

WHITE COLLAR CRIMES - BACKGROUND | LEGAL FRAMEWORK WITH PROPOSED SUGGESTIONS

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ABSTRACT

'He is not an enemy who holds a sword while standing against you. But he is the one who stands behind you while pointing the sword towards you'. The educated ones, the ones in a position of trust, and those with higher economic power who are treated as lifesavers of an economy, the backbone of the country are turning into the reason for crumbling economies. They play a vital role in the rich becoming richer and the poor becoming poorer. This type of situation is hard to control, but determining whether one can mitigate the losses occurring or not is up to the legislation. This Article covers the definition of white-collar crimes and how the decorated positions can be misused. Further, it analyses a few key Acts giving a legal perspective for the scenario. A concise comparative analysis is also done with the United States of America's available legislation. On a further note, the future scope of handling white-collar crimes in India is discussed.

Keywords: Definition, Legal View, Future Scope.

INTRODUCTION

'Money is the root of all evil'¹- This saying explains how money or excessive focus on wealth may lead to undesirable or negative results. Other than wealth there is a need to focus on other aspects of life such as morals, ethical values, social responsibility, empathy and many such. Ignoring them will always lead to adverse effects. When money becomes a need from want, then the consequences thereby will affect not only the offender but all the innocent beings as well. White-collar crimes are an example of such circumstances. They are financially motivated crimes which is the reason they are known as economic offences also. The elite position holders commit such crimes even though there is no need for them to do so. That is why greed plays an important role in committing such crimes. The individuals committing such crimes are fewer in number but the affected people are larger in number. There are several

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¹ 'Dictionary.com Meanings & Definitions of English Words' (Dictionary.com,2023)

<<https://www.dictionary.com/browse/the-love-of-money-is-the-root-of-all-evil>> accessed 14 September 2024.

sections in Indian Acts such as the Companies Act - 2013², Bharatiya Nyaya Sanhita - 2023³, Banking Regulation Act - 1949⁴ and many more where such offences are considered punishable and the punishments were laid down as well. But considering the need separate Acts were introduced to combat financial crimes. They are the Prevention of Money Laundering Act⁵, the Fugitive Economic Offenders Act⁶, and the inapplicability of limitation Act⁷. But as the technology is emerging rapidly it is becoming hard to prosecute the offenders. This leads us to the question Does India have any room for improvement to tackle such crimes and is India ready to do so?

To derive the answer let us delve into the basic concept of the White collar crimes.

WHAT ARE WHITE COLLAR CRIMES?

“A crime committed by a person of high social status and respectability in the course of his occupation.”- Edwin H. Sutherland⁸.

- These are considered crimes. Crimes are something that are illegal. When an individual or an entity benefits at the cost of others. Here the cost of others implies innocent individuals who pay the price for others' wrongdoing. Such activities are against public policy and hence considered crimes.
- It is committed by a person. The word person is not exhaustive. A group of individuals, entities or a company fall under this category.
- The person committing this crime is from a respectable background. The respectable background is often referred to as elite⁹ or elevated or higher position. The positions here can be classified into 3 types viz., Education or knowledge, Economics, and Social.
- They are non-violent. The reason is that greed for wealth is considered one of the major

² The Companies Act 2013

³ The Bharatiya Nyaya Sanhita 2023

⁴ The Banking Regulation Act 1949

⁵ The Prevention of Money-Laundering Act 2002

⁶ The Fugitive Economic Offenders Act 2018

⁷ The Economic Offences (In applicability Of Limitation) Act 1974

⁸ Sally S. Simpson, 'White-Collar Crime' (*obo*, 2009)

<[⁹ Sanjay Sarraf, 'Analysis of Edwin Sutherland Definition of White Collar Crime and with Levelled Criticism' \(2021\) <<https://ssa.lawyer/wp-content/uploads/2021/09/Analysis-of-Edwin-Sutherland-definition.pdf>> accessed 14 September 2024](https://www.oxfordbibliographies.com/display/document/obo-9780195396607/obo-9780195396607-0020.xml#:~:text=Later%2C%20in%20a%20systematic%20study,9).> accessed 14 September 2024.</p></div><div data-bbox=)

causes of white-collar crimes. Even though they are non-violent they affect millions of lives directly and indirectly or even worse the whole economy.

BACKGROUND

It would be impossible to state when the white-collar crimes began to occur. As there are no official reports available for the same. However, the term white-collar crimes was introduced in the early 20th century. A simple timeline can be established under four heads to get a bird's eye view of the emergence of such crimes from that time.



