

# WHITE COLLAR CRIMES AND CORPORATE ACCOUNTABILITY IN INDIA: A LEGAL ANALYSIS

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## ABSTRACT

*The white collar crimes and corporate accountability have become important issues in context of Indian scenario. The recent surge in financial frauds, insider trading, money laundering, tax evasion and corporate misgovernance necessitates an analytical assessment of the corporate criminal liability law in India. The paper analyses the statutory framework governing the white-collar offences in India with special reference to Companies Act, 2013, Prevention of Money Laundering Act, 2002, Securities and Exchange Board of India Act, 1992, Insolvency and Bankruptcy Code, 2016 and other allied legislations. The study further assesses the adequacy of enforcement mechanisms, the effectiveness of regulatory bodies and the challenges faced in ensuring meaningful corporate accountability. Using doctrinal and comparative legal method, the paper relied upon primary, such as statute, judgement, regulatory orders, etc. and secondary data, i.e. academic literature. The paper also compares the frameworks of the US, UK and the EU, so as to distill useful lessons for Indian reform. The article contends that India has developed a large law on white-collar crime and corporate liability. However, this law is plagued with three basic problems: there is a fragmentation of jurisdiction of regulatory agencies with no coordination; the enforcement mechanisms are inadequate because of delay in the procedures, lack of institutional capacity and evidence; and there is no coherent doctrine of corporate criminal liability that can adequately attribute liability to legal persons in a principled manner. The paper provides legislative and institutional reform recommendations as conclusion.*

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## I. INTRODUCTION

### A. Background and Significance

The term white collar crime was coined by the sociologist Edwin Sutherland in a 1939 speech to the American Sociological Society. It referred to crime committed by a person of respectability and high social status in the course of his occupation. Sutherland's thesis was that crime was not just something that the poor did; rather, business elites and corporations were committing crime on a systematic basis in ways that caused enormous social and economic harm, often without the knowledge of, and certainly without punishment from, the CJS. Over the last eighty years, since Sutherland coined the term, white collar crime has grown into complex and multi-dimensional thing. This includes financial fraud, corporate fraud, securities fraud, insider trading, money laundering, tax evasion, bribery and corruption, environmental violations among a host of other offences in course of legitimate business activity.

In recent decades, the Indian context has made white collar crime and corporate accountability very urgent. Over the past few years, a number of high-profile corporate scandals, financial frauds, and governance failures have exposed the weaknesses of our regulatory and enforcement system in India. Some instances of white-collar crime in India that drew massive public attention include the Harshad Mehta securities scam (1992), the Satyam Computer Services fraud (2009), the IL&FS crisis (2018), the Punjab National Bank fraud involving Nirav Modi and Mehul Choksi, and the Yes Bank governance failure. All of which caused substantial damage to investors, creditors, employees, and the general public while posing a significant challenge to regulators and prosecutors. Indian white-collar crime has a huge economic cost. (7 words) As per the estimate of various regulatory agencies and research institutions, fraudulent financials, particularly in the banking sector, runs to the tune of hundreds of thousands of crores of rupees per annum.<sup>3</sup>

India has met these challenges through a step-by-step enlargement and strengthening of its law. The Companies Act, 2013 made changes to corporate governance and accountability. The Prevention of Money Laundering Act, 2002 has undergone several amendments to strengthen the PMLA. Over the

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<sup>3</sup> Edwin H Sutherland, *White Collar Crime* (Dryden Press 1949) 9.

years, regulatory framework for securities markets has become increasingly sophisticated. The year 2016 sees the introduction of accountability mechanisms in corporate resolution processes through the means of the Insolvency and Bankruptcy Code. In recent times, the Enforcement Directorate, the CBI, and the Serious Fraud Investigation Office have been used more aggressively against corporate offenders by investigative agencies.

## **B. Research Questions and Thesis**

The paper aims to answer the following main research question: Is the legal framework in India sufficient enough to tackle white collar crime and enable more meaningful accountability of the corporate? If the situation is not fine, the necessary reforms needed are?

The thesis of the paper is that in spite of the extensive legislative development in India, the laws regulating white-collar crime and corporate accountability suffer from structural deficiencies due to their fragmented regulatory jurisdiction, poor enforcement capacity, procedural bottlenecks in prosecution, and the absence of a coherent corporate criminal liability doctrine. There is a need for reform in legislation, institution and procedure.

