



White Collar Crime in India and its Effect in the Society : A Critical Study

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1. Introduction

This research article analyses a critical study on white collar crime in India. And to understand the concept of white collar crime in India. White collar crime basically means the crime committed by the educated people belonging to a higher class of society during the course of their occupation. In this paper, the author has discussed about what differentiates white collar crime from the blue or ordinary crimes. It can also be called as the crime of educated and professional elites. In this article the author has further discussed the common types of white collar crimes evolved in India from last few years. And how this has become a socio-economic crime. Besides this there are crimes which are involved in different profession in medical, education and legal profession.

White Collar Crime occur in large and complex organization. These offences are committed by people with sophisticated understanding of disciplines of finance management, engineering, medicine, organizational theory, information technology etc. The harm caused by white collar crimes is, in most cases, palpable. For example tax evasion lead to reduce revenue for the treasury, bribery lead to biased government decision making, inside trading lead to loss of investments in investors. There is moral complexity and uncertainty in white collar crimes which is not visible other offences.¹

1.1 Meaning of White Collar Crime:

White Collar Crimes are the crimes committed by a person of high social status and respectability during the course of his occupation. It is a crime that is committed by salaried professional workers or persons in business and that usually involves a form of financial theft or fraud.

The term “White Collar Crime” was defined by sociologist Edwin Sutherland in 1939. These crimes are non-violent crimes committed by business people through deceptive activities who are able to access large amounts of money for the purpose of financial gain. White Collar Crimes are committed by people who are involved in otherwise, lawful businesses and covers a wide range of activities. The perpetrators hold respectable positions in the communities

¹ White Collar Crime, India, available at :<https://blog.ipleaders.in/analysis-white-collar-crimes-india>(Visited on July 15, 2019).

unless their crime is discovered. The laws relating to white-collar crimes depends upon the exact nature of the crime committed.

1.2 Definition of white collar crime :

Late of Edwin Sutherland defined a White Collar Crimes as: “A crime committed by a person of responsibility and high Social Status in the course of his occupation”. The above definition of White Collar Crimes has 5 attributes.

1. It is a crime
2. Committed by a person of respectability;
3. Of high Social Status;
4. In the course of his profession or occupation;
5. It is usually a violation of a trust

Thus, Prof. E. Sutherland pointed out that besides the ‘traditional crimes or Blue collar crimes . Such as Assault, robbery, dacoit, Murder, Rape, Kidnapping and other acts involving violence, these are certain White Collar Crimes.

1.3 Types of White Collar Crimes

There are different types of white collar crimes. Some of them are as follows:

- A. **Bank Fraud:** Bank Fraud means to engage in such activities in order to defraud a bank or using illegal means to obtain assets held by financial institutions.
- B. **Blackmail:** Blackmail means demand for money by threatening some person to cause physical injury or exposing his secrets.
- C. **Bribery:** Bribery means offering money, goods or any gift to someone in order to have control over his actions. It is a crime whether someone offers or accepts a bribe.
- D. **Computer Fraud:** Computer frauds are such frauds which involve hacking or stealing information of some other person.
- E. **Embezzlement:** When someone entrusted with money or property uses it for his own use, it is embezzlement.
- F. **Extortion:** When a person illegally obtains someone’s property by actual or threatened force.
- G. **Insider-Trading:** When someone uses the confidential information to trade in shares of publicly held corporations.²
- H. **Money-Laundering:** Money Laundering means the concealment of origin of illegally obtained money.
- I. **Tax fraud:** Tax fraud means evading tax by providing wrong information in tax forms or illegally transferring property in order to avoid tax.

² White Collar Crime, India, available at :<https://blog.ipleaders.in/analysis-white-collar-crimes-india>(Visited on July 15, 2019)

2. Nature of White Collar Crimes :

After analysing the definitions and studying the unique characteristics of white collar crime, the next step is to see the nature of these crimes. Crime or an offence is “a legal wrong that can be followed by criminal proceedings which may result into punishment.” The hallmark of criminality is that, it is breach of the criminal law. There exist two divergent views regarding the nature of white collar crime. According to one view, white collar crimes are ‘crimes’ in real sense where as the other side raises doubt regarding the criminality of white collar crimes. Those who advocate the non inclusion of white collar crimes in ‘crimes’ say that the vast bulk of white-collar legislation is regulatory rather than penal in philosophy, is administrative in procedure, and by its qualifications is directed chiefly toward the business and professional classes of our society. Most of the statues dealing with white collar violations are administrative in nature. The discretion is vested on the concerned authority to decide whether penal action must be initiated or not. It is studied under the realm of criminology, which is justified because it is in violation of the criminal law.