1. **Pre-20th century:** Before the 20th century i.e. before the emergence of the term white collar crimes, such types of crimes used to exist. Cases like the South Sea Bubble¹⁰ or the Tammany Hall Corruption¹¹ shed light towards financial offences which occurred on a large scale. Some of the forms of the crimes are corruption, bribery, manipulation of stock prices and so on.
2. **Early 20th century:** Edwin H. Sutherland who is an American sociologist and well-known criminologist wanted to name such crimes as they are different from other financial crimes. In 1939 an article “American Sociologist Review” was published by the professor in which the term ‘White collar crime’ was introduced¹². White collar is commonly used to refer to those who are from above-average backgrounds especially economically. When associated with the term crime it becomes the crime committed by those from good backgrounds or those who are leading a good life. The belief that not only people from lower socio-economic status but also people with higher education, greater financial resources and elevated status in society can also commit financial crimes led to the foundation of the idea.¹³

¹⁰ Terry Stewart, ‘The South Sea Bubble of 1720’ (*Historic UK*24, November 2023) <<https://www.historic-uk.com/HistoryUK/HistoryofEngland/South-Sea-Bubble/>> accessed 14 September 2024.

¹¹The Editors of Encyclopaedia Britannica ‘Tammany Hall Summary’, (*Encyclopaedia Britannica*, 22 May 2020) <<https://www.britannica.com/summary/Tammany-Hall>> accessed 14 September 2024.

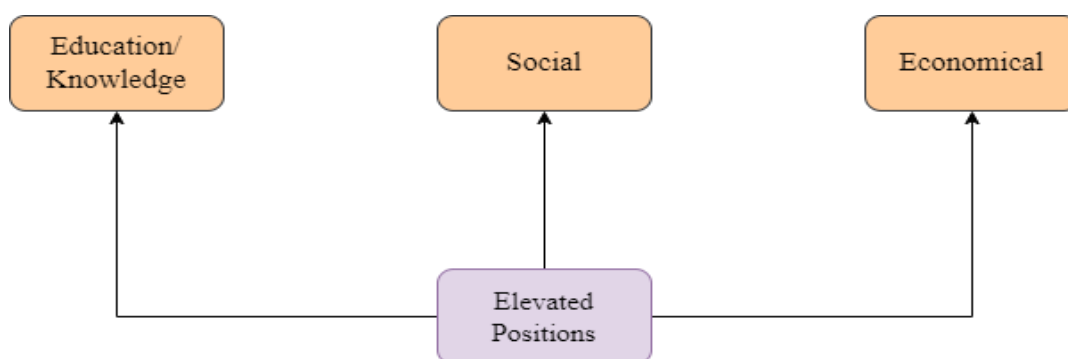
¹² Sanjay Sarraf, ‘Analysis of Edwin Sutherland Definition of White Collar Crime and with Levelled Criticism’ (*ssa.lawyer*, 2021) <<https://ssa.lawyer/wp-content/uploads/2021/09/Analysis-of-Edwin-Sutherland-definition.pdf>> accessed 14 September 2024.

¹³ *ibid.*

3. **Post WW-II** - This is the period when major economies were reviving due to which rapid industrialization took place. It is an important period as after two major wars economies required revival and major countries that were free from colonial rule were also trying to become self-reliant. So for the same reason, massive industrialization and development of public and private sectors took place. Many eminent personalities who remained unaffected or least affected during the wars tried to stabilize their position and help the economy to revive. As the elevated people increased the crimes also increased. Some of the major crimes include the Watergate scandal¹⁴, the Michael Milken and Drexel Burnham Lambert Junk Bond Scandal (1980s)¹⁵, the Enron Scandal¹⁶ and many more.
4. **Era of Digitalization** - This is also an important period after World War 2. The reason is digitalization. As the internet became more prevalent crime has also risen significantly, the technological transformation has made crimes easier. Panama papers, Silk Road, and Bitcoin money laundering are some of them.

CLASSIFICATION OF POSITION

In these types of crimes as mentioned earlier the individuals or groups are from elevated positions. The elevated positions can be broadly classified into 3 types. One may possess any one of them or all of them.



One who is well-versed in the field or has higher knowledge than others due to experience is the one with a higher educational background. They are well aware of the procedures, policies

¹⁴Rick perlstein 'Watergate Scandal', (*Encyclopaedia Britannica*, 21 August 2024) <<https://www.britannica.com/event/Watergate-Scandal>> accessed 14 September 2024.

