high risk of white-collar crime basis its impact on regulators, reputation, consumer, service agreements, finances etc. Following the risk assessment, a company can eliminate ties potential risky vendors, clients, individuals to reduce the organisation's risk, loss, and liability exposure.

3. Monitoring Activities of Employees

White-collar crimes often involve the use of internet. In such scenarios, it becomes important to keep a close watch on the activities of your employees- but within the ambit of the law. An organisation can curb white-collar crimes to a certain extent if its employees are known of being monitored for their respective activities. Anti-money laundering transaction monitoring detection scenarios, monitoring compliance with money laundering regulations, undertaking appropriate due diligence on third parties, monitoring/reviewing the communication/training for employees must be done and be amended if needed. Technology is a proved key tool to monitor activities such as a model draws conclusions from uncategorised data to analyse and identify patterns and underlying structures and help to flag genuinely unusual behaviour that is potentially suspicious. The assistance of a software that helps in monitoring the websites, social media connections and activities can be used as an early-warning system to benefit your company in preventing white-collar crimes to a great extent.



4. Prioritise Internal Audit Function

Internal auditors can be beneficial for the healthy working and operations of the companies since these people have the knowledge of how the company works, they function as identifiers of fraudulent practices and other red flags. They act as first formal line of defence and thus can be viewed next to whistle blowers. Internal audit function should be able to evaluate the effectiveness of all critical risk management functions, such as credit risk including the organisation's overall risk management function. This practice should also be able to evaluate governance at all levels of an organisation, including the senior management and within all service/sub-service lines and ensure the elimination of macro level risks. It should evaluate the adequacy and effectiveness of controls to respond to risks within the organisation's governance, operations, and information systems in achieving the organisation's strategic objectives.

5. Inventorying Equipment

Inventorying equipment and supplies on a regular basis reduces the risk of theft. It is also a wise plan to keep a check on purchase orders against your inventory and implement a regular survey of the equipment and supplies owned by your business. A standardised inventorying equipment can always help an organisation to keep a regular check on asset movements, streamline your warehousing with location management, maintain a consolidated asset database, track equipment utilization, automate procurement process to make the process more of a technology driven, which will help to reduce the high risk of inventory theft and ill supply chain processes. An effective inventory management can also predetermine the threatening factors where your equipment is performing low for which one can develop risk management strategies and protect the business before a catastrophe hits.

6. Creating Awareness among Users

With the advancement of computer and internet technology, most of the financial transactions are being performed online at an individual level. It is therefore important that public/user is educated about the need to take adequate precautions while performing the transactions to protect him from cyber-crimes. An organisation must ensure to spread awareness among the masses about sound governance, common laws governing corruption and accessibility to regulators and should not glorify the alleged crimes between masses. Creating awareness is an old practice yet very effective, it can demonstrate the implication of white-collar crimes and prevent them from happening. An organisation must encourage the whistle blowers and reward them in order to make a larger impact throughout so the offenders be aware that any of their unethical business practice will be blown at any point of time.

7. Transparency

Transparency in business is a key factor for most of the employees as driver of ethical business practices which also helps in creating a sustainable ethical framework across the organisation. A transparent approach to business can also eradicate the toxic culture and reflect the laws in place to prevent such crimes of syphoning funds, manipulating accounts, evasion of taxes etc. According to International Transparency Index, India has ranked 78 out of the 180 countries (as of 2018). This highlights a positive perception of transparency in the country, driven by factors such as new and improved regulations, greater enforcement activities, improved public awareness and the Government's initiatives to promote the country as an investment hub. With the pace set to improve transparency, soon the country will improve its ranking.

In addition to above, financial institutions like bank, stock exchanges etc. need to regularly advice their respective users about:

- Never to click on untrusted/fake links while downloading or opening files, E-mails especially if it asks for personal details or banking information.
- Never to share their passwords OTP etc. with outsiders.
- Changing their passwords regularly. Use of atleast 8 characters with a combination of special characters, numerals and alphabets
- Use of a secure website (indicated by https:// and a security “lock” icon in the browser's address bar) to browse, and especially when submitting sensitive information online, such as credit card details.
- Never use public, unsecured Wi-Fi for banking, shopping or entering personal information online.

Governmental Action

The battle against financial fraud and malpractices has significantly intensified over recent years. In the face of such situation, it is imperative government takes proper measures.

1. Enacting Laws and Regulations

The Government of India has introduced various regulatory legislations, the breach of which amounts to white-collar criminality. Some of these legislations are: Essential Commodities Act 1955, the Industrial (Development and Regulation) Act, 1951, The Import and Exports (Control) Act, 1947, the Foreign Exchange (Regulation) Act, 1974, Companies Act, 1956, Prevention of Money Laundering Act, 2002, Benami Act, 1988, and Public Procurement Act, 2007. In order to tackle the computer-related white-collar crimes and provide legal recognition to the

authentication of information exchanged in respect of commercial transactions, Information Technology Act, 2000 has also been enacted. However, this is a continuous process which needs to be upgraded with the advent of new methods adopted by the criminals. The Government needs to be pro-active in identifying these crimes and take timely action to bring new legislations accordingly.

2. Implementing Strong Regulatory Policies

Where as enactment of stringent laws and regulations is the first step in curbing crime, ensuring strict and effective and timely implementation of the same only can bring a perceptible impact. The enforcement agencies of the Government like Central Bureau of Investigation, Enforcement Directorate, SEBI, IRDA are some of the agencies to deal with the white-collar crimes. These agencies need to ensure that they have the requisite expertise to manage the technology-based crimes and their knowledge is upgraded on regular basis. In addition, the Central Vigilance Commission, which is apex agency of the Government to oversee the corruption in Government, also needs to monitor the working of the officials sitting at top positions to ensure transparency in the whole system.

3. Proper Training of Investigating Officers

It often happens that ageing officers are well experienced to understand the nature and techniques of white-collar crimes but are not able to utilise the technology for tracking the suspect due to lack of training. It is imperative to provide proper training to every investigating officer to be effective on ground and find out the truth without causing harm to the environment or its members.

