

WHITE COLLAR CRIME IN THE MEDICAL FIELD: A STUDY IN INDIAN PERSPECTIVE

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ABSTRACT: *One of the theoretical challenges facing scholars is to develop an accepted definition of white-collar crime. The main characteristic is that it is economic crime committed by a person of respectability and high social status in the course of an occupation. While Edwin Sutherland's concept of white-collar crime has enlightened sociologists, criminologists, and management researchers, the concept may have confused attorneys, judges and lawmakers. One reason for this confusion is that white-collar crime in Sutherland's research is both a crime committed by a specific type of person, and it is a specific type of crime. Later research has indicated, as applied in this book, that white-collar crime is no specific type of crime, it is only a crime committed by a specific type of person.*

Key Words: *Convenience theory, Criminology, Gender perspectives, Occupational crime, Offence characteristics, Special sensitivity hypothesis, Social status*

INTRODUCTION

For all the attention white-collar crime has been receiving recently, Apart from the media, the following academic works are just some example of the current interest in the subject: White-Collar and Corporate Crime; Friedrichs, Trusted Criminals; Klaus, Forging Capitalism; Balleisen, Fraud; Bergh off, Rauh, and Welskopp, Tatort Unternehmern; Baker and Hahn, Cotton Dings; Shover and Hochstetler, Choosing White list Crime. View all notes no generally accepted scholarly definition of this subject exists. In this issue, we will use the terms 'white-collar crime' and 'economic crime' interchangeably. To circumvent the arduous task of crafting a reasonably useful definition, many authors take refuge to a non-systematic case-by-case approach and work with a list of relevant crimes. Historically, it took a long time to categories this kind of malfeasance under the rubric of crime, because people who committed white-collar crimes were not perceived as 'typical criminals' who engaged in theft, manslaughter, or murder. They were not part of what was considered the criminal milieu in a narrow sense.

HISTORICAL BACKGROUND&CONCEPT

The law of crimes has been as old as the civilization itself. Wherever people organized themselves into groups or associations the need for some sort of rules to regulate the behavior of the members of that group inter-se has been felt. Where there were rules of the society, its infraction was inevitable and there lies the necessity of devising some ways and means to curb such tendencies in the society that lead to violation of its rules.

In every organized society certain acts are forbidden on the pain of punishment. Where one person injures another and injury could adequately be compensated by money value, the wrongdoer was required to pay damages or compensation to the wronged individual. But in certain cases in addition to the liability to pay compensation the State imposes certain penalties upon the wrongdoer with the object of preserving peace in the society and promoting good behavior towards each other and towards the community at large.

However, the problem arises as to what acts should be forbidden or what acts should be selected for punishment by the society or the State. In other words, what acts should be declared as crime. According to Terence Morris¹ "Crime is what society says is crime" by establishing that an act is a violation of the criminal law. Without law there can be no crime at all, although there may be moral indignation which results in law being enacted¹.

CAUSES OF WHITE COLLAR CRIMES

Since the distinguishing proof of desk violations as the imperative zone of study, numerous reasons for its bonus in the public arena have additionally been recognized. Investigation of the reasons for cushy violations is likewise imperative since, at that point just we will have the capacity to recommend the

¹ Terence Morris, *Crime and Criminal Justice Since 1945* 17 (1989).

measures to control the developing hazard of salaried wrongdoings, for example, defilement, pay off, proficient offense, legitimate unfortunate behavior, unreliability of the huge organizations and so forth "desk wrongdoing must be put on an indistinguishable balance from 'mass rebellion' of laws in atmosphere of general assessment, which view business rehearses as fundamental for fruitful execution regardless of whether they are illicit. The outcome is 'mass balance' of lawfulness which offer ascent to a gathering standard which endorses professional wrongdoings as 'typical reaction'.