White collar crimes are crime but they differ from conventional crime in five ways i.e. origin, determination of responsibility, philosophy, enforcement and trial procedure and sanctions. The main contention is that according to one view these regulatory crimes are ‘civil’ in nature whereas according to others they are ‘criminal’ in nature. Most of the statues on white collar crime prescribe both civil as well as criminal liability for the same offence. Thus, the reason for this confusion is the result of a variety of remedies available to enforce white collar crimes. The only difference that exists is the legal procedure in civil cases differs from those of criminal cases. Many offences like negligence, defamation, trespass etc. can be tried both under the law of torts and they are also dealt under the Indian Penal Code, 1860. The cases under the torts is pursued according to the provisions of Civil Procedure Code, 1908 where as the case under the criminal law has to be pursued in light of Criminal Procedure Code, 1973. If some forms of illegal behaviour are dealt with by tort law rather than by criminal law simply because of tradition or some administrative reason, then the argument that white collar crime is not really crime because offenders are dealt with under civil law loses much of its strength. Therefore, in the modern arena, when the white collar crime has reached astronomical heights, there does not exist any justification for not treating white collar crime as ‘crime’ in the real sense.

3. Historical Background :

3.1 Ancient Period

Dating back the history, it is an undaunted fact that ever since human being started living together commission of crime has erupted. A few types of crime have become obsolete and many new forms of crime have taken different dimensions in the present society. White collar crime is not a new phenomenon. In the ancient and medieval literatures of India numerous³ references are found about these crimes since Vedic period. Manu, the great law giver of India

³Dr.N.V.Paranjape, *Criminology Penology with Victimology 143* (Central Law Publications Allahabad, 16th edn., 2016)

felt that there was an age when 'dharma' prevailed in perfection but gradually 'adharna' made its headway giving rise to the tendencies like theft, falsehood and fraud.

- A. According to Brahaspati, in former ages men were strictly virtuous and devoid of mischievous propensities. Now that avarice and malice have taken possession of them. The concept of bribe is not a new concept in India. Reference to bribery can be seen even in many sacred books.
- B. Narada says "what has been given by men with fear, anger, lust, grief or in jest or by mistake or through any fraudulent practice by a minor, an idiot, a person not his own master, one insane or intoxicated, an outcast or in consideration of work unperformed be considered as ungiven or bribe.
- C. Hindu Dharmastra writers always think for the better society, therefore Smrtikars take into consideration the problem of health and disease of the people. In this context they discard non-eatables whose sale is punishable. Yajnavalkya first pointed out that sale of the dog's meat is an offence and those connected with such sale must be penalized. Their hands, nose and ears are to be mutilated besides pecuniary fines. Vijnaneswara commenting on this verse also mentions that nose, ears, hands, the three organs of the body should be mutilated. Kautilya has proposed amputation of hand and leg for the sale of non-eatable meat. punishment of physician.³² The embryology was thoroughly known in ancient India and removal of immature fetus was taken as crime and the highest sin. Kathaka Samitha decries and mentions along with Maitrayini Samitha³³ the removal of fetus as more severe crime than killing of a Brahmin. Yajnavalkya³⁴ has keenly looked to this heinous crime and has proposed serious penalty to the person responsible for the destruction of embryo.

According to Kautilya manufacture of forged coins is called 'Kutarupa Kara' and one who mints coins in any place other than the government mint or without being supervised by the state mint maker is a counterfeit coin maker. Kautilya gives a list of apparatus that the counterfeit coin-maker used. They are metals alkali, charcoal, bellows, clipper, hammer, anvil, designed die and crucible.

3.2 Modern Period

The last quarter of 18th century saw the establishment of some cotton textile and jute mills in India but this did not much change the complexion of things because the British government had adopted a policy of some toleration towards the labour in India which was in fact primarily directed by reason and motives of preservation of the textile industry of Manchester and Lancashire in view of the competition between the two. Before the conditions of the India factory workers could much deteriorate the Factories Act, 1881 was placed on the statute book. In India rapid industrialization started only with the First World War (1914 to 1919) but even then the policy of the British Government was to artificially restrict the same to the minimum needed.

