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ECONOMIC OFFENCES AS A FORM OF PRIVILEGED CLASS DEVIANCE: A CRITICAL STUDY OF CORPORATE AND FINANCIAL CRIMES IN INDIA

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ABSTRACT

Economic offences in India, including corporate fraud, bank and loan fraud, securities manipulation, insider trading, tax evasion and money laundering, are usually discussed as failures of enforcement or as by-products of weak regulation. This article proposes a different reading. Drawing on Edwin Sutherland's concept of white-collar crime and on the wider idea of privileged class deviance, it argues that a large share of India's economic offending is committed by people of high social standing, in the course of legitimate business or professional roles, and is shielded by the very status, information and resources those roles provide. The article examines the nature of economic offences, the mechanics of corporate crime, the principal forms of financial wrongdoing, and the statutory and institutional framework built around them, including the Companies Act, 2013, the Prevention of Money Laundering Act, 2002, securities and banking laws, and agencies such as the SFIO, the Enforcement Directorate, SEBI and the RBI. It then reviews the approach of the Supreme Court to bail, investigation, and corporate and individual liability. The analysis suggests that India's difficulty is less an absence of law than an accountability gap produced by informational asymmetry, concentrated economic and political power, regulatory capture, and slow and complex investigation and trial. The article closes with reform proposals aimed at narrowing this gap without sacrificing fairness to the accused.

Keywords: economic offences, privileged class deviance, white-collar crime, corporate crime, money laundering, regulatory capture, accountability, India

1. INTRODUCTION

Consider two borrowers. The first is a small farmer who takes a loan of a few tens of thousands of rupees for seed and fertilizer. The monsoon fails, an instalment is missed, and within months the bank's recovery machinery is at his door. The second is a promoter who has borrowed thousands of crores from a consortium of public sector banks, moved part of that money through a web of group companies, and stopped repaying. His story tends to unfold differently: restructuring meetings, negotiated settlements, years of litigation and, in more than one well-known case, a quiet departure from the country before the first warrant was signed. On a balance sheet both are simply defaulters. In practice, only one of them is treated as a person who has done something seriously wrong.

That contrast is the starting point of this article. Economic offences in India, whether corporate fraud, bank fraud, securities manipulation, insider trading, tax evasion or money laundering, are usually discussed as a problem of weak enforcement or outdated regulation. Both explanations contain some truth. But they skip a prior question: who commits these offences, from what position, and why does the response so often fall short of the harm done? The answer, this article argues, has a good deal to do with the social standing of the offenders themselves.

The lens used here is the criminological idea of privileged class deviance, which grows out of Edwin Sutherland's work on white-collar crime. In this view, people of high status commit offences in the course of respectable occupations, and that status then works as a shield: it delays suspicion, buys expertise and softens the consequences. A recent critical study of the Press Council of India applied the same idea to unethical journalism and identified three features that keep such deviance alive: control over information, the dependence of those who might complain, and the capture of the regulator by the regulated. This article borrows that three-part reading and tests it against the world of corporate and financial crime, where the stakes for public money and public trust are arguably higher still.

The approach is doctrinal and analytical. The article relies on statutes, Supreme Court judgments, committee and commission reports, regulatory orders and the secondary literature on white-collar crime. It does not collect fresh empirical data, and readers should treat the statistics mentioned in passing as indicative rather than definitive. One caution is important. Several of the episodes discussed below were, or still are, the subject of proceedings. Where a matter is pending, allegations are described as allegations, and nothing here is meant to pre-judge the guilt of any named person or company.

The discussion moves in eleven parts. After this introduction, Part 2 sets out the theory. Part 3 describes the nature and characteristics of economic offences, and Part 4 looks at corporate crime and the abuse of economic power. Part 5 surveys the major forms of financial crime. Parts 6 and 7 examine the legal framework and the institutions that enforce it, and Part 8 reviews the judicial approach. Part 9 brings the threads together by asking how privilege, power and regulatory limitations produce an accountability gap. Part 10 discusses the practical difficulties of investigation and prosecution, and Part 11 concludes with findings and suggestions for reform.

2. CONCEPTUALISING PRIVILEGED CLASS DEVIANCE AND WHITE COLLAR CRIME

2.1 Meaning of Privileged Class Deviance

Deviance, in sociological usage, is conduct that departs from the norms of a group or society. Not every deviant act is a crime, and not every crime is treated as deviant. The phrase “privileged class deviance” draws attention to one particular set of norm-breakers: those who hold wealth, power and social respect, and whose position shapes both the way they offend and the way society reacts.

Three features keep recurring in the literature. First, the offender is respectable. He or she is a director, a banker, an auditor, a promoter, a professional, someone whose presence in a boardroom or at a public event raises no eyebrows. Second, the conduct grows out of a legitimate role. The offender does not step outside the occupation to commit the wrong; the wrong is committed through the occupation, using its tools, its access and its trust. Third, the consequences are softer. Prosecutions are fewer, outcomes are more often negotiated, sentences are lighter, and the stigma that would ordinarily attach to a criminal is weaker or absent. It is worth saying plainly that “privileged” here is a structural description, not a moral accusation against wealth or success. The point is that certain advantages, when combined with opportunity, change the risks and rewards of wrongdoing.

2.2 Sutherland’s White Collar Crime Theory

The modern discussion begins with Edwin H. Sutherland, who used the term “white-collar crime” in his 1939 address to the American Sociological Society and developed it in his book of 1949. He defined it as crime committed by a person of respectability and high social status in the course of his occupation. His target was the comfortable belief of that era that

crime was mainly a product of poverty, broken homes and psychological abnormality. If that were true, Sutherland asked, how could one explain the steady violations of the law by the managers of large and prosperous businesses?

To make his case he studied the records of seventy large American corporations and found that they had accumulated nearly a thousand adverse decisions from courts and regulators, an average of around fourteen each, covering restraint of trade, misrepresentation in advertising, infringement of patents and similar matters. Yet very few of these were treated as crimes in the popular sense, and almost none carried the social disgrace that follows a burglar or a robber. Sutherland argued that the difference lay less in the acts than in the power of those who committed them. Businessmen, he observed, helped shape the laws that governed them and the agencies that enforced them, and they were rarely thought of as criminals, even by themselves.