4. Strict Enforcement of Laws

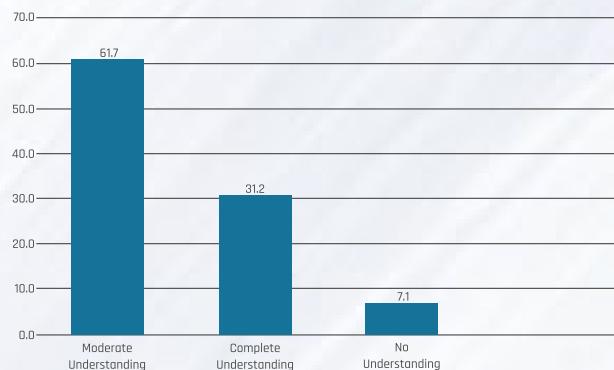
It is not just enough to have laws in place, but their enforcement too is of utmost importance to deracinate the occurrence of such crimes. Small number of fines and short period of imprisonments doesn't make it a good deterrent for the offenders to commit such crimes.

5. Spreading Awareness

The general public lacks awareness about such crimes and its subsequent laws and punishments to deter them. There is an immediate need to educate and keep the general public well-informed. The electronic and print media should be utilized in an effective way to spread awareness about white-collar crimes and the remedies they could seek in case they become victim of such crimes.

SURVEY RESULTS

- Do you understand the difference between white-collar crimes, corporate crimes, occupational crimes & blue-collar crimes?



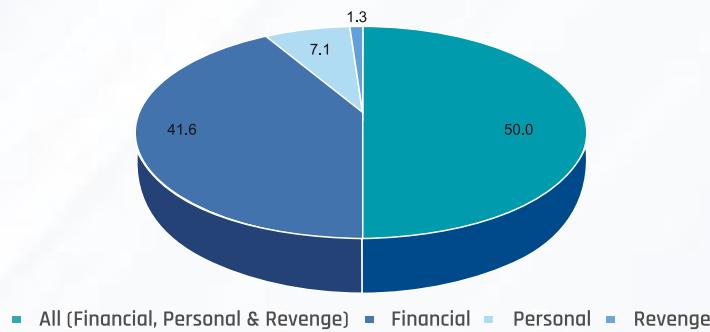
All white-collar crimes, corporate crimes, occupational crimes and blue-collar crimes are committed for financial benefit. While white-collar crimes and blue-collar crimes are committed by persons in their individual capacity with the purpose of achieving personal or financial gain; corporate crimes are committed by persons either for or on behalf of the company they work for, with the purpose of financially benefiting the company or its shareholders.

White-collar crimes and blue-collar crimes are also distinct in nature. Both are divided by social class. While white-collar crimes are usually considered to be committed by men of higher social class, blue-collar crimes are committed by men of lower social class.

As far as occupational crimes are concerned, they are usually understood to be synonymous to white-collar crimes, however, it can be perceived as an abuse of structural system in a workplace leading to a white-collar crime.

Out of the data collected by the sample, it is observed that majority of the people have a clear understanding of the basic differences between white-collar crimes, occupational crimes, corporate crimes and blue-collar crimes. This observation indicates that the audience is aware with the existence of such criminal activities in society and is warned against people who commit such crimes.

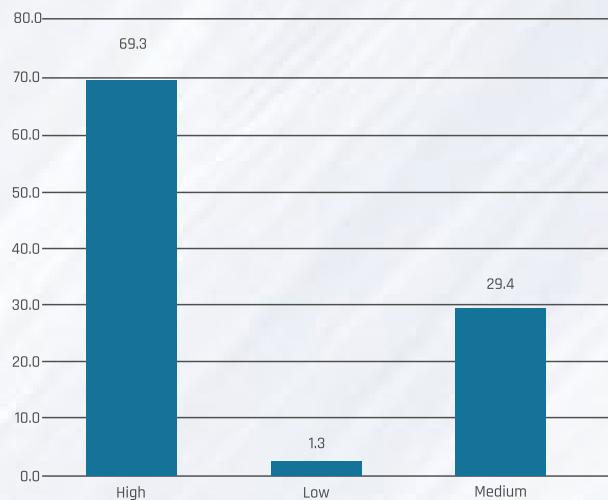
- What is the possible motivation for white-collar crimes?



As per Investopedia, white collar crimes are non-violent crimes committed for the purpose of achieving financial gain. The definition does not include any aspect of revenge or personal gain rather financial gain is the only source of motivation for white-collar crimes.

However, the data collected in the survey shows otherwise. Majority of the people believe that the term "white collar crime" includes revenge and personal gain. This indicates that people are not clear with the term "white collar crime" and believe that personal gain and revenge are the possible indicators of motivation.

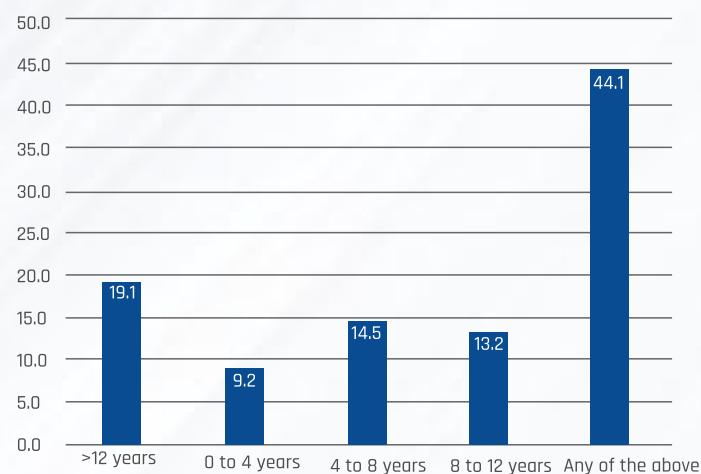
● What is the social status of a person typically involved in a white-collar crime?



