
White Collar Crimes: Contemporary Issues And Challenges

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Abstract

Rampant increase in white collar crimes is a universal menace that affects the very ethos of the socio-economic order of our societies causing irretrievable damage to world economies. These nonviolent crimes are committed by persons of high social status for exorbitant illegitimate gains, usually committed over a span of time and often goes on unreported. Such offences are not isolated events but have many facets like money laundering, corporate frauds, cheating, forgery, falsification of accounts, corporate lobbying and corruption etc. This paper tries to find out the true meaning and extent of white-collar crimes. An insight is being given into the legislations enacted to prevent white collar crime in India. In the words of the hon'ble supreme court of India, "these cases are nothing but private gain at the cost of public that lead to economic disaster"¹. Bonafide societal morale, transparency and strict enforcement compelling adherence to the laws is paramount to curb white collar crimes.

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¹ Ram Narayan Popli v. CBI (2003) 3SCC 641

I. Introduction

The menace of White-Collar Crimes is prevalent throughout the world and India is no stranger to it.² Despite causing colossal irreparable damage to economy and related institutions, it leads to deterioration of social relations, distrust, immorality, and large-scale social disorganization³. The societal repercussions of white-collar crimes are often grave and severe in comparison to ordinary crime.⁴ These are not victimless crimes, “A lone scam can put an end to a company, shatter families by wiping out their life savings, or cost investors billions of dollars or all of the above in more cases than not.”⁵ These are committed by persons of high social status like doctors, lawyers, businessmen and so on. With modernization of information technology and global communication systems white collar crimes are increasing at a rapid speed throughout the world. Crimes like fraud, corruption, cheating, violation of Anti-trust laws, corruption, bribery, inside- trading and health care frauds are all facets of white-collar crimes. Plethora of legislation is enacted against white collar crimes at both a national and international level. Sincere efforts, effective pre-emptive measures, early detection, quick adjudication and co-operation of whole the society starting from the individual level is the key to prevent white collar crimes.

II. Origin Of Term White-Collar Crime

The terminology of white-collar crime was first coined by Edwin Sutherland, who had emphasized the necessity of broadening the observation and examination of criminology to incorporate crimes which are committed by “respectable individuals in the course of their occupation.” Presently, white-collar felons drive the spectrum from administrators to middle-class organizations to general accountants. Sutherland, illustrated that “*white-collar frauds were offences perpetrated by wealthy, upper or high-class individuals during their occupation.*” White-collar crimes, sometimes also referred as corporate crimes, talk about economically motivated, nonaggressive crime committed by businesses and government professionals.

² 7th ed. Viola Rodrigues, Need for a Separate Enactment to Curb White-Collar Crimes in India, 1 LexForti Legal J. 28 (2019).

³ AHMAD SIDDIQUE, CRIMINOLOGY, PENOLOGY & VICTIMOLOGY, (7ed., Eastern Book Company 2016).

⁴ *Ibid.*

⁵ 7th ed. Shivani Singh, Crimes of Privilege: White Collar Crimes, 27 Supremo Amicus [487] (2021).

III. Meaning And Definition

In 1949 by sociologist Edwin Sutherland, defined white collar crime as "crime committed by a person of respectability and high social status in the course of his occupation".⁶ The Hon'ble Supreme Court of India in the judgement of State of Gujarat v. Mohanlal Jitamalji Porwal and Anr⁷ says that, "one individual can murder another individual in the heat of the moment or aggression, but setting off monetary damage or say performing economic crimes requires planning. It includes shrewdness, scheming and strategy building in order to obtain individual benefits". According to UNO, the words "abuse of power" referred to white-collar offences and misuse of power and position with violation of rights of another ordinary man.

The (USFBI) United States Federal Bureau of Investigation interpreted white-collar scandals as those unlawful actions which are denoted as dishonest, unjust or infringement of trust and which are other than the offence of us of the threat of physical force or bodily harm.

