DEFERRED PROSECUTION AGREEMENTS AS A TOOL FOR WHITE-COLLAR CRIME ENFORCEMENT IN INDIA: A ROADMAP FOR ESG AND FINTECH SECTORS

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ABSTRACT

The explosion of ESG (Environmental, Social, and Governance) investing and the FinTech revolution have created a landscape for sophisticated white-collar crime: greenwashing fraud and cryptocurrency Ponzi schemes that subvert India's contemporary enforcement architecture. The criminal justice system of India, with its three criminal branches, is too far behind in judicial backups, sitting with 90% competence-infested incompetence, and no proactive policies for another 1% development after World War II or in the post 2000 legal world, struggles to combat corporate malfeasance effectively due to the strong evidence burden of the identification doctrine and 'too big to jail' labyrinth. In essence, this paper is a proposal for a model Deferred Prosecution Agreement (DPA) for India, taking a few hints from global DPA submissions, especially the Crime and Courts Act 2013, said example under judicial oversight from the UK, the discretion-based American DPA system, and the French Convention Judiciaire d'Intérêt Public statutes to address systemic enforcement deficits comprehensively. It would be argued that a statutory DPA model for India, through a diligently court-supervised process-based approval, will demand cooperation, acceptance of permanent facts by the corporate, sanctions, reformative integrity compliance with independent oversight disaggregated from corporate control, and very stringent liability of individuals in keeping with the strict disciplinary doctrines of ESG and FinTech sectors.

Keywords: Deferred Prosecution Agreements; White-Collar Crime; FinTech; Corporate Criminal Liability; Judicial Oversight.

I. Introduction

The term "white-collar crime" was first introduced by an American sociologist, Edwin Sutherland, in 1939[1], referring to non-violent crimes performed by individuals having high social status or by professionals during their occupation for financial gain. White-collar crime is usually characterised by the concealment or deception caused by breach of trust. In the 20th and 21st centuries, classic crimes of embezzlement and fraud have given way to more sophisticated forms of economic offences that result from working deep within the interstices of the global financial system.

Two new, aggressive frontiers for such crimes in ESG and FinTech. Under the umbrella of sustainable investment, there is a huge opening for colossal grand-scale greenwashing operations, aimed at deceiving potential investors into backing companies whose environmental claims are false or misleading, with the intent to perpetrate immense investor fraud. For instance, Deutsche Bank's asset-management chapter, DWS Group, has been exposed as supposedly having embellished the ESG integration, which has, in return, shown misrepresentation on these issues as being dangerously straddling the line between seeking civil and yet criminal culpability.[2] With the FinTech revolution, a logic has been set in motion that enables digital socio-economic justice by simultaneously minimising financial impediments while perpetuating fraudulent activities such as money laundering, tax evasion, and a range of new frauds. Technologies that value a lot of decentralisation and anonymity, like cryptocurrencies and blockchain, have rather become safe havens for money laundering, tax evasion, and the perpetration of new frauds, including Ponzi schemes featuring Bitconnect and 'rug-pulls' in the DeFi sphere.[3]

Mitigating and controlling these newly emerging threats proves difficult, notably when looking at the Indian context. Within a very slow-moving justice system, the backlog of cases can significantly erode the deterrent function of prosecution, while investigations into white-collar crimes are even more difficult, often requiring highly specialised financial knowledge and, anticlimactically, involved in a multifaceted web of digital and cross-border evidence that stretches the resources of justice for enforcement. Very few corporations are actually

[1] Edwin H. Sutherland, *White Collar Crime* 9 (Dryden Press 1949).
[2] J.S. Nelson, *Corporate Criminal ESG*, 109 Iowa L. Rev. 1429, 1435–37 (2024).
[3] J. Collins, *Crypto, Crime and Control: Cryptocurrencies as an Enabler of Organized Crime* 10–12 (Glob. Initiative Against Transnat'l Organized Crime 2022).

