White collar crime rates are surging at local as well as global levels. Every day, we are bombarded with news of insider trading, securities fraud, impostors, swindlers, and the whole nine yards of fly-by-night operations. We talk on and off about pressing issues such as rising inflation and increasing current account deficit. But never once have we stopped to talk about the effects of something far less known and far more dangerous: frauds and scams. In recent times, India has witnessed a surge in corporate scams and frauds, causing foreign investors’ withdrawal from our nation. In light of our slowly resurrecting economy, the issue assumes supreme importance.

As a well-educated society, we all know the collateral damage caused by systemic inefficiencies to check various strains of fraud, thanks to a proactive media. But when the hubbub subsides, one big question remains unanswered, always. Are we approaching the menace of frauds in a constructive manner by incarcerating those responsible for the crimes in high security cells? Granted, some of the crimes may go against the very ethos of being humanistic, but most offenders are youths with a full, salvageable life ahead of them. From the humanist’s point of view, there’s a clear choice before the authorities to strike a fine balance between taking recourse to harsh penal action and giving a second chance to live out a well-reformed life. And this is precisely where India can take a few cues from the Western countries. Rather than mere incarceration, the extensive knowledge and talents of the youth can be easily harnessed to prevent the system from being manipulated. In India, there is a stigma that comes with the label of a criminal. One finds it very difficult to get a job once the black stain of crime has befouled a man’s image. In comparison, the Western system is far more forward-looking, vigilant, and welfare-oriented. We take a little liberty to make an unlikely comparison between the Indian and Western systems of punitive and preventive action against frauds. If the Indian system restricts itself to the contours and innards of legal frameworks, the Western system makes an unconventional attempt to go beyond the confines of law by engaging criminal masterminds in the preventive mechanism.

In our cover story series this time, we have illustrated the examples of two celebrated ex-fraudsters and an equally famous whistleblower who have helped the American state in preventing a new chain of frauds, something that is considered way too risky and beyond imagination in the Indian way of doing things. Do these examples have something for India to learn from? We leave that to the judgment of Indian legal hawks.

Even the vulnerabilities of our Whistleblower Protection Act make us an easy prey to predators. Also worth noting is the apathy of the corporate management towards curbing malpractices in their own backyard. The ignorance related to safe usage of the internet and social media only adds fuel to the raging fire.

BY VAISAKH E HARI
India: A high-risk zone

What is white collar crime? Edwin Sutherland coined the term white collar crime as "crimes committed by a person of the upper socio-economic class, who violates the criminal law in the course of his occupational and professional activities". Ranging from embezzlement to forgery and blackmail, white collar criminals embrace a whole spectrum of the 'non-violent' criminal activities, which pose a grave threat to the future of an emerging economy such as ours.

A survey by ASSOCHAM and Grant Thornton points out that the recent years have marked a collective increase in corporate frauds like corruption, money laundering, and information theft. An estimated amount of ₹29,000 crore was involved in corporate frauds over the past few years, the CBI notes, along with the alarming growth of NPAs (non-performing assets) in the banking sector.
Alarming statistics
According to a fraud statistics report by KPMG, one of the big four audit and consultancy firms, the following trends are observed:
- Around 59% of respondents from the financial services sector suggested that their organisations have experienced fraud in the last two years.
- Major kind of frauds read, heard, or experienced in financial sector relate to bribery & corruption, e-commerce, internet, cyber-related malpractices, and financial statement fraudging.
- Key measures taken by organisations to counter fraud include the whistleblower mechanism (64%), introduction of process specific controls (59%), and establishment of fraud investigation units (56%).
- Cybercrime, Intellectual Property fraud (including counterfeiting and piracy), and identity theft have been identified as frauds of the future.
- 71 per cent of the respondents felt fraud (of any type) was an inevitable cost of doing business, implying that fraud mitigation and risk management ranked low on their board level agenda.
- Financial services and information & entertainment were identified as sectors most prone to frauds, owing to their high dependence on technology, large transnational data in electronic form, as well as the confidential information they hold.

