

DIMENSIONS OF WHITE-COLLAR CRIME IN INDIA: A LEGAL STUDY

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ABSTRACT: *This paper gives a point by point understanding behind the thought processes of individuals committing violations. Specialists have named the individuals carrying out wrongdoing, where the violations were negligible and kept to a specific region of administration as Grass Eaters. Individuals included in cushy wrongdoings and which has spread in practically all fields of business are named as Meat Eaters. With the approach of innovation and development of instruction, cubicle wrongdoings are on the ascent, being secured by experts discovering escape clauses in the legal executive and backing from the administration by implication. This has made a nexus where individuals from practically varying backgrounds have begun shaping gathering to do office violations and being secured by experts in law. This has led to a circumstance where the little clocks have turned out to be office hoodlums. Discussing the commonness of office violations in India, they are spreading like a fast flame in each circle of society. Although debasement, one of the types of cushy wrongdoings, has been the most discussed issue in all circles social, financial and political, very little stringent steps/moves have been made to control this hazard. Along these lines, the worry of this paper is to characterize cubicle wrongdoing, examine its recorded improvement and detail speculative arrangements for killing the issue.*

Key Words: *White Collar Crime, Judiciary, Government, Eradication, Education.*

Introduction

White collar crimes occur in large and complex organizations. These offenses are committed by people with a 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 leads to reduce revenue for ¹the treasury, bribery lead to biased governmental decision making, inside trading lead to loss of investments in investors. There are moral complexity and uncertainty in white collar crimes which is not visibly other offenses. The identification of victims is very difficult, and victims are unaware of victimization. It is common knowledge that certain profession offers lucrative opportunities for criminal acts and unethical practices which hardly attract public attention; there have been crooks and unethical persons in business, various professions and even in public life. They tend to unscrupulous because of their neglect at school, home, other social institutions, their greediness, profit-making mania, or want to reach on top by a short cut. These deviants have scant regard for honesty and other ethical values. Therefore, they carry on their illegal activities with impunity without fear of loss of prestige or status. The crimes of this nature are called, "White Collar Crimes". They are essentially an outcome of the competitive economy of the mid-twentieth century. Today, a criminal considers the world as his field of operation. He commits especially in his field, profession, business, trade and this kind of persons are not from any criminal background or with hardened arms and ammunition, they do crimes through their privileged position, The widespread political, social, economic and technological changes as well as variation in legislation, procedures and policies in different countries on mutual assistance in criminal matters have allowed this white collar white collar crime groups to become increasingly active in the international arena. These kinds of criminal groups arena taking full advantage of the globalization of world markets, dismantling of trade barriers, and the liberalized migration policies, high-tech communicated equipment, and sophisticated electronic techniques to enhance their deviant activities. White collar criminals are engaged in ²such felonious activities such as fake employment placement rackets, black marketing, medical deviant activities, tax evasion, cybercrime, credit card fraud and procedure large profit and create the incentive to "legitimate" the ill-gotten gains through money laundering and many more.²

What is white collar crime?

1. [Available at] :www.blog.ipleader.in - Analysis of White Collar Crimes (Last Visited On 02/03/2019)

White Collar Crimes are the crimes committed by a person of high social status and respectability during 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. Sociologist Edwin Sutherland in 1939 defined the term "White Collar Crime". These crimes are non-violent crimes committed by business people through deceptive activities who can access large amounts of money for financial gain.

The common feature of all this criminality is that the same which is born out of greed, advance and capacity; and committed during trade, industry, commerce, business and profession of upper and middle classes. These crimes have adversely affected the social and economic fabric of the state and the community alike and have been planned development for the future a very difficult job. Sutherland has called these crimes, "white collar crime", while Sayre has described them, "public welfare offenses", there are others who call these crimes "regulatory offenses" and yet others "crime of strict liability", while many others have called it as "socio-economic crimes also". The genesis of socio-economic crimes/white collar crime has almost the same throughout the world and it would be found that socio-economic criminality is in a way the product of industrial revolution, although renaissance and reformation also had contributed to the emergence of these crimes in no small measure.³

Crimes committed by the affluent during normal business activities:

- Conspiracies – use position for gain
- Expanded by some to include a wider range of "middle-class" criminality and "high-tech" Crimes
- Legitimate business, deviant activity
- Internal vs. External judgments
- Secrecy
- Opportunity structures
- Institutional crimes