prosecuted, and even fewer are convicted; hence, the crimes become almost entirely risk-free yet lucrative for a number of businesses.[4]

Therefore, this paper sets out to answer the following question: How can a model of DPA regime (drawing lessons from the global perspective) help in managing the chronic and deep-rooted systemic challenges in prosecuting corporate white-collar crime in the fast-evolving Indian ESG and FinTech sectors? To answer it, a worldwide discussion on the evolution of DPAs, particularly their application to greenwashing, ESG, and crypto fraud in FinTech, is ventured, followed by the gradual laying down of a roadmap for customised implementation in India.

A. Literature Review

Extensive academic writing on deferred prosecution agreements predominantly lies in the US and UK contexts. Concretely, Alexander and Cohen have been revolutionary in grounding the development of corporate settlements into an empirical realm and opening a path to understanding the proliferation of DPAs and NPAs as viable alternatives to full criminal indictment.[5] In effect, per Spivack and Raman, American jurisprudential inquiry exhibits a strong preference for a judicially supervised model over unreviewed prosecutorial discretion.[6] Further illumination on the structural differences between the two regimes and the necessity for judicial oversight for the legitimacy of DPAs as enforcement mechanisms could be traced in Huynh's comparative research on white-collar prosecution in the US and UK.[7]

In the Indian context, Sony, Meena, and Meena critically discuss the legal system in India for penalising economic offences, briefing delays of systemic dimensions, evidentiary conundrums, and a crumbling conviction facade in corporate prosecutions.[8] As for ESG issues, the footsteps of Nelson's study of ‘Corporate Criminal ESG’ have directly touched the vast

[4] A. Sony, G. Meena & J. Meena, *Justice Delivery of Economic Offences/White Collar Crimes: Case of India*, 2 Indian J. Integrated Rsch. L. 1, 20–22 (2022).
[5] C.R. Alexander & M.A. Cohen, *The Evolution of Corporate Criminal Settlements: An Empirical Perspective on Non-Prosecution, Deferred Prosecution, and Plea Agreements*, 52 Am. Crim. L. Rev. 537, 540–42 (2015); P. Spivack & S. Raman, *Regulating the "New Regulators": Current Trends in Deferred Prosecution Agreements*, 45 Am. Crim. L. Rev. 159, 161–63 (2008).
[6] Alexander & Cohen, *supra* note 5, at 538–40; K. Artello & J.S. Albanese, *Addressing White Collar and Corporate Crime: Prosecution, Nonprosecution, or Deferred Prosecution?*, 7 J. Crim. Just. & L. (2024), https://jcjl.pubpub.org/pub/addressing-white-collar-crime.
[7] D. Huynh, *Preemption v Punishment: A Comparative Study of White Collar Crime Prosecution in the United States and the United Kingdom*, 9 J. Int'l Bus. & L. 105, 120–22 (2010).
[8] Sony, Meena & Meena, *supra* note 4, at 20–22.

realm of ESG liability for misrepresentation by corporations, including those attributed to greenwashing.[9] Collins records crypto crimes and their association with organised crime in the realm of FinTech, while Tomar's double-edged technology in white-collar crime clarifies the approach to addressing enforcement challenges in the literature on the digital financial sector.[10] The global perspective offered by Nguyen in his examination of confronting transnational corporate crime reinforces the urgency of India to establish international enforcement investment modalities.[11] This synthesis would lay down the grounds for a composite DPA model for India.

II. Methodology

This paper is founded on a doctrinal and comparative methodology. The doctrinal aspect establishes systematic scrutiny of primary legal sources, viz. legislation, policy documents, judicial pronouncements, and regulatory framework, in connection with India, the United States of America, the United Kingdom, France, and Singapore. This scrutiny is backed by secondary materials, namely, academic publications, institutional reports, and regulatory guides of regulatory bodies.