Nevertheless even this limited industrial development was of an important social consequence since it saw the birth and growth of two new social classes in the Indian society³⁸ -

- (1) The industrial capitalist and
- (2) The modern working class

The influxes to the urban areas had also made its beginning, even though the workers did not altogether sever their connections and lose their contacts with their kinsmen in the villages. As the industrial activity multiplied, this resulted in an increased dissociation of the workers from their village life. Extreme business competitiveness and search for monopolistic advantages ensued along with natural and implicit concomitant criminalistic behaviour. Criminalistic behaviour is inherently present and implicit in extreme business competitiveness and monopoly thus the demon of white collar crime began to grow in India as well and in not too small a period this newer form of criminality, till now almost unknown to the Indian scene, came to the forefront and in spite of all the provisions of the Indian Penal Code, 1860.

4. Causes of White-Collar Crime

The general perception is that the white collar crimes are committed because of greed or economic instability. But these crimes are also committed because of situational pressure or the inherent characteristic of getting more than others. However, there are various reasons for white collar crimes.

Not really a crime: Some offenders convince themselves that the actions performed by them are not crimes as the acts involved does not resemble street crimes.

Not realizable: Some people justify themselves in committing crimes as they feel that the government regulations do not understand the practical problems of competing in the free enterprise system.

Lack of awareness: One of the main reason of white collar crime is the lack of awareness of people. The nature of the crime is different from the traditional crimes and people rarely understand it though they are the worst victims of crime.

Greed: Greed is another motivation of the commission of crime. Some people think that others are also violating the laws and so it is not bad if they will do the same.

Necessity: Necessity is another factor of committing crimes. People commit white collar crimes in order to satisfy their ego or support their family.

5. Judicial attitude towards white Collar crimes in India:

The government of India has introduced various regulatory legislations, the breach of which will amount to white-collar criminality. Some of these legislations are Essential Commodities Act 1955, the Industrial (Development and Regulation) Act, 1951., The Import and Exports (Control) Act, 1947, the Foreign Exchange (Regulation) Act, 1974, Companies Act, 1956, Prevention of Money Laundering Act, 2002.

Three organs of the Government are legislature, Executive and Judiciary with defined roles of each other. Laws have no meaning without adequate enforcement, which is why our Constitution has put in place an elaborate judicial system with the Supreme Court at the apex. As law abhors vacuum, so therefore, when the Executive refused to act and

legislature could do little about it, Indian Judiciary stepped in to save the day. The public interest litigation has proved to be a strong and potent weapon to control white collar crimes.⁴

5.1 The narcotic drugs and psychotropic substances act,1985 :

The Narcotic Drugs and Psychotropic Substances Act, 1985 prescribes stringent punishments. Hence a balance must be struck between the need of the law and the enforcement of such law on the one hand and the protection of citizens from oppression and injustice on the other. The provisions under the special Act are to be followed meticulously since the punishments are stringent. The judgments of the Supreme Court of India and various High Courts are guiding force and have been referred in detail.

Provision of Section 50 of Narcotic Drugs and Psychotropic Substances Act 1985 is mandatory-

The Supreme Court of India in *Ali Mustafa Abdul Rehman Moosa v. State of Kerala*⁵, where Sub-Inspector of Police received reliable information that a foreigner was waiting in the first class waiting room with huge quantity of charas. The SI of police went to the first class waiting room and found one Ali Mustafa, a Kuwaiti National. He was searched and 780gms. of charas was recovered from his possession. The accused Ali Mustafa was convicted and sentenced to imprisonment for 11 years and to pay fine of Rs. one lakh by the Court of Sessions. The matter went up to Supreme Court in appeal.

However in *State of Punjab v. Balbir Singh*⁶, the Supreme Court has held that if a police officer without any prior information as contemplated under the provisions of NDPS Act makes a search or arrests a person in the normal course of investigation into an offence or suspected offence as provided under the provisions of Cr.P.C. and when such search is completed at that stage section 50 of NDPS Act would not be attracted and the questions of complying with the requirements there under would not arise. If during search or arrest there is a chance recovery of any narcotic drug or psychotropic substance then the police officer, who is not empowered, should inform the empowered officer who should thereafter proceed in accordance with the provisions of the NDPS Act. Then the empowered officer shall carry out investigation as per provisions of NDPS Act from that stage onwards.