The theory has been criticized. Paul Tappan argued in 1947 that treating people as criminals without a criminal conviction stretched the concept beyond what lawyers could accept. Others pointed out that Sutherland's definition mixed two things, the status of the offender and the nature of the offence, which do not always go together. These objections have not made the idea go away. Donald Cressey's study of embezzlers, published in 1953, added a valuable psychological layer by showing how trusted people convince themselves that what they are doing is temporary, justified or not really theft, an insight that still helps explain why respectable executives cross lines they would once have thought unthinkable. Later writers such as Susan Shapiro have argued that the field should study the abuse of trust as a distinct form of wrongdoing, whoever commits it.

2.3 Occupational and Corporate Crime

Two subcategories are especially useful for a study of economic offences. Clinard and Quinney distinguished occupational crime, which individuals commit for personal gain in the course of their work, from corporate crime, which is committed by or on behalf of an organization to advance its interests. Edelhertz's well-known description of white-collar offences as illegal acts characterized by deceit, concealment or violation of trust, and not dependent on physical force, fits both.

The distinction is easy to see in Indian conditions. A bank officer who sanctions a loan against a bribe, or a chartered accountant who signs off on accounts he knows to be false, is an occupational offender. A group that inflates its turnover to keep its share price up, or routes

borrowed funds to associated entities to keep the parent alive, is engaged in corporate crime. In practice the two overlap constantly, because organizations act through individuals and individuals are often rewarded by organisational goals. This is why so many economic offences are difficult to pin on a single person: responsibility is spread across committees, departments and layers of approval, and each participant can honestly say that he saw only a small part of the picture.

2.4 Relationship between Economic Offences and Privileged Class Deviance

Economic offences are the natural home of privileged class deviance. They require access to money, to corporate structures, to financial markets or to public office, and these are things that ordinary offenders do not have. The offender's respectability also serves a practical function, because it makes the fraud possible in the first place. Banks lend, investors invest and auditors accept explanations largely because the person on the other side of the table looks trustworthy.

The three features identified in the study of the Press Council carry across with little adjustment. The first is informational control: those who run a company or manage a financial product know far more about it than any regulator, creditor or investor. The second is dependency: employees, suppliers, lenders, professional advisers and even governments may rely on a large business for jobs, contracts, revenue or political support, which makes them reluctant to complain and slow to act. The third is regulatory capture, the tendency of industries to influence the bodies that oversee them, which the economist George Stigler described in his 1971 essay on the theory of economic regulation. Together these help explain why economic offending by the powerful can become durable, and not merely occasional. The rest of this article looks at how far the Indian experience bears that out.

3. NATURE AND CHARACTERISTICS OF ECONOMIC OFFENCES IN INDIA

3.1 Meaning and Definition

Indian law has no single statutory definition of "economic offence". The term is used loosely for offences that involve financial loss, deception or the abuse of economic systems, and that usually affect the community at large and not just one victim. The Law Commission of India, in its 47th Report of 1972 on the trial and punishment of social and economic offences, treated them as a category needing special attention, pointing to hoarding, black-marketing, tax

evasion, adulteration and the violation of foreign exchange and import laws as examples. The Santhanam Committee on the prevention of corruption, some years earlier, had already warned of the growing links between business, politics and the bureaucracy.

The Supreme Court gave the category its clearest judicial statement in *State of Gujarat v. Mohanlal Jitamalji Porwal* (1987), where it said that economic offences constitute a class apart. They are committed with deliberate design and with an eye to personal profit, regardless of the consequences to the community, and they affect the whole economy of the country. That description has been repeated in later decisions on bail and sentencing, and it remains the working definition for most practical purposes.

3.2 Essential Characteristics

Certain features distinguish economic offences from most other crimes. They are planned, and often planned by professionals, sometimes over years. They are driven by profit, and the profit is frequently very large. They depend on concealment, meaning that the offender's real aim is hidden behind documents, contracts and corporate forms that look normal. They exploit trust, because the victim, whether an investor, a bank or the state, has usually been persuaded to hand over money voluntarily. And they are typically carried out with the help of facilitators such as accountants, values, lawyers, bankers and consultants, whose skills give the scheme its appearance of legitimacy.

Another characteristic is that the harm is diffuse. When a company collapses after years of falsified accounts, thousands of small shareholders, employees, depositors and taxpayers lose something, but no single victim loses enough or knows enough to lead the fight. This dispersal of harm is part of what makes economic offences politically easy to neglect. There are no dramatic pictures, no single grieving family, only a slow erosion of savings, pensions and public revenue.

3.3 Economic Offences versus Conventional Crimes

Conventional crimes such as theft, robbery or assault have identifiable victims, visible evidence and, usually, a clear moment of commission. Economic offences often lack all three. The evidence lies in thousands of documents and digital records, the moment of commission may be spread over years, and the difference between an aggressive business decision and a criminal one can turn on what the accused knew or intended, which is exactly what is hardest to prove.

The social response differs as well. A pickpocket is condemned without hesitation. A promoter accused of siphoning funds is often described in the press as “embattled” or “troubled”, his lawyers speak of “commercial disputes” and “regulatory misunderstandings”, and his supporters point to the jobs he created. The offender’s economic role becomes part of his defense. None of this means that every accused businessman is guilty; the presumption of innocence applies to all. It does mean that the same act can be perceived very differently depending on who performs it, which is the central claim of the privileged deviance thesis.

3.4 Social and Economic Impact

The impact of economic offences is easy to understate. The most visible consequence is direct financial loss, but the indirect costs run deeper. Bank frauds and willful defaults eventually land on public sector banks, and through them on the taxpayer, who funds recapitalization. India’s gross non-performing assets peaked at above eleven per cent of advances in 2018 and only came down to below three per cent in recent years, and while not all of that stress arose from fraud, a substantial part was linked to diversion of funds and poor lending governance. Tax evasion reduces the resources available for health, education and infrastructure. Securities fraud damages confidence in markets, making it more expensive for honest firms to raise capital.