Chronological Setting of Appraisal of White-Collar Crimes

The most punctual recorded instance of white-collar crime law goes back to the fifteenth century in Britain. There has been a case famously known as the Carrier's instance of 1473, where the operator was endowed to transport fleece and he endeavored to take some of it for him. Consequently, the Star Chamber and Exchequer Chamber of the English Court of Law received the breaking mass' convention as it comprised the crime of burglary. In any case, the development of mechanical private enterprise in the eighteenth century introduced a new³history of crime and culpability. The very base of modern free enterprise depends on intimidation and burglary. Presently, before we talk about the point let us comprehend the importance of free enterprise the procedure of rising of these adapted was named by Karl Marx as primitive gathering' while in the expressions of Adam Smith, it was the previous collection.' In this way, the Dutch Marxist, William Bonger fought that criminal frame of mind creates among the common laborers under private enterprise because of states of hopelessness and in the meantime, the criminal mentality creates among the bourgeoisie from the insatiability cultivated when free enterprise strives. It is prevailing in the United States of America in 1890 when Congress passed the Sherman Antitrust Act which stepped up and makes the monopolistic exchange illicit. Other industrialized nations like Great Britain had a background marked by punishments including white-collar crime at that point, yet it was not as clear as the Sherman Act. A few countries executed a sprinkling of these laws, known as rivalry or antitrust law, however, did not have a solid restricting power for quite a while. Be that as it may, progressively against office crime notion rose in the late nineteenth century and mid-twentieth century in the United States because of a gathering of columnists known as maligners. They laid much spotlight on the pervasive stock extortion, protection misrepresentation and insidious practices of monopolistic organizations that had gotten under the Sherman Act. The mud slingers' open offered to ascend to open hatred and consequently called for in some change. By 1914, Congress endeavored to cement and reinforce the slant set somewhere around the Sherman Act, which was utilized against worker's guilds, with the Clayton Antitrust Act. This Act was a lot stricter and went a lot more remote than the Sherman Act in making specific monopolistic practices unlawful.

Types of White-Collar Crimes

By far, the most common type of white-collar crime is fraud. Fraud involves the intentional misrepresentation or omission of a material fact. That misrepresentation must be reasonably relied on, and someone must suffer a monetary loss as a result. The most prevalent types of fraud include:

2. *Ellen S. Podgor. White Collar Crime in NutShell, 4th Edition, West, May 2009*

- **Computer fraud:** The act of stealing a bank, credit card, or proprietary information from a computer.
- **Bankruptcy fraud:** The concealment of assets, misleading creditors, or illegally pressuring debtors.
- **Health care fraud:** The acceptance of kickbacks or billing for services not performed, unnecessary equipment, and/or services performed by a less qualified person. This type of fraud applies to all areas of health care, including hospitals, home health care, ambulance services, doctors, chiropractors, psychiatric hospitals, laboratories, pharmacies, and nursing homes.
- **Telemarketing fraud:** The use of the telephone as the primary means of communicating with potential victims.
- **Credit card fraud:** The use of someone's credit card information to make unauthorized purchases.
- **Insurance fraud:** The falsification, inflation, or "padding" of insurance claims.
- **Mail fraud:** The use of the U.S. mail to commit a crime.
- **Government fraud:** The act of engaging in fraudulent activities with public housing, agricultural programs, defense procurement, educational programs, or other government activities, including bribery in contracts, collusion among contractors, false or double billing, false certification of the quality of parts, and substitution of bogus parts.
- **Financial fraud:** The act of engaging in fraudulent activities relating to commercial loans, check forgery, counterfeit negotiable instruments, mortgage fraud, check-kiting, and false applications.
- **Securities fraud:** The act of manipulating the market and stealing from securities accounts.
- **Counterfeiting:** The act of printing counterfeit money or manufacturing counterfeit designer apparel or accessories.⁴

White Collar Crimes in India

White collar criminality has become a global phenomenon with the advance of commerce and technology. Like any other country, India is equally in the grip of white-collar criminality. The recent developments in information technology, particularly during the closing years of the twentieth century, have added new dimensions to white-collar criminality. There has been unprecedented growth of a new variety of computer dominated white collar crimes which are commonly called as cybercrimes. These crimes have become a matter of global concern and a challenge for 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 victims without physical presence. Further, cyber-criminals have a major advantage: they can use computer technology to inflict damage without the risk of being apprehended or caught. It has been predicted that there would be a simultaneous increase in cybercrimes with the increase in new internet web sites. The areas affected by cybercrimes are banking and financial institutions, energy and telecommunication services, transportation, business, industries, etc. in India.⁵