¹⁵The Editors of Encyclopaedia Britannica 'Michael Milken', (*Encyclopaedia Britannica*, 5 August 2024) <<https://www.britannica.com/money/Michael-R-Milken>> accessed 14 September 2024.

¹⁶Troy Segal 'Enron Scandal and Accounting Fraud: What Happened?', (*Investopedia*, 3 June 2024) <<https://www.investopedia.com/updates/enron-scandal-summary/>> accessed 14 September 2024.

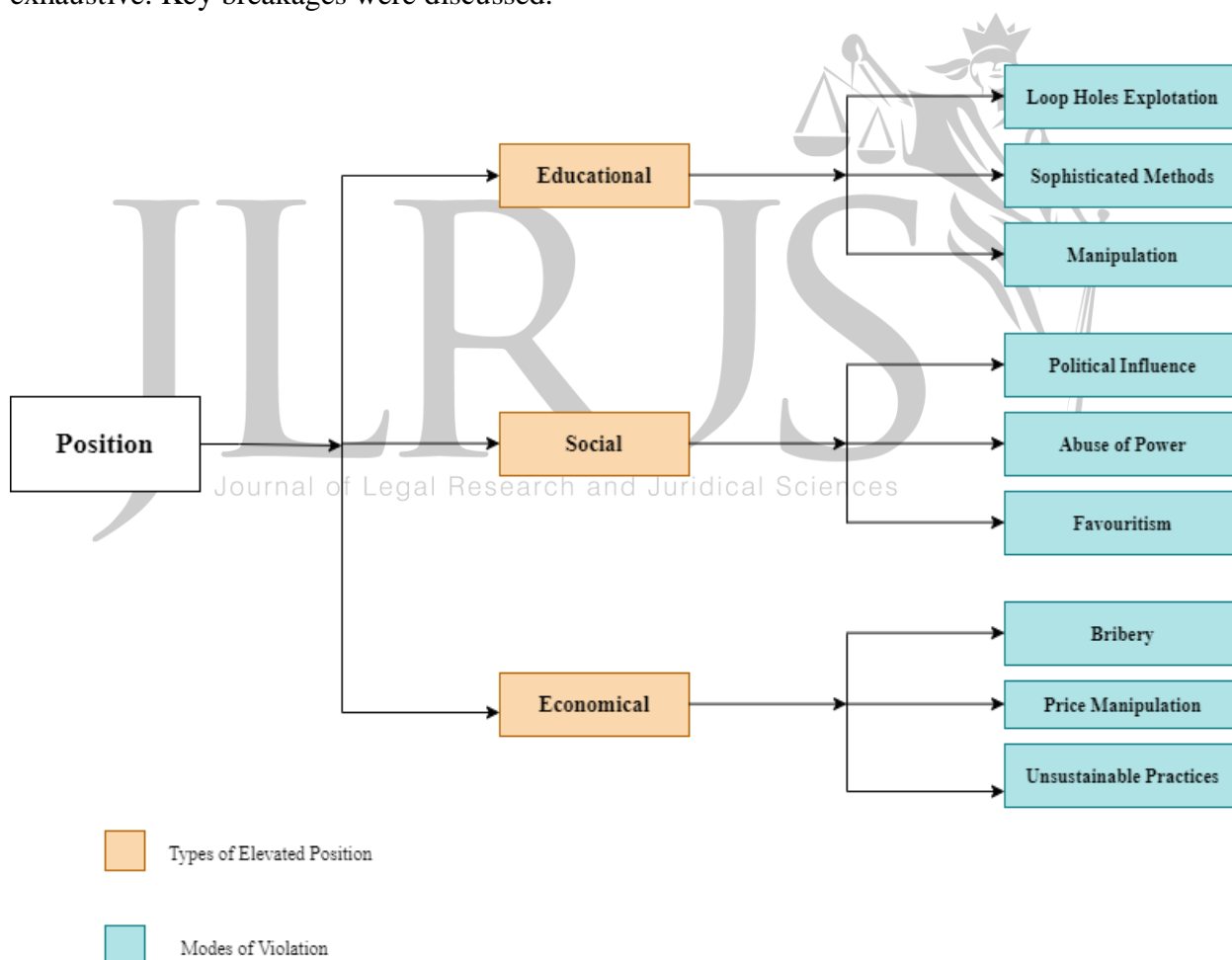
or any other concerned matter.