There is a moral cost too. When ordinary citizens see that large offenders escape lightly, honest compliance begins to look foolish. The Supreme Court recognized this in *Porwal* and in later cases when it linked economic offences to the erosion of public faith in the legal order. Sutherland made the same point in 1939: white-collar crime violates trust and thereby creates distrust, which lowers social morale and produces social disorganization on a large scale.

4. CORPORATE CRIME AND ABUSE OF ECONOMIC POWER

4.1 Meaning of Corporate Crime

Corporate crime refers to illegal acts committed by a company, or by individuals acting for it, in pursuit of corporate goals. The company is not just the setting; it is the instrument and, often, the beneficiary. Its features, such as separate legal personality, limited liability and perpetual succession, were designed to encourage enterprise, and they do that job well. The same features, however, allow individuals to place a layer between themselves and the consequences of their decisions.

Indian courts have moved gradually towards accepting that companies can be

prosecuted. In *Standard Chartered Bank v. Directorate of Enforcement* (2005) the Supreme Court held that a company could be tried for offences carrying mandatory imprisonment, with a fine as the only practicable punishment, and in *Iridium India Telecom Ltd v. Motorola Inc.* (2011) it accepted that a company may be liable even for offences requiring criminal intent, since the intent of those who control it can be attributed to the company. These decisions matter, but a fine imposed on a large corporation is often absorbed as a cost of doing business, which is why attention keeps returning to the people behind the entity.

4.2 Role of Directors and Corporate Officers

Directors and senior officers sit at the point where corporate power and personal responsibility meet. The Companies Act, 2013 imposes duties of good faith, due care and independent judgment on directors, and it uses the concept of the “officer who is in default” to identify who answers for contraventions. Yet the courts have been careful not to make every director automatically liable. In *Maksud Saiyed v. State of Gujarat* (2008) and *SMS Pharmaceuticals Ltd v. Neeta Bhalla* (2005) the Supreme Court insisted that a complaint must actually state how the director was responsible for the conduct of the company’s business. In *Sunil Bharti Mittal v. CBI* (2015) it added that a person who is the directing mind of a company may be prosecuted, but merely holding a senior position is not enough.

This caution is legitimate. Independent and nominee directors, minority shareholders and junior managers should not be dragged into prosecutions simply because their names appear on a letterhead. The difficulty is that the same doctrine gives cover to those who truly control the enterprise but arrange matters so that the paper trail points elsewhere. Promoters who hold no formal office, family members appearing as shareholders, and trusted lieutenants who sign the documents are familiar features of large group structures.

4.3 Abuse of Professional Position

Corporate wrongdoing rarely succeeds without professional help. Auditors are meant to be the public’s guarantee that financial statements are honest, bankers are meant to test the credit-worthiness of borrowers, and credit rating agencies and values are expected to give independent opinions. When these gatekeepers fail, whether through negligence, complacency or complicity, the fraud grows.

The Satyam Computer Services case of 2009 is the standard illustration. The company’s founder admitted in a letter to the board that the accounts had been inflated over several years,

with large fictitious cash and bank balances. The auditors had signed clean opinions throughout. The founder and several others were convicted by a special court in Hyderabad in 2015, and SEBI later barred the audit firms involved from certifying the accounts of listed companies for a period. What the Satyam episode showed is that the professional class is not merely a bystander to corporate deviance but part of its infrastructure. Section 143(12) of the Companies Act, 2013 now requires auditors to report frauds to the Central Government, and the National Financial Reporting Authority has been set up to oversee the profession, but the underlying commercial relationship, in which the auditor is paid by the company being audited, has not changed.

4.4 Corporate Structures and Concealment of Offences

Concealment is the signature of economic crime, and corporate structures supply the means. Layers of subsidiaries and associates, cross-holdings, shell companies with no real business, nominee shareholders and offshore entities can make it extraordinarily difficult to trace who ultimately owns or benefits from a transaction. In 2017 and 2018 the government struck the names of more than two lakhs companies off the register on grounds of prolonged non-filing, a figure that in itself suggests how many dormant entities exist, and how many of them could serve as conduits.

Sham transactions dressed as genuine ones, invoices for services never rendered, round-tripping of funds through foreign jurisdictions, and inter-corporate loans that circle back to the promoter all exploit the same weakness: the law generally respects the separateness of the corporate entity, and investigators must dismantle the arrangement piece by piece before they can attack it. The doctrine of lifting the corporate veil exists, but it is applied sparingly, and each application requires evidence that only the company itself, or those in control of it, may hold.

4.5 Conflict of Interest

Conflict of interest is the quieter cousin of open fraud. Where promoters dominate boards, related-party transactions can be used to move value out of the company and into private hands at prices no independent buyer would have paid. The Companies Act, 2013 responds with requirements of board and shareholder approval for related-party transactions and by emphasizing independent directors, and SEBI's listing regulations add further disclosure rules. But independence is hard to guarantee when the promoter has a decisive

influence over who is appointed and reappointed.

The problem is not confined to the boardroom. Bank officials may sanction loans to borrowers to whom they have personal or political links, regulators and auditors may look forward to lucrative private positions, and professional firms may advise the very group whose accounts they certify. None of these arrangements is illegal by itself. They create the conditions in which the duty owed to the public and the interest of the powerful pull in opposite directions, and the record of the last two decades suggests that the second pull is often stronger.

5. MAJOR FORMS OF CORPORATE AND FINANCIAL CRIMES

5.1 Corporate Fraud

Corporate fraud covers falsification of accounts, misstatement of assets and profits, siphoning of funds and concealment of liabilities. Section 447 of the Companies Act, 2013 defines fraud broadly to include any act, omission, concealment or abuse of position committed to deceive or to gain an undue advantage, and it prescribes imprisonment from six months up to ten years and a fine that may extend to three times the amount involved. Where the fraud involves public interest, the minimum imprisonment is three years.

Beyond Satyam, the collapse of Infrastructure Leasing and Financial Services (IL&FS) in 2018 showed how a large financial group with an apparently strong governance framework, an eminent board and top credit ratings could conceal stress and complex intra-group dealings for years. The matter led to a government-initiated board takeover, an SFIO investigation and criminal proceedings. The lesson, again, was that formal structures of oversight are not enough when those inside the system share the same interests and sources of information.