Reasons behind the surge
The statistical fact that 59 per cent of corporations experience fraud is a cause for concern. “We have assisted many corporates in managing frauds in a dealing room environment. Our experience shows that fraudsters generally indulge in using privileged information to their advantage. In some cases, we have observed that false and incorrect financial statements and information have been used extensively to build positive environment about a company. There have been instances where front office staff and mid-office staff have colluded, building positions in stocks, currencies, or commodities which have been offloaded to the institutions, leading to losses by way of higher acquisition/lower returns for the institutions,” says Sandeep Dhupia, Head of Forensics Department of KPMG India. These instances are not isolated. India currently ranks 94th in the global corruption index of 177 countries, published by Transparency International. In this light, one has to ponder over the reasons that make India a breeding ground for corrupt bureaucrats and unscrupulous fraudsters.

Lack of awareness
There is a perceptible lack of awareness among investors and stockholders regarding the internal operations of companies, which contributes much to making a fraudster’s job easier, says Sandeep. “Investors and stockholders are more often than not caught unaware of the internal machinations of a company. As a result of which, investors lose their money to Ponzi, multilevel marketing and high return investment schemes. Regulators do conduct investor awareness programmes on a sporadic basis which help the consumers improve their understanding of financial products, concepts, and risks relating to the same,” he says. Going by the surge in fraud rates, however, there is a drastic need to put such programmes into top gear, officials admit.

Another point worth mentioning is the lack of awareness on internet and online usage, which has pervaded almost every nook and cranny of a middle class Indian’s life. We find that a very high percentage of customers use unsecured or public networks for online banking or shopping, which involves transfer of sensitive data via the network. Cyber crimes are common in organisations now, often committed by third parties and occasionally by unscrupulous customers. “Faced with frauds, corporates have two solutions: they can either pursue a technical solution or a legal solution, or both. Since the technical solutions are only 80 per cent effective, the rest 20 per cent should be legal. Follow the law and implement the techno-legal solutions that fits every corporate,” says Dhanya Menon, a prominent cybercrime investigator. “There is a notable lack of awareness in every segment of technology users, aggravated by the fact that the smartphone revolution has placed an easy avenue for the predators to target all age groups. Never click on any links that you receive through mail and make sure that you never transfer personal information through emails either. No bank or organisation will ask you for personal info through an email, or you will fall prey to phishing. To combat the issue of identity theft, make sure that you don’t leave your personal information wide open in the web for anyone to find and use,” she says, emphasising the need for awareness that is proportionate to the boom in technology.
Whistleblower protection in India

“Whistleblowing is recognised as an important tool in prevention and detection of corruption and other malpractices. By disclosing wrongdoing in an organisation, whistleblowers can avert harm, protect human rights, help save lives, and safeguard the rule of law. A robust ethics helpline service can help clients establish and manage a secure, efficient, and impartial reporting channel for whistleblowing,” says Sandeep Dhupia of KPMG.

Sadly, India’s Whistleblower Protection Act remains an anathema with gaping holes. “Whistleblower Protection Bill, as passed by Parliament, is in a way stronger than the Bill introduced in the Lok Sabha in 2011. However, when compared with the Whistleblower Protection Acts in the USA, South Africa, and the UK, our Act still lacks some basic functional features such as the definition of victimisation, which is essential in protecting whistleblowers from harm, unlike the 2006 draft which had such a definition,” says Venkatesh Nayak, Programme Coordinator of the Access to Information Programme, Commonwealth Human Rights Initiative, New Delhi.

“Still, there are certain positive sides to the same. It is India’s first Act which recognises an individual or an NGO as a whistleblower. All that apart, in my opinion, there should be certain amendments to the law in question: a definition for the term ‘victimisation’ must be included; Lokpal should replace CVC as the competent authority, since Lokpal possesses more depth and range for its investigation; One of the most important lacunae in the Bill is that the CVC, upon receiving a complaint, can resort to either an independent discrete enquiry or it can direct the same to its HODs. This makes no sense if the complaints are levelled against the HODs in question; Protection for different classes of whistleblowers must be included in the Act; Restrictions on external authorities including the media should also be addressed in a proper manner. However, in a Supreme Court verdict involving Indirect Tax Practitioner’s Association vs. RK Jain, a landmark judgement on press freedom, it was recognised that once the internal mechanism fails to produce satisfactory results, whistleblowers can turn to the media. If the CVC investigation fails to produce the necessary results, the whistleblowers should be able to turn to the external agencies,” he says, adding, “It is the responsibility of the BJP and the PM to ensure that the Act is enforced. At the same time, the public should be properly consulted on the same.”