One who is in a respectable position such as a Judge or a Public Servant. Here the position will bring more respect in turn prestige, pride, and reputation to the person. Thereafter it improves the societal standard of the person.

The one with a sound financial position is said to be the one with an elevated economic background. The strong financial position may be self-made or hereditary.

Violation In Each Position

To understand the WCC profoundly, the diagram attested would be helpful. The flowchart further organizes the fundamental violations in each scenario. The violations are not exhaustive. Key breakages were discussed.



Each type can be misused in any of the mentioned ways or any other excluded ways. The

flowchart covers the major forms of violations.

- **Educational / Knowledge:** The words educational and knowledge hold different meanings. Education refers to a formal learning process through which knowledge can be gained whereas knowledge can be gained either through education or any other means such as exposure, experience or any other.

As it is said ‘an educated mind without a moral compass is like a ship without a rudder’. An individual irrespective of educational background if works without moral principles, ethics or any such social responsibility is bound to take an immoral path. Such as manipulation of stock prices, finding loopholes and thereby exploiting them at the cost of others. Sophisticated methods are invented to cover up such offences.

- **Social Status:** Abuse of Authority, the power over others is an easy form of committing a crime, the laid-back attitude of not getting caught, the confidence of getting away with it and thereafter avoiding the consequences. There are many such cases where due to political influence the witness changed the statements, and the crime never reached the court or even the police station.
- **Economical position:** ‘Money makes the world go around’. As said using money can recruit others to commit offences such as stock manipulation or adopt any such unsustainable practices. If by any chance they come under scrutiny of authorities bribing them would help them get away with it. If unfortunately, they need to appear in front of court they are more than capable of hiring a skilled legal team. Bribing, unsustainable practices, price manipulation, and corruption are some of the forms where the financial position is violated or misused.

LEGAL PROVISIONS IN INDIA

India doesn't have any specific statute that solely deals with white-collar crimes such as the Prevention of White collar crimes Act. But there are multiple Acts and statutes which deal with such crimes. Some of them are the Bharatiya Nyaya Sanhita¹⁷, the Companies Act¹⁸, the Securities Exchange Board of India Act¹⁹, the Prevention of Money Laundering Act²⁰, the

¹⁷Bharatiya Nyaya Sanhita 2023

¹⁸The Companies Act 2013

¹⁹Securities And Exchange Board of India Act 1992

²⁰The Prevention of Money-Laundering Act 2002

Banking Regulation Act ²¹, the Information Technology Act ²², the Economic Offences (in the applicability of limitation) Act²³, the Fugitive Economic Offender Act²⁴.

All the mentioned Acts' sole focus might not be the white collar crimes but they deal with it as per the context and necessity. Such as the SEBI Act coming into the picture for stock market-related issues, the Banking Regulation Act when the offence took place in a bank or any such.

Some of the recognised offences are fraud, dishonesty, illegal, forgery, cheating, money laundering, insider trading, manipulation, identity theft and many more.

The punishment for such offences includes fine, imprisonment, confiscation of the property or related assets, blacklisting the offender etc.,

LEGAL VIEW OF WHITE COLLAR CRIMES

The legal system serves as the backbone of any nation. The reasons are to ensure justice is served thereby gaining public confidence. It can also be further derived as a codified or well-structured legal system that is necessary for an organised nation. Let us delve into a few concepts which are used to tackle the crimes.

THE PMLA

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Background: The Prevention of Money Laundering Act, 2002 was introduced in the nation in 2005 to tackle the growing issue of laundering illegally obtained money to a legitimate economy. It was in 1989 when the UNGA passed a resolution to combat money laundering through drug trafficking. It further advised all the nations to introduce legislation in their countries as well. With the advice of the Narasimhan committee, the Act was introduced²⁵.

Scope: Even though the primary objective of the Act or in a better way the foundation of the Act was to combat drug trafficking, the PMLA didn't restrict itself for the same. A broader perspective of Money laundering is considered and implemented. The definition is broader.

An adjudicating body consisting of a chairperson + director and any such required officers are

²¹The Banking Regulation Act 1949

²²The Information Technology Act 2000

²³The Economic Offences (In applicability Of Limitation) Act 1974

²⁴The Fugitive Economic Offenders Act 2018

²⁵ 'Introspecting PMLA, 2002' (*Drishti IAS*, 2 April 2024) <<https://www.drishtias.com/daily-updates/daily-news-editorials/introspecting-pmla-2002>> accessed 15 September 2024.

appointed to investigate, attachments, confiscation, identification and many other concerned activities.