5.2 Bank and Loan Fraud

Bank fraud is the form of economic crime with the heaviest direct cost to the public purse. It includes fraudulent loan applications, inflated valuations, diversion of loan proceeds, and misuse of trade instruments. The fraud at Punjab National Bank, disclosed in 2018, involved fraudulent letters of undertaking issued through a branch and used by overseas branches of other banks to release funds, with the amounts exceeding thirteen thousand crore rupees. In 2022 the CBI registered a case relating to ABG Shipyard, in which lenders alleged losses of about twenty-three thousand crore rupees, at the time the largest bank fraud case reported in the country. The Kingfisher Airlines matter involved large unpaid loans and led to its promoter being declared India's first fugitive economic offender in 2019 under the Fugitive

Economic Offenders Act, 2018.

The pattern that emerges from such cases includes long delays before detection, the involvement of insiders at the lending institution, and the offender's departure abroad before or shortly after the fraud surfaced. The RBI's regulatory response has included Master Directions on fraud classification and reporting, the creation of a central fraud registry and, more recently, revised rules that allow borrowers a hearing before being classified as fraudulent. The practice of "ever greening", in which fresh loans are given to enable repayment of old ones, and the regular restructuring of stressed accounts, showed how regulatory forbearance can conceal rather than resolve the problem.

5.3 Securities and Investment Fraud

India's securities markets have produced a long line of scandals. Harshad Mehta's manipulation of the securities system in 1992, which exploited weaknesses in the settlement of government securities transactions and the use of bank receipts, led to a market crash, a Joint Parliamentary Committee and eventually to a fundamental reform of market regulation. Ketan Parekh's scam in 2001 revealed manipulation of a different sort, involving stock price rings and funding by co-operative banks. Both men were prosecuted, but both trials ran on for years, and the first died in 2001 while proceedings were still pending against him.

Another category involves unregulated deposit-taking and collective investment schemes, in which ordinary savers are promised extraordinary returns. The Sahara matter, decided by the Supreme Court in *Sahara India Real Estate Corporation Ltd v. SEBI* (2012), concerned optionally fully convertible debentures raised from millions of small investors, and the Court directed a large refund. West Bengal's Saradha and Rose Valley collapses, and dozens of similar cases in other states, followed the same script of high promised returns, aggressive agent networks and political patronage. The victims were typically small savers with no way to protect themselves. Parliament responded with the SEBI Act amendments of 2014, which gave the regulator stronger powers against collective investment schemes, and with the Banning of Unregulated Deposit Schemes Act, 2019.

5.4 Insider Trading

Insider trading is the use of unpublished price-sensitive information for trading, and in India it is governed by the SEBI Act, 1992 and the SEBI (Prohibition of Insider Trading) Regulations, 2015. Section 15G of the Act provides for a penalty up to twenty-five crore rupees

or three times the profit made, whichever is higher, and section 24 permits imprisonment up to ten years. The 2015 regulations widened the definition of “insider” and introduced structured disclosure and trading-window requirements.

The offence is notoriously hard to prove, because it typically rests on circumstantial evidence such as call records, trading patterns and links between individuals. SEBI’s investigation of leaks of quarterly results through messaging groups in 2017 is a good example, since it turned on reconstructing chains of communication among people with access to the information. It is instructive to compare the position abroad. In the United States, Raj Rajaratnam of the Galleon hedge fund was sentenced to eleven years in 2011, and Rajat Gupta, a former head of McKinsey and a member of the boards of major companies, received a two-year prison term in 2012 after conviction for passing confidential boardroom information. Indian enforcement has rarely produced sentences of that severity against figures of comparable stature, and most cases end in monetary penalties and market bans.

5.5 Tax Evasion

Tax evasion, the deliberate concealment of income or assets to avoid payment, is distinct from lawful tax planning, though the line between them can be thin and heavily contested. The Income-tax Act, 1961 prescribes rigorous imprisonment for willful attempts to evade tax (section 276C), and the Central Goods and Services Tax Act, 2017 creates offences for fake invoicing and wrongful input tax credit claims. Parliament has also enacted the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 and the Benami Transactions (Prohibition) Amendment Act, 2016 to deal with undisclosed foreign assets and property held in fictitious names.

Global leaks such as the Panama Papers in 2016 and the Pandora Papers in 2021 showed the involvement of many Indian names in offshore structures. Holding an offshore entity is not itself illegal, and the leaks did not establish wrongdoing by everyone mentioned. What they did reveal was the sheer availability of tools for concealing ownership to those who can afford advisers, and the length of time it takes Indian agencies to obtain information from foreign jurisdictions and convert it into evidence.

5.6 Money Laundering

Money laundering is the process of making the proceeds of crime appear legitimate. It is the point at which every other economic offence comes together, since the profits of fraud,

corruption, tax evasion and market manipulation must all be cleaned before they can be enjoyed. The Prevention of Money Laundering Act, 2002, discussed in the next part, treats laundering as an independent offence linked to a “scheduled offence”, and permits the attachment of property that represents the proceeds of crime. The typical stages of placement, layering and integration are helped by shell companies, trade-based manipulation, real estate and increasingly by digital channels, making laundering a moving target for enforcement.

6. LEGAL FRAMEWORK GOVERNING ECONOMIC OFFENCES IN INDIA

6.1 Companies Act, 2013

The Companies Act, 2013 is the backbone of corporate regulation. It tightened the duties of directors (section 166), made provision for independent directors, required a vigil mechanism for reporting concerns (section 177), regulated related-party transactions (section 188), and created the offence of fraud in section 447. Section 212 allows the Central Government to assign investigations into serious corporate affairs to the Serious Fraud Investigation Office, and section 212(6) places twin conditions on bail for certain offences, requiring the court to be satisfied that there are reasonable grounds for believing the accused is not guilty and is unlikely to offend while on bail. Section 245 introduced class actions, giving shareholders and depositors a collective remedy.

The Act has been amended several times, most notably in 2019 and 2020, when many minor compoundable offences were decriminalized to improve the ease of doing business. That approach makes sense for technical defaults, but it has also fed a debate about whether the line between technical breaches and serious wrongdoing is always drawn in the right place.