The comparison discussion deployed here to India makes use of the well-established scholarly tradition in comparative criminal law, using the US and UK DPA regimes as analytical benchmarks against which the enforcement gaps in Indian enforcement are scrutinised. The comparative analysis is structured along three axes: the source of authority to enter into a DPA (prosecutorial discretion vs statutory mandate), the extent of involvement by a judicial authority, and mechanisms for openness and individual responsibility. The variables are drawn from the literature and are selected because of their direct implications for policy work in the Indian context.

This article does not use a primary empirical data-gathering methodology. Instead, it relies on secondary empirical data gathered from other studies, especially those cited in the literature review, to discuss issues relating to enforcement gaps in India, juxtaposed with DPA experiences in like-minded jurisdictions. Even illustrative cases re: the enforcement action

[9] J.S. Nelson, *The Future of Corporate Criminal Liability: Watching the ESG Space*, 101 L. Rev. 1, 10–12 (2022).
[10] R. Tomar, *Digital Double-Edged Sword: How Technology Fuels and Fights White-Collar Crime*, 12 RGNUL Fin. & Mercantile L. Rev. 174, 176–78 (2025).
[11] K. Van Nguyen, *Confronting Transnational Corporate Crime: Urgent Global Measures*, 2024 Access to Just. in E. Eur. 421, 430–32 (2024).

targeted against Dewan Housing Finance Corporation Ltd. (DHFL)/Deutsche Bank, Satyam Computer Services Ltd., Infrastructure Financial Services Ltd. (IL&FS), and BitConnect Inc., et cetera utilise concrete factual contexts to underline the theoretical communication. The last part discusses the comparative and theoretical investigations to develop the prescription for a normative proposal regarding a model Indian DPA framework.

III. Results and Analysis

A. Deferred Prosecution Agreements: The Global Experience

A deferred prosecution agreement (DPA) is a prosecuting contract entered into by the prosecutor and a firm before trial. Generally, under a DPA, the prosecutor would file charges but agree to hold off prosecuting for some number of months in accordance with the terms of the negotiated settlement. If the corporate entity lives up to the stringent terms of the agreement, most often including the payment of heavy prosecution-set fines, factual assertion of culpability, cooperation with live investigations of individuals, and implementation of internal compliance reforms, the charges are dismissed at the end of that period. This general notion and its complement, non-prosecution agreement (NPA), where charges might be defended, developed as some kind of "third way" for the prosecutors to consider between full-fledged indictment and completion of the case. For companies, DPAs are considered as a way to put an end to criminal liability with a very faint possibility of getting caught in the collateral consequences of a conviction, as seen in the case of Arthur Andersen after its involvement in the Enron scandal.

The United States has long been considered the key builder of contemporary law and has proliferated its use following the Enron scandal. A series of policy memoranda by the Department of Justice, dating from the Holder Memo (1999) through the Thompson, McNulty, and Yates memos, reinforced the idea that corporate cooperation was central to the prosecutions. U. S. DPA, typically, will need a monitor to ensure that a company complies with the reform standard.[12] The approach has attracted significant criticism for such things as the selection of the monitor, the cost of this monitor, the charge of cronyism and the lack of accountability. Despite the criticisms, though, the U. S. model represents a significant departure from a reform that everyone knows, a few learn and improve together from rather than a

[12] Spivack & Raman, *supra* note 5, at 161–63.

punishing paradigm.