Laws Relating to White Collar Crimes

The white-collar crimes which are common to Indian trade and business world are hoardings profiteering and black marketing. Violation of foreign exchange regulations (ie. FERA) and import and export laws are frequently resorted to for the sake of huge profits. Further, adulteration of foodstuff, edibles, and drugs which causes irreparable damage to public health is yet another white-collar crime common in India. White Collar Crimes are difficult to prosecute because they often involve sophisticated systems and even many different people. The government of India has introduced various regulatory legislation, the breach of which will amount⁵ 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, 2002.⁵ The Indian Penal Code contains provisions to check crimes such as Bank Fraud, Insurance fraud, credit card fraud etc. The Reserve Bank of India has issued directions to be strictly followed by the banks under KYC

3. Available at: www.indianresearchjournals.com - Various Types of White Collar Crimes [Last Visited On 02/03/2019]

4. Available at: www.indianresearchjournal.com – White Collar Crimes in India [Last Visited On 03/03/2019]

5. Available at: www.casemine.com – Laws against White Collar Crimes in India [Last Visited On 03/03/2019]

(Know Your Customer) guidelines. The banks and financial institutions are required to maintain the records of transactions for a period of ten years. To tackle with computer-related crimes, Information Technology Act, 2000 has been enacted to provide legal recognition to the authentication of information exchanged in respect of commercial transactions.⁶

Section 43 and 44 of the Information Technology Act prescribes the penalty for the following offenses:

- Unauthorized copying of an extract from any data
- Unauthorized access and downloading files
- Introduction of viruses or malicious programmes
- Damage to a computer system or computer network.
- Denial of access to an authorized person to a computer system.
- Aiding any person to facilitate unauthorized access to a computer. Though the focus of the Information Technology Act is not on cybercrime as such, this Act has certain provisions that deal with white collar crimes.

White Collar Crime in the Legal Profession

The white-collar crimes became a development to be reckoned with the industrial revolution. The modern industrial free enterprise that evolved with time became advanced in nature because it developed a growing business nexus among insurance, banking, stocks, and related company matters. This successively gave rise to crucial legal intricacies regarding property rights and different legal matters that paved the method for the birth of a replacement category of professionals of advocates who within the name of providing justice started abetting within the wrong and thereby pursued their slender interest. An oversized variety of advocates evolved, who forget the pious oath of serving the society and commenced trying to find the legal loopholes and concentrated in the main in serving to out the wealthy entrepreneurs to grow richer. They made an extensive study to undertake out ways that for optimum evasion for these wealthy company personalities still as for themselves. The white-collar crimes committed by these legal practitioners solely reach in finding out⁶ contraband ways of tax-evasion. There are frequent instances of unscrupulous and unethical practices like that of fabricating false evidence, participating skilled witnesses, thereby violating moral standards of the legal profession and dilatory techniques in collusion with the ministerial workers of the courts. The instances of white-collar crimes committed within the Indian society by the lawyers, there lay the shameful illustrations of Magistrates and judges concerned in committing crimes. They within the name of decoding the laws typically act because the protecting shield for the goons having or not having any political color and permit them to travel free whereas they must have been subjected to deterrence. It's the foremost unfortunate scenario at constant time devastating because here the crimes are committed by those people who are being given by the State the responsibility to confirm justice.

White Collar Crime in Medical Facility

In India, the white-collar crimes are so widespread that it doesn't confine itself within the legal arena. Similar unfortunate instances are often drawn from different professions too, like that of medical practitioners, engineers, educationalists, businessmen, politicians and therefore the list goes on. The medical practitioners are usually found concerned in the issuance of false certificates, carrying out illicit abortions, merchandising out sample medicine and drugs, even in some cases adulterated medicine and medicines to the patients. They usually adopt dilatory techniques in providing treatment to their patients with menswear to extract a vast quantity of cash; no matter the person has a good practice. Several ill-famed instances have been seen, where the medical professionals put up before the society the optimum level of brutal character, they will reach for the crave of making cash. Dishonorable and pretend promotional material claiming absolute cure is additionally one of the frequent malpractices being allotted within the medical profession. The matter lies within the incontrovertible fact that, they usually escape penalization, since they cannot be aforesaid to own desecrated the letter of law, but by violating the spirit of the law, they commit crimes that are anti-social and creates monumental harm to the public health and safety at large.

White Collar Crime in Educational Institutions

The matter involves the white-collar crimes educational institutions do are available in the league to operate with freedom.