IV. Facets And Extent Of White-Collar Crimes

Corporate frauds, bribery, insider trading, corruption, cyber crimes, embezzlement, credit card frauds, hawala scam, banking scam, fodder scams, currency schemes, adulteration of foods and drugs, misleading advertisements, malpractices in profession conduct, fraudulent reports, fee splitting etc. are all facets of white-collar crime which have shambled the very roots of Indian economy. "Trusts, cartels, combines, syndicates, etc. formed to combat competition, or to raise prices or otherwise to interfere with the freedom of trade to the detriment of honest businessman or the consuming public. This has now become a branch of law by itself and is usually dealt with under the topic of anti-trust legislation"⁸ Corruption as a white-collar crime remains a pestilence problem that affects several areas within the public and private sectors, including institutions like the police and the judiciary, while affecting all levels of governance.

⁶ James Chen, White-Collar Crime Investopedia (2019), <https://www.investopedia.com/tenns/w/white-collar-crime.asp>.

⁷ AIR 1987 SC 1321

⁸ Viola Rodrigues, Need for a Separate Enactment to Curb White-Collar Crimes in India, 1 LEXFORTI LEGAL J. 28 (2019).

Moreover, “a vast majority of human rights abuses in the country are enabled via a corrupt environment”.⁹ Moreover, white collar crimes are rarely reported due to their complex nature. According to a report titled, ‘The changing dynamics of white-collar crime in India’¹⁰, the Central Bureau of Investigation (CBI) had analysed the records of past 10 years out which unveiled that out of an aggregate 6,533 cases of corruption only 517 issues were reported.¹¹

Furthermore, the data revealed that 4,000 crores of credit for trading was conducted by operating duplicate and fraudulent PAN cards. Among all the states in India, Maharashtra had shown a sudden upswing in online cases. The document had also noted that approximately 3.2 million population underwent a loss due to the thievery of personal card details from the YES Bank ATMs which were administered by Hitachi Payment Services.¹²

Improvement in e-commerce & technological development has brought upswing in cybercrimes which is another classification under white-collar offences. These crimes are expanding day by day, reason being it is considerably lighter in comparison to other risks of being arrested or comprehended.

As per the reports India ranked at 85th position in 2014 on translucency of international’s corruption perception index (CPI) which thereafter uplifted its position to 76th in 2015 by taking different initiatives to deal with white-collar crimes. Additionally, according to the reported document of The Economic Times in 2018, India positioned at 78th with displaying progress of 3 steps in comparison to 2017, among the other 180 listed states.¹³ But since 2020 India has slipped to the overall rank of 85.¹⁴ Nevertheless, India is yet not a developed country its on the path of development, unlike the USA, & the UK but it yet trying its best to develop itself with the passing years simultaneously white-collar crimes are also evolving which is a central reason for India's underdevelopment issues with social-economical deficiency. Such offences in the country possess a risk to socio-economic

⁹ Kaunain Rahman, “Overview of corruption and anticorruption developments in India”, Transparency International (2022)

¹⁰ The Business Standard, “The changing dynamics of white-collar crimes in India”, 22.11.2016, available at https://www.business-standard.com/article/markets/the-changing-dynamics-of-white-collar-crimes-in-india-116102200032_1.html. (Last accessed 29 June 2022).

¹¹ Sofia Bhambri, ‘**WHITE COLLAR CRIMES IN INDIA**’, May 25, 2021, available at <https://www.sbhambriadvocates.com/post/white-collar-crimes-in-india> (last accessed 29 June 2022).

¹² Prof. Mohd. Ashraf, Study Material Criminology II, Department of Law AMU, available at <https://old.amu.ac.in/emp/studym/99995722.pdf>. (Last accessed 29 June 2022).

¹³ *Ibid.*

¹⁴ Transparency International, report 2021, available at, <https://www.transparency.org/en/cpi/2021/index/ind>. (Last accessed 29 June 2022).

growth. Therefore, these crimes are required to be solved with immediate intervention of bureaucrats by implementing and executing strict rules and regular follow-ups.