6.2 Prevention of Money Laundering Act, 2002

The Prevention of Money Laundering Act, 2002 (PMLA), which came into force in 2005, is India’s central anti-laundering statute and a product of international commitments. Section 3 defines the offence as involvement in any process or activity connected with the proceeds of crime, section 4 prescribes imprisonment of three to seven years, and section 5 allows provisional attachment of property. Under section 24 the burden of proving that the proceeds are untainted lies on the accused in prosecutions under the Act, section 45 makes bail conditional on twin tests, and section 50 empowers officers to summon persons and record statements that are admissible in evidence.

These are powers of unusual strength, and they have generated some of the most important constitutional litigation of recent years. In *Nikesh Tarachand Shah v. Union of India* (2018) the Supreme Court struck down the original twin conditions as arbitrary. Parliament re-enacted them with amendments, and in *Vijay Madanlal Choudhary v. Union of India* (2022) a three-judge bench upheld the essential provisions of the Act, including attachment, the reversal of burden, the twin conditions for bail and the use of statements recorded by enforcement officers, while describing the PMLA as a special law aimed at a grave global problem. The decision has been criticized for giving the enforcement agency very wide latitude, and a request for reconsideration has been pending. The Act has also been extended over time to reach professionals such as chartered accountants and company secretaries who carry out specified financial transactions for clients.

6.3 Securities Laws

Securities regulation is built around the SEBI Act, 1992, the Securities Contracts (Regulation) Act, 1956 and the Depositories Act, 1996, with detailed regulations made by SEBI. The SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 address market manipulation and misleading statements, and the 2015 Insider Trading Regulations deal with unpublished price-sensitive information. SEBI can investigate, issue directions, impose penalties, bar persons from the market and, after the 2014 amendments, conduct searches and attach assets. Appeals against its orders go to the Securities Appellate Tribunal and thereafter to the Supreme Court. Criminal prosecutions under the Act require sanction in the form of a complaint by the Board, and the settlement mechanism allows certain proceedings to be closed without admission or denial of guilt on payment of a sum, a facility that is convenient to both sides but raises an obvious question about deterrence.

6.4 Banking and Financial Regulations

The Reserve Bank of India Act, 1934 and the Banking Regulation Act, 1949 give the RBI authority over banks and non-banking financial companies. The SARFAESI Act, 2002 allows secured creditors to enforce their security without going to court, and the Insolvency and Bankruptcy Code, 2016 created a time-bound process for resolving insolvent companies. The Code has a distinctly anti-abuse dimension: section 29A bars persons who are willful defaulters, or who have been associated with non-performing accounts, from bidding for the assets of a company in insolvency, a provision upheld in *ArcelorMittal India Pvt Ltd v. Satish*

Kumar Gupta (2019), and sections 66 and 69 address fraudulent and wrongful trading and transactions intended to defraud creditors.

On the fraud side, the RBI's Master Directions require banks to classify and report frauds and to share information on borrowers, and the Fugitive Economic Offenders Act, 2018 permits the confiscation of property of persons who have left the country to avoid prosecution in cases involving amounts of one hundred crore rupees or more. The regulatory layer is dense, but it has often responded after scandals and not before them.

6.5 Relevant Criminal Law Provisions

The general criminal law also applies. Under the Indian Penal Code, 1860, offences such as criminal breach of trust, cheating, forgery, falsification of accounts and criminal conspiracy were the standard charges in economic cases. Since 1 July 2024, the *Bharatiya Nyaya Sanhita, 2023* has replaced the Code, with criminal breach of trust in section 316, cheating in section 318, forgery from section 336 and criminal conspiracy in section 61. The new *Sanhita* also introduces a provision on organized crime (section 111) that includes economic offences within its reach, and the *Bharatiya Nagarik Suraksha Sanhita, 2023* contains a procedure for attachment of proceeds of crime in section 107.

Corruption forms another strand. The Prevention of Corruption Act, 1988 was amended in 2018 to criminalize bribe-giving by commercial organizations and to make the liability of company officers explicit, though it also introduced a requirement of prior approval for investigating certain decisions of public servants, a change welcomed by those who feared paralysis in decision-making and criticised by those who saw it as an additional shield. The overall picture is a statute book that is extensive, sometimes overlapping and often severe on paper.

7. INSTITUTIONAL MECHANISMS FOR PREVENTION AND INVESTIGATION

7.1 Serious Fraud Investigation Office

The Serious Fraud Investigation Office was established in 2003 on the recommendation of the Naresh Chandra Committee on corporate audit and governance, after a series of corporate scandals, and was given statutory status by the Companies Act, 2013. It is a multi-disciplinary body that includes accountants, forensic specialists, lawyers and officers from banking, taxation and the police. It takes up cases referred by the Central Government in which fraud is

complex, spans multiple entities, or involves public interest, and it can prosecute offences under section 447.

Its strengths lie in its expertise and in its power to look across the whole group of companies rather than at a single entity. Its weaknesses are the size of its cadre, its dependence on government referral, and the time it takes to move from investigation to prosecution. Only a limited number of cases are entrusted to it in any year, which necessarily means that the choice of cases carries its own significance.

7.2 Enforcement Directorate

The Enforcement Directorate, which began as a small unit in 1956 to handle exchange control violations, is now the principal agency for the PMLA and the Foreign Exchange Management Act, 1999, as well as the Fugitive Economic Offenders Act. Its strength is that laundering investigations do not depend on the completion of the predicate offence trial, which allows it to trace and attach assets early. According to *Vijay Madanlal*, its internal Enforcement Case Information Report is not equivalent to an FIR and need not be supplied to the accused in the same way, a point that has fuelled an ongoing debate about fairness.

The agency's record attracts sharply divided assessments. Officials point to the very large sums attached and to the volume of searches. Critics respond that the rate of final convictions is small compared with the number of cases registered, as official replies to Parliament have indicated, that arrests and prolonged custody function as punishment in themselves, and that its actions appear to fall disproportionately on political opponents of whoever is in power. These concerns are contested, and this article takes no position on any individual case. It simply notes that an agency armed with exceptional powers but with few convictions to show for them invites the suspicion of selective use, and that this suspicion damages the legitimacy of enforcement against genuine offenders.