6. Joachim J. Savelsberg..*Constructing White Collar Crime*, University of Pennsylvania Press, Philadelphia, 1st Edition, 1994

A nastier role is played by the private institutions that are least bothered in providing the education, however, only concentrate on creating a business at the price of a child's future. Even rackets operate in these institutions for procuring students to appear within the examinations based on manipulated eligibility certificates, thereby damaging the quality of education in India. Once it involves the Governmental institutions, the academics and staffs of the establishments are usually found to be involved in unscrupulous practices, since they will hardly build a fortune from the inadequate pay, they receive from the government. Academics typically drag the scholars for taking private tuitions and even move to the extent of blackmailing them of ruination their future, if they deny doing so.

White Collar Crime in Corporate Firms

There are solely a handful of instances of white-collar crimes practiced in day to day life by certain professionals within the course of their profession. The most important role in committing white collar crimes are played by the business tycoons and politicians, whose greed and desires multiply with the additional they acquire. In India, whenever any major scandal involves the media focus, a thorough investigation continuously finds an unlawful involvement of political parties in it. So far because the businessmen are involved, their acts of white-collar crimes go beyond count. they're termed because the company criminals who often, are involved in felonious contracts, combination, and conspiracies of trade restraints, unfair labor practices, merchandising of adulterated foods and medicines, bribing of public officers so on and so forth. They cash in of the company veil and indulged during several crimes. The Satyam scam case is one of the worth-mentioning illustrations, wherever it had been seen how an individual, concealing himself within the veil of incorporation, take pleasure in defrauding crores of cash.

Law Related to Different Types of White-Collar Crimes

1. **Corruption:** Prevalence of corruption is one amongst the issues that our country has been facing from yesteryear. The word corruption is extremely comprehensive in its meaning. It implies all the activities that are against the law and society. Its scope is extremely wide, and it includes all the spheres of social life. The corruption isn't confined to any explicit sphere. It entered and exists in each facet of our modern society. For each corruption there should be one corruptor. According to Stroud- "Corruption means moral obliquity of moral perversity." Scandals like 2G spectrum Tele Communication Scam, Commonwealth Games Scam, Adarsh Housing Society Scam has rocked the state. The Santhanam committee report in its findings gave a vivid image of white-collar crimes committed by persons of reputability like businessperson, industrialists, contractors, suppliers and corrupt public officers. Section 161 to 165- A of Indian penal Code, 1860 stand omitted by prevention of corruption Act 1988.
2. **Offences related to Public Servant under Indian Penal Code 1860:**
 - **Public Servant Unlawfully Engaging in Trade:** Confidence rested in a local official is permitted to take part in exchange that they would not give their full focus to their official work. Additionally, they may take unreasonable points of interest over different trades of their official position for the progression of their trade. So, keeping this viewpoint, section 168 of the Indian Penal Code gives "Whoever being a public servant and being legally bound as such public servant not to engage in trade, engages in trade, shall be punished with the simple imprisonment for a term which may extend to one year or with fine or with both."
 - **Public Servant Unlawfully Buying or Bidding for Property:** Section 169 provides that "Whoever, being a public servant and being legally bound as such public servant, not to purchase or bid for certain property, purchase or bids for that property either in his own name or in the name of another, or jointly, or in shares with others shall be punished with simple imprisonment for a term which may extend to two years, or with fine or with both and the property, if purchased, shall be confiscated."⁸
3. **Offences related to Public Servant under Prevention of Corruption Act, 1988:**
 - Section 7- Public servant taking gratification other than legal remuneration in respect of an official act shall be punishable with imprisonment, which shall be not led than six months out which may extend to five years and shall also be liable to fine.⁷

8 Available at: www.mahavirlawhouse.com -White Collar Crimes- India & Abroad [Last Visited on 05/05/2019]

- Section 8- Taking gratification, in order by corrupt or illegal means, to influence public servant shall be punishable with imprisonment for a term which shall be not less than six months, but which may extend to five years and shall also be liable to fine.
- Section 9- Taking gratification, for exercise of personal influence with public servant shall be punishable with imprisonment for a term which shall be not less than six months, but which may extend to five years and shall also be liable to fine.
- Section 10- Punishment for abetment by public servant of offences defined in section 8, shall be punishable with imprisonment for a term which shall be not less than six months, but which may extend to five years and shall also be liable to fine.
- Section 11- Public servant obtaining valuable thing without consideration from person concerned in proceeding or business transacted by such public servant, shall be punishable with imprisonment for a term which shall be not less than six months, but which may extend to five years and shall also be liable to fine.
- Section 12- Punishment for abetment of offences defined in section 7 or section 11, shall be punished with imprisonment for a term which shall be not less than six months, but which may extend to five years and shall also be liable to fine.
- Section 13- Criminal misconduct by a public servant shall be punishable with imprisonment for a term which shall be not less than one year, but which may extend to seven years and shall also be liable to fine.