WHITE COLLAR CRIMES IN LEGAL FIELDS

Use of the term “white collar crime” to refer to some category of illegal, or at least deviant, conduct is now a common feature of our linguistic landscape. Sociologists and criminologists, though disagreeing among themselves about exactly what the term means, have been talking about white collar crime for more than sixty years. The majority of American law schools have a course in the subject. Journalists and politicians refer to it regularly.

Law enforcement agencies, prosecutors, and defense attorneys all claim expertise in the area. And the term is increasingly being used outside the United States, both in English and in translation.

Yet, despite its currency in the academic, professional, and popular culture, the term “white collar crime” occurs only rarely in substantive criminal law. The term appears in only a handful of relatively obscure criminal statutes, and the question whether an offense should be considered a white collar crime is one that has arisen in even fewer cases. Or at least that was the case until recently. For it is striking that, in the recently-enacted Sarbanes-Oxley Act one of the most important pieces of federal criminal law legislation in many years, and the subject of this symposium the term makes prominent appearance.

CRIMINAL PROSECUTION OF DOCTORS

Specialists can be arraigned for evident criminal movement like infringement of statutory arrangements of Acts like the Transplantation of Human Organs Act. The daily papers disclose to us that the main conviction for fetal sex assurance has sent stun waves all through the nation. As indicated by these reports, a sub divisional legal judge in Haryana condemned a specialist and his colleague to 2 years detainment and fine of Rs. 5000/- each to violate the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994. It is normal that removing the odd one out in the calling will go an awesome path in reestablishing the respect and distinction of countless and healing centers who are dedicated to the calling and carefully take after the morals and standards of this honorable calling.

Be that as it may, usually to embroil specialists in criminal cases charging carelessness in the passing of a patient under treatment. On account of Dr. Suresh Gupta's case (Dr. Suresh Gupta versus Govt of NCT Delhi, the Full seat of the Supreme Court of India comprising of Chief Justice R.C. Lahoti, Justice G.P. Mathur,² and Justice P.K. Balasubramanyam announced while checking on the past request that outrageous care and alert ought to be practiced while starting criminal procedures against restorative specialists for affirmed therapeutic carelessness. In a very much thought about request, the zenith court felt that bonafide restorative experts ought not be put through superfluous provocation.

IN A HIGH RISK CASE, ACCIDENTAL EVENTUALITY CANNOT ALWAYS BE CONTROLLED, HENCE CONCLUSION OF DEFICIENCY IN SERVICE CANNOT BE DRAWN

On account of *Mrs. ShantabenMuljibhai Patel and Ors. versus Break Candy Hospital and Research Center and Ors.* I(2005) CPJ 10 (NC), the National Commission expelled the protest documented by the spouse and 2 children of the perished Mr. M.M. Patel who passed on in Breach Candy Hospital affirming carelessness by staff, treatment regulated by Dr. Bhattacharya, specialist, and Dr. Mahatre, Anesthetist. The claim was for an over the top measure of Rs. 1.02 Crores towards the passing of the patient, Rs. 2.50 lacs towards hospitalization charges, Rs. 25,000/- towards burial service costs, Rs. 90 lacs by virtue of misfortune because of death emerging bankrupt, and Rs. 25,000/- towards legitimate costs. The expired had experienced a by-pass medical procedure in 1988 when the mitral valve was supplanted. Crumbling of 15% launch part (pumping proficiency) was found in 1996. An activity was performed effectively. While undertaking post-agent treatment, there was estuation of the endotracheal tube. According to medicinal writing, such odds of exudation are between 8.5% to 13%. Extubation was quick and sudden and was promptly seen by the obligation nurture.

²AIR 2004, SC 4091.

WHITE COLLAR CRIMES IN CERTAIN PROFESSIONS

A portion of the callings including specialized mastery aptitude give adequate chances to desk culpability. Those incorporate therapeutic calling, building, lawful practice, private instructive establishments and so on.