7.3 Securities and Exchange Board of India

SEBI, created in 1992 and given statutory powers in the aftermath of the Harshad Mehta scam, combines rule-making, investigation and adjudication in one body. It has surveillance systems that monitor trading patterns and it has become more active in pursuing insider trading, front-running and unregistered investment advice. Its unusual combination of legislative, executive and quasi-judicial functions is meant to enable swift action. It also means that SEBI is investigator, prosecutor and judge in its own cause, subject to appeals, and raises fair-hearing

concerns that the Securities Appellate Tribunal has to address from time to time.

A further difficulty is that much of SEBI's enforcement output consists of monetary penalties, disgorgement orders and market bans. These are important, but for a wealthy offender a penalty may be a manageable business expense, and a ban may merely push activity into associates and relatives. Criminal prosecution under the SEBI Act is comparatively rare and slow.

7.4 Reserve Bank of India

The RBI supervises banks and non-banking finance companies, sets norms on asset classification and provisioning, and maintains fraud-reporting systems. Its Asset Quality Review of 2015 forced banks to recognize stressed assets that had been carried as standard for years, a step that exposed the extent of the problem. It has also been criticized for the delay between the emergence of a fraud and its reporting, for inspections that failed to detect large exposures at supervised banks, and for periods of forbearance in the treatment of stressed loans.

Supervision by the RBI is difficult by its nature, because the regulator depends on information generated by the regulated entities themselves, a form of informational asymmetry that is the same in kind as the one identified in Part 2. The regulator also has to balance its supervisory role against its concern for financial stability, which sometimes discourages hard action against large institutions.

7.5 Inter-agency Coordination

Because economic offences cross regulatory boundaries, coordination is essential. A single scheme may involve a company law violation (SFIO or the Registrar of Companies), a bank fraud (CBI and the RBI), a securities violation (SEBI), tax evasion (the Income Tax Department or GST authorities) and money laundering (the ED). The Financial Intelligence Unit-India, set up in 2004, receives and analyses suspicious transaction reports and shares them with agencies. Multi-agency groups and memoranda of understanding among regulators exist to share information.

In practice, however, each agency works under its own statute, its own priorities and its own timelines, and information sharing is often less swift than the movement of money. The Supreme Court's concern about the independence of the CBI, first expressed in *Vineet Narain v. Union of India* (1998) and dramatically summed up in 2013 by the description of the agency as a "caged parrot", points to a deeper problem: investigators who depend on the government

of the day for their careers and resources may hesitate to pursue those who have influence with it.

8. JUDICIAL APPROACH TOWARDS CORPORATE AND FINANCIAL CRIMES

8.1 Judicial Treatment of Economic Offences

The Supreme Court has generally spoken with great firmness about economic offences. In *Porwal* it called them a class apart. In *Y.S. Jagan Mohan Reddy v. CBI* (2013) and *Nimmagadda Prasad v. CBI* (2013) it refused bail to accused persons in large economic cases, stressing the gravity of the offence, the possible impact on the national economy and the risk of tampering with evidence. The language of these judgments reflects a real concern that lenient handling of economic crimes would send the wrong signal to society.

Yet there has been an equally important line of cases going the other way. The Court has repeatedly reminded lower courts that the presumption of innocence continues throughout, that the purpose of bail is not punishment, and that the seriousness of an offence cannot be the only ground for refusing release. This tension between severity in principle and liberty in practice is the defining feature of the case law.

8.2 Important Supreme Court Decisions

In *Sanjay Chandra v. CBI* (2012), arising out of the 2G spectrum allocation matter, the Court granted bail to corporate executives, observing that the object of detention before trial is to secure attendance and not to punish, and that the gravity of the charge, while relevant, is not the sole consideration. In *P. Chidambaram v. CBI* (2019) the Court reviewed the earlier decisions and held that although the gravity of an economic offence is a legitimate factor, there is no hard and fast rule that bail must be refused in every such case, and that the ordinary tests of flight risk, tampering and interference with the investigation must be applied.

Under the PMLA, the Court in *Vijay Madanlal* upheld the stringent bail regime, but more recent decisions show a willingness to protect liberty where trials are long delayed. In 2024, in the cases of *Manish Sisodia v. Directorate of Enforcement* and *V. Senthil Balaji v. Deputy Director*, the Court granted bail on the ground that prolonged incarceration without a prospect of early trial violates the right to speedy trial under Article 21, and that statutory restrictions on bail cannot be used to keep an accused in custody indefinitely. In *Pankaj Bansal v. Union of India* (2023) it required the ED to furnish grounds of arrest in writing. In

Association for Democratic Reforms v. Union of India (2024), although not a criminal case, the Court struck down the electoral bond scheme, a decision important for this discussion because it dealt with the opaque flow of corporate money into politics.

8.3 Principles relating to Bail, Investigation and Prosecution

Several principles emerge. First, bail is the rule and jails the exception, even in economic offences, though the court may take into account the nature and gravity of the accusation, the role attributed to the accused, and the likelihood of interference with evidence. Second, special statutes that limit bail, such as the PMLA and section 212(6) of the Companies Act, must be read with constitutional guarantees, and courts retain the power to grant bail where the conditions of the trial make continued custody unjustifiable. Third, an investigation must be fair, and the accused must be told why he is being arrested. Fourth, quashing of proceedings is exceptional, particularly in complex financial cases where the material has yet to be tested at trial, although the courts have intervened where a criminal case is essentially a commercial dispute given a criminal color.

The Court's decision in *Satender Kumar Antil v. CBI* (2022), which laid down guidelines on the grant of bail and on the use of arrests, and its repeated criticism of the mechanical filing of charge-sheets, show a judiciary keen to police the balance between the state and the accused. These are proper concerns. But they also mean that the well-resourced accused, with the capacity to bring successive applications up to the highest court, is better able to take advantage of them than the accused who cannot afford the lawyers.

8.4 Corporate and Individual Criminal Liability

The law on liability follows the lines discussed in Part 4. A company can be prosecuted and fined, and the identification doctrine, which attributes the mind of its directing officers to the company, was adopted from English law in *Standard Chartered Bank* and *Iridium*. Individuals may be prosecuted where they were in charge of and responsible for the conduct of business, but the courts require specific averments and do not accept vicarious liability without statutory backing. In *Aneeta Hada v. Godfather Travels and Tours Pvt Ltd* (2012) the Court held that, for offences committed by a company under the Negotiable Instruments Act, the company must be arraigned before its directors can be prosecuted.