4. **Bribery:** According to Legal Dictionary, Bribery often occurs when a person offers money or something else of value to a public official for the purpose of gaining influence over him or her. The purpose of bribery is to exert influence or pressure over the official's actions. Bribery is a crime for which both parties may be charged. For example, a boxer's promoter in a largely publicized fight pays the opposing boxer to throw the match. Even though this involves a sporting event, rather than government officials, both individuals may be charged with bribery. It is not a requirement for the act of bribery to cause public harm for it to be charged as a crime.

Section 171-B of Indian Penal Code, 1860 provides that:

- 1) Whoever-
 - i. gives a gratification to any person with the object of inducing him or any other person to exercise any electoral right or of rewarding any person for having exercised any such right or
 - ii. accept either for himself or for any other person any gratification as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right, commits the offence of bribery.

Provided that a declaration of public policy or a promise of public action shall not be an offence under this section.

- 2) A person who offers or agrees to give or offers or attempts to procure, a gratification shall be deemed to give a gratification.
- 3) A person who obtains or agrees to accept or attempts to obtain a gratification shall be deemed to accept gratification and a person who accepts a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, shall be deemed to have accepted the gratification as a reward.

Section 171-B of Indian penal code 1860 defines bribery as giving or acceptance of a gratification either as a motive or reward to any person, to induce him to stand or not to stand as a candidate or to withdraw from the contest or to vote or not to vote at an election. It also includes offer or agreement to give or offer and attempt to procure a gratification, as explained in Section 7 of the Prevention of Corruption Act, 1988, include and offer gratification it is not restricted to pecuniary gratification or to gratification estimable in money.

5. **Adulteration of Food and Drugs:** Section 272 to 276 of the Indian Penal Code that are associated with the lifetime of country it's interesting to notice that the penalization not exceeding six months and fine only one thousand rupees that provided under this section looks to be entirely inadequate

9 Available at: www.mahavirlawhouse.com -White Collar Crimes- India & Abroad [Last Visited on 05/05/2019]

within the present day. Section 403 to 409 of the Indian Penal Code, 1860 deals with offences of dishonest misappropriation of property and criminal breach of trust.¹⁰

Section 415 to 420 of Indian Penal Code, 1860 deals with the offence of cheating. Chapter XVIII of Indian Penal Code, 1860 deals with offences relating to document and to property marks.¹¹

- 6. Counterfeiting of Currency:** Section 489-A, 489-B, 489-C, 489-D were introduced so as to provide additional adequacy for the protection of currency note and bank notes from forgery under the Indian Penal Code, 1860 that was passed before existence of paper currency in India, currency notes weren't protected by any special provisions however just by the general provisions, applying to forgery of valuable securities. Before these sections were introduced charges for forging currency notes had to be preferred under Section 467 and for creating or possessing counterfeit plates under Section 472.¹²

Conclusion

It is clear that due to advancement of science and technology newer form of criminality known as white-collar crime has arisen. The term "white-collar crime" has not been defined in the code. But the dimensions of white-collar crime are so wide that after analyzing the provisions of Indian Penal Code 1860, we may conclude that certain offense under Indian Penal Code is closely linked with white collar crimes such as bribery, corruption and adulteration of food, forgery etc. The provisions of Indian Penal Code dealing with white-collar crimes should be amended to enhance punishment particularly fine in tune with changed socioeconomic conditions. The special Acts dealing with white collar crimes and the provisions of Indian Penal Code should be harmoniously interpreted to control the problem of white-collar crimes .

India to maintain its growth story needs to reduce fraud and corruption in government and private sector. As previously mentioned corruption and fraud stop multinationals from investing in the country. The decrease in foreign direct investment in 2011 and the international financial institutions outflow of funds from stock markets are clear indicators of the negative impact of fraud and corruption. Therefore, Indian government must improve governance and take strict action against the offenders. Comptroller Auditor General is showing the way forward, the need of the hour is for political parties to have the spirit to clean up the mess. The private sector must implement fraud prevention measures and focus on ethics to reduce frauds. Both sectors have to collaborate to minimize fraud risks in India.

¹⁰ [Available at]: www.nclr.ucpress.edu – Different Laws for White Collar Crimes [Last Visited on 06/05/2019]

¹¹ [Available at]: www.corporate.cyrilamarchandblogs.com -Law against Counterfeiting of Currency in White Collar Crime [Last Visited On 06/03/2019]