Treading an alternate path
What’s pushing a majority of the youth into a life of crime? “These days, most youngsters are driven by a craving for money and luxury,” says CJ John, a prominent psychologist. “In a society where a person is judged by material possessions, the youth are driven into deviant routes to earn money for buying high-ended mobile phones and vehicles. Basically, what we are witnessing is a shift in their aspirations to the flashy and the material. There are chances that the youth turn to such crimes for a lack of creative outlet. Whatever may be the reason, the force behind it is money.”

Do deviants deserve a second chance? “The issue of recruiting criminals for government consultation, like in the West, is far more complex. If a forger, for instance, is given such a chance, he can either become a super forger or he will be able to rein in his instincts. The outcome depends on the personality of the criminal. If he is an ethical person driven by family or financial issues, his talents can most certainly be harnessed. If he is fraudulent, unethical by nature, the chances are that it will never work out well,” he says.

While the Indian system of checks and balances remains a crucible, let’s listen closely to the messages given by three incredible personalities, renowned ex-fraudsters who showed incredible determination and courage in turning their life around, after the damages of prison and isolation. They are now living proofs of the success of a system that we Indians find difficult to experiment with.

**Different types of white collar crimes**

- Front running: Front running is the illegal practice of a stockbroker executing orders on a security for its own account while taking advantage of advance knowledge of pending orders from its customers.
- Wash trade: A wash trade is a form of stock manipulation in which an investor simultaneously sells and buys the same financial instruments. This may be done for a number of reasons:
  1. To artificially increase trading volume, giving the impression that the instrument is more in demand than it actually is.
  2. To generate commission fees to brokers in order to compensate them for something that cannot be openly paid for.
- Insider Trading: Insider trading is the trading of a public company’s stock or other securities (such as bonds or stock options) by individuals with access to non-public information about the company.
- Pump and Dump Schemes: Pump-and-dump schemes involve the touting of a company’s stock (typically small, so-called “microcap” companies) through false and misleading statements to the marketplace.

Source: KPMG
Humans are at a disadvantage when it comes to combating social frauds, as we are unable to distinguish between an honest intent and a devious intent, says the American bimonthly *Psychology Today*. Awareness is the catch word here, and it will always be. Sharing valuable nuggets of knowledge with us is Frank William Abagnale Jr, a famous American impositor who dodged the FBI for five years and reformed himself by aiding the agency in fraud prevention. He is currently one of the most respected names in law enforcement.

**“The whole five years was a memorable experience. However, it was a very lonely life to live. Everyone I met believed I was ten years older than I was. I never had the opportunity to go to high school dance, football game, or enjoy a relationship with someone my own age. It was a very lonely and sad life,”** he says in an exclusive interview with *Money Indices*. 

“Unfortunately, worldwide, we are living in an extremely unethical society where people do not teach ethics at home. It is not taught in school, because the teacher would be accused of teaching morality. It is not taught in the university and today, very few companies have a code of ethics or code of conduct. Technology has made crime very simple and if you do not have ethics and character in your make-up, people tend to do things that are dishonest and feel that it is OK to steal. We will never put a dent in crime until we bring character and ethics back into homes, schools, universities, and the workplace.”

“A person has to be proactive and protect himself. You must be a wiser consumer. You cannot depend on the banks and retailers to protect your credit and/or your money. We live in a too much information world where we are often asked for our personal information when it is not necessary. Often, people give out their personal information and once in wrong hands, a person can become a victim of identity theft, fraud, etc. Also, many people post too much personal information on Facebook. Never use a full face photo of yourself due to the sophistication and popularity of inexpensive facial recognition software. Most importantly, never give out your date of birth or place of birth on your Facebook page. Finally, remember that what you say on Facebook stays on Facebook forever. You can remove it but it will always be retrievable. A smart individual understands that governments, corporations, and universities are always going to look at someone’s Facebook page (forget privacy buttons) when they consider hiring someone or accepting them. For example, if you are looking for a position with a corporation or government and there’s a picture on your Facebook page of you nude on the beach with a bunch of drug paraphernalia, wine bottles, and beer cans all over your body, they are likely not going to hire you,” he says.