Edwin Sutherland (renowned sociologist) coined the term “white-collar crime” for the first time in 1949. According to him white-collar crimes refer to “crime committed by a person of respectability and high social status in the course of their occupation”. The following definition clearly states that the social status of a person typically involved in committing white-collar crimes must be higher. In case the social status of a person committing a crime of a similar nature is considered low, it will be considered as a “blue-collar crime”.

The responses received show that the majority of the people have clear knowledge as to what classes of persons commit a white-collar crime. This bar chart above indicates a positive shift.

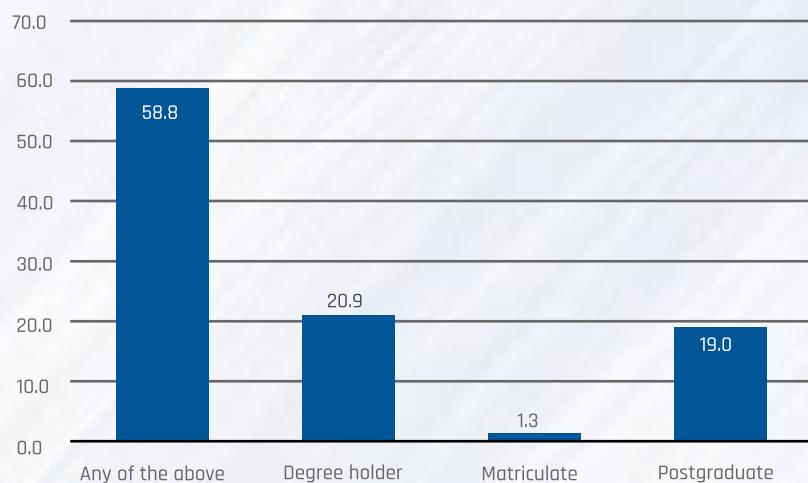
● What is the experience level of white-collar criminal?



Years of experience put forth into practice cannot be judged as an indicator in defining whether a person is a white-collar criminal or not. As long as the person committing a white-collar criminal is a person of respectability and hosts a high social status; committing the non-violent offence during the course of his/her occupation, the said person will be considered as a white-collar criminal. A person need not have years of experience to carry out such an offence as long as he has the willingness to risk it for personal financial gain.

The chart shows that majority of the people believe that irrespective of the experience level, any person who hosts a high social class and commits the offence during the course of his occupation for the purpose of personal financial gain can be considered as a white-collar criminal. This shows that most of the audience is aware of what constitutes a white-collar criminal.

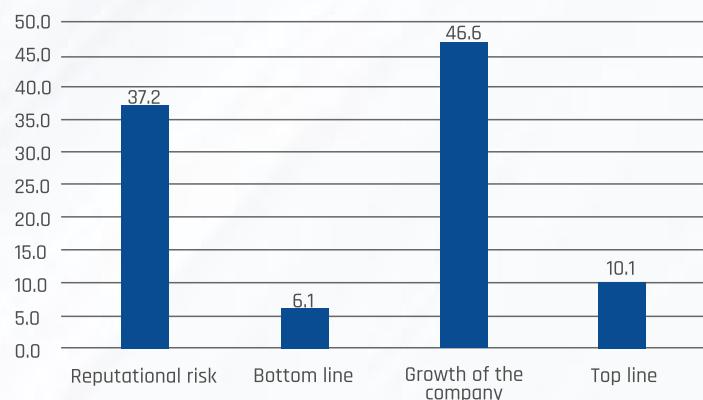
● What is the education level of white-collar criminals ?



White-collar crimes are most prevalent in health, education, legal profession, commerce and trade sectors. Most of the people employed in these trades are professionals requiring a bare minimum of a matriculate. In medical, educational and even the legal field, the same person might even be expected to host a minimum of an undergraduate degree before enrolling his or herself in their respective field. What education level must a person constitute to be a white-collar criminal completely depends on the minimum education requirement in that respective field one is enrolling into. However, one can clearly say that the basic requirement of a white-collar criminal is at least a matriculate or a degree holder as long as he or she is enrolled as a professional in his or her respective field.

As per the findings in the survey, majority of the people believe that white-collar criminals can be any person irrespective of their education in society, provided that the person maintains high repute and commits the non-violence offence during the course of his occupation.

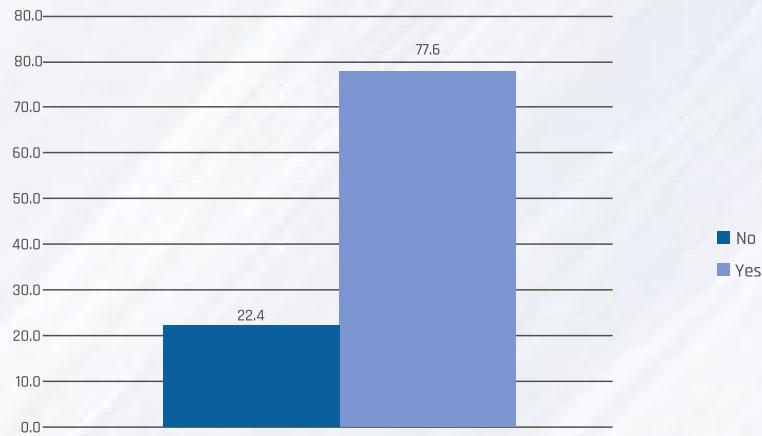
● What is the impact of white-collar criminals in an organisation ?



White-collar crimes are committed due financial motives and personal gains and can create a huge amount of problems for any business. Crimes like theft, embezzlement, extortion and other white-collar crimes have direct impacts on overall profits. The Association of Certified Fraud Examiners estimates that fraud alone reduces the average business' yearly profits by approximately five percent. Therefore, it is important to prevent such crimes from occurring as they are detrimental to growth of the company.

The survey provided above also suggests and supports that the impact of white-collar crimes in an organisation is highest in terms of the detrimental impact it has on a company's growth leading at 46% as compared to the other areas of its negative effects.