In *Ashok Kumar v. State of Haryana*,⁷ the accused Ashok Kumar was searched in presence of a Magistrate while alighting from a bus and was found to possess 5 kg & 500 gms of charas. The Magistrate was examined as a witness, but he was unable to identify the accused during trial. The Investigating Officer identified the accused during trial. The accused was convicted under Section 20 of NDPS Act by the Special Court. The High Court also affirmed the conviction and sentence passed by the Trial Court. It is contended on behalf of the defence before the Supreme Court that the fact of seizure of contraband article should be disbelieved in the absence of independent seizure witness. The Supreme Court upheld the conviction and sentence of the accused person even in the absence of independent witness of search & seizure.

⁴ Ibid

⁵ AIR 1995 SC 244

⁶ AIR 1994 SC 1872

⁷ 2000 SCC (Cri) 506.

5.2 The information technology act, 2000 :

No matter how we enact laws and various control regimes in the and it is judiciary, which, in any Legal system, is responsible for administration of justice.

The case of *Yahoo, Inc. v. Akash Arora*,⁸ was the first case where an Indian Court delivered its judgment relating to domain names. The plaintiff Yahoo Inc. instituted a suit in the Delhi High Court against the defendants seeking inter alia a decree of permanent injunction restraining the defendants, their partners, servants and agents from operating any business and/or selling, offering for sale, advertising and in any manner dealing in any services or goods on the internet or otherwise under the trademark/domain name 'Yahooindia.com' or any other mark/domain name which is identical with or deceptively similar to the plaintiff's trademark 'Yahoo!'. The plaintiff also moved an application seeking temporary.

In this case, instituted by Yahoo! Inc., the Delhi High Court granted an interim injunction restraining the defendants from operating any business or selling, offering for sale, advertising and/or in any manner dealing in services or goods on the internet or otherwise under the trademark/domain name "Yahooinida.com" or any other trademark/domain name which is identical! with or deceptively similar to the plaintiff's trademark "Yahoo!".

In another matter *Rediff Communication Ltd. v. Cyber Booth*⁹, the Yahoo judgment was once again reiterated. In this case, the plaintiff filed a suit for permanent injunction for inter alia restraining the defendants from using the mark/domain name 'RADIFF' or any other word or work or name which is deceptively similar to the plaintiff's mark/name 'REDIFF'. Bombay High Court granted an injunction against the defendants. The Special Leave Petition filed by

Cyber booth in the Supreme Court was also dismissed. Though the Cyber Law was passed under the Information Technology Act in 2000, but the corporates houses have been shy of reporting cyber-crimes fearing adverse publicity which results into less judicial pronouncements. Only conviction reinforces the confidence of the people in the capability of the law enforcement agencies to crack cyber crime and in the Indian judicial system's resilience in dealing with new challenges in the cyber age.

Lalit Goel v. Commissioner of Central Exercise,¹⁰ this Court, while dealing with bail application in a case of Customs Act, observed that the economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. Noticing ever growing materialistic outlook setting unscrupulous elements on a prowl to maximize material gains by unlawful means, this Court even suggested appropriate legislative measure and judicial intervention to safeguard the interest of the State and public at large.

The Supreme Court in *Prashant Kumar v. Mancharlal Bhagatram Bhatia*,¹¹ has held economic offences are increasing all the time. The smugglers disrupt the economy of the nation and erode the valuable foreign exchange. It is necessary to facilitate the investigation into economic offences and the remand courts should not ignore this aspect while

⁹AIR 2000 Bom. 27.

¹⁰2007 (3) SCC 2282.

¹¹1988 Cri LJ 1463 (Bom.)

considering the question of liberty of a suspect. It should be born in mind that the common good of the society should be properly balanced against the individual liberty.

6. Criticism of Sutherland's views on white collar crime :

Sutherland's definition of white collar crime has evoked criticism from certain quarters. Coleman and Moynihan pointed out that the lack of definite criteria for determining who are „persons of responsibility and status“ has made Sutherland's definition of white collar crime the most controversial. It seems likely that what Sutherland meant by this is absence from conviction for crimes other than white collar crimes. The element of „high social status“ as used in the definition also leads to confusion; clearly it has far narrower meaning than is given to that term in everyday usage. Sutherland himself did not stick to this meaning and including thefts and frauds committed by middle or even lower middle class workers in course of their employment or work. Some critics have suggested that such crimes should have been called as „occupational crimes“ instead of being termed as „white collar crime“. It is further argued that in fact the important element in the definition of white collar crime is not the socio economic status of the individual, but rather the type of crime and the circumstances of its commission. These usually include pilfering, false accounting, bribery embezzlement etc. Sutherland however, justifies the special procedure of trial for white collar criminal by administrative agencies on the ground that it would protect the offender from the stigma of criminal prosecution. Yet another objection against the definition of white collar crime is that it does not necessarily require mens rea which is an essential ingredient of a crime. The doctrine of mens rea based on common law has no application to statutory offences in India and the requirement of guilty mind may be excluded either expressly or by implication in such cases.¹²