## **C. Research Methodology and Design.**

The study uses doctrinal and comparative methodology to examine primary materials including statutes, judgments and regulatory orders as well as secondary scholarly texts. The United States, the United Kingdom and the European Union provide comparative material. The paper proceeds as follows: Section II studies empirical literature. The examination of the Statutory Framework of White Collar Crime in India is done in Section III. The doctrine of corporate criminal liability is analysed in Section IV. Heading of section V is “Evaluation of enforcement mechanisms” Section VI performs comparative analysis. Finally, we present our conclusions and recommendations in Section VII.<sup>4</sup>

# **II. REVIEW OF EXISTING LITERATURE**

## **A. Existing Scholarship**

The last few years have witnessed substantial academic engagement with white collar crime and corporate accountability in India, although serious analytical gaps still exist. The basic study of Batra on economic offences in India is a comprehensive survey of the law, several legislations have come in the meantime. The Companies Act, 2013 and the Insolvency and Bankruptcy Code, 2016, and a few other

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<sup>4</sup> Companies Act 2013, s 447.

legislations have been enacted. Goswami's the failure of corporate governance and law in India: has the Corporate Governance Failure in India made Way for White Collar Crime? The Corporate Sector Developments Carry Significance Rash B-7474 J C

The analysis of the Prevention of Money Laundering Act Srikrishna and Chatterjee is rather new. It looks at the constitutional facets of the investigative and attachment provisions with a view to the Supreme Courts jurisprudence. The study undertaken by Varottil on corporate governance under the Companies Act, 2013 provided analytical foundations for understanding the governance framework and its implications for white collar crime prevention and accountability. The comparative study of securities regulation in India with the model of the United States identified big gaps in enforcement capacity and prosecution.<sup>5</sup>

## **B. Identified Gap**

The review points out key gaps which this paper attempts to fill. A systematic analysis of the interaction of the several statutory regimes regulating white collar crime as components of an integrated accountability framework is not available. Despite the importance of the doctrine of corporate criminal liability in India for accountability outcomes, not enough analytical scrutiny has been done on it. The role of multiple investigative agencies as well as the inter-agency coordination and prosecution outcome record in the enforcement dimension has not been comprehensively treated in the literature.

## **III. STATUTORY FRAMEWORK FOR WHITE COLLAR CRIME IN INDIA**

### **A. The Companies Act, 2013**

elaborate white collar crime law regarding corporations.

Section 447 under Companies Act, 2013 defines fraud as including any act, omission, concealment of fact, or abuse of position committed by any person on the intent to deceive, to gain undue advantage for himself or any other person, or to injure the interests of the company or its shareholders, creditors or any other person. The fraudulent act and punishment under section 447, imprisonment for a term of not less than six months which may extend to ten years and with fine which shall not be less than the amount involved in fraud and which may extend to three times of such amount. Fraud that affects the public interest invites a minimum term of three years imprisonment.

Serious Fraud Investigation Office: The Serious Fraud Investigation Office (SFIO), incorporated under the Companies Act, 2013, Section 211, is a multi-disciplinary agency which has been mandated for

<sup>5</sup> Prevention of Money Laundering Act 2002, ss 3, 5.

investigation of corporate frauds which are serious and complex in nature. The SFIO is composed of professionals with finance, accounting, law and investigation background. The reports from the information are valid as evidence in any court and the officers have the power to arrest, search and seize documents. After its statutory establishment under the 2013 Act, the SFIO has investigated a number of high-profile corporate fraud cases like Satyam Case, IL&FS Case, many more financial misreporting and misappropriations.<sup>6</sup>

The act also contains provisions on related party transactions under Section 188 which aim at preventing the tunnelling of corporate resources to promoters and other connected persons. The requirements for the composition of the board including mandatory independent directors u/s 149 and audit committee requirements u/s 177 seek to create internal governance safeguards against frauds. The Act, under Section 195, prohibits insider trading in securities; this prohibition is further elaborated through SEBI's regulations on insider trading.