● Is Ponzi scheme a white-collar crime?



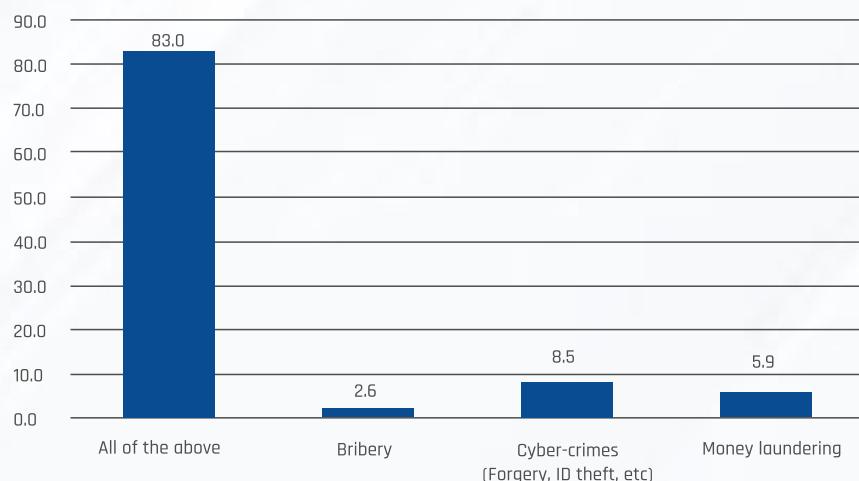
Ponzi schemes are white-collar crimes committed for the purpose of maximising personal financial gain. The originator of a Ponzi scheme raises money from the market by promising investors huge dividends on their investments. He then raises more money from the market and pays himself and the former investors promising new investors greater dividends on their investments. By using the same technique repeatedly, the originator creates excitement in the market thereby motivating large number of investors to his scheme. Once the scheme becomes too big, it collapses upon itself and the originator runs away with everybody's money.

Basically, Ponzi schemes are also white-collar crimes. One, because they share the same common objective; personal financial gain, two, because the originator of the Ponzi scheme like the white-collar criminal maintains a high social class in order to attract more and more investors to his investment fraud and three, the crimes committed are non-violent and committed during the course of his/her occupation.

Having been understood the concept of a Ponzi scheme and how it functions, it can be considered that a Ponzi scheme is nothing less than a type of an investment fraud committed by a white-collar criminal with the objective of maximising his personal financial gain. Furthermore, the American law also considers Ponzi schemes as a white-collar crime ever since the Jeffrey Skilling and Enron Scandal under the Sarbanes Oxley Act of 2002, which was passed by the United States Congress and signed into law by President George W. Bush.

As per the data collected in the survey, a promising 77.6% people believe that Ponzi schemes are none other than white-collar crimes. While 22.4% people hold a separate opinion, the majority show positive understanding of the concept.

● What are the methodologies adopted by white-collar criminals?

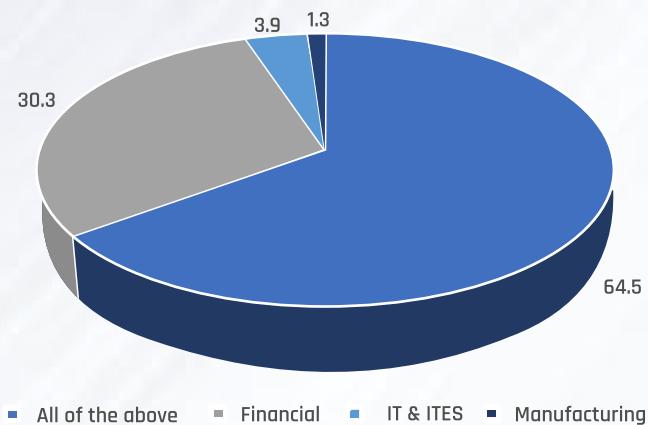


White-collar crimes are committed with the intention of achieving personal financial gain. Whether they are committed through cybercrime or money laundering or even bribery, if the result is personal financial gain, incoming from a non-violent crime committed by a person of high social class, the said offence is a white-collar crime.

Due to advanced technology, an increasing cause of white-collar crimes owes to cybercrimes. This type of crime involves collecting credit card numbers and personal identifying information by using computer technology. It also includes sophisticated attacks in order to discover classified information, even the making of viruses that infect vulnerable computers can send spam or perform other tasks that may help generate funds. Bribery allows the perpetrator to provide financial inputs to a person in position of power to make arrangements that benefit the former or others. In a similar way, money laundering involves the act of filtering illegally obtained money to make it appear as legitimate money. All acts whether cybercrimes or money laundering or bribery, all result in personal financial gain, claiming to be different forms or methodologies adopted by white-collar criminals to satisfy their need of financial gains.

According to the survey provided above, white-collar criminals adopt all the above (bribery, cybercrime and money laundering) as methodologies thus leading with 83% in the data given above.

⦿ What are the industry types most affected by white-collar crimes?



All industry types, whether Financial, Pharma, IT or manufacturing are affected by white-collar crimes. In the Finance industry, white-collar crimes may include securities fraud, embezzlement of money, corporate fraud, money laundering, and tax evasions and so on. Even credit card frauds and insurance frauds can be cited as strong white-collar crimes that are prevalent in the Financial Industry. The Harsh Mehta case and the Satyam case are good examples of white-collar crimes committed in the Finance Industry in India.