The result is a body of doctrine that protects the innocent officer but rewards elaborate structuring by the guilty one. What is missing is a clear and modern principle of organizational

fault, one that asks whether a company had systems, culture and controls capable of preventing an offence, as some other jurisdictions have begun to do through the offence of failing to prevent bribery or fraud.

9. PRIVILEGE, POWER AND ACCOUNTABILITY IN ECONOMIC OFFENCES

9.1 Social and Economic Status of Offenders

The people who stand accused in India's major economic cases are seldom strangers to the establishment. They are industrialists who have appeared on magazine covers, chairpersons of listed companies, senior bankers and professionals with public reputations. Their status does several things at once. It generates a presumption of good faith, so that early warning signs are explained away as ordinary business risk. It gives them access to officials and politicians who might be expected to ask questions. And it shapes the way that their fall is narrated, with the language of "business setback" and "regulatory overreach" often accompanying the language of allegation.

It would be wrong to suggest that the powerful never face consequences. Some of the persons mentioned in this article have been convicted, jailed, or forced out of business, and courts have on occasion been unsparing. The claim is a narrower one: that status changes the odds. It lengthens the time before an offence is detected, increases the chance that a case will be resolved by settlement, and improves the prospects of bail, delay and eventual leniency.

9.2 Influence of Corporate Power

Corporate power in India is concentrated in relatively few large groups, many of which have interests across regulated sectors such as banking, energy, infrastructure and telecommunications. Their dependence on licenses, contracts and regulatory decisions creates an incentive to cultivate political relationships, and the opposite is also true, since politicians and parties depend on business for funds. The Court's decision on electoral bonds in 2024 brought the problem into public view, and the earlier removal of the cap on corporate political donations in the Companies Act showed how far the law had moved in accommodating this flow.

This is the mirror image of what the study of the Press Council called source dependency. Just as public bodies avoid complaining against the media houses whose goodwill they need, lenders, regulators and local governments may hesitate to act against a business

group that employs thousands, supports a region's economy or holds a large share of a bank's loan book. A phrase that has become familiar in the banking context, "too big to fail", describes exactly this. When the failure of a borrower threatens the lender, the lender is not really in a position to enforce.

9.3 Information and Resource Asymmetry

In an economic offence, the accused typically has more information than the investigator, more resources than the prosecutor and more time than the complainant. Documents sit with the company or its advisers. Records may be in several jurisdictions. The accused can retain senior counsel, forensic accountants and public relations advisers, and can contest every step from summons to charge, at each stage going to the High Court and the Supreme Court. Investigating agencies, by contrast, work with limited staff, competing priorities and officers who rotate frequently.

The asymmetry is not merely financial but epistemic. To prove a fraud one must first understand a transaction, and the people who understand it best are the ones being investigated. This is why so many cases are built on the testimony of insiders, whistle-blowers or co-accused, and why the weakness of protection for whistle-blowers matters so much. The Whistle Blowers Protection Act, 2014, as far as the public record shows, has still not been brought into force, leaving those who expose corporate wrongdoing dependent on a patchwork of internal vigil mechanisms and ordinary law.

9.4 Regulatory Capture and Institutional Limitations

Regulatory capture does not have to mean corruption. It can arise from the ordinary tendency of regulators to rely on industry for information, expertise and career opportunities, and to become sympathetic to the problems of those they regulate. India's experience offers several signs of this: the long forbearance towards stressed accounts before 2015, the prevalence of consent and settlement mechanisms that allow offenders to close matters with payment, the decriminalization of offences on grounds of business convenience, and the continuing revolving door between regulators, industry and professional firms.

Institutional limitations compound the problem. Agencies are under-staffed and under-trained for complex forensic work. Special courts are overloaded. Investigating officers may be transferred at politically sensitive moments. And the very design of oversight bodies, such as auditors paid by their clients, ratings agencies paid by issuers, and boards chosen by promoters, builds the conflict into the system. Following Stigler, one might say that regulation

in these areas has been acquired by the industry and designed for its benefit, or, more moderately, that it has been shaped by the industry's need to stay within the limits of the tolerable.

9.5 Accountability Gap

The combined effect is an accountability gap, a difference between the power that the privileged actors exercise and the answerability they are made to bear. It shows in the statistics that are available. Bank fraud losses run into lakhs of crores of rupees, but recoveries are partial and convictions are few. Enforcement agencies register thousands of cases, but only a small fraction end in a final conviction. Trials are slow, and public attention has usually moved on by the time they conclude.

It is also fair to acknowledge the counter-arguments. Investigations of economic crime are inherently hard, and a low conviction rate does not by itself prove capture; it may equally reflect weak evidence or over-charging. The expansion of enforcement in recent years suggests that governments are no longer indifferent to the problem. And where enforcement is perceived as politically selective, the gap can run in another direction, with powerful agencies used against particular targets and not against offenders generally. A credible response must therefore be independent of the executive as well as of the industry. That double requirement, which the Press Council study also emphasized in its own context, is the core of the design problem.

10. CHALLENGES IN INVESTIGATION AND PROSECUTION OF ECONOMIC OFFENCES

10.1 Complexity of Financial Transactions

Modern financial transactions can involve derivatives, structured products, intra-group loans, trade finance and digital payments moving across several jurisdictions in seconds. An investigator has to recognize which of these transactions has no genuine commercial rationale, and then persuade a court, which may have limited exposure to financial engineering, that it is a sham. The problem is aggravated by the speed with which new products and technologies appear, from crypto-assets to complex fintech lending platforms, outpacing both the law and the training of enforcement officers.

10.2 Difficulty in Collecting Evidence

Evidence in economic cases is mostly documentary and increasingly digital. It must be collected, preserved and authenticated, and each step invites challenge. Electronic records require compliance with the certification requirements of the law of evidence, and the loss or alteration of data is a permanent risk. Witnesses are frequently employees who depend on the accused for their jobs, or professionals who fear their own exposure. Statements recorded by enforcement officers, though admissible under the PMLA, will still be tested at trial and are vulnerable to the allegation that they were extracted under pressure.