The National Financial Reporting Authority (NFRA) has been established under Section 132 of the Companies Act 2013 as an independent regulatory authority for the auditing and accounting standards. As manipulation of financial reporting is the key mechanism of corporate frauds, regulation of auditor conduct and audit quality is directly relevant to white-collar crime prevention. The authority will look into any case of misconduct by auditors and audit firms and impose penalties.

## **B. Prevention of Money Laundering Act, 2002**

The Prevention of Money Laundering Act, as updated in 2002, is an important piece of legislation that India uses to combat money laundering. It is one of the most powerful pieces of legislation in the vast arsenal against white-collar crime in India. According to PMLA, Money laundering is any action which is connected with process of crime and is a crime. It comes with punishments of rigorous imprisonment -3 years to 7 years. Similarly, it extends to 10 years in special cases with a fine.

The best enforcement tool of the PMLA is its attachment and confiscation powers. The Enforcement Directorate may attach properties that are allegedly the proceeds of crime for an initial period of 180 days, subject to confirmation by the Adjudicating Authority. After trial, the government may take possession of attached properties. PMLA specifies a wide variety of scheduled offences as predicate offences for money laundering. These offences include under Companies Act, IPC, SEBI Act, Customs Act, and several other statutes.

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<sup>6</sup> Securities and Exchange Board of India Act 1992.

The Supreme Court in *Vijay Madanlal Choudhary v. Union of India* (2022) substantially upheld the constitutional validity of the provisions of PMLA including reverse burden of proof, power of arrest and bail conditions. However, some subsequent decisions have impacted the interpretive scheme that was adopted in this ruling.

The Enforcement Directorate and the courts have interpreted the PMLA widely on an expansive basis, and now, it is being deployed in several major white collar crime investigations..<sup>7</sup>

### **C. Securities Laws and SEBI Regulations**

The regulations and act framed under the Securities and Exchange Board of India Act, 1992 oversee the working of securities markets and prevent market abuse. The powers of investigation, adjudication and enforcement of SEBI in the case of violations of securities laws including insider trading, market manipulation, fraudulent and unfair trade practices and failure of disclosure obligations are overall.

SEBI (Prohibition of Insider Trading) Regulations, 2015 provide a detailed scheme covering prohibition against trading in securities on the basis of unpublished price sensitive information. The 2015 Regulations were introduced of whom a person is to be connected and strengthened the obligation of firms to maintain a structured digital database of persons having access to price-sensitive information and a framework for legitimate purposes, Chinese Walls and trading windows. Over the years, the Securities and Exchange Board of India has increasingly focused on prosecuting cases of insider trading.

The SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities) Regulations, 2003 prohibits a range of manipulative and deceptive practices that include front running, churning, pump and dump and misleading statements. The authorities for SEBI include imposing monetary penalties, debarment from the market, disgorgement of profits, and even referring matters to law enforcement agencies <sup>8</sup>

### **D. Other Relevant Legislation**

The section 420 of Indian Penal Code gives civil remedy for commission of fraud and cheating. Usually, a white collar crime will also involve a fraudulent mistake and non disclosure of facts.

The provisions of the Income Tax Act regarding concealment of income and false statements effectively address tax evasion, a major white-collar crime and concern of the authorities. The Black Money

<sup>7</sup> Insolvency and Bankruptcy Code 2016, s 66.

<sup>8</sup> *Standard Chartered Bank v Directorate of Enforcement* (2005) 4 SCC 530.

(Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 aims specifically at offshore tax evasion and undisclosed foreign assets.

The Insolvency and Bankruptcy Code, 2016, brought in a number of provisions that created accountability mechanisms relevant to white-collar crime. A good example is the provisions on fraudulent trading under section 66. The Code was employed to recover the siphoned off assets by the promoters and to impose liability on those who were responsible for fraudulent conduct in relation to corporate insolvency.

## **IV. CORPORATE CRIMINAL LIABILITY: DOCTRINE AND CHALLENGES**

### **A. The Identification Doctrine and Its Limitations**

Attributing criminal liability to corporations which are legal entities devoid of physical existence and of mind presents a fundamental jurisprudential problem. The Indian courts have a good past of applying the identification doctrine. The acts and mens rea of the directing mind and will of the company, i.e., its senior officers and directors, are attributed to the company, for criminal liability.