On the other hand, the United Kingdom adopted a statutory and well-structured regime for DPAs through the Crime and Courts Act of 2013. Among the striking points of the UK system are the due consideration given to judicial oversight, with a judgment required as to the DPA and watching all along whether it would serve the interests of justice and if its terms were also fair, reasonable and proportionate.[13] The presence of judicial oversight matches the gaps opened by the prosecutorial discretion overreach and abuse in the United States system. The public is also able to find confidence in the transparent process that comes with public-recorded hearings. The public is also able to find confidence in the transparent process that comes with public-recorded hearings. Only a small number of similar institutions present in other jurisdictions could be presumed on the same feet: France has created an organisational framework to control corruption and fraud in public procurement, known as the Convention Judiciaire D'Intérêt Public (CJIP), while Singapore has put in place mechanisms for making corporate directors personally criminally liable for failing to prevent their companies from committing climate-related offences.[14]

The point that the discussion of India comes down to is that, as powerful instruments as DPAs are, their legitimacy and efficacy are significantly fortified if supported by a clear legislative framework and subject to proper oversight from the judiciary, a table that presents the UK.

B. ESG, Greenwashing, and the Spectre of Corporate Liability

ESG investing has overflowed globally with a whopping value of $35 trillion in 2020, permitting newer heights for greenwashing.[15] Greenwashing occurs when there is a presentation of a false or misleading image of a company's environmental or social credentials, intending to attract investors, termed as a thin line in the realms of both RICO, i.e., fraud, and aggressive marketing. India, through the framework Business Responsibility and Sustainability Reporting (BRSR), attempts to address these issues through a mandatory disclosure regime that has been bestowed upon the top 1000 listed companies. However, like most disclosure-based regulatory regimes, this too lacks enforcement, requiring companies to make statements

[13] Crime and Courts Act 2013, sch. 17 (U.K.).
[14] Environmental Protection and Management Act, cap. 94A, § 10A (Sing.) (as amended).
[15] Global Sustainable Investment Alliance, *Global Sustainable Investment Review 2020* (2021), https://www.gsi-alliance.org/trends-report-2020/.

while failing to ascertain their compliance with them, thus paving the way for false representations.

It will be interesting to notice the unusual perseverance portrayed in the prospects of German entities that betrayed the road to true integration. Specifically, Deutsche Bank's DWS was telecast in 2011 for performing its ESG ratings shamefully; hence, raids were aimed by German regulators, with the CEO later resigning. BlackRock, with its use of MSCI ESG ratings that mainly articulate the company's ESG risk in terms of its own peril as opposed to the world, is faced with an array of problems related to the fraudulent marketing of 'sustainable' funds.[16] These cases demonstrate the clear implication that ESG claims themselves are not a mere corporate advertising; they are essential representations made to the investors. Their misrepresentation may now amount to fraud or dishonesty.

The Corporate Sustainability Reporting Directive (CSRD) of the European Union implies an obligation of independent external verification of ESG disclosures in a standardised digital format, thereby combatting greenwashing. The new comprehensive EU Environmental Crime Framework Law will criminalise environmental harm across its member states. These two initiatives indicate a shift from voluntary disclosure to verifiable and enforceable corporate obligations, though India's BRSR framework has not yet achieved that level.[17] On the other hand, there has been growing focus on the personal responsibility of compliance, directors, and officers for failures in terms of ESG risks, with some major global trends emerging in this regard in 2021 EY respondents reported a concern for ESG-related litigation exposure that was shared by more than half of the general counsel of the responding corporations, and the strictest enforcement of this trend might be best displayed in the liability framework of the directors of Singapore.

C. FinTech's Frauds: Regulating Crime in the Virtual World

Technology functions as a double-edged sword in digital finance. In a globally scattered financial universe that is spinning out of traditional regulation, let alone traditional financial models, space has been wrought for modern financial crimes that can rarely be tracked, investigated, and prosecuted. India has responded to such threats by placing Virtual Digital

[16] Nelson, *supra* note 2, at 1435–37.
[17] A. Sharma & B.D. Mishra, *A Study on Sustainability in the Fintech Banking Industry and the Evolution of Sustainable Ratings in Fintech*, 3 Sachetas 16, 20–22 (2024).