Not all reformed fraudsters are recruited by the FBI, he says. “Obviously, there are cases where those who have broken the law can help prevent crimes. However, their acceptance is not automatic.
I get many requests from people in prison or recently released from prison and they want to know how to work for the government. People with a criminal past have to prove themselves for the rest of their lives. I have been doing this for 38 years and have to prove myself every day. Unfortunately, there are still many people who have tunnel vision, who believe once a criminal, always a criminal, and this is an extremely difficult attitude to overcome. It takes years of building trust and relationships with corporations and governments. Corporations and governments have to make sure the person is abiding the law and he would be beneficial to them for a specific need. Anyone who commits credit card fraud is not going to be able to be a credit card fraud expert. There are definitely unique individuals who committed very unique crimes and their knowledge can be helpful but it is certainly not a given that a corporation or government will contract with them for their knowledge. Remember, you have to earn people’s trust. This takes a long time and a lot of hard work,” he says.

He ends with a piece of advice for all youngsters out there. “The best advice I can give is that we are told by many people that life is short. But the truth is, life is long, very long. When you make a mistake in your life, you have to live with that mistake for many, many years. So, when you mistreat someone, deceive someone, lie to someone, bully someone, or steal from someone, as you get older, you will start to think about those things and start to carry a burden for the rest of your life that you cannot forget. I would hope that young people would think before they act and take a moment to realise that their actions affect everyone who loves and cares for them and can hurt others deeply.”

Whitacre’s whistle

Abagnale’s case shouldn’t be seen as a unique case that sets precedence in terms of grant of second chances to offenders. There are many celebrated personalities in the West who have stood by their conscience by defecting from the fraudulent parties and helping the state save billions of dollars. Here, we take a look at Mark Whitacre, who redefined the rules of whistleblowing in his own way, and see what’s he got to say about fixing the loose ends in the system against a break–in

Ethical and compliance training for potential leaders and frequent audits and awareness programmes can function as effective measures against any type of corporate fraud, says Mark Whitacre, an Ivy League PhD and the highest-ranked executive of any Fortune 500 company to become a whistleblower in the US history.

Responsible for uncovering the ADM price-fixing scandal involving an animal feed additive in the early 1990s, Whitacre says, “The importance of the Whistleblower Protection Act cannot be emphasised enough.” The Sarbanes Oxley Act of 2002, he says, played a crucial role in strengthening the Whistleblower Protection Act in the US.

Whitacre is a Marketplace Ambassador for CBMC, an organisation that has impacted his life greatly over the past two decades. Hollywood star Matt Damon played a character inspired by Whitacre in the super hit movie “The Informant”, which depicted his acts as an undercover for the FBI against ADM. Recalling his experience as an undercover, he says, “When you go to work today, imagine having a tape recorder attached to your body, a second one in your briefcase, and a third one in a special notebook, knowing that you will be secretly taping your supervisors, co-workers, and in some
cases, your friends. Now, imagine doing that every day for three years. That is exactly what I did, from 1992 to 1995, when I was an informant for the FBI in the largest price-fixing scandal (at the time), in the US history.”

“It was the highest pressure period of my life. After confessing my role in this international price-fixing scheme to the FBI, I agreed to work undercover for them. Working undercover was an extremely stressful life. For example, I acted like a loyal executive, building the company during the day, and tearing it down during the evenings when I met with the FBI to turn over the tapes and have debriefings. I would record my supervisors and co-workers during the day and then meet the FBI at various hotels during the evenings, often from 6 pm to midnight,” he says.

Corruption, he says, is a very real thing in the corporate industry and the only ways to combat it would be a strong ethical and compliance programme and cultivating long-term focus for the potential leaders. “I think ADM is not involved in any illegal activity at all today. I think they have become one of the shining lights among US corporations. They are a very compliance-driven company today. However, I do think corruption and fraud still exist in many companies around the world, including the US. That fact is due to risk versus reward; and because of greed versus purpose. But it is wonderful to see ETHICS and COMPLIANCE being emphasised so heavily at many universities in the US and around the world. We are seeing more and more ethical managers (and future leaders) graduating from universities because of the emphasis of ETHICS & COMPLIANCE at such a high degree,” he says. “I believe that three paradigms exist in all white collar fraud cases, be it the ADM case, Tyco case, WorldCom, or Enron. They are the following:

1) Long term vs. Short term
2) Individual vs. Community
3) Greed vs. Purpose

“I and a couple of other top executives (my supervisors) at ADM were very focussed on the short term, when we should have been focussed on the long term. We were too focussed on three months down the road because that is when earnings were reported each quarter and when we had the chance to increase shareholder value and our own stock options. We were also too focussed on ourselves (individual) instead of the community around us, which included our customers,” he adds.