Engineering

In the designing calling, underhand dealings with temporary workers and providers, going of sub-standard works and materials and support of sham records of work-charged work are a portion of the regular cases of clerical wrongdoing. Outrages of this kind are accounted for in daily papers and magazines relatively consistently. Development of structures, streets, trenches, dams and extensions with sub-standard material imperils open wellbeing as well as results into gigantic misfortune to open exchequer³. "it is presented that numerous ventures of ward amusements couldn't be finished in time on account of outrages of this sort."

Legal Profession

In India, the attorneys calling isn't looked with much regard nowadays. There are two clear explanations behind this. The crumbling guidelines of lawful training and exploitative practices turned to by the individuals from lawful calling to get client age are for the most part in charge of the corruption of this calling which was once thought to be one of the noblest jobs.

SANTHANAM COMMITTEE REPORT

Clerical guiltiness is basic in India. The Santhanam Committee report gives a point by point and expand record of the criminal conduct of the supposed men of respectability, for example, business magnates, industrialists, contractual workers, top positioning open hirelings and so forth. While turning the pages of the report, it peruses as takes after⁴:

Defilement can exist just if there is somebody willing to degenerate and fit for tainting. This ability and ability to degenerate is found in a huge measure in the mechanical and business classes. It is these people who enjoy avoidance and shirking of duties, gather a lot of unaccounted cash by different strategies, for example, getting licenses in the names of counterfeit firms and people and trafficking in permit stifling benefits by control of exchanges of enduring property. It is they who keep up a multitude of contact and contact men, some of them live, spend and engage pompously.

LEGISLATIVE RESPONSE

Appropriate since its freedom, India is confronting an issue of financial offenses. Outrages were become visible even in the early years of the opportunity of India. Throughout the years, whole framework appears to have spoiled. Administration has turned out to be one of the inconceivable assignments. All the welfare plans have either felled or have not possessed the capacity to deliver wanted outcome due to the gigantic defilement in the administration, service and even at the lower level. Individuals appears to have acknowledged the defilement as a piece of their everyday lives. In numerous segments, private venture has hampered due to the gigantic defilement. It isn't long prior, when one of the Australian firms had pulled back its guide to the sorting out panel of the republic amusements as a result of the enormous debasement became known even before the start of the diversions.

WHITE COLLAR CRIMES IN INDIA

The reason for the recent enormous increase in white collar crime in India is the fast developing economy and industrial growth of the country. The post- independence period in India led to an era of welfare activities which needed regulatory measures on the part of government. It is the contravention of such regulatory measures which generally gives rise to a white collar crime.

The Santhanam Committee Report showed a picture of white collar crimes committed by persons belonging to high status. The report of the committee stated that the big industrialists, businessmen, government officers are responsible for white collar crime in India.⁵

After the independence, the first case of white collar crime was Mundhra's case. India's first Prime Minister Jawaharlal Nehru set up a commission headed by Justice M.C. Chagla to investigate the matter. After the rise of the Indian economy, many companies from the private sector and the public enterprise have been included in the corporate frauds and scandals. It is because of all these came the common manissared to invest in the equity market. Corruption **is one of the worst**

³*Ibid*

⁴Santhanam Committee Report on Prevention of Corruption, 1964

⁵<http://iasexamportal.com>.

form of crimes in India. It has been into existence for many centuries. Even Chanakya has mentioned the various forms of corruption during his time. Many political parties have promised to eradicate corruption; however, the offenders in these types of crimes are usually the government officials or the politicians itself. The chart enunciated herein below shows India's rank amongst the other 175 countries in terms of corruption from 2012 to 2016.