7. Contributing Factors:

There are some factors or causes, which are responsible for occurrence of white collar crime ; some are economical, social and political responsible for white collar crime. The other problem is globalization and liberalization is also mainly responsible for white collar crime. Some of them are as under: The changing socio-economic scenario of the society coupled with increase in wealth and prosperity has furnished opportunities for such crimes. Of all the factors the economic and industrial growth throughout the world has perhaps been the most potential cause of increase in white-collar crimes in recent years.

A Critical Study on White-Collar Crimes in India Commenting on the growing incidence of white collar crime in India, the Law commission in its 29th Report observed that modern scientific and technological developments and monopolistic trends in business world have led to enormous increase in white collar crimes. The post-independence period in India ushered an era of welfare activities which necessitated regulatory measure on the part of government to control means of production and distribution so as to sub serves the common good. The contravention of such regulatory measures generally gives rise to white collar criminality. Marshal B. Clinard asserted that the problem of white collar criminality has its root in competitive business community, which tries to oust their rival competitors in order to, earn huge profits. Sometimes such crimes may also be committed merely for the sake of retaining existence

¹²Prof.J.P.S. Sirohi, *Criminology and Penology* 234 (Allahabad Law Agency , Delhi, 7th edn.,2014)

in the competitive business. To illustrate, though there is a prescribed code of ethics for the practicing lawyers but since the very nature of their profession involves the spirit of combat and competition, they often resort unlawful tactics such as concealment or misrepresentation of facts, which if detected, is punishable under the law. To take another example, the private educational institutions in India, which receive public-aid or grants, furnish false account simply for the sake of retaining their existence. Likewise, the members of industrial and business class who enjoy high status in the society have a tendency to suppress their real profits by furnishing false and fabricated accounts of their income and property in order to claim tax exemption or avoid payment of heavy taxes. One more reason for the multiplicity of white-collar crime is relatively high socio-economic status of white-collar criminals. They belong to an influential group, which is powerful enough to handle their occupation tactfully, and person affected thereby hardly know that they are being victimized.

Moreover, the public in general is also somewhat apathetic to such crimes thus causing obstruction in prosecution and punishment of white-collar criminals. It is often alleged that criminal law administrators and Judges being members of upper strata of the society, are generally sympathetic toward white-collar criminal while dealing with them. But there seems no jurisdiction in this assertion. If this allegation is based on the large number of acquittals of white Judges for those criminals, it may be pointed out that it is not because of demarcation between criminality and immorality involved in white collar crimes. At least, the recent developments in information technology, particularly during the closing years of the 20th century, have added new dimensions to white-collar criminality. There has been unprecedented growth of new variety of computer dominated white collar crimes, which are commonly called as cyber crimes.¹³

These crimes have become a matter of global concern and a challenge for the law enforcement agencies in the new millennium. Because of the specific nature of these crimes, they can be committed anonymously and far away from the victim without physical presence. Further, cyber criminals have a major advantage: they can use computer technology to inflict damage without risk of being apprehended or caught. It has been predicted that there would be simultaneous increase in cyber crimes with the increase in new internet web sites. The areas affected by cyber crimes are banking and financial institutions, energy and telecommunication services, transportation, business etc.

8. CONCLUSION:

White collar crimes are the crimes which cause a harm to the economy of the country as a whole. It threatens the country's economy by bank frauds, economic thefts, evasion of tax etc. It not only affects the financial status of a country or a person but It has also a negative impact on the society. The various crimes such as bribery, corruption, money launder in has affected society in a negative way.

There is no proper definition of White collar crime in Indian laws. These socio-economic Crimes should not be taken leniently by the government.

¹³ White collar crime , available at : <https://study.com/academy/lesson/what-is-white-collar-crime-definition-statistics-examples.html> (visited on May 16,2019)

Punishment regarding White collar crime should be stricter as harsh punishment can pre these crime to a great extent. If the crime is very heinous the punishment might also be extended to life imprisonment. People are not aware about most of these crimes so the public awareness through any Communication medium is also necessary.

Government should impose strict regulations regarding economic thefts of the country.

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