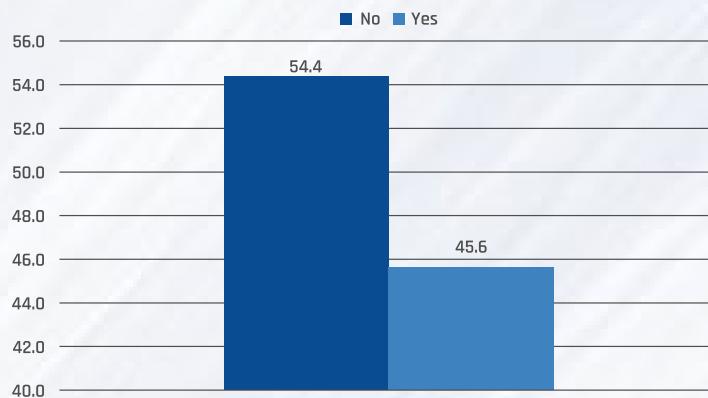
The Pharma Industry is also home to few serious white-collar crimes. With rise in competition, the Pharmaceutical Industry has become home to various white-collar crimes such as red flag and fraudulent schemes, accounting sale of expired inventory, involvement in commercial bribery against supply of medicines to government institutions and hospitals, sale of unprescribed drugs in grey markets, fictitious sales and so on.

The IT sector has also become a host for various white-collar crimes. Cybercrimes or computer crimes committed for the purpose of achieving personal financial gain or financial advantage over another person can lead to committing of a white-collar crime. Examples of white-collar crimes in the IT sector may include hoax mail, gaining unauthorised access into another person's computer, stealing or copying of data from another person's computer, tampering or destroying a person's computer, etc for the purpose of achieving financial benefit can be considered as white-collar crimes.

The manufacturing industry is also home to white-collar crimes. The Volkswagen Emissions scam is a great example of a white-collar crime in the manufacturing sector.

As per the data collected in the survey, majority of people believe that white-collar crimes are prevalent in all types of industries whether Financial, Pharma, IT or manufacturing supporting the statements given above.

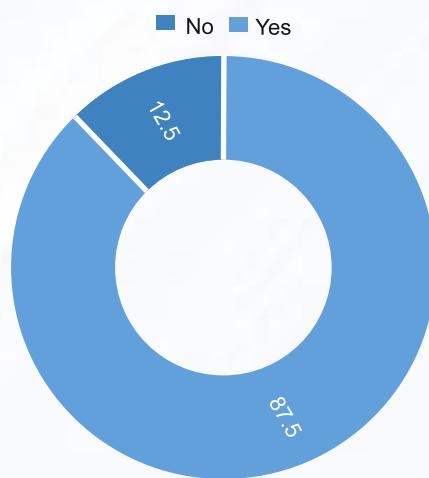
◉ Are white-collar crimes more prevalent in family-owned businesses?



White-collar crimes are committed with the motive of personal gain. The presence of this deviant behaviour is prevalent in both family-owned business and otherwise. According to a research published in **Fraud and Corruption: A Convenience Perspective** By Peter Gottschalk, it is said that if rewards and practices are unfair towards the non-family executives in family-owned business due to greater familial trust and importance of family centric priorities as suggested by a research then given a motive and willingness, the organisational opportunity to commit and conceal financial crime can be greater in family-owned businesses due to heightened trust. However, the book also states that increased social interactions may make non-family executives to feel like family enjoying greater trust that in-turn reduces the willingness to commit crimes.

The survey provided above states that 54.4% believe that white-collar crimes in family-owned businesses are not more prevalent as compared to the 45.6% who believe the opposite. Hence it can be suggested that if given the purpose and willingness to commit crimes due to “second class treatment” of non-family executives in family-owned businesses only then the prevalence can be higher.

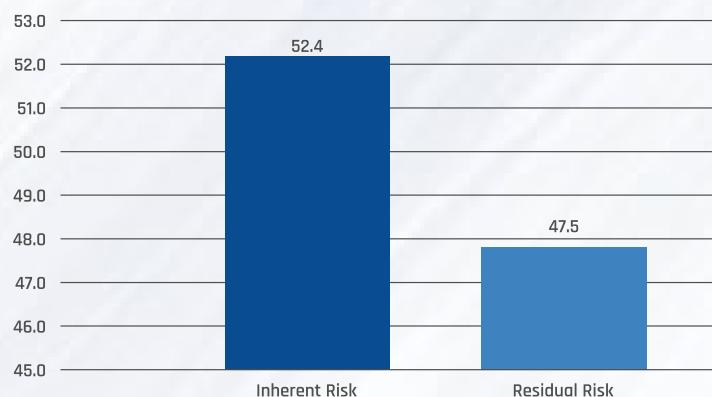
◉ Are white-collar crimes responsible for collapse of business houses?



White-collar crimes can cause huge loss to companies and business houses. Soon after a business house or a company is convicted of hosting a white-collar crime, they immediately are affected by reputational loss. Once a company is affected by reputational loss the demand for its products in the market decreases severely. Also, since

the company has suffered a financial loss the only form of recovery becomes to increase the price of the commodity it is selling. Since the company has suffered a reputational loss and has also increased the prices of its commodities, the demand for its product diminishes severely and it becomes nearly impossible for the company to derive profits thereby finding it difficult to repay its loans and employees, ultimately falling to ruins. In short, white-collar crimes can be held responsible for collapse of business houses and companies. The same is also held by the majority opinion in the survey collected.

● White-collar crimes fall into one of the following?

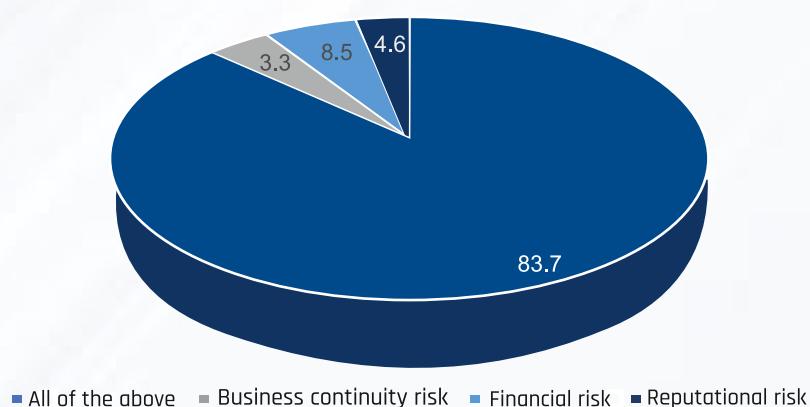


Inherent risk can be defined as the current level of risk that remains after accounting the current existing set of controls; while residual risk can be defined as the amount of risk that remains after additional control is applied.