According to the ruling of the Supreme Court in the case of *Standard Chartered Bank v. Directorate of Enforcement* (2005), it was held that a corporation could be prosecuted for offences that require proof of mens rea. Moreover, the court could impose the penalty of fine upon the company even when the statute provides imprisonment as an alternative or additional punishment. This meant that earlier clashing views as to whether corporations may be prosecuted for offences requiring a mental element were resolved, as was the fine component of criminal punishment on corporations.

Nonetheless, the identification doctrine cannot be relied upon to sufficiently hold a corporation to account. It is effective when the criminal behaviour can be traced to clearly identifiable seniors who are the controlling mind of the company. It does not work well in large complex organisations because the wrongdoing may be diffuse. That is just because the wrongdoing may take place at multiple levels of management, arise from systemic rather than blatant failures of oversight, or reflect the corporate culture rather than identifiable humans.<sup>9</sup>

### **B. Vicarious Liability and Statutory Attribution**

In India, a lot of white collar crime laws make directors, officers and managers vicariously liable for company's offences. In the context of statutory offences, the essential point that requires emphasis is

<sup>9</sup> *Vijay Madanlal Choudhary v Union of India* (2022) SCC OnLine SC 929.

that, the offences under the Companies Act, 2013 and the Negotiable Instruments Act, 1881 are indictable offences while the offence under the Income Tax Act, 1961 is a non-indictable offence.

The Supreme Court has held that merely being described as a director or officer is not sufficient to attract vicarious liability and that the complaint must contain a specific averment that the person was in charge of and responsible for the conduct of business at the relevant time. In several cases including *Pooja Ravinder Devidasani v. State of Maharashtra*, 2014, *Ashok Shewakramani v. State of Andhra Pradesh*, 2023 where proceedings against directors who aren't involved in day-to-day management are squashed by the Court, this interpretative position has been applied.<sup>10</sup>

### **C. The Challenge of Wilful Defaulters**

The Reserve Bank of India's framework for classification of wilful defaulters relates to a particular kind of white-collar behaviour which involves non-repayment of bank loans despite having the capacity to pay, siphoning off of funds, or misrepresentation. The banks must report wilful defaulter to credit information companies as state that wilful defaulters do not get any further credit from our capital markets. The framework on wilful defaulters has been criticized for failing to deter the very conduct it seeks to prevent, as many famous defaulters have already left the country before any action could be taken against them.

## **V. ENFORCEMENT MECHANISMS AND THEIR EFFECTIVENESS**

### **A. Multiplicity of Enforcement Agencies**

India's white collar crime enforcement landscape is defined by various agencies which have overlapping and sometimes competing jurisdictions. The cases of frauds in public sector banks and other matters referred to it are investigated by CBI. The Enforcement Directorate investigates monetary laundering and foreign exchange aforementioned violations. The SFIO probes corporate fraud under the Companies Act. SEBI establishes rules assets. The Income Tax Department probes offences of tax evasion. The Central Board of Indirect Taxes and Customs deals with customs and frauds related to indirect taxes. State police has jurisdiction over offences under the IPC.

There is poor coordination due to such multiplicity of agencies. Simultaneously, investigating agencies may probe the same set of facts under different provisions, creating procedural complications, chances of conflicting findings and opportunity for forum shopping and harassment. The investigation of white-

<sup>10</sup> *Sahara India Real Estate Corporation v SEBI* (2012) 10 SCC 603.

collar crime does not have a statutory framework for inter-agency coordination, which is primarily based on informal cooperation and executive direction. The major cases of IL&FS fraud and the PNB-Nirav Modi case illustrate the potential and the lacuna of multi-agency investigation.<sup>11</sup>

## **B. Institutional Capacity Constraints**

All the important enforcement agencies in India suffer from serious limiting institutional capacity constraints which limits their effectiveness to investigate and prosecute complex white collar crimes. The CBI has always been under the scrutiny for its staff, infrastructure, and political pressure. Despite rapid scale-up in recent years, the Enforcement Directorate still struggles with the massive number of matters that are referred to it. The SFIO is a small organisation when measured against the scale of corporate fraud in India.