“I think the youth often make impulse reactions and impulse decisions (without enough reflection). One can make poor decisions at any age, if it is an impulse reaction without enough thought and reflection. I think it is very important for our youth to have excellent mentors with much wisdom to learn from. I think having people around us to hold us accountable is very important. Making critical decisions in isolation is never a good thing. I made some critical decisions in isolation, and they turned out to be very poor ones. I currently surround myself with some very seasoned executives to keep me accountable. It is important that we all have accountability groups at any age,” he says. “Nine years in prison was like 50 years of real life. Prison is life in slow motion - no text messages, no emails, no cell phones, and hours and hours of free time each and every day. I had plenty of time to reflect on where I went wrong,” he says, adding that maintaining an optimum work-life balance was a must in relieving oneself of the stress.

“Live your life assuming that the green lamp is always with you. The green lamp is what the FBI used at the illegal cartel meetings in order to make the videos of the meetings. I did all the right things when the green lamp was with me. It was when the green lamp was not with me that I made some horrific decisions that cost my family a decade. I wish very often that I had a do-over in life. I would have done many things very differently. But I know that I am very blessed and very fortunate to have a second chance at life,” he says.

“In conclusion, I want to emphasise that no one is above the law, no matter how successful, no matter how wealthy, and no matter how educated. At one time in my life, and at a very young age, I had the world within easy reach. But poor, unethical decision-making changed my life forever. My hope is to guard you from the same ill-fate with my story.”

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Precautions against corporate frauds

- One of the most effective methods to fight corruption is the Whistleblower Act. Strengthening the provisions of the Act becomes supremely important in the current scenario.
- Corporate companies should strive to maintain a good work-life balance for its employees. Most of these frauds occur in retaliation or pent-up anger and frustration.
- Effective and frequent audits are a must in curbing different accounting frauds. Internal audits should be done in coordination with the security department.
- Ethics and compliance programmes for potential leaders should take root from the universities itself.
- Rather than taking decisions alone, even the top level management should surround itself with advisors to maintain accountability.
Investing in the market is a very risky job, one that requires the assistance of trained and certified professionals. In light of surging investor frauds like Ponzi and pyramid schemes, investors need to be extra careful while trying their luck in the stock market. Former white collar fraudster Walter Pavlo cautions investors by digging into his own experiences.

"Investors should learn to embrace the fact that there is no such thing as an easy buck or a sure deal," says Walter Pavlo, an MBA from Mercer University and a speaker and expert on white collar crimes. As a senior manager at MCI, with a meritorious employment history, Pavlo was responsible for the billing and collection of nearly $1 billion in monthly revenue for MCI’s carrier finance division. In March 1996, Pavlo, a member of his staff, and a business associate outside of MCI began to perpetrate a fraud involving a few of MCI’s own customers. When the scheme was completed, seven customers of MCI stood defrauded over a six-month period, resulting in $6 million in payments to the Cayman Islands. In January 2001, in cooperation with the Federal government, Pavlo pleased guilty to wire fraud and money laundering and entered federal prison shortly thereafter. He is currently a white collar crime writer and a prominent speaker on the issues. "Investors’ worst enemy is sometimes their own ego because they believe that they understand an investment and its risks, but many times they do not. The rise of cable television networks like CNBC and Bloomberg have given investors a false sense that they are sophisticated enough to venture out into the investment world as a result of watching a show on stocks or options. The best advice I could give an investor is to work with a professional who works for a well-known financial advisory firm. Further, their investment advisor should have good credentials (undergraduate or graduate degree and some recognised financial designation). It is true that there are some investment advisors who have stolen from clients. But if people work with a reputable firm, then that firm can be sued by the client if they happen to engage a rogue advisor," he says, adding that some companies fear the disclosure of such instances for fear of tarnishing their reputation and expensive litigation. "Failure to disclose criminal activity is also a result of companies wanting to just move on with conducting the business that they do and not getting involved in lengthy legal battles. For small companies, litigating against former employees caught in fraudulent operation in the making."