10.3 Delay in Investigation and Trial

Delay is probably the most damaging practical problem. Investigations may run for years before a charge-sheet is filed, and trials in special courts can take a decade or more, with frequent stays granted by higher courts. The consequences are severe on all sides. Witnesses die or forget, evidence degrades, accused persons sit in custody without conviction, and the prospect of a fast and certain sanction disappears. For the wealthy accused, delay is a strategy in itself, since a case that has not been decided in fifteen years has lost most of its deterrent value. For the innocent accused, delay is a punishment.

10.4 Cross Border Transactions

Money moves across borders faster than investigations do. Obtaining evidence from abroad depends on letters rogatory, mutual legal assistance treaties and tax information exchange agreements, all of which move slowly and depend on the cooperation of foreign authorities. Extradition is slower still. The cases of persons who left India before or during investigations show how long removal proceedings can take, since the accused can raise defenses based on the conditions of detention in India, the political character of the prosecution and the adequacy of the evidence. International assessments of India's anti-money laundering system, including the reports of the Financial Action Task Force, have acknowledged progress in legislation while drawing attention to the gap between investigations and final convictions.

10.5 Identification of Individual Responsibility

Corporate hierarchies diffuse responsibility. Decisions are taken by committees, based on information supplied by subordinates and advice from external consultants, and recorded in minutes that reveal little of the real discussion. The prosecution must separate those who knew

and intended from those who signed in the ordinary course of work, a difficulty that the case law on vicarious liability makes still greater. Promoters who keep no formal position can argue that they are mere shareholders, and executives can argue that they acted on legal and accounting advice. Establishing the necessary mental element, dishonest intention or knowledge, from circumstantial evidence is a demanding exercise that many cases do not survive.

10.6 Enforcement Difficulties

Even where guilt is established, enforcement of the outcome is uncertain. Fines may be paid from assets held in other names. Attachment of property may be contested for years. Recoveries in bank fraud cases are usually a fraction of losses. Meanwhile, there are competing demands upon the same limited enforcement capacity: the courts and agencies must deal with routine crime, national security and politically sensitive matters alongside economic offences. Public pressure to act arises intensely after a scandal and then fades, so that reforms tend to be reactive, and the capacity built up in one crisis is left to decay in the calm that follows.

11. CONCLUSION

11.1 Major Findings

This article began with the observation that economic offences in India are often treated as a failure of enforcement and asked whether it would be more useful to see them as a form of privileged class deviance. Several findings emerge from the analysis.

First, economic offences have distinct characteristics: they are planned, profit-driven, concealed and carried out through legitimate structures and with the help of professionals. Their harm is large but diffuse, and this makes them easy to under-react to. Second, corporate structures and professional roles supply both the means and the cover for wrongdoing, and the legal doctrine on liability, however well-intentioned, tends to protect those who are best able to arrange their affairs. Third, India possesses an extensive legal framework and a range of specialized institutions, but coordination is uneven, the judicial approach oscillates between severity in principle and liberty in practice, and the outcomes, in terms of final convictions and recoveries, remain modest. Fourth, the persistent difficulties of investigation and trial, especially complexity, delay and cross-border reach, systematically favour those with resources.

11.2 Relationship between Economic Offences and Privileged Class Deviance

The evidence supports the view that a substantial part of India's economic offending fits the pattern of privileged class deviance. It is committed by people of standing in the course of respectable occupations. It depends on informational control, on the dependency of lenders, employees and public bodies, and on regulatory arrangements that are weakened by the closeness of regulators and regulated. And it is met by responses that are slow, negotiated and uncertain. This does not mean that all businesspeople are offenders or that enforcement is always ineffective. It means that where power, information and access to institutions are concentrated, the ordinary machinery of law will operate less evenly, and that this unevenness is a structural feature and not a matter of a few bad actors.

11.3 Suggestions for Legal and Institutional Reform

Several reforms follow from the analysis. First, investigation and prosecution should be strengthened in capacity and independence. Agencies dealing with economic offences need specialist staff, secure tenures and insulation from political direction, with independent oversight of their choice of cases so that enforcement is both effective and demonstrably even-handed. Second, special courts for economic offences should be adequately staffed and given time-bound targets, with strict limits on adjournments and stays, so that trials are completed within a reasonable period. Speed serves both the public interest and the rights of the accused.

Third, the law of corporate liability should be modernized. Alongside the identification doctrine, Parliament could consider an offence of failure to prevent fraud or corruption by a company, with a defense for organizations that can show adequate compliance systems. That would shift attention from proving what a particular director knew to asking whether the organization was properly run. Fourth, gatekeepers should be made more accountable. Auditor rotation and independent appointment of auditors, stronger powers for the National Financial Reporting Authority, and clearer consequences for negligent or complicit professionals would address the problem at the point where fraud is most often enabled.

Fifth, protection for whistle-blowers should be made a reality by bringing the 2014 Act into force with suitable amendments, and by giving rewards and confidentiality to those who report serious fraud. Sixth, bail and custody should be governed by consistent principles in which seriousness and flight risk are weighed against the length of the trial, so that the powerful are not favored and the poor are not neglected. Seventh, international cooperation should be improved through faster mutual legal assistance and better information-sharing, and asset

recovery mechanisms should be strengthened so that offenders do not keep the fruits of their conduct. Finally, transparency in corporate ownership and political funding should be enhanced, since secrecy is the friend of privileged deviance, and public registers of beneficial ownership can do more to deter than many penalties.

11.4 Conclusion

The debate about economic crime in India often swings between two positions, outrage at the escape of the powerful and anxiety about the misuse of enforcement powers. Both concerns are legitimate, and they are two sides of one problem: a system in which the treatment of a person depends too much on who that person is. The way forward lies neither in weakening the market nor in expanding punishment for its own sake. It lies in making the rules apply with equal force to the director and the clerk, the promoter and the small borrower, and in building institutions that are independent enough to do so. As Sutherland recognized nearly a century ago, the real test of a legal system is how it treats those who are most able to avoid its reach. On that test, India's record is still a work in progress.

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