White-collar crimes can be considered as a residual risk rather than inherent risk given that a person who has the willingness to risk a white-collar offence will still commit the white-collar offence irrespective of the number of rules or controls surrounding him in his environment. Whether the existing level of control in the environment is stringent enough or not, a person willing to commit a white-collar offence will commit a white-collar offence as long as the element of risk willingness exists in him. Even after considerable efforts in law, criminals all over the world still commit crime. In fact, in certain cases where the laws and rules become more stringent, research suggests that crimes in such sectors also increase instead of showing a decrease.

Since the question is at hand is debatable, both opinions must be given equal weight age irrespective of the data collected in the survey. As far as the data collected is concerned there is not much of a difference between the two opinions of the audience. While the majority does consider white-collar crimes as an inherent risk, many still consider it to be a residual risk.

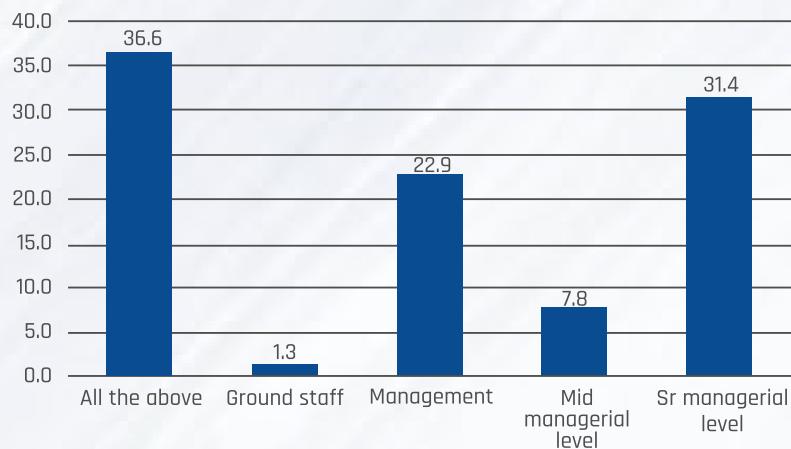
● What type of risk does the white-collar crimes pose?



White-collar crimes are committed with the aim of personal gains and can pose huge risks to the company who falls prey to them. The loss of profits coupled with the cost of fines can put a financial strain on the company's resources in the short-term while harming the company long-term and potentially even force it to close. The ease of communication can easily spread information about a company if it is charged with white-collar crime quickly making it public knowledge. The impacts of white-collar crimes to a company ranging from the fines to the establishment of a full-fledged scandal, could lead to the ruin of a company's reputation in the long run. Therefore, a white-collar crime suggests a range of risks to a company.

The survey provided above supports the above given statement by stating that white-collar crimes pose all types of risks; reputational, business continuity and financial for a company therefore leading the data with 83.7%.

● Who are typically involved in white-collar crimes?



According to Edwin Sutherland, a white-collar crime refers to a "crime committed by a person of respectability and high social status in the course of their occupation". This definition clearly states that the person committing a white-collar crime must be a person capable of attaining respect in society and must also confer to a high social class. While the aforesaid statement clearly points a finger to the senior management, one cannot simply blame them as white-collar criminals judging them only by their position in an organisation. In fact in a research article by Hazel Croall titled "Who is the white collar criminal" in the book "The British Journal of Criminology", in an examination of a group of white-collar criminals the offenders were basically small businessmen and employees in organisations assisting us into thinking that white-collar criminals could also be mid-level managers or ground staff employees.

As far as the answer to this question is concerned, it can be humbly submitted that all members in an organisation irrespective of their position in the company can be white-collar criminals provided that they commit the non-violent offence during the course of their occupation. The same is reflected in the survey collected above.

Legislation against White-Collar Crimes in India



The Indian Penal Code 1860 is perhaps the earliest and most comprehensive codified criminal law of India. It specifically does not mention the word 'white-collar crimes' but deals with many offences which are closely linked to white-collar crimes such as bribery and corruption, counterfeiting of coins and government stamps, of offences relating to weights and measures, offences relating to adulteration of food stuffs and drugs, misappropriation of public property, and criminal breach of trust, cheating, forgery and offences relating to documents and counterfeiting of currency.

Fraud

Section 447 of the Companies Act, 2013 provides punishment for fraud commission. This specifies that if a person is found guilty of a crime of theft, he will be imprisoned for a term of not less than six months, expanding to ten years. And he will also be subject to a fine that, in any event, should not be less than the amount involved in the crime and which could stretch to three times the amount involved in the fraud. In the case that the crime was conducted against the general public's interest, the prison term would not be shorter than three years.

False statement/Claim

Section 448 of the Companies Act, 2013 provides that: if a person deliberately makes a false claim, believing that it is false and intentionally omitting some material fact, knowing that it is true then he is liable for his misconduct. Such false statement can be created by return, report certification, financial statement, prospectus, statement or any other documents required for the reason stated in this Act or any rules made under it.

Money Laundering

In the case of money laundering, the Indian government has taken many steps to address this problem. The Reserve Bank of India has given guidance under the rules of KYC (Know Your Customer) to be strictly implemented by the banks. Banks and financial companies are required to keep transaction records for a 10-year term.

Cybercrimes

To counter computer-related crimes, the Information Technology Act, 2000 is implemented to provide legal recognition for the encryption of information shared in commercial transactions.

The punishment for the following offences is laid out in Sections 43 and 44 of the Information Technology Act:

- Introduction of viruses or malicious programmers.
- Unauthorised access and downloading files.
- Unauthorised copying of an extract from any data.
- Damage to computer system or computer network.
- Helping any person to facilitate unauthorised access to a computer.
- Denial of access to an authorised person to a computer system.