Precautions for investors

- Never trust investment schemes that appear in your mail.
- Never trust anyone’s claims of having insider knowledge. It is punishable by law.
- Approach certified stock brokers from reputed financial institutions to avoid getting duped.
- There is no such thing as a “sure deal” in the world. If there is a hype of such a product in the market, it is more likely to be a fraudulent operation in the making.
- Never lend your ears to market rumours and hot picks of the day.
- A stock which displays a sudden spurt in activity can never be trusted completely.
- Conduct comprehensive research on the institution or company in which you propose to invest first.
in criminal activity can be bad for morale and drains resources (money and manpower). So, while companies may want to see justice done, it comes at a price and companies, big and small, are constantly weighing costs for doing business,” he notes.

“Bribery, insider trading, and financial manipulation have been around for decades, but now only are we seeing these crimes prosecuted, resulting in very long prison terms. Also, law enforcement is using tactics like phone taps, video surveillance, search warrants, and informants to entrap white collar criminals. These forms of investigation are typically associated with organised crime and drug investigations. With that said, I think that investors are always on the hunt for the deal that seems “too good to be true”. More should be done to educate investors about scams and financial predators that exist in our financial markets. Prosecuting people and putting them in prison might be a deterrent, but it is also extremely expensive,” he says.

He notes that the youth venture into such activities without any idea of what lay in store for them. The initial glamour disappears fast into a life of degradation and loneliness, he says. “I started out wanting to work inside big companies that offered many opportunities. I always felt like staying with the same company, and moving up with promotions was always the route that I wanted to go. With that, I thought that family life would balance out my life. But, in the early days, I put work first. Now, 11 years after leaving prison, I value family more and enjoy helping others in need. I could never work at a big company. They wouldn’t have me. So, I would never consider applying. Life in prison for me was focussed on getting back out. I socialised with only a few inmates, read a number of books, and worked out. I had a job as a librarian while in prison and I routinely helped men read and write letters home. I learned that I needed very little to live from day to day and embraced a minimalist lifestyle today as a result. I had few visits in prison, which was my preference, since my kids had a number of activities going on in their life at the time. It was also very depressing to have visitors, no matter how much I missed them,” he says.

“As young people venture out into the workplace, they should respect the rules that organisations have in place to deter criminal or unethical behaviour. Further, they should become engaged in the company by having input into procedures that deter fraud by limiting the opportunities for it to occur. The more opportunities, loose rules and procedures, the more fraud the organisation will see,” he says.

Curbing the white collar crime

There are multiple measures to curb white collar crime at the organisational and regulatory levels. A few significant ones are listed below:

- Periodic regulatory examinations to ensure that organisations have robust compliance systems to prevent and detect fraud.
- Stringent regulations that provide for penal provisions and actions against promoters, management, and companies in case of any white collar crime.
- Regulator to act as “market watchdog” and act promptly on investor complaints for investor confidence in stock markets.
- Regular investor education programmes.

“Any audit, be it internal or external, is as best as the ‘tone at the top’ and governance culture of the organisation. Multiple factors like implementation of a formal fraud risk framework, deterrence matrix and its effective dissemination, and use of technology in intelligence gathering mechanisms determine the effectiveness against corporate fraud. Though each independently have their own distinct advantage, internal auditors can fall prey to management pressure and can succumb to dilution in professional independence. External auditors are completely independent and with the required know-how have an upper edge over internal audit for the fight against corporate fraud,” says Sandeep Dhupia

Source: KPMG
Could you compare India’s white collar crime rate with other nations?

According to our survey, one in three (37%) organisations is a victim of economic crime. In our own experience, white collar crime in India has shown a steady increase over the last few years. In comparison to developed countries, the statistics in India have shown a propensity of increase, both in terms of magnitude and scale of perpetration. The key difference, however, lies in enforcement - while many countries globally have significantly augmented regulatory frameworks and have stepped up enforcement, there is a still a lot to be done on these aspects in the Indian context.

What are the main differences between the West and India in tackling financial frauds?