One can realize the gravity and impact of white-collar crimes by the following few mentioned instances ¹⁵:

- a) Coal Allotment Scam (186000 Crores approx.)
- b) 2G Spectrum Allocation Scam (176000 Crores approx.)
- c) Delhi Commonwealth Games 2010 (CWG) Scam (70000 Crores approx.)
- d) Black Money Stashed by Indian Corporate Houses (70000 Crores approx.)
- e) Hawala Scam (8000 Crores approx.)
- f) Satyam Scam (14000 Crores approx.)
- g) Stock Market Scam (3500 Crores approx.)
- h) Kingfisher Revival Scam 2012-2016 (9000 Crores approx.)

The Law Commission has expressed the elements accountable for the rise of White- Collar wrongdoings in the following words: *“The advance of technological and scientific development is contributing to the emergence of 'mass society', with a large rank and file and a small controlling elite, encouraging the growth of monopolies, the rise of a managerial class and intricate institutional mechanisms. Strict adherence to a high standard of ethical behaviour is necessary for the even and honest functioning of the new social, political and economic processes. The inability of all sections of society to appreciate in full this need results in the emergence and growth of White-Collar and economic crimes”*.¹⁶

In the case of Dr. Subramanian Swamy v. Dr. Manmohan Singh, the Hon'ble Justice Ganguly observed that "Today, corruption in our country not only poses a grave danger to the concept of constitutional governance, it also threatens the very foundation of the Indian democracy and the Rule of Law. The magnitude of corruption in our public life is incompatible with the concept of a socialist, secular, democratic and republic".¹⁷

¹⁵ Narender Nagarwal & Anit Kumar, Prevention of Corporate Corruption in India: Judicial Response and the Rule of Law - A Critical Analysis, 7 INDIAN J.L. & Just. 77 (2016).

¹⁶ Twenty-ninth Report, Law Commission of India (1966) 3.

¹⁷ (2012) 3 SCC 64

V. Reason Behind The Development Of White-Collar Offences

The basic fundamental urge to indulge in white collar crimes is due to acquisitiveness, conflict, deprivation of implementation and execution of laws to prevent such crimes.¹⁸ These are explained as follows-

- **Acquisitiveness:** The founder of contemporary political philosophy Dr Machiavelli acknowledged, 'men by nature are greedy.' He has also concluded that a person can quickly overcome his grief from the death of his father but he can barely bear the failure of succession over the property.' This statement eventually fits on white-collar crimes. But it's not always necessary that a privileged person may commit such crimes is out of greediness but due to other factors too.
- **Effortless, Swift And Prolonged Influence:** The rapid growth of technological development has introduced new ways of committing crimes and abuse of power. In white collar crimes the risk of being caught is less as compared to traditional crimes, but such crimes eventually end up imparting more harm to society.
- **Poor Implementation Of Existing Legislation:** Mostly such crimes are enabled by internet access and the laws are uncertain to pursue such cases because they are difficult to track and a very twisted job at the same time. Moreover, lack of resources and training to investigational agencies and lengthy procedures add to list of impediments to curb white collar crimes.
- **Lack Of Awareness:** India is not fully developed and hence population is not fully educated and literate. Due to non-awareness of the risk they lag to know their rights and claims and becomes the victim of crime. Primarily in civic or urban cities, in hustle of busy schedule people don't try to invest time to check the policy of any organization and end up facing loss. To retaliate against such issues an extensive program is required at the grassroots level by the state.

¹⁸ Prof. Mohd. Ashraf, *supra note 11*.

VI. Legal Framework Against White Collar Crimes In India

India sanctioned The United Nations Convention Against Corruption (UNCAC) and the United Nations Convention Against Transnational Organised Crime (UNTOC) in 2011 (UNODC 2022) but “the country is not a signatory to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business. Also, India is a member of the G20 Working Group against Corruption (GAN Integrity 2020)”.¹⁹ India has several laws domestic laws dealing with white collar crimes and the most prominent ones are as follows-

Indian Penal Code (IPC), 1860

The primary penal code of the country, i.e., The Indian Penal Code (IPC), 1860 provides for dishonest misappropriation of property²⁰, Criminal breach of trust²¹, Cheating²², Cheating and dishonestly inducing delivery of property²³, forgery²⁴, falsification of accounts²⁵ and criminal conspiracy²⁶ which can be used to deal with white collar crimes.