JUDICIAL VIEW

MR.SANJIV KUMAR JAIN VS INTELLIGENCE BUREAU⁶on 18 June, 2010

under section 8 (2) is as follows:-In case CPIO, IB doesn't have information for any relevant para, he/ she may seek information from their American and British counterparts. British GMC and American FBI have communicated to share information to legal Indian counterparts. Under RTI, there is provision to seek information from public authorities who do come under purview of RTI Act, 2005. Appellant ShriSanjiv Kumar Jain Dr. Anju Jain Respondents ShriArvind Deep, Joint Dir, Intelligence Bureau Shri Jain submitted copies of Visas on Passport Nos. E-4328607, and K- 493099 in the name of ShriVenkateshwara Prasad Vankayalapati,

H. B. CHATURVEDI VS C.B.I. on 31 May, 2010

This is a petition under Section 439 of the Code of Criminal Procedure (CrPC) for grant of bail in the case registered vide RC No. BDI/2009 E 0005 under Section 120B read with Sections 420, 468 and 478 of the Indian Penal Code (IPC). The petitioner was arrested by the Central Bureau of Investigation (CBI) on 19th February, 2010 and remained in police custody till 27th February, 2010.

The petitioner has been in judicial custody thereafter and has been charge sheeted along with five other co-accused in a case of defrauding the Industrial Development Bank of India (IDBI).

STATE VS DEEPAK BILANI⁷on 31 October, 2012

In the criminal trial, the prosecution is duty bound to prove its case against the accused beyond reasonable doubt. Before recording the guilt of the accused, the court is required to satisfy itself that the possibility of the innocence of the accused is ruled out. The evidence produced on the record must convince the mind of the court beyond all reasonable doubt. The golden thread running into the web of criminal justice system has laid down the rule of prudence that the court must insist higher degree of proof in criminal cases as compared to civil cases. The court cannot record the conviction on suspicion or conjecture. There is presumption of innocence in favour of the accused and therefore, the burden of proving the charge is on the prosecution.

RAM PRASAD JAISWAL VS CENTRAL BUREAU OF INVESTIGATION ⁸

A demonstration of these statutory provisions would leave no room for doubt that the High Court Rules do not provide for any correction application separately to be moved on the criminal side. Consequently, one may have to fall back upon the inherent powers under Section 482 Cr.P.C. read with the circumscription of Section 362 Cr.P.C. A correction can only be allowed when there is an inadvertent typographical or arithmetical error. This may be a mistranscription which is not wilful and unintentional. It is a fault of fact that creeps in ignorance. It is an act of inaccuracy which is not intentional and may also be on account of absence of knowledge. Similarly, a typographical error is attributable to the transcription generated by the mechanical reproduction of the shorthand dictation given by the Court or the Judge where unknowingly or inadvertently a mistake creeps in. Such being the position of typographical and arithmetical errors, to which no motive can be attributed, can be subject matter of corrections under the inherent powers of the Court. However, an error of judgment or a conscious omission in spite of the facts correctly disclosed, cannot be subject matter of correction as understood under Section 362 Cr.P.C., but that is a matter to be gone into when the correction applications are argued.

CONCLUSION

It mentions worthy here that the Government has taken remarkable steps against corrupt persons who used their political and social power in order to earn more money. Many big fishes have come under the trial and many of them have already been convicted. It is a good sign for the country which will lessen the

⁶<https://indiankanoon.org/doc/39191>.

⁷<https://indiankanoon.org/doc/11042228>.

⁸ 2010(112)BomLR3527.

white collar crime. But in a country like Bangladesh where large scale of starvation, mass illiteracy and ignorance, patronization of such criminals by dirty politics affect the life of people, white collar crimes are bound to multiply in large proportion. Control of these crimes is a crucial problem for the criminal justice administration in this country. However some, of the measures for combating white collar criminality may be as follows-

Though Sutherland's work is considered as a milestone in criminological history, his focus and major concern was the crime of the rich and powerful. But with the passage of time the sphere of such crime has been broadened. Now middle class people also use their position and involve of trust business and government and industrial activities. So redefinition of white collar crime is a must.

It is difficult to estimate the extent and influence of white collar crime on victims because those who suffer the consequences of white collar crime are ignore about it. For this reason detecting, processing or penalizing of white collar criminals is necessary. It must be brought under the law of crimes.