Forensic capacity in digital forensics and forensic accounting is important to investigate white-collar crimes as they involve complex financial structures and digital forensic evidence but Indian enforcement agencies lack these capacities. The presence of specialised expertise in courts and prosecutors are both lacking when it comes to complex financial matters, which causes deferments in the proceedings. Furthermore, it also makes it difficult to understand and present complex evidence.<sup>12</sup>

## **C. Judicial Delays and Procedural Challenges**

The criminal justice system in India suffers from such severe delays that it may be the most serious structural impediment to the effective prosecution of white collar crime. Corporate fraud cases can take years, even decades, before actually making it to trial. For example, more than twenty years after the scandal, litigation concerning the Harshad Mehta scam cases was ongoing. Judicial delays deprive victims of justice, allow perpetrators to squander their assets, incentivize the accused to prolong the trial by resorting to procedural tactics, and lastly reduce the deterrent value of criminal prosecution.

The complication of being delayed is added to further by the complex procedures which occur due to overlapping courts in criminal courts, civil courts, SEBI's adjudicatory proceedings, NCLT proceedings under the IBC and of the Adjudicating Authority under the PMLA. The accused persons often delay proceedings by filing writ petitions at different stages.<sup>13</sup>

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<sup>11</sup> *SEBI v Rakhi Trading Pvt Ltd* (2018) 13 SCC 753.

<sup>12</sup> *Pooja Ravinder Devidasani v State of Maharashtra* (2014) 16 SCC 1.

<sup>13</sup> Companies Act 2013, s 211 (Serious Fraud Investigation Office).

## **D. The Bail and Asset Attachment Regime**

The stringent bail conditions under the PMLA which ask the accused to convince the court that he or she is not guilty as well as his or her likely to commit an offence while on bail has invited controversy. According to the supporters of strict bail conditions, economic offenders can leave the country with their assets if the bail conditions are not strict, as seen in the case of fugitant economic offenders. The presumption of innocence and the constitution's right to bail are allegedly violated by the conditions. The Fugitive Economic Offenders Act, enacted in 2018, addresses the issue of persons fleeing to foreign jurisdictions to avoid prosecutions. This allows for the attachment and confiscation of their properties in India.

## **VI. COMPARATIVE ANALYSIS: INTERNATIONAL FRAMEWORKS**

### **A. United States: Comprehensive Enforcement Architecture**

The United States has the most sophisticated system in the world for prosecuting white-collar crime and holding companies accountable. The American approach has several lessons for India, to consider.

The Department of Justice extensively uses deferred prosecution agreements and non-prosecution agreements to resolve corporate criminal liability. Under these mechanisms, a corporate entity agrees to pay fines, implement compliance programmes, cooperate with ongoing investigations, and submit to independent monitoring in exchange for the deferral or abandonment of criminal charges. Corporations, including major global banks, pharmaceutical companies and defence contractors, have paid billions of dollars in penalties and have made significant behavioural changes as a result of DPAs. So far, India has not used this mechanism, although policy discussions on the introduction of deferred prosecution in the case of corporate offences.

In the United States Federal law, a corporation is liable for the criminal acts of its employees who are acting within the scope of their employment and at least in part to benefit the corporation, via the doctrine of respondeat superior. The broad standard of corporate liability of the USA makes corporations in USA more legally vulnerable than those in India and creates stronger incentives for robust compliance programmes.

The USA has established wide-ranging whistleblower incentive programmes, including those under the Sarbanes-Oxley Act and Dodd-Frank Act, which incentivise the reporting of false claims and corporate fraud through monetary gains and protections. Whistleblower tips have sparked thousands of actions and

brought in billions due to the SEC. The framework for whistle-blower protection in India is relatively underdeveloped.<sup>14</sup>

## **B. United Kingdom: Failure to Prevent Offences**

The UK has implemented a powerful and innovative model of corporate criminal liability through the offence of failure to prevent, originally established in the Bribery Act 2010 in respect of bribery offences and subsequently extended to tax evasion in the Criminal Finances Act 2017. Under this model, the corporation is guilty of the offence if a person associated with it commits the specified act unless the corporation can prove that it had in place adequate procedures to prevent that person from committing the act. The 2023 Economic Crime and Corporate Transparency Act further extends liability for failure to prevent fraud.