Proceeds of the crime²⁶: All the persons directly and indirectly involved are considered to be guilty of the offence of money laundering. At the same time to protect the interest of the 3rd party a list is laid down which are considered offences such as ‘concealment, possession, acquisition, use, projecting as untainted property, claiming as untainted property’²⁷.

Criticism: The PMLA since its enactment has received major criticism. The critics targeted a few provisions and claimed them to be unreasonable. Such as the Act has deviated from its original course i.e., combat drug trafficking. It was also considered that the baile conditions were too rigid. Along with them, there were repetitive violations of section 19(1)²⁸ which clearly states that the reason for arrest must be communicated in written form, but the officers during the early stages of its enactment violated it. Further, the burden of proof is laid down on the accused, it would be better if both the parties present their piece of evidence. The major criticism is that the officers or adjudicating body is conferred with excessive powers, where there are high chances of being misused, it may either be unnecessary to target an individual or entity or they may overlook some of the fraudulent activities.²⁹

Future Scope: The Act was enacted in 2005 when the digital currency was not prevalent, or as a whole when digitalization was not vast. The emerging technology makes it difficult to detect money laundering so further technological upgradation for easy detection is necessary. Better international relations are necessary as the crime doesn't have borders. The Act in general is under scrutiny for some of the concerned matters, but the outcome may be desirable.

FUGITIVE ECONOMIC OFFENDERS ACT 2018

Background: This act was enacted in the view of those economic offenders who try to evade the legal proceedings bypassing the borders of the nation. They either refuse to attend the proceedings and remain in a foreign country or they might not be in any contact with any possible person. Vijay Mallya's case serves as the best example of the same. The n during this situation it becomes difficult to move further in the proceedings or investigations, inspections,

²⁶The Prevention of Money-Laundering Act 2002, s 2(u)

²⁷ The Prevention of Money-Laundering Act 2002, s 3(i)

²⁸ The Prevention of Money-Laundering Act 2002, s 19(1)

²⁹ ‘Introspecting PMLA, 2002’ (n 25)

prosecution or any other concerned activity. Therefore this Act was enacted.

Scope: Under this act, an individual can be declared as a fugitive economic offender. To do so an application must be filed with proper reasoning by concerned authorities to the Special Court, where the reason of belief must be stated with certain proofs. This Act enables the authorities to search, inspect, mark thereby seize the properties of such offenders or from any other person in connection with them. The value of the offence must be 100 crore and above. An ex-parte proceedings can be conducted in this case. The burden of proof is laid down on the adjudicating body.

Criticism: Multiple critics have pointed out the excessive power vested in the authorities, which might help bring justice but also might trap the innocent ones.

THE ECONOMIC OFFENCES (INAPPLICABILITY OF LIMITATION) ACT

The limitation period of offences under certain acts is not applicable under this Act. The limitation period refers to the limit of time under which any legal action can be taken which is covered in the Limitation Act³⁰. The time limit differs from case to case. However, according to this specific Act, such a time limit does not apply to certain economic offences which are laid down in the Act.

COMPARATIVE ANALYSIS

The United States of America

White-collar crimes are not limited to India. It is a worldwide issue where one person's greed destroys the lives of hundreds and thousands or even more. The United States of America has multiple statutes under its wing to combat white-collar crimes. We can say that the system is well structured as there are laws against insider trading whereas in India it is covered under the Security Exchange Board of India Act³¹. In the USA there is a separate Act which is the Securities Act of 1933³² and the Securities Exchange Act of 1934³³ along with the Insider Trading Act³⁴. It can be derived that for serious issues a separate act or law is enacted there. Along with them, some other Acts such as the Dodd-Frank Wall Street Reform and Consumer

³⁰ The Limitation Act 1963

³¹ Securities And Exchange Board of India Act 1992

³² Security Act 1933

³³ Security Exchange Act 1934

³⁴ Insider Trading Sanctions Act 1984

Protection Act 2010 were enacted to oversee financial institutions, especially after the global financial crisis.

Denmark

Denmark reportedly has one of the less white-collar crimes. Experts feel that it is due to their stringent legal provisions. The legal framework of Denmark is comprehensive. Chapter 28 of the Danish penal code³⁵ deals with offences against property which covers offences like embezzlement, fraud, breach of trust and many more. The punishment for the same is fine or imprisonment. The term for imprisonment starts from 18 months and extends up to 8 years based on the offence and its severity.