Assets under the Prevention of Money Laundering Act, 2002 (PMLA),[18] to target proceeds from crime by working through AML and CTF mechanisms.[19] Few, however, consider an approach suitable to curb FinTech-specific frauds like cryptocurrency Ponzi schemes, scam ICOs, and rug pulls in DeFi.[20]

FinTech crime is diversified and expanding at a faster pace. Cryptocurrency 'mixing' or 'tumbling' services are laundering thinly veiled money; dark web transactions are facilitating corporate espionage and identity theft due to Bitcoin transactions; NFT platforms oversaw false sales of fake or plagiarised digital assets. BitConnect, a humongous fraud shown foo crypto venture, folded in 2018 after drawing in excess of $2 billion of investment from victims worldwide. BitConnect, a humongous fraud shown foo crypto venture, folded in 2018 after drawing in excess of $2 billion of investment from victims worldwide. FATF has formalised target criteria for Virtual Asset Service Providers (VASPs), namely the 'travel rule', which calls for origination and beneficiary information to be provided to counterparties[21]; however, this lack of streamlined implementation is compounded by criminal exploitation of jurisdictions with weaker regulatory regimes. These crimes by nature transcend borders, making it difficult for traditional enforcement tools.

D. The Imperative for DPAs in India: Beyond the Binary

The Indian criminal justice system is not at all prepared to handle complex corporate misdeeds. Dockets burden the courts, whereby corporate crime cases could remain for decades, nullifying deterrence for the prospective offenders, while providing inadequate, often illogical and far-fetched justice to the victims. The identification doctrine that requires proof that a company's "directing mind and will" committed a crime is far too hard to establish in the case of largely decentralised, large-scale corporations. On top of everything, the proliferation of digital evidence means that getting evidence is even more difficult. All this characterises atrociously low rates of corporate prosecution and conviction that have created a governance vacuum in which corporate impunity thrives.

The 'too big to jail' dilemma even further limits the room for manoeuvre for

[18] Prevention of Money Laundering Act, No. 15 of 2003, § 2(1)(vda) (India) (as amended by Finance Act 2023).
[19] *Id.*
[20] Sony, Meena & Meena, *supra* note 4, at 15–17.
[21] Financial Action Task Force, *Updated Guidance for a Risk-Based Approach: Virtual Assets and Virtual Asset Service Providers* (2021), https://www.fatf-gafi.org.

prosecutors. The saga of Arthur Andersen is the most vivid illustration yet of this scenario. Arrest brought the accounting firm down; this is evident from its loss of clients during the Credit Season and a loss of honor which attending insolvency at times took the tail, likewise harming the fortunes of thousands of genuinely innocent stakeholders and employees. The dilemma is not merely a theoretical one in India. During the 2009 financial scandal of Satyam Computer Services, where its Chairman admitted to inflating profits by more than ₹7,000 crores, its very fear of insolvency forced the acquirer Tech Mahindra to rescue it from mass unemployment. The same was true of the IL&FS crisis of 2018, where their default was to the tune of ₹91,000 crores, which, in the absence of action on the part of the government, would bring down the whole system of the economy[22]. Such collateral harms could have been lessened under a deferred prosecution scheme that includes self-reporting and expedited remediation.

DPAs offer some benefits, such as focusing on voluntary disclosure, allowing culpable individuals to cooperate in prosecution, and presenting relevant compliance reform issues to a monitor independent from the corporation in order to foster a trustworthy environment.[23] By so doing, the Indian enforcement regime pursues a balance between punishment and an enforcement system that is preventive and oriented toward restoring life to corporate entities while holding them accountable.

IV. Discussion and Conclusion

A. A Proposed Roadmap for a DPA Framework in India

An effective DPA framework for India must be built on transparency and tailored to the nation's unique legal and economic environment. Duplicating the US model, found to heavily rely upon prosecutorial discretion with insufficient oversight, would be wrong. Instead, India should adopt the UK approach by formulating its own DPA framework with a clear statutory framework, complemented by substantial judicial oversight as a cardinal principle.