While the Information Technology Act does not dwell on cybercrime as such, there are some clauses in this Act that deal with white-collar crimes. Chapter XI deals with the offence of cybercrime and chapter IX deals with penalties and adjudication of crime. Apart from this, many issues are unresolved due to lack of focus. Some of them are:

- Inapplicability
- Qualification for appointment as adjudicating officer not prescribed
- Definition of hacking
- No steps to curb internet piracy
- Lack of international cooperation
- Power of police to enter and search limited to public places
- Absence of guidelines for investigation of cyber-crime

Fugitive Economic Offenders Act, 2018

With such backdrop and scams like that of Satyam scam, fleeing Vijay Mallaya, 2G scams and many more, it was in 2018 that the Government of India passed Fugitive Economic Offenders Act, 2018 which seeks to punish economic offenders who commit white-collar crime in India and flee to other country in order to escape from their criminal liability and recuse themselves from the jurisdiction of Indian Courts. The Act provides provision which empowers the Government to confiscate any property of economic offender in India who flees to other country. It contains a variety of provisions including, but not limited to, declaration of a "fugitive economic offender" in respect of a person, attachment of the property of such person and bar over civil claims. The statute defines 'fugitive economic offender' as any individual against whom a warrant for arrest in relation to a Scheduled Offence has been issued by any Court in India, who:

- (i) has left India to avoid criminal prosecution, or
- (ii) is abroad, refuses to return to India to face criminal prosecution.

The Act also defines 'benami property' and provides it the same meaning as given under the Prohibition of Benami Property Transactions Act, 1988. This implies that this Act, 2018 applies to any property which is the subject matter of a benami transaction and also includes proceeds from such property. Further it also seeks to cover within its ambit the transactions which are in nature of benami transactions under the Prohibition of Benami Transactions Act, 1988. Such move is welcome and might successfully curb white-collar crimes or at least act as a deterrent to such criminal minds.

Enforcement Agencies

When India is moving steadily up the growth scale, enforcement agencies such as the Central Investigative Agency (CBI), Serious Fraud Investigation Office (SFIO), Enforcement Directorate (ED), Income Tax (IT), Department of Vigilance DFS of Ministry of Finance, SEBI, RBI and IRDA are duly motivated to improve their capabilities to meet the challenges of the changing scenario though reactive in nature.

These departments which are the eyes and ears of the Govt for combating white-collar criminals are trying to revamp their capabilities in terms of manpower, technical capabilities and the spear of their activities. They are either thinking or some have already of the way forward to cope with the rise in white-collar crimes to defend the greater economic interest of various investors.

Global Initiatives to Combat White-Collar Crimes

The Vienna Convention

This was the first major initiative in the prevention of money laundering held in December 1988. It laid down the groundwork for efforts to combat money laundering by obliging the member states to criminalise the laundering of money from drug trafficking. The Vienna Convention promotes international cooperation in investigations and makes extradition between member states applicable to money laundering. The convention also establishes the principle that domestic bank secrecy provisions should not interfere with international criminal investigations.

FATF

The FATF is an inter-governmental body established at the G7 summit at Paris in 1989 with the objective to set standards and promote effective implementation of legal, regulatory and operational measures to combat money laundering and terrorist financing and other related threats to the integrity of the international financial system.

The Council of Europe Convention

This convention in 1990 establishes a common policy on money laundering. It sets out a common definition of money laundering and common measures for dealing with it. The Convention lays down the principles for international cooperation among the member states, which may also include states outside the Council of Europe. One of the purposes of this convention is to facilitate international cooperation as regards investigative assistance, search, seizure and confiscation of the proceeds of all types of criminality, particularly serious crimes such as drug offences, arms dealing, terrorist offences etc.

United Nations Global Programme against Money Laundering

GPML was established in 1997 with a view to increase effectiveness of international action against money laundering through comprehensive technical cooperation services offered to Governments. The programme encompasses following 3 areas of activities, providing various means to states and institutions in their efforts to effectively combat money laundering:

1. Technical cooperation is the main task of the programme. It encompasses activities of creating awareness, institution building and training.
2. The research and analysis aim at offering States Key Information to better understand the phenomenon of money laundering and enable the international community to devise more efficient and effective countermeasure strategies.
3. The commitment to support the establishment of financial investigation services for raising the overall effectiveness of law enforcement measures.

Initiatives by Government of India

To prevent white-collar crimes, RBI issued Master Circular on Know Your Customer (KYC) norms/ Anti-Money Laundering (AML) standards/ Combating of Financing of Terrorism (CFT)/ Obligation of banks under Prevention of Money Laundering Act, 2002 and banks were advised to follow certain customer identification procedure for opening of accounts and monitoring transactions of a suspicious nature for the purpose of reporting it to appropriate authority. These KYC guidelines have been revisited in the context of the Recommendations made by the Financial Action Task Force (FATF) on Anti-Money Laundering (AML) standards and on Combating Financing of Terrorism (CFT). Banks have been advised to ensure that a proper policy framework on KYC and AML measures

with the approval of the Board is formulated and put it place.

Government, through 2019 amendments to PMLA Act, has made the anti-money laundering laws stricter by making money-laundering a continuous offence and expanding the ambit of the “proceeds of crime”. It empowers the ED to undertake search actions even in the absence of a report under Section 157 of the Code of Criminal Procedure, 1973 and arrest can be made for an offence under the PMLA even in the absence of FIR. To combat the threat of offences of money laundering, the Government is entrusting the work relating to investigation, attachment of property/proceeds of crime relating to the scheduled offences under the Act and filing of complaints etc. to the Directorate of Enforcement, which currently deals with offences under the Foreign Exchange Management Act.

Another progressive step taken by Government is the passing of Economic Fugitive Offender Act, 2018. The Act provides for attachment and confiscation of property of fugitive economic offenders. The immigration authorities can detain as well as prevent any person, including a willful defaulter, from leaving India against whom LOC has been issued. Bureau of Immigration has opened 83 LOCs till now at the behest of banks.