Denmark also has a separate ‘whistle-blower protection law’ which deals with the protection of whistle-blowers who have acted in good faith. According to the act, a ‘whistle-blowing hotline’ must be set up by each private sector. The hotline must have features such as confidentiality i.e. protection of the identity of whistle-blowers from their superiors. Along with that some provisions such as the report can be made either orally or in written format or both are provided with an option of confirmation and thereby rectification of the report while protecting the identity. On top of that if due to any such report which is made in good faith the individual has faced any retaliation and such is proved then the offender is also punishable. The hotline access must be to the employees, employers any other external parties etc.,³⁶

³⁵Straffeloven 1933

³⁶ “‘Lov Om Beskyttelse Af Whistleblowere’”: Denmark Passes Whistleblower Protection Act’ (*EQS Integrity Line*, 7 August 2024) <<https://www.integrityline.com/expertise/blog/lov-om-beskyttelse-af-whistleblowere/>> accessed 15 September 2024.

Future scope to approach WCC

The WCC are emerging at an alarming rate and tackling them is becoming difficult with the emerging technology. Some areas need better focus to tackle the White collar crimes.

1. Technology

Artificial intelligence, Block Chain Technology and Machine learning can be used to detect such crimes. If used effectively they can even detect the manipulation which makes it harder for the offenders to not get caught while manipulating³⁷.

2. Legal

Introducing new laws is necessary to gain public trust. But a mere introduction may gain public confidence and thereby gain a few more votes in the election. The legislation must also focus on protecting and upholding the integrity of the law, the law must be justice-oriented oriented, provide fair trial. For drafting such law experts' suggestions must be taken not only by legal experts but experts from concerned fields, and criticism must be received and thereby amended. Along with that instead of introducing new ones, they can amend the existing ones themselves.

3. International relations

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Crime is one of the things which doesn't have any borders. Emerging technology aided in the vanishing of the border. A person sitting in a country can defraud someone who is residing on the other side of the globe. So it makes it hard to track the offenders and if tracked, catching them will be more difficult as the offender is from a foreign country. The countries must help each other during catching such offenders.

4. Social Responsibility & Public Awareness

As discussed previously most of them fail to notify such offences as there is a fear within them. Fear of losing a job or anything worse. Whistle-blowing is one of the techniques to catch the offenders. It can be achieved by public awareness. Educating the public from the very beginning i.e. as a part of the school curriculum would be of

³⁷ Kanika Singh et al., 'Shield of White-Collar Crime through the Intervention of AI, IoT and Blockchain'(2023) 2023 International Conference on Sustainable Computing and Data Communication Systems (ICSCDS) <<https://ieeexplore.ieee.org/document/10105021>> accessed 15 September 2024.

great help. Other than that conducting workshops from time to time and educating the public on how one can avoid such crimes and then report them.

CONCLUSION

Even though India has its fair share of economic offences still it is not ready to tackle such crimes fully. Whether it is legal, or from an investigative standpoint, technically or its relation with international agencies.

As discussed earlier the driving force is psychological greed. Elite groups will find one or the other way to commit such offences and thereafter get away with it. The available legal provisions specifically which are discussed above which deal with economic offences need revisions as they are not aiding in reducing crimes as such. Countries such as the USA which was gravely affected due to the global financial crisis have implemented strict provisions by creating a well-structured legal framework. Countries like Denmark which has a record of less white collar crimes have a comprehensive legal framework that is aided by independent bodies. Legal frameworks for the protection of whistle-blowers have emphasised the country's approach to encouraging whistle-blowers and thereafter protecting them. Such approaches must be encouraged in India as well. Adapting to the latest technology, maintaining better foreign relations, and educating the younger generation regarding the need to combat such crimes would help India in reducing offences of this type. As fewer people commit white-collar crimes the affected people are larger in number. Years of savings, and work will all go in vain and eventually, the victims take extreme steps. Along with that economic offences have the power to crumble the whole economy. When an economy crumbles then civil war starts. Followed by civil war the economy will fall in debt thereby inflation hits. Day-to-day life becomes harder. Basic needs become luxuries.

Hence, to tackle such crimes everyone must work together. The legislation must draft a well-structured legal framework, the investigative agencies must develop themselves with the help of technology, and the judiciary must focus on speedy disposal of such cases. Then the citizens' trust can be restored and more people become whistle-blowers.