The failure to prevent model overcomes a critical problem with the identification doctrine. This doctrine, applied by courts to corporations, requires prosecutors to identify a directing mind who did the act causing the offence. Alternatively, the failure to prevent model shifts the onus to corporations to show that they had adequate compliance procedures. This framework provides corporations with a strong incentive to develop authentic compliance programs. India can adopt this model meaningfully for major white collar crimes like bribery, fraud, and money laundering.

## **C. European Union: Harmonised Standards**

The European Union has developed harmonised minimum standards for corporate criminal liability in multiple areas through directives on money laundering, market abuse, fraud affecting EU financial interests, and environmental crime. The EU's approach emphasises the combination of effective, proportionate, and dissuasive penalties applicable to both natural and legal persons. The Market Abuse Regulation provides for stringent sanctions including criminal penalties for insider trading and market manipulation across EU member states.<sup>15</sup>

## **VII. CONCLUSION AND RECOMMENDATIONS**

The above analysis shows that India's law and institutional architecture on white collar crime and corporate accountability is quite a lot. India has a comprehensive legal framework to tackle corporate crime. In this context, the Companies Act, 2013, the PMLA, the SEBI regulatory framework, the IBC

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<sup>14</sup> Companies Act 2013, s 132 (National Financial Reporting Authority).

<sup>15</sup> Fugitive Economic Offenders Act 2018, ss 4, 12.

and allied legislation considered together constitute a significant response to the problem. As will have been seen from the paper, it would appear that there are still significant structural deficiencies that exist.

### Suggestions for Improvement

Due to the limitation of the identification doctrine, almost all corporate crime in India has remained outside the ambit of the law with little or no effective legal sanction. Consequently, India should adopt a holistic comprehensive Corporate Criminal Liability framework. The framework should go over the identification doctrine. Further, it should achieve a failure to prevent model similar to the UK Bribery Act for important classes of corporate crime like fraud, bribery, tax evasion and money laundering. Under this framework, there will be strong incentives for corporates to invest in genuine compliance programmes, as it will overcome the evidentiary challenges that hinder prosecution.

Furthermore, the state must establish a statutory White Collar Crime Coordination Authority which will bring the CBI, the ED, the SFIO, SEBI, and others under a coordinated investigative and prosecutorial framework with clear protocols for information sharing, joint investigation, and allocation of prosecutorial responsibility. The current ad hoc coordination among agents is not enough to tackle sophisticated corporate crime.

India must set up courts that will be expert in white-collar crime, which ought to be modelled on the lines of dedicated commercial courts. The judges in these courts must be trained in financial and company matters and the procedural rules ought to be designed to ensure speedy disposal. Prolonged Delay In The Existing Criminal Justice System Erodes The Foundational Deterrence.

India should enact a sound Whistleblower Protection and Incentive Act, which ought to provide meaningful legal protection against retaliation and financial incentives to whistleblowers who report corporate fraud based on the US SEC whistleblower programme.<sup>16</sup>

To be sure, India should have a formal Deferred Prosecution Agreement mechanism to deal with corporate offence cases so that the enforcement agencies may reach a negotiated settlement of comprehensive remedies including an appropriate financial penalty, compliance programme, independent monitor, cooperation with the continuing investigation, etc., in cases where the DPA will be in public interest in lieu of criminal prosecution of corporate entities.

To ensure the effective performance of enforcement agencies like SFIO, Enforcement Directorate, and the enforcement division of SEBI, the workforce, forensic accounting and digital forensics capabilities

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<sup>16</sup> Umakanth Varottil, *Indian Corporate Law* (OUP 2019) 212.

have to be strengthened significantly. It is important to provide remuneration which is enable and retain talent.

The IBC will be used as a way out for promoters to avoid personal liability for fraudulent conduct that caused the corporate debtor's insolvency. Seventh, legislative clarity is needed on the relationship of corporate accountability under the Companies Act with IBC to avoid this outcome.

In summary, though there has been reasonably strong evolution of Indian law relating to white collar crime and corporate accountability, it is not sufficiently coherent, coordinated, and practical to deter and sanction sophisticated corporate crime which is increasingly threatening India's economic growth, investor confidence, and institutional integrity. The proposed reforms, suggested in this paper which are based on a comparative experience but mindful of India's legal and institutional context, can lead to an effective corporate accountability regime.<sup>17</sup>

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