The need of the hour is empowering and strengthening enforcement agencies such as Central Bureau of Investigation, the Enforcement Directorate, The Directorate of Revenue Intelligence, The Income-tax Department and the Customs Department. The government machinery should work in consonance with the Directive Principles of State Policy that there should not be concentration of wealth in the hands of few and distribution of national wealth must be done in a proper manner. Central Vigilance Commission must keep a constant vigil on the workings of the top-ranking officials and there should be periodic audits, inspections under the supervision of CAG. Special tribunals like fast track courts should be constituted with power to award sentences for less grave offences. Indian Penal Code should be amended to include a separate chapter on white-collar crimes so that the ones connected by the Courts and perpetrators are punished.



It is well said- “Education is the passport to the future, for tomorrow belongs to those who prepare for it today.” Well rightly said, however while education does endeavour to make one well-read but it does not always build integrity. Most White Collar crime from the basic ponzi schemes to the insider trading are generally the work of educated employees who have consciously chosen to drop integrity at the expense of personal avarice causing long term impact to the well being of colleagues and reputation of organizations when detected. Sound governance necessitates the need for audits at multiple levels to limit the opportunity for white collar crimes.



Mr. Harendra Bana
Associate Director – Security
PepsiCo | India Region

ABOUT THE SURVEY

This survey is conducted by Indian National Bar Association (INBA) in association with Netrika Consulting India Private Limited (Netrika). This survey was rolled out to Law Firms, Media houses and Corporate houses in the form of questionnaire and answers in objective form. The responses of the audience are then collated to have a better understanding of the awareness level of white-collar crimes.

About Indian National Bar Association (INBA)

INBA is focused on taking the Indian legal industry and its members to newer heights. Representing the entire legal ecosystem in India, INBA is dedicated to expanding its members' professional network and industry insight. When lawyers need to be heard, INBA is their voice. The association promotes members' through programmes that focus on access to justice, human rights, anti-corruption, judicial reform and more. INBA provides resources to help its members become better lawyers. Each year the association hosts or participate in events around the world. Existing INBA members contribute valuable insights and knowledge through various modes and means of expressions facilitated by INBA. They help broaden their member's perspectives and exchange views through online forums and partnerships with the best organisations.

About Netrika Consulting India Private Limited (NCIPL)

Netrika is a professional risk and integrity management company, an ISO 9001:2008 and 27001:2013 certified, established with a vision to help clients to focus on their core competencies and operate in a risk-free environment. With specialised services in corporate investigations, safety and security/assessments, intelligence gathering, and risk consulting, Netrika adopts the most feasible and legally viable approach to execute its assignments in a seamless and cost-effective manner. Today, along with having multiple operating offices in India (Delhi NCR, Mumbai, Bangalore) and a global presence in Sri Lanka, Singapore & Dubai, it possesses collective experience of more than 100 years across all industries throughout the globe.



About AUTHORS

Contributors at INBA

Research, Survey Analysis, Content Writing & Editing

- Mr. Kaviraj Singh, Secretary General, Indian National Bar Association
- Ms. Vinakshi Kadan, Advocate Supreme Court of India, Indian National Bar Association
- Ms. Babita Sharma, Editor-in-Chief, Indian National Bar Association
- Ms. Bhawna Gandhi, Advisor, Students Section, INBA

Research Team

- Ms. Palak Arora, Chairperson, Student Section, INBA
- Ms. Arushi Sethi, Student Section, INBA
- Ms. Avni Agarwal, Student Section, INBA
- Mr. Akshaye Ahuja, Student Section, INBA

Contributors at Netrika Consulting India Pvt Ltd

Conceptualization, Research, Content Writing and Editing

- Mr. Sanjay Kaushik - Managing Director
- Mr. Sanganagouda Dhawalgi - Executive Director
- Ms. Suruchi Gaur - Associate Director
- Mr. Ketan Mehta - Associate Director
- Ms. Muskan Makhija - Senior Consultant (Research)
- Ms. Vaishali Raj - Content Writer
- Ms. Shruti Jha - Marketing Specialist



IS PROUD TO SHARE THAT
NOW WE ARE



✉ info@netrika.com, 🌐 www.netrika.com
☎ Toll Free: 1800 121 300000, Board: +91 124 288-3000



INDIAN
NATIONAL
BAR
ASSOCIATION



INBA
VIEWPOINT
India's No.1 Portal for Legal News

— INBA HEAD OFFICE —

Indian National Bar Association
8/11, First Floor, Shahi Hospital Road
Jangpura Extension, Jangpura, New Delhi – 110014, India
Phone: 011 - 49036141, Mobile: +91 - 9811992072, +91 - 9971532995
Email: contact@indianbarassociation.org

— NETRIKA OFFICES —

Global Headquarters

Plot # 2, Industrial Estate, Udyog Vihar,
Phase - IV, Gurugram - 122015,
Delhi NCR, India

Contact Information

+91 124 288 3000, +91- 9910020032
info@netrika.com

Singapore

Regus Vision Exchange
2 Venture Drive Level # 24-01- #24-32
Singapore 608526

Contact Information

+65 87308006, +91 987109338
singapore@netrika.com

Mumbai (Western Region)

Accord Classic 510, above Anupam Stationery
Arey Road, Goregaon East, Mumbai - 400063
India

Contact Information

+91 22 490 35900, +91 8655104777
pravin.parab@netrika.com

UAE

SAIF ZONE,
Q1-06-141/C PO Box - 124932
Sharjah Airport Free Zone, UAE

Contact Information

+971 553794260, 525346993,
+91 9990944440
dubai@netrika.com

Bangalore (Southern Region)

Unit No. 205 A, Carlton Towers,
01 Old Airport Road, Bangalore - 560008
India

Contact Information

+91 80 437 28750, +91 97422 33717
sanganagouda.dhawalgi@netrika.com

Sri Lanka

32 Uswatte Road,
Etul Kotte, Kotte,
Sri Lanka

Contact Information

+94 773410254
srilanka@netrika.com