Prevention Of Corruption Act, 1988

The Prevention of Corruption Act, 1988 (POCA), “is the foremost anti-corruption law of the country and therefore one of the primary legislations tasked with tackling one of the more egregious kinds of white-collar crime in any society, that is, bribery and corruption.”²⁷

As such, the POCA penalizes the giving or taking of any type of illegal gratification. “However, the scope of application of the POCA is restricted to the public sector only, that is, the provisions get attracted only with respect to public servants and not to acts of private bribery.”²⁸

¹⁹ Kaunain Rahman, Overview of corruption and anti-corruption developments in India, Transparency International (2022), <https://www.jstor.org/stable/resrep39425>.

²⁰ Section 403 IPC, 1860

²¹ Section 405 IPC, 1860

²² Section 415 IPC, 1860

²³ Section 420 IPC, 1860

²⁴ Section 463 IPC, 1860

²⁵ Section 477A IPC, 1860

²⁶ Section 120A IPC, 1860

²⁷ Susanah Naushad and Mohammed Raiz, White collar crimes in India, pg. 27, 1st ed. 2021.

²⁸ *Ibid.*

The POCA was substantially amended in 2018.²⁹ POCA provides for Offence relating to public servant being bribed³⁰, Public servant obtaining undue advantage without consideration from person concerned in proceeding or business transacted by such public servant³¹ and Criminal misconduct by a public servant³².

The Prevention of Money Laundering Act, 2002:

In the landmark judgement of *Nikesh Tarachand Shah v. Union of India*³³ it was observed that, “the Prevention of Money Laundering Act, 2002 (PMLA) was introduced, as its Statement of Objects and Reasons mentions, to make money laundering an offence, and to attach property involved in money laundering, so that this serious threat to the financial system of India is adequately dealt with”. PMLA also calls for “the maintenance and verification of all customer records by banks, financial institutions and intermediaries and its provision of this information to relevant authorities.”³⁴

Companies Act, 2013:

According to Section 128(6) of the act, if there has been improper upkeep of books of accounts in contravention of Section 128, then any official, who being charged by the Board of Directors with the duty of comply, commits such contravention, he shall be liable for punishment for a period of up to 1 year and fine (INR 50,000 to 5,00,000).

Section 134(8) provides that if the report of board of directors including inter alia information regarding the state of affairs of the company is not laid down in the general meeting of company under section 134(3) then such contravention is punishable with fine on company (INR 50,000 to 25,00,000) and every office holder of the company who is default can be punished with the imprisonment up to 3 years and fine (INR 50,000 TO 5,00,000).

²⁹ The Prevention of Corruption (Amendment) Act, 2018 (POCA, 2018 Amendment), was notified in the Official Gazette and came into force on July 26, 2018.

³⁰ Section 7 of the Prevention of corruption Act, 1988

³¹ Section 11 of the Prevention of corruption Act, 1988

³² Section 13 of the Prevention of corruption Act, 1988

³³ (2018) 11 SCC 1

³⁴ Kaunain Rahman, *supra note*.18, pp.14

Section 166(7) provides that if a director of a company acts in contravention of his duties under Section 166 then he could be fined (INR 1,00,000 to 5,00,000). Under Section 447, fraud is punishable with imprisonment for a term which shall not be less than 6 months and can be extended upto 10 years and fine amounting to at least the actual amount involved in the fraud and upto 3 times the actual amount involved in fraud. Section 448 of the act says that if a false statement is made by a person in “return, report, certificate, financial statement, prospectus, statement or other document” which is required under the Companies act or its rules then such person is liable for fraud under Section 447.