The main difference is the attitude towards preventing, detecting, and responding to fraud. Western countries over the years have acknowledged that fraud is a complex subject and have encouraged and supported development of specialist skill sets to combat it. Measures such as zero tolerance towards fraud, stringent code of conduct, strong operating and financial policies, active whistleblowing channels as well as strong and adequately staffed compliance, audit and investigation departments are all good examples of effective fraud management programmes. In comparison, in India, the concept of fraud risk management has not completely evolved. The general public does not see effective deterrents to stop fraudulent activity. Perceived difficulties in initiating and filing legal cases as well as difficulties in recovery of defrauded amounts further create a less than healthy attitude towards fraud control.

Do you think India should be more open-ended in using the talents of reformed criminals to plug the loopholes in the system?

Skill sets on fraud detection are still nascent and developing in India, but societal attitudes are stumbling blocks in making effective use of reformed criminals. In our own experience, while we have effectively used the cooperation of suspects for speedier investigation, the quality of evidence usually requires rigorous corroboration. We also found in some instances, significant scepticism in accepting evidence or agreeing on facts because these came with the assistance of “reformed criminals”.

Could you provide us with some statistics of corporate fraud cases in the country?

Corporate fraud in our experience has increased significantly in India, both in terms of instances and magnitude of amounts involved. In our experience, the following are most relevant trends on frauds in India:

- We see more and more cases involving senior management as against junior and mid-level employees.
- There is a huge shift in the
type of fraud perpetration - from plain embezzlement, we see a shift towards financial statement fraud, earning management, abuse of trust, bribery and corruption, and large-scale asset misappropriation.

- Some industries appear to be more vulnerable than others - we see industries such as infrastructure, financial services, and consumer markets more prone to fraud and unethical activity generally as compared to others.
- We see a significant increase in ticket size - what used to be 'lacs' is now, at times, in multiple 'crores'.

From a regulatory perspective, enforcement needs to be significantly strengthened. While we do have a plethora of laws, the key is swift and successful enforcement with actual physical recoveries. In this regard, there is a huge potential for India to significantly improve regulatory action on fraud matters.

In our view, continued oversight by the Boards of companies with sharp focus on fraud prevention will go a long way in improving the quality of anti-fraud programmes and controls.

Could you care to bring out the significance of the Whistleblower Protection Act on the issue at hand?

The essence and intention of all Whistleblower Acts are the same, which is to provide a mechanism for stakeholders to confidentially report on fraud and unethical activity without fear of retribution. Many companies, both in India and overseas, have achieved great success with whistleblowing channels. On the other side, many companies have minimal or almost no reporting that comes through such channels. In our experience, this is because of one or more of the following reasons:

- Companies are not able to instil confidence among their stakeholders that reporting will be confidential and/or there will be no retribution against the person making the complaint.
- Reporting channels are not independent of the management (for example, complaints are sent to the CEO or other senior functionaries).
- There is restricted ease of use (for example, email address is provided to factory workers who may not be literate) or no local language support.
- There is little or no opportunity for the complainant to seek feedback on his complaint (absence of call back opportunities, one-way communication, etc).

What are some measures that could be adopted by the corporate to curb the surging crime rates in their own backyard?

The following are some of the key measures that companies could adopt to address rising fraud:

- Building a sustainable, zero tolerance to fraud & misconduct policy and its proper communication to internal and external stakeholders.
- Thorough and in-depth fraud risk assessment covering the business entity, key processes, and financial reporting.
- Completing an inventory of all regulatory compliances applicable to the company and monitoring status periodically.
- Conducting due diligence on third parties.
- Implementing effective whistleblower policy and providing adequate channels to facilitate reporting.
- Use professional help on fraud risk management - recognise that fraud management is different from internal or financial or risk audit and requires specialist skill sets.

FROM A REGULATORY PERSPECTIVE, ENFORCEMENT NEEDS TO BE SIGNIFICANTLY STRENGTHENED. WHILE WE DO HAVE A PLETHORA OF LAWS, THE KEY IS SWIFT AND SUCCESSFUL ENFORCEMENT WITH ACTUAL PHYSICAL RECOVERIES. IN THIS REGARD, THERE IS A HUGE POTENTIAL FOR INDIA TO SIGNIFICANTLY IMPROVE REGULATORY ACTION ON FRAUD MATTERS.