The fundamental basis of such a framework should plant a distinct chapter in the Code of Criminal Procedure authorising DPAs, or otherwise allow for specific legislation; democratic legitimacy and legal certainty have been served by this first step already, by

[22] Artello & Albanese, *supra* note 6.
[23] Spivack & Raman, *supra* note 5, at 165–67.

avoiding such ad hoc experiments as have occurred in the U. S. context. Plainly, the law must specify that any DPA will require confirmation by a High Court judge, PRN. In the British setup, the judicial review is substantive, so that the judge must determine whether the DPA is within the interests of justice, as well as fair, reasonable, and proportionate. This feature is crucial, so the framework does not provide corporations the leverage to buy their way out of trouble. The DPA, any stipulated facts, and legal and evidential detail on the court's assurances given should all be published in the public domain, and by that establish transparency and good precedent for further enforcement.

Present-day Indian systems provide a good model: SEBI's Settlement Regulations 2018 allow the adjustment of enforcement actions because of civil penalties or compliance commitments, whereas the RBI's Master Directions on Frauds 2016 care for the submission of internal audits and the receipt of reports. With minor adjustments to incorporate judicial oversight conditions, these may lay concrete institutional grounds for the initiation of the DPA movement in India in relation to ESG and FinTech.[24]

The outline of a model Indian DPA thus includes the following key provisions. First acknowledgement with clear admission of facts. The corporation must acknowledge a very detailed and unambiguous set of facts admitting to its wrongdoing, binding upon the company and used as evidence in case of any breach. Second-Monetary Sanctions: Multiple penalties, including fines, disgorgement of ill-got profits (where applicable), restitution to victims, to be determined in terms of sentencing guidelines for ensuring proportionality. Third-efficiency to positive corporate changes: Specific and measurable obligations to strengthen the internal control mechanisms and compliance framework for the ESG offences. These may include independently verified reporting on emissions or supply chain due diligence of the financial statements; for the fintech enterprise, these may include strengthened AML/KYC procedures and algorithmic fairness audits. Fourth-Independent Oversight: As a matter of course for major cases, there will be a monitor appointed by the court, with each appointment and pecuniary compensation overseen by the court. Fifth-looping in of Full Cooperation along with Individual Accountability as a Central Prerequisite: Full cooperation with any investigations on individuals that pertain to those targeted for indictment as part of a DPA administration, with a clear clause stating that the DPA does not extend immunity to any employee, agent, officer,

[24] Nelson, *supra* note 2, at 1460–62; Tomar, *supra* note 10, at 190–92.

or director, past or present.

B. Conclusion

Sustainable and digital forces bring transformation when white-collar crime occurs. It has never been more evident than it is today, where some new and fairly complex misconduct in volume ESG and Fintech has uncovered the fundamental problems of a traditional criminal justice system that is too tilted towards binary, punitive responses. The entailed enforcement gaps of oversized dockets, evidentiary issues, and risks of collateral consequences from prosecution hugely undermine deterrence and shake the confidence of the common Indian. In fairness, the existing paradigm is too insufficient against globalisation, more specifically, a digital economy where the corporate fraudster could hide more efficiently.

This article has raised the instant necessity for Deferred Prosecution Agreement legislation in India as a practical and efficient solution to the abovementioned issues. They provide a middle ground between expulsion and prosecution, offer incentives for self-reporting, necessitate internal reform, and charge those individuals at fault. This reshapes the regime entirely from simply retaliating against punishment to preventing employees altogether and rehabilitating them.

India must avoid a legal regime built upon an unmeasured prosecutorial discretion. Instead, the country should draw from the experiences at the global level and evolve a legal mandate with proper judicial oversight, drawing on the British example. Through the court's oversight over the DPA, these settlements will always be in the public interest. They will provide strong incentives to deliver corporate reform and restore victims' recoveries while ensuring individual accountability, without harming economic equilibrium. This regime is not intended to be lenient; rather, it embraces patent justice in the 21st century.

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