Whistle Blowers Protection Act, 2014:

The Whistleblowers Protection Act, 2014 was drafted in 2011. “It was passed by both houses of parliament, but it has not been notified in the official gazette as yet. The act is limited to public servants and public sector undertakings.”³⁵ Also, there is a Whistle Blowers resolution under the Central Vigilance Commission Act, 2003 which says that “CVC is the designated agency for receiving such complains against employees of central Government or any Corporation established under a Central Act. The CVC can issue appropriate directions to the Government for protection of complainant and witnesses.”³⁶

Lokpal and Lokayuktas (Amendment) Act, 2016:

The Lokpal and Lokayuktas Act, aimed to create an autonomous ombudsman institution at the union (Lokpal) and state (Lokayukta) levels and was originally approved after a struggle in 2014. “The Lokpal Bill which specifically addresses the issues of public and private sector corruption finally gone through but some of its provisions are highly unrealistic. Thus, it can safely be stated that the current form of the Lokpal (The Ombudsman Authority) is a weak anti- corruption watchdog. The earlier final draft of the Lokpal had a mandate to investigate and punish the perpetrators of all sort of corruption whether public or private but this Lokpal is a toothless tiger”³⁷.

³⁵ pp .14, Transparency International Anti-Corruption Helpdesk

³⁶ Gangotri Chakraborty, Legal Framework for Prevention of Corruption in India: An Overview, 4 INDIAN J.L. & Just. 12 (2013), pp.18.

³⁷ Dr. J. J. Mozika, "Corruption and Human Rights: The Right Based Approach towards Corruption", *Indian Human Rights Law Review*, Vol-4 No. 2, Dec, 2013.

Presently it inquires into allegations of corruption against certain public functionaries only. “Now the Lokpal Bill is enacted but it's a weak Lokpal as it has no control over CBI, another drawback is the punishment provisions for whistle blower.”³⁸

The other legislations which deal with white collar crimes includes-Imports and Exports (Control) Act, 1950; Commodities Act, 1955; Income tax act, 1961; The Benami Transactions (Prohibition) Act, 1988³⁹ and The Fugitive Economic Offenders Act, 2018 etc. The previous threats, commission of such offences and forthcoming risks of white-collar offences in are not hidden anyone. Thus, with the implementation of above-mentioned laws against white collar crimes had made the situation little better than worse. But the impact is not very remarkable and often the lawmakers and law executioners are themselves the one committing white-collar crimes.

VII. Institutional Framework

Lokpal (Ombudsman), Central Vigilance Commission (CVC), Central Bureau of Investigation (CBI), Enforcement Directorate (ED), Election Commission of India (ECI), Comptroller and Auditor General of India (CAG), Union and state Judiciary are entrusted with the duty to curb white collar crimes along with other statutory functions and constitutional duties. Media and Civil societies can also play a significant role against white collar crimes. It has been noted that most of the white-collar crimes were unrevealed. So, if the media becomes proactive towards reporting frauds, exposing cheat-scams and make efforts to spread awareness against white-collar crimes then this would certainly help in plummeting the rate at which the white-collar crimes are being executed.

³⁸ Narender Nagarwal & Anit Kumar, Prevention of Corporate Corruption in India: Judicial Response and the Rule of Law - A Critical Analysis, 7 INDIAN J.L. & Just. 77 (2016).

³⁹ This act prohibits the purchase of property in the name of another person or under a false name.

VIII. Conclusion

In the words of sir Walter reckless, “White-collar crimes are committed by persons of status, not for need but for greed”. White collar crimes are not just any other domestic social-legal problem but a global phenomenon that has aggravated its transnational attributes with the advancing technology and global networking resulting in disastrous consequences and irreparable economic loss to our country. Merely enacting new legislations and creating different institutions to deal with white collar crimes is not sufficient but what is required is practical application of the preventive legislations and exemplary punishment of the offenders of white-collar crimes. The institutions entrusted with adjudication of such economic offenders should be equipped to try such cases expeditiously without any external pressure and political influence.

²⁸ Misra, Acharya Rajeshwar: (2011), Malian Chanakya - Jeevani and Samagra Sahitya, Diamond Pocket Books, New Delhi, p- 271.

²⁹ Ryszard Szpyra, supra note 1, at Pg 59.